

# **Timeline of District's Efforts to Build 2<sup>nd</sup> School in the Preserve**

**June 3, 2021**

**Terry Tao, AIA, Esq.  
Tao Rossini, APC**

# Why are we here?

- **School development and construction process**
- **Timeline of work performed**
- **Estimated timeline of remaining work**
- **Acquisition of site for the new school**
- **Next steps**

# The Education Process with Lewis Homes

- In May 2019 letter addressing school district acquisition requirements
  - Education Code 17210 et. Seq.
  - Environmental Review
    - ✓ Geotechnical and Soils Analysis
    - ✓ Hazardous waste review
      - Former waste site or disposal site
      - Location of Hazardous release
      - or Pipeline nearby
  - Department of Toxics Substances Control Concurrence
    - ✓ Public Review of site toxics required

The Tao Firm  
921 N. Harbor Blvd, Suite 408  
La Habra, CA 90631  
(714) 761-3007  
May 21, 2019

Via E-mail to [Joseph.Edwards@lewismc.com](mailto:Joseph.Edwards@lewismc.com) and First-Class Mail

Joseph Edwards, Vice President Regional Planned Communities  
Pat Loy, Vice President Regional Project Manager  
Brad Francke, Vice President/Associate General Counsel  
Lewis Management Corp.  
1156 N. Mountain Avenue  
Upland, CA 91786

Re: General Overview of School District Property Acquisition Requirements

Dear Joseph, Pat and Brad:

Below are the statutorily required steps to property acquisition addressed primarily in Education Code Section 17210 et. Seq. Please pay special attention to Sections I,A,B & C, and Section II.

Another good reference tool is to review the CDE acquisition requirements at <https://www.cde.ca.gov/ls/fa/sf/schoolsiteguide.asp#evaluating>.

I. ENVIRONMENTAL OBLIGATIONS

The school district's environmental obligations are set forth under both the Education Code and the Public Resources Code.

A. Geological Studies and Soils Analysis

A geological study and soils analysis must be conducted to provide an assessment of the nature of the proposed new school site and potential for earthquake or other geological hazard damage if the prospective school site is located within (1) the boundaries of any special studies zone; or (2) an area designated as geologically hazardous in the safety element of the local general plan. (Education Code Sections 17212 and 17212.5). A special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the California State Geologist. However, no studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies.

Even if a geological study and soils analysis is not required, it is wise to complete one in order to assist the school district in its review under the California Environmental Quality Act ("CEQA").

B. Hazardous Waste/Substances/Materials

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The most complicated steps of the site-specific analysis required for a potential school site concern hazardous substances and site investigation. .

Pursuant to Education Code Section 17213(a), the school district, in conjunction with CEQA, must determine that the property is not any of the following:

- a. The site of a current or former hazardous waste disposal site or solid waste disposal site, unless if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed;
- b. A hazardous substance release site identified by the Department of Toxic Substances Control; or
- c. A site that contains one or more pipelines, situated underground or above ground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.

The school district must present the site hazard findings described above in its environmental impact report "EIR" or negative declaration under CEQA.

*Phase I Assessment.*

The school district must retain a qualified environmental assessor to prepare a Phase I Environmental Site Assessment that must be prepared in accordance with ASTM E1527-97 (Education Code Section 17213.1). The purpose of the Phase I assessment is to provide a general overview of the status of the site with respect to the potential presence of hazardous substances, and to help determine if a more involved Phase II assessment (also known as a "preliminary endangerment assessment" or "preliminary environmental assessment" or "PEA") is necessary. If the Phase I Assessment concludes that no further investigation is required, the school district must submit the Phase I, along with proof of the environmental assessor's qualifications and applicable fees, to the Department of Toxic Substances Control ("DTSC") for approval. DTSC then has 30 calendar days in which to conduct its review of the Phase I assessment.

*Phase II Assessment (if applicable).*

If the Phase I, or DTSC, concludes that a PEA is needed, the school district must either elect not to pursue the acquisition of the property, or retain an environmental assessor to prepare a PEA and enter into an agreement with DTSC to oversee the preparation of the PEA.

If a PEA is required, a detailed site appraisal must be provided to the California Department of Education (CDE Form SFPD 4.01; California Code of Regulations Section 1859.74.1(a)(1)).

