

SUMMONS (CITACION JUDICIAL)

MAR 24 2022

STATE CLEARINGHOUSE

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED Superior Court of California, County of San Diego

02/15/2022 at 11:36:00 AM

Clerk of the Superior Court By Melissa Valdez, Deputy Clerk

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CITY OF SAN DIEGO, and DOES 1 through 10, inclusive, DEL MAR UNION SCHOOL DISTRICT, a California public school district, Real Party-in-Interest

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

SAVE THE FIELD, a California nonprofit public benefit corporation

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro.

The name and address of the court is:

(El nombre y dirección de la corte es): SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO 330 W. Broadway San Diego, CA 92101 Central

CASE NUMBER: (Número del Caso):

37-2022-00005335-CU-TT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Rebecca L. Reed (Bar No. 275833) (619) 238-1900 Procopio, Cory, Hargreaves & Savitch LLP 525 B Street, Suite 2200 San Diego, CA 92101

[Signature of M. Valdez]

Clerk, by M. Valdez, Deputy (Secretario) (Adjunto)

DATE: 02/16/2022 (Fecha)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- 1. [] as an individual defendant.
2. [] as the person sued under the fictitious name of (specify):
3. [] on behalf of (specify): under: [] CCP 416.10 (corporation) [] CCP 416.60 (minor) [] CCP 416.20 (defunct corporation) [] CCP 416.70 (conservatee) [] CCP 416.40 (association or partnership) [] CCP 416.90 (authorized person) [] other (specify):
4. [] by personal delivery on (date):

1 Rebecca L. Reed (Bar No. 275833)
E-mail:rebecca.reed@procopio.com
2 Procopio, Cory, Hargreaves &
Savitch LLP
3 525 B Street, Suite 2200
San Diego, CA 92101
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5 Attorneys for Petitioner
6 SAVE THE FIELD

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/08/2022 at 05:00:00 PM
Clerk of the Superior Court
By Adriana Iwe Anzalone, Deputy Clerk

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. 37-2022-00005335-CU-TT-CTL

**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
21 Petitioner SAVE THE FIELD ("Save the Field" or "Petitioner"), a California nonprofit public
22 benefit corporation alleges as follows:

23 **THE PARTIES**

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

1 Respondent's duty to carry out its obligations in conformity with all applicable state, federal, and
2 other laws.

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

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

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

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

17 JURISDICTION AND VENUE

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

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

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

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

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

4 **GENERAL ALLEGATIONS**

5 11. Petitioner petitions this Court for a Writ of Mandate ("Petition") directed to
6 Respondent.

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

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

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

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

1 within reasonable scope of the statutory language.” *Friends of Mammoth v. Board of Supervisors*
2 (1972) 8 Cal. 3d 247, 259.

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

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

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

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

23 19. The Strict Accountability in Local School Construction Bonds Act of 2000 (Ed. Code
24 §§ 15264 *et seq.*) [“Proposition 39”] “amended the state Constitution to create an exception to the 1
25 percent limit on ad valorem taxes on real property, and to reduce from two-thirds to 55 percent the
26 number voters required to approve any bonded indebtedness proposed to be incurred by a school
27 district for the ‘construction, reconstruction, rehabilitation, or replacement of school facilities’”.
28 *Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal. App. 4th 986, 993.

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

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

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

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

23 24. In addition to its location next to the protected reserve, the school sits in a highly
24 sensitive Coastal Overlay Zone. (See San Diego Municipal Code § 132.0402.) The school is also
25 situated in a “Very High Fire Hazard Severity Zone.” California has designated the location of the
26 School as an area with the very highest risk of wildfire.¹

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

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

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

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

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

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

25 29. The District—*acting as its own lead agency*—also gave significant impetus to the
26 Rebuild Project which foreclosed alternatives and mitigation measures. The District spent nearly
27 \$1.1 million in Measure MM funds prior to the certification of its MND. Notably, the District spent
28 \$956,645 in architect fees (representing 34% of the \$2,800,000 budget), in connection with

1 preparing the current design. The District first submitted pre-check documents (thereby incurring
2 significant architectural costs) to the Division of the State Architect on February 11, 2020, *before*
3 *the MND was first circulated for public review on February 20, 2020.*

