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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

PRESERVING THE PEACE, et al., Petitioners, vs. MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT, et al. Respondents.	Case No.: 21CV002755 ORDER RE: PETITION FOR WRIT OF MANDATE

This petition for writ of mandate filed by petitioners Preserving the Peace and Taxpayers for MPUSD Accountability (collectively "Petitioners") against respondents Monterey Peninsula Unified School District and Monterey Peninsula Unified School District Board of Trustees (collectively the "District") arises out of the District's project to add stadium lights, a public address ("PA") system, visitors' bleachers and a multi-sport field to Monterey High School (the "Project").

The petition came on for hearing on June 8, 2022 and June 20, 2022. During these hearings, the District repeatedly pointed out that Petitioners were raising new arguments in support of their petition or providing much more substantiation or detail in support of the arguments made in their opening brief. At the conclusion of oral argument, the Court ordered the District to provide a brief outlining the issues it believed were waived due to Petitioners' failure to timely raise them in their written briefs. Petitioners were in turn provided with an opportunity to file a brief in response.

Following the submission of the parties' briefing, the Court afforded the District an opportunity to file a supplemental opposition brief addressing some of the issues Petitioners had untimely raised. Both parties were also asked to brief the applicable standards of review relative to the issues raised. These briefs were filed on September 9, 2022. The matter having been submitted, the Court now rules as follows:

I. Factual and Procedural Background

In January 2018 the District Board approved a Facilities Needs Assessment for all District schools, which served as the basis for a facilities bond measure. The District indicated the purpose of the assessment was to "determine priority improvements to [its] schools and ensure that all funds from Measure I would be spent on the District's most urgent needs." (AR 3288.) In June 2018, the voters approved Measure I. In January 2019, the Monterey City Manager reported that District Superintendent "PK [Diffenbaugh] would like to break ground in April" on the stadium lighting and PA system. (AR 34070.) In March 2019, Superintendent Diffenbaugh said the District would be "adding a lower multipurpose field, weight room, visitor bleachers…with funds from Measure I." (AR 17375.)

In July 2019, the District released a proposed mitigated negative declaration for the Project. There was public opposition to this approach. As such, the District decided to prepare an EIR before approving and moving forward with the Project. On November 13, 2020, the District released a DEIR that presented the Project and six alternatives. (AR 100-846.) On July 7, 2021, the District released the FEIR. (AR 847-2030.)

On July 27, 2021, the District Board certified the FEIR, adopted a statement of overriding considerations for the significant and unavoidable noise and lighting impacts, and approved Alternative 2 for the Project. (AR 8-99.) The Project includes construction of four 70-foot-tall stadium light standards each with three levels of LED arrays, a stadium public address system, 300-seat aluminum visitor bleachers in the stadium, and the conversion of a dirt overflow parking lot into a multi-use lower field with 150 bleacher seats and a new team room and weight room. (AR 142-147.)

Petitioners contend the EIR did not comply with the California Environmental Quality Act ("CEQA") and filed a petition for writ of mandate on August 27, 2021.

II. Administrative Record

The administrative record was admitted into evidence.

III. Merits of the Petition

The petition for writ of mandate alleges causes of action for: (1) CEQA – Stadium and Field Project; (2) CEQA – Parking Project; (3) CEQA – Logan Lane Driveway Widening Project; (4) Government Code section 53094; and (5) Violation of Local Zoning Ordinance.

A. Preliminary Issues

Before the Court reaches the merits of the petition, it will address a few preliminary issues regarding claims that were waived, unauthorized briefing by Petitioners that will not be considered, and problems with Petitioners' presentation of the issues involved in this matter.

First, the Court observes that though the petition for writ of mandate alleges five causes of action, Petitioners' briefing only addressed two of the claims – namely, the first cause of action for CEQA violations relative to the stadium and field project, and the second[1] cause of action for CEQA violations relative to the parking lot improvement project. (See Opening Brief at pp. 8, 38.) The District argues in its opposition that the third, fourth and fifth causes of action should be waived based on Petitioners' failure to address them. (Opp. at p. 9, citing *Moulton Nigue, Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1215.) The Court agrees. California courts have held that "[e]very brief should contain a legal argument with citation of authorities on the points made." (*People v. Stanley* (1995) 10 Cal.4th 764, 793; see also *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591.) "If none is furnished on a particular point, the court may treat [that argument] as waived and pass it without consideration." (*Ibid.*) Accordingly, the Court will only address the first two causes of action in the petition for writ of mandate. The remaining claims are deemed waived.

[1] Petitioners erroneously refer to this claim as the third cause of action in their opening and reply briefs.

Second, following the hearing on the merits of the petition, the Court issued an order allowing the District to provide supplemental briefing for the purpose of responding to a number of points raised for the first time by Petitioners at oral argument. Notwithstanding the Court's order – which was necessitated in the first instance by Petitioners' untimely raising of new material in oral argument – Petitioners proceeded to file an *additional* pleading titled "Factual Corrections to Respondents Monterey Peninsula Unified School District and Monterey Peninsula Unified School District Board of Trustees' Supplemental Merits Opposition Brief Dated September 9, 2022." In this pleading, filed after the District submitted its supplemental opposition brief, Petitioners object and essentially respond to a number of points made by the District in its supplemental brief. This is improper. Petitioners were not granted leave to file this additional pleading. Accordingly, the Court will not consider it.

Lastly, the Court notes that throughout this litigation, Petitioners' presentation of the issues was sorely lacking in organization and clarity. In their written briefing, Petitioners raised any number of contentions in support of their argument the District's EIR was inadequate. However, many of these arguments were lobbed in a scattershot way, often without much in the way of actual substance or analysis. Petitioners' opening brief framed the issues under a few broad umbrella categories but often, the contentions that were made in the corresponding argument sections went significantly beyond or were unrelated to the heading under which the contentions were grouped. Petitioners' oral argument on the matter at hearing provided some clarity, but also improperly raised any number of new contentions that were not previously raised. In this order, the Court seeks to synthesize the various points made by Petitioners at different times in order to provide a comprehensive analysis of all the issues raised.

B. First Cause of Action – CEQA Violations Relative to Stadium and Field Project

Petitioners argue the EIR related to the District's stadium and field project is deficient because, among other things, it failed to contain baseline information on traffic, transportation and safety; failed to adequately disclose the magnitude of the noise impacts; and contained inadequate mitigation measures.

1. Legal Standard

Under Code of Civil Procedure section 1094.5, a trial court determines whether an agency has engaged in a prejudicial abuse of discretion, which 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." (Pub. Resources Code, § 21168.5; *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392-93.) Under this two-pronged framework, a court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforc[ing] all legislatively mandated CEQA requirements, but accord greater deference to the agency's substantive factual conclusions." (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935, internal quotation marks omitted.)

Public Resources Code section 21168.5 provides that an "[a]buse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." Courts have held that "[j]udicial review of these two types of error differs significantly." (*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 512 ("*Sierra Club*").) Specifically, "[w]hile [courts] determine de novo whether the agency has employed the correct procedures, scrupulously enforc[ing] all legislatively mandated CEQA requirements [citations], [they] accord greater deference to the agency's substantive factual conclusions." (*Ibid.*, internal citations and quotation marks omitted.)

In the context of determining the adequacy of an EIR's discussion of environmental impacts, the California Supreme Court in *Sierra Club* stated that case law and the CEQA Guidelines[2] make clear that the ultimate inquiry is "whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Sierra Club, supra,* 6 Cal.5th at 516.) The high court went on to state this inquiry "presents a mixed question of law and fact." (*Ibid.*) "As such, it is generally subject to independent review. However, underlying factual

[2] The CEQA Guidelines found in the California Code of Regulations at Title 14, sections 15000 et seq., are the regulations that implement CEQA.

determinations – including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect – may warrant deference." (*Ibid.*) "Thus, to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted." (*Ibid.*) The court also generally observed that courts have "consistently recognized that adequacy of discussion claims are not typically amenable to substantial evidence review." (*Id.* at 515.)

2. Arguments Raised by Petitioners Relative to the EIR's Analysis of the Stadium and Field Project

a. Failure to Include Baseline Information

"To fulfill its information disclosure function, an EIR must delineate environmental conditions prevailing absent the project, defining a baseline against which predicted effects can be described and quantified." (*Cleveland Nat'l Forest Found. v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 439, internal quotation marks omitted.)

Here, Petitioners contend the EIR failed to provide a map showing the complicated circulation around Monterey High School ("MHS"), including the five access points to the campus from Pacific Street, Logan Lane, Martin Street, Larkin Street and Herrmann Lane; student pedestrian use of the Pacific Street/Logan Lane access due to the location of a school bus loading zone on Pacific Street and the area's proximity to downtown and the library; and the five campus parking lots that are not interconnected. However, Petitioners do not go on to explain why they believe such information needed to be included in the EIR. Nor do they articulate why the failure to include baseline information resulted in prejudice. (*Schenck v. Cnty. of Sonoma* (2011) 198 Cal.App.4th 949, 959 ["Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown."].)

This is insufficient. It is not apparent how Petitioners believe the District's failure to include the aforementioned circulation information violated CEQA's information disclosure requirements. Accordingly, the Court finds no error with the District's purported omission of baseline information.

b. *Traffic Impacts on Logan Lane*

Petitioners assert the EIR fails to analyze increases in traffic that would occur on Logan Lane – a one-lane, bidirectional street that students and vehicles occasionally use to access the campus. Petitioners suggest this increased traffic would occur because the primary construction access is on Logan Lane and because there would be more game traffic on this road after the Project's completion. However, once again, they do not fully flesh out their argument or explain why an analysis of traffic impacts to Logan Lane was required. Further, to the extent Petitioners' assertion is based on an increase in game traffic on Logan Lane, this argument seems to lack merit. As the District points out in opposition, the FEIR stated the following: "Comments were also raised about use of Logan Lane for spectator access to the lower field during operation, including making reference to a 'pinch point' on Logan Lane. No spectator access would be provided to the lower field on Logan Lane. In this way, the proposed project will not increase traffic related to after-hours games on Logan Lane." (AR 1566.) Accordingly, the record does not support Petitioners' assumption there would be an increase in game-related traffic on Logan Lane, much less impacts that would require additional environmental analysis.

In a separate portion of their opening brief, Petitioners take issue with the fact that the FEIR announced that "[n]o spectator access would be provided to the lower field on Logan Lane" and "[i]n this way, the proposed project will not increase traffic related to after-hours games on Logan Lane." (Opening Brief at p. 18, citing AR 1566.) Petitioners contend this was significant new information that required recirculation of the EIR. (*Ibid.*) More particularly, Petitioners assert that there was historic access from Logan Lane to the 2.2-acre dirt lot that will eventually become the new athletic field. (*Ibid.*) As such, Petitioners assert the FEIR's proposal to limit spectator access to that lot would "materially change existing circulation." (*Ibid.*) Additionally, Petitioners contend the FEIR does not explain how spectator access would be prohibited. (*Ibid.*)

Petitioners' argument is not well-taken. It is true that CEQA requires a lead agency to recirculate an EIR when significant new information is added to the EIR after the draft EIR has been released to the public for review and prior to certification. (Pub. Resources Code, §

21092.1.) Here, however, the standard for recirculation has not been met. In *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1994) 6 Cal.4th 1112, 1129, the California Supreme Court held that "the addition of new information to an EIR after the close of the public comment period is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." "[A] lead agency's determination that a newly disclosed impact is not 'significant' so as to warrant recirculation is reviewed only for support by substantial evidence." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447.) Generally, "[t]he decisions of the agency are given substantial deference and are presumed correct," "[t]he parties seeking mandamus bear the burden of proving otherwise, and the reviewing court must resolve reasonable doubts in favor of the administrative findings and determination." (*Sierra Club v. Cnty. of Napa* (2004) 121 Cal.App.4th 1490, 1497.)

