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7 SAVE THE FIELD

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

11 SAVE THE FIELD, a California nonprofit public
12 benefit corporation,

13 Petitioner,

14 v.

15 DEL MAR UNION SCHOOL DISTRICT, and
16 DOES 1 through 10, inclusive,

17 Respondent.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

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

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

18
19 Petitioner SAVE THE FIELD (“Save the Field” or “Petitioner”), a California nonprofit
20 public benefit corporation alleges as follows:

21 **THE PARTIES**

22 1. Petitioner Save the Field is a California nonprofit public benefit corporation existing
23 under the laws of the State of California. Petitioner’s principal place of business is in Redding,
24 California. Petitioner’s purpose is to save the fields located at the Del Mar Heights School.
25 Petitioner has a clear, present and beneficial right to the performance of Respondent’s duty to carry
26 out its obligations in conformity with all applicable state, federal, and other laws.

27 2. Respondent DEL MAR UNION SCHOOL DISTRICT (the “District” or
28 “Respondent”) is a California school district, a California agency. Respondent has taken the

1 actions, as fully alleged below, by which Petitioner is aggrieved and of which Petitioner seeks
2 review by this Court.

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

8 JURISDICTION AND VENUE

9 4. This Court has jurisdiction over this action pursuant to California Code of Civil
10 Procedure sections 1085 and 1094.5, and pursuant to Public Resources Code sections 21168 and
11 21168.5.

12 5. Petitioner has no plain, speedy and adequate remedy at law and has exhausted all
13 available administrative remedies.

14 6. Venue for this action properly lies in the San Diego County Superior Court because
15 the subject property, Respondent's Project, and Respondent's principal place of business are
16 located in San Diego County.

17 7. Petitioner complied with Public Resources Code section 21167.5 by mailing written
18 notice of the commencement of this action to Respondent prior to filing suit. A true and correct
19 copy of the Notice of Commencement of Action sent to Respondent pursuant to Public Resources
20 Code section 21167.5 is attached hereto as **Exhibit A**.

21 8. Additionally, Petitioner sent Respondent a Notice of Intent to Sue, a true and correct
22 copy of which is attached hereto as **Exhibit B**.

23 GENERAL ALLEGATIONS

24 9. Petitioner petitions this Court for a Writ of Mandate ("Petition") directed to
25 Respondent.

26 10. Petitioner challenges Respondent's approval of its Del Mar Heights School Rebuild
27 (the "Rebuild Project"), which is the product of the passage of Proposition 39 Measure MM, which
28 authorized \$186,000,000 in bond funding for improvements to Del Mar Union schools.

1 11. The Rebuild Project involves the complete demolition and rebuild of the Del Mar
2 Heights Elementary School (the “School”), a K-6 elementary school with an enrollment of
3 approximately 500 students.

4 **A. The Rebuild Project Significantly Expands the Size and Footprint of the School**

5 12. The School is located at 13555 Boquita Drive, Del Mar, California 92014¹. The
6 School is located within the Coastal Zone and is immediately adjacent to the Torrey Pines State
7 Reserve Extension.

8 13. On or around February 20, 2020, the District published a Notice of Intent to Adopt a
9 Mitigated Negative Declaration for the Del Mar Heights School Rebuild Project stating that based
10 on the Initial Study, the District determined that with mitigation the Rebuild Project would have no
11 significant adverse impacts on the environment and that a Mitigated Negative Declaration
12 (“MND”) is the appropriate CEQA compliance document.

13 14. The District released its Initial Study/MND (“IS/MND”) for public review and
14 comment through March 23, 2020.

15 15. The MND purported to analyze the impacts resulting from the Rebuild Project,
16 which include the demolition of the 52,406 square foot school, and the reconfiguration and
17 rebuilding of the expanded 66,823 square foot school.

18 16. In addition, the Project significantly expanded the footprint of the School across the
19 entirety of the project site and involved the usurpation of a significant portion of the existing
20 playfields. (Compare **Exhibit C** and **Exhibit D**.)

21 17. On information and belief, based on the figures provided by the District, the
22 District’s redesign will result in a 41,000 square foot reduction in available grassy playfields for the
23 students and the community.

24 18. In exchange for the open playfields, the District is constructing a significantly
25 expanded parking lot which nearly doubles the number of available parking spaces from 48 to 80.

26 19. Despite the significantly expanded footprint, the School’s location in a Coastal
27 Zone, and the adjacent Torrey Pines State Reserve, the District’s MND concluded that there were

28 ¹ Although the School bears a Del Mar address, the property is within the jurisdiction of the City of San Diego.

1 no significant—or even potentially significant—environmental impacts as a result of the Rebuild
2 Project.

3 20. The District received over twenty comment letters raising concerns regarding the
4 Rebuild Project from organizations including the Sierra Club North County Coastal Group, the
5 City of San Diego, California Department of Parks and Recreation, and Play Outside Del Mar.

6 21. In response to these comments, the District prepared a 370-page Response to
7 Comments, adding significant amounts of information in response to the issues raised.

8 22. Determined to proceed with the Rebuild Project as quickly as possible, on May 12,
9 2020, the District approved the Rebuild Project and adopted the MND.

10 **B. The District’s CEQA Process was Flawed from the Beginning, Resulting in an**
11 **Incomplete and Inaccurate Environmental Review**

12 23. CEQA mandates that “public agencies shall not undertake actions concerning the
13 proposed public project that would have a significant adverse effect or limit the choice of
14 alternatives or mitigation measures, before completion of CEQA compliance.” (Guidelines, §
15 15004(b).) Public agencies are prohibited from taking “any action which gives impetus to a
16 planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that
17 would ordinarily be part of CEQA review of that public project.” (*Ibid.*)

18 24. The California Supreme Court has recognized that “the later the environmental
19 review process begins, the more bureaucratic and financial momentum there is behind a proposed
20 project, thus providing a strong incentive to ignore environmental concerns that could be dealt
21 with more easily at an early stage of the project. *This problem may be exacerbated where . . . the*
22 *public agency prepares and approves the EIR for its own project.*” (*Laurel Heights Improvement*
23 *Association v. Regents of University of California* (1988) 47 Cal.3d 376, 395 [Emphasis added].)

