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7 Attorneys for Defendant
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.
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Case No. 20-cv-1080-LAB-AHG
Judge: Hon. Larry Alan Burns

DECLARATION OF TYREE K.
DORWARD IN SUPPORT OF *EX*
PARTE APPLICATION TO
CLARIFY PRELIMINARY
INJUNCTION

Complaint Filed: June 12, 2020

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I, Tyree K. Dorward, declare as follows:

1. I have personal knowledge of the following facts and if called to testify, I would and could testify competently thereto.

2. I am an attorney at law duly licensed to practice before all courts in the State of California. I am an attorney at Best Best & Krieger LLP, attorneys of record for Defendant Cardiff School District (“District”) in the above-captioned action. As one of the District’s attorneys in this action, I am familiar with the proceedings therein and the documents and records relating thereto maintained in my office in connection therewith.

3. On September 2, 2020, I first reached out via electronic mail to counsel for Plaintiff, Rebecca Reed, to meet and confer regarding certain improvements located within the 6(f)(3) boundary, including the segment of the walkway located on the south side of Building M, where the restrooms are located. The purpose of my email was to ascertain whether Plaintiff objected to any of these improvements. Ms. Reed responded by simply referring the District to the Court.

4. I reached out to Ms. Reed again by electronic mail on September 10, 2020, offering to provide additional documentation regarding the absence of a sidewalk on the southern side of Building M. I never received a response to my September 10, email, and further effort to meet and confer with Ms. Reed regarding this topic would be futile.

5. Attached hereto as Exhibit “A” is a true and correct copy of my email correspondence with Ms. Reed chain from September 2 and 10, 2020.

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

Executed this 17th day of September, 2020, at San Diego, California.

/s/ Tyree K. Dorward
TYREE K. DORWARD

EXHIBIT A

From: Tyree Dorward
Sent: Thursday, September 10, 2020 3:32 PM
To: 'Reed, Rebecca L.'; Fontaine, Justin M.
Cc: Matthew Green; Leena M Sheet (Leena.Sheet@doj.ca.gov); justin.lee@doj.ca.gov; Dorgan, Glen (USACAS) (Glen.Dorgan@usdoj.gov)
Subject: RE: STP v. NPS et al. - Meet and Confer Re Ex Parte

Rebecca,

In light of recent comments made by Ms. Musick, I am writing to request further clarification regarding your client's position with regard to the completion of the Project improvements necessary to reopen Cardiff School, namely the remaining roughly 7,000 square feet of the parking lot and pick-up/drop-off zone, and the ADA walkway that runs from Building E to Building M (where the only student restrooms are located) and 8 of the 10 classrooms on campus.

In an article published yesterday in the *Encinitas Advocate*, Ms. Musick faulted the District for not providing evidence – “declarations from an expert or public official” – stating that the such improvements were “necessary to reopening.” In an article published today in the *Coast News*, Ms. Musick similarly stated that “[t]he District submitted no declarations by any contractors or inspectors to support that these features were critical to reopening.” In the same article, Ms. Musick is also quoted as claiming “[t]here was no objection by Save the Park to opening the school at any time[.]”



As an initial matter, the declarations of Superintendent Jill Vinson and Principal Parker, both of whom are “public officials,” as well as Ms. Vinson's communication to the parents on September 5, 2020, make it abundantly clear that such improvements are necessary to safely reopen the school. These documents detailed the significant safety issues regarding on-street student pick-up and drop-off and the lack of an ADA walkway. Indeed, there isn't even a walkway to the only restrooms located on campus.

While the safety issues created without the improvements in question are already detailed in these documents, and frankly should be obvious, we are happy to provide your client with a declaration from a “contractor” or “inspector” if that's what it will take for your client to agree to allow these improvements to proceed. If your client truly does not want to stand in the way of Cardiff School reopening, as has been suggested in the above-referenced articles and prior court filings, we are more than willing to provide the further evidence/documentation that Ms. Musick has claimed is lacking.

Accordingly, please confirm whether your client is or is not willing to allow the off street drop-off and/or the ADA walkway work necessary for the school to safely reopen.

Ty



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From: Reed, Rebecca L. [mailto:Rebecca.Reed@procopio.com]
Sent: Wednesday, September 02, 2020 3:59 PM
To: Tyree Dorward; Fontaine, Justin M.
Cc: Matthew Green; Leena M Sheet (Leena.Sheet@doj.ca.gov); justin.lee@doj.ca.gov; Dorgan, Glen (USACAS) (Glen.Dorgan@usdoj.gov)
Subject: RE: STP v. NPS et al. - Meet and Confer Re Ex Parte

CAUTION - EXTERNAL SENDER.