Here, Petitioners fail to carry their burden of demonstrating that substantial evidence did not support the District's decision to not recirculate the EIR after it decided there would be no spectator access to the field through Logan Lane. Petitioners broadly and vaguely assert this change in access would "materially change existing circulation." However, they fail to explain what actual changes would occur and why these changes would result in substantial adverse environmental impacts the public was not able to comment on during the DEIR circulation period. Accordingly, it is not apparent any error has occurred.

c. *Impacts to Pedestrian Safety During Project Construction and After Project Completion*

Petitioners contend the FEIR indicates the presence of many student pedestrians, stating "many students…also take public transportation to the Monterey Transit Plaza in downtown Monterey and walk to campus" (AR1554) and "a large number of MHS students take the bus from Marina or Seaside to the nearby transit center and then walk" (AR1695). (Opening Brief at pp. 13-14.) Yet, Petitioners argue the EIR did not consider that information in its transportation

impact analysis nor did it discuss the impacts to pedestrian safety that would result from Project construction and increased game traffic after the Project's completion. (*Id.* at p. 14.) Instead, Petitioners state the DEIR contained one short paragraph each on the "pedestrian system" and "pedestrian safety" and concluded the project would not adversely affect pedestrian facilities because it would not physically change existing roads. (*Id.* at p. 13, citing AR 271, 273.)

Further, Petitioners argue the EIR inaccurately stated there were no fatalities involving youth pedestrians between 2010 and 2019, and inaccurately stated that an August 20, 2019 accident involving a Monterey High School Student occurred at a signal-controlled intersection.[3] (Opening Brief at p. 14, citing AR 271, 1533.) In fact, Petitioners contend there was a pedestrian fatality at Pacific at Madison on 9 a.m. on August 14, 2019, a school day, and the student accident on August 20, 2019 occurred when the student was hit midblock on Pacific adjacent to the bus loading zone. (*Ibid.*, citing AR 10632, AR1095, 10515, 10631-10632.) Petitioners also assert the EIR's "cramped focus" on "pedestrian collisions involving high school aged youth (13 to 18 years old) near Monterey High School did not adequately consider all ages who would attend events; the EIR's conclusion that student pedestrian accidents were not associated with nighttime games was only based on five games a year; and the EIR failed to investigate its statistic that "between 2010 and 2019, there were 39 pedestrian collisions involving 49 youth pedestrians (18 years old or younger) in the City." (*Ibid.*, citing AR 279.)

Additionally, Petitioners point out that the EIR transportation section did not include safety in its significant criteria and "did not consider pedestrian safety impacts caused when attendees and visiting players are arriving for afternoon games at the same time that a thousand students are leaving campus." (Opening Brief at p. 15.) In this regard, Petitioners observe that the Project would materially expand nighttime usage of the stadium from five nights *per year* to five nights *per week* from October to April, which is approximately 140 nights per year. (*Ibid.*, citing AR 145-146.) Petitioners also note the EIR rejected the possibility of increased attendance, failed to consider the added attraction of the lights and new PA system, and failed to consider the

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[3] This argument and the contention immediately following it were actually included in the portion of the opening brief relating to the EIR's discussion of traffic hazards. However, because these assertions seem more related to the argument related to pedestrian safety, the Court discusses it here.

impacts of the increase in vehicular and pedestrian activity after dark. (*Ibid.*, citing AR 1628, 142, 145.) Petitioners contend that a "traffic study should have considered whether the project – including a year of construction and the addition of hundreds of attendees and participants who would arrive and depart from the site in the dark through multiple access points on foot and in vehicles – created additional risks." (*Ibid.*)

Petitioners' arguments have some merit. CEQA requires that an EIR include a "detailed statement" setting forth the "significant effects on the environment of the proposed project." (Pub. Resources Code, § 21100, subd. (b)(1).) It also requires that an EIR "contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail." (CEQA Guidelines, § 15128.) "[A] 'significant effect on the environment' under CEQA is a substantial or potentially substantial adverse change in the physical conditions existing within the area affected by the project." (*City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362, 391.) Pedestrian safety is an impact that has been discussed and analyzed in EIRs relating to school construction projects. (See, e.g., *City of Maywood, supra*, 208 Cal.App.4th at 391-92; *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 914-916.)

Here, the District briefly addressed the issue of pedestrian safety. However, the Court finds the District's analysis of this issue failed to satisfy the information disclosure requirements of CEQA by providing sufficient information "to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (See *Sierra Club, supra,* 6 Cal.5th at 516.) As Petitioners point out, the EIR included two short paragraphs regarding pedestrian safety relative to the Project. (AR 271.) The first paragraph, titled "Pedestrian System," generally discusses the "pedestrian facilities" (i.e. "sidewalks along arterial and collector roadways" and "sidewalks along both sides of roadways used to access the project site") that provide pedestrian access to and from the school, and provide connections to the downtown area and Monterey Public Library. (AR 271.) This section also mentions that roadways to the south and west generally have low traffic and low pedestrian facilities including intermittent or no sidewalks and narrow shoulders. (*Ibid.*) The second

paragraph – titled "Pedestrian Safety" – merely states that in a 10-year-period from January 1, 2010 to December 31, 2019, there were 178 pedestrian collisions across the City of Monterey (which equates to about 18 collisions per year); 25 pedestrian collisions near Monterey High School (or about 2.5 per year); 39 pedestrian collisions involving 49 youth (18 years old or younger) pedestrians; and 4 pedestrian collisions involving high school aged youth (13 to 18 years old) near Monterey High School. (*Ibid.*)

The Court finds this discussion of the issue of the Project's possible impacts to pedestrian safety to be lacking. At the outset, it is unclear how an explanation of the pedestrian facilities around the school and a recitation of the past decade of collision history in the City and around the high school illuminates what the *future* impacts might be upon pedestrian safety. Further, it seems clear there would be potential impacts to pedestrian safety resulting from both Project construction and Project operation.

With respect to Project construction, the parties do not appear to dispute that Logan Lane will be the primary construction access point. However, as Petitioners point out in their opening brief, this lane also happens to be adjacent to a school bus loading zone and is also one of the closer access points to the transit plaza, library and downtown. (See, e.g., AR 10614.) The District does not dispute the existence of the school bus loading zone next to Logan Lane nor does it seem to dispute Petitioners' contention that students often use the lane to enter the campus. Based on the foregoing, it seems reasonably foreseeable that student pedestrians would use this lane and their safety could be impacted by construction in the same area. And yet, the EIR includes no discussion of this issue. Although the EIR discusses the use of flaggers for *traffic* safety during construction, it does not address the use of these or other precautions for the safety of *pedestrians* during construction. It may be that this shortcoming can be easily addressed, but it does need to be addressed.

Similarly, it seems reasonably foreseeable there could be impacts from Project operation on pedestrian safety. The Project proposes the construction of an entirely new multi-sport field and significant upgrades to the existing school stadium. Elsewhere in the EIR, the District indicates there could be a potentially significant increase in game-related traffic around the high

school as home games are currently played at Monterey Peninsula College, but they would be played at MHS once the Project is complete. (See, e.g., AR 274 ["The project-generated operational change in VMT would generally be associated with the redistribution of trips to and from the five annual MHS football games. With the implementation of the project, trips generated by these football games would originate or conclude at MHS instead of Monterey Peninsula College, where home football games are currently held."].) The EIR also notes that evening events hosted at the stadium "would typically be scheduled to begin *shortly after the end of regular school hours*" and, during football games, the estimated parking demand would be approximately 433 vehicles. (AR 277, emphasis added.) Thus, incoming traffic from those coming to play various games may conflict with students exiting the school after school ends.

Taken together, it seems reasonably foreseeable that the Project would result in increased construction traffic in what might be a student thoroughfare on Logan Lane and increased operational traffic around the school that could conflict with student pedestrian activity when games are scheduled to begin shortly after the end of regular school hours. The Court finds these issues should have been at least minimally disclosed, discussed, and analyzed in the EIR. (See, e.g., *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1989) 47 Cal.3d 376, 396 [an EIR must include an analysis of the environmental effects of an action if "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects"].) The EIR's omission of any discussion regarding these issues rendered it inadequate as an informational document.

As for the District's arguments in opposition, they do not compel a contrary conclusion. The District does not seem to include a specific argument section regarding the adequacy of its analysis of the pedestrian safety issue. Rather, it merely states the "EIR addresses baselines for pedestrian facilities and safety by identifying pedestrian facilities that provide access to-and-from MHS and their access points (AR000269), and uses the UC Berkeley's Transportation Inquiry Mapping System ("TIMS") to establish the baseline for pedestrian collisions near MHS involving all age groups (AR000269; see also AR 1526-1533, AR 101558-1559, AR 1686,

AR1690, AR1714 [detailed responses to comments].)" (Opp. at pp. 14-15.) But, as the Court previously indicated, such references to *existing* pedestrian facilities and *past* pedestrian collisions are insufficient because they do nothing to address the *future* impacts to pedestrian safety resulting from the Project.

As such, the Court agrees with Petitioners that further analysis of the pedestrian safety issue is needed in the EIR.

d. *Discussion of Traffic Hazards During Project Construction and Operation*

Petitioners contend the Project would substantially increase hazards at dangerous intersections. (Opening Brief at p. 17.) They point out the CEQA checklist identifies the need for analysis of whether the project would "substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses." (*Ibid.*, citing Guidelines, App. G, § XVI.d.) Here, Petitioners assert public comment supplied information about known traffic hazards at Pacific Street and Logan Lane. (*Ibid.*, citing AR 999.) Further, Petitioners' traffic engineer commented on the lack of safety analysis for project truck traffic on Pacific and Logan "given the geometrics of the existing intersection where there is no left turn lane" and conflicts between trucks headed in opposing directions. (Opening Brief at p. 17, citing AR10707.) Among other things, Petitioners' traffic engineer expressed concern regarding truck safety at 757 Pacific (a busy seven-business medical complex); off-set interactions of Pacific Street at El Dorado Street and Martin Street that could further constrain traffic operations; and collision clusters around the closely spaced off-set intersections that may be due to the roadway geometrics. (*Ibid.*, citing AR 9506, 10557, 10602-10604, 10621-10624, 10707-10708, 10721, 47465.)

The Court is only persuaded as to some of Petitioners' arguments. With respect to the assertions regarding the purported inadequacy of the EIR's analysis of the construction-related traffic hazards from the Project, it is true that "Appendix G to the CEQA Guidelines recommends that, in determining whether a project will have significant traffic impacts, lead agencies consider whether it will "[s]ubstantially increase hazards due to a design feature (e.g.,

sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?" (*Keep Our Mountains Quiet v. Cnty. of Santa Clara* (2015) 236 Cal.App.4th 714, 735, citing CEQA Guidelines, appen. G, § XV, subd. (d).) With that said, the Court is not convinced the EIR inadequately analyzed this issue. The EIR includes a discussion regarding "Impact 3.12-2: Substantially Increase Hazards due to a Design Feature or Incompatible Uses." (AR 276.) In this section, among other things, the EIR indicates that "[t]he hauling of heavy equipment (e.g. bulldozer, excavators, etc.) and operation of large trucks associated with project construction could result in traffic hazards along surrounding roadways with narrow right-of-way constraints," thus, implementation of the Project "could potentially substantially increase traffic hazards during the construction period." (*Ibid.*) The EIR notes that some of the roadways around the Project site (e.g. Larkin Street and Hermann Drive) which it states have "limited lane width, little or no roadway shoulders, and sharp curves" result in temporary hazards when large trucks are used for haul trips and equipment deliveries. (*Ibid.*) As an example, the EIR points out that if a large truck was traveling in one direction on Larkin Street, this could preclude traffic from traveling in the opposite direction. (*Ibid.*)

In this Court's view, the foregoing analysis fulfills the informational requirements of an EIR. Though it is true the EIR does not reference the specific roadways Petitioners mentions (e.g. Pacific Street and Logan Lane), it does generally indicate that implementation of the Project "could potentially substantially increase hazards" if "project-related haul trips and the operation of heavy vehicles were to occur along roadways with constrained right-of-way." (AR 276.) The Court finds this analysis provides enough information for the public and decisionmakers to understand and meaningfully consider the issues raised by the Project. (*Schaeffer Land Tr. v. San Jose City Council* (1990) 215 Cal.App.3d 612, 631 ["An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences…The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure."].)

