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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

COALITION TO SAVE SAN
MARIN,

Plaintiff and
Respondent,

v.

NOVATO UNIFIED SCHOOL
DISTRICT,

Defendant and
Appellant.

A156877

(Marin County
Super. Ct. No. CIV1702295

Appellant Novato Unified School District (the District) appeals from a judgment directing it to vacate Resolution No. 31-2016/2017, adopted by its Board of Trustees, which issued an approval and certification of an environmental impact report (EIR)¹ for a project known as the San Marin

¹ “EIR” as used hereinafter refers to the final version of the EIR that was certified by the Novato Unified School District Board of Trustees. The final EIR “includes: (1) the Draft EIR and appendices, and (2) the Final EIR, which includes responses to comments, corrections and revisions to the Draft EIR, and 6 appendices.” In issuing its resolution, the Board of Trustees also considered the staff reports pertaining to

High School Stadium Lights Project. Pursuant to a writ of administrative mandamus, the trial court enjoined the project until the District fully complied with the California Environmental Quality Act (CEQA; Pub. Res. Code,² § 21168). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND³

At issue here is the adequacy of the CEQA review of “The San Marin High School Stadium Lights Project,” consisting of the installation of new stadium lighting, an upgraded public address system for the stadium, and egress lighting at the existing school campus.

I. Environmental Setting

San Marin High School (SMHS) is at the interface of a suburban residential neighborhood comprised of largely one-story, single family homes and open space preserves, grasslands, and hillsides. Bordering the school are San Marin Drive to the east and Novato Boulevard to the south. Across Novato Boulevard is a 98-acre park which is unlit at night; it contains open space trails and Novato Creek which runs through the park approximately

the final EIR, the minutes and reports for all public hearings, and all evidence received by the District at those hearings.

² All further unspecified statutory references are to the Public Resources Code and the CEQA guidelines are referred to as “Guidelines section” “Whether the Guidelines are binding regulations is not an issue in this case, and we therefore need not and do not decide that question. At a minimum, however, courts . . . afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA. [Citation.]” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2 (*Laurel Heights I*)).

³ The factual and procedural background is taken, in part, from the trial court’s comprehensive 69-page opinion.

one quarter-mile south of the stadium. SMHS is also surrounded by (1) trails and single-family homes to the west; (2) single-family homes to the north; (3) multi-family residences to the northeast; and (4) open hillsides with grassland and scattered oak trees rise to the north and west.

The nearest residences are about 120 feet north and northeast of the stadium track. Because of a grassy berm, the northeastern end of the stadium is below the level of the multi-family residences. Scenic views from the stadium and surrounding residences include undeveloped ridgelines and hillsides which are dark at night. San Marin Drive to the east of the school is a four-lane street, landscaped with trees which obstruct views of the stadium from the houses to the east. The road is lightly illuminated by well-spaced street lights, but there are no lighted signs until a medium-sized shopping center approximately one-half mile north. Novato Boulevard to the south of the school is very dark in the evening. In sum, the roads and neighborhoods adjacent to the school have low brightness against a dark background of undeveloped hills and open space.

II. Project Objectives and Description

The District had several objectives in pursuing the project: (1) improved stadium availability for evening/nighttime athletic fields, which would improve academic performance by minimizing early class dismissal and missed instruction time for student athletes; permit greater attendance by parents, students, and fans, which would build community spirit and increase ticket revenues; offer a safe outlet for student socializing; and reduce conflicting uses of the same field by different teams, thereby reducing accidental injuries to student athletes; (2) better lighting conditions during evening practices and games would improve safety for student athletes; and

(3) an improved public address system to better focus sound inside the stadium.

The stadium has a bleacher capacity of 2,400 persons with standing room for an additional approximately 1,600 persons. The project would involve installation of 26 athletic field lights and an upgraded public address system. The final EIR set forth the schedule for when the lights would be used: the main stadium lights would be turned off by 8:00 P.M. for practices Monday through Thursday, by 8:30 P.M. for games Monday through Thursday, and by 9:45 P.M. for Friday football games. The stadium lights would not be used on Saturdays or Sundays, with the possible exception of Saturday light usage until 8:30 P.M. for two to four Saturdays in February and two Saturdays in May for soccer and lacrosse playoff games.

