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CARDIFF SCHOOL DISTRICT

8  
9 UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11

12 SAVE THE PARK AND BUILD THE  
SCHOOL,

13 Plaintiff,

14 v.

15 NATIONAL PARK SERVICE; DAVID  
16 L. BERNHARDT, in his official  
capacity as Secretary of the United  
17 States Department of the Interior;  
DAVID VELA, in his official capacity  
18 as Director of the National Park Service;  
LISA MANGAT, in her official capacity  
19 as Director of the California Department  
of Parks and Recreation; and CARDIFF  
20 SCHOOL DISTRICT,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. 20-cv-1080-LAB-AHG  
Judge: Hon. Larry Alan Burns

CARDIFF SCHOOL DISTRICT'S  
FURTHER BRIEF ON REOPENING  
OF SCHOOLS

Date: August 28, 2020  
Time: 12:00 PM  
Dept.: Courtroom 14A (14th Flr.)

Complaint Filed: June 12, 2020

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1 Beginning on Monday, September 14, the District intends to provide in-  
 2 person instruction for approximately 200 Kindergarteners and first graders at  
 3 Cardiff School, half of which will be attending public school for the first time.  
 4 Parker Decl. ¶ 3. Pursuant to the Court’s Order of August 25, the District  
 5 respectfully submits this supplemental brief to “explain how the District’s  
 6 reopening plan affects the balance between the public and private interests in the  
 7 injunction[.]” Dkt. 36 at 2:4-5.

8 The Court’s Amended Preliminary Injunction Order appropriately recognized  
 9 there is a public interest “in ensuring that school is open and ready for use by  
 10 students when the school year begins.” Dkt. 21 at 11:16-18. Under Article I,  
 11 Section 28(f)(1) of the California Constitution, all students also have “the  
 12 inalienable right to attend campuses which are safe, secure, and peaceful.” The  
 13 public interest in having Cardiff School “open and ready for use by students”  
 14 therefore necessarily includes ensuring that the school is in as safe of a condition as  
 15 possible. In this regard, the public interest supports the construction of certain  
 16 project components located within the old 6(f)(3) boundary that cannot be  
 17 completed due to the current injunction, namely the remaining third of the student  
 18 drop-off/pick-up zone and parking lot, and certain ADA walkways.<sup>1</sup>

19 1. The Drop-Off/Pick-Up Area And Parking Lot

20 Following NPS’s approval on April 24, and in reliance thereon, the District  
 21 demolished the old parking lot and drop-off and pick-up area, built a large retaining  
 22 wall to the west to support construction of the new parking lot (and multipurpose  
 23 building), graded the land for the new parking lot, and installed the curbs and  
 24 gutters around the entire perimeter of the new parking lot. Parker Decl. ¶ 4. At the

25 \_\_\_\_\_  
 26 <sup>1</sup> Plaintiff’s brief also contends that the multipurpose building need not be built  
 27 because it is only intended for all-school assemblies and thus cannot be used due to  
 28 COVID-19. Dkt. 35 at 5:4-16. Plaintiff similarly suggests that the playground area  
 need not be accessed because use of the playground equipment is discouraged in  
 light of COVID-19. *Id.* at 2:18-19. Contrary to Plaintiff’s contention, these areas of  
 the campus are still significant because they allow for both increased social  
 distancing and fundamental educational activities. Parker Decl. ¶ 13.

1 time the current injunction was issued in late July, all that remained to be completed  
2 for the new parking lot was the placement of asphalt and other minor  
3 improvements. *Ibid.* Because roughly 7,850 square feet of the westernmost portion  
4 of the new drop-off/pick-up area and parking lot are located within the old 6(f)(3)  
5 boundary, which was formerly a sloped pathway surrounded by landscaping that  
6 was unusable for recreation, the current injunction prevents the District from  
7 completing this critical work. *Ibid.*

8 Under California law, “[p]arent drop off” must be “separated to allow  
9 students to enter and exit the school grounds safely ....” Cal. Code Regs. §  
10 14030(b). Absent completion of the parking lot, student drop-off and pick-up would  
11 occur on a busy residential public street. *Id.* ¶ 5; Dkt. 34-1 ¶ 5. As detailed in the  
12 Safe Routes to School Guide on Student Drop-off and Pick-up, which was prepared  
13 with support from multiple federal agencies, and as illustrated in the photographs  
14 therein, such “a drop-off and pick-up zone can become dangerous for children[,]”  
15 creates “a variety of situations that are chaotic and potentially unsafe[,]” and results  
16 in a “dangerous mix of pedestrians and motor vehicles.” Parker Decl., Ex. A at  
17 7-2 – 7-4.

