Civil No. S214061

IN THE SUPREME COURT OF CALIFORNIA

FRIENDS OF THE COLLEGE OF SAN MATEO GARDENS,

Plaintiff and Respondent

v.

SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, *et al.*,

Defendants and Appellants

After a Decision by the Court of Appeal
First Appellate District, Division One
Civil Number A135892

Affirming the Ruling by the Honorable Clifford Cretan
San Mateo County Superior Court Case No. CIV 508656

ANSWER BRIEF ON THE MERITS

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Introduction

"The trees on campus may not be put into a tree museum, but trustees for the College of San Mateo did vote ... to pave at least 20,000 square feet of paradise to put up a parking lot ..."

"'It's a really peaceful place now. A beautiful place,' said student Nick Carlozzi, who often writes music in the ... habitat where hundreds of plants — from the ancient Bunya-Bunya, to the rare Fragrant Pitcher Sage — attract wildlife, bees, hawks and herons."[1]

The Friends of the College of San Mateo Gardens are students acting in the public interest. They have challenged the appellant San Mateo County Community College District's refusal to conduct an environmental impact report (EIR) process before approving the destruction of its 1963 horticulture complex and cherished gardens.

Offering ample evidence that demolition of the "Building 20 complex" at the College of San Mateo — for yet another campus parking lot — may significantly impact aesthetics, recreation, and biological and cultural resources, the Friends invoke mandates of the

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[1](Administrative Record [AR] [Volume] 5:[Page] 2610, *San Francisco Chronicle*, May 21, 2011.) *See also* AR2:1835 [student Bonnie Britton references Joni Mitchell's 1970 song "Big Yellow Taxi" and the refrain, "pave paradise, put up a parking lot ..."].

California Environmental Quality Act (CEQA), a citizen-enforced statute, which requires analysis of environmental effects and identification of potentially-feasible less-impactful alternatives.

Depending on whether "Demolition of the Building 20 Complex" (AR1:1) is recognized as a 'new' project, or is instead treated as 'supplemental' to an earlier campus project approved in 2007, one or the other of CEQA's two standards of review will apply to the threshold question of whether an EIR is required. But under *either* standard — 'fair argument' or 'substantial evidence' — the answer is *yes*. Since undisputed facts in the record confirm that the demolition-for-parking project did *not* receive first-tier environmental review in 2007, the 'negative declaration addendum' relied upon by the District in 2011 violated CEQA.[2]

Both the San Mateo County Superior Court and the First District Court of Appeal concur. In affirming the trial court's issuance of a peremptory writ, the appellate court ruled that "*under the straightforward facts of the present case*" the project is "*entirely new* ..." (Slip Opinion, p. 10, italics added.)

The well-supported judgments should be affirmed.

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[2] Facts in the Introduction are cited to the record *post*.

Summary Answer to Question Presented for Review

Issue: When a lead agency performs a subsequent environmental review and prepares a subsequent environmental impact report, a subsequent negative declaration, or an addendum, is the agency's decision reviewed under a substantial evidence standard of review (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385), or is the agency's decision subject to a threshold determination as to whether the modification of the project constitutes a 'new project altogether,' as a matter of law (*Save our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288)?

Answer: Whether a project is 'supplemental' to an earlier project or is instead 'new' is a threshold question of law that must be resolved by review of the facts in a certified administrative record. This is consistent with similar threshold questions such as whether a proposed action *is* a CEQA 'project' or is exempt from the Act.

If a CEQA project is 'supplemental' to an earlier project, the substantial evidence standard will apply to a lead agency's decision regarding the appropriate level of environmental review. On the other hand, it is undisputed that the unique 'fair argument' standard applies to whether the CEQA document required for an unstudied 'new' project can be a negative declaration or must be an EIR.

Whether 'supplemental' or 'new,' adequacy of the resultant environmental process must then be reviewed for abuse of agency discretion under CEQA's 'dual' standards of review: (1) failure to proceed in the manner required by law or (2) lack of substantial evidence supporting the lead agency's findings. (*Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412).

(AR5:2607 [portion of the Building 20 south garden].)

Factual Summary

> **"The [College of San Mateo] teaching gardens are not neat, clipped or manicured, but reflections of nature ... The gardens are a feast for the senses with the colors and fragrances of flowers, textures of bark, leaves, and needles, and songs of birds. There is an aesthetic beauty and wildness about these gardens not present in the clipped lawns of the majority of the new landscaping.**
>
> **These gardens are a peaceful oasis for various activities and a sanctuary for reflection ... English students practice their speeches and write poetry in the gardens ... I would hate to see the District eliminate this ... history and botanical richness, for a parking lot!"**

(AR4:1977-1978 [floristry alumnus Liane Benedict].)

Friends cannot improve upon the cogent factual synopsis of this case presented in the Slip Opinion's "Procedural Background & Facts." (Slip Opinion, pp. 2-6.) While relying on that summary, Friends will here present material facts with reference to the record.

Environmental Setting. The botanical collections developed over four decades within the College of San Mateo horticulture complex comprise a cultural landscape and campus gathering-place. As explained by horticulturist Lucy Tolmach,

historic vernacular landscapes evolve through use and activities to reflect the "physical, biological, and cultural character of everyday lives." (AR5: 2247.)

(AR5:2608 [south garden].)

Tolmach, Director of Horticulture at the National Trust for Historic Preservation property "Filoli," in Woodside, explained that the Building 20 complex is eligible for the honor of listing in the California Register of Historical Resources and "has a rich heritage as a mid-century vernacular landscape that developed for the teaching and training of horticulture." (AR5:2247-2248, *attached.*)

The special character of the horticulture complex was lauded by College of San Mateo professor Barbara Jones, self-described as

"*among hundreds of students and faculty who object to the plan of razing Building 20 and the adjacent garden to make a parking lot*," who explained that due to recent campus redevelopment

> ... removal of the Garden will substantially degrade the existing visual character and quality of the campus ... The Garden is *the only place left on campus* where students, faculty, and staff can go to get away from the concrete and rigid plots of monoculture plantings that have taken over the campus, where we can enjoy nature's kindness, bounty, and wonder, relax, sit on the grass, and leisurely explore and experience its mini-climates and ecosystems so carefully nurtured over the past 40 years ... the Garden offers us all ... respite from the office-park [the College] has come to resemble ...

(AR4:1997, italics added.)

The Building 20 complex dates from 1963. (AR1:3.) The main building that was used for horticulture and floristry programs has an open courtyard and a laboratory-classroom, offices, and a student center. There is a greenhouse that houses plant specimens for horticulture and science courses; a lath house and storage room; and mature gardens north and south of Building 20 and within its interior courtyard. (AR1:9, 93; 3:1562.)

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Figure 4
Aerial Photo

(AR:76 [Building 20 complex].)

The .75 acres of botanical collections in the gardens date to 1963 when the campus was opened. There are four distinct areas: the Urban Display Garden, the Eleanore Nettle Garden, the California Native Plant Garden, and the Building 20 Courtyard Garden. "Every effort has been made to include the name, planting date, planting location, nursery of original and size of plant at planting when a plant is accessioned into the collection." (AR5:2265.)

The CSM Project. Appellant San Mateo County Community College District adopted a Facilities Master Plan for its three community college campuses in 2006, without conducting CEQA

review.[3] (AR3:1633-1716.) The next year, the District approved a related Facilities Improvement Project at the College of San Mateo campus. That "CSM project" proposed improvements consistent with the recommendations of the Facilities Master Plan. (AR1:3.)

The 2006 Facilities Master Plan and the 2007 CSM project both envisioned "construction of new buildings and parking lots, renovation of existing buildings and parking lots, building demolition, traffic circulation improvements, and enhancement of landscaping and signage." (AR1:438.)

The CSM project relied on an initial study and mitigated negative declaration[4] prepared in 2006. (AR1:3, 9, 114-393.) Project mitigation measures were very general (AR1:438):

> ... covering trucks which are carrying soil or sand; watering active construction sites; covering exposed stockpiles of dirt and other construction materials; protecting people from exposure to lead or asbestos; limiting hours of construction to minimize the effects of noise; and implementing traffic control.

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[3] Although unrelated to this appeal, a new 5-year Facilities Master Plan was approved in July 2011, also without CEQA review; College staff explained that CEQA review occurs on a project basis once funding is secured; it is "only a plan and ... might change over time." (AR2:1150.)

[4] The 2006 "mitigated negative declaration" is sometimes referred to in this brief as the "negative declaration."

Both the 2006 Facilities Master Plan and the 2007 CSM project provided for the *rehabilitation* of the Building 20 horticulture complex and the maintenance of the extensive gardens. (AR1:9-10, 64-66, 414; 2:658; 3:1687.)

(AR5:2602 [Building 20 Courtyard Garden].)

The District awarded design-build contracts for site-specific CSM project components between 2007 and 2010, spending over 175 million dollars. (AR1:412.) However, renovation of the Building 20 complex was not funded. (AR2:658.) "We didn't receive the state funding that we had anticipated ..." (AR3:1573.)

The Initial Demolition/Edison Parking Lot Project.

Four years after approving the CSM project, the District completed its "flagship" building, the "College Center," boasting views of San Francisco Bay. (AR1:490; 3:1283.) As built, Building 10 is larger than the three stories that had been planned, including a fourth floor for corporate and community events. (AR1:490; 2:626, 1034; 5:2294.)

The District expressed hope that an "army of visitors" would "flock to rent a newly-opened facility intended for everything from job fairs to weddings and bar mitzvah parties." (AR5:2611.) "We're trying to generate revenue any way we can." (*Ibid.*)

(AR1:490 [new Building 10 College Center])

The expansion of Building 10 for corporate events became an impetus for the subject "Demolition of the Building 20 Complex" (the demolition/parking lot project) to expand parking north of Buildings 10 and 12 by 140 – 160 spaces. The idea surfaced in late

2009. (AR1:1877.) Due to the opposition by the College faculty, the Academic Senate resolved in March 2010 to support "halting" the project that would destroy the gardens' "spectacular specimens" and the Building 20 horticulture complex. (AR5:2298, 2301-2301.) "Save the Horticulture/Floristry Program" petitions were circulated and signed by hundreds of CSM students in February and March 2010, objecting in relevant part to the "proposed paving of our green space's rare and legacy plants." (AR5:2304-2383.)

A year passed. On March 9, 2011, College of San Mateo student Tricia Gardner spoke at the District Board of Trustees' meeting regarding still-ripening plans to expand parking lots for staff and Building 10 events. On behalf of other concerned students, Gardner objected to the proposed demolition of "the garden, Building 20, and the greenhouses" to expand parking. (AR1:459.)

The demolition/parking lot project was next publicly discussed at a Board meeting on March 23. (AR2:609-611.) Student Richard Gardner supported retention of "one of the most beautiful gardens he has ever seen." (AR2:609.) Student Shawn Kann made a lengthy presentation in support of retaining the horticulture complex and the "spectacular specimens" in the garden, pointing out that "biology and paleontology courses and the students who utilize the

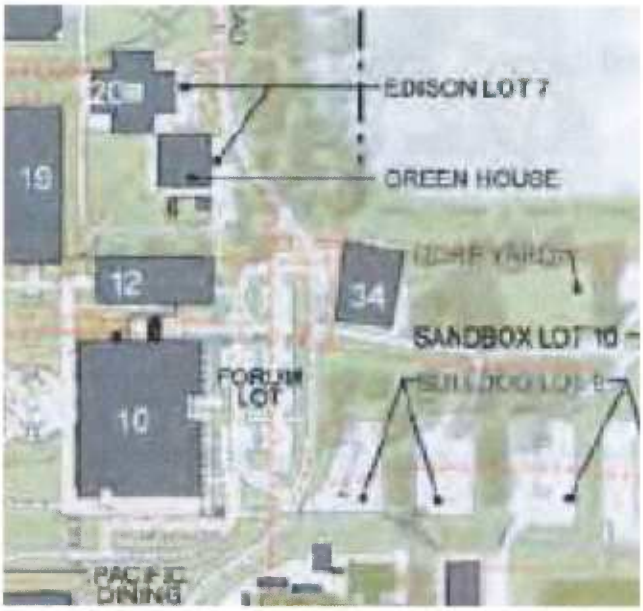
garden's diverse living botanical specimens, native plants, and living fossils would be adversely affected" by demolition. (AR2:610.)

Tricia Gardner presented a compromise plan developed by the new campus Save the Garden Club, proposing up to 70 new parking spaces and retention of much of the complex. (AR2:611.) She asked the Board to "respect biological resources that enrich studies in ways that are difficult to measure." (*Ibid.*)

The Board promised to consider students' concerns. (AR:611.)

Then, at a public 'study session' two weeks later, the Trustees announced that they had made a decision: to demolish the Building 20 complex to expand the asphalt Edison parking lot adjacent to the south garden and provide additional parking for Building 10. (AR1: 9-10.) College President Michael Claire explained that "... [w]ith Building 10 at only 50% of capacity, there are already complaints about a lack of parking." (AR2:626.)

In announcing the decision, the Trustees strongly criticized student and faculty objectors. While acknowledging that the College faculty strongly preferred to retain Building 20 and the gardens, the Trustees made clear that they planned to demolish the Building 20 complex and objectors were wasting their time in suggesting parking alternatives. (AR2:624-627.)



