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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

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

11 Petitioner,

12 v.

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

15 Respondent.

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

**PETITIONER SAVE THE FIELD'S  
OPENING BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF  
MANDATE UNDER THE  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT**

Date: November 18, 2020

Time: 1:30 p.m.

Dept: C-73

Judge: Hon. Joel R. Wohlfeil

Complaint Filed: June 12, 2020

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1 Petitioner SAVE THE FIELD, a California not for profit public benefit corporation  
2 (“Petitioner” or “Save the Field”) respectfully submits the following Opening Brief in support of its  
3 Petition for a Writ of Mandate Under the California Environmental Quality Act (“CEQA”).

4 **I.**

5 **INTRODUCTION**

6 The Del Mar Heights School (the “School”) is a K-6 public elementary school located on a  
7 10.85 acre site at 13555 Boquita Drive in San Diego, California. (Vol. I, Tab 5, AR00023.) On the  
8 northerly side of the school campus is a number of detached buildings, a parking lot, and other  
9 incidental improvements. (*Ibid.*) A grassy field and two baseball fields sit on the remaining portion  
10 of the site. (*Id.* at AR00029.) The lion’s share of the School is directly adjacent to the Torrey Pines  
11 State Reserve Extension (the “Reserve”). (*Ibid.*; *id.* at AR00038.)

12 Critical to the matter before the Court, the Reserve is a protected State Natural Reserve and  
13 is located within the City of San Diego’s (the “City”) Multiple Habitat Preservation Area  
14 (“MHPA”) and is subject to the protections under the City’s Multiple Species Conservation Plan  
15 (“MSCP”). (Vol. VI, Tab 1, AR03658.) As the California Department of Parks and Recreation has  
16 recognized, the Reserve “is environmentally very sensitive and important regionally.” (*Ibid.*) In  
17 addition to its location to the protected Reserve, the School sits in a highly sensitive Coastal  
18 Overlay Zone (See San Diego Municipal Code (“SDMC”), § 132.0402.)

19 Also, critical to this case is the fact that the School is situated in a “Very High Fire Hazard  
20 Severity Zone.” A Fire Hazard Severity Zone (“FHSZ”) is a mapped area that designates zones  
21 (based on factors such as fuel, slope, and fire weather) with varying degrees of fire hazard (i.e.,  
22 moderate, high, and very high). Here, California has designated the location of the School as an  
23 area with the very highest risk of wildfire.<sup>1</sup>

24 In 2018, the School District endeavored to rehabilitate the School campus and in order to  
25 acquire funding for its project, placed a Proposition 39 (Cal. Const. art. 13A §1(b)(3)(A) & (B))  
26 bond measure – Measure MM – on the ballot. In doing so, the District asked the voters to approve  
27 \$186,000,000 in funding payable from the voters by exceeding the statutory 1% cap on ad valorem

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

1 taxes. (Vol. IX, Tab 1, AR4825.) Measure MM passed by at least 55% of the vote.

2 The Rebuild Project at issue in this case is being funded with \$56,000,000 of the Measure  
3 MM bond funds to rebuild the Del Mar Heights School (Vol. IX, Tab 4, AR4849), which currently  
4 has a student enrollment of 459 students. (Vol. 1, Tab 5, AR00037.)

5 While the “Rebuild Project” was pitched to the voters as a rehabilitation project, it now  
6 proposes to demolish the existing 52,406 ft<sup>2</sup> school and replace it with 66,823 ft<sup>2</sup> of new  
7 construction, which will expand the School’s footprint over the entire width of the school site.  
8 (Vol. I, Tab 5, AR00039.) The Rebuild Project will entirely redesign the existing campus and will  
9 significantly increase the size of the School’s paved parking lot which will stretch the entire width  
10 of the campus. (*Id.* at AR00043.)

11 The 14,400 ft<sup>2</sup> expansion of the school and significant extension of the parking lot comes at  
12 the cost of the current School’s grassy fields, which are currently used by the community after  
13 school hours. The School’s grassy fields will be reduced by 41,643 ft<sup>2</sup> (nearly one acre). (Vol. I,  
14 Tab 5, AR00115.) In other words, the School is swapping grassy playfields for paved parking lot.

15 From the early planning stages of the Rebuild Project, it has always been the District’s  
16 intent to begin demolition and construction of the existing campus in the summer of 2020. (*Id.* at  
17 AR00039.) In a strained effort to meet its ambitious project schedule, the District short-circuited  
18 the normal CEQA review process. Instead of preparing an Environmental Impact Report (“EIR”),  
19 the District prepared an Initial Study/Mitigated Negative Declaration (“IS/MND”) which  
20 summarily concluded that the Rebuild Project would have no significant impacts on the  
21 environment. (Vol. I, Tab 1, AR00001.)

22 Unfortunately, the IS/MND contained many factual and legal deficiencies, prompting a  
23 significant number of comment letters raising numerous concerns related to the Rebuild Project’s  
24 potentially significant impacts to the environment. For example, in response to the District’s  
25 IS/MND, the California Department of Parks and Recreation wrote that given the School’s location  
26 adjacent to the Reserve, and “[b]ecause this land is environmentally very sensitive and important  
27 regionally [State Parks has] several concerns regarding the proposed Project that need to be better  
28 addressed or redesigned before the Draft MND is completed.” (Vol. VI, Tab 1, AR03658.)



1 Additionally, the Sierra Club North County Coastal Group expressed its disappointment that its  
2 “concerns about protection of the adjacent reserve have not received adequate consideration to  
3 date.” (*Id.* at AR03504.)

4 Plaintiff also heavily commented on the District’s IS/MND and germane to this action,  
5 submitted comments from technical experts at RK Engineering Group, Inc. (“RK Engineering” or  
6 “RK”) regarding a number of deficiencies set forth in the District’s IS/MND. (*Id.* at AR03727.)

7 Instead of meaningfully addressing the foregoing concerns, the District prepared a  
8 Response to Comments in an attempt to defend its inadequate IS/MND. (See *id.* at AR03420-  
9 3953.) As a result, Save the Field had no choice but to file this Petition for Writ of Mandate in  
10 order to ensure that the District completes adequate environmental review of the Rebuild Project.

11 As will be discussed herein, the District’s approval of the MND must be set aside for a  
12 number of reasons. First, the District failed to include in its project description the fact that the  
13 School lies in a Coastal Overlay Zone, which is invariably required by CEQA. As a consequence,  
14 the District did not evaluate impacts against this critical baseline which causes the IS/MND to  
15 violate CEQA.

16 Further, given that Plaintiff’s expert opined on the many factual deficiencies in the  
17 IS/MND, concluding that the District’s Rebuild Project may have significant impacts, as a matter  
18 of law the District’s approval of the MND must be set aside. (See Guidelines<sup>2</sup>, § 15064, subd. (g)  
19 [when conducting environmental review, “[i]f there is disagreement among expert opinion  
20 supported by facts over the significance of an effect on the environment, the Lead Agency ***shall***  
21 ***treat the effect as significant and shall prepare an EIR***”] [emphasis added].)

22 Moreover, the District failed to consider impacts occasioned by the School’s location in a  
23 Very High Fire Hazard Severity Zone, including the impacts resulting from its unlawful design of  
24 campus improvements in mandated fire setbacks. This omission is not only egregious given the  
25 ongoing disastrous wildfires in California, but particularly so since the School will house over 400  
26 children, in addition to staff, and since the School lies adjacent a dense residential community  
27 which necessarily will be impacted by a design that will increase the severity of a wildfire.