The PEA must yield one of the following conclusions:

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# Explaining School Property Acquisition to Lewis

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- Review of all properties within ¼ of a mile of the school on hazardous substances
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- a. A further investigation of the site is not required.
- b. A release of hazardous materials has occurred (and if so, the extent of the release), that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

The school district must submit the PEA to DTSC for its review and approval, and to the State Department of Education for its files. The school district must also make the PEA available to the public for review and comment (for a more detailed discussion of the timing requirements for public review of the PEA, see "Timing of CEQA and PEA Public Review" below).

If the DTSC disapproves the PEA, it shall inform the school district of the decision, the basis for the decision, and actions necessary to secure DTSC approval. The school district must take actions necessary to secure DTSC approval of the PEA or elect not to pursue the acquisition of the property.

If the DTSC approves a PEA determination that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, and that further investigation is required, the school district may elect not to pursue the acquisition of the property. If the school district elects to pursue the acquisition of the property, it shall coordinate with DTSC for preparation and review of a remedial action plan.

If the PEA concludes that further investigation of the site is not required and DTSC approves the determination, it shall notify the California Department of Education and the school district of its approval. The school district may then proceed with the acquisition of the property.

## C. Requirements for All Projects.

Pursuant to Education Code Sections 17213(b) and (c), the school district must consult with the local administering agency (generally the local health department or fire department) in which the proposed school site is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and non-permitted facilities within one-quarter of a mile of the proposed school site which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste.

Emissions sources include railyards, large agricultural operations, and "freeways and other busy traffic corridors." Busy traffic corridors have average daily traffic of 50,000 vehicles in a rural area or 100,000 vehicles in an urban area. It is important to note that the agencies with which the school district must consult will have records only relating to permitted facilities. Thus, it is necessary to conduct a site survey to determine whether non-permitted facilities or any of the other listed sources of pollution exist within one-quarter mile of the proposed school site.

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The school district must make one of the following findings:

If the DTSC disapproves the decision, the school district must take actions to mitigate the acquisition of the property.

If the DTSC approves the decision, the school district must coordinate with the DTSC to ensure that the acquisition of the property does not result in a net increase in hazardous substances.

If the PEA concludes that the school district is unable to make one of the findings above, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites, the governing board shall adopt a statement of overriding considerations pursuant to CEQA. Under CEQA, a statement of overriding considerations is only compatible with an environmental impact report, not a mitigated negative declaration. What this means from a practical perspective is that if the school district is unable to make the necessary findings, it will be obligated to prepare an environmental impact report even if a negative declaration would otherwise suffice.

## C. Requirements for

Pursuant to Education Code 17520.1, the school district must identify both permitted and non-permitted facilities within a quarter mile of the school site.

Emissions sources include, but are not limited to, other busy traffic lanes, freeways, and other major roads. The school district must coordinate with the DTSC to ensure that the acquisition of the property does not result in a net increase in hazardous substances.

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After concluding its consultations and investigation, the governing board of the school district must make one of the following findings:

- Consultations identified none of the above-referenced facilities or pollution sources; or
- Such facilities or pollution sources exist, but one of the following conditions applies: (a) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school; or (b) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

If the governing board makes the latter finding, the governing board must also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to the levels specified.

For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the school district governing board must determine, through air dispersion modeling and consideration of mitigation measures, that neither short-term nor long-term exposure pose significant health risks to pupils.

If the school district governing board is unable to make one of the findings above, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites, the governing board shall adopt a statement of overriding considerations pursuant to CEQA. Under CEQA, a statement of overriding considerations is only compatible with an environmental impact report, not a mitigated negative declaration. What this means from a practical perspective is that if the school district is unable to make the necessary findings, it will be obligated to prepare an environmental impact report even if a negative declaration would otherwise suffice.

## D. Compliance with the California Environmental Quality Act

Prior to acquiring a school site, (and prior to commencing an eminent domain action) the school district must comply with CEQA. Unlike the provisions of the Education Code that deal with specific environmental factors such as hazardous substances and air quality that might impact the school itself, CEQA addresses all forms of environmental impacts that the project might create, including noise, impacts to air and water quality and biological resources, light and glare, traffic, and several other impact categories.

