TYREE K. DORWARD, Bar No. 211086
tyree.dorward@bbklaw.com
MATTHEW L. GREEN, Bar No. 227904
matthew.green@bbklaw.com
LINDSAY D. PUCKETT, Bar No. 233852
lindsay.puckett@bbklaw.com
BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
San Diego, California 92101
Telephone: (619) 525-1300
Facsimile: (619) 233-6118

Attorneys for Defendant
CARDIFF SCHOOL DISTRICT

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAVE THE PARK AND BUILD THE SCHOOL,

Plaintiff,

v.

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

Defendants.

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

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Date: July 20, 2020
Time: 11:30 a.m.
Dept.: Courtroom 14A (14th Flr.)

Complaint Filed: June 12, 2020

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ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

I.

INTRODUCTION

This action concerns the westernmost portion of Cardiff School, where the playfields, hardcourts, and playgrounds are located, and which was long ago improved in part with federal grant funds under the Land and Water Conservation Fund ("LWCF") Program. The grant was governed by a Project Agreement between the State Department of Parks and Recreation ("DPR"), Cardiff School District ("District"), and formerly the City of Encinitas ("City"), under which the subject area may be converted to another use if the Department of the Interior, National Park Service ("NPS"), in its discretion, makes certain findings, namely that the converted property is being replaced with other land of at least equal fair market value and of reasonably equivalent usefulness and location.

After an arduous process lasting more than two years, on April 24, 2020, NPS approved the District's conversion, and the adjustment of what is referred to as the "6(f)(3) boundary," to allow the District to construct improvements within the old 6(f)(3) boundary for the Cardiff School Modernization and Reconstruction Project ("Project"). As part of a settlement agreement reached in prior state court litigation, Plaintiff Save the Park and Build the School ("Plaintiff") also expressly agreed that such improvements could proceed once NPS approval was obtained. The District accordingly demolished all of the existing recreational features within the former 6(f)(3) boundary over the past few months in order to build out the Project, which will include a far superior recreational space for Cardiff School students and the greater Cardiff community.

On the evening of Friday, June 26, 2020, more than two months after NPS's approval, and being given written notice of the same, Plaintiff filed an *ex parte* application for a temporary restraining order ("TRO"), which exceeded 690 pages in length, to stop all construction within the old 6(f)(3) boundary. According to Plaintiff, "the Park will be destroyed absent a TRO …." (Doc. 9-1 at 10:7-8.) Due to Plaintiff's

delay in seeking a TRO, coupled with the fact that "work has been proceeding for several months," the Court appropriately found there was no urgency to warrant a TRO and construed the *ex parte* application as a motion for preliminary injunction. (Doc. 10 at 2:1-13.)

As detailed below, Plaintiff has not met its burden of showing entitlement to injunctive relief. Not only does Plaintiff's action lack merit, but issuance of the requested injunction would also result in immeasurable harm to the District and the public. Most notably, the District would be unable to open Cardiff School for the 2020-21 school year because certain features of the Project necessary for students and staff to occupy the grounds would be left incomplete, such as the parking lot, ADA accessible walkways, outdoor play areas, and various utilities. There is also no comparison between the harm to both the District and community and the alleged damage Plaintiff seeks to prevent, i.e., the destruction of the old George Berkich Park. As noted above, the land within the former 6(f)(3) boundary, commonly known as George Berkich Park, has already been completely demolished to make way for the new park improvements, which are well on their way to completion. The old George Berkich Park is thus no longer there to be preserved. Yet, inexplicably, Plaintiff, whose four members all live across the street and have a direct view of the Project, sat idly by for months watching the Project proceed.

Plaintiff's motion also runs counter to the terms of the parties' settlement agreement. While Plaintiff carved out the limited right to challenge an approval from NPS, Plaintiff consented to the District's construction of all components of the Project located within the old 6(f)(3) boundary upon NPS approval. Plaintiff also agreed that certain Project improvements could be built even without NPS approval, namely the bioinfiltration basins and new turf playfields. In contravention of the settlement agreement, Plaintiff now asks the Court to enjoin all construction activities within the former 6(f)(3) boundary. For the reasons set forth herein, the Court should deny Plaintiff's motion for a preliminary injunction.

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

II.