28 <sup>2</sup> The CEQA Guidelines are set forth in California Code of Regulations, title 14, section 15000 *et seq.*

1 **II.**

2 **ARGUMENT**

3 The purpose of the California Environmental Quality Act “is to inform the public and its  
4 responsible officials of the environmental consequences of their decisions *before* they are made.”  
5 (*Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1138 [emphasis in original].) “To  
6 this end, public participation is an ‘essential part of the CEQA process.’” (*Ibid.* [quoting  
7 Guidelines, § 15201].)

8 CEQA’s purposes are designed to (1) inform governmental decision makers and the public  
9 about the potential, significant environmental effects of a proposed project, (2) identify ways to  
10 avoid or significantly reduce environmental damage, (3) prevent significant, avoidable damage to  
11 the environment by requiring changes to a project that use alternatives or mitigation measures, and  
12 (4) to disclose to the public the reasons why a governmental agency approved a project in the  
13 manner it chose if significant environmental effects are present. (Guidelines, § 15002; *San Joaquin*  
14 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 614.) The  
15 provisions of CEQA are interpreted “to afford the most thorough possible protection to the  
16 environment that fits reasonable within the scope of its text.” (*California Bldg. Industry Assn.t v.*  
17 *Bay Area Quality Management Dist.* (2015) 62 Cal.4th 369, 381 (“*CBIA*”).)

18 **A. THE STANDARD OF REVIEW FAVORS THE PREPARATION OF AN EIR**

19 CEQA requires a lead agency to prepare an environmental impact report any time a project  
20 “may have a significant effect on the environment.” (Pub. Resources Code, § 21151, subd. (a).)  
21 “[I]f a lead agency is presented with a fair argument that a project may have a significant effect on  
22 the environment, the lead agency shall prepare an EIR even though it may also be presented with  
23 other substantial evidence that the project will not have a significant effect.” (Guidelines, § 15064,  
24 subd. (f)(1) [emphasis added].) A significant effect is any “substantial, or potentially substantial,  
25 adverse changes in the physical conditions which exist within the area.” (Pub. Resources Code, §  
26 21151, subd. (b); Guidelines, § 15382.)

27 “In reviewing an agency’s decision to adopt an MND, a court . . . must determine whether  
28 there is substantial evidence in the record to support a ‘fair argument’ that a proposed project may

1 have a significant effect on the environment.” (*Preserve Poway v. City of Poway* (2016) 245  
2 Cal.App.4th 560, 575-576.) “The fair argument standard creates a ‘low threshold’ for requiring  
3 an EIR, reflecting a legislative preference for resolving doubts in favor of environmental review.”  
4 (*Ibid.* [emphasis added]; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317.)  
5 Notably, “courts owe no deference to the lead agency’s determination” and “[r]eview is de novo.”  
6 (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.)

7 A mitigated negative declaration may be adopted only if the record shows that there is no  
8 substantial evidence that the project may have a significant effect on the environment. (See  
9 Guidelines, § 15070, subd. (b)(2); *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236  
10 Cal.App.4th 714, 730.) Substantial evidence “means enough relevant information and reasonable  
11 inferences from this information that a fair argument can be made to support a conclusion, even  
12 though other conclusions may be reached.” (Guidelines, § 15384.) Substantial evidence includes  
13 “facts, reasonable assumptions predicated on facts, and expert opinion supported by fact.” (*Ibid.*)  
14 “[R]elevant personal observations of area residents on nontechnical subjects may qualify as  
15 substantial evidence.” (*Keep Our Mountains Quiet, supra*, 236 Cal.App.4th at 730 [quoting *Pocket*  
16 *Protectors, supra*, 124 Cal.App.4th at 928].)

17 **THE IS/MND FAILS TO PROVIDE AN ADEQUATE DESCRIPTION OF**  
18 **THE REBUILD PROJECT AND FAILS TO RECOGNIZE THAT THE**  
19 **REBUILD PROJECT IS LOCATED IN THE SENSITIVE COASTAL ZONE**

20 An initial study/mitigated negative declaration must contain (1) “[a] description of the  
21 project including the location of the project;” and (2) “[a]n identification of the environmental  
22 setting.” (Guidelines, § 15063, subd. (d).) “An accurate and complete project description is  
23 necessary for an intelligent evaluation of the potential environmental impacts of the agency’s  
24 action.” (*City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406.) “Where  
25 an agency fails to provide an accurate project description, or fails to gather information and  
26 undertake an adequate environmental analysis in its initial study, a negative declaration is  
27 inappropriate.” (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th  
28 1170, 1202 [quoting *El Dorado County Taxpayers for Quality Growth v. County of El Dorado*  
(2004) 122 Cal.App.4th 1591, 1597].) A project description that hides important project

1 ramifications “frustrates one of the core goals of CEQA.” (*Santiago County Water Dist. v. County*  
2 *of Orange* (1981) 118 Cal.App.3d 818, 830.)

3 Critically, the MND’s project description omits the most fundamental fact necessary to  
4 cause it comply with CEQA, which is that the Del Mar Heights School is located within the  
5 sensitive Coastal Overlay Zone. (See San Diego Municipal Code (“SDMC”), § 132.0402.) As our  
6 Courts have explained, “[t]he California coastal zone is a distinct and valuable natural resource of  
7 vital and enduring interest to all the people [and] the permanent protection of the state’s natural and  
8 scenic resources is a paramount concern.” (*Citizens for South Bay Coastal Access v. City of San*  
9 *Diego* (2020) 45 Cal.App.5th 295, 306-307 [quoting Pub. Resources Code, § 30001].)

10 The District’s Notice of Completion & Environmental Document Transmittal submitted to  
11 the State Clearinghouse demonstrates that the MND did not consider the coastal zone when  
12 performing its analysis:

13 **PROJECT ISSUES DISCUSSED IN DOCUMENT**

<input checked="" type="checkbox"/> Aesthetic/Visual	<input checked="" type="checkbox"/> Flood Plain/Flooding	<input checked="" type="checkbox"/> Schools/Universities	<input checked="" type="checkbox"/> Water Supply
<input checked="" type="checkbox"/> Agricultural Land	<input checked="" type="checkbox"/> Forest Land/Fire Hazard	<input type="checkbox"/> Septic Systems	<input checked="" type="checkbox"/> Wetland/Riparian
<input checked="" type="checkbox"/> Air Quality	<input checked="" type="checkbox"/> Geological/Seismic	<input checked="" type="checkbox"/> Soil Erosion/Compaction/Grading	<input checked="" type="checkbox"/> Wildlife
<input checked="" type="checkbox"/> Archaeological/Historical	<input checked="" type="checkbox"/> Minerals	<input checked="" type="checkbox"/> Solid Waste	<input checked="" type="checkbox"/> Growth Inducing
<input type="checkbox"/> Coastal Zone	<input checked="" type="checkbox"/> Noise	<input checked="" type="checkbox"/> Toxic/Hazardous	<input checked="" type="checkbox"/> Land Use
<input checked="" type="checkbox"/> Drainage/Absorption	<input checked="" type="checkbox"/> Population/Housing Balance	<input checked="" type="checkbox"/> Traffic/Circulation	<input checked="" type="checkbox"/> Cumulative Effects
<input checked="" type="checkbox"/> Economic/Jobs	<input checked="" type="checkbox"/> Public Services/Facilities	<input checked="" type="checkbox"/> Vegetation	<input type="checkbox"/> Other _____
<input type="checkbox"/> Fiscal	<input checked="" type="checkbox"/> Recreation/Parks	<input checked="" type="checkbox"/> Water Quality	

14 (Vol. VIII, Tab. 1(l), AR04780.)