Turning to the EIR's analysis of the Project's operation-related traffic impacts, the Court is less persuaded regarding its adequacy. More particularly, as previously discussed, the EIR indicates there will likely be an increase in nighttime traffic around the school stemming from the Project's proposed expansion of the nighttime use of the stadium and construction of an entirely new field. (See, e.g., AR 145 [stating "[t]he proposed project would provide a well-lit sport field and allow for expanded evening-hour games and sport activities"].) Notwithstanding this fact, the District does not point to any section of the EIR that analyzes the potential traffic hazards that may arise from the expanded evening use of the stadium and field. Nor does it discuss issues that may arise when this traffic occurs in the context of an involved circulation system around the school where lots are not connected and yet would likely get filled during the five football games a year that could generate an estimated parking demand for 433 vehicles for a school that only has 278 parking spaces. (See AR 277.) In this Court's view, the EIR's failure to analyze these issues precludes meaningful understanding and consideration of the traffic hazards presented by the project.

As for the District's argument in opposition, it again does not compel a contrary conclusion. In response to Petitioners' points, the District references the fact the DEIR states there would be "no construction, re-design, or alteration of any public roadways." (Opp. at p. 14, citing AR 276, AR 1559.) This statement occurs in the section titled: "Impact 3.12-2: Substantially Increase Hazards Due to a Design Feature or Incompatible Uses." (AR 276.) In this section, the EIR also states that the "*types*" of vehicles accessing the project site during operational activities would be consistent with those currently using the roadway network to access MHS (i.e. passenger vehicles, buses, etc.); thus, it concludes "operational activities would not substantially increase hazards due to design feature or incompatible uses." (Opp. at p. 14, citing AR 276, AR 1559.)

In this Court's view, the fact the District references only an analysis of traffic hazards stemming from "design feature[s]" or "incompatible uses" highlights the fact that the EIR did not, in fact, include any analysis of the traffic hazards that would result from an increase in evening use of the stadium and an entirely new sports field. Further, the impact analysis included

in this section would not supply the public and decisionmakers with the information they would need regarding traffic hazards resulting from increased evening use. In this regard, the Court observes that "Impact 3.12-2" concludes no substantial increase in hazards would result because the "types" of vehicles accessing the Project site during operational activities are the same as those currently using the roadway. But the fact that the *types* of vehicles accessing the school site are the same says nothing about whether there would be an increase in hazards because the *volume* of vehicles traveling in evening hours will likely increase.

Accordingly, the EIR's discussion of the traffic hazards resulting from operation of the stadium and new field, particularly in the evenings, is inadequate.

e. *Failure by Project to Include ADA Access*

Petitioners assert the DEIR project description and FEIR site plan are deficient because they did not include Americans with Disabilities Act ("ADA") access to the new field. (Opening Brief at p. 19.) They also take issue with the fact that when asked about this access issue during circulation of the EIR, the FEIR responded that "plans approved by DSA are included as Attachment 2" when these plans had not actually been approved. (*Ibid.*, citing AR 985.) Lastly, Petitioners point out their traffic engineer opined that ADA access routes can "change traffic patterns and project design" and impacts. (*Id.* at pp. 19-20, citing AR 10709-10710.)

As framed in the opening brief, Petitioners' contention was poorly articulated, lacking in analysis and difficult to follow. Further and more significantly, the argument seemed completely unsubstantiated as Petitioners cited no legal support for the proposition that CEQA requires a project plan to include ADA access and an EIR must analyze the environmental impacts of ADA access. When asked about this issue at oral argument, Petitioners cited Government Code sections 4450 to 4453 and *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 in support of their position. Because this was new authority that was not discussed in the parties' written briefs, the Court allowed the District to respond. Having considered the parties' contentions, the Court now concludes there is no merit to Petitioners' position.

Petitioners assert that *County of Amador* stands for the proposition that an EIR is required

to look at all potential environmental issues. They further contend that ADA access can cause physical changes in the environment and ADA access in this Project might require ramping from Larkin Street, Logan Lane or Martin Street; thus, there would be not only potential physical changes but also possible changes to the circulation in the area.

The Court is not persuaded. As the District points out in its supplemental opposition brief, *County of Amador* did not hold that EIR project descriptions and site plans are required to include ADA access. In fact, that case had nothing to do with issues related to ADA access. And though Petitioners are generally correct the *County of Amador* court reaffirmed the general proposition that "a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project may have a significant effect on the environment" (*Cnty. of Amador v. El Dorado Cnty. Water Agency* (1999) 76 Cal.App.4th 931, 944), here, Petitioners do not point the Court to substantial evidence supporting a fair argument that ADA access would result in a significant environmental impact. In fact, Petitioners themselves acknowledged in their opening brief that as of June 2021, the Project plans still lacked the "[r]equired accessible pedestrian arrival point." (Opening Brief at p. 19, citing AR 8956.) Given the lack of certainty around how ADA access is going to be addressed in the Project, it is clear any analysis of potential environmental effects stemming from such access would be speculative. Accordingly, the District was not required to analyze them. (See CEQA Guidelines, § 15064 ["A change which is speculative or unlikely to occur is not reasonably foreseeable."]; *Citizens for a Sustainable Treasure Island v. City & Cnty. of San Francisco* (2015) 227 Cal.App.4th 1036, 1058 [same].) To the extent it becomes apparent at a later point in Project development that ADA access will result in environmental impacts, a subsequent, supplemental or addendum to the EIR can be prepared. (See, e.g., CEQA Guidelines, §§ 15162, 15163, 15164.)

As for Petitioners' reliance on Government Code sections 4450 to 4453, it is misplaced. These statutes establish the California Legislature's intent to "ensure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities." (Gov. Code., § 4450, subd. (a).) Among

other things, these provisions require the State Architect to develop building standards and other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities. (*Id.* at subd. (b).) These statutes have nothing to do with the environmental review process for projects under CEQA, much less require that that review process encompass an analysis of ADA access issues.

As such, the Court finds the EIR is not deficient because its project description and site plans did not include ADA access.

f. *Failure to Address Adequacy of Emergency Access*

Petitioners state the CEQA Guidelines checklist asks: "[W]ould the project result in inadequate emergency access?" (Opening Brief at p. 20, citing App. G, § XVII.e).) However, instead of answering that question, Petitioners contend the DEIR looked only at "existing" emergency access. (*Ibid.*, citing AR 273.) Further, Petitioners note that the FEIR disclosed that the District had decided to provide emergency access through Martin Street rather than Logan Lane (AR 1561, 1566, 1812), but the record does not contain evidence that the Martin Street access meets the California Fire Code requirements or is an "acceptable alternate." (*Ibid.*) Petitioners also point out that the "04/27/21" plans (AR 8296-8395) show Logan and Martin emergency routes and were signed by the fire marshal and accepted by the District (AR 8300), while the FEIR plan bearing the same date shows emergency access on Martin only and does not show fire marshal or District acceptance. (*Ibid.*, citing AR 1812.) Lastly, Petitioners assert that their traffic engineer opined that the late-added Martin emergency access would have potentially significant impacts. (AR 10705.)

At oral argument, Petitioners additionally asserted the District was aware the emergency access issue needed to be addressed in the EIR as evidenced by its preparation of 10 different versions of access plans that were repeatedly submitted to the fire marshal. Because this contention was raised for the first time at the hearing, the Court allowed the District to respond to this issue in its post-hearing supplemental opposition brief.

Having considered both parties' arguments, the Court finds the EIR's analysis of the emergency access issue was lacking. Appendix G to the CEQA Guidelines recommends that lead

agencies consider whether a project will "[r]esult in inadequate emergency access" (CEQA Guidelines, appen. G, § XV, subd. (d).) Here, as part of its analysis around the transportation impacts of the Project, the District indicated that one threshold of significance would be if the Project "result[ed] in inadequate emergency access." (AR 273.) The DEIR ultimately concluded that "adequate emergency access would continue to be provided at MHS" as "[t]he project would not develop new vehicular access points and would not inhibit existing emergency access to MHS facilities." (*Ibid.*) As such, the DEIR states "[t]his issue is not discussed further[.]" (*Ibid.*) However, in the FEIR, the District acknowledged that there actually *was* a "need for emergency access in this area" that had been identified by the Division of the State Architect ("DSA"). (AR 1561 ["Comments included concerns about fire and emergency access to the project site, including making reference to a 'pinch point' on Logan Lane. *The need for emergency access in this area was identified as a part of DSA review of the plans for the proposed project*."].) Further, the EIR stated the District had "initially explored emergency access from Logan Lane" but had "ultimately decided to provide emergency access to the lower field site from Martin Street." (AR 1561.)

These statements in the FEIR regarding an exploration of potential emergency access routes to meet the need for emergency access in the stadium and field area seems to contradict the DEIR's conclusion there was already adequate emergency access because the existing emergency access would not be inhibited. At the very least, even if these statements in the FEIR and DEIR could somehow be reconciled, the Court finds they preclude meaningful understanding and consideration of the issues related to the adequacy of emergency access because it remains unclear whether the emergency access to this area is adequate. As for the FEIR's statements the emergency access route has now been changed from Logan Lane to Martin Street, it does not resolve this discrepancy. More particularly, despite indicating this modification in emergency access points has been made, the FEIR does not revise its prior analysis regarding the adequacy of emergency access. This is despite the fact it seems apparent the DEIR's analysis of this issue cannot stand because the Project clearly is not relying on existing emergency access routes anymore but on a new route that has been developed on Martin

Street.

In light of the foregoing, the Court finds the EIR is deficient because it does not discuss whether emergency access is adequate, particularly in light of the fact the emergency access route changed between the time the DEIR was circulated and the time the FEIR was circulated.

g. *Use of Purportedly Unreliable VMT Estimates*

Petitioners raised two issues related to the DEIR's conclusions about impacts related to vehicles miles traveled ("VMT"). First, Petitioners state they take issue with the EIR's estimates of construction-related VMT. (Opening Brief at p. 20, citing AR 272-273.) Second, Petitioners contend the increased operational use due to the expanded facilities (e.g. additional stadium seating and newly created lower field) would result in additional traffic generation and VMT and, yet, these increases in traffic were not quantified. (*Id.* at pp. 21-22, citing AR 10705.) The Court will address each of these issues in turn.

Construction-Related VMT: Petitioners assert that despite the EIR's statement there would be no more than 110 trips per day, there would actually be more than 110 trips per day. In support, Petitioners contend the District told the consulting group that prepared the EIR that there would be between 22 and 64 haul trips per day. (Opening Brief at p. 21, citing AR 5513.) Petitioners assert this is 44 to 128 trips per day which when added to 40 construction workers (80 trips) would be 124 to 208 total trips daily. (*Ibid.*) Petitioners also contend their traffic engineer opined it would be "impossible" to conclude that 110 trips would not be exceeded, particularly given that the District estimated that 10,974 cubic yards of soil would be relocated which would require nearly 1,100 one-way trips. (*Ibid.*, citing AR 10707, 10711.)

In opposition, the District points out the EIR provides that 40 is the maximum number of workers that would be on the Project site at one time. More particularly, the EIR states "[t]he construction labor force would fluctuate over the 11-month period, depending on the activities taking place, *with up to 40 workers on site during peak construction periods*." (Opp. at p. 17, citing AR 259, emphasis added by the District; AR 1650.) The District additionally points out the record reflects that the worker estimates were based on "past project sites" worked on by the District's construction manager, RGM Kramer, Inc. (*Ibid.*, citing AR 581, 3028, 34606, 34766;

see CEB Handbook §13.26 ["An EIR's impact analysis may be based on informed judgments by experts..."].) Lastly, the District asserts the 110-trip threshold of significance was based on the Office of Planning and Research's ("OPR") Technical Advisory; a qualitative analysis of construction impacts was appropriate under CEQA Guideline 15064.3 because the construction-related activities were still unknown; and VMT trips generated by heavy vehicle trips associated with construction were not included in accordance with the OPR's Technical Advisory. (*Id.* at pp. 18-19, citing AR 1677.) As such, the District concludes that even if 40 construction workers were on site in a single day, the 80 trips generated would still be below the 110-trip threshold of significance.