BACKGROUND FACTS

A. THE CARDIFF SCHOOL PROJECT

The instant action concerns Cardiff School. Cardiff School is located on a roughly 7.4 acre triangular site, bounded by Montgomery Avenue on the north, Mozart Avenue on the south, and San Elijo Avenue on the west, the entirety of which is owned by the District. (Declaration of Jill Vinson ("Vinson Decl.") ¶ 4; Notice of Lodgment ("NOL"), Ex. 21 at AR163, 171.)

In November 2016, Cardiff voters decidedly passed a $22 million school bond measure known as Measure GG to help fund the much needed modernization and reconstruction of Cardiff School, which was built in a piecemeal fashion in the 1950s and 1960s, except for two buildings constructed in the early 2000s identified as Buildings E and M. (Vinson Decl. ¶¶ 6, 8.) The District thereafter spent more than two years planning and designing the Project with extensive input from the community. Although no one design could possibly please everyone, and due to a pressing need to bring the school up to current safety and security standards for school facilities, the District settled on a final design in June 2018. (Declaration of Randal L. Peterson ("Peterson Decl.") ¶ 9; NOL, Ex. 15.) The Project was thereafter approved by the District in February 2019, and construction first commenced in June 2019. (Vinson Decl. ¶ 20; Peterson Decl. ¶ 12; NOL, Exs. 22, 29.)

B. THE LWCF PROJECT AGREEMENT

At the heart of this case is the grant of federal funds to the District and City in 1993, under the LWCF Act. Among other provisions, the LWCF Act authorizes the Secretary of the Interior to provide financial assistance to states for the development of outdoor recreation, which funds are then disbursed for outdoor recreation purposes. 54 U.S.C. § 200305(a)(3); Cal. Pub. Res. Code §§ 5099.3, 5099.4 5099.5; (NOL, Ex. 60 at 3-1, ¶ A.2.)

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During the development of the site plan for the Project, the District discovered the existence of a LWCF Project Agreement spearheaded by the City in 1993.[1] (Vinson Decl. ¶ 12; NOL, Ex. 23 at AR1723-24.) Pursuant to the Project Agreement, the State disbursed $159,600 in federal funds for improvements to the then-existing "play area, open sportsfields, picnic facilities and associate fields" on Cardiff School's playfields, which were named George Berkich Park to honor the school's longtime principal upon his retirement in 1988. (Vinson Decl. ¶ 12; NOL, Ex. 2 at 1.) As a condition of receiving the funds, the parties agreed to comply with the LWCF Act, and agreed that the subject area "shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity …." (NOL, Ex. 2 at 2, ¶ II.B.)

Significantly, the Project Agreement and LWCF Act nevertheless allow for a "conversion" of the playfields where NPS "finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as [NPS] deems necessary to assure the substitution of other recreation properties of at leas[t] equal fair market value and of reasonable equivalent usefulness and location."[2] (*Ibid*.) The Project Agreement further provides that the approval of a conversion is within the "sol[e] discretion" of NPS.[3] (*Id*. at 1, ¶ II.B.)

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[1] The District was unaware of the Project Agreement before then because the City had acted as the lead agency with the State, and any communications relating thereto had been solely between the City and State. (NOL, Ex. 23 at AR1724.) The District also lacked institutional knowledge of the Agreement due to it being 25 years old. (*Ibid*.) Moreover, although the entire Cardiff School is owned by the District, (NOL, Ex. 21 at AR165), the City was involved with the property under a Master Joint Use Agreement ("JUA") with the District. The JUA, however, was subject to termination by either party by giving six months written notice to the other party, (NOL, Ex. 1 at 5, ¶ 13), which right was recently exercised by the District in December 2019. (NOL, Ex. 47.)

[2] The language in the Project Agreement corresponds with Section 6(f)(3) of the LWCF Act. 54 U.S.C. § 200305(f)(3).

[3] The Secretary of the Interior has delegated the authority for approval of conversions pursuant to the LWCF Act to the Director of the NPS, who has re-delegated that authority to NPS Regional Directors. 51 Fed. Reg. 34181 (Sep. 25, 1986).