24 25. Despite the CEQA regulations to the contrary, the District engaged in a series of
25 expensive decisions which gave significant impetus to the Rebuild Project and foreclosed
26 alternatives and mitigation measures that should have been part of the CEQA review and public
27 comment for the project.

28 26. Prior to approving the Rebuild Project and adopting the MND, the District spent

1 \$1,098,160 in costs associated with the Rebuild Project.

2 27. Notably, the District had spent \$956,645 on architect fees, representing 34% of the
3 total \$2,800,000 budget.

4 28. On or around February 11, 2020—before the MND was even released to the
5 public—the District submitted Increment One “pre-check” design plans to the California Division
6 of the State Architect (“DSA”) in order to move the Rebuild Project along as quickly as possible.

7 29. Additionally, on or around February 28, 2020—shortly after the MND was released
8 to the public and nearly one month before the public comment period closed—the District
9 submitted Increment Two “pre-check” plans to the DSA.

10 30. In total, the District submitted over 300-pages of detailed design plans to the DSA
11 prior to completing the CEQA review process, resulting nearly \$1,000,000 in architect costs.

12 31. The District’s impetus to begin the DSA review process is evidenced by the timeline
13 set out in the District’s MND: “The District seeks to submit plans to the California Division of the
14 State Architect (DSA) approximately March 2020, with construction to start approximately June
15 2020 and end approximately July 2021.”

16 32. If the District did not submit their design plans to the DSA until after they
17 completed the CEQA review process, they would have been unable to start construction in June
18 2020 as hoped. The District would have been even more delayed if it conducted an EIR for the
19 Rebuild Project.

20 33. As made clear by the District, its paramount objective was to commence
21 construction of the project in the Summer of 2020, and to that end it outlaid around a million
22 dollars of the taxpayer’s money to ensure that their design plans would be expeditiously approved
23 on its ambitious timetable. These facts clearly incentivized the District to dispense with
24 environmental concerns that could and should have been dealt with before significant amounts of
25 money were spent on the Rebuild Project.

26 34. Thus, by the time the District released the IS/MND for public comment, it was well
27 into its project schedule and pausing to consider *potentially significant* environmental concerns
28 raised by the community simply did not comport with the District’s objectives, as preparing an EIR

1 would delay the commencement of construction, and any redesign would cause the Rebuild Project
2 to go over-budget.

3 **C. The District Failed to Consider the California Coastal Act and the Project’s Impacts**
4 **to the Coastal Overlay Zone**

5 35. In violation of CEQA, the District’s MND failed to acknowledge the obvious fact
6 the School is located within the sensitive coastal overlay zone, thus omitting this condition from its
7 baseline against which it was required to analyze project impacts. As a consequence, the District
8 failed to analyze its Project’s impacts against an appropriate baseline causing its MND to violate
9 CEQA.

10 36. In response to public comments regarding this critical omission, the District’s
11 summarily concluded that “[a]lthough the existing campus is within the coastal zone, rebuilding the
12 school on the same site would not have an effect on the coastal zone.”

13 37. The District’s *post hoc* analysis of the coastal zone failed to consider the impacts of
14 demolishing 52,406 square feet of buildings, reconfiguring the footprint of the existing campus to
15 expand into previously unbuilt portions of the property, and the new construction of 66,823 square
16 feet of buildings on the sensitive coastal environment.

17 38. Even more concerning is the District’s disregard for its obligations under the
18 California Coastal Act. The California Coastal Act “was enacted by the Legislature as a
19 comprehensive scheme to govern land use planning for the entire coastal zone of California.”
20 (*Citizens for South Bay Coastal Access v. City of San Diego* (2020) 45 Cal.App.5th 295.)

21 39. The Coastal Act states that “any person . . . wishing to perform or undertake any
22 development in the coastal zone . . . shall obtain a coastal development permit.” (Pub. Resources
23 Code, § 30600(a).) Under the Coastal Act, “person” is defined to include “any person . . . district,
24 county, city and county, city, town, the state, and any of the agencies and political subdivisions of
25 those entities, and, to the extent permitted by federal law, the United States, or any of its agencies
26 or political subdivisions.” (Pub. Resources Code, § 21066.)

27 40. Accordingly, under the Coastal Act, the District is required to obtain a CDP prior to
28 engaging in any “development,” which includes “the placement or erection of any solid material or

1 structure; . . . change in the density or intensity of use of land, . . . construction, reconstruction,
2 demolition, or alteration of the size of any structure, *including any facility of any private, public, or*
3 *municipal utility.*” (Pub. Resources Code, § 30106 [Emphasis added].)

4 41. In addition to the plain text of the Coastal Act, the California Department of
5 Education published SFPD Memo 00-10 titled “Proposed School Sites Within the Coastal Zone,”
6 which eliminates any confusion on this issue. The Department of Education’s memorandum
7 concludes that “[a]ll development (as defined by the Coastal Act) that occurs in the coastal zone,
8 including schools, requires a coastal development permit. The authority to issue coastal
9 development permits is delegated to local governments upon the Commission’s certification of a
10 LCP.”

11 42. Since the Coastal Commission has certified a Local Coastal Program (“LCP”) for
12 the City of San Diego, the City of San Diego is the responsible agency for the District’s CDP.