(AR2:1284, ["Existing Campus"].)

Trustee Dave Mandelkern stated that "the discussion on this issue is done and he will not continue to engage in debate ..." (AR2:627.) Board President Richard Holober referenced the involvement of students and community members with the local City Council and "other official representatives"[5] regarding the demolition project and pronounced that "*the discussion is over and the answer is no.*" (AR2:627, italics added.)

At the next meeting of the Board of Trustees in late April 2011, student Shawn Kann pointed out that the Trustees had not formally

[5] The reference was apparently directed at correspondence between concerned College faculty and Congresswoman Jackie Speier. (AR4:1844-1848, 1947; 5:2293-2298.)

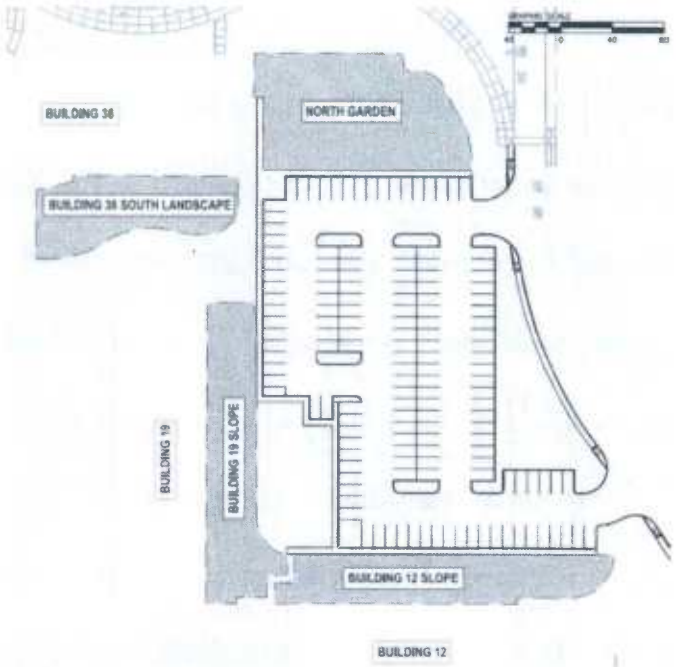
approved the Building 20 demolition project and that a CEQA environmental document should be prepared and considered in making the decision. (AR2:633.)

The Sierra Club Loma Prieta Chapter criticized the Trustees' handling of student concerns at its prior meeting: "We were impressed with the fervor — yet polite demeanor — of these young people for preserving something they felt to be of ... value not only for themselves but for successor students." (AR3:1880.)

Student Brandon Snyder told the Board of Trustees that "if students do not feel welcome to express their concerns within the system that was set up for them, then what do they do?" (AR2:633.) Snyder said that the promised opportunities for students to voice concerns about the project had not materialized "and because of that, you have groups of students coming to Board meetings trying to find answers. I can assure you that we will continue to attend public meetings and respectfully speak our minds ..." (*Ibid.*)

CEQA Addendum and Formal Project Approval.

The District then prepared an addendum to the negative declaration that had been prepared for the CSM project in 2006. (AR1:4-31.)



(AR1:16 [drawing of the proposed 140-160 space Edison lot].)[6]

The addendum for the demolition/parking lot project summarily recited that due to new construction at the College, the classroom and laboratory spaces in Building 20 were no longer needed and "there is a need for additional parking on the east side of campus where Building 20 is located." (AR1:1, 10-12, 4-57.) Unspecified portions of the north and south gardens were to be destroyed and some plants were to be relocated and replanted. (AR1:24-25; 2021-2030.)

The addendum did not analyze the potentially significant aesthetic impacts of demolishing the mature gardens, considering in

[6] The fonts on this District document are altered for clarity.

a cursory way only the visual impacts of new lighting needed for the expanded Edison parking lot. (AR1:21.) It did not study the extent of campus parking needs (including those related to the Building 10 College Center and its corporate rentals), nor consider alternatives that might provide additional parking. (AR1:21-30.) There was no analysis of the environmental setting or of the gardens' contribution or status as an historic vernacular landscape. (*Ibid.*)

The College was presented with additional anti-demolition petitions signed by hundreds of students, including seventy "Save the Gardens" petitions stating that

> The garden at the College of San Mateo is in jeopardy of being permanently eliminated and replaced with a parking lot. We object to the paving of green space with rare and legacy landscape plants. We value the educational opportunities provided by this space and recognize this would be a tremendous loss for the students. We ... urge our leaders to Save the Garden at the College of San Mateo.

(AR5:2459-2530.)

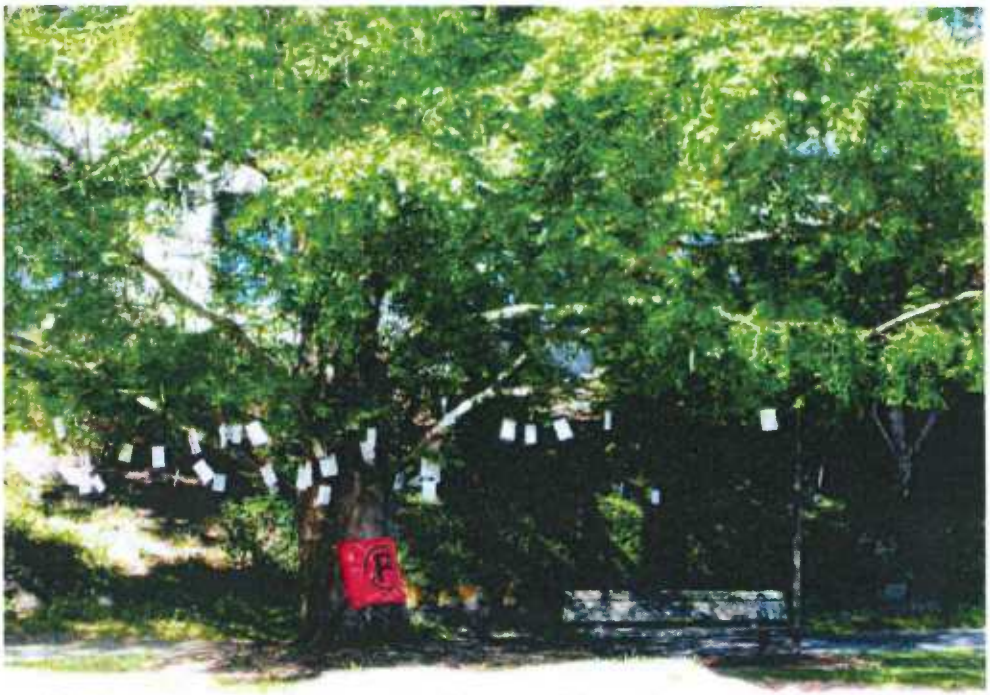
On May 11, the week *before* the Trustees held a public meeting to consider approval of the demolition/parking lot project, the College construction manager prematurely emailed subcontractors that "the district has elected to proceed" and described specific

imminent project implementation duties. (AR3:1955-1956.)

On May 15, the [undersigned] attorney for the Save the Garden Club, whose members later formed the Friends of the San Mateo College Gardens, sent a 7-page letter to the Trustees, explaining the legal inadequacy of the addendum and requesting an EIR "before any further consideration of this project." (AR:1991.)

> There are likely alternative ways to meet the College's program and facility needs with fewer environmental impacts. As pointed out by the Academic Senate, demolition of Building 20, the gardens, and the Dawn Redwood has not been justified, and should be halted.

(*Ibid.*)



(AR5:2604 [student notes/no-parking sign, south garden].)

Protested by students and faculty, the demolition/parking lot project was formally considered by the Board on May 16th. (AR2:726-788 [transcript].) Architect Gita Dev pointed out that "every other campus I know is trying to reduce their parking, move their parking farther away so people will walk. Stanford now has 50 percent people who use transit ... who do not use their car." (AR1:151.)

> We have a beautiful new quad [at the College]. It's gorgeous, ... it's magnificent, but it's not a garden. What the students have [are] these two gardens with butterflies and little animals, and it's a place you can sit, it's a place you can meet ... with your friends, you can study there. It's quiet. It has that quality which the quad will have in 25 years when those trees are magnificent, but won't have it until then.

(AR1:749-750.) CSM horticulture instructor Linton Bowie urged that environmental review was needed to analyze aesthetic values and quality for "people and programs and education" –

> I see people there all the time using that garden. It's a garden that is about 50 years old and there's a lot of mature specimens that provide a very unique kind of space that is not on this campus any longer and I don't think can be created by the landscape plan.

(AR1:743.) Student Bonnie Britton told the Trustees that on her

recent drive to the campus to attend class, she observed signs directing a community club to Building 10. "[Y]ou're giving up a resource that people treasure in order to provide parking for staff and for visitors who aren't even students, who aren't even connected with the college ... that's a questionable decision." (AR2:774; *see* additional student and faculty comments *post,* pp. 59-69.)

Over the significant expressed opposition, the Board approved the project and the addendum. (AR1:1, 64.)

The Revised Demolition/Parking Project. In June 2011, the newly-formed Friends of the College of San Mateo Gardens filed a CEQA mandamus action in San Mateo County Superior Court [Case CIV 506455]. (Appellants' Appendix (AA):6.) The action became a matter of broad public and media interest, primarily due to the threat to the future of the beloved College gardens. (AR1:459; 2:609-611, 633, 719-721, 738-755, 774-776; 4:1839-1841, 1949, 1957-1963, 1971-2010, 2012-2020; 5:2610-2615.)

While the action was pending, it became apparent that a secondary reason for the project was the imminent expansion of the large Galileo parking lot for the "North Gateway project" near the Building 20 north garden. During construction of that lot, the Edison

lot's expansion would provide temporary parking. (AR3:1136.)

(AR5:2615 [students protesting in the gardens, May 2011].)

The District and Friends engaged in substantive settlement negotiations to save a viable portion of the complex and gardens. (AR3:1399; 4:2241; AA:6.) Friends presented its latest counter-counter offer to the District Board on July 29, 2011. (*Ibid.*) While Friends' members and counsel awaited a response, the District proceeded behind the scenes to complete a revised addendum. (AR1:58-213.) Friends were not told that a new addendum was in process until August 17, and a copy was not provided to them or to the concerned public and students until its completion at 5 p.m. on Friday, August 19. (AR1:58-213; 4:2208, 2241.)

The initial addendum for the demolition/parking lot project approved in May 2011 made no pretense that the demolition was encompassed within the described impacts of the 2006 Facilities Master Plan or its implementing 2007 CSM project. (AR1:4-56.) However, after Friends' initial lawsuit was filed in June 2011, the revised addendum newly contended that the demolition of the Building 20 complex could be considered as substitute for the no-longer-contemplated demolitions of campus Buildings 15 and 17 and would have similar insignificant impacts. (AR1:65, 67-68, 96.)

The attempt to characterize the new project as encompassed within the old was unsupported. The demolitions of Buildings 15 and 17 that were proposed by the 2007 CSM project were to make way for a new building, not a parking lot. (AR1:67.) Buildings 15 and 17 are unrelated to Building 20 and their demolitions have no overlapping environmental impacts except for the amount of debris that would result from demolition. (AR1:81.) The revised addendum similarly contrived to describe various proposed changes to the gardens as "part of the CSM Project," even though the CSM project never proposed any garden alterations. (AR1:65-66, 71-72, 92-94 [Revised Addendum, Project Changes].)

The revised addendum explained that the District considered the demolition/parking lot project to be part of the pending "North Gateway Part II" project's Galileo parking lot construction north of the Building 20 complex and gardens. (AR1:92;3:1859, 1862-1867.) The addendum disclosed that "the College needs additional parking spaces in the near term to offset the loss of 600-800 spaces during the 18-24 month construction period for the North Gateway Project ..." (AR1:106-107.)

The Board of Trustees held a hearing on August 24, a few days after release of the revised addendum. (AR1:413-416; 3:1569-1625 [transcript].) The District staff report explained the chronology of events and that the revised addendum contained more detail about plans for the gardens. (AR3:1398-1400.)

A student pointed out, with supporting photographs, that while the current week [in late August] was one of the busiest of the school year, most student lots were relatively full in the mornings but only half full in the afternoons. Staff and faculty parking was never a problem. (AR3:1586-1588.) She requested an EIR to explore alternate parking sites for Building 10 events. (*Id.*, p. 1587.)

After public comment, the Board rescinded its May project approvals, approved the revised addendum, and reapproved the

demolition/parking lot project as described in the revised addendum. (AR1:79-80; 3:1566, 1585-1597; 1569-1625.) Student Trustee Barry Jointer and others requested a continuance of the hearing to allow adequate time for the widely-concerned public and student body to review and respond to the revised addendum. (AR3:1562-1566, 1593-1594.) The Board declined. (AR3:1566.)

Statement of the Case

> **"The Gardens are '50 years old, filled with mature and interesting specimens, a valued habitat area ... and a spot of refuge treasured by students. *The mature plants cannot successfully be moved and replanted elsewhere.* The new landscaped areas of the campus (water demanding) grass, concrete and standardized plantings do not in any way compare aesthetically or in usefulness to this garden."**

(AR4:2196-2197 [horticulture alumnus Anne Westerfield].)