C. NPS'S APPROVAL OF THE CONVERSION AND BOUNDARY ADJUSTMENT

After discovering the existence of the Project Agreement in February 2018,[4] the District began working with DPR's Office of Grants and Local Services ("OGALS"), who is responsible for administering the Project Agreement, to obtain OGALS's recommendation that NPS approve a conversion of portions of the old 6(f)(3) boundary and adjust the boundary in order to accommodate features of the Project, as well as the construction of Building M in the early 2000s. (Peterson Decl. ¶¶ 13-28.) On November 25, 2019, after working with OGALS for approximately 21 months, OGALS issued its written recommendation to NPS to approve the District's conversion and boundary adjustment. (Peterson Decl. ¶ 30; Declaration of Tyree K. Dorward ("Dorward Decl.") ¶ 18; NOL, Ex. 42.)

NPS thereafter notified OGALS that "[it] will be providing a conditional approval of the amendment for the small conversion of Berkich Park." (NOL, Ex. 43.) After such conditions were satisfied, NPS gave its final approval of the conversion and boundary adjustment on April 24, 2020, notice of which was provided by OGALS to the District on April 27, 2020. (NOL, Ex. 50.) Among other findings, NPS's Conversion Review notes that the conversion results in a net gain of more than 23,000 square feet of dedicated property within the new 6(f)(3) boundary. (NOL, Ex. 50, Conversion Review at 3.) The District notified Plaintiff of NPS's approval the very next day on April 28, 2020.[5] (NOL, Ex. 51.)

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[4] While Plaintiff asserts that "the District had already finalized its project design" at this time, (Doc. 9-1 at 14:22-23), as noted above, the final site plan was not approved until June 2018, and the Project was not approved until February 2019. (Peterson Decl. ¶¶ 9-10; Vinson Decl. ¶ 20; NOL, Ex. 22.)

[5] Plaintiff's off the cuff statement that NPS "rubberstamped" the District's conversion and boundary adjustment is unavailing. The District spent more than two years working toward obtaining such approval, which included addressing concerns raised by NPS throughout the process. Even after OGALS recommended NPS's unconditional approval in November 2019, NPS imposed additional conditions on its approval. (NOL, Exs. 42-43.) NPS's approval was also ultimately supported by a detailed, well-reasoned evaluation of the District's conversion and boundary adjustment. (NOL, Ex. 50, Conversion Review.)

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

D. PLAINTIFF'S PRIOR LAWSUIT AGAINST THE DISTRICT

Following the District's approval of the Project in February 2019, Plaintiff filed an action in state court against the District in early March 2019 ("State Court Action"). (NOL, Ex. 25.) The State Court Action challenged the Project on the grounds that it violated the California Environmental Quality Act ("CEQA") and constituted taxpayer waste because certain Project features were allegedly not authorized by Measure GG. (NOL, Ex. 45, ¶¶ 30-77, 88-93.)

The gravamen of the State Court Action was that the District could not proceed with any components of the Project within the old 6(f)(3) boundary before NPS provided its approval, and that the District would never obtain such approval. (Dorward Decl. ¶ 4; NOL, Ex. 45.) The District disagreed, namely because the District, who had been working directly with OGALS since early 2018, had confirmed with OGALS the week the Project started that the District was not being asked to stop construction, (Vinson Decl. ¶ 24; Peterson Decl. ¶ 25; NOL, Ex. 32), the District was confident in its ability to provide acceptable replacement property (which proved correct in light of NPS's ultimate approval), and the District recognized NPS approval was necessary to complete the Project, which was a requirement of the Project under the District's Environmental Impact Report ("EIR").[6] (NOL, Ex. 23 at AR1721-29.)

The state court nevertheless granted Plaintiff a TRO in July 2019, and later a preliminary injunction, barring construction activities for the Project within the old 6(f)(3) boundary. (NOL, Ex. 33.) The court also issued a ruling favorable to Plaintiff regarding its CEQA claim. (Pl.'s Ex. 18.) While the ruling addressed various procedural issues, absent therefrom was any consideration of the District's EIR. Instead, the ruling simply noted that "[the District], as of this ruling, has not resolved

[6] Plaintiff erroneously contends that the District has stated that it could not or would not comply with, or was not bound by, the Project Agreement. (Doc. 9-1 at 16:1-5, 16:11-12.) To the contrary, since discovering the Agreement in February 2018, the District has undertaken extensive efforts to comply with its LWCF obligations. (*See* NOL, Exs. 12, 16-19, 20-21, 23-24, 30-32, 34-43, 50.)

the issues over the federal Land and Water Conservation Fund Act issues[,]" and that the District thus far has been unable "to establish [] replacement property acceptable to the controlling authorities." (*Id.* at 4:10-12.) The court declined to provide further clarification of its ruling, and, at Plaintiff's request, orally directed the District to stop all construction for the entire Project in December 2019. (Dorward Decl. ¶ 9.)