13 43. Despite these mandates, the MND fails to discuss the District’s requirement to
14 obtain a CDP and fails to list the City of San Diego as a reviewing agency. Likewise, the District’s
15 Response to Comments fails to adequately address the District’s requirement to obtain a CDP.

16 44. The Response to Comments states that “[t]he California Coastal Commission has
17 purview over the proposed project and would be a responsible agency if a coastal development
18 permit was required. The Commission received a copy of the MND for review and did not submit
19 any comments to the school district.”

20 45. The District’s Response to Comments also claims that “the school campus is not
21 within the Coastal Commission Permit Jurisdiction area nor within the Local Coastal Program
22 Deferred Certification.”

23 46. Based on the foregoing erroneous and conclusory statements, the District
24 apparently believes that it is not required to obtain a CDP since the Coastal Commission did not
25 respond to its MND. Thus, it appears that the District will proceed with its project without a
26 required CDP in violation of the law.

27 47. Moreover, the development of the original school in 1965 appears to have been
28 authorized pursuant to a City-issued discretionary permit, in which case, an amendment would be

1 required to account for the Rebuild Project. The IS/MND also fails to acknowledge that the current
2 zoning of the site requires a conditional use permit for school facilities and fails to acknowledge
3 that it is not a previously conforming use pursuant to the City of San Diego's regulations, because
4 it results in an intensification of use. (San Diego Municipal Code § 126.0107(b)).

5 48. The IS/MND fails to list the City of San Diego as a public agency whose approval is
6 required and is therefore insufficient under CEQA.

7 **D. The District's MND Fails to Adequately Analyze the Rebuild Project's Impacts on the**
8 **Environment**

9 49. The District's MND fails to state, or substantially understates the severity and scope
10 of the Rebuild Project's environmental impacts, including impacts to Aesthetics; Air
11 Quality/Greenhouse Gas Emissions; Biological Resources; Hazards and Hazardous Materials;
12 Hydrology and Water Quality; Land Use and Planning; Noise and Public Services and Recreation.
13 Additionally, the mitigation measures identified by the District are inadequate, and the District
14 violated CEQA by taking actions which limited the choice of alternatives or mitigation measures
15 before complying with CEQA. As a result, the public and decision-makers cannot fully appreciate
16 the consequences of the Rebuild Project's approval.

17 **1. The IS/MND Fails to Adequately Address the Project's Impacts on Aesthetics**

18 50. The IS/MND concludes that the Rebuild Project will not have any significant
19 impacts to aesthetics, but fails to adequately consider the project's impacts on the surrounding
20 community and adjacent Torrey Pines State Reserve Extension.

21 51. The Rebuild Project erroneously concludes that the project has a less than
22 significant impact to new sources of substantial light or glare which would adversely affect day or
23 nighttime views in the area. The IS/MND concludes that the lighting towards the Torrey Pines
24 State Reserve Extension would be minimal, and impacts to Mira Montana Drive from the lighting
25 in the new parking lot would not be substantially greater than existing levels.

26 52. This conclusion is cursory and not supported by any proper analysis or fact.

27 53. The IS/MND fails to adequately consider the baseline conditions surrounding the
28 school site.

1 54. Currently, Mira Montana Drive is adjacent to a grass field and is not impacted by
2 the school’s lighting. Additionally, the existing playfields and hardcourts are adjacent to the Torrey
3 Pines State Reserve Extension, resulting in minimal impacts from the school’s lighting.

4 55. The Rebuild Project, however, will increase the light impacts to these areas as a
5 result of the newly-expanded parking lot along Mira Montana Drive and the expansion of the
6 classrooms across the entirety of the project site—bringing light much closer to the Torrey Pines
7 State Reserve Extension.

8 56. The impacts resulting from the lighting in these new locations is potentially
9 significant and must be analyzed against the current (minimal) baseline conditions.

10 57. Accordingly, the District is required to prepare an EIR and conduct a lighting study
11 to analyze the impacts of the new lighting based on the existing conditions surrounding the school
12 site.

13 **2. The IS/MND Fails to Adequately Address the Project’s Impacts on Air**
14 **Quality/ Greenhouse Gas Emissions**

15 58. The Rebuild Project significantly alters the layout of the School and greatly extends
16 the existing parking lot down the entirety of Mira Montana Drive.

17 59. Extending the parking lot in this fashion will significantly increase the vehicle
18 emissions exposure to the Mira Montana Drive properties. These homes face the existing fields and
19 are thus not exposed to the types of vehicle emissions associated with a parking lot.

20 60. The new design of the school will cause a significant increase in emissions and
21 exposure to uphill properties as the westward wind will trap emissions between the long stretch of
22 buildings/black top and the bluff, which will then move towards the homes on Mira Montana Drive
23 and the Rebuild Project will increase vehicle emission exposure to the homes directly adjacent to
24 the existing parking lot.

25 61. The District relies on the Bay Area Quality Management District’s CEQA
26 Guidelines to determine whether any increase is significant and does not take into account any
27 specific details of the Rebuild Project. Specifically, the Rebuild Project will not produce increased
28 traffic at an intersection, but instead will include a substantially larger parking lot which will result

1 in a re-routing of traffic.

2 62. As such, relying on the Bay Area standard is inappropriate. By using standards
3 designed for the Bay Area, the IS/MND erroneously concludes that there will be no significant
4 impacts to the surrounding sensitive receptors as a result of the increased parking lot.

5 63. The IS/MND states that during construction “contractors are anticipated to minimize
6 non-essential idling;” however the IS/MND does not provide for any monitoring plan to ensure
7 compliance with this important mandate. Assessing and reducing air quality impacts is especially
8 important when a project involves young children, like the District’s K-6 students.

