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6 SAVE THE FIELD

7
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 CITY OF SAN DIEGO, and DOES 1 through 10,
14 inclusive,

15 Respondent.

16 DEL MAR UNION SCHOOL DISTRICT, a
California public school district,

17 Real Party-in-Interest.
18

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

**[CALIFORNIA CODE OF CIVIL
PROCEDURE §§ 1085 AND 1094.5]**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT (PUB. RESOURCES
CODE, §§ 21168; 21168.5) (CEQA)]**

19
20 Petitioner SAVE THE FIELD (“Save the Field” or “Petitioner”), a California nonprofit
21 public benefit corporation alleges as follows:

22 **THE PARTIES**

23 1. Petitioner Save the Field is a California nonprofit public benefit corporation existing
24 under the laws of the State of California. Petitioner’s principal place of business is in Redding,
25 California. Petitioner’s purpose is to save the fields located at the Del Mar Heights School and to
26 assure that government agencies, including the City of San Diego and Del Mar Union School
27 District, act in a lawful manner. Petitioner has a clear, present and beneficial right to the
28 performance of Respondent’s duty to carry out its obligations in conformity with all applicable

1 state, federal, and other laws.

2 2. Petitioner’s members are residents within the City of San Diego and within the
3 boundaries of the Del Mar Union School District. Petitioner’s members are residents and
4 taxpayers within the City of San Diego and geographical area of the Del Mar Union School
5 District.

6 3. Respondent and Defendant CITY OF SAN DIEGO (the “City” or “Respondent”) is
7 a local government agency and political subdivision. The City has taken the actions, as fully
8 alleged below by which Petitioners are aggrieved and of which Petitioners seeks review by this
9 Court.

10 4. Petitioners are informed and believe, and on that basis allege, Defendant and Real
11 Party-in-Interest DEL MAR UNION SCHOOL DISTRICT (the “District”) is a California school
12 district, a California agency.

13 5. Petitioner is currently unaware of the true names and capacities of Real Parties in
14 Interest DOES 1 through 10, inclusive. DOES 1 through 10 includes are persons or entities
15 unknown to Petitioner who claim some legal or equitable interest in the Subject Property and/or the
16 Project. Petitioner will amend this Petition to show the true names and capacities when such names
17 and capacities become known.

18 **JURISDICTION AND VENUE**

19 6. This Court has jurisdiction over this action pursuant to California Code of Civil
20 Procedure sections 1085 and 1094.5, and pursuant to Public Resources Code sections 21168 and
21 21168.5.

22 7. Petitioner has no plain, speedy and adequate remedy at law and has exhausted all
23 available administrative remedies.

24 8. Venue for this action properly lies in the San Diego County Superior Court because
25 the subject property and the District’s Project are located in San Diego County.

26 9. Petitioner complied with Public Resources Code section 21167.5 by mailing written
27 notice of the commencement of this action to Respondent prior to filing suit. A true and correct
28 copy of the Notice of Commencement of Action sent to Respondent pursuant to Public Resources

1 Code section 21167.5 is attached hereto as **Exhibit A**.

2 10. Additionally, Petitioner sent Respondent a Notice of Intent to Sue, a true and correct
3 copy of which is attached hereto as **Exhibit B**. As of this date, Respondent has not responded to
4 either Notice.

5 **GENERAL ALLEGATIONS**

6 11. Petitioner petitions this Court for a Writ of Mandate (“Petition”) directed to
7 Respondent.

8 12. Petitioner challenges Respondent’s approval of a Coastal Development Permit
9 (“CDP”), Conditional Use Permit (“CUP”), Site Development Permit (“SDP”) and Planned
10 Development Permit (“PDP”) (collectively, the “Approvals”) issued to the Del Mar Union School
11 District in connection with the Del Mar Heights School Rebuild (the “Rebuild Project”).

12 13. The Rebuild Project includes the demolition of the existing Del Mar Heights
13 Elementary School and construction of a much expanded school on a 10.85 acre site in a highly
14 sensitive coastal zone adjacent the Torrey Pines State Reserve. The City approved the CDP based
15 upon a “focused” environmental impact report and a mitigated negative declaration *that the San*
16 *Diego Superior Court ordered vacated*. The City did so with knowledge of the Court’s order
17 vacating the MND and separately, knowing that the law does not permit a project’s environmental
18 review to be split across two types of environmental review documents. See *Farmland Protection*
19 *Alliance v. County of Yolo* (2021) 71 Cal. App. 5th 300. As a consequence, the City, among other
20 reasons, did not comply with the California Environmental Quality Act (“CEQA”) or the Coastal
21 Act.