CEQA differs from the hazardous substances requirements discussed above in that there is no official agency charged with enforcing CEQA (the role of DTSC in hazardous substances oversight does not extend to CEQA obligations). Rather, the duty of enforcing CEQA falls to the lead agency (generally the school district itself for district projects),



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## C. Requirements for

Pursuant to Education Code section 52060, the school district shall, in cooperation with the local air quality management district (in a rural area, the school district shall identify both permitted and non-permitted facilities within a quarter mile of the school site, and shall coordinate with the local air quality management district to ensure that the school district is in compliance with the California Environmental Quality Act (CEQA).

Emissions sources other than the school site, including but not limited to, other busy traffic lanes, freeways, and other major roads, are subject to the same requirements as the school site. The school district shall coordinate with the local air quality management district to ensure that the school district is in compliance with the California Environmental Quality Act (CEQA).

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- b. Such facilities or pollution sources exist, but one of the following conditions applies: (a) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school; or (b) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

If the governing board makes the latter finding, the governing board must also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to the levels specified

For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the school district governing board must determine, through air dispersion modeling and consideration of mitigation measures, that neither short-term nor long-term exposure pose significant health risks to pupils.

If the school district governing board is unable to make one of the findings above, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites, the governing board shall adopt a statement of overriding considerations pursuant to CEQA. Under CEQA, a statement of overriding considerations is only compatible with an environmental impact report, not a mitigated negative declaration. What this means from a practical perspective is that if the school district is unable to make the necessary findings, it will be obligated to prepare an environmental impact report even if a negative declaration would otherwise suffice.

## D. Compliance with the California Environmental Quality Act

Prior to acquiring a school site, (and prior to commencing an eminent domain action) the school district must comply with CEQA. Unlike the provisions of the Education Code that deal with specific environmental factors such as hazardous substances and air quality that might impact the school itself, CEQA addresses all forms of environmental impacts that the project might create, including noise, impacts to air and water quality and biological resources, light and glare, traffic, and several other impact categories.

CEQA differs from the hazardous substances requirements discussed above in that there is no official agency charged with enforcing CEQA (the role of DTSC in hazardous substances oversight does not extend to CEQA obligations). Rather, the duty of enforcing CEQA falls to the lead agency (generally the school district itself for district projects),

# Explaining School Property Acquisition to Lewis

- Consultation with Health department, Fire department, Air Quality Management District
- Review of all properties within ¼ of a mile of the school on hazardous substances
- Review of Traffic Corridors
  - Review of pollution
  - Special requirements if over 100,000 vehicles
- Review other health risks
- Compliance with California Environmental Quality Act

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Pat Loy, Vice President Regional  
Brad Francke, Vice President/Assoc  
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- A further release of the information.
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If the PEA concludes that the acquisition is in the best interests of the district, it approves the determination. If the PEA concludes that the acquisition is not in the best interests of the district, the school district may appeal the PEA's decision to the state board of education.

C. Requirements for

Pursuant to Education Code § 35170, the Board of Education, with the local air quality management district (or the local air quality management department) in which the proposed school is located, shall identify both permitted and unpermitted sources of greenhouse gas emissions, or to have

Emissions sources  
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If the school district governing board is unable to make one of the findings above, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites, the governing board shall adopt a statement of overriding considerations pursuant to CEQA. Under CEQA, a statement of overriding considerations is only compatible with an environmental impact report, not a mitigated negative declaration. What this means from a practical perspective is that if the school district is unable to make the necessary findings, it will be obligated to prepare an environmental impact report even if a negative declaration would otherwise suffice.

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- Preparation of an Environmental Impact Report which also addresses each of the conditions required under Title 5
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  - Notice of a Public Hearing

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members of the public and other interested agencies. In light of the public oversight model upon which CEQA depends, the most important factors in adequate CEQA compliance are thorough evaluation of impacts and mitigation, full disclosure, public notice and review, and findings supported by substantial evidence in the administrative record.

## 1. Preparation of CEQA Document.

In most cases, a project involving the acquisition of real property by a school district will require preparation of a mitigated negative declaration or an environmental impact report ("EIR"). There are no exemptions from CEQA<sup>1</sup> for purchases of real property. A school district may rely on the "general rule" exemption from CEQA<sup>2</sup>, but this approach is risky as it is prone to abuse and examined with heightened scrutiny by reviewing courts.