At the outset, the Court observes that though Petitioners do not clearly frame it this way, the challenges regarding the VMT estimates used in the EIR seem to amount to contentions the District's conclusions about the construction-related VMTs are not supported by substantial evidence. Put another way, Petitioners appear to take issue with the factual determinations made by the District; thus, the Court must employ a substantial evidence standard of review. (*Save our Peninsula Comm. v. Monterey Cnty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118 [stating that an agency's factual determinations are subject to deferential review]; *Sierra Club, supra,* 6 Cal.5th 502, 516 [stating that an agency's "underlying factual determinations – including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect – may warrant deference"].)

"Substantial evidence is defined as 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." (*Ctr. for Biological Diversity v. Cty. of San Bernardino* (2010) 185 Cal.App.4th 866, 881, internal quotation marks omitted; see also *California Youth Auth. v. State Pers. Bd.* (2002) 104 Cal.App.4th 575, 584-85 ["Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Such evidence must be reasonable, credible, and of solid value."].) "In determining whether substantial evidence supports a finding, the court may not reconsider or reevaluate the evidence presented to the administrative agency. All conflicts in the evidence and any reasonable

1 doubts must be resolved in favor of the agency's findings and decision." (*Id.* at 881-82.) Put
2 another way, the "[agency's] findings come before us with a strong presumption as to their
3 correctness and regularity." (*California Youth Auth., supra,* 104 Cal.App.4th at 585.) "[Courts]
4 do not substitute [their] own judgment if the [agency]'s decision is one which could have been
5 made by reasonable people." (*Ibid.*, internal quotation marks omitted.) In determining if an
6 agency's decision is supported by substantial evidence, a reviewing court must review the entire
7 record. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 144.)

8 Applying this standard to the issues presented here, the Court finds that substantial
9 evidence supports the District's factual conclusion the construction-related VMTs would be less
10 than significant.

11 The DEIR indicates that trips associated with Project construction would include heavy-
12 vehicle trips to haul equipment and materials and trips associated with workers commuting to
13 and from the project site. (AR 274.) It further states the number of haul and worker trips would
14 vary based on phase and duration of the activity and the exact number of trips is currently
15 unknown but, due to the scale and intensity of the project, it was anticipated that fewer than 110
16 trips per day would be generated. (*Ibid.*) As such, the DEIR concluded the transportation impacts
17 would be less than significant in accordance with the 110-trip-per-day threshold of significance
18 recommended by the OPR Technical Advisory on Evaluating Transportation Impacts in CEQA.
19 (AR 272-74.) In response to public comments, the FEIR stated that at the peak of construction
20 and conservatively assuming the construction workers would use separate vehicles to commute
21 to the project site, 40 workers might be on site in any given day. (AR 1677.) The FEIR further
22 indicated that VMT generated by heavy vehicle trips were not included in the analysis based on
23 the OPR Technical Advisory which indicated that prior to the adoption of CEQA Guideline
24 15064.3 – which established VMT as the means by which a project's transportation impacts
25 would be analyzed – the term "automobile" was used to indicate that only on-road passenger
26 vehicles and "specifically cars and light trucks" should be included in analysis of VMT.

27 At the outset, the Court observes there is some lack of clarity around the EIR's discussion
28 of the methodology used to determine the VMT threshold of significance. The DEIR first

outlines the four "Criteria for Analyzing Transportation Impacts" established by CEQA Guideline 15064.3, subdivision (b), including the criteria for addressing land use projects in which "[v]ehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact" and the criteria for "Qualitative Analysis" where "a lead agency may analyze the project's vehicle miles traveled qualitatively" "[i]f existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered." (AR 272.) CEQA Guideline 15064.3, subdivision (b)(3) provides that "[s]uch a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc." In the DEIR, the District refers to the OPR Technical Advisory's 110-trip-per-day threshold of significance, stating that "the VMT attributable to the project would result in less-than-significant VMT impact if it would generate fewer than 110 trips per day." (AR 272-73.) However, the DEIR then goes on to state the following: "Taking into consideration the four criteria detailed in Section 15064.3(b) for analyzing the transportation impacts and their applicability to the project, state policy, and the recommendation of the Technical Advisory, *a no-net increase threshold* was determined appropriate for the purposes of analyzing the combined change in VMT associated with implementation of the project. Therefore, an increase in VMT as compared to existing conditions would result in a significant effect." (AR 273, emphasis added.)

Based on the foregoing, it appears the threshold of significance adopted by the District relative to the VMT impacts is a "no-net increase threshold" whereby any "increase in VMT as compared to existing conditions would result in significant effect." (See AR 273.) However, when the District actually engages in analysis of the construction-related and operational impacts of VMT, it utilizes the 110-trip-per-day threshold of significance established by the OPR advisory and *not* a no-net increase threshold. (See AR 274 [concluding the construction-related VMT would be less than significant because " it is anticipated that fewer than 110 trips per day would be generated during construction; AR 276 [concluding that the operational VMT generated by the project would be less than significant "because the project would not result in a net increase of VMT and because the project would generate fewer than 110 trips per day"].) As

such, though the District indicates the threshold it adopted was a "no-net increase threshold," in fact it appears it more consistently utilized the 110-trip-per-day threshold suggested by the OPR.

Notwithstanding the fact there is some lack of clarity in the District's discussion around the threshold of significance, the Court finds the District's analysis is nonetheless supported by substantial evidence. Though Petitioners initially take issue with the fact heavy truck trips were excluded from the VMT estimates utilized by the District, the Court observes the OPR Technical Advisory states the following: "**Vehicle Types**. Proposed Section 15064.3, subdivision (a), states, "For the purposes of this section, 'vehicle miles traveled' refers to the amount and distance of automobile travel attributable to a project." Here, the term "automobile" refers to on-road passenger vehicles, specifically cars and light trucks." (https://opr.ca.gov/docs/20180416-743_Technical_Advisory_4.16.18.pdf.) The District has the discretion to adopt the OPR's threshold of significance. (See CEQA Guidelines, § 15064.7 ["When adopting or using thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence."].) Further, the EIR's statement there would be no more than 80 car and light truck trips from construction workers commuting to and from the school site is supported by substantial evidence. More particularly, the Court observes these estimates were provided by the District's EIR consultants (RGM and Associates) when such estimates were requested based on what the consultants had "seen at past project sites." (See, e.g., AR 34606; see also AR 34760 [stating in response to a query regarding how many constructions workers would be present on a given day that "[i]t depends on the scope and is hard to predict exactly but I would estimate no more than 40 each day"]; AR 34643 [same].) As such, the Court does not find the District's analysis of construction-related VMT to be deficient.

Operational VMT: Petitioners take issue with the EIR's conclusion the operation of the new stadium and field facilities will not result in an increase in VMT. The Court is not persuaded the District's conclusions are not supported by substantial evidence. The EIR engages in a detailed analysis regarding the District's projection that the number of participants and spectators

at games would generally remain the same because practices and other high school activities that would now extend into the evening would not require extra trips because participants would already be on campus; MHS facilities would not become available to serve existing public nighttime events, thus, no new nighttime events would be created; and evening football games previously hosted at Monterey Peninsula College would now shift to MHS but this would not substantially change the associated VMT. (AR 274-75.) The EIR acknowledges the change in VMT based on the relocation of evening football games to MHS "cannot be precisely predicted" as "there is uncertainty regarding participant and spectator travel patterns and trip lengths." (AR 275.) Among other things, the EIR notes that the distance traveled by some vehicles to the games may increase while the distance traveled by others may decrease. (AR 276.) However, the EIR also observes that playing football games at MHS instead of Monterey Peninsula College would also enable students to stay on campus or in the vicinity at the end of the school day; thus, the number of student-related vehicle trips related to football game attendance could even potentially decrease. (*Ibid.*)

The Court concludes the aforementioned evidence is sufficient to support the reasonableness of the District's conclusion the impacts from operational VMT would be less than significant.

h. *Inconsistent Analysis of Parking Supply and Demand*

Petitioners argue the EIR's parking discussion is unreliable because the DEIR stall counts changed materially in the FEIR and were inconsistent with the District's representations to the California State Architect on the DSA-approved parking project plans. (Opening Brief at p. 22, citing AR 6964.) Among other things, Petitioners point to the fact the DEIR represents that MHS has 147 parking spaces whereas elsewhere in the DEIR the District states that "[p]arking at MHS consists of five on-site parking areas providing a total of 335 striped parking spaces." (Compare AR 138 with AR 271.) Moreover, in response to comments in the FEIR, Petitioners point out the District states that "MHS currently has ~~five~~ three formal parking areas and a total of ~~375~~226 parking spaces (not including approximately 100 parking spaces associated with the previously utilized informal dirt overflow lot, which would increase available parking to 326 spots)." (Reply

at p. 8, citing AR 1527, strikethroughs and emphasis in original.) On that same page of the AR, the District states that during football games, the estimated parking demand would be approximately ~~433~~485 vehicles, which would be greater than the ~~278~~194 parking spaces provided on the MHS campus with implementation of the project."

As such, Petitioners assert the EIR includes inconsistent numbers regarding the actual number of parking spaces, which is information material to the analysis of what the impacts would be of having football games moved to MHS where more than 400 vehicles would potentially be driving around looking for event parking at dusk. Petitioners also point out the FEIR materially increased the estimated spectator attendee count from 502 attendees to 740 attendees but, when recalculating the impacts to parking, used a figure of only 561 attendees in its parking analysis. (Reply at p. 9, citing AR 278, 1551.)

In opposition, the District argued at the hearing that if there are conflicts in evidence, the District should be afforded deference. The District's contention is not well-taken. It seems apparent from the numbers used in the EIR that there are inconsistences in the estimated number of parking spots that currently exist at MHS. And while it is true the lack of parking itself is not an environmental impact, the uncertainty around the actual number of parking spots at MHS could affect the EIR's analysis of the Project's impact on traffic, safety and circulation in the area among others. Accordingly, the Court finds the EIR should be revised to provide a stable and consistent description of the parking supply at MHS, so it can fulfill its role as an informational document and provide the facts needed to allow for informed and meaningful understanding and consideration of the issues presented. Further, to the extent any revision to the numbers results in environmental impacts not previously analyzed, such analysis should be provided.

i. ***Failure to Contain Mitigations for Operational Traffic***

Petitioners argue the EIR did not contain any mitigations for operational traffic and the District adopted a single traffic mitigation measure for construction traffic. (Opening Brief at p. 23, citing AR56-57.) As for that mitigation measure (i.e. Mitigation Measure 3.12-1), Petitioners assert their traffic engineer opined it was inadequate because it did not address the safety impacts

that should have been analyzed in the EIR, addressed some but not all construction impacts, and failed to take into account the unique roadway geometric conditions of the area of Pacific Street where the construction ingress and egress would occur. (*Ibid.*, citing AR10708.) They also argued their traffic engineer stated that signage and traffic flagger personnel are not adequate "to mitigate the geometrics of the left turns," and traffic signage and flaggers were anomalously not required for Pacific Street, Hermann Street and Martin Street. (*Ibid.*) Lastly, Petitioners assert the proposal to schedule deliveries "during periods of minimum traffic flow" does not provide a basis for determining when "minimum traffic flow" is because there was no traffic study. Petitioners also point out that in the FEIR, the District established a different performance standard when it indicated that deliveries would be scheduled "outside of periods of high traffic flow." (*Ibid.*, citing AR 1529.)

The disjointed and disconnected nature of Petitioners' arguments make it hard to comprehend the nature of the CEQA violation that is being alleged. It also does not help that Petitioners fail to provide the Court with any discussion of the legal framework within which they are bringing their challenge. However, Petitioners' contention largely appears to be a challenge to the adequacy of Mitigation Measure 3.12-1 ("MM 3.12-1"). Such a challenge must be evaluated under the substantial evidence standard. [See *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027 ["For projects for which an EIR has been prepared, where substantial evidence supports the approving agency's conclusion that mitigation measures will be effective, courts will uphold such measures against attacks based on their alleged inadequacy."].)