15 In order to comply with CEQA, the environmental impacts of the Rebuild Project must be  
16 measured against an accurate project description—one which considers the Rebuild Project’s  
17 location in the distinct and valuable coastal zone. (See *Save Our Peninsula Com. v. Monterey*  
18 *County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125 [recognizing that project impacts are to  
19 be measured against the project description and existing conditions on the site].) The failure to  
20 consider the fact that the Rebuild Project is located within the coastal zone when analyzing the  
21 potential environmental impacts of the project causes the entire MND to be out of compliance with  
22 CEQA. As a consequence, the Rebuild Project’s potential impacts must be reevaluated consistent  
23 with this baseline.  
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1 **C. THERE IS A FAIR ARGUMENT THAT THE REBUILD PROJECT MAY**  
2 **HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT AND THE**  
3 **DISTRICT MUST PREPARE AN EIR**

4 **1. Expert Opinion Requires the District to Prepare an EIR**

5 When conducting environmental review, “[i]f there is disagreement among expert opinion  
6 supported by facts over the significance of an effect on the environment, the Lead Agency *shall*  
7 *treat the effect as significant and shall prepare an EIR.*” (Guidelines, § 15064, subd. (g)  
8 [emphasis added]; *Pocket Protectors, supra*, 124 Cal.App.4th at 928 [stating “[w]here such expert  
9 opinions clash, an EIR should be done”]; *Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th at  
10 1316; see also Pub. Resources Code, § 21082.2, subd. (c) [“Substantial evidence shall include . . .  
11 expert opinion supported by facts”].)

12 In response to the District’s MND, Save the Field submitted comments from technical  
13 experts at RK Engineering Group, Inc., who evaluated multiple factual deficiencies set forth in the  
14 District’s ISMND, and concluded that the Rebuild Project may have significant impacts to the  
15 environment. (See Vol. VI, Tab 1, at AR03727-AR03735.) RK Engineering’s nine-page letter  
16 analyzed the IS/MND’s conclusion regarding air quality, noise and transportation, and states,

17 RK has reviewed the IS/MND with respect to potentially significant impacts to the  
18 surrounding communities. Based upon this review, RK has provided several  
19 technical comments regarding the air quality, noise and transportation assessment of  
20 the project. While existing school may benefit from certain design changes and  
21 upgrades, **RK has identified several technical issues with respect to the analysis  
that show that the Rebuild Project has potentially significant impacts on the  
environment** and requires further assessment to determine whether significant  
impacts would occur and whether additional mitigation measures are required.

22 (Vol. VI, Tab 1, at AR03727 [emphasis added].)

23 As discussed in detail below, the findings of RK Engineering show that there is substantial  
24 evidence supporting a fair argument that the project may have a significant impact on the  
25 environment. Any “rebuttal” expert opinion by Respondent is irrelevant to the mandatory language  
26 set forth in the CEQA guidelines, which requires Respondent to treat the experts’ disagreement as  
27 significant and prepare an environmental impact report.

1           **2. The Rebuild Project May Have a Significant Impact on Noise**

2           **a. The IS/MND Fails to Consider Noise Impacts to Sensitive Receptors**

3           The IS/MND fails to adequately analyze the impacts of construction noise on sensitive  
4 receptors immediately adjacent the project site. As the IS/MND recognizes, sensitive receptors are  
5 “where quiet environments are necessary for the enjoyment, public health, and safety of the  
6 community.” (Vol. I, Tab 5, AR00104.) Unfortunately, as RK Engineering has opined, “the study  
7 fails to indicate the worst case noise levels at the noise sensitive land uses and additional noise  
8 level impacts are likely greater than what has been reported in the IS/MND.” (Vol. VI, Tab 1,  
9 AR03729.) The IS/MND analyzed project-related construction noise levels at 330 feet from  
10 residential homes and 350 feet from the Torrey Pines Reserve. (*Ibid.*) However, there are  
11 residential homes are located less than 25 feet from the project site to the north, and construction  
12 activity is expected to occur less than 85 feet from the easterly residential homes and less than 100  
13 feet from the Torrey Pines Extension State Park and Trail. (*Ibid.*)

14           Further, Respondent failed to conduct any noise monitoring to appropriately consider noise  
15 impacts to the adjacent single-family homes located to the north and east of the project site. RK  
16 Engineering recognized that “no noise monitoring [was] done at or around this site. In order to  
17 provide accurate information of the existing baseline conditions and future noise level impacts to  
18 the adjacent residential homes, the noise study should be revised to include ambient daytime noise  
19 monitoring at the property line of the adjacent homes.” (Vol. VI, Tab 1, AR03728.)

20           A lead agency “should consider both the increase in noise levels and the absolute noise  
21 level associated with a project.” (*Keep Our Mountains Quiet, supra*, 236 Cal.App.4th at 732.) The  
22 IS/MND purports to rely on the City of San Diego’s noise thresholds in Chapter K of its CEQA  
23 Significance Determination Thresholds where applicable (Vol. I, Tab 5, AR00106); however, the  
24 IS/MND omits the City’s significance threshold which asks whether the project will “[r]esult or  
25 create a significant increase in the existing ambient noise levels?” (Vol. V, Tab 1(c), AR03106.)

26           Here, the District failed to obtain a baseline from which to measure the increased levels of  
27 noise, instead relying on a general assumption of the current noise levels in residential  
28 neighborhoods. An adequate baseline is an essential mandate under CEQA. (See *Communities for*

1 *a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 328  
2 [“the comparison must be between existing physical conditions without the [project] and the  
3 conditions expected to be produced by the project. Without such a comparison, the EIR will not  
4 inform decision makers and the public of the project’s significant environmental impacts, as CEQA  
5 mandates”].) The IS/MND erroneously fails to consider the noise impacts to these sensitive  
6 receptors and the District must be compelled to perform additional environmental review of these  
7 impacts. (See *City of Redlands, supra*, 96 Cal.App.4th at 408 [“The agency should not be allowed  
8 to hide behind its own failure to gather relevant data”]; *Lighthouse Field Beach Rescue, supra*, 131  
9 Cal.App.4th at 1202 [“Where an agency . . . fails to gather information and undertake an adequate  
10 environmental analysis in its initial study, a negative declaration is inappropriate”].)

11 **b. *The Rebuild Project Will Have Potentially Significant Construction-***  
12 ***Related Noise Impacts***

13 The IS/MND erroneously concluded that the average noise levels resulting from  
14 construction activities were less than significant since construction related noise levels would not  
15 exceed the 75 dBA limit set forth in the City’s Thresholds at the nearest residential property. (Vol.  
16 I, Tab 5, AR00108.) Preliminary, as discussed above, the IS/MND analyzed noise impacts to  
17 single-family homes located 330 feet east of the project site—ignoring noise impacts to the  
18 residential homes located less than 25 feet to the north, and 85 feet to the east. (*Ibid.*)

19 Under CEQA, Respondent is not permitted to rely solely on the City’s noise ordinances to  
20 determine whether the rebuild project will have potentially significant construction related impacts.  
21 In fact, “an EIR is required if substantial evidence supports a fair argument that the Project may  
22 have significant unmitigated noise impacts, even if other evidence shows the Project will not  
23 generate noise in excess of the County’s noise ordinance and general plan.” (*Keep Our Mountains*  
24 *Quiet, supra*, 236 Cal.App.4th at 732; see also *Berkeley Keep Jets Over the Bay Committee v. Bd.*  
25 *of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1381.) The IS/MND purports to rely on the City’s  
26 CEQA thresholds for determining significant noise impacts; however, the City thresholds for  
27 construction noise impacts note that “where temporary construction noise would . . . affect  
28 sensitive receptors . . . a significant noise impact may be identified.” (Vol. V, Tab 1(c), AR03106.)



