No. _____

# In The Supreme Court of the United States

"I AM" SCHOOL, INC.,

*Petitioner,*

v.

CITY OF MOUNT SHASTA,

*Respondent.*

On Petition for Writ of Certiorari to the Court of Appeal of the State of California, Third Appellate District

## APPENDIX


STEPHEN F. DARGER
118 Siskiyou Avenue
Mount Shasta, CA 96067
(530) 925-4443
steve.darger@outlook.com

EDWARD O.C. ORD
*Counsel of Record*
ORD ASSOCIATES
233 Sansome Street
Suite 1111
San Francisco, CA 94104
(415) 274-3800
ord@ordassociates.com

*Counsel for Petitioner*



LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

## TABLE OF APPENDICES

Appendix A-1

Filed 8/23/21 "I Am" School, Inc. v. City of Mount Shasta CA3

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

---

| | |
|---|---|
| "I AM" SCHOOL, INC.,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>CITY OF MOUNT SHASTA,<br><br>Defendant and Respondent. | C091575<br><br>(Super. Ct. No. CVPT20191269) |

Appendix A-2

Health and Safety Code[1] section 11362.768, subdivision (b) states: "No medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medicinal cannabis pursuant to this article shall be located within a 600-foot radius of a school." This case addresses whether the 600 feet is measured from the parcel upon which a school is located or from additional parcels owned by the school upon which no school building currently exists.

Appellant "I Am" School, Inc., appeals from the trial court's entry of judgment against them in their declaratory relief action. Appellant contends it had vested rights in all of the lots it acquired, the court erred in failing to find the 600-foot radius applied to all of the lots, and the ruling infringes on their First Amendment right to practice and teach their religion. It further contends that the trial court erred in failing to address the remainder of its complaint petitioning for a writ of mandate and administrative mandamus and other relief.

The trial court correctly determined that the 600-foot limit is measured from the lot upon which the school exists at the time, meaning the lot upon

[1] Undesignated statutory references are to the Health and Safety Code.

which there is no school are not counted, even if owned by the school. Since we do not have jurisdiction to address appellant's remaining contentions we shall affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

"I Am" School, Inc. is a private, faith-based school located in Shasta City, Siskiyou County. It was established in October 1997 when Shasta City (City) approved its request for a conditional use permit for a school. The permit originally allowed 20 students, and was increased to 75 students the following year. In 2002, appellant had the chance to purchase adjoining parcels for additional classroom space and housing; the City approved a conditional use permit for the expansion plan. The school is on parcel number 057-621-330-000 (Parcel 1), while the conditional use permit added 057-621-360-000 (Parcel 2), 057-621-210-000 (Parcel 3), 057-621-240-000 (Parcel 4). The permit allows for a shop/classroom/storage building and a future classroom for Parcel 3, which has not been developed. Parcel 4 is permitted for a residential unit and is also undeveloped. Appellant also owns another parcel 057-621-270-000 (Parcel 5),which has no use permit and is zoned Employment Center (EC), a zone that does not allow a school. In 2018, an application was submitted for a cannabis business,

Jefferson Soul, to operate at 1119 Ream Avenue in Shasta City. Measuring the distance from the property line of Parcel 1, the City determined the new business was more than 600 feet from the school. The proposed cannabis business is fewer than 600 feet from Parcel 4.

Appellant filed a second amended complaint/petition for a writ of mandamus, administrative mandamus, and order on December 6, 2019.[2]Appellant sought a declaration that: states the City's amendment to the Shasta Municipal Code addressing cannabis businesses did not comply with the California Environmental Quality Act (CEQA), orders the City to rescind the law due to insufficient and deficient public notice, begins CEQA review of the ordinance in question, vacates the ordinance's exemption from CEQA review, and stays permitting future and current cannabis industry use within certain zones until CEQA review is complete. Appellant further sought an order requiring the City to measure the buffer zone for cannabis businesses from the perimeter property line of all lots identified in appellant's conditional use permit, notwithstanding the lack of any infrastructure on

[2] The initial complaint was filed by officers of appellant, in pro per; counsel was retained, and the amended complaint filed after the trial court informed them a corporation had to be represented by counsel.

the property. Appellant also sought unspecified attorney fees, general damages, punitive damages, and costs.