9 64. The IS/MND also fails to address the requirements set forth in the San Diego
10 Climate Action Plan (“CAP”) and failed to consider how the Rebuild Project would meet GHG
11 reduction requirements for the life of the entire project.

12 65. Based on the adjacent sensitive receptors located within 25 feet of the project site to
13 the north, the IS/MND “should further analyze the potential significant impacts to the adjacent
14 homes from adverse construction emissions and fugitive dust.” Accordingly, an environmental
15 impact report must be performed to adequately analyze the impact of increased vehicle emissions
16 as a result of the Rebuild Project.

17 66. The IS/MND for the Rebuild Project also fails to comply with the requirements of
18 Public Resources Code section 21151.8.

19 **3. The IS/MND Fails to Adequately Address the Project’s Impacts on Biological**
20 **Resources**

21 67. The Rebuild Project requires the destruction and grading of a significant portion of
22 the existing school fields and all of the existing school building, which is likely to affect numerous
23 sensitive species that call the surrounding coastal habitat and Torrey Pines State Reserve Extension
24 home.

25 68. Further, when a project is located in a coastal zone, the IS/MND should analyze
26 whether any significant habitat on the site may qualify as environmentally sensitive habitat areas
27 under the Coastal Act. (See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2
28 Cal.5th 918, 941.) The IS/MND discusses sensitive plant species and sensitive wildlife, but does

1 not address whether the project site contains any environmentally sensitive habitat under the
2 Coastal Act. The IS/MND fails to meet this requirement of the Coastal Act.

3 69. The IS/MND omits the proper Coastal Act analysis and fails to discuss all of the
4 Rebuild Project’s possible effects on the environment. The evidence shows that it is possible that
5 the Rebuild Project will have a significant effect on the environment and thus, an environmental
6 impact report must be prepared.

7 **4. The IS/MND Fails to Adequately Address the Project’s Impacts on Hazards**
8 **and Hazardous Materials**

9 70. The IS/MND’s analysis of the Rebuild Project’s environmental effects related to
10 hazards and hazardous materials is based in part on the Phase 1 Environmental Site Assessment for
11 the Del Mar Heights Elementary School Rebuild Project, conducted by PlaceWorks in October
12 2019 (the “ESA”). The ESA omits discussion of four topics necessary for evaluating a demolition
13 and complete rebuild project of this scale.

14 71. First, the ESA failed to fully consider the presence of polychlorinated biphenyls
15 (“PCB”) occurring on site. The ESA conducted an assessment of PCBs that was limited to
16 ““electrical or hydraulic equipment known or likely to contain PCBs’ to the extent visually and or
17 physically observed or identified,” and concluded that no electrical or hydraulic equipment was
18 observed on site. However, the ESA should have performed a more thorough analysis given the
19 prior presence of PCBs on site. In 2000, the School had PCBs transported off-site for proper
20 disposal. The ESA does not discuss the amount and source of the PCBs, and how they were
21 used/handled on site. Further analysis is necessary to ensure that the PCBs were properly removed
22 from the site, and to ensure that remaining PCBs, if any, are within acceptable limits.

23 72. Second, in 2000 the School had 20.22 tons of asbestos containing waste that was
24 transported off-site for disposal under a manifest. The ESA does not describe the source of the
25 waste. Due to the age of the School’s original development, asbestos-containing materials are
26 likely present and a proper management plan should be in place for the planned demolition
27 activities since they pose an air emission risk to students, teachers, and the surrounding
28 community.

1 73. Third, in 2000 the School also disposed of 0.17 tons of organic liquid off-site. The
2 ESA does not discuss what generated this material and how it was managed while on-site.
3 Additional analysis and discussion is required to ensure that this organic liquid was properly
4 disposed of and does not remain on site as a risk to students, teachers and the surrounding
5 community.

6 74. Finally, Assembly Bill 746 (Health & Safety Code, § 116277) requires that by July
7 1, 2019, community water systems test lead levels in drinking water at all public K-12 schools
8 constructed before January 1, 2010. The ESA does not discuss whether this test was done, and
9 whether the results were satisfactory. The District must perform this test to ensure compliance with
10 this regulation, and the safety of their students.

11 **5. The IS/MND Fails to Adequately Address the Project's Impacts on Hydrology**
12 **and Water Quality**

13 75. The IS/MND fails to adequately analyze and address the stormwater management
14 for the Rebuild Project.

15 76. The existing stormwater outfall pipes show significant signs of deterioration and are
16 causing erosion along the southern and western limits of the School.

17 77. This has resulted in failed drainages, and deep erosional gullies and loss of
18 vegetation within the eroded areas.

19 78. The impacts of these failing outfall pipes extend into the adjacent Torrey Pines State
20 Reserve Extension; however, the existing and continuing damage resulting from the on-site
21 stormwater has not been addressed as part of the Rebuild Project.

22 79. The IS/MND fails to provide sufficient information regarding the Rebuild Project's
23 stormwater management plans.

24 80. The Rebuild Project will greatly increase the amount of impervious cover on the site
25 and includes major modifications to the site's current stormwater management.

26 81. The IS/MND fails to provide any details as to the proposed plan and summarily
27 concludes that BMPs such as swales and landscape planters would reduce runoff. In approving the
28 Rebuild Project, the District must analyze the impacts to the environment, including any adverse

1 impacts related to improper or insufficient stormwater management.

2 82. A complete analysis of the stormwater management plans for the Rebuild Project is
3 therefore a necessary element of the IS/MND.

4 **6. The IS/MND Fails to Adequately Address the Project's Impacts on Land Use &**
5 **Planning**

6 83. The IS/MND concludes there will be no impacts to land use and planning but it fails
7 to discuss conformity with the City's General Plan and the Torrey Pines Community Plan.