Following the filing of the revised addendum and rescission of the initial demolition/parking project in August 2011, the Friends group dismissed its initial mandamus action. It filed a new action in the public interest in the San Mateo County Superior Court in September 2011, challenging the revised addendum and reapproved project. The Friends group filed the action as a private attorney

general and was (and is) represented by the undersigned *pro bono* counsel pursuant to Code of Civil Procedure section 1021.5. (AA:10.)

Following briefing and a hearing on the merits, the Honorable Clifford Cretan ruled in favor of Friends and granted the mandamus petition. (AA:175-176.) The form of judgment submitted by Friends included findings both that the proposed demolition was a 'new' project and that even if treated as a 'revised' project the approval based on the addendum was unlawful. (AA:193-194.) District counsel successfully sought revision of the judgment to delete the findings. (AA:189-191, 195-198.) The judgment therefore states only that the District violated CEQA in basing project approval on an addendum. (AA:196; *see* Slip Opinion, p. 6., fn. 4.) A peremptory writ issued requiring the District's compliance with CEQA. (AA:252-253, 254.)

The District appealed. In an unpublished opinion, as noted above the First District Court of Appeal, Division One, cogently summarized the material facts of the case. (*Id.*, pp. 2-6.) Following the approach of *Save Our Neighborhood v. Lishman, supra,* 140 Cal.App.4th 1288, the Court then held that under the straightforward facts presented in the certified administrative record, the proposed demolition of the Building 20 horticulture complex and gardens was a new project as a matter of law. (Slip Opinion, p. 9.)

The Court rejected the College District's characterization of the demolition/parking lot project and addendum as if reflecting "minor technical changes or additions" to the negative declaration. (Slip Opinion, p. 8.) To the contrary, "[t]he addendum changes 'renovation' of the Building 20 complex to 'demolition' of the complex's buildings and a substantial portion of the gardens ... We conclude the demolition project is a 'new project" that has not been subjected to adequate environmental review." (*Ibid.*)

The Court distinguished cases that "indeed involve relatively minor changes ... and not an entirely new project substituted for the initial project which had been environmentally reviewed." (*Id*, p. 9.) Ruling that "under the straightforward facts of the present case" the demolition/parking project "is a 'new' project," the Court affirmed the trial court's judgment, remanding the case for environmental review utilizing the 'fair argument' standard of review to determine whether an EIR should be prepared or whether a new negative declaration would suffice. (*Id.*, pp. 9-11.)

The District sought review, and this Court granted the petition in January 2014. Friends' filing fees were waived since it is a "group composed of college students, has no assets or income, and has pursued this public interest case as a private attorney general" with

counsel advancing all legal services since the underlying mandamus action was filed in September 2011. (Request to Waive Court Fees.)

The physical status quo remains intact at the Building 20 complex, including the ongoing maintenance of the historic gardens.

Standard of Review

> **"This is the last remaining green space on the campus with any habitat value. All other parts of the campus have been re-landscaped with a low diversity of plant species. This area contains fruiting and flowering plants, nuts, seeds, and mature trees that provide habitat for wildlife ..."**

(AR5:2263 [Save the Gardens Club students' statement], *attached.*)

The College District violated CEQA if it abused its discretion either by failing to proceed in the manner required by law or making findings unsupported by substantial evidence. (Pub. Resources Code, § 21168.5.) Appellate review is de novo. (*Vineyard Area Citizens v. City of Rancho Cordova, supra,* 49 Cal.4th 412, p. 427.)

In 2007 the District approved a campus-wide plan that provided for the rehabilitation of the Building 20 complex, while the project before this Court calls for demolition. This Court will decide whether the District's threshold decision to characterize the

demolition/parking lot project as 'supplemental' to the 2007 rehabilitation project rather than 'new' is reviewed for failure to proceed in the manner required by law or must instead be deferentially reviewed to determine whether it is supported by substantial evidence.

As explained below, based on CEQA's statutory and regulatory authority as interpreted by the decisions of this Court, the District's approach must be independently reviewed for failure to proceed in the manner required by law.

It's All About the Facts. In *Vineyard Area Citizens* this Court differentiated between two discrete types of CEQA disputes, essentially divided between procedural and factual. While the Court's direction is clear as to CEQA's dual standards of review, a few appellate decisions continue to be inconsistent, in part due to confusion over the word *facts*.

Here is why. First, because challenges to an agency's CEQA compliance must be resolved solely based on a certified administrative record of proceedings, trial courts make no findings of fact. ***Every alleged CEQA violation presents an issue of law based on the record.*** That is why CEQA appellate review is

de novo. (*Vineyard Area Citizens, supra*, 49 Cal.4th 412, p. 427.)

Yet questions about agency compliance with CEQA's mandated procedures are often referenced as 'issues of law,' while questions relating to the requisite substantial evidence to support an EIR's conclusions and agency approval findings are often referred to as 'a dispute over the facts.' (*Vineyard Area Citizens, supra*, 49 Cal.4th 412, pp. 722-723.)

The first type of issue is reviewed for failure to proceed in the manner required by law, based on "whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements." (*Vineyard Area Citizens, supra*, 49 Cal.4th 412, p. 722, citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3rd 553, p. 564.) An "agency's substantive conclusions," on the other hand, are deferentially reviewed for substantial evidence. (*Id.*, p. 723.)

In *Vineyard Area Citizens*, this Court found an EIR's water supply analysis to be inadequate as a matter of law. (*Vineyard Area Citizens, supra*, 49 Cal.4th 412, pp. 442-444.) The Court's approach applies to all similar questions addressing a CEQA process or the legal adequacy of a CEQA document. No authority gives an agency final discretion to determine the adequacy of its own CEQA

document or process simply because there may be substantial evidence to support its decision, nor should it.

Friends posit that confusion about which of the two standards of review should apply arises because the question of whether (1) an agency has complied with mandated CEQA procedures, and (2) whether its evidentiary conclusions are supported by substantial evidence — each involve review of relevant *facts*.

In sum, *both* types of CEQA inquiries present issues of law reviewed de novo because they are solely based on facts in the certified record. And *both* types of inquiry are resolved via review of the facts. Yet the standards of review of the two inquiries differ.

Statutory and regulatory authorities provide a detailed road map to the procedures that must be followed to assure CEQA compliance, and legislative intent is manifest in the policies of the Act. (*E.g.*, Public Resources Code, §§ 21000-21006, 21060-21072, 21080, 21080.1, 21081, 21082.2, 21083, 21084.1, 21093, 21094, 21100, 21151, 21166; CEQA Guidelines [14 Cal.Code Regs., §§ 15000 *et seq.*] §§ 15002-15003, 15005, 15020-15021, 15063-15065, 15070-15075, 15350-15385.)

Interpretation of the environmental mandates of the Public Resources Code and the CEQA Guidelines require statutory and

regulatory construction and, if necessary, consideration of the intent of the California Legislature and the Resources Agency. (*E.g.*, *Friends of Sierra Madre v. City of Sierra Madre* (2001) 24 Cal.4th 154, pp. 188-189.)

Leaving up to the lead agency to decide whether it has adequately complied with CEQA's legislated requirements is comparable to judging its own compliance with any other state law of general application. These issues requiring statutory construction are rightfully subject to de novo judicial review, unlike a lead agency's interpretation of its own ordinances and plans, which are generally entitled to deference.

On the other hand, once an agency prepares an environmental document in compliance with CEQA, its findings as to significance of impacts and the feasibility of alternatives are deferentially reviewed for substantial evidence. (*Vineyard Area Citizens, supra*, 49 Cal.4th 412, pp. 722-723.) This makes sense: by the time an agency makes CEQA findings its land use discretion has been informed via environmental analysis within a public process. Courts do not direct which experts an agency may choose to rely upon following an EIR process; that is the prerogative of elected decisionmakers empowered by the electorate to make land use decisions.

Threshold Issues. Two of the threshold CEQA issues that are reviewed for 'failure to proceed in the manner required by law' are whether a proposed action is a 'project' subject to the Act (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, pp. 131-132; *Muzzy Ranch v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, p. 382), and whether a proposed action is statutorily exempt from CEQA review (*Sunset Sky Ranch Pilots Association v. County of Sacramento* (2009) 47 Cal.4th 902, pp. 907-909).

In such cases, courts review the whole of the record to determine whether, as a matter of law, an agency has complied with the requirements of CEQA. (*See, e.g., San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356, p. 1375 ["... interpreting the scope of a CEQA exemption presents 'a question of law, subject to de novo review by this court.' "].)

Whether a CEQA project is either 'new' or 'supplemental' presents a comparable threshold question of law. (*Save Our Neighborhood, supra*, 140 Cal.App.4th 1288, pp. 1297, 1301.)

To begin the discussion of the applicable standard of review for this threshold question, Friends invoke the overarching and unequivocal legislative mandate that requires an EIR process for any

project with a potentially significant environmental impact. (Public Resources Code, §§ 21082.2, 21100, 21151.)

To implement the mandate for EIR preference, CEQA's unique 'fair argument' standard of review requires preparation of an EIR upon any substantial record evidence that there may be such impact, regardless of contrary evidence. (*No Oil, Inc., v. City of Los Angeles* (1974) 13 Cal.3rd 68, p. 75; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, p. 1318; CEQA Guidelines, § 15064, subd.(f) subd.(1).) An EIR informs agency decisionmakers and demonstrates "to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action." (*No Oil, supra,* 13 Cal.3rd 68, p. 86.)

However, once a project has been approved based on an EIR, an agency may *not* require the preparation of a supplemental or subsequent EIR for the same project unless project changes or new circumstances require major revisions to the original document. (Pub. Resources Code, § 21166.)

1. *Bowman v. City of Petaluma*. This Court has not addressed the standard of review for evaluating an agency's compliance with section 21166. However, many Court of Appeal decisions dictate that the fair argument standard should *not* apply to

whether a changed project requires a supplemental EIR. As first explained in *Bowman v. City of Petaluma* (1986) 185 Cal.App.3rd 1065, pp. 1073-1074:

> [S]ection 21166 comes into play precisely because in-depth review has already occurred ... and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process. Thus, while section 21151 is intended to create a 'low threshold requirement for preparation of an EIR' [citation] section 21166 indicates a quite different intent, namely, to restrict the powers of agencies 'by prohibiting [them] from requiring a subsequent or supplemental environmental impact report' unless the stated conditions are met.

This Court will note that both section 21166 and the *Bowman* case address supplemental EIRs, *not* supplemental negative declarations nor negative declarations supplemented via addenda. The District's discussion of section 21166 is thus off-point. Friends *agree* that the substantial evidence applies to supplemental project review following preparation of an EIR. (District Brief, p. 19.)

Further, *Bowman* does not address the threshold question of the applicable standard of review to determine whether a project is 'new' or 'supplemental,' as inferred by the District. (District Brief,

p. 24.) *Bowman* involved a proposed traffic configuration change to a residential project; there was no doubt that '*the* project' was not 'new.' (*Bowman, supra*, 185 Cal.App.3rd 1065, p. 1070.)

Bowman's rationale for applying the substantial evidence test rather than the fair argument test to supplemental review was that '*in-depth review*' had already occurred — in an EIR. Neither section 21166 nor *Bowman* addresses the standard of review applicable to the question at hand: whether a current project is '*the* project' that was the subject of a prior EIR or is in fact something new.

This threshold question of whether a project is new or a supplement to a prior project benefits from this Court's direction in *Vineyard Area Citizens*. Whether an agency may apply section 21166 to a particular project depends on "whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements," and not whether its "substantive conclusions" are supported by substantial evidence. (*Vineyard Area Citizens, supra*, 49 Cal.4th 412, pp. 722-723; *ante*, p. 30.) *Only if* a project is 'supplemental' may section 21166 apply and may an agency's findings as to the sufficiency of its supplemental review be deferentially upheld if supported by substantial evidence.

2. *Benton v. Board of Supervisors*. While section 21166 only applies to supplemental EIR review, Guidelines section 15162 applies the same provisions to negative declarations, as did *Benton v. Board of Supervisors* (1991) 226 Cal.App.3rd 1467, pp. 1482-1483. In *Benton*, an approved winery chose to relocate, and the Court of Appeal upheld a second negative declaration addressing that change. The Court decided *as a matter of law* that the relocation was not a 'new' project: "*On this record*, we are satisfied that the project before us was a modification of the existing winery project, not an entirely new project." (*Id.*, p. 1477, italics added.)

Benton construed Guideline section 15162 and allowed the expanded application of section 21166 to negative declarations.

> If a limited review of a modified project is proper when the initial environmental document was an EIR, it stands to reason that no greater review should be required of a project that initially raised so few environmental questions that an EIR was not required ... To interpret CEQA as requiring a greater level of review for a modification of a project on which a negative declaration has been adopted and a lesser degree of review of a modified project on which an EIR was initially required would be absurd."

(*Benton, supra*, 226 Cal.App.3rd 1467, p. 1480.)

This point has not been at issue in this case, but Friends posit that *Benton* is incorrect. An EIR is required upon substantial evidence of a potentially significant impact, as discussed above. While the record supporting a particular negative declaration may not have contained the requisite substantial evidence, a subsequent project that does contain such evidence should trigger an EIR. There has not yet been 'in-depth' review if no EIR was prepared.