On December 18, 2019, appellant also filed a "Notice of Motion and for the Issuance of an Order" (the motion or motion), which sought an order declaring: the 600-foot measurement be made from the perimeter of all property owned by appellant, a 600-foot buffer zone be ordered for all schools, the City had not properly permitted an EC zone to include the cannabis industry, the school property be considered what was included in the 2002 conditional use permit, the City be enjoined from granting the proposed cannabis license within 600 feet of school property, and summary judgment be entered.

The City opposed the motion on the grounds it was procedurally defective, summary judgment was premature, there was insufficient evidence to support granting a preliminary injunction, and the requested relief was not properly obtained through a motion.

On January 9, 2020, appellant filed a request for a CEQA hearing. That same day, at a hearing on

the motion,[3] both attorneys acknowledged that the motion's essence was a determination of the minimum buffer zone under Business and Professions Code section 26054 and section 11362.768, subdivision (c), and how it should be measured, and that "resolution of this issue could resolve the litigation matter." The parties agreed that prompt resolution of this issue would be in all their best interests. They further agreed that the motion will be treated as a declaratory relief complaint pursuant to Code of Civil Procedure section 1060 and respondent stipulated to an actual controversy between the parties, and the parties would submit a statement of facts supporting their position or a jointly agreed statement of facts. Respondent agreed not to issue a cannabis license to Jefferson Soul or any other cannabis business that might fall in appellant's 600-foot buffer zone until the trial court issued its ruling following oral argument. The parties also agreed to a new hearing date and briefing schedule, which superseded the previous schedule.

On February 7, 2020, respondent submitted a proposed undisputed statement of facts, which

---

[3] There are no reporter's transcripts of any proceeding in this case, any recitation of what took place at a hearing is from the minutes or written orders of the trial court.

appellant did not join. That same day, respondent submitted points and authorities in opposition to the declaratory relief action. Also that day, appellant filed a complaint for declaratory relief, regarding the 600-foot zone, which it supported with arguments and exhibits.

The motion was heard on February 13, 2020. According to the trial court's order following the hearing, "[b]oth attorneys acknowledged that the essence of the relief sought is a determination on the minimum 600 foot buffer zone established by Business and Professions Code § 26054 and Health and Safety Code § 11362.768[, subdivision](c) including how it should be correctly measured and resolution of this issue could resolve this litigation matter. The parties agreed that prompt resolution of this issue would be in the best interest of the parties."

The trial court denied the motion, finding appellant did not have vested rights in lots 4 and 5.

On February 20, 2020, appellant filed a notice of appeal from the February 13, 2020 order. The next day, appellant filed an ex parte application and supporting memorandum to stay the trial court's order and grant an injunction. Appellant argued the court's order denying declaratory relief was

erroneous, and urged an injunction against issuing a cannabis use permit during the pendency of the appeal.

At a February 24, 2020 ex parte proceeding, the trial court denied the application, finding "[b]y agreement, scope of writ lead to action of declaratory relief by agreement of parties . . . ." Since appellant's filing of a notice of appeal divested the court of jurisdiction over its order denying declaratory relief, it could not make any further orders regarding the matter while the appeal was pending.

## DISCUSSION

### I

### *Appealability*

How this case was decided below and what claims the trial court did and did not address require us to first determine what can be considered on appeal.

An appeal generally lies only from a final judgment. (Code Civ. Proc., § 904.1, subd. (a)(1).) "A judgment is the final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) Under this rule, "[a] paper filed in an

action does not become a judgment merely because it is so entitled; it is a judgment only if it satisfies the criteria of a judgment." (*City of Shasta Lake v. County of Shasta* (1999) 75 Cal.App.4th 1, 10.) "It is not the form of the decree but the substance and effect of the adjudication which is determinative. As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory." (*Lyon v. Goss* (1942) 19 Cal.2d 659, 670.)