8 84. In determining whether the Rebuild Project will cause a significant environmental
9 impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of
10 avoiding or mitigating an environmental effect, the IS/MND only analyzed the zoning of the
11 project site and stated that the Rebuild Project would not change the zoning or land use designation
12 of the site (which is currently RS-1-3 Instructional and Public and Semi-Public facilities).

13 85. The IS/MND did not consider whether the Rebuild Project conflicts with the City's
14 General Plan, specific plan, and local coastal program.

15 86. The IS/MND's discussion of land use and planning focuses only on zoning and does
16 not mention the City of San Diego's General Plan or the Torrey Pines Community Plan.

17 **7. The IS/MND Fails to Adequately Address the Project's Impacts on Noise**

18 **a. *The IS/MND Excludes Critical Thresholds of Significance for Noise***

19 87. The IS/MND fails to use an adequate threshold of significance to determine noise
20 related impacts.

21 88. The IS/MND states that it is using the recommended criteria set forth in the City of
22 San Diego's CEQA Significance Determination Thresholds (the "City Thresholds"), but only
23 includes the threshold of whether the Rebuild Project would expose people to noise levels in excess
24 of the City's adopted noise ordinance.

25 89. The IS/MND did not conduct any noise monitoring at or around the project site.

26 90. In order to provide accurate information of the existing baseline conditions and
27 future noise level impacts to the adjacent residential homes, the noise study must be revised to
28 include ambient daytime noise monitoring at the property line of the adjacent homes.

1 91. By excluding impacts to existing ambient noise levels, the District has improperly
2 excluded the analysis of potentially significant impacts of the Rebuild Project.

3 **b. *The IS/MND Improperly Concludes the Project will Have Less than***
4 ***Significant Impacts to Noise Levels***

5 92. The single-family homes to the north and east of the project site are sensitive
6 receptors “where quiet environments are necessary for the enjoyment, public health, and safety of
7 the community.” The San Diego Municipal Code (Chapter 5, Article 9.5) sets the following
8 exterior sound level limits for single-family residential areas: 50db (7 a.m. to 7 p.m.), 45db (7 p.m.
9 to 10 p.m.), and 40db (10 p.m. to 7 a.m.). The City Thresholds state that temporary construction
10 noise exceeding 75dB at a sensitive receptor would be considered a significant impact.

11 **(1) Construction Related Noise Impacts**

12 93. The IS/MND found that average noise levels resulting from construction activities
13 were less than significant. The District concluded that construction related noise levels would not
14 exceed the 75dBA limit set forth in the City’s Thresholds at the nearest residential property, and
15 therefore the construction related noise would be a less-than-significant impact to the surrounding
16 residential receptors.

17 94. This finding was based on noise impacts to single-family homes located 330 feet
18 east of the project site.

19 95. The IS/MND fails to recognize that residential homes are located less than 25 feet
20 from the project site to the north, within 85 feet of the residential homes to the east, and less than
21 100 feet from the Torrey Pines Extension State Park and Trail.

22 96. Project related construction noise was calculated from the center of the project site,
23 and fails to account for any construction activities that would occur throughout the construction
24 site—such as the construction of the expanded parking lot and new classrooms, all of which are
25 located within 330 feet of the surrounding single-family residences.

26 97. The IS/MND improperly concludes that the construction-related noise impacts will
27 produce a less than significant impact to the surrounding sensitive residential receptors, since there
28 is are potentially significant noise impacts to the surrounding residential homes and Torrey Pines

1 State Reserve Extension.

2 98. RK Engineering Group, Inc. concluded that “[t]here is a potentially significant
3 impact to the noise levels experienced at these residential homes and RK recommends that the
4 project provide additional analysis of worst case construction noise levels at noise sensitive
5 locations.”

6 **(2) Operational Noise Impacts**

7 99. The IS/MND fails to analyze the potential noise impacts on the adjacent Torrey
8 Pines State Reserve, despite the fact that “construction activities are expected to occur at less than
9 100 feet from the Torrey Pines Extension State Park & Trail and may have a potentially significant
10 effect in this area.”

11 100. Construction and operational noise will both likely impact this area, and the District
12 must analyze noise to determine whether there is a significant impact to this area.

13 101. Despite the expanded parking lot and added drop-off/pick-up lane parallel to Mira
14 Montana Drive, the IS/MND concludes that traffic noise would not significantly increase above
15 existing conditions and noise impacts would be less than significant.

16 102. The single-family residences on Mira Montana Drive currently face a garden and
17 grass field; however, the Rebuild Project proposes to replace the grassy field with a parking lot and
18 buildings.

19 103. This new construction will move the noise related impacts of idling cars, slamming
20 car doors, car horns/beeps, and school loud speakers away from the current parking lot area
21 directly in front of the homes on Mira Montana Drive.

22 104. The noise related impacts of the new parking lot and campus located directly in
23 front of these properties and other single-family residences in the area may have potentially
24 significant noise-related impacts.

25 105. Not only is it possible that the operational noise from the new campus and parking
26 lot exceed the standards set forth in the SDMC, the new campus and parking lot will likely result in
27 a significant impact to the existing ambient noise levels of the homes located on Mira Montana
28 Drive.

1 106. The IS/MND fails to include existing ambient noise level measurements from the
2 nearest sensitive noise receptors in order to determine the existing baseline conditions. Expansion
3 of the parking lot and the addition of a drop-off/pick-up lane along the east and southeast portions
4 of the site may result in a potentially significant effect resulting from the additional vehicle
5 movement and parking lot activity that may occur on-site.

6 107. The District must establish baseline conditions and include a threshold of
7 significance to determine whether the Rebuild Project will have a significant effect on the existing
8 ambient noise levels for the community.