Ty –

Your continued after-the-fact explanations for the work in the 6(f)(3) boundary does not instill any confidence in your claims that the work your client is doing is permitted by the Court’s order. The problem is compounded by your prior disingenuous contention that removal of a non-permanent “play structure” to another location entitled you to grade and install a play area, including pouring concrete. This is violative scope creep and it simply amazes me the liberties your client has and continues to take with the various court orders entered against it.

With respect to your request below, we refer you to the Court which has jurisdiction over its order.

Best,
Rebecca

From: Tyree Dorward [mailto:Tyree.Dorward@bbklaw.com]
Sent: Wednesday, September 02, 2020 1:07 PM
To: Fontaine, Justin M.
Cc: Reed, Rebecca L.; Matthew Green; Leena M Sheet (Leena.Sheet@doj.ca.gov); justin.lee@doj.ca.gov; Dorgan, Glen (USACAS) (Glen.Dorgan@usdoj.gov)
Subject: FW: STP v. NPS et al. - Meet and Confer Re Ex Parte

Justin,

I received an out of office response from my original email this morning to Rebecca. If she is unavailable, please respond accordingly.



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From: Tyree Dorward
Sent: Wednesday, September 02, 2020 9:15 AM
To: 'Reed, Rebecca L.'
Cc: Dorgan, Glen (USACAS); Leena M Sheet; Matthew Green
Subject: RE: STP v. NPS et al. - Meet and Confer Re Ex Parte

Rebecca,

We received your emails and have had a chance to confer with the District and provide this response on behalf of the District to the issues you have raised. The injunction expired by its own terms at midnight August 31st, and no order continuing the injunction was issued. However, the District intends to treat the injunction as remaining in place.

School is scheduled to reopen to students on September 14. In light of the Court's deferment in ruling on the District's reconsideration request, and given your client's continued claim that they support the building of the school, the District requests that STP allow the District to complete the following work to provide a safe school environment for students. As described in the District's briefs, the plans and specifications for these portions of work are fully DSA approved for access and fire/life safety compliance:

1. The portion of the off-street student drop-off/pick-up zone and parking lot entrance located within the old 6(f)(3) boundary
2. The ADA walkway that replaces the previously existing walkway along the western and southern edge of Building M, which is the only available ADA access to the majority of the classrooms and the only student restrooms on site. No other ADA walkways can be constructed within the existing school campus while the portable classrooms are occupied by students. Attached is a photograph of the restrooms and a highlighted site plan showing both of the small areas (parking area and ADA sidewalk) in question.

Please advise by close of business today, if STP is willing to agree to one or both of the above improvements, to ensure the safest possible environment for the District's returning students.

With regard to the concerns about the "dog park" area work, no permanent construction is occurring in this area. This work is the relocation of the temporary construction entrance needed to facilitate the completion of the north infiltration basin, which is necessitated by construction delays due to this injunction. The infiltration basin work is expressly permitted by the injunction and temporary construction activities necessary to complete/operate the classroom buildings such as this are set forth in the settlement agreement. Section 5 of the Settlement Agreement states:

Use of Land Within 6(f)(3) Boundary During Construction. *During construction of the Project improvements outside the 6(f)(3) Boundary, and the construction of the partial infiltration basins within the 6(f)(3) Boundary, STP will not object to the land within the 6(f)(3) Boundary being used for temporary storage of construction equipment, materials, and soil as is necessary to complete construction of the improvements outside the 6(f)(3) Boundary and the partial infiltration basins. In the event the District uses land within the 6(f)(3) Boundary for such purposes, the District agrees any such use shall conclude within 30 days of the completion of the classroom buildings (Buildings A, B, C, D, F, H, and J) and related support spaces for the Project outside the 6(f)(3) Boundary. The District further agrees to provide STP a certificate or statement of completion identifying the date of completion of the classroom buildings (Buildings A, B, C, D, F, H, and J) and related support spaces for the Project outside the 6(f)(3) Boundary.*

From: Reed, Rebecca L. [mailto:Rebecca.Reed@procopio.com]
Sent: Tuesday, September 01, 2020 5:07 PM
To: Tyree Dorward; Matthew Green

Cc: Dorgan, Glen (USACAS); Leena M Sheet

Subject: Re: STP v. NPS et al. - Meet and Confer Re Ex Parte

CAUTION - EXTERNAL SENDER.