In order to determine whether a negative declaration or EIR will be required, the school district must prepare an initial study. While the initial study is sometimes prepared by the project architect or a member of the school district staff, we recommend retaining a qualified environmental consultant familiar with school projects.

If the initial study reveals no substantial evidence that the project may have a significant effect on the environment (usually the impacts are reduced through proposed mitigation measures), the school district may proceed with a mitigated negative declaration. Otherwise, the school district must prepare an EIR. It is important to note that while an EIR is almost always more expensive and time-consuming to prepare than a negative declaration, an EIR provides the lead agency a much higher degree of protection should an opposing party challenge the project in court on CEQA grounds.

The project description used to describe the project in the CEQA document should include both the acquisition of the site and the construction of the school facilities. As noted above, Public Resources Code Section 21151.8 requires the school district to disclose in its EIR or negative declaration the site hazard findings made under Education Code Section 17213.

Once a negative declaration is prepared, it must be released for a minimum 30 day public review and comment period that is properly noticed. The school district must accept and respond to comments from the public, and then hold a hearing on the negative declaration during which members of the public may submit oral comments. If the school district decides at the conclusion of the hearing to adopt the initial study and negative declaration, it must make appropriate findings

<sup>1</sup> See CEQA Guidelines Section 15300 et seq.

<sup>2</sup> CEQA Guidelines Section 15061 provides that a project is exempt from CEQA if: "The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

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(generally by way of a resolution) and direct school district staff to file a Notice of Determination with the County Clerk and the Office of Planning and Research.

If the school district decides to prepare an EIR, it must first publish and post a Notice of Preparation ("NOP") of EIR and provide a copy of the NOP to applicable agencies. Interested agencies and members of the public will then have an opportunity to comment on what should be included in the draft EIR. Once the draft EIR is complete, the school district must notice and conduct a second public review and comment period as described above (the review period for an EIR must be 45 days instead of 30 days). If the school district elects to move forward with the project after considering the draft EIR and comments submitted by the public and interested agencies, it must first certify the EIR by adopting detailed findings. If the EIR identifies any significant impacts that cannot be avoided or substantially lessened, the school district must also adopt a statement of overriding considerations.

#### E. Timing of Public Review for the CEQA Document and PEA

As noted above, the school district will have to satisfy the public review and adoption procedures required under both CEQA for the negative declaration or EIR, and the Education Code for the PEA (Phase II Assessment for hazardous substances).

Both the CEQA regulations and the Education Code require the school district to solicit and accept public comments on its CEQA document and PEA, and to subsequently hold a public hearing for consideration of the documents and the comments received. The school district may offer the two documents for public review simultaneously and consider both during the same board meeting, or it may conduct a separate review period and hearing for each. The school district must publicize each comment period and hearing in a public notice that complies with the notice and public review provisions of Education Code Section 17213.1 and CEQA, as well as Cal. Code Regs. Title 14, Section 15074.

#### Notice, Public Review, and Hearing under Ed. Code Section 17213.1.

Education Code Section 17213.1 provides a public review procedure for a PEA that is effectively identical to the process set forth under CEQA for a negative declaration. Section 17213.1 also allows school districts to streamline the public review and comment process by conducting simultaneous public review and comment periods for both the CEQA document and the PEA.

Section 17213.1 offers school districts their choice between two procedures for consideration and adoption of the PEA and CEQA document, Option "A" or Option "B." Option A provides for separate and distinct review periods and hearings for the PEA and CEQA documents while Option B provides for linked review and consideration of both

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# Explaining School Property Acquisition to Lewis

- Areas of Review
  - Proximity to Airports
  - Planning Commission Investigation
    - ✓ Written report from Planning commission
  - General Plan Conformity
  - Conformity with Zoning ordinances
  - Consultation with Local Parks and Recreational Authorities
  - Prepare long range master plan
  - Board review of budget and funding
  - Public Hearing
- California Department of Education in Sacramento Approval

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The hearing notice should refer to both the CEQA document and the PEA if both are to be offered for review and considered at the same time, and, under Education Code Section 17213.1, the notice must state whether the school district is proceeding under Option A or Option B. Both the PEA and the CEQA document should be made available for review, and comments regarding either should be considered at the hearing. Finally, specific starting and ending dates for the review period and a correct hearing date must be included.