9 108. Accordingly the District must prepare an environmental impact report to analyze
10 and address any potentially significant increases in noise.

11 **8. The IS/MND Fails to Adequately Address the Project’s Impacts on Public**
12 **Services and Recreation**

13 **a. *The IS/MND Fails to Adequately Address Impacts to Fire Protection***

14 109. The IS/MND concludes that there would be no impact to fire protection since the
15 student capacity would remain unchanged and the expanded parking lot would remove congestion
16 adjacent to the school and the addition of fire lanes would improve emergency vehicle access.

17 110. The IS/MND fails to analyze whether the expanded parking lot and addition of cars
18 on campus would impede emergency access, since the parking lot drive aisles may limit or block
19 emergency vehicles from quickly reaching the far ends of campus during peak drop-off and pick-
20 up times.

21 111. The District must perform an emergency access and fire access study, as well as a
22 traffic study to ensure that the new parking lot does not create an impediment for first responders
23 and slow response times.

24 **b. *The IS/MND Fails to Adequately Address Impacts to Schools***

25 112. The California Department of Education Guide to School Site Analysis and
26 Development (2000 Edition) (the “Site Development Guide”)² was drafted for the purpose of
27 “assist[ing] school districts in determining the amount of land needed to support their educational

28 ² Available at <https://www.cde.ca.gov/ls/fa/sf/documents/schoolsiteanalysis2000.pdf>

1 programs in accord with their stated goals and in accord with recommendations of the California
2 Department of Education.”

3 113. Based on the most recent enrollment figures in the Del Mar Heights Elementary
4 School Accountability Report Card, the Site Development Guide states that a school like Del Mar
5 Heights should have outdoor field areas (exclusive of kindergarten) totaling 166,320 square feet.³

6 114. The District’s plans call for a reduction of the field area by 41,643 square feet,
7 which by the District’s calculations will result in a field area of only 92,213 square feet—far short
8 of the requirements set forth by the California Department of Education.⁴

9 115. The District states that there are no impacts to schools because the project would
10 address the most critical physical needs of buildings and grounds at the campus; however, the
11 current design of the Rebuild Project will deprive students of the necessary field area as determined
12 by the California Department of Education.

13 116. Accordingly, the Rebuild Project presents a potentially significant impact to public
14 services and an environmental impact report should be drafted to address this potential impact.

15 **c. *The IS/MND Fails to Adequately Address Impacts to Parks and***
16 ***Recreation***

17 117. The IS/MND concludes that the Rebuild Project had a less than significant impact to
18 parks and a less than significant impact to recreation. The IS/MND concludes that the Rebuild
19 Project would not generate a demand for park space, would not result in negative impacts to
20 existing neighborhood and regional parks or other recreational facilities, and would not require
21 construction of offsite recreational facilities. In support of these conclusions the IS/MND states that
22 the project would improve the recreational facilities available for community use by providing
23 amenities that are not currently available to the community.

24 118. The IS/MND fails to consider the impact of greatly reducing open space within a
25

26 ³ In 2018–19, the Del Mar Heights School had an enrollment of 211 students in Grades 1 through 3, and 221 students
27 in Grades 4 through 6. The Site Development Guide states that the school should have two (2) fields measuring 90 feet
28 by 120 feet, with a 10% factor for layout for Grades 1 through 3 (23,760 square feet), and four (4) fields measuring 180
feet by 180 feet, with a 10% factor for layout for Grades 4 through 6 (142,560 square feet).

⁴ Save the Field disputes the accuracy of the District’s calculations and estimates that the true size of the new field is
less than 80,000 square feet.

1 community that is already significantly lacking park space. The City's General Plan, Recreational
2 Element, establishes a population-based park requirement of 2.40 usable acres per 1,000
3 population. As set forth in the Torrey Pines Community Plan, the potential buildout population of
4 the community area is 7,000 and would require 16.80 usable acres of park space. The only park
5 within the Torrey Pines community plan area is the Crest Canyon Neighborhood Park, which has
6 approximately 1.5 acres of usable park area. Thus, the Torrey Pines community planning area is
7 15.30 acres short of its requirements.

8 119. The Torrey Pines Community Plan recognizes the need for additional park space
9 and has expressly indicated a possible joint use of the Del Mar Heights Elementary School to help
10 fulfill its shortfall. Now, instead of helping the existing shortage of parks, the Rebuild Project
11 proposes to diminish the usable park area by at least 41,643 square feet (.96 acres).

12 120. There is a likely possibility that the reduction of usable recreation area from the
13 school site will generate a demand for park space and would cause increased use of other existing
14 (and limited) park facilities within the Torrey Pines community plan area.

15 121. The IS/MND therefore improperly concluded that there is a less than significant
16 impact to parks and recreation, and an environmental impact report should be prepared to analyze
17 the impacts to parks and recreation as a result of the Rebuild Project's reduction in usable open
18 space.

19 **9. The IS/MND Fails to Adequately Address the Project's Impacts on**
20 **Transportation**

21 122. The transportation analysis included in the IS/MND is deficient and the Rebuild
22 Project may result in significant impacts around the Del Mar Heights School, Del Mar Hills
23 Academy and communities located to the east along Carmel Valley Road which will provide
24 access to the existing Ocean Air Elementary School.

25 123. The traffic impacts caused by the redistribution of the Rebuild Project may result in
26 significant environmental effects and further assessment and potentially additional mitigation
27 measures are required to analyze and reduce the potential impacts to the residential communities in
28 these areas.

1 124. The traffic analysis only reviewed traffic impacts at three intersections in the
2 vicinity of the Del Mar Hills Academy and Ocean Air Elementary School.