The installation of new lights on existing and new poles throughout the stadium would use state-of-the-art LED lights with narrow beams to reduce light trespass and emit less light visible to the neighboring residences. Eight new 80-foot tall light poles, equipped with downward-facing 72 LED light fixtures (also known as luminaires), would be evenly spaced with four poles along each of the sidelines. Additional downward facing LED luminaires would be mounted at 70 feet on some of the 80-foot tall poles and upward-facing low-output lights would be mounted at 20 feet on the 80-foot tall poles, with the upward-facing lights turned on during the entirety of games. A second set of lower-output lights would be installed on up to 18 new and existing 30-foot tall light poles. The lights would be used approximately 152 nights per year for various sport practices and games, and on a few other occasions primarily during the fall and winter evening hours between October and March. To provide focused, distributed sound throughout the

stadium, up to 18 additional 30-foot tall public address speaker poles would be installed on the project site. The new public address system would not be used for practices or for soccer and lacrosse games.

III. EIR Proceedings

On December 20, 2016, the District issued its draft EIR, and extended the public comment period to March 3, 2017. The Coalition, its members and other concerned citizens submitted written and oral comments asserting deficiencies in the project and draft EIR. On May 10, 2017, the District issued its final EIR with responses to the public comments, as well as corrections and revisions to the draft EIR, and six appendices. On May 16, 2017, the District's Board of Trustees voted to certify and approve the EIR. Two weeks later, the Board of Trustees adopted Resolution 31-2016/2017 approving the project, a statement of overriding considerations, and a mitigation and monitoring program identifying the timing and responsibility for monitoring each mitigation measure.

IV. Trial Court Proceedings

On June 23, 2017, the Coalition filed a petition for writ of administrative mandate (Code Civ. Proc., § 1094.5), seeking to enjoin the project until the District complied with CEQA, on the ground the EIR did not adequately examine certain significant environmental impacts; did not adequately identify and discuss mitigation measures and project alternatives; and did not examine the cumulative impacts of the project together with foreseeable future projects at the high school. The Coalition also alleged the District was required to recirculate the EIR because, after the close of the public comment period, the final EIR included new and significant information on certain environmental impacts.

Based upon “numerous instances” of noncompliance with CEQA, the trial court found the EIR inadequate as an informative document. Specifically, the court found: (1) the District “erred in adopting the CIE’s E-3 lighting zone benchmark to describe the project’s environmental setting for evaluating” the impact of the lights and corresponding mitigation measures; (2) the EIR contained insufficient information subject to public comment concerning how the District analyzed the impact of projected light and glare on surrounding communities during nighttime operations of the stadium to support the conclusion that the proposed mitigation measures would result in the impacts being less than significant; and (3) the District’s “decision not to prepare the relevant photometric studies until after approval of the project constitute[d] a prejudicial abuse of discretion because it ‘preclude[d] informed decision[-]making and informed public participation, thereby thwarting the statutory goals of the EIR process.”

The court entered judgment in favor of the Coalition, directing the District to set aside its approval of the project and enjoining it from proceeding with the project until it had fully complied with CEQA as discussed in the court’s opinion. The court’s injunction did not bar the District from conducting certain necessary photometric studies to test, calibrate, or modify the equipment to be installed for the project to comply with mitigation measures set out in the final EIR and approved by the District.

The District timely appealed.

DISCUSSION

I. Standard of Review

In *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 (*Sierra Club*), our Supreme Court clarified the appropriate standard of review: Generally, “[t]he standard of review in a CEQA case, as provided in sections 21168.5 and 21005, is abuse of discretion. Section 21168.5 states in part: ‘In any action or proceeding . . . to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion.’ [Citation.] [The court’s] decisions have thus articulated a procedural issues/factual issues dichotomy. ‘[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, “scrupulously enforc[ing] all legislatively mandated CEQA requirements” [citation], we accord greater deference to the agency’s substantive factual conclusions. In reviewing for substantial evidence, the reviewing court “may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,” for, on factual questions, our task “is not to weigh conflicting evidence and determine who has the better argument.” ’ [Citations.]” (*Sierra Club, supra*, 6 Cal.5th at p. 512.)

However, “when the issue is whether an EIR’s discussion of environmental impacts is adequate, that is, whether the decision sufficiently performs the function of facilitating ‘informed agency decision[-]making and

informed public participation,’ [t]he review of such [a] claim[] does not fit neatly within the procedural/factual paradigm.” (*Sierra Club, supra*, 6 Cal.5th at p. 513.) After describing several of its own decisions and those of the Court of Appeal, the court concluded “[t]hree basic principles emerge . . . : (1) An agency has considerable discretion to decide the manner of the discussion of potentially significant effects in an EIR. (2) However, a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘ “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” ’ ” [Citation.] (3) The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” (*Id.* at pp. 515–516.)