Please note that after the hearing takes place, Education Code Section 17213.1 requires final approval of the final draft PEA by DTSC, regardless of whether the school district has received comments on the final draft PEA. According to the Section, this final step may take up to thirty days.

## II. OTHER PROCEDURAL REQUIREMENTS

### A. Proximity to Airport

The school district must determine whether any proposed new school site is within two miles, measured by air line, of any point on an airport runway or a runway proposed by an airport master plan. If the proposed new school site is within two miles of an airport runway or proposed runway, the governing board of the school district must give written notice of the proposed acquisition to CDE. (Education Code Section 17215).

CDE will subsequently notify the California Department of Transportation which will investigate the proposed site and submit to CDE a written report and its recommendations concerning acquisition of the site within 30 days. CDE shall, within 10 days, forward the report to the governing board of the school district. The school district cannot acquire or lease the proposed new school site until the report of the Department of Transportation has been received. If the report does not favor the acquisition of the proposed school site, no state or local funds may be apportioned or expended for the acquisition or lease of that site, construction of any school building upon that site, or for expansion of any existing site to include that site.

### B. Planning Commission Investigation and Written Report

Before the school district acquires a new school site, the governing board of the school district must give the local planning commission written notice of the proposed acquisition pursuant to Public Resources Code Section 21151.2. Thereafter, the planning commission will investigate the proposed site and will, within 30 days after receipt of the notice, submit to the governing board of the school district a written report of the investigation and its recommendations concerning acquisition of the site. The governing board cannot acquire title to the property until the report of the planning commission has been received.

If the local planning commission fails to approve the new school site, the school district may not acquire title to the property until thirty days after the commission's report is received.

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## II. OTHER PROCEDURAL REQUIREMENTS

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The school district must determine whether any proposed new school site is within two miles, measured by air line, of any point on an airport runway or a runway proposed by an airport master plan. If the proposed new school site is within two miles of an airport runway or proposed runway, the governing board of the school district must give written notice of the proposed acquisition to CDE. (Education Code Section 17215).

CDE will subsequently notify the California Department of Transportation which will investigate the proposed site and submit to CDE a written report and its recommendations concerning acquisition of the site within 30 days. CDE shall, within 10 days, forward the report to the governing board of the school district. The school district cannot acquire or lease the proposed new school site until the report of the Department of Transportation has been received. If the report does not favor the acquisition of the proposed school site, no state or local funds may be apportioned or expended for the acquisition or lease of that site, construction of any school building upon that site, or for expansion of any existing site to include that site.

### B. Planning Commission Investigation and Written Report

Before the school district acquires a new school site, the governing board of the school district must give the local planning commission written notice of the proposed acquisition pursuant to Public Resources Code Section 21151.2. Thereafter, the planning commission will investigate the proposed site and will, within 30 days after receipt of the notice, submit to the governing board of the school district a written report of the investigation and its recommendations concerning acquisition of the site. The governing board cannot acquire title to the property until the report of the planning commission has been received.

If the local planning commission fails to approve the new school site, the school district may not acquire title to the property until thirty days after the commission's report is received.

# Explaining School Property Acquisition to Lewis

- Areas of Review
  - Proximity to Airports
  - Planning Commission Investigation
    - ✓ Written report from Planning commission
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  - Conformity with Zoning ordinances
  - Consultation with Local Parks and Recreational Authorities
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  - Public Hearing
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## C. General Plan Conformity

The school district must request the city/county planning agency to review the acquisition with respect to conformity with the city/county's adopted general plan. (Government Code Section 65402). In this request, the school district should include the location and the purpose for the property acquisition. The planning agency is required to render an opinion as to conformity with the adopted general plan within forty (40) days of submission. If the planning agency disapproves of the acquisition, the school district may act to overrule the disapproval (note that this step requires formal action, unlike the simple waiting period provided under Public Resources Code Section 21151.2).

## D. Zoning Ordinances

A school district must comply with city/county zoning ordinances if the city/county's zoning ordinance provides for the location of public schools and the city/county has adopted a general plan. (Government Code Section 53091).