3. *Save Our Neighborhood v. Lishman, et seq.* *Save Our Neighborhood, supra*, 140 Cal.App.4th 1288, is the *sole reported case* addressing application of section 21166 to an approval based on a negative declaration supplemented with an addendum. The Court ruled that the addendum was unlawful because the project was 'new.' Noting that *Benton* considered whether the project was 'new' as an issue of law, the Court agreed and explained its approach:

> The question under Public Resources Code section 21166 and Guidelines section 15162 is whether changes in a project or its surrounding circumstances introduce new significant environmental impacts. *However, a threshold question is whether we are dealing with a change to a particular project or a new project altogether* ... Despite the City's self-serving statements in the addendum that the [project] is a modification ..., *the totality of the circumstances proves*

> *otherwise* ... Public Resources Code section 21166 and Guidelines section 15162 are therefore not applicable ... and the City violated CEQA in relying on an addendum rather than independent environmental review.

(*Id.*, p. 1301, italics added.)

A year later, *Moss v. Humboldt* (2008) 162 Cal.App.4th 1041 determined that under the facts of its case, whether the project at issue was 'new' or 'supplemental' was a question of law, rather than an issue deferentially resolved by substantial evidence. (*Id.*, p. 1053.) The Court noted that a similar question had been treated as a "question of law which we review de novo" in *Lincoln Place v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, p. 1503. (*Id.*, p. 1051.) The *Moss* Court applied the same non-deferential approach utilized in *Save Our Neighborhood.* (*Id.*, p. 1053.)

Consistently, *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156 required a new EIR for a project that was not studied in an earlier programmatic CEQA document. The project was within the scope of a prior approved plan and had been anticipated in the prior environmental document, albeit unstudied. The Court applied the fair argument standard to what it considered a "separate project." (*Id.*, p. 1166.)

Center for Sierra Nevada Conservation relied on *Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th 1307, which applied the 'new project' fair argument standard to require an EIR for a mining project that revised the Aggregate Resources Management Plan for mining along the Russian River. The mining company argued that "its proposed activity was not a separate project, but was instead part of a minor modification of the single large project already studied in the ... Plan." (*Id.*, p. 1320.) The Court disagreed, noting that the area proposed for mining was specifically designated for *preservation* in the Plan. The company's "... claim simply ignores the Plan itself, which states that [the land in question was] proposed for preservation." (*Id.*, pp. 1320-1321.)

Sierra Club held that the new "site-specific" mining was not "the same or within the scope of" the project reviewed in the prior EIR, and agreed with the trial court that the fair argument standard applied to the new project. (*Sierra Club, supra*, 6 Cal.App.4th 1307, pp. 1320-1321.) Without directly discussing either its approach or the standard of review for its threshold decision, as a matter of law the Court treated the current mining project as 'new.'

4. *Mani Brothers* and *Latinos Unidos de Napa*. The first case that held that the substantial evidence standard applied to the

threshold question of whether a project is to be treated as 'new' or 'supplemental' was *Mani Brothers Real Estate Group v. City of Los Angeles, supra*, 153 Cal.App.4th 1385.

Mani Brothers upheld a project approved based on a 1989 EIR supplemented with a 390-page addendum prepared in 2005. The Court found that project revisions — converting office and retail uses to residences in a 3 million square-foot high-rise mixed-use project — would not increase the severity of impacts, and further found *Save Our Neighborhood* "distinguishable and inapplicable" because it dealt with an addendum following a negative declaration rather than an addendum following an EIR. (*Id.*, pp. 1391-1392, 1400.)

Mani Brothers did not reference this Court's comprehensive explication of CEQA's dual standards of review in *Vineyard Area Citizens*, issued a few months earlier. And while *Mani Brothers* claimed to follow established law, it misconstrued the *Benton* Court's initial de novo decision not to treat a winery project as 'new' and instead focused on the substance of *Benton*'s review of the winery's environmental changes. (*Id.*, pp. 1400-1401.)

Following *Mani Brothers* is *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, decided by Division One of the First District. In *Latinos Unidos*, the City of Napa certified a

program EIR for its 2020 General Plan in 1998. It then amended the Housing Element of that General Plan in 2009, relying on the 1998 EIR without supplemental environmental review. The City treated the new Element as within the scope of the 2020 General Plan and found no unstudied impacts. (*Id.*, pp. 198-199.) The Court reviewed the facts in the record and agreed with the City and the trial court that the project was supplemental to the General Plan and within the ambit of Public Resources Code section 21166. (*Id.*, p. 204.)

Latinos Unidos noted that *Mani Brothers, supra,* 153 Cal.App.4th 1385, p. 1401, supports application of the substantial evidence standard "*particularly in cases where there is a certified EIR.*" (*Latinos Unidos, supra,* 221 Cal.App.4th 192, p. 201, italics added.) *Latinos Unidos* distinguished its own facts from those in *Sierra Club v. County of Sonoma* and *Center for Sierra Nevada Conservation v. County of El Dorado.* (*Id.*, pp. 202-203.) The Court agreed with the ruling of its "colleagues in Division Three" in *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, p. 1052, n. 6, "that a court should tread with extraordinary care before reversing a local agency's determination about the environmental impact of changes to a project." (*Id.*, p. 202.)

But *Latinos Unidos* also mistakenly stated that *Moss v. County of Humboldt* had applied the substantial evidence standard to the threshold question of whether section 21166 applied, and agreed with that statement. (*Latinos Unidos, supra,* 221 Cal.App.4th 192, p. 202, *see ante* p. 39.) The Court then reviewed the facts relevant to the City of Napa's Housing Element approval and concluded that there could be "*no dispute*" that the project was within the scope of the General Plan 2020 and its EIR and was "properly analyzed under Guidelines section 15162." (*Id.*, p. 204, italics added.)

In reviewing the facts and applying the relevant law, *Latinos Unidos* essentially *applied the mandates of CEQA to the facts at hand.* As the Court's de novo conclusion aligned with that of the City of Napa, substantial evidence indeed supported the City's decisions to apply section 21166 and not to undertake further review. (*Latinos Unidos, supra* 221 Cal.App.4th 192, p. 204.) But does not make the substantial evidence applicable. Further, *Latinos Unidos* mistakenly treated the level of environmental impact as relevant to the measure of whether a project is 'new' or 'supplemental;' in fact, either type of project may or may not have significant new impacts and that is why varying levels of review are appropriate.

Characterization of a project as 'new' or 'supplemental' depends on whether it is within the scope of an original project subjected to environmental review. Even without benefit of this Court's ruling in *Vineyard Area Citizens*, decided a year later, *Save Our Neighborhood v. Lishman* got it right.

Save Our Neighborhood is the only case that has addressed the sufficiency of an addendum following a negative declaration. And it was the first case to pointedly consider the standard of review applicable to the question here at issue: when may a project be characterized as 'new' and when is it 'supplemental'? That threshold question involves application of a general law, CEQA, to undisputed facts, without deference to the lead agency's opinion.[7]

The District's threshold decision to conduct CEQA review of the 2011 demolition/parking project as a 'supplement' to the 2007 CSM project and negative declaration must be reviewed for failure to proceed in the manner required by law, based on facts in the record.

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[7] Ironically, the debate in this case about the threshold standard of review may relate to the facts of the two key cases: the Court's opinions in *Save Our Neighborhood* and *Mani Brothers* are arguably counter-intuitive to their facts, although without full knowledge of the administrative records it is impossible as well as irrelevant to second-guess those rulings.

Standard of Review for Adequacy of the Addendum.

Once the threshold question of 'new' versus 'supplemental' is answered, the Court will consider whether the District abused its discretion in approving the demolition/parking lot project based on the combined 2006 negative declaration and 2011 addendum.

1. New Project. If the project is 'new,' this case will resolve based on that determination. *A new project requires preparation of a new CEQA document.* An addendum cannot stand alone or serve as the basis to approve a new project, as there is no underlying document to supplement or "addend." (Guidelines, § 15164.)

For a 'new' demolition/parking lot project, it is undisputed that CEQA's low-threshold 'fair argument' standard of review applies to the question of whether a negative declaration or EIR must be prepared. Public Resources Code sections 21080 and 21100 provide that an EIR is triggered unless "there is no substantial evidence" that a project "may have a significant effect on the environment." *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3rd 988, pp. 1002-1003, explained the basis for the fair argument standard, relying on this Court's landmark decision in *No Oil*:

> But if a local agency is required to secure preparation of an EIR 'whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact' (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75), then an agency's adoption of a negative declaration is not to be upheld merely because substantial evidence was presented that the project would not have such impact ... If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR ..., because it could be 'fairly argued' that the project might have a significant environmental impact.

Public Resources Code section 21080 subdivision (e) defines substantial evidence sufficient to support a fair argument of potentially significant environmental impact as "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Consistently, section 21082.2 mandates that "substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Guidelines section 15064 subdivision (g) directs that "if there is a disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant ..." This is because, as held in *Sierra*

Club v. County of Sonoma, supra, 6 Cal.App.4th 1307, pp. 1322-1323, CEQA ... "reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." *Sierra Club* holds that a finding of no environmental impact "can be upheld only when there is no credible evidence to the contrary." (*Id.*, pp. 1317-1318; italics added.)

Thus, if the demolition/parking lot project is found to be new, the administrative record must be reviewed for evidence supporting a fair argument that the project may have any significant impact. If such evidence is present, an EIR must be prepared. Otherwise, a mitigated negative declaration will suffice. Either way, the District's addendum is unlawful and the judgment and writ properly issued.

2. Supplemental Project. If the project demolition/parking lot project could be considered 'supplemental,' the Court would review the record for substantial evidence supporting the District's findings that the 2006 mitigated negative declaration as supplemented by the 2011 addendum complied with CEQA in addressing the impacts of the demolition/parking lot project. (Pub. Resources Code, § 21166; Guidelines, §§ 15162-15164.)

A complication to judicial review of an addendum is that there are no statutory criteria by which to measure its sufficiency. The

term 'addendum' is not mentioned in the Public Resources Code. No cases address the lack of legislative authority, and some uphold addenda to EIRs. (*E.g., Mani Brothers, supra,* 153 Cal.App.4th 1385; *Citizens for Responsible Equitable Development v. City of San Diego* (2011) 196 Cal.App.4th 515; *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689.)

The CEQA Guidelines provide for the use of addenda to an EIR "if some additions are necessary" and if a subsequent EIR is not required. (Guidelines, § 15164 subd.(a).) The availability of an addendum to supplement an adopted negative declaration is more restrictive, perhaps because no in-depth review has yet occurred.

The Guidelines allow an addendum to a negative declaration for a supplemental project "*if only minor technical changes or additions are necessary*" or if none of the conditions triggering the preparation of a subsequent EIR or negative declaration have occurred [such as substantial changes in the project or substantial changes in circumstances that require major revisions of the EIR or negative declaration; or if new information of substantial importance shows new significant effects or more significant effects]. (Guidelines, § 15164 subd.(b), italics added, referencing § 15162.)

The demolition/parking lot project addendum should thus be reviewed for compliance with parameters of Guideline section 15164.

The Guidelines also provide that addenda need not be circulated for any public review or comment. (Guidelines, § 15164 subd.(c).) There is no statutory authority for this section. All EIRs and negative declarations require a public comment period, and *addenda can only be justified as appendages to an EIR or negative declaration.* The Guidelines thus provide that addenda "can be included in or attached to the final EIR or adopted negative declaration." (*Ibid.*) The decisionmaking body is to "consider the addendum *with the final EIR or adopted negative declaration* prior to making a decision on the project." (*Id.*, subd.(d), italics added.)

Friends suggest that the Guidelines' proviso that no public notice is required for agency reliance on an addendum is without statutory authority and void, as approval of an addendum is equivalent to the approval of a revised negative declaration or a revised EIR. Recirculation for public review and comment may be required. (*E.g.*, Guidelines, § 15088.5.)

And although there is *no precedent* for consideration of the sufficiency of an addendum to a negative declaration, Guideline section 15064 subdivision (f) subdivision (7) provides that the

standard of review for any addendum is substantial evidence. This of course applies to an addendum prepared for a project that qualifies as 'supplemental.' The agency's reliance on the addendum must be supported by substantial evidence that environmental impacts have been adequately analyzed and mitigated to a level of insignificance.

Discussion

> **"I request the Board of Trustees consider a solution that preserves the garden spaces ... I authored the Trustee's Fund for Program Improvement ... The native garden was intended to be a living laboratory ... For teaching and learning in biology and horticulture, the value of the native garden is similar to using a digital video camera in communication studies, graphing calculator in mathematics, or microscope in chemistry."**

(AR4:1959 [Kate Motoyama, May 13, 2011].)

The issue before the Court involves the threshold question of the proper standard of review for classifying a project as 'new' or 'supplemental' when a prior and arguably-related project has received some level of CEQA review. That issue is addressed above.

But the substantive merits of this appeal, after applying the correct threshold standard of review, are also now before this Court.

Friends do not ask for a judicial determination as to whether

Building 20's buildings and gardens may ultimately be demolished, all or in part, for an expanded parking lot. The District Board of Trustees is elected to make just such discretionary decisions about college facilities and programs — *after* complying with CEQA so that environmental impacts are first analyzed and alternatives identified and adopted if feasible. (AA:1-10.)