E. THE SETTLEMENT OF THE STATE COURT ACTION

While the District strongly disagreed with the state court's ruling, the parties settled the entire action at the commencement of the trial on Plaintiff's waste action in January 2020, which was memorialized in a written agreement on February 26, 2020 ("Settlement Agreement").[7] (NOL, Ex. 48.) Under the Agreement, the District was allowed to immediately resume all construction for the Project located outside the old 6(f)(3) boundary. (*Id.* at ¶ 3.) As to the area within the former 6(f)(3) boundary, Plaintiff agreed the District could perform certain features of the Project, namely the construction of the two partial infiltration basins and installation of new turf for the playfields. (*Id.* at ¶¶ 4-6.) Regarding the remaining improvements within the old 6(f)(3) boundary, which principally consist of the new multipurpose building (Building L) and a small portion of the parking lot, Plaintiff agreed construction thereof could proceed upon NPS's approval of the District's conversion and boundary adjustment. (*Id.* at ¶ 2.)

Plaintiff also released the District "from any and all claims, demands, damages …, debts, liabilities, causes of action, suits, accounts and obligations of whatsoever character, nature and kind, in law or in equity, arising from, connected with or related to the Lawsuit …." (*Id.* at ¶ 10.) The only claims carved out of Plaintiff's release of the District were those "arising from, connected with, or related to any action taken, or to be taken, by OGALS and/or NPS in connection with the District's current or

[7] Although Plaintiff notes that the District sought writ review of the CEQA ruling in the California Court of Appeal, and that such request was summarily denied, (Doc. 9-1 at 18:17-19; Pl.'s Ex. 20), Plaintiff fails to mention that the District's writ petition was not denied until February 27, 2020, after the District notified the Court of Appeal of the settlement on February 26, 2020.

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655 WEST BROADWAY, 15TH FLOOR
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any future application for a conversion of any land within the 6(f)(3) Boundary." (*Id.* at ¶ 10.a.) Thus, aside from reserving the right to challenge NPS's approval of the District's conversion and 6(f)(3) boundary adjustment, Plaintiff released the District from any claims asserted in the State Court Action, including Plaintiff's challenge of the EIR under CEQA. Per the Settlement Agreement, the State Court Action was dismissed with prejudice on May 27, 2020.[8] (NOL, Ex. 52.)

III.

LEGAL STANDARD

Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). To make such a showing, the plaintiff "'must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest.'" *Am. Trucking Ass'ns. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20).

A preliminary injunction may also issue "where the likelihood of success is such that serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). "[This] test applies a sliding scale approach to a preliminary injunction in which 'the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another.'" *Fuhu, Inc. v. Toys "R" Us, Inc.*, 12cv2308 WQH-WVG, 2012 WL 5197556, at *3 (S.D. Cal. Oct. 19, 2012) (Hayes, J.) (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1131).

[8] While Plaintiff continues to suggest that the District misrepresented the scope of the projects at Cardiff School to be funded with Measure GG bond proceeds, (*see* Doc. 9-1 at 14:5-7), this claim was also released and dismissed pursuant to the Settlement Agreement. (NOL, Ex. 45, ¶¶ 88-93; NOL, Ex. 48, ¶¶ 9-11; NOL, Ex. 52.)

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

IV.

ARGUMENT

A. PLAINTIFF IS UNLIKELY TO PREVAIL ON THE MERITS

1. Legal Standard Under The Administrative Procedure Act.

"The first factor under *Winter* is the most important—likely success on the merits." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). "Because it is a threshold inquiry, when a plaintiff has failed to show the likelihood of success on the merits, [courts] need not consider the remaining three [*Winter* elements]." *Ibid.* (internal quotation marks and citations omitted).