“The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’ [Citations.] The inquiry presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency’s decision as to which methodologies to employ for analyzing an environment effect—may warrant deference. [Citations.] Thus, to the extent a mixed question requires a determination whether statutory criteria were satisfied, *de novo* review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted. [Citation.] ” (*Sierra Club, supra*, 6 Cal.5th at p. 516.) “For

example, a decision to use a particular methodology and reject another is amenable to substantial evidence review But whether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by the court to be inadequate as an informational document without reference to substantial evidence.” (*Id.* at p. 514.)

“ ‘An appellate court’s review of the administrative record for legal error and substantial evidence in a CEQA case . . . is the same as the trial court’s: The appellate court reviews the agency’s action, not the trial court’s decision; in that sense appellate judicial review under CEQA is de novo.’ [Citation.] Further, ‘ “the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision.” ’ [Citation.]” (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 262.)

Based on the above described standard of review, and based on our independent review of the record, we agree with the trial court and conclude that the EIR did not include “sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully” certain environmental impacts of the proposed project. (*Sierra Club*, *supra*, 6 Cal.5th at p. 510, citing to *Laurel Heights I*, *supra*, 47 Cal.3d at p. 405.)

II. EIR’S Analysis of Aesthetics⁴

A. EIR Findings

The EIR analyzed, against a baseline for lighting, the project’s potential aesthetic adverse environment impacts from light illumination (light trespass/spillover)⁵, glare intensity⁶, and sky glow⁷.

1. Baseline Thresholds

The EIR used significance thresholds for the illuminance and glare generated by the proposed new lighting fixtures based on the standards adopted by the International Commission on Illumination (CIE), which is an industry group that sets limits for outdoor lighting installations depending on which of four CIE lighting zones the surrounding area falls within, i.e., E-1 to E-4.

“The CIE describes the E-3 lighting zone to include ‘urban residential areas’ of ‘medium ambient brightness.’ Several public commentators indicated that the project area is much less bright than the example areas identified in the E-3 lighting zone. These commentators argued that the designation does not correspond to the low street lighting along San Marin Dr[ive] and the surrounding residences, and that this designation flat out

⁴ The description is taken, in part, from quoted portions of the trial court’s decision, omitting citations to the administrative record.

⁵ “Illumination is defined as ‘the amount of light that strikes an object, including light cast by sources that are not directly seen by the viewer.’”

⁶ “Glare ‘refers to the discomfort or impairment of vision experienced when a person is exposed to a direct or reflected view of a light source, causing objectionable brightness that is greater than that to which the eyes are adapted.’ Glare intensity ranges from the wors[t] case – ‘disability glare’ where visibility is lost, to ‘discomfort glare’ where the light is distracting and uncomfortable.”

⁷ “Sky glow refers to illumination from upward light which increases the brightness of the nighttime sky.”

ignores the dark, unlit hills and open spaces abutting the south, west and northwest boundaries of the school. These commentators advocated for the use of the E-2 zoning rating which the CIE defines as ‘a lighting environment with low district brightness and provides as an example “sparsely-inhabited rural areas” (CIE, 2003).’ ”

In particular, “[o]ne commentator, Marc Papineau, an environmental scientist, challenged the District’s use of the E-3 standard by arguing this rating did not give sufficient deference to the dark, undeveloped open space on the edges of the project site. Papineau explained that the ambient nighttime brightness thresholds as reflected in the four lighting zones ratings (E-1 to E-4) are intended to be ‘progressive, in order to be suitably protective of the environment’ Thus, he reasoned that when a suburban area is adjacent to an unlit, or dimly lit open space the ‘prudent planning practice’ is to accommodate the contiguous, more light-sensitive area by applying the lighting standards ‘that are more sensitive to cumulative change in ambient brightness. . . .’ . . . In this scenario, that would require adopting the more light sensitive and environmentally-protective E-2 rating, for light spillover, glare and sky glow than the E-3 rating.”