3 125. The analysis presents several issues with respect to the assumed redistribution of
4 traffic to those other schools and the need to access additional intersections, especially with respect
5 to the Ocean Air Elementary School.

6 126. Additional study area intersects are needed to fully assess the potentially significant
7 redistribution impacts of traffic and buses to the other elementary schools.

8 127. Additionally, the potentially significant impacts of the bus traffic need to be
9 assessed both to/from the Del Mar Hills Academy and Ocean Air School. This was not included in
10 the Traffic Impact Analysis.

11 128. The IS/MND did not document whether the traffic counts were obtained in February
12 2020, or even if the traffic counts were done when school was in full session. Since no traffic count
13 worksheet was provided, the date and accuracy of the counts cannot be determined. This must be
14 clarified so that a full review of the potentially significant impacts can be determined from accurate
15 baseline conditions.

16 129. Further, traffic generation of additional bus traffic must be considered in the traffic
17 analysis. Bus trips must be converted to Passenger Car Equivalents (“PCEs”) to adequately address
18 the impacts of the redistribution of project traffic and the use of buses taking students to Del Mar
19 Hills Academy and the Ocean Air Elementary School.

20 130. As a result of the existing traffic congestion in the vicinity of Del Mar Hills
21 Academy, an alternative staging area for students being transferred by bus should be considered.
22 The currently proposed bus staging at the Del Mar Hills Academy would eliminate a substantial
23 amount of on-street parking that is currently utilized by the school and adjacent residential
24 neighborhood. Buses returning back to Del Mar Heights Road would be required to travel through
25 the existing residential neighborhood causes unnecessary and potentially significant impacts. The
26 bus staging is currently a red curb zone and existing major driveway to the Bella Del Mar
27 Apartments.

28 131. Bus parking in this area would cause congestion and potentially dangerous sight

1 distance problems at this driveway.

2 132. There may be a potentially significant impact as a result of these factors and for the
3 safety to the students, an alternative staging area, outside of the existing impacted area around the
4 Del Mar Hills Academy School, needs to be located for the bus traffic which won't impact the
5 existing residential neighborhood.

6 133. The distribution of traffic to the Ocean Air Elementary School of 35% is unrealistic.
7 The vast majority of traffic that will be redistributed from the Del Mar Heights School including
8 cars and buses would come from the west of Center Heights Drive along Carmel Mountain Road.
9 The 35% distribution to and from the east of Center Heights Drive does not appear to be realistic.

10 134. A Construction Traffic Impact Analysis was not provided as part of the IS/MND.
11 Potentially significant traffic impacts during construction need to be assessed with respect to
12 workers, deliveries, construction vehicles and other activities that will occur during the various
13 phases of construction.

14 135. The Proposed Site Plan "includes construction of an ADA-complaint ramp and
15 stairs from the Mira Montana Drive cul-de-sac down to the southeastern end of the campus." The
16 MND claims that "[t]his will improve safety as students are now following a dirt path at this
17 location." The MND, however, fails to account for the potentially significant traffic and safety
18 impacts resulting from this new student pick-up and drop-off location.

19 136. Mira Montana Drive is a small residential street that is insufficient to handle a
20 significant volume of vehicle traffic associated with student drop-off and pick-up.

21 137. The width of Mira Montana Drive between Mira Montana Place and the cul-de-sac
22 decreases significantly from 35 feet to only 20 feet.

23 138. The Proposed Site Plan creates a new, unofficial student drop-off and pick-up
24 location which would create significant traffic and safety impacts to Mira Montana Drive.

25 139. The narrow section of Mira Montana Road cannot support any increased traffic and
26 would create significant traffic concerns as well as safety issues for fire and emergency access to
27 the nearby homes and canyon. Given the narrow width of the road, the entire westerly side of Mira
28 Montana Drive is a designated no parking zone.

1 140. Currently, the Mira Montana Drive cul-de-sac is adjacent to the field without direct
2 access to the school; therefore, little student drop-off/pick-up occurs in this area.

3 141. By adding a staircase and ramp to this location, the Rebuild Project will
4 significantly increase the number of parents who will drop-off or pick-up their students from Mira
5 Montana Drive. The Rebuild Project will create a potentially significant impact to this area that
6 must be studied.

7 142. Accordingly, the District must prepare an EIR in order to study the traffic and safety
8 impacts resulting from this new access point.

9 **10. The IS/MND Fails to Adequately Address the Project's Impacts on Wildfire**
10 **and Emergency/Fire Access**

11 143. The Del Mar Heights School is located in or near a Very High Fire Severity Zone
12 (Gov. Code, § 51178).

13 144. The Rebuild Project will completely redesign the campus and will result in the
14 majority of classrooms being located south of their current location, much further away from the
15 single entrance on Boquita Drive.

16 145. Additionally, new improvements are being constructed southwest of their current
17 location, near the Torrey Pines State Reserve Extension.

18 146. The sole access point to the entire campus is the entrance at the end of Boquita
19 Drive, which requires first responders to travel much greater distances through a crowded parking
20 lot before reaching the majority of classrooms.

21 147. The IS/MND fails to adequately address the levels of significance for wildfires. The
22 District erroneously concludes that the Rebuild Project will have less than significant impacts to (a)
23 impairment of an adopted emergency response plan or emergency evacuation plan, (b)
24 exacerbation of wildfire risks due to slope, prevailing winds and other factors thereby exposing
25 project occupants to pollutant concentrations from wildfire or uncontrolled spread of wildfire, (c)
26 will require the installation or maintenance of associated infrastructure that may exacerbate fire
27 risk or that may result in temporary or ongoing impacts to the environment, and (d) expose people
28 or structures to significant risks as the result of runoff, post-fire slope instability or drainage

1 changes.