18 Plaintiff’s solution for the lack of an onsite student drop-off/pick-up zone is  
19 that the District either revert back to the design of the old parking lot or modify the  
20 design of its new parking lot. *See* Dkt. 35 at 6:13-15. Plaintiff’s speculation that the  
21 District can simply create a new design or rebuild the old parking lot is unfounded  
22 and erroneous. At a minimum, a redesign would require changes to the plans and  
23 specifications already approved by the Division of State Architect and other state  
24 and local agencies, which would require the expenditure of substantial additional  
25 public monies and potentially take significant time to achieve. Parker Decl. ¶ 8. The  
26 suggestion that the District undergo such an exercise is particularly inequitable  
27 because the District has already spent hundreds of thousands of dollars in public  
28 monies on constructing the new parking lot and drop-off/pick-up zone to near

1 completion after NPS's approval, *ibid.*, all while Plaintiff's four members sat idly  
2 by watching from their homes across the street from the school.<sup>2</sup>

3 2. The ADA Walkways

4 Following NPS's approval in April, the District also removed certain ADA  
5 walkways within the old 6(f)(3) boundary that are to be replaced by upgraded  
6 walkways that meet current ADA requirements, but which now cannot be installed  
7 due to the current injunction. *Id.* ¶ 9. These ADA walkways run along the  
8 northwestern side of the administration/office building (Building E), continue along  
9 the northwestern and southwestern sides of Building M, the latter of which is where  
10 the only available student restrooms are located, and continue to 10 of the 12 total  
11 classrooms currently available on campus, as well as to the play and eating areas on  
12 the south side of the school.<sup>3</sup> *Ibid.*; Dkt. 13-8 at 16 (Site Plan); Dkt. 34-1 ¶ 6. Given  
13 the eastern 6(f)(3) boundary line abuts the northwestern side of Building E, and  
14 Building M is located entirely within the old 6(f)(3) boundary, these walkways  
15 cannot be constructed under the current injunction. Parker Decl. ¶ 10. In fact, the  
16 walkway along the southwestern side of Building M in front of the student  
17 restrooms cannot even be built. *Id.* ¶ 10, Ex. C. Without these walkways, there is no  
18 ADA access to these critical school facilities, or any access whatsoever to the  
19 student restrooms. *Id.* ¶ 12.

20 Relying on an old site plan depicting paths of travel when the final project is  
21 finished, Plaintiff falsely alleges that "there are other accessible pathways for  
22

23 <sup>2</sup> Since issuance of the current injunction, Plaintiff has engaged in a weekly  
24 campaign of looking for purported violations of the injunction, which include  
25 allegations of malicious tree planting and play apparatus relocation. *See* Dkt. 35 at  
26 3:18- 4:20. Not only are Plaintiff's allegations false, but Plaintiff's newfound  
vigilance also underscores Plaintiff's calculated silence following NPS's approval  
and the inequity of precluding the District from completing the improvements it  
constructed to near completion from late April to late July.

27 <sup>3</sup> An aerial photograph included with Cardiff School's Principal, Julie  
28 Parker's, declaration depicts a northerly view of the subject area, specifically the  
northwestern sides of Buildings E and M, the southwestern side of Building M with  
the doors to the student restrooms, and the 10 classrooms southeasterly of Building  
M. Parker Decl., Ex. B.

1 teacher and student access from the parking lot.” Dkt. 35 at 5:24-25; Dkt. 35-2 at  
 2 53. While the site plan depicts three walkways leading from the parking lot, the  
 3 ADA walkway in question is the only one that can be built at this time. Parker Decl.  
 4 ¶ 11. The portions of the other walkways that will eventually provide additional  
 5 ADA access to the student restrooms, 10 classrooms, and the play and eating areas  
 6 cannot be installed until the eight portable classrooms are removed, which will not  
 7 occur for another roughly four months when the new classroom buildings  
 8 (Buildings A-D and F) are completed and ready for occupancy. *Ibid.* The only  
 9 access to these areas of the campus that exists at this time, which is located on the  
 10 southeastern side of Building M, includes a staircase and is thus insufficient for  
 11 ADA access. *Id.* ¶ 12, Ex. D.