Appellant filed a notice of appeal from the February 13, 2020 order denying the motion for declaratory relief. Although the court never entered a judgment pursuant to this order, the parties stipulated that the motion would be treated as a declaratory relief action, and agreed that resolving this issue could resolve the matter. The court's order likewise reiterated the parties' agreement that resolving the issue regarding the 600-foot buffer zone could resolve the case, and that its prompt resolution was in the parties' interest.

Although the court never addressed appellant's claims apart from the declaratory relief action regarding the 600-foot limit, we find the parties effectively narrowed the dispute to this claim, and the court's denial effectively resolved this sole remaining dispute.

For this reason, we find the matter is appealable as a final judgment, and that our jurisdiction is limited to the claim regarding the 600-foot limit.

"Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from." (*Polster, Inc. v. Swing* (1985) 164 Cal.App.3d 427, 436.) Matters following entry of judgment are generally not part of an appellate court's jurisdiction over the appealed from judgment. (See *Grant v. List & Lathrop* (1992) 2 Cal.App.4th 993, 998 ["Normally an appeal reviews the correctness of a judgment at the time it is rendered and matters occurring later are irrelevant"].) Such is the case here. Appellant filed a notice of appeal from the order denying declaratory relief regarding the 600-foot limit; that order did not address any other of appellant's claims. The trial court correctly concluded the appeal divested it of jurisdiction over that order; to the extent the court addressed other matters in the ex parte action after notice of appeal was filed, those actions are not within our

jurisdiction. Accordingly, we limit our consideration to the correctness of the order denying declaratory relief.

II

*The 600-foot Limit*

Appellant contends the trial court erred in failing to find cannabis businesses could not operate within 600 feet of any of its property.

Business and Professions Code section 26054, subdivision (b) states:

"A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, daycare center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law."

Section 11362.768 states in pertinent part:

"(b) No medicinal cannabis cooperative, collective, dispensary, operator, establishment, or

provider who possesses, cultivates, or distributes medicinal cannabis pursuant to this article shall be located within a 600-foot radius of a school.

"(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures. [¶] . . . [¶]

"(h) For the purposes of this section, 'school' means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes."

We apply a de novo standard of review to questions of statutory interpretation. (*Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1311.) " 'Our fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose.' [Citation.]" (*Carson Citizens for Reform v. Kawagoe* (2009) 178 Cal.App.4th 357, 366; see *Fluor Corp. v. Superior Court* (2015) 61 Cal.4th 1175, 1198.) " ' "We begin with the plain language of the

statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." [Citations.] The plain meaning controls if there is no ambiguity in the statutory language. [Citation.] If, however, "the statutory language may reasonably be given more than one interpretation, ' " 'courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.' " ' " [Citation.]'[Citation.]" (*Fluor Corp.*, at p. 1198.)

We need to look no further here than the text of the relevant statutes. Business and Professions Code section 26054 establishes the 600-foot limit for cannabis businesses and defers how that limit is to be determined to section 11362.768.Under section 11362.768, the 600-foot limit is measured from the property line of the school, and school is defined as the place "providing instruction in kindergarten or any of grades 1 to 12, inclusive," which clearly refers to the place where the children are taught rather than property that is owned by an educational institution but where children are not educated.

The fact that appellant has a conditional use permit allowing educational facilities on lot 4 is of no consequence because appellant has not developed that lot and therefore has no vested right in it. "It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit.[Citations.]" (*Avco Community Developers, Inc. v. South Coast Regional Com*. (1976) 17 Cal.3d 785, 791.) No such right exists until the property owner acts in reliance on the permit or zoning; the government is not estopped from changing what is permitted until the owner's right vests. "[N]either the existence of a particular zoning nor work undertaken pursuant to governmental approvals preparatory to construction of buildings can form the basis of a vested right to build a structure which does not comply with the laws applicable at the time a building permit is issued. By zoning the property or issuing approvals for work preliminary to construction the government makes no representation to a landowner that he will be exempt from the zoning laws in effect at the subsequent time he applies for a building permit or that he may construct particular structures on the

property, and thus the government cannot be estopped to enforce the laws in effect when the permit is issued." (*Id.* at p. 793.)