A public EIR process is mandated to do just that, and the District's insistence that an addendum suffices is insupportable. Was the demolition of the Building 20 complex generally encompassed within the Facilities Master Plan or the CSM project? Were its impacts addressed in the 2006 mitigated negative declaration? The easy and undisputed answer is "no." (AR2:610-611, *attached.*) The District's longstanding intentions not to demolish but instead to rehabilitate and save the Building 20 complex and historic gardens were reflected in both its 2006 Facilities Master Plan and the 2007 CSM project. (AR1:9-10, 64-66; 3:1687.)

The District relies on cases that are fact-driven and that involve projects that are *not* 'new' and which therefore qualified for 'supplemental' CEQA review. The District emphasizes EIR cases in which specific development projects were approved and then subsequently revised without a supplemental EIR process, all

appropriately considered under the substantial evidence standard. (District Brief, pp. 18 [oddly including *Sierra Club v. County of Sonoma, supra,* 6 Cal.App.4th 1307, p. 1318, as a case applying the substantial evidence test], 23-33, 41.) Only some of the District's cited cases involve addenda and *none of its cited CEQA addenda cases review an addendum to a negative declaration* but instead involve addenda to EIRs. (*Ibid.*)

The adequacy of the demolition/parking lot project is relevant only if the project is 'supplemental' to the 2006 CSM project and mitigated negative declaration; if it is 'new,' an addendum cannot suffice. (*Ante,* pp. 45-47.) And even if the Court applied the 'supplemental' project statutory provisions of Public Resources Code section 21166, the EIR addendum cases are irrelevant. No case has yet applied Guidelines section 15164 subdivision (b), the *only* criterion [albeit without statutory authority] for determining the adequacy of a negative declaration addendum.

Along with the lack of relevant precedent addressing an addendum to a negative declaration, there is no substantial evidence that could support a finding that the demolition/parking lot addendum requires only "minor, technical changes or additions" to the mitigated negative declaration. (Guidelines, § 15164 subd.(b).)

Whether 'new' or 'supplemental,' the addendum is unlawful.

A. The Project is 'New'

The District contends that the demolition/parking project was generally encompassed within the 2006 Facilities Master Plan and 2007 CSM project, and that "minor" and "modest" differences were adequately addressed in the addendum to the negative declaration.

As discussed *ante*, pp. 28-45, the threshold question of whether the demolition/parking lot project is 'new' or 'supplemental' is a legal question to be answered by the Court's de novo review. However, regardless of the standard of review, resolution of the threshold question of whether the demolition/parking lot project is 'new' begins with a review of the relevant facts in the administrative record. The most important fact is that both the 2006 Facilities Master Plan and the 2007 CSM project planned to retain Building 20 and the gardens. (AR1:246.) Neither the environmental impacts of the demolition of the complex and the construction of the new parking lot, nor any need for additional parking, were considered in the 2006 mitigated negative declaration. (AR1:334, 355.)

As readily conceded by the District and evidenced in the record, its perceived (albeit unstudied) need for additional parking

relates to changes in program needs; the increased size of the new Building 10 College Center, expanded from three floors to four floors and now made available for rental to community groups and corporations; and its perceived (and similarly unstudied) need for parking while the North Gateway 2 project 600-800 parking spaces are under construction. (AR1:71-72; 2:624 [Building 10 is at 50% capacity and there are already complaints about lack of parking]; 1136 [Edison lot would provide "new parking spaces prior to the shutdown of the Galileo parking lot for the North Gateway project].)

The 2011 addendum recites that demolition of "Building 20, greenhouse, and lath house and expansion of the existing parking lots constitutes a minor change in the CSM Project." (AR1:65.) The addendum states that the CSM project proposed "the demolition of sixteen buildings," but the District "ultimately decided not to demolish buildings 15 and 17. By this revised addendum, demolition of the aging Building 20 complex structures replaces buildings 15 and 17." The addendum further states that the demolition of the Building 20 complex will "allow for the expansion of the existing parking lots in the Building 20 complex" to create between 140 and 160 additional parking spaces for about a 4% increase in campus parking. Finally, the addendum claims that a majority of the gardens

would be "retained and improved". (AR1:65.)

Saying so does not make it true. In fact, neither the demolition/parking lot project nor the 2011 addendum address "minor, technical changes" to the 2006 CSM project and its negative declaration. This is instead an unstudied new project with potentially significant impacts, as explained below.

Project Description. The District contends that project-related "changes to the garden areas" in the Building 20 complex would result in loss of 10,000 square feet of the current 55,995 square feet of lawn and gardens. (District Brief, pp. 12-13, 39; AR1:65-66, 79-80; 2:724.) The District states that 80% of the north garden will be "retained and rehabilitated" and that 45% of the south garden will remain. (District Brief, pp.12-13, 40; AR1:65-66, 79-80.) It claims this to be less than 1/3 of 1% of campus green space and that it is therefore insignificant. (*Ibid.*) The District concludes that the "net loss" of green space is "minor." (District Brief, pp. 11-12.)

The District's calculations are misleading. Its "counting" comparisons between square feet in its proposed project versus the current garden areas do not distinguish between valued 50-year-old specimens and the proposed new plantings, nor differentiate between major north and south garden areas and the small side-

pathway areas. All are equated. The District also does not "count" the current open space area with specimen plants in the interior square courtyard of Building 20 as part of the gardens.

(AR4: 2104)

Section 4 to the west of the Dawn Redwood [circular section 3 above] shows the steep berm between the south garden and Building B19. That berm and the strip of trees and shrubs along the walkways to the south by Building B12 [also depicted as section 4] are not part of the south garden and cannot be used recreationally. But that is what the District touts as mini-ecosystems (and part of its garden "percentages") along with fragmented patches in sterile ground between sidewalks adjacent to Building 36 [area 2]. (AR1:72, 87.)

The 80% of the north garden that is to be "retained and rehabilitated" is in fact to be demolished, redesigned, and replanted.

That is not the same as "preserving," as represented by the District. (District Brief, p. 11.) The "45%" of the south garden purportedly being "retained" includes the unusable hillside/berm area. And the new garden "design" by professors Linton Bowie and Tania Beliz was a general concept requested by the District, and contains no evidence that their expert concerns about the destruction of horticulture and wildlife habitat (*e.g.*, *post*, pp 1971-1974) were assuaged. (*Id.*, p. 87.)

(AR1:75 [Demolition/parking lot project.)

As shown above, the new asphalt is dangerously close to the Dawn Redwood [large green circle at left near words "Building 19"] and changes its context within the cultural landscape. The tree would become landscaping in a parking lot rather than a star feature of a

diverse blooming cultural landscape and biotic habitat. The two small rectangles in the upper left of the plan that "count" as new garden space are to be plantings among sidewalks: manicured suburban landscaping rather than a "garden." (AR1:74.) Similarly, planted strips along walkways adjacent to the expanded parking lot, including the berm to the west and small shrubs to the south, are not part of the gardens at issue.

With the exception of the Dawn Redwood, the demolition plan depicts the destruction of all that the Friends care about: *especially* the entire existing south garden and habitat, and also the entire *existing* north garden and Building 20 along with its interior courtyard. (AR1:79.) The greenhouse, important to propagate new plants, would also be razed. (AR1:74-75, 79.)

The District's arithmetic is faulty and its assumption of what should be "counted" as lost or gained square footage of garden space is disputed. All green areas are not equal on the renovated campus.

Demolition Comparisons. The District contends that the project entails only "minor" changes to the 2007 CSM project. It describes the earlier project as including demolition of up to 16 buildings. (District Brief, p. 38; AR1:65.) The District originally planned to renovate 10 buildings but later decided to renovate

(rather than demolish) Buildings 15 and 17. (AR1:65; 3:1563.) The new plan to raze Building 20 would thus result in a net loss of one building instead of two and less square footage being demolished, and with a net loss of "only about 10,000 square feet of lawn/landscaped area." (District Brief, pp. 38-39; AR1:80.)

The fallacy of the District's approach is that environmental impacts involve more than measuring the square feet of buildings (or other environmental resource) to be demolished. If it were a matter of comparative square footage, substantive CEQA analysis would serve no purpose. At oral argument in the Court of Appeal, counsel and the Court discussed the absurdity of any simplified comparison-by-percentage, by which, for example, demolition of San Francisco's glorious City Hall would be insignificant if valued only according to its minor percentage of total square feet in the City of San Francisco, or if measured by the net square feet of buildings remaining within City boundaries if a nondescript warehouse was instead spared.

Under the District's logic it might approve new campus construction projects like the one here at issue via successive CEQA addenda treated as 'supplemental' projects — forever! Its rationale is that since the CSM project "considered the disposition of "*every building on the campus*" (District Brief, p. 41, italics in original),

every future campus project will now relate back to that project and rely on the prior environmental documents for CEQA compliance, *even if no plans, projects, or environmental impacts or analyses overlap and even if they are inconsistent.* Such logic would apply to any project located on a campus that was previously subject to environmental study of unrelated projects within its boundaries.

This makes no sense and is not supported by CEQA, which unequivocally requires separate review for unstudied projects proposed within the delineated geographic boundaries of, for example, a city, or a county, or a public park.

In describing proposals for campus buildings and parking lots projected in the 2006 Facilities Master Plan, which await funding for implementation, the 2007 CSM project is akin to a plan, a phased project, or a program rather than a simple "project." It implements a particular Facilities Management Plan, which is updated *every five years*. The District refers to the CSM project as a "campus-wide renovation project." (District Brief, p. 2.)

As held in the Slip Opinion, citing *Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th 1307, the 2006 negative declaration for the CSM project addressed a "long-term management plan." Material alteration of such a plan is fairly characterized as a "new

project triggering new environmental review." (Slip Opinion, pp. 9-10.) "To adopt the District's concept, it would be empowered to change various components of the CSM project at will over the years, with inadequate environmental review." (*Id.*, p. 10.)

The demolition/parking lot project was not only *not* studied in the negative declaration, it is inconsistent with specifics of the Facilities Master Plan and CSM project that call for renovation of the Building 20 complex and the gardens.

Any way one looks at it, this is a new project.

B. The Addendum is Inadequate

Because the demolition/parking lot project is new, it cannot be approved on the basis of an addendum. (*Ante,* pp. 45-47, 52.)

Even if an addendum could be considered an appropriate form of CEQA document for the demolition/parking lot project, the addendum relied upon by the District is inadequate by any reasonable standard. First, as a project that is inconsistent with the CSM project it requires more than "minor technical changes or additions" to the 2006 negative declaration. Beyond that, the addendum does not supplement the 2006 negative declaration via assessment of reasonably foreseeable environmental impacts of the

project, nor mitigate them to insignificance.

Friends will not catalogue all relevant evidence in the record relating to unstudied environmental impacts. Since this is a new project, such discussion is only marginally relevant. However, some of the unstudied areas of environmental impacts include:

Biological Resources Impacts. The CEQA Guidelines' Appendix G Checklist considers the modification of habitat of any sensitive or special status species, or impeding the use of native wildlife nursery sites, or conflict with any local policy such as a tree preservation ordinance, to be a potentially significant impact. (Appendix G, IV, Biological Resources, (a)-(f).) Some of the evidence of potentially significant impacts to plants and wildlife in the record, that were not studied in the addendum, include:

- The fate of the Dawn Redwood in the south garden was initially uncertain, but the approved project anticipates its preservation although no enforceable mitigation measures can be found in the record. (AR4:1964.) An assessment of the tree indicates its importance and predicts "some future health problems" if the parking lot is constructed near the tree as planned. (AR1:182-207.)

- Floristry certificate holder Liane Benedict explained that "[t]he green spaces [in the complex] provide natural beauty, a restful oasis

for study and habitat for animals. They contain diverse plant species ... Unusual plant species include dawn redwood, cashmere cypress, kauri, bunya-bunya, ginko, Norfolk island pine, coast silk tassel, cycad ... It isn't the same to replace a well-established mature plant with a spindly young specimen ..."

- An expert stated that "passerines, potentially juncos" may nest in the greenhouse; a follow-up survey was recommended and has not been done. (AR1:212-213.)

- While the District contends it is exempt from City and County zoning, that does not undo the Appendix A Checklist requirement to consider a local tree preservation ordinance. (AR2:601.) One blue cedar tree will require removal. (AR3:1930.)

- CSM Professor Matthew Leddy explained that he has conducted field studies on native bumble bees in campus gardens. He said that Garden demolition "will result in the loss of 23,325 square feet unique landscaped area ... This garden is unique in its diversity of plant species, both native and non-native. In addition, one of the design criteria for this garden has been to provide a sequence of blooming plants for native bees. During the last two years, my Biology classes at CSM have conducted field studies on native bumble bees in campus gardens. We have observed a number of species both foraging and nesting within [project] boundaries." He stated that the College is within the range of a special status species, the western bumble bee, *Bombus occidentalis,* and that the habitat should be studied and appropriately mitigated. (AR3:1957-1958, underline and italics in original.)

- Adjunct CSM instructor and horticulturist Linton Bowie explained the important species in the Gardens and provided an expert opinion about biologic impacts:

"This variety [of soil and plant complexes in the Gardens] provides food sources for a complex of wildlife species that is more rich and diverse than the rest of the campus, especially now that most of the original mature landscaping ... has been removed. There are areas of natural vegetation ... that are producing native bryophyte and understory plants found in a mature ecosystem community. The surrounding hill area that will remain provides cover, perching, and nesting sites for wildlife, but the adjacent gardens provide the foraging and hunting sites to maintain these species." (AR4:1972.)