1 Here, there is a fair argument that the Rebuild Project may have significant unmitigated  
2 noise impacts. As set forth in RK Engineering’s comment letter, construction activities are  
3 expected to occur less than 25 feet from the residential homes to the north and less than 85 feet  
4 from the residential homes to the east, and accordingly, “[t]here is a potentially significant impact  
5 to the noise levels experienced at these residential homes . . . .” (Vol. VI, Tab 1, AR03729  
6 [emphasis added].) Further, the IS/MND erroneously concluded that “[a]verage construction noise  
7 could reach up to 70 dBA Leq at the Gully Trail, which abuts school property to the south,” and  
8 “[c]onstruction noise levels are not anticipated to exceed 75 dBA Leq at Torrey Pines Extension  
9 State Park and boarding trails. Therefore, this would be less-than-significant impact.” (Vol. I, Tab  
10 5, AR00108.) As previously discussed, the IS/MND only considered construction activities within  
11 the center of the site, and failed to consider the fact that “construction activities are expected to  
12 occur at less than 100 feet from the Torrey Pines Extension State Park & Trail and may have a  
13 potentially significant effect in this area.” (Vol. VI, Tab I, AR03730 [emphasis added].)

14 **c. The Rebuild Project Will Have Potentially Significant Operational**  
15 **Noise Impacts**

16 As the IS/MND recognizes, “[t]he proposed project would expand the parking lot and add a  
17 drop-off/pick-up lane along the east and southeast portion of the school.” (Vol. I, Tab 5,  
18 AR00109.) The IS/MND summarily concludes that “[t]raffic noise would not significantly increase  
19 above existing conditions and impacts would be less than significant.” (*Ibid.*) Additionally, the  
20 IS/MND summarily concludes that traffic noise associated with the expansion of the parking lot  
21 would not significantly increase above existing conditions and increases would be less than  
22 significant. (*Ibid.*)

23 The IS/MND fails to recognizes that the single-family residences on Mira Montana Drive  
24 currently face a garden and grass field. (*Id.* at AR00029.) The Rebuild Project will replace the  
25 grassy field with a parking lot and buildings, thus expanding the noise related impacts of a parking  
26 lot (idling cars, slamming car doors, car horns/beeps, and school loud speakers) to immediately in  
27 front of these sensitive receptors on Mira Montana Drive. (*Id.* at AR00043.) As RK Engineering  
28 has stated, “[i]f the project were to expand the parking lot and add a drop-off/pick-up lane along



1 the east and southeast portion of the site, there may be a potentially significant effect resulting  
2 from the additional vehicle movement and parking lot activity that may occur on-site, instead of at  
3 other off-site locations where parents may be picking up their kids now.” (Vol. VI, Tab 1,  
4 AR03730 [emphasis added].)

5 **3. The Rebuild Project May Have Significant Impacts to Transportation**

6 **a. *The Relocation of Students During Construction May Have***  
7 ***Potentially Significant Impacts on the Environment***

8 The IS/MND concluded the Rebuild Project would have a less than significant impact to  
9 transportation, or no impact to transportation. (Vol. I, Tab 5, AR00116.) However, RK Engineering  
10 determined that “the traffic impacts caused by the redistribution of project traffic needs may result  
11 in significant environmental effects and further assessment and potentially additional mitigation  
12 measures are needed to reduce the impacts to the residential communities around those areas.”  
13 (Vol. VI, Tab 1, AR03731 [emphasis added].)

14 Preliminarily, RK Engineering determined that the traffic analysis only reviewed traffic  
15 impacts at a total of three intersections in the vicinity of the Del Mar Hills Academy and Ocean Air  
16 School. (*Ibid.*) RK Engineering identified “several issues with respect to the assumed redistribution  
17 of traffic to these other schools, and the need to assess additional intersections, especially with  
18 respect to the Ocean Air Elementary School.” (*Ibid.*) RK Engineering also recognized that  
19 additional study area intersections are needed as a result of the redistribution of project traffic and  
20 the use of additional buses. (*Ibid.*)

21 Further, the District again omitted crucial information from the IS/MND, frustrating the  
22 public’s review of the project impacts—a core goal of CEQA. (See *Protect Niles, supra*, 25  
23 Cal.App.5th at 1138.) The IS/MND failed to provide Highway Capacity Manual worksheets, which  
24 made it impossible to determine whether appropriate Peak Hour Factor adjustments were made as  
25 part of the traffic analysis. (See Vol. VI, Tab I, AR03732.) Respondent only provided this  
26 information as part of its Response to Comments, which was released immediately before the  
27 District’s approval of the Rebuild Project and certification of the IS/MND—precluding any  
28 meaningful review of the data before the Rebuild Project was certified by the District. The

1 IS/MND also does not address “the potentially significant impacts of the bus traffic . . . both  
2 to/from the Del Mar Hills Academy and Ocean Air School,” which was not included in the Traffic  
3 Impact Analysis. (*Id.* at AR03733.) Nor does the IS/MND contain a Construction Traffic Impact  
4 Analysis, and “potentially significant traffic impacts during construction need to be assessed  
5 with respect to workers, deliveries, construction vehicles and other activities that will occur during  
6 the various phases of construction.” (*Id.* at AR03734.)

7 RK Engineering also identified several deficiencies with respect to the analysis set forth in  
8 the traffic study. Based on its expertise, RK Engineering determined that,

9 For the redistribution of traffic to the Del Mar Hills Academy, the 15% distribution  
10 to the south of Del Mar Heights Road appears to be too low given the location of the  
11 students that attend the existing Del Mar Heights School. Furthermore, the 5%  
12 distribution to the north of the Del Mar Academy appears to be unrealistic given the  
13 attendance area of the Del Mar Heights School.

14 The distribution of traffic to the Ocean Air Elementary School to the east of Center  
15 Heights Drive along Carmel Mountain roads of 35% is unrealistic. The vast  
16 majority of traffic that will be redistributed from the Del Mar Heights School  
17 including automobiles and buses would come from the west of Center Heights Drive  
18 along Carmel Mountain Road. The 35% distribution to and from the east of Center  
19 Heights Drive does not appear to be realistic.

20 (Vol. VI, Tab 1, AR03733.) Based on these findings, RK Engineering concluded that “the project  
21 traffic needs to be revised and distributed as noted” above, and “the project trip generation needs to  
22 be adjusted to account for bus traffic converted to [passenger car equivalents].” (*Ibid.*)

23 The proposed bus staging for the Rebuild Project is heavily impacted by parked vehicles  
24 and “[t]he use of this area as a bus loading and unloading zone would eliminate a substantial  
25 amount of existing on-street parking that is currently utilized by the school and the adjacent  
26 residential neighborhood.” (*Ibid.*) Further, the potential bus staging is adjacent to a current red curb  
27 zone and existing major driveway to the Bella Del Mar Apartments. (*Ibid.*) As RK Engineering  
28 noted, “[b]us staging in this area would cause congestion and sight distance problems at this  
driveway. There may be a potentially significant impact as a result of these factors and for the  
safety to the students, an alternative staging area . . . needs to be located for the bus traffic which  
won’t impact the existing residential neighborhood.” (*Id.* at AR03733-AR03734 [emphasis  
added].)