We conclude the trial court was right, section 11362.768 requires the measurement be taken from the lot or lots with existing school structures, and, under *Avco Community Developers, Inc. v. South Coast Regional Com., supra*, 17 Cal.3d 785, appellant had no vested rights in the undeveloped lots.[4,5]

## DISPOSITION

The judgment (order) is affirmed. Respondent shall recover costs on appeal, if any. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

---

[4] Appellant's claim that the ruling violates its First Amendment rights is not supported by any authority interpreting the First Amendment, and does not describe how it burdens appellant's free exercise of their religion. It is forfeited. (*People v. Hardy* (1992) 2 Cal.4th 86, 150 [appellate court may decline to address argument not supported by citation to relevant authority]; *People v. Harper* (2000) 82 Cal.App.4th 1413, 1419, fn. 4 [an argument is forfeited if it is raised in a perfunctory fashion without any supporting authority].)

[5] We deny respondent's request to take judicial notice of Assembly Bill No. 2650, as the material contained therein is unnecessary to the resolution of this appeal.

/s/

BLEASE, Acting P. J.

We concur:

/s/

DUARTE, J.

/s/

RENNER, J.

Appendix B-1

STEPHEN F. DARGER
Attorney at Law
CA Bar #141205
118 Siskiyou Ave.
Mount Shasta, CA 96067
Telephone (530)925-4443
Fax (530)926-0828
Attorney for: Plaintiff
"I AM" SCHOOL, INC.
et al.

FILED
SUPERIOR COURT
OF CALIFORNIA
COUNTY OF
SISKIYOU YREKA
BRANCH

FEB 18 2020
BY ____/s/_____
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**
**IN AND FOR THE COUNTY OF SISKIYOU**

| **In re:** | **Case No: CVPT 19-01269** |
|---|---|
| "I AM" SCHOOL, INC.<br>et al.<br>Plaintiffs | ORDER OF COURT<br>FOLLOWING<br>HEARING |
| VS. | |
| CITY OF MT. SHASTA<br>(a.k.a. City of Mount Shasta)<br>Defendant | Hearing<br>Date: February 13,<br>2020 Time:.9:30am<br>Dept: 9 |

Appendix B-2

Plaintiffs' Complaint For Declaratory Relief came on for hearing on February 13, 2020 in Department 9. This was as a result of Plaintiffs' Motion for Issuance of an Order heard on January 9, 2020 in Department 9. Stephen F. Darger appeared for Plaintiffs and John S. Kenny appeared for Respondent.

Both Attorneys acknowledged that the essence of the Relief sought is a determination on the minimum 600-foot buffer zone established by Business and Professions Code § 26054 and Health and Safety Code §11362.768(c) including how it should be correctly measured and resolution of this issue could resolve this litigation matter. The parties agreed that prompt resolution of this issue would be in the best interest of the parties.

THE COURT FINDS and ORDERS THAT:

1. . Plaintiff School request for a declaration of its right, by California Statute, to be protected by a minimum 600 foot sensitive use buffer zone around its entire school campus exterior perimeter is denied. This Court's relies on majority opinion held in AVCO COMMUNITY DEVELOPERS, INC., v. SOUTH COAST REGIONAL COMMISSION et al., 17 Cal.3d 785, 791 (1976) in determining a lack of

vested rights attached to Plaintiff School's property lots 057-621-240-000, 057-621-270-000, known as Parcel 4 and Parcel 5 located within Plaintiff's Masterplan of School Campus approved by Defendant City.