Bowie explained that regarding the Table 4 lists of plants to be replaced and relocated, one of the proposed replacement areas (the Building 36 South Landscape) was recently graded and has insufficient topsoil to support the plants it is to accept. (AR4:1972.)

"Also, removal of a mature garden will have a significant impact as any replacement would take decades to mature." (AR4:1972.)

"Great blue herons, *Ardea Herodias*, a special status species, have been observed foraging in the green space on many occasions by faculty and students. The green space has some prey species such as salamanders, field mice, lizards, frogs, and insects. The decline of

native bee populations is an issue of great concern in our area. Currently there is a bee study being conducted in the green space. Three species of native bumble bees as well as multiple species of solitary bees have been recorded using and nesting in the green space." ... "These biological values create an important resource for a diversity of plant and animal species and teaching at this campus. The entire contiguous space needs to be preserved." "The College has its own tree preservation policy." (AR4:1972, *attached.*)

- Student Michelle Smith noted that many of the garden plants could not be successfully moved or replaced, including those essential to bumble bees. As a biology student she participated in ongoing bumble bee studies and concluded that a significantly smaller garden would not allow enough room for the current bee population to thrive as vital pollinators. Smith begged the Trustees to allow current and future students, faculty, and community members to experience the beautiful gardens as she and many before her "have been privileged to do." (AR4:2013.)

- Anne M. Westerfield, B.A. Stanford 1952, with a College of San Mateo certificate in Landscape Design/Ornamental Horticulture 1978, stated that the Garden "is 50 years old, filled with mature and interesting specimens, a valued habitat area ... and a spot of refuge treasured by students. The mature plants cannot successfully be moved and replanted elsewhere. The new landscaped areas of the campus (water demanding) grass, concrete and standardized plantings do not in any way compare aesthetically or in usefulness to this garden." (AR4:2196-2197.)

These fact-based expert opinions regarding unstudied biological impacts differ from the facts of any case upholding an addendum. These environmental impacts require review in an EIR.

Aesthetic and Recreation Impacts. The CEQA Guidelines' Appendix G Checklist inquires in its first section whether a project *may* have a substantial adverse effect on a scenic vista, or *may* substantially damage scenic resources, or *may* "substantially degrade the existing visual character or quality of the site and its surroundings." (Appendix G, I, Aesthetics, (a)-(c).) Recreation is included in the Appendix Checklist at XV. Any "yes" answer to any such (admittedly subjective) question indicates a potential significant impact that in turn triggers the preparation of an EIR.

Testimony of area residents that are not qualified environmental experts qualifies as substantial evidence of aesthetic effects when based on relevant personal observations. (*E.g., Ocean View Estates Homeowner's Association v. Montecito Water District* (2004) 116 Cal.App.4th 396 [laypersons' subjective opinions regarding potential aesthetic impacts affecting private views and a public hiking trail provided fair argument]; *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 [residents'

opinions provided a fair argument of aesthetic impacts of a housing project and its arguable inconsistency with adopted plans].)

The District's environmental consultant conceded that "there are no established, objective criteria for evaluating the aesthetic effect resulting from removal of a portion of the gardens. Accordingly, subjective personal opinions ... may vary." (AR1:94.)

That does not end the inquiry; fact-based subjective opinions regarding significant aesthetic impacts are substantial evidence. The consultant also acknowledged that the 2006 negative declaration had not considered views and aesthetics from individual buildings being demolished, but more generally considered views from the community to the hilltop campus: "*I know that we didn't take a look on a site-by-site basis of each of the buildings* ... we generally took a much broader look at aesthetics, looking at the entire campus ... [not] building by building ... (AR2:764, italics added.)

The addendum failed to review the opinions provided by concerned students, faculty, community residents, or even experts. Under the case law, input from non-experts can document a potentially significant impact where such input is credible and does

not purport to embody analysis requiring special training.[8]

Here, the record documents potentially significant visual impacts that would attend the substantial demolition of the gardens and Building 20 complex and alteration of its context so that even the remaining Dawn Redwood and new plantings (AR3:1896) will no longer be in a pastoral setting but adjacent to large expanses of asphalt. Representative samples of the evidence include:

- Student Trustee Barry Jointer noted that speakers before the District Board "are saying there is going to be a significant aesthetic impact on the campus. Looking just at the pictures up there it seems like it would have a significant impact. I mean a "moderate" impact would be a very conservative judgment ..." (AR2:757.)

- Alfredo Aguirre, one of five siblings attending CSM, explained that all of them have "an enduring appreciation for the Horticulture area that represents the values of preserving our environment. The

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[8] *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, held that opinions regarding the aesthetic differences between a three-story versus four-story housing project on busy Sacramento Street in downtown Berkeley did not meet the fair argument standard as a matter of law in the context of that case. The *Bowman* facts were emphasized and distinguished in *The Pocket Protectors, supra*, 124 Cal.App.4th 903,939, and *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, each of which relied upon fact-based evidence of aesthetic impacts.

building and garden provided a welcoming sanctuary for thousands of students, many of whom were from diverse racial, ethnic, and economic backgrounds. ... [t]he planned [project] will significantly diminish the aesthetic quality of the campus, in addition to losing such an important legacy of the College of San Mateo." (AR3:1961.)

- Adjunct instructor and expert in horticulture and biology Linton Bowie pointed out that the addendum did not discuss the gardens, which include 100,000 square feet of contiguous green space, and "over 300 specimens of native and ornamental plants, representing a large variety of plant genera and forms and regions around the world. The addendum does not show a before-and-after view of the gardens versus a parking lot, nor does it analyze the aesthetic impact of the proposed destruction of the garden on the overall visual character of the campus. ... In my opinion, the removal of the gardens will substantially degrade the existing visual character and quality of the campus and have a significant adverse aesthetic effect." (AR4:1971, *attached.*)

- Michael Bucher, former College of San Mateo and District Academic Senate President, community member for over 40 years, teacher and dean, urged that the greenhouses and gardens not be demolished in favor of a few convenient parking spaces. In the late 60's the campus was just starting to recover from being scraped bare for construction. "A few sheltered spots were nurtured to provide aesthetic relief and human retreats." The College now has the sterile aspect of an industrial park. The gardens "are targeted for conversion to an asphalt desert ... Since the truly natural places of retreat are inaccessible due to steepness or poison oak, the garden will do ...

The vast vistas of Bay and urban sprawl are impressive, but human-scale places of repose are valuable as well, with their own aesthetics and comforts. Keep the garden. Such a secluded yet welcoming spot is now a unique resource ..." (AR4:1995.)

- CSM Mathematics Professor Robert Hasson believes the Garden "has a positive aesthetic effect on the campus, especially in view of all the concrete that has been laid as part of the new landscaping of the campus. Natural beauty is beneficial to students, staff, and community. The garden provides a relaxing, even spiritual space for students, staff, and community. I understand that some students use the garden as a setting for prayer." (AR4:1999.)

- Former student Danielle Black explained that when taking a Botany class, "I found myself countless times in the gardens looking at plants for class, and soon found myself going for pleasure because of what a sense of calm it gave me to hang out there between classes. I transferred to SFSU where I am currently majoring in Botany because of this program and those garden ... it would be catastrophic to the school's aesthetic appeal, but also the natural beauty that can inspire people to want to learn about plants, or just to have a beautiful place to relax on campus." (AR4:2000.)

- Student Kim Wodarczyk believes that the gardens should be cherished. "I often arrive to class early and stroll the gardens ... in the hustle and bustle of today's society, these strolls in the garden are moments that I truly treasure... " She noted the Paul Madonna quote that "In hard times, beauty can seem frivolous – but take beauty away and all you're left with is hard times." (AR4:2002.)

- J. Radov Martin, a community member, student, fitness center member, tax-payer, and dog-walker, said that "pictures in the Sunday *Chronicle* [AR5:2613-2615] don't do the garden justice, it is a beautiful, unique place ... Despite being untended, beautiful plants and flowers grow and bloom in the garden. It is the only part of the campus with any charm – other trees and plantings were demolished and covered with pavement ... Abandon your plan and restore this charming green space ... CSM is sited on one of the most beautiful parcels of land in the Bay Area. Please recommit yourselves as good stewards." (AR4:2036-2037.)

These fact-based opinions regarding potentially significant aesthetic impacts, consistent with the inquiry required by Appendix A of the CEQA Guidelines, were not addressed in the addendum.

Cultural Resources Impacts. Demolition of an historic resource is a significant environmental impact. (Public Resources Code, § 21084.1.) CEQA Guideline section 15064.5 provides that "a resource shall be considered by the lead agency to be 'historically significant' if the resource meets criteria for listing on the California Register of Historical Resources." Historic status is not a political or even a programmatic choice for elected decisionmakers, but is a matter of identification just like an endangered plant or animal

species, based on the objective criteria of the California Register. (Guidelines, § 15064.5 (a)(3).)

League for Protection v. City of Oakland (1997) 52 Cal.App.4th 896, p. 907, cogently holds that the protections of CEQA may be triggered by a fair argument of historic eligibility, and that designation as historic in a recognized register is not required in order to invoke CEQA review. Otherwise,

> if historical resources were limited to properties actually listed, owner resistance to inclusion or mere government inaction might forestall preparation of an EIR for a worthy structure, a result certainly not sanctioned by CEQA.

(*Ibid.*) The record provides a fair argument that the 1963 Building 20 complex and gardens are an historic vernacular resource. Their significance must be assessed and feasible alternatives and mitigations to demolition identified. Relevant evidence includes:

- Building 20 and its supporting buildings and gardens are over 50 years old. The greenhouses are unique. The intrinsic cultural or historical value to the campus should be evaluated further with a specific historical assessment of the complex. The Hopi Meditation Maze is used by students from many cultural backgrounds. (AR4:1973.)

- Lucy Tolmach, B.S. and M.S. in Horticulture and the Director of Horticulture at Filoli, testified at the July 27 hearing and also submitted a letter explaining that the Building 20 complex and gardens are a vernacular landscape. (AR5:2247-2248; *attached.*)

The addendum and mitigated negative declaration together do not adequately address the demolition/parking lot project impacts.

C. Remedy

While the Superior Court and Court of Appeal directed that the remedy for the District's violations of law was a peremptory writ requiring the District to set aside the project approval and to comply with CEQA, on the record before the Court the District should be ordered to prepare an EIR on remand.

The reason the addendum fails is both that the project is 'new' and an addendum cannot suffice and also that mandates of the Public Resources Code require preparation of an EIR upon the facts in the record discussed above. (Pub. Resources Code, §§ 21082.2 subd.(d), 21100 subd.(a), 21151 subd.(a).)

Upon remand, *if* the District chooses to proceed with an identical project the only legal option would be the preparation of an EIR as in *Galante Vineyards v. Monterey County Water Management District* (1997) 60 Cal.App.4th 1109, p. 1127 [ordering a

supplemental EIR rather than an addendum]. Judicial economy would be served by a similar order from this Court.

Conclusion

The Friends seek the salutary protections of CEQA that mandate EIR review of environmental impacts and alternatives that may avoid needless adverse impacts to the Building 20 horticulture complex and the marvelous gardens. The judgment is also of critical importance to curb the District's ongoing disregard of CEQA.

The threshold standard of review for consideration of the applicability of supplemental environmental review is the failure to proceed in the manner required by law. But whether the demolition/parking lot project is 'new' or 'supplemental,' the District's reliance on a CEQA addendum is insupportable based on the undisputed facts in the certified administrative record.

The Friends respectfully request that the judgment and the peremptory writ be affirmed in the public interest.

Counsel's Certificate of Word Count per **Word:**mac[2011]: 13,923

April 3, 2014

Respectfully submitted,

Susan Brandt-Hawley
Attorney for Friends of the CSM Gardens

and it would be unwieldy and difficult for the District to answer to several different zoning and policy boards. For this reason, Vice President Mandelkern said he is in favor of this resolution which merely formalizes the existing status.

President Holober asked Mr. Nibbelin if the resolution covers all of the various components of the Capital Improvement Master Plan and any new work that might be required in the future. Mr. Nibbelin said he believes the resolution is broad enough to cover the scope of all components in the Master Plan. New resolutions should be approved for different projects and projects at the other campuses. In response to the earlier question from Ms. Hale, President Holober asked if the resolution exempts the District from various City and County zoning regulations in their entirety. Mr. Nibbelin said the District is exempting itself from all land use regulations with respect to the Capital Improvement Project at College of San Mateo. Mr. Nibbelin confirmed County Counsel's belief that the District is exempt and this resolution, in an abundance of caution, states the existing status. President Holober asked if similar resolutions should be presented soon for projects at the other campuses. Mr. Nibbelin said he will coordinate the initiation of such resolutions with District staff.

After this discussion, the motion carried, all members voting "Aye."