1                   **b.       *The Revised Site Design Will Increase Traffic***

2                   Many local residents have expressed concerns that the Rebuild Project’s revised design will  
3 increase traffic, instead of decreasing it as the District claims. Notably, the IS/MND did not  
4 perform a traffic study in order to resolve these conflicting claims. (*Pocket Protectors, supra*, 124  
5 Cal.App.4th at 935 [“It is the function of an EIR, not a negative declaration, to resolve conflicting  
6 claims”].) Importantly, “[r]elevant personal observations of area residents on nontechnical subjects  
7 may qualify as substantial evidence.” (*Keep Our Mountains Quiet, supra*, 236 Cal.App.4th at 730.)  
8 Adjacent property owners may testify to traffic conditions based on their personal knowledge.  
9 (*Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172  
10 Cal.App.3d 151, 173.) Here, the observations of area residents create a fair argument that the  
11 revised project design will increase traffic in the surrounding area—not decrease it as the IS/MND  
12 claims.

13                   The IS/MND erroneously concludes that the School’s “parking lot and traffic flow would  
14 be improved through the expansion of the parking lot and student loading zone,” and the extended  
15 queuing zone and student drop-off/pick-up area “would improve circulation in the area, by  
16 reducing the number of vehicles on the adjacent roadways. This would create a safer environment  
17 for students who live in the neighborhood to walk and/or bike to campus.” (Vol. I, Tab 5,  
18 AR00117.)

19                   Notably absent from the IS/MND was any traffic study which evaluated the effectiveness of  
20 the significantly expanded parking lot. The design of the parking lot raises serious concerns about  
21 traffic, as a vehicle must travel all the way to the end of the south roundabout and back before  
22 being able to exit the school campus. (See *id.* at AR00043.) While the length added to the parking  
23 lot is approximately the length of Boquita Drive from Cordero to the school’s entrance, community  
24 members have noted that the backup usually extends far beyond the intersection of Boquita and  
25 Cordero.<sup>3</sup> (Vol. VI, Tab 1, AR03571.) Additionally, the increase in parking will likely encourage  
26 more people to drive to the campus as opposed to walking or carpooling, which will exacerbate

27 \_\_\_\_\_  
28 <sup>3</sup> This specific observation was made by a local resident who drove or walked past the morning back-up over the past  
four years. (Vol. VI, Tab 1, AR03571.)

1 existing dangerous traffic conditions near the school. (See *id.* at AR03616.) The expanded parking  
2 lot has the potential to “trap” a car into traversing the entirety of the significantly expanded parking  
3 lot, which is likely to cause traffic to disperse to other pick-up and drop-off locations, such as Mira  
4 Montana Drive. (See Vol. VI, Tab 1, AR03572.)

5 This problem is exacerbated by the proposed construction of an ADA-complaint ramp and  
6 stairs from the Mira Montana Drive cul-de-sac down to the southeastern end of the campus. (Vol.  
7 I, Tab 5, AR00040; AR00043.) Currently, there is no direct access from the campus to the Mira  
8 Montana Drive cul-de-sac (see *id.* at AR00029), and the addition of an ADA ramp and stairs will  
9 create a de-facto drop-off and pick-up area at the end of this narrow street.

10 Mira Montana Drive is a small residential street that is insufficient to handle a significant  
11 volume of vehicle traffic associated with student drop-off and pick-up. The width of Mira Montana  
12 Drive between Mira Montana Place and the cul-de-sac decreases significantly from 35 feet to only  
13 20 feet. (See *id.* at AR00029; Vol. IX, Tab 3, AR4838.) As Save the Field’s members and others  
14 have observed, creating direct access to the Mira Montana cul-de-sac will create significant traffic  
15 concerns as well as safety issues for fire and emergency access to the nearby homes and canyon.  
16 (Vol. IX, Tab 3, AR4838; see also Vol. VI, Tab 1, AR03572-73.) This narrow road is insufficient  
17 to handle any traffic other than providing access to the few homes located at the end of this street.

18 Based on these observations, and in reviewing the site design and surrounding streets, there  
19 is a fair argument that the Rebuild Project’s new parking lot may cause significant traffic impacts.  
20 Critically, the District has failed to prepare a traffic study which would analyze whether the  
21 proposed design is effective. The District must conduct an EIR with a traffic study to fully evaluate  
22 the transportation impacts resulting from its new design.

23 **4. The Rebuild Project May Have Significant Impacts to Air Quality**

24 The IS/MND fails to properly address the Rebuild Project’s significant impacts to air  
25 quality and greenhouse gas emissions. RK Engineering has stated,

26 Based on the observations made by RK, adjacent sensitive receptors (residential  
27 uses) are located within 25 feet of the project site to the north. Due to the proximity  
28 of the adjacent sensitive receptors, the IS/MND should further analyze the potential  
significant impacts to the adjacent homes from adverse construction emissions and

1 fugitive dust.

2 RK recommends that appropriate mitigation measures, if any, should be identified  
3 to protect the adjacent homes from construction emission and fugitive dust.

4 (Vol. VI, Tab. 1, AR03728.) The IS/MND has failed to adequately consider the potential  
5 significant impacts to adjacent sensitive receptors from construction emissions and fugitive dust.  
6 These impacts may be significant, thus requiring the preparation of an EIR.

7 Further, additional impacts to air quality and greenhouse gas emissions are present as a  
8 result of the significantly altered layout of the School, which greatly extends the existing parking  
9 lot down the entirety of Mira Montana Drive. Extending the parking lot in this fashion will  
10 significantly increase the vehicle emissions exposure to the sensitive receptors along Mira Montana  
11 Drive. These sensitive receptors currently face the existing grassy fields and are not exposed to the  
12 types of vehicle emissions associated with a parking lot. The new design of the school will cause  
13 an increase in emissions and exposure to uphill properties as the westward wind will trap emissions  
14 between the long stretch of buildings/black top and the bluff, which will then move towards the  
15 sensitive receptors on Mira Montana Drive. The Rebuild Project will also increase vehicle emission  
16 exposure to the homes directly adjacent the existing parking lot, as the newly designed school will  
17 increase the number of vehicles using the parking lot. (See Vol. I, Tab 5, AR00117.)

18 The redesigned parking lot has the potential to increase vehicle emissions to nearby  
19 sensitive receptors, something which was not fully analyzed in the IS/MND. Accordingly, the  
20 District must prepare an EIR to fully analyze these impacts.

21 **5. The Rebuild Project May Have Significant Impacts to Wildfire and**  
22 **Emergency/Fire Access**

23 For projects located in very high fire hazard severity zones—like the Rebuild Project (Vol  
24 I, Tab 5, AR00144)—the lead agency must determine whether the project would (a) substantially  
25 impair an adopted emergency response plan or emergency evacuation plan, (b) exacerbate wildfire  
26 risks due to slope, prevailing winds, or other factors, and thereby expose project occupants to  
27 pollutant concentrations from wildfire or the uncontrolled spread of wildfire, (c) require installation  
28 or maintenance of associated infrastructure (such as roads, fuel breaks, or other utilities) that may

1 exacerbate fire risk or that may result in impacts to the environment, of (d) expose people or  
2 structures to significant risks as a result of runoff, post-fire slope instability or drainage changes.  
3 (Guidelines, Appendix G, § XX.) The IS/MND erroneously concludes that the Rebuild Project will  
4 have less than significant impacts to each of these categories. (Vol I, Tab 5, AR00143.)