Applying that standard here, the Court finds that Petitioners' arguments are unpersuasive. To begin, Petitioners contend but do not elaborate upon their assertion MM 3.12-1 does not address all the construction impacts or the geometric conditions at the cite. For instance, Petitioners do not explain why impacts are *not* addressed by the mitigation measure nor do they explain why the signage, flags and other measures proposed are inadequate to deal with the geometric conditions of certain roadways. Similarly, Petitioners do not explain why Pacific,

Hermann and Martin would require signage and flags. As such, Petitioners' arguments are under-developed and uncompelling.

Moreover, in opposition, the District points out that MM 3.12-1 mitigates the potentially significant traffic hazards resulting from the heavy equipment and trucks by requiring the construction contractor to prepare and implement a traffic control plan that utilizes "industry-accepted traffic control practices" in "coordination with the City." (Opp. at p. 27, citing AR 56-57.) MM 3.12-2 includes several traffic control methods, including providing signage and flagger personnel if needed to control and direct traffic for deliveries, scheduling deliveries during periods of minimum traffic flow and submitting proposed street closures to the City for review and feedback, among others. (AR 56-57.) The District also points out the signage and flagger personnel are not limited to Logan Lane and Larkin Street, citing the FEIR at AR 1159 in support. (*Ibid.*) Rather, the District argues that Logan Lane and Larkin Street are referenced in the mitigation because Logan Lane was identified as the primary construction access point and hazard concerns related to both streets were publicly identified as areas of concern. (*Ibid.*, citing AR 1559, 1688-89.)

The District's contentions are persuasive. Petitioners fail to demonstrate that substantial evidence does not support the EIR's conclusion that MM 3.12-2 would not be effective to address the potential traffic hazards resulting from heavy equipment and trucks on some of the narrower streets around the school. With that said, the Court observes there is one issue that may still need revising in the EIR. Specifically, notwithstanding the District's contention the signage and flagging are not limited to Logan Lane and Larkin Street, this fact is not evident in the EIR. Rather, the FEIR states the District will "provide adequate signage and flagger personnel, if needed, *on Larkin Street* <u>*and Logan Lane*</u> to control and direct traffic for deliveries, if they could preclude free flow of traffic in both directions or cause a temporary traffic hazard." (AR 1559, italics added, underline in original.) Such language clearly seems to limit the signage and flagging to the enumerated streets. As such, perhaps this language should be modified to encompass all areas that could potentially be affected by these construction-related hazards, in accordance with the District's representations in its opposition.

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j. *Failure to Disclose Significant Noise Impacts*

Petitioners state the EIR analysis concluded that "operational noise would be significant and unavoidable in the evenings from the combination of crowd noise…and PA system noise" (AR 262, AR 1543-1544), that there would be a "substantial increase in existing ambient noise levels" (AR 1543), and the noise would exceed the City's maximum noise standards between 7 am and 10 PM for residential uses (AR 258, AR 1543). (Opening Brief at p. 23.) The EIR also indicated that all three of the modeled impacts – L_{02}, L_{08} and L_{eq} – would be dramatic and severe on surrounding residences. (*Ibid.*, citing AR 1548.) However, Petitioners contend these statements do not even begin to describe the noise impacts of the Project, which would result in a fourfold increase in loudness from entirely new sources of noise in what are currently quiet neighborhoods. (*Id.* at p. 24.) They also point out that one commentator (noise expert Derek Watry) opined that the EIR failed to analyze the geographic scope of the impacts and the noise sources so that it could "accurately account for the effects of distance, topography, and shielding by buildings over a large area surrounding the project site and produce graphical depictions of future noise levels that can be easily understood." (*Ibid.*, citing AR 962.) Petitioners also assert the EIR's impact discussion does not disclose how many hundreds of thousands of residences would be affected by excessive noise levels and where these residences are located. (*Ibid.*)

Petitioners' arguments are not well-taken. Here, Petitioners do not charge the District with failing to analyze the noise impacts of the Project or with providing an analysis that was too sparse. Rather, Petitioners appear to be taking issue with the *manner* in which the EIR analyzed the noise of the impacts, citing their own noise expert and his proposed means of analysis in support. However, as the District points out in opposition, courts have held that "challenges to the scope of an EIR's analysis, the methodology used, or the reliability or accuracy of the data underlying an analysis, must be rejected unless the agency's reasons for proceeding as it did are clearly inadequate or unsupported." (*Chico Advocs. for a Responsible Econ. v. City of Chico* (2019) 40 Cal.App.5th 839, 851.)

In this case, the Court is not persuaded the District's chosen methodology for analyzing the noise impacts of the Project was inadequate or unsupported. With respect to the noise

impacts associated with games and practices at the stadium and lower field, the DEIR stated the following:

> The level of noise exposure at nearby residential land uses from noise-generating activities at evening games and practices at Dan Albert Stadium and the lower field were assessed based on ambient sound level measurements, reference noise levels for crowd noise and a public address system, and standard attenuation rates and modeling techniques. This analysis is based on a noise study prepared by Bollard Acoustical Consultants, which is provided in Appendix H.

(AR 258.) Further, in response to comments provided to the DEIR, the FEIR explains that Appendix H regarding the Environmental Noise Assessment provides more detail regarding certain aspects of its analysis including the reference noise levels it used to generate a holistic "crowd noise" (which includes a variety of noise-generating sources such as PA system noise, noise from the lower field, etc.) as opposed to referencing noise levels for each noise-generating source present during the games. (AR 1544.) Though Petitioners' expert may not have agreed with the above analytical approach, there does not seem to be any indication the District's reasons for proceeding as it did were clearly inadequate or unsupported. Rather, the District engaged in significant analysis as is evident from the noise assessment it attached as Appendix H to the EIR and the EIR's discussion of multiple sources of noise (including pedestrian noise, bleacher noise, etc.).

k. ***Inadequacy of Noise Mitigation Measure***

Petitioners next contend that Mitigation Measure 3.11-3 ("MM 3.11-3"), the measure to minimize noise levels generated by activities and events at the stadium, suffered from any number of defects which they break down under multiple subheadings in this argument section. The Court addresses each of these subheadings below.

Failure to Describe Feasible Mitigation Measures: Having recognized and acknowledged that Project noise would result in significant adverse impacts, Petitioners assert the EIR was required to describe, evaluate and ultimately adopt feasible mitigation measures which would mitigate or avoid those impacts. (Opening Brief at p. 26, citing Pub. Resources

Code, § 21002.1, subd. (b); Guidelines, §§ 15126.4(a)(1), 15091; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 91.) Petitioners do not further elaborate on this point. Nor do they explain how MM 3.11-3 failed to describe feasible mitigation measures. As such, the Court will disregard this contention. (See, e.g., *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 ["Where a point is merely asserted by counsel without any argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion."].)

Use of "Impermissibly Vague" Terms: Petitioners assert that MM 3.11-3 uses the terms "reduce," "feasible," and "goal" which appellate courts have found to be "impermissibly vague" terms in mitigation measures as a performance standard. (Opening Brief at p. 26.) They do not say anything further and do not even reference the text of the mitigation measure which they assert includes "impermissibly vague" terms. Absent further elaboration, the Court cannot evaluate the merits of Petitioners' argument and will therefore disregard it.

In any event, the Court finds that MM 3.11-2 is not impermissibly vague. The full text of the mitigation measure is as follows:

> **Mitigation Measure 3.11-3: Minimize Noise Levels Generated by Activities and Events at Dan Albert Stadium**
>
> The Monterey Peninsula Unified School District shall implement all feasible measures to minimize the levels of noise exposure at off-site residences from noise generated by events at Dan Albert Stadium. The goals of this mitigation are to prevent nearby residences from being exposed to noise levels that exceed the City's L02, L08, and Leq standards and experience noise levels substantially greater than existing conditions. Noise reduction measures include:
>
> - Prohibit use of the public address system when it is not specifically necessary for a game, event, or other activity. For example, safety-related announcements, announcements required by governing leagues, and announcements regarding game play such as scoring summaries are necessary and shall be allowed. Announcements that are meant to induce cheering by the crowd and amplified music other than the national anthem, however, are not necessary. This direction shall be posted at the control station for the public address system.

- The public address system shall be designed to focus the sound within the bleacher areas and minimize spillover to adjacent residential areas. This shall involve specifying the direction and height of the loudspeakers, as well using the minimum volume levels required for intelligibility over background crowd noise.

- Events shall be scheduled to conclude before 10:00 p.m. or earlier. Note that as long as an event is scheduled to end at 10 p.m., this measure does not require that an event stop at 10 p.m. should it last beyond its scheduled time.

(AR 97.) This mitigation measure enumerates a specific goal – namely, to "prevent nearby residences from being exposed to noise levels that exceed the City's L_{02}, L_{08} and L_{eq} standards[.]" As such, it is not apparent the mitigation measure contains impermissibly vague terms.

MM 3.11-3 Does not Have Specific Performance Standards. Petitioners argue that MM 3.11-3 does not comply with CEQA's directive that an agency must "(2) adopt[] specific performance standards the mitigation will achieve, and (3) identify[] the type(s) of potential action(s) that can feasibly achieve that performance standard." (Opening Brief at p. 27, citing Guidelines, § 15126.4(a)(1)(B).) Though Petitioners acknowledge the District contends the noise goals of not exceeding the City's L_{02}, L_{08} and L_{eq} standards is a performance standard, they assert this is not specific performance criteria but merely a "generalized goal." (*Ibid.*, citing *POET I,* 218 Cal.App.4th 681, 740.)

Petitioners' contention is flawed. The relevant portion of Section 15126.4, which Petitioners cite in support of their assertion, reads as follows:

> *Formulation* of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) *adopts specific performance standards* the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will considered, analyzed, and potentially incorporated in the mitigation measure."

(CEQA Guidelines, § 15126.4, subd. (a)(1)(B), emphasis added.) Based on this regulation, courts have generally discussed performance standards in the context of agencies deferring the *formulation* of a mitigation measure. (See, e.g., *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011 [agency offered a list of seven general measures that might be included in the city's *unformulated* transportation management plan]; *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 90 [agency stated that no less than one year after approval of the conditional use permit, the developer would submit for approval a *plan* for achieving no net increase in GHG emissions over the proposed project's baseline].)

Here, in contrast, the District did not defer the *formulation* of mitigation measures. Rather, the District outlined specific measures that could help mitigate the noise impacts from the stadium, including use of the PA system only to make necessary announcements, focusing the PA system within the bleacher areas, and scheduling events to end at 10:00 p.m. or earlier. It also did seem to establish a performance standard – namely, to "prevent nearby residences from being exposed to noise levels that exceed the City's L_{02}, L_{08} and L_{eq} standards[.]" (AR 97.) Moreover, even if it did not, the Court is not persuaded a performance standard was necessary in this context. As the District points out in its opposition, courts have held that "[m]itigation measures need not include precise quantitative performance standards[.]" (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal.5th 502, 523.) Rather, "they must be at least partially effective, even if they cannot mitigate significant impacts to less than significant levels." (*Ibid.*)

MM 3.11-3 is of Uncertain Effectiveness. Petitioners contend the EIR did not discuss the effectiveness of three other possible mitigation measures, which they assert is inconsistent with the requirement that "[f]or each significant effect, ... where several potential mitigation measures are available, each should be discussed separately." (Opening Brief at p. 28, citing *Cleveland National Forest Foundation*, 17 Cal.App.5th 413, 432.) They also argue the EIR did not show that the other measures would have a quantifiable impact on reducing the adverse noise effects, which violates the requirement that the EIR must accurately reflect the net effect of proposed mitigation measures. (*Ibid.*, citing *Sierra Club*, 6 Cal.5th 502, 522, quotations around "other" in the brief.) Petitioners additionally contend that when an agency adopts mitigation

measures that are of uncertain effectiveness as to significant and unavoidable impacts, the agency must make mandatory findings, which the EIR did not do. (*Id.* at p. 28, citing *King & Gardiner Farms,* 45 Cal.App.5th 814, 865.)

Petitioners' first argument is difficult to evaluate because they do not explain what alternative mitigation measures they believe the District was required to discuss. As such, the Court will disregard this contention.