12 Plaintiff also argues that the ADA walkways at issue were “not scheduled to  
 13 be constructed until mid/late October – long after school was originally scheduled  
 14 to begin.” Dkt. 35 at 6:1-2 (citing Dkt. 35-1 at 49). The line-item of the schedule  
 15 relied on by Plaintiff, however, refers to different walkways to be performed as part  
 16 of site work on the northern side of the campus. The ADA path of travel that the  
 17 District seeks to install is instead covered by the “Summer 2020 Work” portion of  
 18 the schedule, specifically the line-item for the sidewalks under the “Building E Site  
 19 Work” that were to be installed from July 23 to July 31. Dkt. 35-1 at 49-50; Parker  
 20 Decl. ¶ 11. Plaintiff’s objection to the District installing walkways that are merely  
 21 replacing old walkways in the same location, including the walkway in front of the  
 22 only student restrooms, is simply inexplicable.<sup>4</sup>

### 23 3. Balancing Of The Public And Private Interests

24 The public interest in completing the pick-up/drop-off area, parking lot, and  
 25 ADA walkways unequivocally outweighs Plaintiff’s interests. In this action,

26 \_\_\_\_\_  
 27 <sup>4</sup> It should also be noted that for the safety and security of students, the sole  
 28 point of access to the school from the parking lot must run through Building E. Parker Decl. ¶ 9 n.1. The other two points of access from the parking lot, once they are completed, will have locked gates, access through which will only be available to local law enforcement and fire protection agencies. *See* Cal. Educ. Code § 32020.

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1 Plaintiff seeks to enforce the LWCF Act’s requirement that the property replacing  
2 the converted property be “of reasonably equivalent usefulness and location.” 54  
3 U.S.C. § 200305(f)(3); 36 C.F.R. § 59.3. In the event Plaintiff ultimately succeeds  
4 in establishing that the new 6(f)(3) boundary area approved by NPS in April does  
5 not meet this standard, then the sole remedy is to remand the matter to NPS, and for  
6 the District or State to provide other replacement property. Dkt. 29-1 at 6:10-22; 36  
7 C.F.R. § 59.3(b)(3)(ii). Accordingly, Plaintiff’s stated interest in enforcing  
8 compliance with the LWCF Act may be harmonized with the public interest in  
9 ensuring that Cardiff School may reopen in as safe of a condition as possible.

10 The public interest in reopening Cardiff School in the safest possible manner  
11 also clearly outweighs Plaintiff’s personal interest in preserving certain features  
12 within the old 6(f)(3) boundary, namely grassy parkland and a concrete walkway  
13 loop. As previously noted, there is more grassy parkland and overall recreational  
14 greenspace in the new 6(f)(3) boundary area. Dkt. 34 at 5:13-19. Similarly,  
15 allowing the District to complete the remaining approximately 20% of work in the  
16 new 6(f)(3) area does not foreclose the addition of a looped walkway at a later date.  
17 *Id.* at 5:20-6:16.

18 Based on the foregoing, there is no comparison between the public interest to  
19 be advanced by allowing completion of the pick-up/drop-off area, parking lot, and  
20 ADA walkways and Plaintiff’s private interests. Indeed, it is astounding that four  
21 individuals would argue that their own personal interests outweigh the public  
22 interest of the students and families served by Cardiff School. Any ongoing  
23 injunction in this matter therefore must, at a minimum, be modified to immediately  
24 allow the completion of these critical components of Cardiff School.

25 Dated: August 28, 2020

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By: /s/ Tyree K. Dorward

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CARDIFF SCHOOL DISTRICT

28



1 Save the Park, et al. v. National Park Service, et al.  
2 United States District Court, Southern District of California,  
3 Case No. 20-cv-1080 –LAB-AHG

4 **PROOF OF SERVICE**

5 I, Lisa Atwood, declare:

6 I am a citizen of the United States and employed in San Diego County,  
7 California. I am over the age of eighteen years and not a party to the within-entitled  
8 action. My business address is 655 West Broadway, 15th Floor, San Diego,  
9 California 92101. On August 28, 2020, I served a copy of the within document(s):

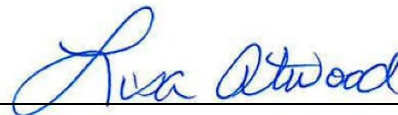
10 **CARDIFF SCHOOL DISTRICT’S FURTHER BRIEF ON  
11 REOPENING OF SCHOOLS;**

12 **DECLARATION OF JULIE PARKER IN SUPPORT OF CARDIFF  
13 SCHOOL DISTRICT’S FURTHER BRIEF ON REOPENING OF  
14 SCHOOLS**

15  **By Electronic Service.** Pursuant to CM/ECF System, registration as a  
16 CM/ECF user constitutes consent to electronic service through the  
17 Court’s transmission facilities. The Court’s CM/ECF system sends an e-  
18 mail notification of the filing to the parties and counsel of record who  
19 are registered with the Court’s EC/ECF system.

20 I declare that I am employed in the office of a member of the bar of this court  
21 at whose direction the service was made.

22 Executed on August 28, 2020, at San Diego, California.

23 

24 Lisa Atwood

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