2 148. The IS/MND does not include a specific wildfire evacuation study as part of the
3 environmental review despite the new design of the campus. Evacuation of the campus will likely
4 take much longer than before, since students will now be housed in classrooms on the very
5 southern portion of the campus, compared to the current location of the classrooms on the northern
6 end of campus near Boquita Drive.

7 149. The IS/MND summarily concludes that the proposed project “would improve
8 parking and queuing onsite, thereby reducing congestion on the surrounding roadways, and would
9 provide a 20-foot wide fire access lane around the entire campus,” and that there are less than
10 significant impacts to emergency response or emergency evacuation plans.

11 150. The District, however, has no evidence that the proposed design of the Rebuild
12 Project will not conflict with current emergency response plans and will not significantly increase
13 the emergency response times of first responders.

14 151. The District must perform a traffic study and an evacuation study to ensure that first
15 responders would have adequate access to the site during peak drop-off and pick-up times and that
16 students and staff can safely evacuate in the event of a wildfire.

17 152. An evacuation plan/time study should have been performed given the substantial
18 increase in the number of students enrolled at the School.

19 153. Del Mar Heights School was originally constructed for 350 students—who were to
20 be bussed to school—but now has an enrollment of approximately 500 students, none of whom are
21 bussed.

22 154. The substantial increase in the student population, combined with the new design of
23 the school, has the high probability of increasing evacuation times. Given the new design of the
24 campus and the fact that the buildings (and students) are housed significantly further from the
25 campus’s only entrance, an evacuation study should be performed to ensure that the current design
26 of the campus does not substantially impair emergency response/evacuation and does not expose
27 students and teachers to unnecessary risk.

28 155. The IS/MND erroneously concludes that the Rebuild Project would not require the

1 installation or maintenance of associated infrastructure that may exacerbate fire risk or that may
2 result in temporary or ongoing risks to the environment. The IS/MND only discusses the
3 installation of utilities to meet service requirements and states that infrastructure improvements
4 would not directly increase fire risk. The IS/MND fails to state the fact that the Site Plan (Figure 5)
5 does not show a fire access lane around the entire campus, which would significantly exacerbate
6 fire risk to the children and the community.

7 156. Given the location of the Rebuild Project upslope from the adjacent Torrey Pines
8 State Reserve Extension, and the prevailing winds from the west, the Rebuild Project may
9 exacerbate wildfire risks and expose project occupants and the nearby community to uncontrolled
10 spread of wildfire.

11 157. The IS/MND merely concludes that the project has fire resistant components and
12 will comply with applicable codes, and that any impacts are less than significant.

13 158. The IS/MND fails to analyze and discuss the impacts of the Rebuild Project and the
14 possible significant effects resulting from the prevailing winds and open space adjacent to the
15 Rebuild Project.

16 159. Accordingly, the IS/MND fails to adequately address the levels of significance for
17 wildfires.

18 **FIRST CAUSE OF ACTION**

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

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

21 160. Petitioner incorporates by reference each and every allegation contained in each
22 paragraph above and below as though the same was set forth in full herein.

23 161. Respondent is charged with the authority to regulate and administer land use
24 activities within its jurisdiction, subject at all times to the obligations and limitations of all
25 applicable state, federal and other laws, including CEQA, the CEQA Guidelines, the California
26 Planning and Zoning Law, and the California Coastal Act.

27 162. The MND fails to comply with CEQA and is insufficient to support a decision on
28 the Rebuild Project. In particular, the MND fails to provide necessary information and analysis and

1 contains an inadequate description of the Rebuild Project, fails to adequately disclose the scope of
2 the Rebuild Project, and fails to identify the Project within the coastal overlay zone.

3 163. In addition, the MND fails to state or substantially understates the severity and
4 scope of the Rebuild Project's environmental impacts, including impacts to Aesthetics; Air
5 Quality/Greenhouse Gas Emissions; Biological Resources; Hazards and Hazardous Materials;
6 Hydrology and Water Quality; Land Use and Planning; Noise and Public Services and Recreation.

7 164. The mitigation measures identified by the District are inadequate, and the District
8 violated CEQA by taking actions which gave impetus to the Rebuild Project and limited the choice
9 of alternatives or mitigation measures before complying with CEQA.

10 165. As a result, the public and decision-makers cannot fully appreciate the consequences
11 of the Rebuild Project's approval.

12 166. There is a fair argument based on substantial evidence that the Project may have a
13 significant effect on the environment, and accordingly, Respondent violated CEQA by failing to
14 prepare an Environmental Impact Report for the Rebuild Project.

15 167. To comply with state law and ensure the public and the decision-makers have
16 adequate information to consider the effects of the Rebuild Project, Respondent must prepare and
17 circulate an Environmental Impact Report ("EIR") that properly describes the Rebuild Project,
18 analyzes its impacts, and considers meaningful alternatives and mitigation measures to reduce
19 those impacts.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner prays for relief as follows:

- 22 1. Alternative and peremptory writs of mandate commanding the Respondent
23 to:
24 a) Vacate Respondent's approval of the Mitigated Negative Declaration
25 for the Del Mar Heights School Rebuild Project;
26 b) Vacate Respondent's approval of the Del Mar Heights School
27 Rebuild Project; and,
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c) Suspend any and all activity pursuant to Respondent’s approval of the Rebuild Project that will prejudice the consideration or implementation of particular mitigation measures or alternatives until Respondent has fully complied with all requirements of the California Environmental Quality Act and all other applicable state and local laws, policies, ordinances and regulations as directed by the Court pursuant to Public Resources Code section 21168.9.

2. 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: June 10, 2020

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

By: _____
Rebecca L. Reed
Justin M. Fontaine
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 12th day of June, 2020, at San Diego, California.

Shana Khoury