

1 Rebecca L. Reed (Bar No. 275833)  
E-mail:rebecca.reed@procopio.com  
2 Justin M. Fontaine (Bar No. 323357)  
E-mail:justin.fontaine@procopio.com  
3 PROCÓPIO, CORY, HARGREAVES &  
SAVITCH LLP  
4 525 B Street, Suite 2200  
San Diego, CA 92101  
5 Telephone: 619.238.1900  
Facsimile: 619.235.0398

6 Attorneys for Petitioner  
7 SAVE THE FIELD

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 SAVE THE FIELD, a California nonprofit public  
benefit corporation,

11 Petitioner,

12 v.

13 DEL MAR UNION SCHOOL DISTRICT, and  
14 DOES 1 through 10, inclusive,

15 Respondent.

Case No. 37-2020-00020207-CU-TT-CTL

**RESPONSE TO RESPONDENT DEL  
MAR UNION SCHOOL DISTRICT'S  
OBJECTIONS TO PETITIONER'S  
OPENING BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF  
MANDATE UNDER THE  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT**

Date: November 18, 2020

Time: 1:30 p.m.

Dept: C-73

Judge: Hon. Joel R. Wohlfeil

Complaint Filed: June 12, 2020

1 Petitioner Save the Field respectfully submits the following Response to Respondent Del Mar  
2 Union School District's (the "District" or "Respondent") Objections to Petitioner's Opening Brief in  
3 Support of Petition for Writ of Mandate under the California Environmental Quality Act (the  
4 "Opening Brief"). Respondent objects to three arguments raised in the Opening Brief, alleging that  
5 those arguments were not adequately raised in the Petition. Such objections are without merit and  
6 must be overruled.

7 First, the Opening Brief raises issues that were discussed in the Petition with enough  
8 specificity to give Respondent notice of the claims Petitioner intended to raise. The Petition expressly  
9 alleges that the Project will have adverse impacts to biological resources (§ D(3)), land use and  
10 planning, specifically that the IS/MND "did not consider whether the Rebuild Project conflicts with  
11 the City's General Plan, specific plan, and local coastal program," (§ D(6)), and that the IS/MND  
12 fails to adequately address the Project's impacts on transportation (§ D(9)).

13 Notably, all of the claims raised in the Petition and Opening Brief were raised as part of the  
14 administrative process before filing this action. Respondent does not allege that Petitioner failed to  
15 exhaust administrative remedies with respect to any of its arguments. Accordingly, Respondent has  
16 had notice of all the claims and has not suffered any prejudice, even if the arguments were not  
17 expressly raised in the Petition. (See, e.g., *Buxbom v. Smith* (1944) 23 Cal.2d 535, 542 [stating,  
18 "matter of pleading becomes unimportant when a case is fairly tried upon the merits and under  
19 circumstances which indicate that nothing in the pleadings misled the unsuccessful litigant to his  
20 injury"]; *Menefee v. Oxnam* (1919) 42 Cal.App. 81, 96 ["The code requires not only a liberal  
21 construction, with a view to substantial justice between the parties, but also that the court shall  
22 disregard any effect in the pleadings which does not affect the substantial rights of the parties"].)

23 Further, the Parties expressly stipulated that the Opening Brief will serve as Petitioner's  
24 Statement of Issues under Public Resources Code section 21167.8. (ROA #27 [stating, "The Opening  
25 Brief will serve as Petitioner's Statement of Issues under Public Resources Code section 21167.8"].)  
26 Public Resource Code section 21167.8 provides in pertinent part,

27 Not later than 30 days from the date that notice of certification of the record of  
28 proceedings was filed and served in accordance with Section 21167.6, the petitioner  
or plaintiff shall file and serve on all other parties a statement of issues which the

1 petitioner or plaintiff intends to raise in any brief or at any hearing or trial.

2 (Pub. Resources Code, § 21167.8, subd. (f).)

3 Under Public Resources Code section 21167.8, a petitioner is required to set forth the specific  
4 issues it intends to raise *after the final administrative record is certified*. Respondent's objections  
5 demand well beyond what is required under California's pleading standards—expecting Petitioner to  
6 set forth each specific argument it intends to raise down to the species of plant at issue before the  
7 certification of the administrative record. At most, the level of detail Respondent seeks is reserved for  
8 the Statement of Issues under Public Resources Code section 21167.8, which the parties stipulated  
9 away from. Accordingly, Respondent's objections must be overruled.

10

11

12 DATED: November 6, 2020

PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP

13

14

By: 

15

Rebecca L. Reed  
Justin M. Fontaine  
Attorneys for Petitioner  
SAVE THE FIELD

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to  
3 the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH  
4 LLP, 525 "B" Street, Suite 2200, San Diego, California 92101. On November 6, 2020, I served  
5 the within documents:

6 **RESPONSE TO RESPONDENT DEL MAR UNION SCHOOL DISTRICT'S OBJECTIONS  
7 TO PETITIONER'S OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
8 MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

9  **BY FACSIMILE** by transmitting via facsimile number (619) 235-0398 the document(s) listed  
10 above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the  
11 transmission confirmation report is attached hereto.

12  **BY U.S. MAIL** by placing the document(s) listed above in a sealed envelope with postage  
13 thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth  
14 below. I am readily familiar with the firm's practice of collection and processing  
15 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal  
16 Service on the same day with postage thereon fully prepaid in the ordinary course of business.  
17 I am aware that on motion of the party served, service is presumed invalid if postal  
18 cancellation date or postage meter date is more than one day after date of deposit for mailing  
19 an affidavit.

20  **BY OVERNIGHT DELIVERY** by placing the document(s) listed above in a sealed overnight  
21 envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth  
22 below. I am readily familiar with the practice of this firm for collection and processing of  
23 correspondence for processing by overnight mail. Pursuant to this practice, correspondence  
24 would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101  
25 in the ordinary course of business on the date of this declaration.

26  **BY E-MAIL OR ELECTRONIC SERVICE (via One Legal Online Court Services):** I  
27 served upon the designated recipients via electronic transmission through the One Legal system  
28 on November 6, 2020. Upon completion of said transmission of said documents, a certified  
receipt is issued to filing party acknowledging receipt by One Legal's system. Once One Legal  
has served all designated recipients, proof of electronic service is returned to the filing party.

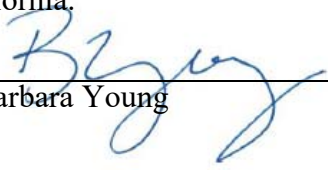
20 Wendy H. Wiles, Esq.  
21 Jeffrey W. Frey, Esq.  
22 ATKINSON, ANDELSON, LOYA,  
23 RUUD & ROMO  
24 20 Pacifica, Suite 1100  
25 Irvine, CA 92618

Telephone: 949-453-4260  
Facsimile: 949-453-4262  
[wendy.wiles@aalrr.com](mailto:wendy.wiles@aalrr.com)  
[jeff.frey@aalrr.com](mailto:jeff.frey@aalrr.com)  
(cc: [Irene.dehart@aalrr.com](mailto:Irene.dehart@aalrr.com))

Attorneys for Respondent,  
Del Mar Union School District

26  (State) I declare under penalty of perjury under the laws of the State of California that the  
27 above is true and correct.

28 Executed on November 6, 2020, at San Diego, California.

  
Barbara Young