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

11 31. As a consequence, the IS/MND not surprisingly contained many factual and legal
12 deficiencies, prompting a significant number of comment letters raising concerns related to the
13 Rebuild Project’s potentially significant impacts to the environment. For example, in response to
14 the District’s IS/MND, the California Department of Parks and Recreation wrote that given the
15 school’s location adjacent to the Reserve, and “[b]ecause this land is environmentally very
16 sensitive and important regionally [State Parks has] several concerns regarding the proposed
17 Project that need to be better addressed or redesigned before the Draft MND is completed.”
18 Additionally, the Sierra Club North County Coastal Group expressed its disappointment that its
19 “concerns about protection of the adjacent reserve have not received adequate consideration to
20 date.” Save the Field also heavily commented on the District’s IS/MND and submitted comments
21 from technical experts at RK Engineering Group, Inc. regarding a number of deficiencies set forth
22 in the District’s IS/MND.

23
24 ² The California Supreme Court has stated,
25 “[T]he later the environmental review process begins, the more bureaucratic and financial momentum
26 there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns
27 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 32. Regardless of the above comments and determined to proceed with the Rebuild
2 Project as quickly as possible, on May 12, 2020, the District approved the Rebuild Project and
3 adopted the MND.

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

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

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

23 35. Only as a consequence of letters issued by Petitioner’s counsel to the California
24 Division of State Architect (“DSA”) – the agency responsible for issuing building permits for
25 school improvements – notifying DSA of the District’s position did the District finally agree to
26 comply with the City’s Coastal Development Permit application requirement.

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

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

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

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

17 39. The Court then asked the Parties for supplemental briefing concerning the
18 appropriate CEQA remedy. Only then did the District abandon its request for a “Focused EIR” and
19 instead asked the Court to keep its MND alive permitting it to merely “fix” the issues in the MND.
20 The trial court did not grant the District’s request and instead ordered that the District was “...left
21 with three choices if the Rebuild Project is to go forward: it may prepare and circulate a complete
22 EIR, a ‘focused’ EIR or a second MND.” Thereafter, the Court entered judgment ordering the
23 District to vacate its MND.
24
25
26
27
28

1 **E. The District Prepares a “Focused” EIR to Replace the Vacated MND and**
2 **Separately, Resurrects the Vacated MND by Board Resolution and Submits Both**
3 **Environmental Documents to the City of San Diego for Purposes of Obtaining a**
4 **Coastal Development Permit.**

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

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

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

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

16 43. In response, the City notified Save the Field that the environmental action for the
17 Rebuild Project was not appealable. The City stated, inter alia, “[d]evelopment on the Del Mar
18 Heights School project site is covered under the Del Mar Unified School District’s Focused
19 EIR and MND...The City of San Diego, as a Responsible Agency pursuant to CEQA Statute

20 ³Following entry of judgment, Save the Field appealed the Court’s judgment permitting the District to prepare
21 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

22 21168.9 does not authorize a trial court to split a project’s environmental
23 review across two types of environmental review documents (i.e., a negative
24 declaration or mitigated negative declaration and an environmental impact report).
25 The Act requires an agency to prepare a full environmental impact report
26 when substantial evidence supports a fair argument that any aspect of the
27 project may have a significant effect on the environment. Section 21168.9
28 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 **section 21069 and CEQA Guidelines Section 15096, has determined that the previously**
2 **Focused EIR and MND adequately addressed the project...no further documentation is**
3 **required by CEQA.”**

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

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

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

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

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

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

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

26 50. The Torrey Pines Community Plan (“Community Plan”) explains that the Torrey
27 Pines community planning area possesses many highly scenic open space areas and dramatic
28

1 vistas. Torrey Pines also has a number of road segments that have scenic qualities worthy of formal
2 recognition and protection.

3 51. Indeed, the Community Plan explains that “[s]ignificant resource areas” include the
4 “Torrey Pines State Reserve Extension,” and that future development adjacent to the Torrey Pines
5 State Reserve Extension shall provide adequate buffer areas and setbacks to avoid significant
6 visual impacts.

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

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

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

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

22 55. Indeed, the Rebuild Project proposes to reduce the size of the open/community
23 accessible area by 61,340 square feet. The City’s General Plan, Recreational Element, establishes a
24 population-based park requirement of 2.40 usable acres per 1,000 population. As set forth in the
25 Torrey Pines Community Plan, the potential buildout population of the community area is 7,000
26 and would require 16.80 usable acres of park space. The only park identified in the Torrey Pines
27 community plan area is the Crest Canyon Neighborhood Park, which has approximately 1.5 acres
28

1 of usable park area. Thus, the Torrey Pines community planning area is 15.30 acres short of its
2 requirements.