22 14. The City issued the CDP pursuant to San Diego Municipal Code §126.0702(a) and
23 the decision was not appealable to the California Coastal Commission.

24 15. The purpose of CEQA (Pub. Res. Code §21000 *et seq.*) is to maintain a quality
25 environment for the people of the State of California now and in the future. §2100(a). “[T]he
26 overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the
27 quality of the environment give primary consideration to preventing environmental damage.” *Save*
28 *Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal. App.4th 99,

1 117. CEQA must be interpreted “so as to afford the fullest, broadest protection to the environment
2 within reasonable scope of the statutory language.” *Friends of Mammoth v. Board of Supervisors*
3 (1972) 8 Cal. 3d 247, 259.

4 16. The Coastal Act of 1976 (Pub. Res. Code §30000 *et seq.*) (the “Coastal Act”) is the
5 legislative continuation of the coastal protection efforts commenced when the People passed
6 Proposition 20. See *Ibarra v. California Coastal Comm.* (1986) 182 Cal. App. 3d 687, 693. One of
7 the primary purposes of the Coastal Act is the avoidance of deleterious consequences of
8 development on coastal resources. *Pacific Legal Foundation v. California Coastal Comm.* (1982)
9 33 Cal. 3d 158, 163. The Act must be liberally construed to accomplish its objectives. Coastal Act
10 §30009.

11 17. The Coastal Act’s goals are binding on local government and include, inter alia,
12 maximizing, expanding and maintaining public access (§ §30210-14), expanding and protecting
13 public recreation opportunities (§§ 30220-24) and protecting and enhancing land resources
14 (§§20240-44). **The supremacy of these statewide policies over local, parochial concerns is a**
15 **primary purpose of the Coastal Act.** *Pratt Construction Co. v. California Coastal Comm.* (2008)
16 162 Cal. App. 4th 1068, 1075-76.

17 **A. The Del Mar Union School District Allocates \$56,000,000 in Proposition 39**
18 **Measure MM Funds for the Demolition of an Existing School and Construction of**
19 **a Substantially Larger New School In a Highly Sensitive Coastal Zone Adjacent**
20 **Torrey Pines State Reserve.**

21 18. The Rebuild Project is the product of the passage of Proposition 39 Measure MM,
22 which authorized One Hundred and Eighty-Six Million Dollars (\$186,000,000) in bond funding for
23 improvements to Del Mar Union schools.

24 19. The Strict Accountability in Local School Construction Bonds Act of 2000 (Ed.
25 Code §§ 15264 *et seq.*) [“Proposition 39”] “amended the state Constitution to create an exception
26 to the 1 percent limit on ad valorem taxes on real property, and to reduce from two-thirds to 55
27 percent the number voters required to approve any bonded indebtedness proposed to be incurred by
28 a school district for the ‘construction, reconstruction, rehabilitation, or replacement of school

1 facilities””. *Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal.
2 App. 4th 986, 993.

3 20. The intent of Proposition 39 was to ensure that bond expenditures are in strict
4 conformity with the law, to allow taxpayers to directly participate in the oversight of school
5 expenditures, to allow for the public to be alerted to any waste or improper expenditure of school
6 construction money, and to ensure that “unauthorized expenditures of school construction bond
7 revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any
8 improper expenditures.” (Ed. Code § 15264).

9 21. The Rebuild Project lies in a sensitive coastal zone adjacent the Torrey Pines State
10 Reserve and involves the complete demolition of the entirety of Del Mar Heights Elementary
11 School (the “School”), a K-6 elementary school consisting of 53,406 square feet of improvements
12 with an enrollment in the years 2019-2021 of 300-340 students. The Rebuild Project proposes to
13 construct a new school with an increase of 14,417 square feet in excess of the existing school
14 improvements. The Fifty-Six Million Dollars (\$56,000,000) of the Proposition Measure MM funds
15 have been earmarked for the Rebuild Project.