In actions brought under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, which is the vehicle for challenging determinations made under the LWCF Act, *Sierra Club v. Davies*, 955 F.2d 1188, 1192 (8th Cir.1992); *Friends of Roeding Park v. City of Fresno*, 848 F. Supp. 2d 1152, 1160-61 (E.D. Cal. 2012); *Weiss v. Kempthorne*, 580 F. Supp. 2d 184, 187 (D.D.C. 2008), the likelihood of success on the merits is evaluated under the deferential arbitrary and capricious standard of review. *Earth Island Institute v. Carlton*, 626 F.3d 462, 468-69 (9th Cir. 2010); *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (en banc), *overruled in part on other grounds by Winter*.

Under the APA, reviewing courts may only reverse agency action if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Courts must defer to the agency on matters within the agency's expertise unless the agency completely failed to address a factor that was essential to making an informed decision. *Nat'l Wildlife Fed'n v. NMFS*, 422 F.3d 782, 798 (9th Cir. 2005). A court "may not substitute its judgment for that of the agency concerning the wisdom or prudence of [the agency's] action." *River Runners for Wilderness v. Martin*, 593 F.3d 1064, 1070 (9th Cir. 2010). The Ninth Circuit has further explained as follows:

> In conducting an APA review, the court must determine whether the agency's decision is "founded on a rational connection between the facts found and the choices made ... and whether [the agency] has committed a clear error of judgment." *Ariz. Cattle Growers' Ass'n v. U.S. Fish & Wildlife*, 273 F.3d 1229, 1243 (9th Cir. 2001). "The [agency's] action ... need only be a reasonable, not the best or most reasonable, decision." *Nat'l Wildlife Fed'n v. Burford*, 871 F.2d 849, 855 (9th Cir. 1989). *River Runners*, 593 F.3d at1070.

Absent a showing of arbitrary action, a court must assume that an agency has exercised its discretion appropriately. *Kleppe v. Sierra Club*, 427 U.S. 390, 412 (1976). Thus, the standard is "highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision." *Independent Acceptance Co. v. California*, 204 F.3d 1247, 1251 (9th Cir. 2000) (internal quotations omitted); *see also Weiss*, 580 F. Supp. 2d at 188 ("If the district court can 'reasonably discern' the agency's path, it should uphold the agency's decision."). The deferential nature of a Court's inquiry into the merits is not altered at the preliminary injunction stage. *Lands Council*, 537 F.3d at 987; *Ranchers Cattlemen Action Legal Fund v. U.S. Dept. of Agric.*, 415 F.3d 1078, 1093 (9th Cir. 2005) (finding that, in granting a preliminary injunction, "the district court committed legal error by failing to respect the agency's judgment and expertise").

The deferential review afforded to NPS's decision is also guided by the amount of authority and discretion afforded under the LWCF Act. Section 6(f)(3)'s promulgated standards grant a considerable degree of discretion to the Secretary of the Interior, and NPS through delegation, to approve of proposed conversions "on such conditions as the Secretary considers necessary," in order to ensure that any converted parkland is replaced with land of "reasonably equivalent usefulness and location." 54 U.S.C. § 200305(f)(3). This high degree of discretion granted to NPS under the LWCF Act, in combination with the deferential standard for review of agency determinations under the APA, informs the proper scope of review.

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ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

2. Plaintiff's Action Lacks Merit.

To establish a likelihood of success on the merits, Plaintiff argues the Defendants violated the LWCF Act on the grounds (1) that the District never considered alternatives to the proposed conversion, (Doc. 9-1 at 24:5-13); (2) that the replacement property lacks a reasonably equivalent usefulness as the land within the original 6(f)(3) boundary, (*id.* at 24:14-25:23); and (3) that the District's environmental review was inadequate because the EIR violates CEQA, (*id.* at 25:24-26:2). As to its NEPA claim, Plaintiff contends the conversion does not qualify for a categorical exclusion because the State Court Action and CEQA ruling therein show there is a substantial dispute regarding the conversion. (*Id.* at 26:3-27:13.) Each of Plaintiff's arguments is unavailing.

a. All Practical Alternatives To The Conversion Were Evaluated.

Before obtaining a conversion approval, "[a]ll practical alternatives to the proposed conversion [must] be[] evaluated." 36 C.F.R. § 59.3(b)(1). Relying on deposition testimony from Randal Peterson, the District's Bond Program Manager, and Eric Naslund, the Project architect, Plaintiff claims "that the District never considered an alternative design which did not encroach into the protected 6(f)(3) boundary." (Doc. 9-1 at 24:8-11.) Not only does Plaintiff fail to acknowledge that only ***practical*** alternatives need be evaluated, but Plaintiff's motion fails to identify a single alternative plan that the District allegedly did not consider.