PRESENTATIONS

GARDEN CONSTRUCTION PLANS AT COLLEGE OF SAN MATEO (11-3-2C)

College of San Mateo student Shawn Kann said that students representing many majors at College of San Mateo are concerned about the possible disruption of the science and horticulture gardens. He said they were told by faculty that there is no need for more faculty parking. He said faculty and students want to keep the native plant garden as a place to study living organisms and habitats on campus. Mr. Kann said that in January 2006, the Board of Trustees commissioned Steinberg Architects to develop the 2006 Facilities Master Plan which was created to inform decision-making related to the next phase of planning and construction. After review of previously completed physical assessments and analyses, site visits, multiple meetings with College constituent groups and open forums, the Facilities Master Plan was completed. The College implemented the master planning process through shared governance, the purpose of which is to provide an overall development plan for the District to consider when addressing specific problems, issues and opportunities so that solutions relate to the campus as a whole. The 2006 Master Plan was approved by the Board of Trustees in August 2006. With regard to College of San Mateo, the plan stated "To become suitable for learning in the 21st century and to protect the assets, various buildings on campus require a range of modernization, remodel or renovation. Buildings requiring some level of modernization or remodel are B2, B4, B8, B12, B14, B16, B19, B20 and B30." Mr. Kann said the 2006 Master Plan includes expansion of parking lots 9, 10 and 11 along with additional parking in a new lot 27 and restructured lots 23 and 12. He said this brings into question the need for more parking.

Mr. Kann said an initial project proposal, issued November 22, 2007, stated, "This Initial Project Proposal will renovate Building 20, which is in poor condition, but because of the concrete construction maintains structural integrity. It is a 40-year-old building that has not been modernized since it was built. The focus of this IPP will be to improve the classroom space and support College of San Mateo's important Horticulture program. Modernizing the adjacent greenhouses and improving the outdoor classroom spaces is integral to this project with the goal of providing modern, controlled plant growth facilities. Bringing green technological solutions to an old building will allow the program to use such solutions as part of the educational mission, and use the building as a marketing tool to future students."

Mr. Kann said the biology and paleontology courses and the students who utilize the garden's diverse living botanical specimens, native plans and living fossils would be adversely affected if the garden is lost. He said the garden includes some spectacular specimens such as the decades-old Dawn Redwood tree that was recently dedicated to Adrian Orozco. Mr. Kann said that President Claire told faculty that the Board and the Chancellor want more parking and want to remove the garden and Building 20 for a parking lot. He said students understand that the Board, Chancellor Galatolo and President Claire are choosing to keep a temporary Building 34 instead of a permanent Building 20. He said the students have parents and friends who are contractors who cannot make sense of this decision. Mr. Kann said the students respectfully ask Board members and Chancellor Galatolo to make good on their promise to San Mateo voters who were promised, when they voted for Measure A, that funds would be used to "renovate and remodel" several buildings, including Building 20. He asked that the decision be made to save the garden and Building 20, which would be an investment in the science and horticulture majors in San Mateo County. Mr. Kann said that students' parents and friends are waiting to hear why the promise to renovate and remodel Building 20 is not being kept.

Ms. Gardner thanked members of the Save the Garden Club who were present and those supporters who were not present. She said the club has approximately 25 members and approximately 115 supporters on the club's Facebook page. Ms. Gardner said the District collected $675 million in bond money from Measures C and A. Some students, parents and friends are taxpayers in the County and want to know why the administration wants to take away educational facilities that are used by programs on campus. She said current construction plans include taking away the gardens and Building 20, along with removing the greenhouses and replacing them with a new greenhouse. However, the plan does not include a replacement garden or a place for the horticulture program to go if Building 20 is destroyed. Three proposals were made recently for the construction plans: (1) take everything away and construct a parking lot; (2) take most things away, rebuild a small greenhouse next to Building 36, possibly keep the Dawn Redwood tree, and have the rest become a parking lot; (3) take everything away, rebuild a small greenhouse, leave a small amount of grass area, possibly keep the Dawn Redwood tree, and have the rest become a parking lot. The students do not believe these plans are a good compromise. The parking lot would be for faculty parking and would provide approximately 160 spaces. Ms. Gardner said students have talked with faculty who said they do not believe that many parking spaces are needed. Ms. Gardner offered an alternative plan, which she said is a good compromise:

- renovate Building 20 and potentially create two or three more science lab rooms; faculty have said students are turned away from science classes because of a lack of space
- keep the garden areas which are important to a number of classes
- remove the greenhouses and replace with a small greenhouse
- construct a parking lot with approximately 70 parking spaces

Ms. Gardner said the concerned students are not only horticulture students, but come from a wide range of majors. In science classes, students have learned the importance of biological diversity and the gardens are the only green areas left to study diversity. If the gardens are gone, many classes will be affected, including general biology, botany, paleontology, wildlife, ethnic studies, art, photography, forestry and horticulture. Data collected by horticulture students has been used in class projects by students in statistics. A study showed that 43% of science classes use the garden space and plants in the area for teaching. Removing the gardens would also have profound effects on local nature that cannot be reflected in environmental impact reports. Ms. Gardner said students and community members who voted on the bond measures are upset. Some students are environmental science majors who understand that paved surfaces may increase runoff. The presence of a parking lot may increase light pollution and increase the heat island and greenhouse effect. Students are listening to their Hillsborough neighbors complain about the amount of tree cutting going on at College of San Mateo, causing disruption of native habitats. Ms. Gardner said this is not in keeping with the going clean policy, although she complimented the District on the new buildings at College of San Mateo. She asked the Board and the Chancellor to respect the biological resources that enrich studies in ways are difficult to measure.

President Holober thanked the presenters and supporters for coming to the meeting. He said the Board listened attentively and will take the comments into consideration.

PRESENTATION OF GREEN BUILDING AWARD PLAQUE, CERTIFICATES OF RECOGNITION AND COMMENDATION (11-3-3C)

President Holober said College of San Mateo's Health and Wellness Building (Building 5) won a 2011 Sustainable San Mateo County Green Building Award in the non-residential category and was honored at a ceremony on March 10. President Holober said he was pleased to present President Claire with a plaque from Sustainable San Mateo County, Recycleworks and AIA San Mateo County. He also presented certificates from Congresswoman Jackie Speier, State Senator Leland Yee, Assemblymember Jerry Hill and the San Mateo County Board of Supervisors. President Claire said the effort involved many people and he recognized Vice Chancellor Nuñez and his staff, Rick Bennett and Linda da Silva, Executive Directors of the Construction Planning Department, and McCarthy Construction. President Claire thanked the Board for having a vision and ensuring that the District constructs sustainable buildings and helps to keep local people employed.

CONSTITUTION OF A TRUST COMMITTEE TO REVISE THE FACULTY EVALUATION SYSTEM (11-3-4C)

President Bennett said that in 1988, AB 1725 mandated that community colleges establish faculty evaluation procedures. In response, the District formed a Trust Committee comprised of six faculty and three administrators who worked together over a two-year period. The Committee reached agreement on the procedures to be proposed for use in the District.

Board of Trustees
San Mateo Community College District
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May 14, 2011

Re: Building 20 and Gardens: Agenda Item 11-5-100B

My name is Linton Bowie, I am an adjunct instructor at the College of San Mateo (CSM). I teach a variety floristry, horticulture and biology classes at CSM and Skyline College. I have a B.A. in Biology and an M.S. in Range Management. I am also a certified Range Manager with the State Board of Forestry and Fire Protection. I am also a certified Master Gardener through University of California Cooperative Extension Service and a trained Master Composter. I volunteer for both these organizations as a speaker on horticulture, floristry, gardening and sustainability topics. I have been an instructor at the campus since 2002. Prior to becoming a teacher, I worked in federal, state, and private industry as a biologist, research scientist, environmental compliance manager and regulatory trainer. I have general environmental background in CEQA, NEPA, the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, and permitting/compliance issues associated with construction of large projects (primarily in infrastructure). I am a long-time resident of the county. I have taken classes at the District colleges in the past, along with my family members. My children both attended CSM and transferred to four-year colleges. Both of them have successfully completed degrees as a result of their attendance here. I am a long-term supporter of education in this county and have supported all of the bond and tax measures associated with education at local, county and state levels for many years.

I am writing to urge you not to adopt the Building 20 CEQA Addendum (Addendum) without further study of potentially significant impacts. I have examined the Addendum and I have the following concerns. I believe there are potentially significant impacts of the demolition of Building 20, the greenhouse, and the gardens, and the Addendum's conclusions of no significant impacts are not supported. My concerns include the following:

Aesthetics.
The aesthetics section of the Addendum only describes the project as a "new 125-200 space parking lot in place of an existing building, greenhouse and lath house, and small parking lot (with approximately 40 spaces)" and only mentions lighting effects. It does not discuss the gardens surrounding the complex. The gardens represent a large contiguous green space of approximately 100,000 square feet that is valued by many on campus. The garden contains over 300 specimens of native and ornamental plants, representing a large variety of plant genera and forms, and also regions around the world. The Addendum does not show a before-and-after view of the gardens versus a parking lot, nor does it analyze the aesthetic impact of the proposed destruction of the garden on the overall visual character of the campus. This space is used by 43% of the science programs and is a valuable teaching area for many programs on campus, including paleontology, art, ethnic studies, architecture, biology, and others. In my opinion, the removal of the gardens will substantially degrade the existing visual character and quality of the campus and have a significant adverse aesthetic effect.

In addition I have the following concerns over conclusions reached in the Addendum:

Biological Resources.
The Addendum states: "The Building 20 complex includes landscaped areas and a garden that support a number of specimen plants that are either non-native or not a part of a natural landscape on the campus. As noted in the 2006 IS/MND, the original construction of the campus removed all native vegetation from the site. The existing campus is an urbanized setting with no natural vegetation at the Building 20 complex. The 2006 IS/MND found that botanical specimens were not sensitive biological resources because they do not fall under the accepted definition of a natural community or sensitive plant species. This circumstance has not changed."

This brief description does not adequately describe the site's environmental setting in terms of its diversity and educational value. This complex has soil and plant complexes that have matured over 50 years. The gardens contain over 300 plant specimens, including a wide variety of plants that produce fruits, nuts, and seeds of all types. This variety provides food sources for a complex of wildlife species that is more rich and diverse than the rest of the campus, especially now that most of the original mature landscaping (including many mature trees) has been removed. There are areas of natural vegetation surrounding the gardens that are producing native bryophyte and understory plants found in a mature ecosystem community. The surrounding hill area that will remain provides cover, perching, and nesting sites for wildlife, but the adjacent gardens provide the foraging and hunting sites to maintain these species.

Specifically, Table 4 lists the plant and tree species that would be "replaced, removed or relocated as a result of demolishing the Building 20 complex site and indicates that each specimen will either be replaced with a new plant or transplanted to the available garden/landscape areas in and around the Building 20 complex as part of the proposed Edison parking lot, accessibility and landscape improvement plan."

One of the proposed replacement areas (Building 36 South Landscape) is an area that has been graded and does not have any topsoil sufficiently developed to support the variety of plants that are being removed from the gardens. Replacement of landscape should be in kind and of sufficient quality to replace the green space being removed. There are not specific plans available yet to analyze whether this is an adequate replacement. And the removal of the current mature garden will have a significant impact as any replacement would take decades to mature.

Great blue herons, *Ardea herodias* , a special status species, have been observed foraging in the green space on many occasions by faculty and students. The green space has some prey species such as salamanders, field mice, lizards, frogs, and insects. The decline of native bee populations is an issue of great concern in our area. Currently there is a bee study being conducted in the green space. Three species of native bumble bees as well as multiple species of native solitary bees have been recorded using and nesting in the green space.

These biological values create an important resource for a diversity of plant and animal species and teaching at this campus. The entire contiguous space needs to be preserved.

The College has its own tree preservation policy. The dawn redwood, *Metasequoia glyptostroboides*, is a "plaqued" tree on this campus. It has been evaluated by an independent certified arborist. A number of protection measures have been detailed that have to be implemented to ensure the survival of this tree

in the parking lot. Several statements have been made at different meetings (for example the April 13 District Board Meeting), expressing concern over the cost and success of this effort. The approval of the project should be contingent on a commitment to preserve this tree, and leave the garden area intact.

Cultural Landscape.
Building 20 and its supporting buildings and gardens are approaching 50 years old. This site represents a part of campus that has not been altered from the original campus. The greenhouses are unique structures, built as professional greenhouses in 1963. This type of greenhouse is unique to the CSM campus and is no longer found on many campuses. The architectural construction of the framework of the greenhouses represents numerous greenhouses that were an important part of the agricultural industry in the county. The greenhouses are still used, and the horticulture program has been a part of the campus for 60 years. There are numerous photos in the campus historical archives that I request be made part of this record. The intrinsic cultural or historical value to the campus should be evaluated further with a specific historical assessment of the complex.

The gardens are used for student events. An example is the Extended Opportunity Programs and Services annual student appreciation event. A Hopi Meditation Maze was constructed in the garden space that is used by students from many cultural backgrounds. This space has multicultural value that is not duplicated on the reconstructed campus. These values should be preserved.