16 22. The existing Del Mar Heights School is located on a 10.85 acre site at 13555
17 Boquita Drive in San Diego, California. On the northerly side of the school campus is a number of
18 detached buildings, a parking lot, and other incidental improvements. A grassy field and two
19 baseball fields sit on the remaining portion of the site.

20 23. The lion’s share of the school is directly adjacent to the Torrey Pines State Reserve
21 Extension, which is a protected State Natural Reserve and is located within the City of San Diego’s
22 Multiple Habitat Preservation Area and is subject to the protections under the City’s Multiple
23 Species Conservation Plan. As the California Department of Parks and Recreation has recognized,
24 the reserve “is environmentally very sensitive and important regionally.”

25 24. In addition to its location next to the protected reserve, the school sits in a highly
26 sensitive Coastal Overlay Zone. (See San Diego Municipal Code § 132.0402.) The school is also
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28

1 situated in a “Very High Fire Hazard Severity Zone.” California has designated the location of the
2 School as an area with the very highest risk of wildfire.¹

3 25. In 2018, the District endeavored to “rehabilitate” the school campus and placed a
4 Proposition 39 (Cal. Const. art. 13A §1(b)(3)(A) & (B)) bond measure – Measure MM – on the
5 ballot asking voters to approve \$186,000,000 in funding payable from the voters by exceeding the
6 statutory 1% cap on ad valorem taxes. Measure MM passed by at least 55% of the vote and the
7 Rebuild Project for the school is being funded with \$56,000,000 of the Measure MM bond funds.

8 26. While the Rebuild Project was pitched to the voters as a “rehabilitation project,” it
9 actually proposes to demolish the existing 52,406 foot school and to replace it with 66,823 feet of
10 new construction, expanding the school’s footprint over the entire width of the school site. The
11 Rebuild Project also includes a redesign of the the existing campus and significantly increased the
12 size of the school’s paved parking lot which will stretch the entire width of the campus.

13 27. The 14,400 ft expansion of the school and significant extension of the parking lot
14 comes at the cost of the current school’s grassy fields, which are currently used by the community
15 after school hours. The school’s grassy fields will be reduced by 41,643 feet (nearly one acre). In
16 other words, the school is swapping grassy playfields for a paved parking lot.

17 **B. In an Effort to Meet its Ambitious Project Schedule, Del Mar Union School**
18 **District Short-Circuits CEQA review and prepares a deficient Mitigated Negative**
19 **Declaration, Summarily Concluding that the Rebuild Project Would Have No**
20 **Significant Impacts on the Environment.**

21 28. From the early planning stages of the Rebuild Project, it was the District’s intention
22 to begin demolition and construction of the existing campus in the summer of 2020. In a strained
23 effort to meet its ambitious project schedule, the District short-circuited the normal CEQA review
24 process. Instead of preparing an EIR, the District prepared an Initial Study/Mitigated Negative
25 Declaration (“IS/MND”) which summarily concluded that the Rebuild Project would have no
26 significant impacts on the environment.

27
28 ¹<https://gis.data.ca.gov/datasets/789d5286736248f69c4515c04f58f414>.

1 29. The District—*acting as its own lead agency*—also gave significant impetus to the
2 Rebuild Project which foreclosed alternatives and mitigation measures. The District spent nearly
3 \$1.1 million in Measure MM funds prior to the certification of its MND. Notably, the District spent
4 \$956,645 in architect fees (representing 34% of the \$2,800,000 budget), in connection with
5 preparing the current design. The District first submitted pre-check documents (thereby incurring
6 significant architectural costs) to the Division of the State Architect on February 11, 2020, *before*
7 *the MND was first circulated for public review on February 20, 2020.*

8 30. The District expended significant costs in connection with the current design, and
9 foreclosed the consideration of any project alternatives or mitigation measures that were raised
10 during the CEQA process. Indeed, the District’s preparation of detailed (and expensive)
11 construction plans are the very type of bureaucratic and financial momentum the California
12 Supreme Court has warned of—the District knew that it was going to approve its own
13 environmental document and therefore moved forward with preparing detailed construction
14 documents and solidifying the current design regardless of the environmental consequences.²