As for the argument the District was required to make certain findings relative to mitigation measures of uncertain effectiveness, Petitioners rely on *King & Gardiner Farms, LLC v. Cnty. of Kern* (2020) 45 Cal.App.5th 814, 865 where the court of appeal held that agencies could adopt measures of uncertain effectiveness provided "(1) the lead agency has made certain findings, (2) the lead agency has adopted a statement of overriding considerations and (3) the EIR satisfies certain requirements." (*Ibid.*) With respect to the findings, the *Gardiner* court stated: "The lead agency must find (1) the measures are at least partially effective, (2) all feasible mitigation measures have been adopted, and (3) the environmental impacts will not be mitigated to less than significant levels. The findings must be supported by substantial evidence. (§ 21168.5.)" (*Ibid.*)

Here, Petitioners assert the District failed to make findings that MM 3.11-3 is at least partially effective to reduce noise and all feasible mitigation measures have been adopted. (*Ibid.*) With respect to the issue of the partial effectiveness of the mitigation measures, the District found that "[i]mplementation of Mitigation Measure 3.11-3…would reduce noise levels generated by the public address system to minimize exceedances of the City of Monterey's noise standard of 65 dB L08 at all nearby residences" while also acknowledging the measure would not guarantee compliance with the City's noise standards as there would be increased noise during stadium events. (AR 73.) In this Court's view, this finding regarding the reduction of noise levels generated by the PA system indicates partial effectiveness of the mitigation measure. As for the finding regarding the adoption of all feasible mitigation measures, the EIR states that apart from MM 3.11-3 "there would be no other feasible mitigation measures to ensure the

1 applicable noise standards are achieved." (*Ibid.*) This is tantamount to a finding that all feasible
2 mitigation measures have been adopted. As such, the District's findings were not deficient.
3 **MM 3.11-3 is of Uncertain Feasibility.** Petitioners assert the DEIR did not state whether
4 each measure in MM 3.11-3 was feasible, but the FEIR concluded that "the potential reduction in
5 noise through implementation of Mitigation Measure 3.11-3 is not feasible." (Opening Brief at p.
6 29, citing AR 55-56, 1657.) Thus, Petitioners conclude the EIR did not comply with the
7 requirement to "describe feasible measures which could minimize significant adverse impacts."
8 (*Ibid.*, citing Guidelines, § 15126.4(a)(1), underlining added.) Petitioners then launch into a
9 meandering recitation of other verbiage in the EIR which they claim was ambiguous or
10 expressed a lack of commitment by the District to carry out the mitigation measures. (*Ibid.*) For
11 example, Petitioners argue that the EIR's conclusion "there would be no other feasible mitigation
12 measures" is ambiguous because the EIR did not conclude the MM 3.11-3 measures *were*
13 feasible, the conclusion is ambiguous because CEQA requires EIRs to propose feasible
14 mitigation measures and the District rejected as infeasible the EIR's top proposed mitigation
15 measure (i.e. removal of the PA system), the District did not commit to the measures, and MM
16 3.11-3's phrase "noise reduction measures include" implies other measures might exist which
17 contradicts the finding that "there would be no other feasible mitigation measures to ensure the
18 applicable noise standards are achieved" (AR 31).
19 This argument by Petitioners is disjointed and difficult to follow. It is not apparent to the
20 Court what clarity was lacking in MM 3.11-3 regarding the feasibility of the measures outlined.
21 The District made a finding that removal of the PA system as a mitigation measure was
22 infeasible and there is nothing to indicate the other measures proposed would not be feasible. As
23 such, Petitioners' contentions are not well-taken.
24 **MM 3.11-3 Contains Ambiguous Material Terms.** Petitioners contend that the
25 measure's use of the phrases "minimum volume levels required for intelligibility over
26 background crowd noise," "not specifically necessary," "not necessary," and "necessary" are
27 ambiguous and not enforceable as performance standards. (Opening Brief at p. 30.)
28

This argument lacks merit. "The level of detail CEQA requires in the EIR's discussion of facts and analysis of the mitigation measures depends on whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*King, supra,* 45 Cal.App.5th at 869, internal quotation marks omitted.) Here, that standard has been met. With respect to the "minimum volume levels" language, the measures states: "The public address system shall be designed to focus the sound within the bleacher areas and minimize spillover to adjacent residential areas. This shall involve specifying the direction and height of the loudspeakers, as well using the minimum volume levels required for intelligibility over background crowd noise."

Though it is true there is arguably some ambiguity around how one would determine the minimum volume at which PA announcements can be heard over background crowd noise, it is generally clear what is meant by this statement. Similarly, with respect to the "necessary" language, it is taken from the noise reduction measure relating to the types of uses of the PA system that will be allowed or disallowed. Specifically, the measure prohibits uses of the PA system that are not necessary (e.g. announcements meant to induce cheering by the crowd) and spells out examples of the types of announcements that are necessary (e.g. safety-related announcements, announcements required by the governing league, announcements regarding game play and scoring summaries, etc.). (AR 263.) In this Court's view, this provision is clear enough that the public can understand and consider the mitigation proposed.

Scheduling an Event to End at 10 PM is Illusory. Petitioners point out that events are merely scheduled to end at 10 p.m. and there is no penalty or accountability for going past that time. (Opening Brief at p. 30.) Further, the FEIR admits "[i]t is not known how many events would certainly end by 10 p.m." and how many would go past 10 PM. (*Ibid.*, citing AR 1657.) Petitioners state it is questionable whether the "end at 10 PM" suggestion even qualifies as a mitigation measure because a mitigation measure is not part of the project. (*Id.* at p. 31, citing *Cleveland National Forest,* 17 Cal.App.5th at 433, *Lotus v. Department of Transportation*, 223 Cal.App.4th 645, 656 & fn. 8.) In this regard, Petitioners point out that the approved project proposes games that end at 10 PM anyways. (*Ibid.*, citing AR 145, 970.)

The Court is not persuaded. It is true "[a] 'mitigation measure' is a suggestion or change that would reduce or minimize significant adverse impacts on the environment caused by the project as proposed…[and] is not part of the project." (*Cleveland Nat'l Forest Found. v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 433, internal citations omitted.) It is also true the DEIR lists a proposed event sporting event schedule that indicates football games would end at 10 p.m. (AR 145-46.) With that said, it is not apparent to the Court that the proposed event schedule renders the 10 p.m. end time for football games a part of the project. (See *Lotus v. Dep't of Transportation* (2014) 223 Cal.App.4th 645, 657 ["The distinction between elements of a project and measures designed to mitigate impacts of the project may not always be clear."].) Further, there are other measures in MM 3.11-3 that plainly appear to be mitigation measures, such as the design of the PA system to focus the sound within the bleacher areas and minimize spillover to adjacent residential areas. (AR 97.) These are not illusory.

MM 3.11-3 Improperly Defers Mitigation. Petitioners argue the EIR admitted that MM 3.11-3 defers the formulation of specific details of the mitigation and claimed there are possible future "'potential action[s] that can feasibly achieve that performance standard that is listed in Mitigation Measure 3.11-3.'" (Opening Brief at p. 31, citing AR 1607, 1738.) But, Petitioners contend that deferral is only appropriate "when the agency has committed itself to specific performance criteria for evaluating the efficacy of the measures to be implemented in the future, and the future mitigation measures are formulated and operational before the project activity begins." (*Ibid.*, citing *Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 686; CEQA Guidelines section 15126.4(a)(1)(B).) Here, Petitioners assert the mitigation measure has no performance standard and does not provide for the future adoption of any other noise mitigation. (*Ibid.*)

For the reasons previously discussed, the Court is not persuaded. Contrary to Petitioners' assertions, the District did not defer formulation of mitigation measures. Rather, it set forth the measure to be enacted with various means of achieving the enumerated performance standard based on the City's current noise standards.

District Did Not Adopt Meaningful Monitoring and Reporting. Petitioners assert the Mitigation Monitoring and Reporting Program adopted by the District lists a sole means of verifying compliance with MM 3.11-3, which is to "maintain list of use guidelines at control station of the public address system." (Opening Brief at p. 32, citing AR 55.) Petitioners argue this is inconsistent with the requirement "to ensure compliance during project implementation" and that the lead agency "shall provide" that mitigation measures "are fully enforceable." (*Ibid.,* citing Pub. Resources Code, § 21081.6.)

This contention may have some merit. Public Resources Code section 21081.6, subdivision (b) provides in relevant part that "[a] public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures." Here, though Petitioners incorrectly state there is only one monitoring measure, it does appear the Mitigation Monitoring and Reporting program generally lacks provisions for verifying compliance with MM 3.11-3. Relative to verification, MM 3.11-3 simply states: "Include in project specifications"; "Verify with PA system engineer, vendor, or designer"; and "Maintain list of use guidelines at control station of the public address system." (AR 55.) The first two verification steps might ensure the design and construction of a PA system that focuses sound within the bleacher areas and minimizes spillover to the adjacent residential areas. As for the third means of verification, it may serve to remind PA system operators of the standards for use that would mitigate noise impacts. With that said, no measures are provided to ensure that the District continues to comply with MM 3.11-3. For example, there does not appear to be any verification process for ensuring games are not scheduled to end past 10 p.m. or to periodically monitor the noise levels from games to see if the measure's goal of not exceeding the City's noise standards is generally being achieved.

As such, MM 3.11-3 should be revised to ensure that the mitigations proposed are enforced to the maximum extent feasible.

EIR Rejected Feasible Mitigation Measures for Spurious Reasons. Petitioners state that even when a project's benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible. (Opening Brief at

p. 32, citing *Sierra Club, supra*, 6 Cal.5th 502, 524-525; *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 231.) Here, Petitioners assert the District rejected the following measures: having the PA system turn off automatically, limiting the maximum volume of the PA system, and installing nonmetal bleachers. (*Id.* at pp. 32-33.) Petitioners said the District reasoned that an automatic shutoff of the PA system could cause safety issues; rejected limitations on the maximum volume of the PA system because there was already a performance standard in place; and rejected the mitigation of nonmetal bleachers because even if the crowd could not use aluminum bleachers to make noise it would simply cheer louder. (*Ibid.*) However, Petitioners argue a shutoff could be overridden when needed for safety and nonmetal bleachers could still significantly lower noise because "cheering is finite whereas foot-stomping and bat-banging is easier to do for longer." (*Ibid.*)

In evaluating Petitioners' contentions, the Court first notes that "[a]gency findings regarding whether mitigation measures are feasible are generally reviewed for substantial evidence." (*Masonite Corp. v. Cnty. of Mendocino* (2013) 218 Cal.App.4th 230, 237.) Further, a finding that an alternative is infeasible must describe specific reasons for its rejection. (CEQA Guidelines, §15091(c).)

At the outset, the Court observes that relative to the imposition of limitations on volume levels for the PA system, the DEIR actually lists as a noise reduction measure "using the minimum volume levels required for intelligibility over background crowd noise." (AR 97.) As such, it is not apparent the District found the imposition of limits on volume levels to be infeasible.