THEREFORE, IT IS SO ORDERED

DATED 2-18-20

/s/

KAREN DIXION
JUDGE OF THE SUPERIOR COURT

Appendix C-1

Court of Appeal,
Third Appellate District
Andrea K. Wallin-
Rohmann, Clerk
Electronically FILED on
9/13/2021 by C. Doutherd,
Deputy Clerk

**IN THE**
**Court of Appeal of the State of California**
**IN AND FOR THE**
**THIRD APPELLATE DISTRICT**

"I AM" SCHOOL, INC.,
Plaintiff and Appellant,

v.

CITY OF MOUNT SHASTA,
Defendant and Respondent.

C091575
Siskiyou County
No. CVPT20191269

BY THE COURT:

Appellant's petition for rehearing is denied.

/s/

BLEASE, Acting P.J

Appendix D-1

SUPREME COURT
FILED
NOV 10 2021
Jorge Navarrete Clerk
Deputy

Court of Appeal, Third Appellate District - No. C091575

S271137

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

"I AM" SCHOOL, INC., Plaintiff and Appellant,

V.

CITY OF MOUNT SHASTA, Defendant and Respondent.

---

The petition for review is denied.

CANTI L-SAKAUYE

Chief Justice

## IV. RESPONDENT CLAIM OF NO EVIDENCE OF A TAKING IS IN ERROR. A CLEAR REVOCATION OF RIGHTS EXISTS.

### 1. Appellant correctly asserts that the effect of the appealed Order and Respondent's application of it amounts to a revocation of clearly established rights under a valid CUP granted over Appellant's entire school campus lands.

Respondent takes the position there is no 'taking' of Appellant's property, ignoring evidence of revocation of rights, a form of constructive taking. Appellant's CUP is a contract with the Respondent. (IICT374-375) Contracts constitute property within the meaning of the Fifth Amendment and are susceptible to a "taking" within the meaning of the Takings Clause. *Lynch v. United States*, 292 U. S. 571, 579 (1934). Respondent gave Appellant the right to use and develop the lands designated under the CUP according to the terms of that CUP. Respondent Staff Report acknowledges: "project over 4 lots"; "expansion of the campus"; "new residential dormitories"; "new school facilities will serve 75 students"; "incremental development"; "School Site Selection and Approval Guide of the California State Department of Education" was referred to in the

process. The existing school building was referred to as "the existing campus facility"; Appellant was acknowledged as operating a "School Site". (IICT370-380) Respondent now attempts to take rights away by



having this Court re-define the intent under the CUP of the school residence/dormitories, as nothing more than a private residence – defined in the dictionary as a place where people live.

The distinction is clear. One is for individuals specifically identified to have something to do with the business of the school. The other is simply anyone. Using this interpretation, Respondent takes the position that Appellant's existing school residence/dormitory on lot 2 is not a school building, just a private residence. As for lot 4, Respondent states Appellant can still build a residence under the CUP and use it for the school, but it, like the existing school residence/dormitory on lot 2, just won't ever be considered a school residence/dormitory entitled to any benefits or protection to which schools are otherwise entitled. Appellant is not in the Landlord business. It is a school.

Respondent relies on *Boxer v. City of Beverly Hills* (2016) 246 Cal.App.4th 1212,1218: - view from property interfered with by City planting trees. No right to a view existed and the comparison cannot be made with Appellant's CUP rights where the intrusion against Appellant's rights by their very existence in the first place and then their revocation, is tangible.

Respondent also relies on *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal. 4th 435,462., wherein the Court maintained the position that a legislative land-use measure is not a taking and survives a constitutional challenge so long as the measure bears "a reasonable relationship to the public welfare." 61 Cal. 4th, at 456-459, and n. 11, 351 P. 3d, at 987-990, n. 11.