15 31. As a consequence, the IS/MND not surprisingly contained many factual and legal
16 deficiencies, prompting a significant number of comment letters raising concerns related to the
17 Rebuild Project’s potentially significant impacts to the environment. For example, in response to
18 the District’s IS/MND, the California Department of Parks and Recreation wrote that given the
19 school’s location adjacent to the Reserve, and “[b]ecause this land is environmentally very
20 sensitive and important regionally [State Parks has] several concerns regarding the proposed
21 Project that need to be better addressed or redesigned before the Draft MND is completed.”
22 Additionally, the Sierra Club North County Coastal Group expressed its disappointment that its

23 _____
24 ² The California Supreme Court has stated,

25 “[T]he later the environmental review process begins, the more bureaucratic and financial
26 momentum there is behind a proposed project, thus providing a strong incentive to ignore
27 environmental concerns that could be dealt with more easily at an early stage of the project. This
problem may be exacerbated where, as here, the public agency prepares and approves the EIR for its
own project. For that reason, ‘EIRs should be prepared as early in the planning process as possible to
enable environmental considerations to influence project, program or design.’ ”

28 *(Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal. (1988) 47 Cal.3d 376, 395, quoting Bozung v. Local
Agency Formation Com. of Ventura County (1975) 13 Cal.3d 263, 282.)*

1 “concerns about protection of the adjacent reserve have not received adequate consideration to
2 date.” Save the Field also heavily commented on the District’s IS/MND and submitted comments
3 from technical experts at RK Engineering Group, Inc. regarding a number of deficiencies set forth
4 in the District’s IS/MND.

5 32. Regardless of the above comments and determined to proceed with the Rebuild
6 Project as quickly as possible, on May 12, 2020, the District approved the Rebuild Project and
7 adopted the MND.

8 **C. The District Refuses to Comply with the California Coastal Act Rebuffing Its**
9 **Requirement to Apply for a Coastal Development Permit, Which is Required for**
10 **Development in a Coastal Zone.**

11 33. At the same time the District approved its own deficient MND, the District refused
12 to submit an application for a Coastal Development Permit. The District unilaterally and
13 inexplicably contended that it need not do so because it is a School District despite the express
14 terms of the California Coastal Act which state that “any person . . . wishing to perform or
15 undertake any development in the coastal zone . . . shall obtain a coastal development permit.”
16 (Pub. Resources Code, § 30600(a).) “Person” is broadly defined to include any “district, county,
17 city and county, city, town, the state, and any of the agencies and political subdivisions of those
18 entities.” (Pub. Resources Code, §§ 21066; 30600(a).)

19 34. And the District maintained this position despite receiving an email from the
20 California Coastal Commission on May 19, 2020, confirming the District’s obligation to apply for
21 and obtain a CDP stating, inter alia, as follows “(a)s Commission staff clarified to the school
22 district, with concurrence from Raynard Abalos (cc’ed on this e-mail) of the City of San Diego,
23 while the school project will be reviewed by the City due to its location within their permit
24 jurisdiction of the coastal zone, the redevelopment of the school site would require a coastal
25 development permit (CDP) be issued by the City, as the CDP is a state-required permit that would
26 be reviewed by the City pursuant to their Commission-certified Local Coastal Pro.”

27 35. Only as a consequence of letters issued by Petitioner’s counsel to the California
28 Division of State Architect (“DSA”) – the agency responsible for issuing building permits for

1 school improvements – notifying DSA of the District’s position did the District finally agree to
2 comply with the City’s Coastal Development Permit application requirement.

3 36. At the same time, Save the Field filed a Petition for Writ of Mandate challenging the
4 District’s deficient MND (“Petition”). See *Save the Field v. Del Mar Union School District* San
5 Diego Superior Court Case No. 37-2020-00020207-CU-TT-CTL (the “Underlying Action”).
6

7 **D. The Trial Court Finds that the District’s MND Violates CEQA and Orders it**
8 **Vacated.**

9 37. Following a hearing on Save the Field’s Petition in the Underlying Action, the Court
10 found that there was substantial evidence supporting a fair argument that certain aspects of the
11 Rebuild Project may have a significant environmental effect. As a consequence, it ordered the
12 District to vacate its Resolution approving the MND.

13 38. In oral argument at the hearing on the merits of Save the Field’s Petition, the
14 District asked the Court to allow it to prepare a “Focused” EIR in lieu of its MND. In response,
15 Save the Field’s Counsel explained why a “Focused” EIR could not serve as the standalone
16 environmental document for the entire Rebuild Project, and in foretelling fashion explained that the
17 City of San Diego would not issue a Coastal Development Permit on the sole basis of a “Focused”
18 EIR that merely “fixed” the issues in the defective MND.