5 Of primary concern is the Rebuild Project’s impacts on the emergency evacuation plans of  
6 the School and surrounding community. Currently, parents will park their cars along the  
7 surrounding neighborhood streets in order to pick up students. (*Id.* at AR00117.) The Rebuild  
8 Project, however, proposes a significantly increased parking lot—with a single narrow entrance  
9 and exit—in order to eliminate the back-up off campus. Respondent claims that the newly designed  
10 parking lot “would improve parking and queuing onsite, thereby reducing congestion on the  
11 surrounding roadways, and would provide a 20-foot wide fire access lane around the entire  
12 campus.” (*Ibid.*) The IS/MND provides no support for this statement.

13 Indeed, as the Sierra Club has pointed out, the Rebuild Project may lead to substantially  
14 longer evacuation times as a result of the new parking lot:

15 We believe this area is within the high severity risk fire zone because of its location  
16 adjacent to hardline preserve land. The County of San Diego now asks developers of  
17 projects within this zone to “voluntarily” prepare an evacuation time study. Such  
18 studies consider roadway capacity and local demographics to compute the time it  
19 will take to evacuate an area. Schools are of particular concern in planning for  
20 evacuations because typically there is extensive traffic into the site right at the  
21 time the evacuation out of the site is needed. Given the site configuration with one  
22 way in and out, more cars inside the site boundary, and no change in nearby  
23 roadway capacity this could result in a substantial increase in potential  
24 evacuation times. Conducting such a study might highlight the need for site  
25 changes, roadway modifications or other operational considerations to improve the  
26 evacuation time for the school and for the entire neighborhood that might need to be  
27 evaluated.

23 Furthermore, the school student population has increased substantially from the time  
24 it was originally constructed for 350 students to the current proposal for 504, with  
25 no analysis of the impacts of these increases on evacuation times. Failure to  
26 adequately evaluate this risk, and the resultant impact on public safety response  
27 times is a potentially significant adverse impact that has not been addressed.

26 (Vol. VI, Tab 1, AR3508 [emphasis added].)

28 Given the design changes—which relocate students from classrooms on the northern

1 portion of campus to the southern portion of campus—evacuation of the school is likely to take  
2 significantly longer than before. Residents who live near the school have expressed their concerns  
3 regarding the traffic and evacuation impacts resulting from the new parking lot, which provides  
4 substantial evidence that there is a fair argument that the Rebuild Project may have a significant  
5 impact to wildfire.

6           Undoubtedly, there is an existing risk of wildfires given the location of the Del Mar Heights  
7 School directly adjacent to the Reserve within a very high fire severity zone. The proposed design  
8 of the campus will exacerbate these existing hazards—thereby exposing the students and nearby  
9 residents to greater wildfire risks—since the Rebuild Project will move the school buildings closer  
10 to the Reserve. (Vol. I, Tab 5, AR00043.) CEQA mandates that Respondent “evaluate existing  
11 conditions in order to assess whether the project could exacerbate hazards that are already present.”  
12 (*CBIA, supra*, 62 Cal.4th at 388.) Additionally, as noted by the California Department of Parks and  
13 Recreation, the relocation of school structures closer to the native habitats may result in impacts to  
14 existing native habitats from fuels reduction. (Vol. VI, Tab 1, AR03660.) Since the Rebuild Project  
15 will place buildings immediately adjacent the Reserve, fuel or vegetation management may be  
16 required within the existing native habitat areas, thereby creating a potentially significant impact  
17 which was not discussed in the IS/MND. “If additional fuel management zones are to occur within  
18 the existing native habitats these areas would be considered significant unless adequate mitigation  
19 were provided.” (*Ibid.*)

20           The IS/MND fails to adequately analyze the wildfire risks associated with the Rebuild  
21 Project and must further analyzes these impacts in an EIR.

22           **6. The Rebuild Project May Have Significant Impacts to Land Use and**  
23           **Planning**

24           Under CEQA, a project may have a significant environmental impact—thus requiring the  
25 preparation of an environmental impact report—where the project conflicts “with any applicable  
26 land use plan, policy, or regulation . . . adopted for the purpose of mitigating an environmental  
27 effect.” (Guidelines Appendix G, § XI, subd. (b); *Pocket Protectors, supra*, 124 Cal.App.4th at 934  
28 [“Because the land use policies at issue were adopted at least in part to avoid or mitigate

1 environmental effects, [the court will] consider their applicability under the fair argument test with  
2 no presumption in favor of the [respondent]”).) Notably, the IS/MND fails to discuss the Rebuild  
3 Project’s conformity with the City’s General Plan, the Torrey Pines Community Plan, and the  
4 City’s Local Coastal Program.<sup>4</sup>

5 In determining whether the Rebuild Project may cause a significant environmental impact  
6 due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding  
7 or mitigating an environmental impact, the IS/MND only analyzed the zoning of the project site  
8 and stated that the Rebuild Project would not change the zoning or land use designation of the site.  
9 (Vol. I, Tab 5, AR00103.) The IS/MND did not consider whether the Rebuild Project conflicts with  
10 the City’s General Plan, the Torrey Pines Community Plan, or the City’s Certified Local Coastal  
11 Program. (*Ibid.*) On this basis alone, the IS/MND is deficient. (See *City of Redlands, supra*, 96  
12 Cal.App.4th at 408 [“The agency should not be allowed to hide behind its own failure to gather  
13 relevant data”].)

14 a. ***The Rebuild Project Violates the 100-foot Setback Requirement***  
15 ***Under California Law and Fails to Comply with the Torrey Pines***  
16 ***Community Plan and Local Coastal Program***

17 Critically, the improvements proposed in the IS/MND conflict with California statutory  
18 law, as well as the Torrey Pines Community Plan and the City’s Local Coastal Program. The Del  
19 Mar Heights School is located in a very high fire severity zone (Vol I, Tab 5, AR00144), and  
20 accordingly, the District is required to “[m]aintain defensible space of 100 feet from each side and  
21 from the front and rear of [any] structure . . . .” (Gov. Code, § 51182, subd. (a)(1); see also Pub.  
22 Resources Code, § 4291.) Notably, the IS/MND concedes that “**the plan does not provide the full**  
23 **100-foot defensible space along the entire perimeter of the site**” and that the buffer area is as little  
24 as **two feet** in some areas. (Vol. VI, Tab 1, AR03491 [emphasis added].) While the District’s  
25 Response to Comments purports that it may obtain an exemption from this requirement, it fails to  
26 state any grounds on which it is entitled to such an exemption or variance. (*Ibid.*)

27 <sup>4</sup> The California Coastal Act requires the City to establish a Local Coastal Program. The development criteria of the  
28 City’s Local Coastal Program have been incorporated into the elements of the Torrey Pines Community Plan.  
Appendix E to the Torrey Pines Community Plan contains the specific supplemental coastal development policies  
which “apply to all development within the coastal zone.” (Vol. V, Tab 1(g), AR03289.)



1 Even assuming, *arguendo*, the District could receive a variance from the 100-foot  
2 defensible space requirement, doing so would conflict with the City’s Local Coastal Program and  
3 the Torrey Pines Community Plan—an issue that was not discussed in the MND. The Local  
4 Coastal Program expressly states,

5 Future development adjacent to the Torrey Pines Reserve Extension . . . shall  
6 provide for adequate buffer areas. Development proposals shall provide adequate  
7 setbacks to avoid significant erosion, visual or sediment impacts from construction.  
8 **Setbacks also shall be required to prevent fire breaks from being constructed on**  
9 **reserve property or into off-site sensitive areas.**

10 (Vol. V, Tab 1(g), AR03393 [emphasis added].)