“In response to these public comments,” the District explained its decision to rely on the E-3 zone standard:

“Although the project site is located near the interface of suburban development and open space, the site itself is best characterized as being located in environmental lights zone E3. Support of this classification includes the presence of San Marin Drive, a four-lane arterial roadway with streetlamps, directly to the east of the project site, suburban-density single-family housing to the east and northwest of the project site, and multi-family housing to the northeast of the site. In addition, a commercial center that includes medical offices, an animal hospital, and various retail outlets (including a Starbucks and a

Subway) is located approximately 0.25-mile east of the project site. Environmental lighting zone E2, which is defined by the example of ‘sparsely-inhabited rural areas,’ is not an appropriate classification of the project site and surrounding neighborhood. Therefore, the characterization of the Draft EIR of the project site being located in environmental lighting zone E3, which is defined by the example of ‘well-inhabited rural and urban areas,’ is appropriate. As discussed in Section 4.1, Aesthetics, of the Draft EIR, impacts related to night lighting would be less than significant with the identified mitigation measures. No changes to the Draft EIR are warranted as a result of comments pertaining to the existing ambient lighting at the project site.”

2. Light Trespass/Spillover

“The [EIR] determined that the effect of light trespass/spillover on the nearest residences from illuminating the field would be significant if illumination produced by the project exceeded 2.0 foot-candles (f.c.) when measured at the vertical and horizontal planes at the high school property lines nearest the residences. This measurement was derived from an earlier project of the District, and from standards used by other California school districts i.e., light trespass is not significant if the foot candles measured at the school property lines fall in the range from 0.8 f.c. to 2.5 f.c.”

“Without first performing a photometric study to estimate the brightness of light generated by the specific fixtures, the [EIR] found that the proposed stadium lighting system may produce illumination in and around the stadium in excess of the 2 foot-candle significance threshold at the boundaries of the stadium, and would constitute a potentially significant impact. [¶] As a mitigation measure, the [EIR] proposed the District hire a qualified lighting consultant to prepare a photometric study consistent with industry standards ‘that estimates the vertical and horizontal foot-candles generated by the proposed stadium lighting on the football field and at the

boundaries of the stadium site,’ and as part of the final design of the light system, to position and shield the fixtures along the football field until they generate no greater than 2 foot-candles at the site boundaries. The [EIR] concluded that implementation of this mitigation measure would not ‘generate excessive significant light trespass at nearby residences’ and the impacts would be less [than] significant after mitigation.”

3. Glare Intensity

“The [EIR] also evaluated the effect of glare on residents and on adjacent public street and sidewalks by units of intensity called ‘candelas.’ . . . The [EIR] assumed that light intensity of 500 candelas or less when measured at the school’s property lines would result in no ‘discomfort glare’ at those residences which faced the school. . . . [¶] The District used significance thresholds for glare[set by the CIE] . . . [¶] Applying the CIE designations, the [EIR] identified the project area as falling into lighting zone E-3 – which denotes ‘areas of medium ambient light, such as urban residential areas.’ For the E-3 zone, the CIE establishes a threshold of significance for pre-curfew hours (i.e., before 10 p.m.) of 10,000 candelas, and 1,000 candelas for post-curfew hours.”

“The [EIR] found that the lighting system could generate painful ‘discomfort glare’ or more serious ‘disability glare’ in excess of the CIE standard adopted for areas in the E-3 zone at residential property lines facing the stadium and on adjacent public streets and sidewalks, and these impacts are significant but mitigatable.” As a mitigation measure, “[t]he [EIR] proposed . . . the District prepare a photometric study to ensure that ‘discomfort glare’ does not exceed the 10,000 candelas limit (i.e., before 10 p.m.) at residential property lines facing the stadium, and if needed, to adjust

the position of the light fixtures illuminating the football field to meet this standard for glare, and to minimize the ‘disability glare’ experienced by pedestrians and motorists on San Marin Drive. With these mitigation measures, the [EIR] concluded that impacts would be less than significant.”

4. Sky Glow

The EIR recognized that “impacts from ‘sky glow’ would be significant ‘if the proposed lighting emits a substantial amount of upward light, significantly increasing the brightness of the sky during nighttime hours.’” However, “[t]he [EIR] states that sky glow will not be significant because the state-of-the-art downward-focusing luminaries on the 80’ poles will be using a narrow beam angle, and will be fitted with reflectors and visors to block upward light. [¶] As to the 20’ lower brightness, upward-facing luminaries, the [final] [EIR] note[d] they would be designed to provide only the minimum amount of illumination necessary to see airborne objects in the stadium [but acknowledged that the use of upward-facing lights ‘would incrementally increase sky glow when in use by reflecting light off clouds and aerosols’]. In a change from the [draft EIR] which planned for intermittent use only during kick-offs and punts, the upward lights would . . . remain on for [an] entire game; i.e., 2-4 hours.” Nonetheless, the EIR “concludes that [the] amount of sky glow will be ‘minimal’ because it will be limited to the early evening hours (before 8:30 p.m.) and ‘would occur in a location with existing nighttime lighting (including street lamps along the adjacent roadway and security lighting on the adjacent campus). Therefore, [the lighting system] would not substantially contribute to sky glow during sensitive nighttime hours. The City of Novato, being located in the greater San Francisco Bay Area, also has nighttime skies that are subject to substantial existing light