19 39. The Court then asked the Parties for supplemental briefing concerning the
20 appropriate CEQA remedy. Only then did the District abandon its request for a “Focused EIR” and
21 instead asked the Court to keep its MND alive permitting it to merely “fix” the issues in the MND.
22 The trial court did not grant the District’s request and instead ordered that the District was “...left
23 with three choices if the Rebuild Project is to go forward: it may prepare and circulate a complete
24 EIR, a ‘focused’ EIR or a second MND.” Thereafter, the Court entered judgment ordering the
25 District to vacate its MND.

26 **E. The District Prepares a “Focused” EIR to Replace the Vacated MND and**
27 **Separately, Resurrects the Vacated MND by Board Resolution and Submits Both**
28 **Environmental Documents to the City of San Diego for Purposes of Obtaining a**

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Coastal Development Permit.

40. Subsequently, the District’s Board issued Resolution 2021-11 which vacated the MND while concurrently resurrecting it. Specifically, the Resolution explains that the Board “*approves, adopts, and certifies the MND*” (that the trial court ordered vacated). It also adopted a Focused EIR.

41. Notably, in its Notice of Preparation and Notice of Decision issued by the District to the public with respect to its Focused EIR, the District made no mention of its intent to prepare and adopt the vacated MND.³

F. The City Issues a CDP in Reliance on a “Focused” EIR and a Court-Ordered Vacated MND.

42. Save the Field extensively commented during the City’s review of the District’s application for a Coastal Development Permit (and CUP, SDP and PDP).

43. In response, the City notified Save the Field that the environmental action for the Rebuild Project was not appealable. The City stated, inter alia, “**[d]evelopment on the Del Mar Heights School project site is covered under the Del Mar Unified School District’s Focused EIR and MND...The City of San Diego, as a Responsible Agency pursuant to CEQA Statute section 21069 and CEQA Guidelines Section 15096, has determined that the previously Focused EIR and MND adequately addressed the project....no further documentation is required by CEQA.**”

³Following entry of judgment, Save the Field appealed the Court’s judgment permitting the District to prepare a “Focused” EIR in place of the vacated MND. As explained in *Farmland Protection Alliance v. County of Yolo* (2021) 71 Cal. App. 5th 300; 286 Cal.Rptr.3d 227, 229, Public Resources Code

21168.9 does not authorize a trial court to split a project’s environmental review across two types of environmental review documents (i.e., a negative declaration or mitigated negative declaration and an environmental impact report). The Act requires an agency to prepare a full environmental impact report when substantial evidence supports a fair argument that any aspect of the project may have a significant effect on the environment. Section 21168.9 was enacted to provide a trial court with flexibility in fashioning remedies to ensure compliance with the Act; it does not authorize a trial court to circumvent the mandatory provisions thereof. Indeed, to find otherwise would strike a death knell to the heart of the Act, which is the preparation of an environmental impact report for the project, as provided in the third tier of the environmental review process.

1 44. In other words, the City relied on the Focused EIR and separately, the court ordered
2 vacated MND to find that the requirements of CEQA were satisfied.

3 45. Subsequently, and over Save the Field’s objections, the City approved and issued a
4 Coastal Development Permit for the Rebuild Project.

5 46. The City violated CEQA and the Coastal Act by relying on a vacated MND and
6 separately, relying on two separate environmental documents for the Rebuild Project when it issued
7 the CDP.

8 **G. The City Could Not Make Findings Required by the San Diego Municipal Code**
9 **for Approval of the Permits.**

10 47. Separately, the City violated the SDMC by failing to make findings required prior to
11 the issuance of the Permits.

12 48. The San Diego Municipal Code (“SDMC”) requires as a precondition to issuing a
13 CDP the following findings: (1) the proposed coastal development will not encroach upon any
14 existing physical accessway that is legally used by the public or any proposed public accessway
15 identified in a Local Coastal Program land use plan; and the proposed coastal development will
16 enhance and protect public views to and along the ocean and other scenic coastal areas as specified
17 in the Local Coastal Program land use plan; (2) the proposed coastal development will not
18 adversely affect environmentally sensitive lands; and (3) the proposed coastal development is in
19 conformity with the certified Local Coastal Program land use plan and complies with all
20 regulations of the certified Implementation Program.