11 The setback requirements in the Government Code, Public Resources Code, and the Torrey  
12 Pines Community Plan/Local Coastal Program are undoubtedly adopted to avoid or mitigate the  
13 significant impacts related to development within high fire hazard areas, within the Torrey Pines  
14 Reserve Extension, and within the coastal zone. (See Gov. Code, § 51176 [“The purpose of this  
15 chapter is to classify lands in accordance with whether a very high fire hazard is present so that  
16 public officials are able to identify measures that will retard the rate of spread, and reduce the  
17 potential intensity, of uncontrolled fires that threaten to destroy resources, life, or property, and to  
18 require that those measures be taken”]; Pub. Resources Code, § 30001, subd. (b) [the legislative  
19 purpose of the Coastal Act recognizes that “the permanent protection of the state’s natural and  
20 scenic resources is a paramount concern to present and future residents of the state and nation”].)  
21 The District’s concession that the Rebuild Project violates the 100-foot setback requirement under  
22 California law (which is also not in conformity with the policies set forth in the Torrey Pines  
23 Community Plan and Local Coastal Program) necessitates the preparation of an EIR to address this  
24 conflict. (See *Pocket Protectors*, *supra*, 124 Cal.App.4th at 930 [“if substantial evidence supports a  
25 fair argument that the proposed project conflicts with the policies of the [community plan], this  
26 constitutes grounds for requiring an EIR.”].)

27 **b. The Rebuild Project Does Not Conform with the Torrey Pines**  
28 **Community Plan**

The IS/MND fails to discuss the Rebuild Project’s inconsistencies with key policies set

1 forth in the Torrey Pines Community Plan, such as the policy that “construction of public projects  
2 shall avoid impacts to residential neighborhoods.” (Vol. V, Tab 1(g), AR03275.) As previously  
3 discussed, the Rebuild Project has potentially significant impacts on the surrounding community,  
4 including traffic impacts, noise impacts, and wildfire impacts. Further, the IS/MND fails to address  
5 the policy that “[u]seable public parks and active playing fields should be provided within the  
6 planning area for use by all age groups.” (*Id.* at AR03276.) As discussed in Section II(C)(7) below,  
7 the Rebuild Project is inconsistent with this key policy.

8         The District—for the first time—attempts to address the Rebuild Project’s consistency with  
9 the Torrey Pines Community Plan in its response to comments. (Vol. VI, Tab 1, AR03745.)  
10 However, the District only analyzes the Torrey Pines Community Plan’s Key Policies, and omits  
11 any discussion of the plan-specific policies and goals. (See *id.* at AR03302-04, AR03320,  
12 AR03337, AR03369-70.) The District’s failure to analyze these policies in the IS/MND fails to  
13 adequately inform the public and its officials of the environmental consequences of the Rebuild  
14 Project before the decision is made. (See *Protect Niles, supra*, 25 Cal.App.4th at 1138.) The  
15 omission of this information frustrates the public’s participation in the CEQA process. (See *ibid.*)

16         **7. The Rebuild Project May Have a Significant Impact to Recreation**

17         Under CEQA, a project may have a significant impact on the environment if it would (a)  
18 increase the use of existing neighborhood and regional parks or other recreational facilities such  
19 that substantial physical deterioration of the facility would occur or be accelerated, or (b) the  
20 project includes recreational facilities or requires the construction or expansion of recreational  
21 facilities which might have an adverse physical effect on the environment. (See Guidelines,  
22 Appendix G, § XVI.) The IS/MND erroneously concludes that the Rebuild Project would not have  
23 a significant impact to recreation because the operation of the school “would not require students to  
24 use existing neighborhood or regional parks,” and “would not require construction of offsite  
25 recreational facilities.” (Vol. I, Tab 5, AR00115-16.) In support of this conclusion, the IS/MND  
26 asserts that the project would improve the recreational facilities available for community use by  
27 providing amenities that are not currently available to the community. (*Ibid.*)

28         Initially, the District’s conclusion that the school would not require students to use existing

1 neighborhood or regional parks erroneously overlooks the basic fact that the fields are used by the  
2 communities for activities such as baseball and soccer. (*Id.* at AR00037.) Limiting the analysis of  
3 impacts based on student use is flawed and undermines the purposes of CEQA. Additionally, the  
4 fact that the Rebuild Project may provide new amenities to the community does not negate the  
5 Rebuild Project’s significant impacts to recreation. In fact, if any aspect of a project may result in  
6 any significant impact on the environment, an EIR must be prepared even if the overall effect of  
7 the project is beneficial. (Guidelines, § 15063, subd. (b)(1); see also *County Sanitation District No.*  
8 *2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.)

9       The Rebuild Project will reduce the amount of open space available which is currently  
10 available for recreation use after school hours by at least 41,000 ft<sup>2</sup>. The IS/MND fails to  
11 adequately consider the impact of this nearly one-acre reduction in a community that is already  
12 significantly lacking park space:

13       The General Plan, Recreational Element, establishes population-based park, open  
14 space, resource/regional park, and other park requirements within the City.  
15 Population-based park requirements are based on 2.40 usable acres per 1,000  
16 population. The Torrey Pines Community Plan identifies a potential buildout  
17 population of 7,000. This buildout population will require 16.80 usable acres. The  
18 existing Crest Canyon Neighborhood Park is ten acres in size total but only 1.5  
19 more or less is usable. **The Torrey Pines community planning area is short 15.30  
20 acres of usable park property.**

21 (Vol. V, Tab 1(g), AR03364 [emphasis added].)

22       The Torrey Pines Community Plan recognizes the need for additional park space and has  
23 expressly indicated a possible joint use of the Del Mar Heights Elementary School in order to help  
24 fulfill this shortfall. (*Ibid.*) Critically, “no public park space for active recreational type activities  
25 existing within the community” and the community’s needs as set forth in the General Plan are met  
26 “through the use of schools within the community planning area.” (*Id.* at AR03377.)

27       Instead of entering into a joint use agreement, the Rebuild Project proposes to reduce the  
28 existing usable park area by nearly one acre. As a result of this reduction in park space, there is a  
fair argument that this reduction will generate a demand for park space and will cause increased  
use of other existing (and limited) park facilities within the Torrey Pines community planning area.  
Notably, the Rebuild Project calls for the removal of the existing two baseball fields, thus requiring

1 either the construction of replacement fields, or resulting in an increase in the use of other existing  
2 baseball fields in the area.

3 The Rebuild Project is not only inconsistent with the Torrey Pines Community Plan’s  
4 recreational element (which itself is a potentially significant impact that must be addressed in an  
5 EIR), but also has potentially significant impacts on the scarce recreational space in the  
6 surrounding area. Accordingly, the District must perform an EIR to fully analyze these potentially  
7 significant impacts. (Guidelines, § 15064, subd. (f)(1).)