pollution, largely from sources in the U.S. 101 corridor, and that are not sensitive to additional artificial light. Therefore, the proposed stadium lights would not substantially contribute to sky glow near the school site, and impacts would be less than significant [with no need for mitigation measures].’ ”

B. District’s Contentions

1. Project Baseline for Lighting

The District argues that its choice for the project baseline for lighting in the draft EIR as the CIE’s E-3 lighting zone, defined by the example of “ ‘well-inhabited rural and urban areas,’ ” was within its discretion and supported by the evidence. We disagree.

The District’s chosen methodology must be supported by reasoned analysis and evidence in the record. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 119-120.) Even applying the deferential substantial evidence test, we agree with the trial court that there was insufficient evidence to support the District’s adoption of the CIE’s E-3 lighting zone to describe the project’s environmental setting for evaluating the light and glare impacts and the corresponding mitigation measures and a restrictive light alternative for the project. Based on an environmental scientist’s comments concerning the appropriate way to apply the CIE’s four possible lighting zones, the trial court properly found the District, by applying the E-3 lighting zone, had “virtually ignore[d] the extensive open spaces and unlit hillsides that form a substantial boundary along the south, west and northwest edges of the project site.” The District ma[de] no effort to distinguish the unique physical features of this environmental setting from the typical, suburban

neighborhood that falls within the E-3 rating.” Because the District’s “duty under CEQA . . . [was] not served by taking a ‘one size fits all’ approach when describing the environmental setting,” the EIR was inadequate because it did “not illustrate the types of uses and infrastructure that would aid decision-makers and the public to understand the types of suburban neighborhoods that would qualify as ‘well-inhabited rural and urban areas’ under the E-3 rating[; or] contain information showing the population size of such areas, the mix of commercial, recreational or residential uses, or the number of major thoroughfares that crisscross a typical E-3 suburban neighborhood.”

We also conclude, as did the trial court, that “the District’s conclusion the project area was characterized at nighttime by ‘medium ambient brightness,’ ” was refuted by the evidence in the administrative record. “It is uncontradicted that the project area is served by only two main thoroughfares, San Marin Dr[ive] and Novato [Boulevard], with Novato [Boulevard] being dark or having very low illumination, and San Marin Dr[ive] adjacent to the stadium being dimly lit. The amount of ambient light affecting the project area is significantly reduced when one considers the dark, undeveloped hillsides and open spaces abutting several sides of the project area. These features distinguish the project’s setting from the typical ‘well-inhabited rural and urban areas’ in the E-3 zone that may be traversed by many blocks of well-lighted streets.”

We see no basis for the District’s reliance on the presence of commercial establishments to support the E-3 rating; as the trial court noted, the EIR did not contain a discussion of the following issues: (1) whether any of the professional medical offices north of the school were open during the relevant evening hours; (2) the number of stores in the adjacent shopping center that

were open at night; (3) the intensity of ambient nighttime light from any store windows and parking lots; and (4) the spacing of street lamps and “whether the light intensity was low, medium or high brightness.”

Because the administrative record did not support the classification of the environment as falling with the E-3 lighting zone, there was no proper baseline and hence no way to undertake accurate assessments of the impacts, mitigation measures, or project alternatives. Accordingly, the trial court properly found that a recirculation of the EIR was warranted on this basis. However, our decision should not be read as a determination that the E-3 lighting zone is an inappropriate baseline for the project. We hold only that the District’s choice of the E-3 lighting zone must be preceded by an adequate analysis of the trial court’s concerns with which we concur.