Nevertheless, the governing board of a school district, by vote of two-thirds of its members, may render any local zoning ordinance inapplicable to a proposed use of school district property, unless the proposed use is for "nonclassroom facilities" such as warehouses and maintenance yards. (Government Code Section 53094.)

The school district must give the city or county 45 days notice of its intent to render a city or county zoning ordinance inapplicable prior to acting. Following such notification, the affected city or county may request a meeting with the school district, which, if requested, shall be held within 15 days of the request to discuss the methods of coordinating planning, design, and construction of school sites, siting options, safety and travel issues, possible local government financial assistance and coordination with community programs.

After providing the necessary notification, the school district may complete its plan without further delay. The city or county may commence a court action seeking a review of such action of the governing board of the school district to determine whether it was arbitrary and capricious.

Notwithstanding the above, pursuant to Government Code Section 53097, the governing board of the school district must comply with any city or county ordinance which regulates drainage improvements and conditions, or road improvements and conditions, or requires the review and approval of grading plans as these ordinance provisions relate to the design and construction of onsite improvements which affect drainage, road conditions, or grading, and must give consideration to the specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements.

## E. Consultation with Local Recreation Park Authorities



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F. Comprehensive Long-Range Master Plan

To obtain State funding, the school district must prepare a long-range comprehensive master plan for the school district in accordance with acceptable planning procedures which justifies the master-planned size of the site.

G. Board Review of Budgeting and Funding Considerations

If the school district decides to seek State funds, the school district should obtain and review the State Allocation Board's Applicant Handbook from the Office of Public School Construction. In addition, if the school district has retained a consultant to assist the school district with the State program, the school district should confer with their consultant to make certain that the purchase is structured so as to maximize the school district's funding from the State.

H. Public Hearing on Site Acquisition

Once the above requirements are met and the school district is satisfied with its site selection, the governing board must evaluate the property at a public hearing pursuant to Education Code Section 17211 utilizing the site selection standards set forth in Sections 14001, 14010 and 14011 of Title 5 of the California Code of Regulations. This public hearing may take place at the same board meeting at which the school district approves either the negative declaration or the EIR, however, CEQA should always precede this public hearing on the agenda.

III. FINAL APPROVAL BY THE SCHOOL FACILITIES PLANNING DIVISION (CALIFORNIA DEPARTMENT OF EDUCATION)

Once the above requirements are met, the school district must submit a letter to the School Facilities Planning Division, California State Department of Education requesting approval of the selected school site. The letter must be addressed to the SFPD consultant and must contain SFP Form 4.01 information.

Once the site is approved, the School Facilities Planning Division will issue an approval letter to the school district. If the site is being purchased with State funds, a copy of the approval letter will be sent to the Department of General Services, Office of Public School Construction.

IV. CONCLUSION

This letter provides an overview of the requirements. Some of the later requirements addressing local review are likely already undertaken as part of the specific plan process.

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Perhaps the most important sections for the work we are doing are Sections I.A, B & C, and Section II. The CEQA will be handled with the District as lead agency once the key code requirements associated with the property acquisition have been completed.

Sincerely,



Terry T. Tao, AIA, Esq  
The Tao Firm

Cc: Sandra Chen  
Greg Stachura

# Timeline of Work Performed

▪ California Department of Education conducted school site evaluation	9/10/2018
▪ CVUSD began design of new school with Architect (PBK-WLC Architects)	6/1/2019
▪ CVUSD Board of Education approved CEQA consultant (PlaceWorks) for new school	8/15/2019
▪ CVUSD notified the Lewis group of the potential problems impacting soils testing for CEQA due to the stockpiled soil on site	9/19/2019
▪ CVUSD Board approved License Agreement w/Lewis to access the proposed new school site	9/19/2019
▪ CVUSD obtained approval from Division of Aeronautics	9/25/2019
▪ The Lewis group indicated stockpiled soil would be removed by December 2019/January 2020	10/29/2019
▪ CEQA consultant work stopped, waiting for stockpiled soil to be removed by the Lewis Group	2/13/2020
▪ The Lewis group completed removal of the stockpiled soil on site	10/1/2020
▪ CEQA consultant resumed work and completed soils testing	11/5/2020