As for the remaining proposed mitigation measures, the Court finds substantial evidence exists to support the District's rejection of them. With respect to the proposed automatic shutoff of the PA system, FEIR stated in response to comments that "[h]aving the PA system turn off automatically at a given time could cause safety issues if an announcement needs to be made." (AR 1738.) These concerns about safety issues that could arise in the event the PA system automatically becomes unavailable at a given time support a fair argument that this mitigation measure would not be feasible. Further, with respect to the proposal of nonmetal bleachers as a

mitigation measure, the FEIR devoted an entire discussion section to "Bleacher Noise." (AR 1545.) In this discussion, the FEIR noted that commenters had suggested constructing bleachers out of wood or placing materials on top of the aluminum bleachers to reduce noise. (*Ibid.*) However, it stated its noise analysis "accounted for noise generated at a typical football game rather than modeling reference noise levels for individual noise sources," thus, noise from bleachers was accounted for within the broader category of "crowd noise." (*Ibid.*) Further, the FEIR indicated that mitigating noise specifically from aluminum bleachers was infeasible and would not reduce the significant impact from noise because crowd noise is inherently unpredictable and difficult to control, and crowds could conceivably stomp on bleachers even if they were made of a different material or generate noise by different means. (*Ibid.*) The Court finds the foregoing to be sufficient information from which a fair argument can be made that merely changing the material of the bleachers would not have been a feasible mitigation measure. Accordingly, substantial evidence supports the District's conclusions each of Petitioners' alternative noise mitigation measures were infeasible.

l. ***Failure to Adequately Consider the Potential Impacts of "School Related" Events, Uses Under the Civic Act, and Future Cell Facilities*** [4]

Petitioners state that the project as approved would allow the use of the PA system for "school related" events and "other activities" from 8 a.m. on weekdays and from 8 a.m. until sunset on Saturdays. (Opening Brief at p. 33, citing AR 145-146, 17181, 1007, 1576, 1772.) However, Petitioners contend that when asked to respond to this issue, the FEIR was vague about what a "school related" event was stating: "School related groups and activities are those that have an official affiliation with Monterey High School or schools in the District." (*Ibid.*, citing AR 1637.)

Petitioners argue that under the Civic Center Act (Educ. Code, § 38130, et seq.), a school board has broad authority to allow groups to use school grounds and some requests are discretionary while others are mandatory. (Opening Brief at p. 34.) However, Petitioners assert

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[4] This argument appears as a subheading under the argument section relating to the adequacy of MM 3.11-3. However, it appears to be an entirely new argument unrelated to the mitigation measure issue. As such, the Court addresses it separately.

1 the EIR failed to adequately consider the potential impacts of uses of the new facilities under the
2 Civic Center Act and did not address the mandatory uses. (*Ibid.*) Petitioners also point out that
3 residents in the surrounding neighborhoods recently battled Verizon applications to install cell
4 facilities on 13 city utility poles in the vicinity of MHS. (*Ibid.*) Thus, they conclude it is
5 reasonably foreseeable the District could lease the school's utility poles for cell facilities. (*Ibid.*)
6 Petitioners' arguments are not well-taken. The California Supreme Court has held that an
7 EIR must include an analysis of the environmental effects of an action if: "(1) it is a reasonably
8 foreseeable consequence of the initial project; and (2) the future expansion or action will be
9 significant in that it will likely change the scope or nature of the initial project or its
10 environmental effects." (*Laurel Heights Improvement Assn. v. Regents of Univ. of California*
11 (1989) 47 Cal.3d 376, 396.) Here, the FEIR indicates that use of the Project facilities by non-
12 District entities pursuant to the Civic Center Act is possible but not significant enough that it
13 would change the scope or nature of the Project or its environmental effects. Specifically, the
14 FEIR states that "[h]istorically, Dan Albert Stadium has been reserved for District use and *Civic*
15 *Center Act requests seeking use of Dan Albert Stadium have been infrequent and generally have*
16 *not been granted* due to limited availability." (AR 1534, emphasis added.) Further, the FEIR
17 states that given the Proposed Sporting Event Schedule reflected in Table 2-3 of the EIR, use of
18 the stadium during the school year "will primarily be reserved for student use" and "availability
19 of Dan Albert Stadium for public use, if any, will continue to be limited." (*Ibid.*) Similarly, with
20 respect to the lower field, the FEIR states that "[b]ased on the proposed use of the lower field by
21 the District, there will be limited availability for public use during the school year and as a result,
22 Civic Center Act use is not expected to increase considerably." (*Ibid.*) Given the apparently low
23 probability the new facilities would be frequently used by non-District entities, the EIR was not
24 required to analyze the impacts of such use.
25 Petitioners' argument regarding the potential installation of cell towers fails for the same
26 reason. As the District points out in opposition, the FEIR states the "District has no plans to
27 install cellular towers or other telecommunications devices on the light standards." (AR 1586.)
28 Petitioners do not cite any evidence to the contrary. In fact, Petitioners' opening brief does not

even reference any plans by the District to lease the school poles for cell facilities. Instead, Petitioners refer to prior Verizon applications to install cell facilities on 13 *city* utility poles.

As such, the EIR is not inadequate because it failed to analyze impacts from school-related events, uses of the new facilities under the Civic Center Act, and the possible cell facilities that could be constructed on campus.

m. ***Inadequate Analysis of Lighting Impacts***

Relative to the EIR's analysis of the lighting impacts stemming from construction of the stadium, parking lot and area lights, Petitioners state the EIR acknowledged that the residents are highly sensitive receptors and that nighttime views within the project area are of particular importance to the surrounding neighborhoods' "residents and the broader Monterey community." (Opening Brief at p. 35, citing AR 156.) It also acknowledged that the stadium lighting would have significant and unavoidable adverse impacts. (*Id.* at p. 34, citing AR 169.) However, Petitioners assert the EIR "did not attempt to quantify how many hundreds or thousands of residences would be adversely affected by the stadium lighting." (*Id.* at p. 35.) No more was said on this issue in Petitioners' opening brief. However, at oral argument, Petitioners raised a number of additional points including the lack of a detailed description of the lighting; the failure to include photographs of lights; a comparison between the Project's stadium lights and the lights at Seaside High School; exacerbation of the lighting impacts by the removal of eucalyptus trees for access purposes in connection with the project; the failure to consider the effects of seasonal changes in sunset times; the failure to take into account the topography of the area surrounding the Project; and challenges to the credibility of the lighting contractor supplying information utilized in the EIR assessment.

The Court was deeply concerned about the extent of elaboration Petitioners engaged in relative to their argument the lighting impacts were inadequately analyzed in the EIR. As such, it afforded the District an opportunity to address the newly raised points in a supplemental opposition brief. Having considered the parties' arguments, the Court finds Petitioners' contentions lack merit.

With respect to Petitioners' assertions the EIR was required to quantify how many residences would be adversely affected by stadium lighting, compare the proposed Monterey High School lights to the lights at Seaside High School, consider the effects of seasonal changes in sunset times, and take into account the topography of the area surrounding the Project, these are essentially challenges to the manner in which the District performed its lighting analysis. As such, they must be rejected unless the agency's reasons for proceeding as it did are clearly inadequate or unsupported. (See *Chico Advocs. for a Responsible Econ. v. City of Chico* (2019) 40 Cal.App.5th 839, 851 ["[C]hallenges to the scope of an EIR's analysis, the methodology used, or the reliability or accuracy of the data underlying an analysis, must be rejected unless the agency's reasons for proceeding as it did are clearly inadequate or unsupported."].)

Here, the Court finds the District's reasons for proceeding with its lighting analysis in the manner it did were not inadequate or unsupported. The EIR includes a detailed description of the glare standards developed by the Illuminating Engineering Society of North America ("IESNA"), which the District used to measure lighting impacts; the type of environmental zone the District determined the surrounding area fell in under the IESNA handbook; and the means by which it conducted nighttime illumination visual simulations to determine the amount of light trespass and glare generated by the proposed stadium lighting. (AR 157-159.) The EIR also includes various diagrams illustrating the amount of light trespass beyond the Monterey High School property line. (See, e.g., AR 162 ["Figures 3.1-5 and 3.1-6 depict the amount of light trespass in fc beyond the MHS property line. Light trespass is measured on both the vertical plane (light shining through a window) and horizontal plane (light shining on the floor). As points along the edge of the property the maximum fc is shown in green, and the minimum is shown in red."]; AR 164-165 [supporting diagrams for the EIR's analysis].) The EIR also states the maximum amount of light trespass along the vertical plane will be 0.020 fc, while the maximum amount of light trespass along the horizontal plane would be 0.007 fc. (AR 162.) Further, as the District points out in it supplemental opposition brief, both the visual simulations and photometric study considered topography based on data obtained from Google Earth in order to verify "simulation precision." (AR 158, 162-63, 1596.) Thus, it does not appear the District

failed to take into account the topography of the area. Nor does the District's means of lighting analysis appear inadequate or unsupported.

As for the EIR's failure to include photographs of the lights, Petitioners do not explain how this omission precluded informed decision-making. Similarly, beyond broad assertions the lights would appear brighter in the absence of the eucalyptus trees, Petitioners fail to demonstrate why a discussion of the tree removal was required for meaningful consideration and understanding of the lighting impacts from the Project. Moreover, as the District points out in its supplemental opposition brief, the FEIR did address the issue of the eucalyptus tree removal. Specifically, the FEIR stated that the DEIR "measure[d] light trespass and glare generated at the property line" and "conclude[d] lighting and glare impacts would be significant and unavoidable," thus, "this analysis is representative of lighting impacts that could occur after removal of eucalyptus trees." (AR 1562.)

Lastly, with respect to Petitioners' challenges to the credibility of the lighting contractor supplying information utilized in the EIR assessment, it is unsubstantiated. Petitioners do not direct to Court to any evidence demonstrating that the analysis performed by the District's lighting contractor (Musco Engineering) was inaccurate. And though the Court appreciates that Petitioners' lighting expert disagreed with the manner in which the District's lighting contractor conducted the impact analysis, this alone does not render an EIR inadequate. (See *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1989) 47 Cal.3d 376, 409 ["It is also well established that '[d]isagreement among experts does not make an EIR inadequate.'"].) "The relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence that supports the [agency conclusions]." (*Ibid.*) Here, there is no indication the analysis conducted by the Musco Engineering was not credible.

n. *Inadequacy of Lighting Mitigation Measure 3.1-3*

Petitioners contend that Mitigation Measure 3.1-3 ("MM 3.1-3") is illusory because it does not reduce, change or avoid the lighting impacts. (Opening Brief at p. 35, comparing AR 34-35 and 308-309.) Additionally, Petitioners assert MM 3.1-3 is ineffective because there is no meaningful monitoring or reporting with the sole verification being that the District will "create a

yearly calendar of events that will be published on its website that indicates the timing of evening events." (*Ibid.*, citing AR 50.) Lastly, Petitioners argue the EIR rejected feasible mitigation measures including the proposal that lights go off within a short time after the practices end instead of an hour later (AR 1672), or that dimming, timers, and motion sensors be used. (*Id.* at pp. 35-36.)

With respect to Petitioners' first contention that MM 3.1-3 does not reduce, change or avoid lighting impacts, Petitioners do not elaborate upon it. They cite two sections of the administrative record in support (i.e. AR 34-35 with AR 308-309), but neither of these citations actually include any references to MM 3.1-3. Instead, both discuss the restrictions on lighting that would be in effect under Alternative 2 of the Project. Similarly, Petitioners do not elaborate upon their contention the District rejected other feasible mitigation measures. As such, the Court will not further address these arguments as they are not fully formed.

Turning to Petitioners' contention that MM 3.1-3 has no meaningful monitoring and reporting, the Court is not persuaded. MM 3.1-3 lists out a number of restrictions intended to reduce the impacts of lighting to the surrounding area. These restrictions include limits on the number of non-football evening games that can be played per year (i.e. 16) with games to be concluded by 7 p.m. and lights out by 8 p.m.; limits on the months in which practices can be conducted for field sports (i.e. October to March) with lights out by 8 p.m.; a requirement that all lower field weekday use by non-school related groups conclude by 6 p.m.; and a requirement that all weekend use conclude by sunset. (AR 50.) The verification listed for compliance with these restrictions is as follows: "The District shall create a yearly calendar of events that will be published on its website that indicates the timing of evening events. The calendar will be updated monthly." (AR 50.) This is sufficient. Courts have held that "[t]he adequacy of a mitigation monitoring program, like a description of mitigation measures and project alternatives, must be assessed in accordance with the rule of reason, which requires what is reasonably feasible." (*Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1992) 5 Cal.App.4th 351, 380.) Here, it is reasonable for the District to institute this monthly calendar verification as a means for ensuring the restrictions on stadium usage are complied with.

o. *Inadequate Analysis and Mitigation of Project Elements Added After DEIR Circulation*

Petitioners contend that after the DEIR was circulated, the District made two changes that expanded the Project footprint and impacts. (Opening Brief at p. 36.) More particularly, Petitioners contend the District included an attachment to the FEIR that indicated there would be a heavy construction "staging area" at the top of Logan Lane driveway in an area that is "flanked by historic Carmel stone walls" similar to those determined by consultant Pamela Daly to be historic. (*Ibid.*, citing AR 5719, 5724-5736, 5740, 10656, 10669, 24647, 24650, 7460.) They also assert the District effected a change in the emergency access route from Logan Lane to Martin Street, which was only disclosed when the FEIR was circulated. As such, they conclude recirculation was required.