2. Light Trespass/Spillover and Glare Impact

a. Photometric Study

The District’s overarching contention is that the Guidelines do not mandate that a photometric study of the new lighting installation be included as part of the EIR. To the extent there was such a requirement, the District argues it met its obligation by including, after publication of the draft EIR, a preliminary photometric study for the project “that was conducted as part of a proposed mitigation measure (AES-3) identified in” the draft EIR, albeit conceding “[i]t is apparent” the preliminary photometric study “was never intended to be a part of the EIR itself, but rather was provided for informational purposes in anticipation of the approval of said mitigation measure.” According to the District, a photometric study does not actually measure illumination impact, but rather “projections of impacts that can, would be, and have been, controlled in producing a final design conforming to

that final photometric study. That is, the discussions of photometric studies described what the project would be, within the control of the District. Therefore, the failure to include more, or further or final studies was not necessary to an informed discussion: the public was clearly apprised that the [p]roject would perform within the parameters discussed for a final photometric study, and other studies projecting different constraints would have been misleading.” We see no merit to the District’s arguments.

We conclude, as did the trial court, that “[t]he need for detailed photometric studies to analyze the impacts from light and glare and to devise mitigation and avoidances measures to ensure the impacts will be reduced to less than significant levels, cannot be doubted. The District conceded as much in the [final EIR’s] discussion of the Aesthetics impact analysis: ‘Because a photometric study that estimates the brightness of light generated by a specific lamp, fixture, or group of fixtures at the stadium has not been prepared, it is not possible to determine whether the proposed lighting system would result in light trespass in excess of the quantitative threshold of two foot-candles at the boundaries of the stadium site. Nearby residences could be subject to excessive illuminance when stadium lights are in use. Therefore, lighting impacts are potentially significant.’” Thus, as recognized by the District’s own comments in the record, preparation of a photometric study is essential to determine whether the light/glare impacts from the project could be mitigated to less than significant levels.

We further conclude that a photometric study “was not only necessary,” but could have been included and summarized in the draft EIR and before the closure of the public comment period. The Coalition submitted, as part of its writ petition, two existing photometric studies of projects for new stadium

lighting by the District's lighting contractor Musco Sports Lighting, LLC (dated October and November 2015) which had been completed over one year" before the draft EIR. The earlier photometric studies "included equipment specifications, illumination summaries and project summaries, . . . and . . . scale site drawings of the stadium that show the eight light pole placements on the two long-sides of the field, and . . . calculated the amount of light trespass and glare intensity at the stadium site, and also at the north and east residential property lines." In an email accompanying the earlier photometric studies, the project engineer stated "he used these photometric studies to place the eight, field-light poles on the electrical plans, and requested the architect to identify the location of the egress lights so he could 'run the photometric study to install the security lights.'" The email also had attached "scale drawings showing the equipment layout and the angle of the luminaires and a project summary containing light and glare analyses in table form."

"For reasons not explained by [the] District, these studies were not included or summarized in the [draft EIR] or the [final EIR]. Nor has the District identified if the photometric study of the egress lights had been prepared, and if so, why that study was not also included in the EIRs." After publication of the draft EIR and in response to public comments, the District had the lighting contractor prepare *preliminary photometric studies* for the project that modeled both illumination and glare in and around the project site, and the District inserted these graphics into the final EIR. However, the preliminary photometric studies were not similar to October and November 2015 documents, but were "isolated illustrations, presented without a description of the District's assumptions, methodology or data." "The

accompanying text states the preliminary modeling shows that ‘neither horizontal nor vertical foot–candles are expected to exceed the 2.0 foot-candle threshold at District property lines nearest to neighboring residence’ and ‘the discomfort glare produced during operation of the proposed project should be below the 10,000-candela threshold at residential property lines facing the stadium’ and discomfort glare will be low for pedestrians and motorists (3,500 candelas or less).” “These limited preliminary modeling studies were not thereafter subject to public comment.” “Even after giving due deference to the evidentiary value” of the preliminary photometric analyses, we must agree with the trial court that those studies did not “supply substantial evidence to support the District’s conclusions that light and glare impacts will be reduced to less than significant levels,” because they constituted “unsubstantial opinion,” and failed to provide enough details or explanation for the public “ ‘to discern from the [EIR] the analytic route . . . the [District] traveled from evidence to action.’ ” (*California Oak Foundation v. Regents of University of California, supra*, 188 Cal.App.4th at p. 262.)