# Timeline of Work Performed (continued...)

▪ CEQA consultant finalized the Preliminary Environmental Assessment Geological and Environmental Hazards Assessment reports	1/28/21
▪ CVUSD advertised for Public Hearing to be conducted on the Preliminary Environmental Assessment reports as required by law	2/13/21
▪ CVUSD Board of Education conducted Public Hearing on the Preliminary Environmental Assessment reports	3/18/2021
▪ CVUSD submitted Preliminary Environmental Assessment reports to the Department of Toxic Substance Control	3/19/2021
▪ CEQA consultant finalized and provided the Addendum to the Environmental Impact Report (CEQA Document)	5/25/21
▪ Board of Education considers approval of Addendum to the Environmental Impact Report (CEQA document)	6/3/2021
▪ CVUSD submits final CEQA document to CDE for site approval	Pending

# Stockpile



921 N. Harbor Blvd, Suite 408  
La Habra, CA 90631  
(714) 761-3007  
July 23, 2020

Via e-mail to [brad.francke@lewismc.com](mailto:brad.francke@lewismc.com)

Brad Franke  
General Counsel  
Lewis Management Corp.  
1156 N. Mountain Avenue  
Upland, California 91786

**Re: Delay of Property Purchase due to Pile of Soil**

Dear Mr. Franke:

This letter is written on behalf of Chino Valley Unified School District ("District") with respect to the pile of soil on land that is the subject of a prospective purchase and sale agreement ("PSA") between the District and Lewis. As part of the District's due diligence, it is necessary to meet certain requirements of the State of California for evaluation of property the District is acquiring. Pursuant to Cal. Code Regs., section 140111, California Department of Education ("CDE") approval is required before school districts can purchase new school sites. Section 14011(g) conditions CDE approval on compliance with Education Code sections 17212 and 17212.5, which require school districts investigate the soil of sites prior to acquiring them for the construction of school buildings. At this time, there is a large pile of soil on the site. Until the pile of soil is removed so the District can conduct testing, the District will not be able to proceed with PSA discussions or proceed with preparing for construction of a school on the site.

The District and Lewis have been in protracted talks about the purchase of a school site in The Preserve, Lewis' new development in Chino. As noted in paragraph C of the Recitals in the prospective PSA, the District must evaluate the property to comply with California law before purchasing it.

Presently, there is a pile of soil on the site that makes it impossible for the District to investigate the soil (see Exhibit A: Photographs). District contractor Placeworks has repeatedly contacted Lewis about when the soil would be removed (see Exhibit B: Correspondence). In February, Lewis assured the Placeworks that the site would be balanced by mid-June. On June 3, Placeworks contacted Lewis to note a concerning lack of progress and ask again about when the removal would be complete. In response, Lewis stated it could not provide an estimate as to when the removal would be completed since PSA discussions had not been held for some time.





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General Counsel



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# Stockpile



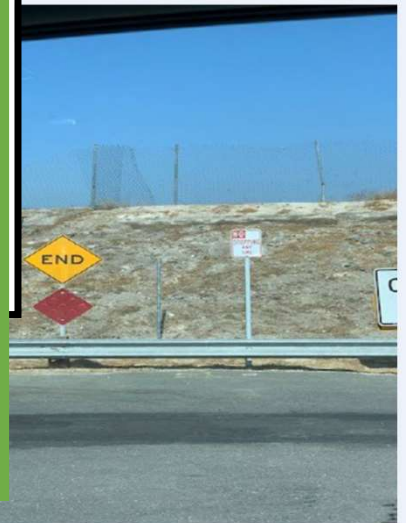
921 N. Harbor Blvd, Suite 408  
La Habra, CA 90631  
(714) 761-3007  
July 23, 2020

Via e-mail to [brad.francke@lewismc.com](mailto:brad.francke@lewismc.com)  
Brad Francke  
General Counsel

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- As early as Sept. 19, 2019, CVUSD repeatedly notified Lewis of potential issues impacting soils testing effort due to stockpiled soils on site;
- From June 3, 2020 and again in a legal counsel letter on July 23, 2020, Lewis was notified of work stoppage due to inability to test the site;
- 144,722 cubic yards (5,361 truckloads);
- Completion of stockpiled soil removed on October 1, 2020.