The Courts have repeatedly stated that a taking is not for "public use" when it is "for the purpose of conferring a private benefit on a particular private party.", as is the case here (*Kelo v. New London*, 545 U.S. 569,477 (2005)). Appellant's CUP exists and is being exercised. The school residence/dormitory on lot 2 is being used properly. The actions of Respondent by publishing a school buffer zone map and refusing to measure from

Appellant's exterior land covered by its' CUP is not a legislative decision, nor has it anything to do with public welfare.

There was no foreseeability. Appellant could not have reasonably anticipated that Respondent would act in the unprecedented way of ignoring the full extent of a school campus envisioned and approved in detail by both parties, in measuring a State mandated radius. The Ream Ave. cannabis license might aspire to improve economic conditions through City taxes, but it does so by taking CUP rights granted on private property put to conventional, non-harmful uses. The result is a taking/revocation of rights which interferes with investment-backed expectations and has an adverse economic impact on Appellant. (IICT395)

Respondent's position that any revocation of rights does not deprive Appellant of viable economic use of the property cannot be supported. Appellant is a private religious international boarding school that, if it loses its rights under its CUP, may very well be driven out of business. (ICT110,111,143,151)(IICT395,401-402,421)



Monetary damage is only one factor. Also to be considered is the "effect of [the loss] in human terms

and the importance of it to the individual in the life situation." (*Bixby v. Pierno*, supra, 4 Cal. 3d 130, 144; *Goat Hill Tavern v. City of Costa Mesa*, supra, 6 Cal.App.4th at p. 1526.) In other words, the nature of the right rather than the actual amount of harm. (*San Benito Foods v. Veneman* (1996) 50 Cal. App. 4th 1889, 1896 [58 Cal. Rptr. 2d 571].) Without an ability to protect children in its school residence/dormitories, and therefore large parts of its school campus, international and out-of-town parents will be reluctant to send their children to board at Appellant's school. A significant portion of Appellant's students board in the school residence/dormitories and are important to the economic viability of Appellant and its ability to carry on business. Although Appellant may be entitled to compensation for loss of ability to use its land as intended and approved by Respondent, and the potential income generated there-from, more valuable than any form of compensation is freedom to continue uninterrupted development of the school campus as contemplated by the overarching CUP and fully protected by minimum 600ft protective radius around the entire campus. (IICT401-2) And that is what Appellant is seeking.

The effect of the Superior Court Order is to revoke rights under a Conditional Use Permit and refuse to acknowledge permitted lands slated for

development as school property and entitled to



the 600ft radius protection. There is no legal authority for allowing parts of an approved development to be dissected out of a CUP and denied rights which have vested under that CUP simply because the entirety of buildings are, as yet, unconstructed. Conditional Use Permits acted and relied upon Vest land use Rights and continue with the land notwithstanding that all land under the CUP has yet to be built upon. Denying land use rights amounts to revocation of those rights. (*Goat Hill, supra*, (pp. 1530-1531)), (AOB-39). This is exactly what Respondent is attempting to do, despite the fact that there has never been a time frame set for completion of Appellant's campus.

Many developments proceed in stages according to the rate money is invested in them or the speed of sales, not unlike Appellant which has been expanding its' campus according to the rate funds donated for that cause are accumulated. If parts of an approved development are allowed to be dissected out of a single CUP covering the entire development lands, then developers will not have the certainty they require to take on large

developments that take an extensive period of time to complete. Most certainly, case law upholding vested rights in developments specifically planned and approved and/or partially constructed, would also be rendered meaningless.

If allowed to segregate currently undeveloped land from a CUP, Respondent will be able to take steps to arbitrarily revoke those rights in their entirety for all undeveloped school property,



including lot 3, no matter its designation for future classrooms, and be encouraged to force Appellant to have to reapply for the right to build at all, at the building permit stage. To allow this would allow Respondent to decimate the planned and approved school campus master plan development under the CUP it granted to Appellant.