8 **8. The Rebuild Project May Have a Significant Impact to Biological**  
9 **Resources**

10 The District’s IS/MND concluded that the Rebuild Project will have less than significant  
11 impacts, or no impacts to the surrounding biological resources. (Vol. I, Tab 5, AR00075.) The  
12 IS/MND, however, again omits critical information necessary for the decision makers and public to  
13 fully analyze the environmental impacts of the Rebuild Project. As recognized by the California  
14 Department of Parks and Recreation, “[t]he Biological Resources Assessment did not include a  
15 focused sensitive plant survey, despite the project study area including 0.8 acres of southern  
16 maritime chaparral.” (Vol. VI, Tab 1, AR0359.) Further, the Biological Resource Assessment  
17 “asserts that no sensitive plant species were observed within the project footprint and as such, the  
18 project would not result in impacts to sensitive plant species.” (*Ibid.*) However, “the surveyed area  
19 contains a Federally-listed as endangered plant species, Del mar manzanita,” and at “a minimum  
20 the MND and Biological Resources Assessment should address potential impacts to Del mar  
21 manzanita. This assessment should detail appropriate avoidance and mitigation measures  
22 associated with working in close proximity to this federally-endangered plant species.” (*Ibid.*)

23 The District’s MND fails to adequately perform a sufficient analysis of potential  
24 environmental effects, and the District “should not be allowed to hide behind its own failure to  
25 gather relevant data.” (*City of Redlands, supra*, 96 Cal.App.4th at 408.)

26 **D. THE DISTRICT’S RESPONSE TO COMMENTS DOES NOT CURE THE**  
27 **DEFICIENCIES IN THE IS/MND**

28 In response to the multitude comments in response to the MND, including the comments by

1 Save the Field, California Department of Parks and Recreation, and the Sierra Club, the District  
2 prepared a 370-page Response to Comments. The District attempted to use the response to  
3 comments process—a procedure that is atypical for an MND, but is instead required for an EIR  
4 (see Guidelines, § 15088)—in a futile attempt to rebut the substantial evidence submitted by the  
5 public and avoid the preparation of an EIR. The District’s response to comments, however, further  
6 supports the fact that a full EIR must be performed.

7 Under CEQA, a lead agency is not permitted to “focus simply upon the evidence favoring  
8 [a MND] in disregard of other relevant evidence supporting a contrary position.” (See *City of*  
9 *Carmel-By-The-Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 243; Guidelines, § 15064,  
10 subd. (f)(1).)

11 If there was substantial evidence that the proposed project might have a significant  
12 environmental impact, *evidence to the contrary is not sufficient to support a*  
13 *decision to dispense with preparation of an EIR and adopt a negative declaration,*  
14 because it could be “fairly argued” that the project might have a significant  
15 environmental impact. Stated another way, if the trial court perceives substantial  
16 evidence that the project might have such an impact, but the agency failed to secure  
17 preparation of the required EIR, *the agency’s action is to be set aside because the*  
18 *agency abused its discretion by failing to proceed “in a manner required by law.”*

19 (*Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 [quoting Pub.  
20 Resources Code, § 21168.5] [emphasis added].) “It is the function of an EIR, not a negative  
21 declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental  
22 effects of a project.” (*Pocket Protectors, supra*, 124 Cal.App.4th at 935.)

23 The District’s attempted reliance on its Response to Comments in order to cure the  
24 deficiencies set forth in the IS/MND is insufficient to avoid the preparation of an EIR. The  
25 Response to Comments establishes that there are conflicting claims based on substantial evidence  
26 and it is the function of an EIR—not a response to comments—to resolve these issues.

27 **E. THE DISTRICT HAS VIOLATED CEQA BY GIVING SIGNIFICANT**  
28 **IMPETUS TO THE PROJECT PRIOR TO FULL COMPLIANCE WITH**  
**CEQA**

CEQA requires that negative declarations be “prepared as early as feasible in the planning  
process to enable environmental considerations to influence project program and design and yet

1 late enough to provide meaningful information for environmental assessment.” (Guidelines, §  
2 15004, subd. (b).) A public agency is prohibited from “tak[ing] any action which gives impetus to a  
3 planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that  
4 would ordinarily be part of CEQA review of that public project.” (*Ibid.*) Indeed, the Guidelines  
5 expressly state that a public agency “shall not undertake actions concerning proposed projects that  
6 would . . . limit the choice of alternatives or mitigation measures, before completion of CEQA  
7 compliance.” (*Ibid.*)

8 The California Supreme Court has recognized that public agencies have strong incentives to  
9 ignore environmental concerns when environmental review begins late in the approval process,  
10 especially where the public agency serves as its own lead agency. The California Supreme Court  
11 has stated,

12 [T]he later the environmental review process begins, the more bureaucratic and  
13 financial momentum there is behind a proposed project, thus providing a strong  
14 incentive to ignore environmental concerns that could be dealt with more easily at  
15 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.”

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

19 The District—acting as its own lead agency—has given significant impetus to the project  
20 which foreclosed alternatives and mitigation measures. The Administrative Record shows that the  
21 District spent nearly \$1.1 million in Measure MM funds prior to the certification of its MND. (Vol.  
22 IX, Tab 2, AR at 4849.) Notably, the District spent \$956,645 in architect fees (representing 34% of  
23 the \$2,800,000 budget), in connection with preparing the current design. (*Ibid.*)

24 It is not necessarily the dollar amount of project funds expended which raises concerns  
25 regarding CEQA; instead, it is the fact that the District spent a significant portion of its budget in  
26 preparing over 300 pages of detailed design plans as part of its “pre-check” submission to the  
27 California Division of the State Architect. The District first submitted pre-check documents  
28 (thereby incurring significant architectural costs) to the Division of the State Architect on February

1 11, 2020, before the MND was first circulated for public review on February 20, 2020. (Vol. VI,  
2 Tab. 1, AR03880; Vol. I, Tab 3, AR00010.)<sup>5</sup>

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

10 **F. THE COURT SHOULD VACATE RESPONDENT’S ENVIRONMENTAL**  
11 **APPROVALS AND SUSPEND CONSTRUCTION UNTIL IT COMPLIES**  
12 **WITH CEQA**

13 A trial court has the authority to issue a writ of mandate requiring the public agency to  
14 vacate its environmental approvals and to suspend any or all project activities until the agency has  
15 complied with CEQA. (Pub. Resources Code, § 21168.9, subd. (a); *Nelson v. County of Kern*  
16 (2010) 190 Cal.App.4th 252, 285 [setting aside environmental approvals and approval of  
17 conditional use permit and requiring respondent to comply with CEQA prior to issuance of any  
18 further permit or approval].) “Directing an agency to void its approval of the project is a typical  
19 remedy . . . for a CEQA violation.” (*John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.*  
20 (2018) 20 Cal.App.5th 77, 102 [quoting *POET, LLC v. State Air Resources Bd.* (2013) 218  
21 Cal.App.4th 681, 759].)

22 **III.**

23 **CONCLUSION**

24 For the reasons stated above, Petitioner respectfully requests that the Court, pursuant to  
25 Public Resources Code section 21168.9, vacate Respondent’s project approvals and remand for  
26 compliance with CEQA. Additionally, given the significant environmental impacts and the  
27 imminent harm to the environment, Petitioner respectfully requests that the Court enjoin any

28 <sup>5</sup> The Administrative Record only contains the District’s Increment 1 submission to the DSA. (See Vol. VI, Tab 1,  
AR03880-03906.) The Administrative Record does show, however, that the Increment 2 plan sheets had been received  
by, and were under review by the DSA as of February 24, 2020. (*Id.* at AR03876.)

1 construction of the Project until the Respondent has complied with CEQA.

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3 DATED: October 7, 2020

PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP

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By: 

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SAVE THE FIELD

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