21 49. The Coastal Act states that scenic and visual qualities of the coastal areas shall be
22 considered and protected as a resource of public importance.

23 50. The Torrey Pines Community Plan (“Community Plan”) explains that the Torrey
24 Pines community planning area possesses many highly scenic open space areas and dramatic
25 vistas. Torrey Pines also has a number of road segments that have scenic qualities worthy of formal
26 recognition and protection.

27 51. Indeed, the Community Plan explains that “[s]ignificant resource areas” include the
28 “Torrey Pines State Reserve Extension,” and that future development adjacent to the Torrey Pines

1 State Reserve Extension shall provide adequate buffer areas and setbacks to avoid significant
2 visual impacts.

3 52. The Rebuild Project does not preserve the scenic and visual qualities of the Reserve.
4 The Rebuild Project will greatly expand the footprint of the existing campus across the entirety of
5 the site, which will result in the construction of new buildings closer to the Reserve and diminish
6 views to the ocean and to the Reserve from the surrounding areas.

7 **H. The Rebuild Project Fails to Conform to the Certified Local Coastal Plan.**

8 53. The District’s Focused EIR and Court-ordered vacated MND omit any analysis of
9 the Rebuild Project’s consistency with the City of San Diego General Plan or the Torrey Pines
10 Community Plan. The District’s post-hoc analysis of the Rebuild Project’s conformity with the
11 Torrey Pines Community Plan, first analyzed in response to comments to the District’s inadequate
12 MND, omits many of the obvious inconsistencies with the Plan, including how it is consistent with
13 parks and recreation and development near the Reserve.

14 54. As one example, the District fails to recognize the Rebuild Project’s inconsistency
15 with the Community Plan goal to “provide adequate park and recreation facilities” by securing
16 joint use agreements with the elementary schools. The Rebuild Project’s significant reduction in
17 outdoor recreation space is directly contrary to this goal.

18 55. Indeed, the Rebuild Project proposes to reduce the size of the open/community
19 accessible area by 61,340 square feet. The City’s General Plan, Recreational Element, establishes a
20 population-based park requirement of 2.40 usable acres per 1,000 population. As set forth in the
21 Torrey Pines Community Plan, the potential buildout population of the community area is 7,000
22 and would require 16.80 usable acres of park space. The only park identified in the Torrey Pines
23 community plan area is the Crest Canyon Neighborhood Park, which has approximately 1.5 acres
24 of usable park area. Thus, the Torrey Pines community planning area is 15.30 acres short of its
25 requirements.

26 56. The Torrey Pines Community Plan recognizes the need for additional park space
27 and expressly contemplates a joint use of the Del Mar Heights Elementary School to assist with
28 fulfilling its shortfall. Instead, the Rebuild Project will diminish the availability of usable park area

1 even further by reducing the existing grassy playfields available to the public by at least 41,643
2 square feet (.96 acres).

3 57. Further, the Community Plan explains that the area of Torrey Pines located south of
4 Carmel Valley Road “is heavily influenced by Torrey Pines State Reserve and Los Penasquitos
5 Canyon Preserve and Lagoon.” Most of this portion of the community is designated open space to
6 protect the lagoon and resources within Torrey Pines State Park Reserve Extension. The
7 Community Plan requires that “[n]ew development adjacent to and impacting biologically sensitive
8 areas shall be responsible for the restoration and enhancement of that area.” Despite the Rebuild
9 Project’s impacts on the Reserve, the District has refused to study and commit to mitigating the
10 Project’s impacts.

11 **I. The Rebuild Project Runs Afoul of the Torrey Pines Community Plan Brush**
12 **Management Guidance.**

13 58. The Torrey Pines Community Plan explains that “[b]ecause of the abundance of
14 natural open space areas including canyons rich with native vegetation, special brush management
15 consideration and enforcement should be provided within the Torrey Pines planning area.”

16 59. The Rebuild Project proposes alternative compliance for an expanded, fully
17 irrigated Brush Management Zone One condition measuring 43-feet with no Brush Management
18 Zone Two. However, with the Coastal Zone, Zone Two may only be reduced by 30 feet, leaving a
19 balance of 35 feet. The Rebuild Project does not comply with the requirement.