**2. Revocation of Rights resulting in certain school property not being able to be used and included as part of a school inhibits a school's ability to protect the children on all its school campus property, a legal requirement.**

All California schools are affected by the Superior Court's decision which amounts to a

revocation of rights over designated and permitted, yet at present undeveloped school property. Respondent wants the Court to ignore this effect of revocation of Appellant's rights and therefore its ability to abide by California law and protect children on the school property which makes up its school campus. Respondent tries to make it simply about compensation.

Section 28(a)(7) of Article I of the California Constitution declares that 'the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where



students and staff have the right to be safe and secure in their persons'. (IICT440) Section 44276.1(a)(1) California Education Code (EDC) states that: 'The Legislature finds and declares that the educational mission of schools may be thwarted when school campuses are not safe, secure, and peaceful'. (IICT442)

Sending a child to school, especially a boarding school such as Appellant's, is with the explicit

understanding that the school will, to the maximum extent of the law, keep the child safe from all threats. It has long been held that "[a] special relationship is formed between a school district and its students, resulting in the imposition of an affirmative duty on the school district to take all reasonable steps to protect its students…[t]his affirmative duty arises, in part, based on the compulsory nature of education." (*M.W. v. Panama Buena Vista Union School District* (2003) 110 Cal.App.4th 508, 517, citing, *Rodriguez v. Inglewood Unified School Dist.* (1986) 186 Cal.App.3d 707, 714-715, California Constitution Art. I, §28, subd. (c) [students have inalienable right to attend safe, secure and peaceful campuses]; California Education Code (EDC) §48200.) and California Code of Regulations(CCR) set out a number of requirements that, if not met, can give rise to liability on the part of school district employees.

EDC §44807 provides: "[e]very teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess." Pursuant to CCR Title 5, §5551 a principal is responsible for the supervision and administration of his school. §5552 provides, "[w]here playground supervision

is not otherwise provided, the principal of each school shall provide for the supervision by certificated employees of the conduct and safety . . . of the pupils of the school who are on the school grounds during recess and other intermissions." The purpose of these laws is to regulate students' conduct "so as to prevent disorderly and dangerous practices which are likely to result in physical injury to immature scholars." (*M.W. v. Panama Buena Vista Union School Dist.*, *supra*, review denied (Oct 01, 2003) [quotations omitted].) Most certainly these same expectations, responsibilities and liabilities apply even more so to boarding schools, such as Appellant.

Denying Appellant the right of the State mandated protection of a minimum 600ft radius around its entire school campus because certain of the permitted lands have, as yet, no building structures constructed, denies Appellant the right to protect the children within its care. That part of Appellant's school property for which the right is denied, becomes unusable as school property. (IICT414-415) In Appellant's situation even after development, with a cannabis business established less than 600ft away, it would be impossible to revive the right to a buffer zone and therefore

maintain the Appellant's ability to protect children within its care on its school campus lands.

A reverse onus would be placed upon Appellant not to build within 600ft of a cannabis business. (IICT414-415)

51

Appellant cannot knowingly put children in harm's way and yet if it expands the campus buildings using school lands which have no protective 600ft radius rights, then it is putting children at risk. Appellant's ability to expand is therefore compromised and the property becomes unusable as safe school property. The result is not just a loss of right to use of property according to original and overarching CUP intent, but is a loss of ability to establish a safe school campus where students are guaranteed the minimum 600ft right of protection.

The importance of protection is particularly true due to the fact that the Ream Ave property less than 600ft away intends to cultivate cannabis. (ICT178) Although Respondent would have everyone believe that such activity will have no effect on the surrounding area, it is well known that adverse impacts do arise from cannabis cultivation including disagreeable odors, negative effects on environment,

unsanitary conditions, negative effects on physical, mental and community health, increased risk of burglary, acts of violence and other such crimes or occupant's attempts to prevent such crimes. Children are particularly vulnerable to the adverse effects of cannabis use and cannabis plants are an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children such as where they congregate at schools. (IICT431-438) The potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that children will be involved or endangered. The risk is not substantially less with any other



type of cannabis business. The 600ft State mandated protective radius is therefore essential for Appellant's entire school campus. (IICT431-438)