In sum, while the Guidelines do not mandate an agency perform any specific type of studies in determining potentially significant environmental impacts, we conclude the District’s failure to provide a photometric study of the new lighting installation as part of the draft EIR did not meet the CEQA requirement of an informative document subject to public comment. (See, e.g., *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1038, 1039, 1041 [appellate court upheld school district’s conclusion that the project (which included new lighting at school football stadium) would not have a significant effect on the environment by means of significant light trespass (or glare or sky glow)

where initial study described the impact of the new field lighting installation “based on a photometric analysis conducted by Musco Lighting, the Project’s lighting system designer”].) As the trial court here explained: “Preparation and review of a photometric study at the time the [draft] EIR circulated . . . would have provided the decision makers and the public [with] information all participants needed to intelligently assess the scope of the potential impacts and the feasibility of possible mitigation measures,” as well as consideration of a reduced lighting alternative, “thereby fulfilling CEQA’s principle purpose, i.e., to ‘alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.’ ” (*Laurel Heights I, supra*, 47 Cal.3d at p. 392.)

b. Deferral of Photometric Study

We also see no merit to the District’s arguments that it did not violate CEQA by failing to provide a photometric study of the new lighting installation in the draft EIR because it deferred preparation of such a study until after the project approval and installation of the light poles as part of a mitigation measure. According to the District, the photometric study is a “design tool” that constrains how the final design is prepared and the project is built, and is “akin to a final structural design,” according to which a building would be constructed to comply with building codes, in that “the very nature” of the final photometric study requirement was to produce a study, on which design and construction would be based, that would necessarily constrain lighting impacts to those discussed in the EIR. The District’s argument is unavailing.

The record demonstrates, “[a]s reflected by the District’s own comments in the record,” that the “preparation of a photometric study is essential to

determine whether the light/glare impacts from the project could be mitigated to less than significant levels. Also, the record shows it was not only necessary but feasible, to prepare and circulate a photometric study with the [draft EIR], as illustrated by the reliance of the District and the project's principals on the two photometric studies prepared by Musco in October and December 2015, one year before the preparation of the [draft EIR]." "[T]he San Marin high school stadium and the surrounding structures already exist, the decision to illuminate the entire football field has been made, and the evenly spaced placement of the light poles along the sidelines has been illustrated in the October and November 2015 photometric studies and in the preliminary photometric study inserted in the [final EIR]. [¶] The record demonstrates that there was no reason to wait until after project approval to conduct such studies and, in fact, two photometric studies had been prepared by the District's light consultant."

While there is no presumption that an error in failing to include information is prejudicial (§ 21005), we conclude that in this case the District's decision not to prepare a photometric study of the new lighting installation until after approval of the project and as a mitigation measure constituted a prejudicial abuse of discretion because it precluded " "informed decision[-]making and informed public participation, thereby thwarting the statutory goals of the EIR process." ' ' (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 242.)

3. Sky Glow Impact

The District challenges the trial court's finding that the factual basis for the EIR's analysis of the issue of sky glow and potential glare on dark skies during nighttime hours was inadequate. Because reconsideration of the

environmental impact of light and glare will necessitate a reconsideration of the environmental impact of the sky glow generated by the installation of the new lighting system, we need not address the District's contention that its discussion of the impact of sky glow was adequate.

In any event, we see no basis to disturb the trial court's finding that the EIR's factual basis for its analysis of the impact of sky glow on nighttime scenic views was "faulty. The project is not located near the City of Novato's commercial district where sky glow is expected, nor is there evidence that sky glow from the 101 freeway several miles to the east or from the lights of San Francisco Bay Area presently affects *the scenic views of the ridgelines* around the stadium." In finding that the EIR "omit[ted] material necessary to informed decision[-]making and informed public participation," the trial court did not find the District had to reach any particular conclusion when reconsidering the matter.

III. EIR's Analysis of Biological Resources

As part of the final EIR, the District included Appendix A, a "new biological resource review" presented, for the first time, acknowledging that "several species of native bats may be present in the project area that are of 'special concern' to the California DWF [Department of Wildlife and Forestry]. That review concludes the 'potential impacts to incidental foraging bats would be less than significant' because: the project will not remove bats roosting habitats near the project site, e.g., trees, buildings; bats are not likely to roost near the project site since more suitable unlit roosting and foraging habitats exist ¼ mile south at Novato Creek; and while evening illumination 'may have some effect on bat foraging behavior' [given] the lack of light trespass beyond 100 feet from the stadium and the brief operation of

the lights (2-4 hours) the project would not present a ‘negative impact on the population.’ ”