20 **J. There is no Analysis of Impacts to Public Health, Safety and Welfare Occasioned**
21 **by the Increased Risk of Wildfire on Account of the Rebuild Project’s Location in**
22 **a “Very High Fire Hazard Severity Zone” and Proximity to the Reserve.**

23 60. The District’s Rebuild Project is located in the most extreme fire hazard zone in
24 California – a “Very High Fire Hazard Severity Zone” and does not comply with the 100-foot
25 setback requirement. And the Focused EIR fails to provide the necessary related public disclosure
26 of this fact.

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1 61. Additionally, the Rebuild Project fails to consider impacts to wildfire evacuation,
2 which can have significant adverse impacts on first responder’s ability to respond to any wildfire at
3 or near the Reserve.

4 62. A Preliminary Fire Protection Analysis Report dated August 16, 2020 with respect
5 to the Rebuild Project concluded that “there are serious deficiencies in the proposed building
6 configurations and mitigations related to CEQA Significant Impacts related to wild fire safety as
7 required for new projects and residential developments”. The Report continues “it is unknown if
8 the process of evacuating students from the school during a wildfire event has been analyzed” and
9 “[t]he existing evaluation route for the school and surrounding residential neighborhoods does not
10 allow for an effective simultaneous evacuation and ingress of emergency vehicles due to narrow,
11 congested streets”. The Report also states “[i]nadequate emergency access is a Significant Adverse
12 Impact according to Appendix G, XVI Transportation/Traffic of the California Environmental
13 Quality Act (CEQA) and must be mitigated in the Project planning documents and process.”

14 63. A second fire study dated August 17, 2020 concluded that “evacuation is a major
15 concern as the existing road network is inadequate for ingress and egress during an emergency.”
16 The foregoing issues were not evaluated at all in environmental review.

17 **K. The Findings Necessary for a SDP Were not Made.**

18 64. The SDMC requires the decision-making body to support a decision to grant a Site
19 Development Permit for projects located in Environmentally Sensitive Lands (“ESL”) with a
20 finding that the site in question is physically suitable for the design and siting of the proposed
21 development such that the development will result in minimum disturbance to environmentally
22 sensitive lands.

23 65. Impacts to ESL were not evaluated and will require deviations from critical brush
24 management regulations. Further, given the Rebuild Project’s increase of risk of wildfire and
25 proximity to the Reserve, the Site is not physically suitable for the design and siting of the Rebuild
26 Project.

27 **L. The Rebuild Project Was Not Analyzed for Consistency with the City’s Climate**
28 **Action Plan in Violation of CEQA.**

1 66. The City did not analyze and therefore, assure that the Rebuild Project complies
2 with the City's Climate Action Plan ("CAP") and its accompanying conformance checklist ("CAP
3 Checklist") which constitutes a separate and significant violation of CEQA Guidelines Section
4 15064.4.

5
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7 **FIRST CAUSE OF ACTION**

8 **(Writ of Mandamus [Civ. Proc. Code §§ 1085 and 1094.5])**

9 67. Petitioner incorporates by reference each and every allegation contained above
10 below as though the same were set forth in full herein.

11 68. Respondent approved the CDP, CUP, SDP and PDP without following the law, inter
12 alia, CEQA, the Coastal Act and the SDMC, as follows:

- 13 a. Approving the CDP on the basis of a Court-ordered vacated MND and a "Focused"
14 EIR;
- 15 b. Finding that City the environmental action for the Rebuild Project was not
16 appealable on account of the City's reliance on the "Focused" EIR and Court-
17 ordered vacated MND;
- 18 c. Without making findings required by the SDMC for approval of permits;
- 19 d. Without making findings of the Rebuild Project's consistency with the City of San
20 Diego General Plan and Torrey Pines Community Plan;
- 21 e. Given that the Rebuild Project does not comply with Brush Management
22 requirements;
- 23 f. In the absence of any analysis of impacts to public health, safety and welfare
24 occasioned by the increased risk of wildfire on account of the Rebuild's Project's
25 location in a "Very High Fire Hazard Severity Zone" and proximity to the Torrey
26 Pines State Reserve;
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- 1 g. Without making the necessary findings for a SDP, including a finding that the site in
2 question is physically suitable for the design and siting of the proposed development
3 and that it will result in minimum disturbance to environmentally sensitive lands;
4 h. Without any analysis as to whether the Rebuild Project is consistent with the City’s
5 Climate Action Plan.