# Before and After 5,361 truckloads of soil was removed from the Preserve II Site



June 2020



June 2, 2021

# Estimated Timeline for Remaining work

Activity	Estimated Timeline
<ul style="list-style-type: none"> <li>Final site approval from CDE (The District has zero control over state processing timeline)</li> </ul>	Aug. 2021 – Oct. 2021
<ul style="list-style-type: none"> <li>Escrow period/Lewis delivers super-pad</li> </ul>	By June 2022
<ul style="list-style-type: none"> <li>DSA plan submission/Plan Check/Approval (The District has zero control over state processing timeline)</li> </ul>	Nov. 2021 – July 2022
<ul style="list-style-type: none"> <li>Bidding/Award/Contracting</li> </ul>	Aug. 2022 – Sept. 2022
<ul style="list-style-type: none"> <li>Board of Education Approval of bids</li> </ul>	Oct. 2022
<ul style="list-style-type: none"> <li>Construction &amp; Furnishing (21 months)</li> </ul>	Nov. 2022 – July 2024
<ul style="list-style-type: none"> <li>Estimated Occupancy</li> </ul>	August 2024

# District Expenditures to Date

- The District has spent \$1,574,513.27 to date on the following:
  - WLC Architects: \$1,443,487.50
  - PlaceWorks (CEQA Consultant): \$117,827.07
  - Dept. of Toxic Substance Control \$13,198.70
- Anticipate DSA fees of \$276,990 (Upon California Department of Education approval)

# May 2019 – June 2019

- **May 2019** – Letter to Lewis explaining school construction process
- **June 2019** – WLC Architects commenced design of new school in the Preserve





# Today

- Board meeting to approve a mitigation monitoring plan addendum to the EIR
- Architectural plans should not be submitted without a final State Department of Education Approval



# The School Design Today



# Mitigation Agreement of 2004, Section 2.13(b)

**(b) If construction of the Second School does not commence.** In the event construction of the Second School does not commence by the date that (i) the First School houses 750 students generated from the Project, and (ii) the District's Pupil Generation Rates provide that 650 students from the Project will need to be housed within eighteen (18) months, then the District may, at its sole discretion, elect to terminate this Agreement immediately upon written notice to Developer. Should the District elect to terminate this Agreement, all obligations set forth in this Agreement of either party shall cease, and Developer shall pay to the District, commencing with the 1201<sup>st</sup> K-8 student generated from the Project, School Fees for all subsequent residential building permits issued within the Project. Further, concurrent with District's payment of the Site Acquisition Cost, Developer shall convey to the District title to the School Site for the Second School in fee simple absolute, unencumbered by any liens, easements, or other encumbrances which would interfere with development of that School.



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# Mitigation Agreement of 2004, Section 1.2

**1.2 School Site Acquisition Cost.** The cost to the District to acquire each School Site shall be the appraised amount as set forth in the appraisal for the School Site prepared by the District ("**School Site Acquisition Cost**"). The appraisal of the School Site shall be based on a "construction ready" site (utilities stubbed to the site and curbs, gutters and roads on two sides of the School Site and rough graded) considering the highest and best land use. The District agrees to undertake the appraisal consistent with the Leroy F. Greene School Facilities Act of 1998 and those regulations promulgated thereunder, as amended from time to time. The appraisal of each site shall be undertaken within six months of the filing for state reimbursement of land purchase costs by the District.



# Mitigation Agreement of 2004, Section 1.2

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# District is Ready to Proceed under Terms of the Mitigation Agreement of 2004

- After \$1,574,513 in expenditures, it would be irresponsible to agree to a conditioned sale allowing Lewis to repurchase
- The District intends to build a school
- The rumors about land speculation are untrue
- Lewis has been very difficult about what should be a standard purchase and sale agreement
- District is proceeding under terms of Mitigation Agreement dated June 2004 which requires Lewis sell the Preserve II property to the District without conditions in a completed state
- Deposit of the value for a completed building pad into escrow (which requires a written agreement)

# Next Steps -- Arbitration

- Nearly 2 years after the District provided a purchase and sale agreement, Lewis has not agreed to a simple purchase agreement.
- The District has been ready to make the full property value deposit. Lewis needs to follow the executed Mitigation Agreement and stop imposing conditions on the District
- If the District cannot purchase the property under the Mitigation Agreement, the District will proceed with a demand for arbitration with Lewis under Article 12 of the 2004 Mitigation Agreement to enforce the sale of the property