3 56. The Torrey Pines Community Plan recognizes the need for additional park space
4 and expressly contemplates a joint use of the Del Mar Heights Elementary School to assist with
5 fulfilling its shortfall. Instead, the Rebuild Project will diminish the availability of usable park area
6 even further by reducing the existing grassy playfields available to the public by at least 41,643
7 square feet (.96 acres).

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

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

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

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

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

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

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

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

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

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

25 64. The SDMC requires the decision-making body to support a decision to grant a Site
26 Development Permit for projects located in Environmentally Sensitive Lands (“ESL”) with a
27 finding that the site in question is physically suitable for the design and siting of the proposed
28

1 development such that the development will result in minimum disturbance to environmentally
2 sensitive lands.

3 65. Impacts to ESL were not evaluated and will require deviations from critical brush
4 management regulations. Further, given the Rebuild Project's increase of risk of wildfire and
5 proximity to the Reserve, the Site is not physically suitable for the design and siting of the Rebuild
6 Project.

7 **L. The Rebuild Project Was Not Analyzed for Consistency with the City's Climate**
8 **Action Plan in Violation of CEQA.**

9 66. The City did not analyze and therefore, assure that the Rebuild Project complies
10 with the City's Climate Action Plan ("CAP") and its accompanying conformance checklist ("CAP
11 Checklist") which constitutes a separate and significant violation of CEQA Guidelines Section
12 15064.4.

13
14 **FIRST CAUSE OF ACTION**

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

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

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

- 20 a. Approving the CDP on the basis of a Court-ordered vacated MND and a "Focused"
21 EIR;
- 22 b. Finding that City the environmental action for the Rebuild Project was not
23 appealable on account of the City's reliance on the "Focused" EIR and Court-
24 ordered vacated MND;
- 25 c. Without making findings required by the SDMC for approval of permits;
- 26 d. Without making findings of the Rebuild Project's consistency with the City of San
27 Diego General Plan and Torrey Pines Community Plan;
- 28

- 1 e. Given that the Rebuild Project does not comply with Brush Management
- 2 requirements;
- 3 f. In the absence of any analysis of impacts to public health, safety and welfare
- 4 occasioned by the increased risk of wildfire on account of the Rebuild's Project's
- 5 location in a "Very High Fire Hazard Severity Zone" and proximity to the Torrey
- 6 Pines State Reserve;
- 7 g. Without making the necessary findings for a SDP, including a finding that the site in
- 8 question is physically suitable for the design and siting of the proposed development
- 9 and that it will result in minimum disturbance to environmentally sensitive lands;
- 10 h. Without any analysis as to whether the Rebuild Project is consistent with the City's
- 11 Climate Action Plan.

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

16 **SECOND CAUSE OF ACTION**

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

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

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

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

25 72. Respondent acted as the "Responsible Agency" with respect to issuing the Approvals
26 at issue in this case.

27 73. The MND fails to comply with CEQA as the trial court found in the Underlying
28 Action. As a consequence, the trial court ordered vacated the Resolution approving the MND, which

1 the District's Board then vacated. The District's action to "resurrect" the vacated MND is void as a
2 matter of law. As a consequence, the MND is insufficient to support a decision on the Rebuild
3 Project.

4 74. In addition, the Respondent's reliance on the "Focused" EIR is in derogation of
5 CEQA. CEQA requires an agency to prepare a full environmental impact report when substantial
6 evidence supports a fair argument that any aspect of the project may have a significant effect on the
7 environment. See *Farmland Protection Alliance, supra.*, 71 Cal. App. 5th 300; 286 Cal.Rptr.3d at
8 229, PRC § 21168.9. Here, the MND was vacated and the District did not prepare a full EIR. As a
9 consequence, Respondent was not entitled to rely on a "Focused EIR" for the purpose of issuing a
10 CDP.

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

15 76. In addition, Respondent's failure to analyze the Rebuild Project's consistency with
16 the City's Climate Action Plan violated CEQA.

17 THIRD CAUSE OF ACTION

18 (Declaratory Relief)

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

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

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

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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

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



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SAVE THE FIELD