6 69. For each of the foregoing reasons, Respondent failed to proceed in the manner
7 required by law and committed a prejudicial abuse of discretion in that its decisions are not
8 supported by the findings and the findings are not supported by law. As a consequence, each of the
9 foregoing reasons independently compels setting aside the City’s Approvals set forth above.

10 **SECOND CAUSE OF ACTION**

11 **(Violation of the California Environmental Quality Act)**

12 **[Public Resources Code section 21000 *et seq.*]**

13 70. Petitioner incorporates by reference each and every allegation contained in each
14 paragraph above and below as though the same was set forth in full herein.

15 71. Respondent is charged with the authority to regulate and administer land use
16 activities within its jurisdiction, subject at all times to the obligations and limitations of all
17 applicable state, federal and other laws, including CEQA, the CEQA Guidelines, the California
18 Planning and Zoning Law, and the California Coastal Act.

19 72. Respondent acted as the “Responsible Agency” with respect to issuing the
20 Approvals at issue in this case.

21 73. The MND fails to comply with CEQA as the trial court found in the Underlying
22 Action. As a consequence, the trial court ordered vacated the Resolution approving the MND,
23 which the District’s Board then vacated. The District’s action to “resurrect” the vacated MND is
24 void as a matter of law. As a consequence, the MND is insufficient to support a decision on the
25 Rebuild Project.

26 74. In addition, the Respondent’s reliance on the “Focused” EIR is in derogation of
27 CEQA. CEQA requires an agency to prepare a full environmental impact report when substantial
28 evidence supports a fair argument that any aspect of the project may have a significant effect on the

1 environment. See *Farmland Protection Alliance, supra.*, 71 Cal. App. 5th 300; 286 Cal.Rptr.3d at
2 229, PRC § 21168.9. Here, the MND was vacated and the District did not prepare a full EIR. As a
3 consequence, Respondent was not entitled to rely on a “Focused EIR” for the purpose of issuing a
4 CDP.

5 75. Further, Respondent’s reliance on the “Focused” EIR along with the vacated MND
6 violates CEQA. CEQA does not permit a project’s environmental review to be split across two
7 types of environmental documents. See *Farmland Protection Alliance, supra.*, 71 Cal. App. 5th
8 300; 286 Cal.Rptr.3d at 229, PRC § 21168.9.

9 76. In addition, Respondent’s failure to analyze the Rebuild Project’s consistency with
10 the City’s Climate Action Plan violated CEQA.

11 **THIRD CAUSE OF ACTION**

12 **(Declaratory Relief)**

13 77. Petitioner incorporates by reference each and every allegation contained above and
14 below as though the same were set forth in full herein.

15 78. An actual and substantial controversy has arisen between Petitioner and Respondent
16 with respect to the validity of the Approvals issued by the City.

17 79. Petitioner desires a judicial determination with respect to the legal force and effect
18 of the actions taken by the City. Such declaration is necessary at this time so that Petitioner and
19 Respondent can ascertain the legal force and effect of the actions taken by Respondent, and is
20 appropriate because it will obviate the need for future legal action between the parties regarding the
21 same subject matter.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner prays for relief as follows:

- 24 1. Alternative and peremptory writs of mandate commanding the Respondent
25 to vacate its approvals of the CDP, CUP, SDP and PDP;
- 26 2. An injunction suspending any and all activity pursuant to Respondent’s
27 Approvals that will prejudice until Respondent has fully complied with all
28 requirements of the California Environmental Quality Act, the Coastal Act

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and SDMC and all other applicable state and local laws, policies, ordinances and regulations as directed by the Court;

3. A judicial determination that the City’s Approvals are invalid;

4. Petitioner also seeks the following relief:

- a) For the costs of suit herein;
- b) For an award of attorneys’ fees and costs pursuant to Code of Civil Procedure section 1021.5; and,
- c) For such other and further relief as the Court deems just and proper.

DATED: February 8, 2022

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

By: _____
Rebecca L. Reed
Attorneys for Petitioner
SAVE THE FIELD

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VERIFICATION

I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof.

I am the Chief Financial Officer of Save the Field, a California nonprofit public benefit corporation, Petitioner in this action, and I am authorized to make this verification for and on its behalf. The matters stated in the foregoing documents are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ___ the day of February, 2022, at San Diego, California.

Shana Khoury