Under CEQA, recirculation is required when significant new information is added to an EIR prior to final certification. (CEQA Guidelines, §15088.5.) New information added to an EIR is "significant" when the EIR has been changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate the effect. (*Laurel Heights Improvement Assn. v. Regents of Uni. of Cal.* (1993) 6 Cal.4th 1112, 1129.) Recirculation is not required if the new information merely clarifies, amplifies, or makes insignificant modifications to an otherwise adequate EIR. (*Id.* at 1130; CEQA Guidelines §15088.5(b).) A determination whether new information is "significant" is reviewed for substantial evidence. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447.) Put another way, "courts must defer to an agency's explicit or implicit decision not to recirculate a draft EIR so long as it is supported by substantial evidence." (*Citizens for a Sustainable Treasure Island v. City & Cnty. of San Francisco* (2014) 227 Cal.App.4th 1036, 1063.)

With respect to the change in emergency access, Petitioners assert that as part of the shift from Logan Lane to Martin Street emergency access, the FEIR announced there would be road widening that would require the removal of three eucalyptus trees. (Opening Brief at p. 37, citing AR 1561.) However, Petitioners contend the eucalyptus grove is the tallest feature of campus and

a visual landmark. (*Ibid.*) They further assert that removing the three tallest trees and constructing the retaining wall would decimate the grove and impact the aesthetics and public views. (*Ibid.*, citing AR 10649 [photos], 10506, 995 [I15-99].)

In opposition, the District asserts the FEIR addressed the impacts on aesthetics that would result from removal of the trees. (Opp. at pp. 24-25.) In support, it cites AR 1562 which states:

> The widening of the access road, restriping and partial repaving of the parking lot, and removal of eucalyptus trees would not change the scenic corridor along Pacific Street or view of Monterey Bay or change the visual character and quality because it would merely widen the existing access road. Nearest to the project site, Pacific Street has many built (i.e., non-natural) visual components, including utility poles, tennis courts with fencing, and overhead utility lines, and the eucalyptus trees are not a dominant visual component of the view. Therefore, although the tops of the eucalyptus trees are visible from Pacific Street, their removal would not result in adverse effects to the Pacific Street scenic corridors.

(AR 1562.) At the outset, the statement the removal of the trees would not change the visual character and quality of the area because "it would merely widen the existing access road" seems beside the point. The fact a road would be widened does not necessarily mean the visual character and quality of the area would not be affected. With that said, in this Court's view, the fact the scenic corridor along Pacific Street has many other non-natural visual components that render only the tops of the trees visible in any case is substantial evidence the removal of these trees is not significant new information. Accordingly, recirculation of the EIR was not required on the basis the eucalyptus trees would be removed.

Turning to the purported change in the construction staging area for the Project though, the Court is persuaded it triggered the need for recirculation of the EIR. The District argues in its supplemental opposition brief that, contrary to Petitioners' assertion, there was not in fact a change made to the construction staging area. Rather, the construction staging area had not changed since the initial V1 Plan Set. (Compare AR 6374 [8/13/20 V1 Plan Set] with AR 1814 [FEIR Plan Set].) With that said, it is not apparent the V1 Plan Set and location of the staging

area were taken into account when the DEIR was drafted as no mention is made regarding potential impacts to Carmel Stone in the staging area. And though the District was not required to analyze the impacts to the Carmel Stone in the area unless this change was significant, and that determination would be measured by the substantial evidence standard, here, the District fails to point the Court to substantial evidence supporting its conclusion the impacts to the Carmel Stone would not be significant.

At oral argument, the District indicated that mitigation measures would be put in place to protect the stone and any effects would not be significant because the FEIR indicated that vibration impacts from construction vehicles would similar to that of a garbage truck passing by a residence and were unlikely to cause structural or cosmetic damage, citing AR 192 and 1561 in support. However, the Court observes that AR 192 discusses mitigation to Carmel Stone in a different area of the Project – namely, the stone bleachers in the Dan Albert Stadium – and not the stone located at the top of Logan Lane. Further, the District's focus on impacts stemming solely from vibrations caused by construction vehicles moving through the area seems myopic as damage could conceivably result from direct impacts to the stone as well. As such, though it may be that substantial evidence exists to support the District's conclusion the impacts to the Carmel Stone on Logan Lane would not be significant, the District fails to point the Court towards substantial evidence in support of this conclusion. Accordingly, recirculation of the EIR to address potential impacts of the Logan Lane construction staging area on Carmel Stone is required.

B. Second Cause of Action – CEQA Violations Relative to Stadium and Field Project

Petitioners argue the District "chopped up its parking project into pieces in order to avoid CEQA review." (Opening Brief at p. 38, citing *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223.) They assert the District committed to a definite course of action relative to the parking lot project ("PLI"), under the test of *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139-142; §§ 21080(a), 21151; CEQA Guidelines, §§ 15004, 15352(a), (b).) Specifically, Petitioners contend the District

previously "commingled substantial parts of its parking project with two other projects" when, in 2021, the District added a parking lot to a science building project it approved back in 2019 and when it piggybacked two parking lots onto the present stadium and field Project after the release of the DEIR. (Opening Brief at p. 39.) In support, they list out a progression of events dating back to September 2019 when, purportedly in response to parking concerns expressed by comments to the proposed mitigated negative declaration for the Project, the District signed a contract with C2G Engineers to develop parking improvement plans. (*Ibid.*, citing AR 4968-4975, 11518-11525.) This was followed by, among other things, the District's October 2020 decision to merge part of the PLI Area 1 with the science building project under construction; indications from the District's construction manager in December 2020 that the PLI project would be bid on in the future; a statement from the C2G on April 1, 2021 stating that the District will "proceed with" parking improvements in PLI Area 1, and parking lots in PLI Areas 3 and 4 "will be completed and coordinated with lower athletic field improvements"; and the District staff's expansion of the science building scope of work to include the PLI Area 1 upper lot despite the fact this lot had never been included in the science project footprint. (*Id.* at pp. 39-40, citing AR 47250-47251 [colored map].) On June 22, 2021, Petitioners state the District Board approved a $1.67 million "change order" that materially expanded the project limits of the already-completed science project and authorized construction of Area 1 of the PLI Project. (*Ibid.*, citing AR 8927-8953; 47615-47616.) Then, in July 2021, Petitioners state the stadium/field project FEIR Attachment 2 "Site Plan" showed the project footprint had expanded to add two parking lots in PLI Project Areas 3 and 4 with lighting. (*Ibid.*)

Petitioners assert the FEIR did not adequately analyze the impacts of the added scope of the Project. (Opening Brief at p. 40.) They also assert the District did not perform CEQA review on the science building or any part of the PLI project. (*Ibid.*)

"CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences. CEQA attempts to avoid this result by defining the term 'project' broadly. A project under CEQA is the whole of an action which has a

potential for resulting in a physical change in the environment, directly or ultimately, and includes the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies." (*E. Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 293, internal citations and quotation marks omitted.) "The process of attempting to avoid a full environmental review by splitting a project into several smaller projects which appear more innocuous than the total planned project is referred to as 'piecemealing.'" (*Ibid.*, citing *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1358.)

The California Supreme Court set forth the relevant standard: "We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project." (*Laurel Heights, supra*, 47 Cal.3d at 396.) "Improper piecemealing occurs when the purpose of the reviewed project is to be the first step toward future development or when the reviewed project legally compels or practically presumes completion of another action." (*E. Sacramento, supra,* 5 Cal.App.5th at 293.)

Here, the Court is not persuaded the District engaged in improper piecemealing relative to the PLI because it does not seem the PLI was intended to be a first step toward future development, nor did the Project legally compel or presume the completion of another action. It is true the District contracted with C2G/Civil Consultants Group, Inc. regarding "Parking Improvements" for Monterey High School Paving Project #8235. (AR 4968.) It is also true that at various points the District has referred to these improvements as a "Parking Lot Improvement Project." (See, e.g., AR 6078 [stating the "Parking Lot Improvement Project (DSA# 01-118835) was pending approval].) With that said, the component pieces of the parking improvements proposed by C2G could easily have been stand-alone and separate projects and not ones that relied on the completion of another action. (See, e.g., *Leonoff v. Monterey County Bd. of*

Supervisors (1990) 222 Cal.App.3d 1337, 1358 [no piecemealing because "[t]here were two separate projects"].)

For example, relative to the parking improvements made in connection with the science building project, it seemed driven by the lack of adequate ADA access to the building and not due to an overall desire to generate parking for the forthcoming stadium project. Further, the stadium project is not necessarily predicated on the completion of the parking project. The record indicates that other parking options are available to address the potential parking shortages. Lastly, as the District points out in opposition, there is record evidence indicating the PLI was abandoned in April 2021. (Opp. at p. 36, citing AR 8260 [script for 4/30/21 District Board meeting indicating the District decided to put the parking project on hold for the time being].)

Accordingly, the Court finds the District did not engage in improper piecemealing of the parking improvements.

C. Conclusion

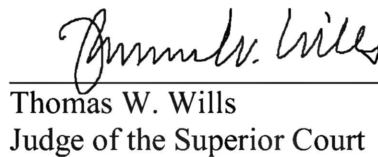
Based on the foregoing, the Court finds that many of Petitioners' arguments regarding the deficiencies in the Project EIR lack merit, but several of their contentions were persuasive. Specifically, the Court agrees that: (1) the EIR's analysis of the pedestrian safety issues were informationally inadequate and failed to inform the public and decisionmakers of impacts to pedestrian safety stemming from Project construction and Project operation; (2) the EIR's analysis of operation-related traffic impacts was inadequate as it failed to discuss potential traffic hazards that could arise from the expanded evening use of the stadium and field; (3) the EIR's analysis of the issue of adequacy of emergency access was inadequate and failed to fulfill CEQA's informational disclosure requirements because it was self-contradicting and was not revised to take into account the modification made to emergency access routes after the DEIR was circulated; (4) the description of the parking supply at MHS was inconsistent which, in turn, rendered uncertain any impact analyses that took into account the parking supply at MHS; (5) the EIR failed to indicate that signage and flagger personnel would be provided at all streets as mitigation for construction-related traffic hazards; (6) the EIR did not adopt meaningful monitoring and reporting measures relative to the noise mitigation measure (i.e. MM 3.11-3) as

1 there is no verification process for ensuring games are not scheduled to end past 10 p.m. or
2 periodic monitoring of noise levels from games to see if the measure's goal of not exceeding the
3 City's noise standards is generally being achieved; and (7) the EIR should have been recirculated
4 to address potential impacts to Carmel Stone located in the construction staging area on Logan
5 Lane.

6 Accordingly, relative to the first cause of action for violations of CEQA arising out of the
7 stadium and field project, the petition for writ of mandate is GRANTED IN PART. As for the
8 remaining claims, the petition for writ of mandate is DENIED.

9

10 Dated: December 8, 2022



11 Thomas W. Wills
Judge of the Superior Court

12

CERTIFICATE OF MAILING

13 (Code of Civil Procedure Section 1013a)

14 I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and
15 not a party to the within stated cause. I placed true and correct copies of the **ORDER RE: PETITION FOR WRIT OF MANDATE** for collection and mailing this date following our ordinary business
16 practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in
17 the ordinary course of business with the United States Postal Services in Monterey, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed
18 is as follows:

19

20

Molly E Erickson	Sloan Robert Simmons	Harold Mark Freiman
P.O. Box 2448	One Capitol Mall, Suite 640	2001 N Main St Ste 650
Monterey, CA 93942	Sacramento, CA 95814	Walnut Creek, CA 94596

21

22

23 Dated: December 9, 2022

Clerk of the Court:

24

25 By:

P Conder, Deputy Clerk

26

27

28