Ty - I did not receive a response to my email below and was just notified that the District demolished the dog park within the original boundary today, so I'll take it that you believe the District has the authority to proceed notwithstanding the Court's order. We will notify the Court.

Best,
Rebecca

Sent from my iPhone

On Sep 1, 2020, at 12:02 PM, Reed, Rebecca L. <Rebecca.Reed@procopio.com> wrote:

Ty –

Having received the Court's order last evening, I would like to confirm with your side that you agree the injunction remains in effect through September 11, 2020.

Can you please let me know.

Best,
Rebecca

From: Tyree Dorward [mailto:Tyree.Dorward@bbklaw.com]
Sent: Friday, August 14, 2020 4:32 PM
To: Reed, Rebecca L.; Matthew Green
Cc: Dorgan, Glen (USACAS); 'Leena M Sheet'
Subject: RE: STP v. NPS et al. - Meet and Confer Re Ex Parte

Rebecca,

I am responding to your email as well as providing notice of the District's intention to file an ex parte application.

1. First, please be advised that on Monday, August 17, 2020, on behalf of the Cardiff School District ("District"), we intend to file an Ex Parte Application in Case No. 20-cv-1080-LAB-AHG seeking leave to file a Motion to Reconsider the Amended Order of Preliminary Injunction (Doc. 21), in Courtroom 14A, located at 333 West Broadway, 14th Floor, San Diego, CA 92101. The District's Application for leave to file the motion will be made on the grounds that there are new facts regarding COVID and the need for the District to be able to properly reopen the Cardiff school site. In addition, the Amended Order also fails to apply the highly deferential standard of review used in APA cases, misapplies 36 C.F.R. § 59.3's requirements, and finds irreparable injury based on an unavailable remedy. Accordingly, please advise if your client intends to oppose the District's Ex Parte Application for leave to file a motion for reconsideration.

2. With regard to your additional email involving allegations regarding ongoing work on the Project, we have again inquired of the District regarding the work in question and confirmed that the apparent work in question relates solely to the restoration/reinstallation of the play apparatus and playground areas in the southern playfield area of the site. As previously communicated to you and consistent with Court's order and the

settlement agreement, the District is only proceeding with the work necessary to restore and make available the southern play areas for students. As you are aware, the play apparatus work was also specifically contemplated by Section 6 of the Settlement Agreement which stated:

Installation of New Natural Turf and Replacement and Relocation of Play Structure Within 6(f)(3) Boundary. Immediately following construction of the classroom buildings (Buildings A, B, C, D, F, H, and J) and related support spaces for the Project outside the 6(f)(3) Boundary, the District shall restore the turf within the 6(f)(3) boundary to its Original Condition; and STP agrees that the District may replace and relocate the play structure to the south side of the site.

As always, the school site was and remains an active school and the 6(f)(3) area constitutes the playground/playfield areas of the school. Accordingly, a play apparatus is a critical component of the educational program and an enhancement from the previous play apparatus that existed at the site, and upon completion will serve both the students as well as the community who will ultimately be able to use the site for outdoor recreation when not needed for school purposes.

[<http://clients.bbklaw.net/images/logos/bbklogohires.jpg>]<http://www.bbklaw.com/>>

Tyree Dorward <https://www.bbklaw.com/our-team/tyree-k-dorward>>

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From: Reed, Rebecca L. [mailto:Rebecca.Reed@procopio.com]
Sent: Thursday, August 13, 2020 3:34 PM
To: Matthew Green
Cc: Tyree Dorward; Dorgan, Glen (USACAS); 'Leena M Sheet'
Subject: STP v. NPS et al.

CAUTION - EXTERNAL SENDER.

Matt –

Attached are videos and far below a picture of your client's continued contempt of the Court's injunction order. Unbelievably, your client has proceeded to perform work in the original 6(f)(3) boundary which does not

involve the biofiltration basins or turf restoration. Below depicts the area that your client is working. The videos and picture say a thousand words. I again implore you to advise your client to cease and desist further violations of the Court's order and to assure that is done. You and your client could at least show a modicum of respect for the Court and the law. We will raise these issues with the Court.

Rebecca

REBECCA L. REED
SENIOR COUNSEL

—
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<image001.jpg>

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mailgw01.procopio.com made the following annotations

Thu Aug 13 2020 15:34:46

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