Hydrology and Water Quality.
"The Addendum states: Project construction is not expected to contribute to reduce surface water quality as a result of mitigation requiring preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP) as described in Measure WQ-1, and the spill prevention, containment, and countermeasures required by Measure H-1. Potential impacts from changes in drainage patterns are mitigated by Measure WQ-2 (implement measures to ensure new impervious surfaces do not result in increased hydrograph modification impacts to local creeks). The proposed changed project would incorporate all of these measures. The demolition and construction activities now proposed for the Building 20 complex would be essentially the same as demolition and construction activities expected to occur elsewhere on campus as part of the Facilities Improvement project. Whereas the proposed change would result in additional impervious surface in the form of the parking lot, its impact will be mitigated by Measure WQ-2. Therefore, the proposed project change would not result in a new or substantially more severe impact than disclosed in the 2006 IS/MND."
Measure WQ-2 states: "To ensure that new impervious surface associated with the proposed project do not cause increased hydrograph modification impacts, the District will either (1) comply with the provisions of the existing STOPPP Hydrograph Modification Management Plan (HMP) under the STOPPP municipal NPDES permit (if approved and in-place by the time the project is implemented); or (2) develop and implement their own HMP for proposed project facilities. If prepared, a project-specific HMP will be developed by a state-certified hydrogeologist (CHg) or state-licensed civil engineer, and will be subject to review and approval by the STOPPP and Regional Board prior to implementation."

This document needs to be submitted and considered prior to project approval. The Construction Update site does not display the documentation with this requirement. I would like to see it posted. The parking lot of up to 200 spaces is a *large* addition of impervious surface to the campus footprint and impacts cannot be deferred to future study and mitigation.

Transportation and Traffic.
The Addendum states: "Currently, the parking at CSM is concentrated at the west end of campus near the main entrance, and at the northern end along Perimeter Road which circles the main campus buildings. This project change would provide additional parking capacity within the campus to meet existing parking demand at its eastern end. Access to Edison lot would be directly from Perimeter Road. The proposed project change would result in additional traffic along the eastern portion of Perimeter Road to reach the new parking spaces. However, the additional trips would be dispersed throughout the day as students come and go to classes and are not expected to result in an unacceptable level of congestion on Perimeter Road. Therefore, the proposed project change would not result in a new or substantially more severe impact on area traffic than disclosed in the 2006IS/MND."

I cannot find any study of traffic and parking that analyzes the impacts and alternatives to parking. There are only general conclusory statements. A 200-space parking lot needs a parking and traffic study. If additional trips will be dispersed throughout the day, are there alternatives to parking that were not considered, so that the green space can be preserved? At a recent meeting, the President stated that about 60 percent of classes are in the buildings at the west end of campus. If this is true, most students will tend to park on the west end for classes and access other buildings by walking through the campus quad to Building 10. Assessments by staff indicated that the staff parking needs claimed to provide the reason for the building the parking lot, were overestimated based on work by a volunteer committee working in 2010. A conclusion of no significant impact is unsupported without a parking study that stratifies the traffic and parking needs by students, staff and the public coming to campus.

Parking needs to be analyzed as a whole based on other projects on campus. The Bond Oversight Committee voted on funding for the project on May 4, with a vote of 5 to 4 (including 2 abstentions) of funds of $15 million for the "North Gateway Project Phase 2." Reports filed at the May and February meetings indicate that this project is going out to bid soon on what appears to be a combined project. The North Gateway project, as presented to the Bond Oversight Committee, includes the demolition of Buildings 20-29; and construction of parking and an amphitheater. The addendum just focuses on a segment of this combined project and does not include the total effects of anticipated events in Building 10 and the amphitheater, including associated traffic, (and other impacts such as noise and light) that may result in redistribution of parking to the east side of campus. Taken together the proposed project change discussed in the Addendum is connected to a bigger project that taken as a whole could result in a substantially more severe environmental impact than discussed. CEQA requires that the environmental document addresses the "entire" project.

This Addendum is not appropriate for this new project in light of its potentially significant unstudied environmental impacts. I hope you will consider these comments in your deliberation, and I respectfully respect a response to these comments before you make a final decision on the approval of the project.

Sincerely,

Linton Y. Bowie

Linton Y. Bowie
Instructor

From: Brittany Arthur [mailto:brittany_arthur@hotmail.com]
Sent: Sunday, May 15, 2011 12:48 AM
To: Board of Trustees; savecsmgarden@gmail.com
Subject: a wish from the CSM student community

Dear Board of Trustees,

I am writing to you to tell you about my very personal concern about the collective loss we will experience by having our CSM garden paved over. I remember my first semester at CSM, in the summer of 2009, when I first began spending time in the garden. I remember studying astronomy and biology for long hours there, the garden allows me to reference nature directly to make my studies more meaningful. I remember being on the verge of anxiety attacks after calculus and retreating into the garden alone to cool off for a few hours to be able to go back into preparing for exams. And, the garden is absolutely the only place on campus where I feel comfortable meditating. Meditation practice is one of the most meaningful and beneficial things I spend my time doing everyday. Since I spend about 10 hours on campus each day, it makes me feel safe to know there is a place to go to where I can experience what the garden can offer. Nature is irreplaceable. There is no where else on campus that can contain such vitality and beauty and there is no where else where I can feel comfortable to take a break to meditate.

Furthermore, I believe the accessibility of the garden fosters a good learning environment. The brain needs time to consolidate and assimilate new information; the garden is the perfect place to do this because of how calm, quiet, and beautiful it is. The garden is so important to me to be able to prepare myself again for classes and to recover from any sort of anxiety that accumulated during that day. Taking the garden away is equivalent to taking away the potential achievements of future students.

Also, right now many of us are building a foundation for completing our undergraduate degrees. It's important to have a solid understanding of the material. It is very difficult to really understand the material if we do not independently take the time to think about it and apply it into the real world, especially in science classes. One day when we are out of school, all we will have left from these years at CSM, besides maybe a few friends and good memories, is the knowledge that we have gained. Since we will be using this knowledge to solve real world issues, it would be best to be able to reference knowledge that was initially stored as information that connects to the real world as well. Many science professors at CSM promote this and use the garden as a learning tool. The books do not have all the answers, otherwise there would be no more scientific jobs left; that's why we need practice supplementing them with experiences and using their information to discover new interesting things about nature. The CSM garden is the best place on campus to practice this because of the biodiversity of the plants and animals. This diversity and beauty seems to embody the scientific spirit: it is easy to feel endless curiosity and motivation here. The garden makes me want to be able to conceptualize and explore nature in greater detail; it is what motivates me through my science classes. Because it is on campus, the accessibility allows for a greater number of students and frequency of visits.

After I am gone, there will be more students at CSM who will be just like me. They too will value their time meditating. They too will experience the value in applying knowledge from text books into something tangible they can see so close to the classroom. They too will benefit from the breaks spent in the garden to recover from stress and consolidate information from classes. Thank-you for your time spent reading this. I understand that the parking is an issue and this is a solution, but I hope that you will hear my plea concerning what other current students and students in the future will be missing out on if the garden is destroyed.

Sincerely,
Brittany Arthur

In Chapter 3 Page 3 of the above mentioned *Initial Study*,
Under Environmental Factors Potentially Affected, under the category of **Aesthetics** (pgs 47, 48 in the pdf document) stated that:

Item a) The renovation project (which included the RENOVATION Of Building 20 and the surrounding area) will not "have a substantial adverse effect on a scenic vista" While these might have been correct for a renovation project, it cannot apply for the newly proposed project which calls for the demolition of these areas and construction of a parking lot. A parking lot is an eyesore while a garden is garden: is a place of peace and relaxation.

Item c). The renovation project will not "substantially degrade the existing visual character or quality of the site and its surroundings? We believe that that statement no longer applies as well: There is little visual character of the old campus left, but the gardens surrounding building 20 are all that is left of the old campus.

Item d). The renovation project will not "create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area". We believe that that statement no longer applies because the parking lot will add light and glare, especially now since the tree cover has been removed.

We have the following additional concerns that should be evaluated:

The 2006 Facilities master plan claims expansion of parking lots 9, 10 & 11 covering the entire north end of campus, and additional parking in the new lot 27 and restructured lot 23/12, bringing into question the necessity of even more parking.

If the full parking lot is constructed, it would add approximately 100,000 square feet of additional impervious surface on the campus. Impervious surfaces increase heat and do not allow water to filter into the ground water. The current green space allows water to infiltrate the soil.

This is the last remaining green space on the campus with any habitat value. All other parts of the campus have been re-landscaped with a low diversity of plant species. This area contains fruiting and flowering plants, nuts, seeds, shrubs, trees and mature trees that provide habitat for wildlife. Because the space was going to be preserved, we do not know if specific species assessments were done for the site.

This is the only green space that has a developed and mature soil, capable of supporting a healthy variety of plants. Other landscape areas on campus have been graded and the soil structure disturbed. It would take years to re-generate the soil system we have in this green space.

From:	Brooks, Virginia
To:	Galatolo, Ron; Christensen, Barbara
Subject:	FW: CSM Horticulture Building 20 Complex
Date:	Wednesday, August 24, 2011 4:44:33 PM
Attachments:	LTLetter to District Board August 24.pdf

From: Lucy & Jonathan Tolmach [mailto:ltolmach@earthlink.net]
Sent: Wednesday, August 24, 2011 4:37 PM
To: Board of Trustees
Subject: CSM Horticulture Building 20 Complex

August 24, 2011

San Mateo County Community College District Board of Trustees

Re: Proposed Demolition of Building 20 Complex

I am the Director of Horticulture at Filoli, a property of the National Trust for Historic Preservation, in Woodside. I am also a member of the advisory committee of the Horticulture Department at the College of San Mateo and have been for a few years. I have a B.S. and M.S.degree in horticulture and graduated from the University of California, Davis. My experience in historic preservation also includes serving as Chair of the Historic Landscapes Committee of the American Public Garden Association, and I was a member of the founding board of the Elizabeth F. Gamble Garden Center in Palo Alto, and serve on their advisory committee.

I am writing to ask the Board not to demolish the Building 20 complex, which would be a great and unnecessary loss to the campus and to the community. In my opinion, the Building 20 complex, including the gardens, greenhouses, and Building 20 classroom and laboratory spaces, is an important historic vernacular landscape and its demolition in the manner proposed would have a significant adverse impact on aesthetics, historic resources, and horticulture.

As defined by the National Park Service in its Preservation Brief 36, a "historic vernacular landscape" is a landscape that evolved through use by the people whose activities shaped it. Through social or cultural attitudes of a community, the landscape reflects the physical, biological, and cultural character of everyday lives. Function plays an important role in vernacular landscapes. The horticulture department gardens have evolved through time shaped by the hands of its students as they have learned. It has also evolved as the needs of the horticulture industry in San Mateo County has changed. Today the gardens have a mature character and they provide a unique natural amenity to the campus which the students appreciate and enjoy.

The Building 20 complex has a rich heritage as a mid-century vernacular landscape that developed for the teaching and training of horticulture. San Mateo County had a major greenhouse industry and the CSM horticulture department originally served the children of these florist families that raised carnations and other cut flowers and potted plants so the children could take over the businesses and also train employees for the florist businesses. It also trained gardeners for the large local estates like Filoli in the hills of Hillsborough, Burlingame, and Woodside, and provided the increasing home gardening landscape industry with employees. Filoli has trained many CSM horticulture graduates in our gardener and apprentice program, some of whom then worked at Filoli and other estates or have started their own businesses in San Mateo County.

As I understand it, the demolition of the Building 20 complex was not proposed in the 2006 Facilities Master Plan and is a new project. It is important that the environmental setting of this project be fully studied, including the qualification of this near-50 year old site for listing on the California Register of Historical Resources, for which I

believe it is eligible. After the environmental setting is fully analyzed, including the aesthetic and recreational features of the South Garden and its biological features, the impacts of demolition should be considered along with alternatives and mitigation measures.

None of these things have been considered by the District in its addendum. This proposed demolition for vague parking needs cannot be justified on the record before you. An environmental impact report should be prepared. After that, I hope this Board will recognize that the demolition of the Building 20 complex is ill-considered and will result in the needless loss of an important and unique resource.

I attended your meeting on July 27th regarding the culmination of the horticulture program and was very disturbed about the lack of opportunity given concerned students and members of the public to explain their views to you. I remain very concerned that this Board is not being given adequate information to make the important decision before you tonight. Please require a public environmental review process to make sure that your discretion is fully informed.

Sincerely,

Lucy Tolmach

Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist., et al.
Supreme Court No. S214061

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen years and not a party to this action. My business address is P.O. Box 1659, Glen Ellen, California 95442.

On April 3, 2014, I served one true copy of:

Answer Brief on the Merits

✓ By emailing to Sabrina Teller at the address listed below.

✓ By placing a true copy enclosed in a sealed envelope with prepaid postage, in the United States mail in Glen Ellen, California, to addresses listed below.

Sabrina M. Teller
Remy, Moose, Manley, LLP
455 Capitol Mall, Suite 210
Sacramento CA 95184

STeller@rmmenvirolaw.com

Attorney for Defendant and Appellants

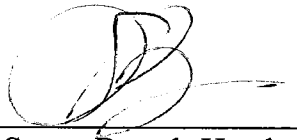
Eugene Whitlock
Deputy County Counsel
400 County Center, 6th Floor
Redwood City CA 94063

Attorney for Defendant and Appellants

San Mateo County Superior Court
Attn: Clerk of the Court
Main Courthouse – Hall of Justice
400 County Center
Redwood City CA 94063-1655

California Court of Appeal
First Appellate District, Division 1
Attention: Clerk of the Court
350 Mc Allister Street
San Francisco CA 94102-3800

I declare under penalty of perjury that the foregoing is true and correct and is executed on April 3, 2014, at Glen Ellen, California.



Susan Brandt-Hawley