The District contends the final EIR’s new discussion of the biological impact of the project on the habitats and behavior of a bat species was not adequate to trigger recirculation. According to the District, the information concerning the bat habitats and behavior added nothing new of substance, and it is entirely unclear how recirculation of the EIR would add to or clarify what has already been thoroughly discussed and vetted. However, as the trial court explained, the “new information” concerning bat habitats and behavior was “ ‘significant’ ” for two reasons: (1) “the [final EIR] identified the potential for stadium lighting to alter the roosting and foraging behavior of these nocturnal species by driving them to other areas surrounding the project site, which matters were not discussed in the [draft EIR];” and (2) the biological resource analysis again relied “on the District’s preparation and discussion of a preliminary photometric study, presented for the first time in the [final EIR], to support the District’s conclusion that light trespass will not affect habitat beyond 100 feet from the stadium and any lighting impacts will be mitigated to less than significant levels. The preparation of a comprehensive photometric study is central to the District’s position that the significant impacts from light trespass and glare can be substantially mitigated, and the District has not satisfactorily explained its decision not to prepare a photometric study to be circulated with the [draft EIR].”

We therefore conclude, as did the trial court, that before certifying the final EIR the District should have recirculated the section concerning the project’s impacts on bat habitats and behavior because “[n]either the public nor any other trustee agency had a prior opportunity to evaluate” the new

information or to test the validity of the District's conclusions. In so concluding, we reject the District's contention that the new information merely clarified or amplified the otherwise adequate discussion of biological impacts in the draft EIR.

IV. EIR's Analysis of Cumulative Impact

While the EIR discussed the project's cumulative impact from illumination in connection with a list of current and future non-residential and residential projects throughout the City of Novato, with none being closer than 1.2 miles to the project site, the final EIR "contains no discussion of the cumulative impacts on Aesthetics from the project, together with the related impacts of a new lighted soccer and lacrosse field already approved by the District. The installation of additional lights on 15-foot poles, when the school never hosted nighttime activities, could conceivably increase the significant environmental impacts from illumination, glare and/or sky glow on the surrounding residences and open spaces, and it was 'reasonable and practical to include the project' in the discussion."

The District contends it had no obligation to analyze the cumulative impact of the football stadium lighting project with the District's recently approved plans to convert the high school's upper baseball field into soccer and lacrosse fields ("planned conversion project") with sixteen 15-foot tall light poles because the planned conversion project was an independent project, which was neither an "integral part" nor a "future" expansion of the football stadium lighting project. However, "CEQA requires an EIR to discuss the cumulative effect on the environment of the subject project in conjunction with other closely related, past present and *reasonably foreseeable probable future projects.*' " (§ 21083, subd. (b); Guidelines,

§§ 15130, 15355, *italics added*.) The term “‘[c]umulative impacts’ refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (Guidelines, § 15355.) “‘If an identified cumulative impact is not determined to be significant, an EIR is “required to at least briefly state and explain such conclusion.” ’”(*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739–740, quoting from *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 432, citing Guidelines, § 15065, subd. (a)(3) [defining “Cumulatively Considerable”].)

We also see no merit to the District’s argument that the EIR did not need to evaluate the planned conversion project because it “would not include lighting . . . [and] [n]o nighttime use is planned for” that project. The record demonstrates that in response to a public comment that the planned conversion project “would have a significant number of lights, in addition to the lights included in the solar panel structures that allegedly stay on all night,” the District asserted that although no nighttime use was planned for the additional turf field, “[l]ights associated with on-site solar panels are motion-activated LED lights with dual-dimming controls,” the lights were designed to have minimal horizontal light trespass and are turned off at 10:00 P.M.,” with the draft EIR, on the stadium lights project, being revised in the final EIR to include, both “[e]xterior security light fixtures located at on-site school buildings” and located “*at on-site solar panels*.” (*Italics in original*.) Thus, the District’s contentions that the planned conversion project did not need to be evaluated in conjunction with the new lighting for the football stadium is unavailing.

V. Need for Recirculation of EIR

Because we have addressed the need for recirculation in the context of discussing the District's other arguments, we do not separately address the issue.

DISPOSITION

The judgment is modified by adding the following provision: The District shall prepare a new draft EIR that articulates the appropriate baseline for the project's evaluation, analyzes the project in light of its cumulative impact that takes into account the planned conversion of its baseball fields into lighted fields for lacrosse and soccer, assesses the project's impacts on biological resources and light spillover, glare and skyglow on the bases of photometric analysis. As so modified, the judgment is affirmed.

Respondent Coalition to Save San Marin is awarded costs on appeal.

Petrou, J.

WE CONCUR:

Siggins, P.J.

Jackson, J.