The administrative record will show that Plaintiff previously argued that an alternative site plan created by Brett Farrow indicates that "a redesign of the school can be accomplished and can meet the needs of the District without encroaching into the Park." (NOL, Ex. 28 at 7; *see also* NOL, Ex. 14.) The Farrow proposal suggested that the multipurpose building be placed in the eastern portion of the parking lot and that Building K be located between the playfields and the administration building and

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655 WEST BROADWAY, 15TH FLOOR
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abutting the administration building. (NOL, Ex. 28 at Ex. 9.) Notably, even the Farrow proposal placed improvements within the old boundary. (*Ibid.*)

The District evaluated the Farrow proposal and determined that it was impractical. With regard to the multipurpose building, Farrow's proposed location would have jeopardized student safety and security concerns by preventing the front office from monitoring access and entry to the building and locating the building next to kindergarten classrooms; it would have significantly increased the impact to views given the eastern side of the campus is approximately 20 feet higher in elevation than the western side of the campus; it would have required the parking lot to be moved westward along Montgomery Avenue and thus encroach further across the 6(f)(3) boundary; and it would have separated the multipurpose building from the outdoor assembly area and thereby precluded the coordination of indoor educational programs with adjacent outdoor programs. (Peterson Decl. ¶ 17; NOL, Ex. 14; *see also* NOL, Ex. 23, Attachment 2 at AR2163.) As to Building K, the Farrow plan ignored the grade change on the western side of the administration building and the substantial expense associated with addressing the same, and it would have required further encroachment into the flat field areas within the 6(f)(3) boundary and would have failed to satisfy the school's programming needs by isolating the building from the core instructional areas of the campus. (*See* NOL, Ex. 14.)

Moreover, during the more than two years of planning and designing the Project, the record will demonstrate that the District engaged in nine rounds of public review and revisions, and the EIR alone shows that the District evaluated ***18*** potential site layouts. (Peterson Decl. ¶ 4; NOL, Ex. 23 at AR 2141-53.) Among other features, the first conceptual site plan situated the multipurpose building near the front office for safety and security purposes, namely so that members of the public would not travel through the school to access the space for community events, and so that access and entry to the building could be monitored from the front office. (Peterson Decl. ¶ 5; NOL, Ex. 8 at 11564; NOL, Ex. 5 at 2; NOL, Ex. 7 at 2.) The site plan also placed

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all kindergarten and extended-day facilities in the northwest corner of the site. (Peterson Decl. ¶ 6; NOL, Ex. 8 at 11564.) The purpose of placing such facilities in this location was to provide a direct view from the administration offices and allow direct access to the playfields. (*See* Peterson Decl. ¶ 5; NOL, Ex. 8 at 11566.)

After receiving community feedback, which principally concerned preserving adjacent ocean views and maintaining more open space, a revised conceptual site plan was prepared. (Peterson Decl. ¶ 6; NOL, Ex. 8 at 11565.) The revised plan tightened up the footprint of the buildings by compromising and reducing outdoor instructional spaces located between the classroom buildings, dramatically reduced the amount of play area available for kindergarten and extended-day students, and omitted the separate kindergarten and first grade student pick-up/drop-off area and parking lot. (Peterson Decl. ¶ 6; NOL, Ex. 8 at 11565; NOL, Ex. 9.) While the revised plan kept the multipurpose building near the main entrance of the school for safety and security reasons, the kindergarten and extended-day classrooms were relocated to the northeast side of the campus, which no longer allowed for a direct view thereof from the administration building, or direct access to the playfields. (Peterson Decl. ¶ 6; NOL, Ex. 8 at 11565; NOL, Ex. 9 at 2.) These alterations substantially decreased the amount of land to be converted within the old 6(f)(3) boundary for the Project.

Further revised conceptual plans were created that continued to move the buildings closer together, further shorten the length of the student pick-up/drop-off area and parking lot, and further compromise the District's educational programming needs in order to accommodate the community's desire to preserve and enhance the site's outdoor recreation spaces. (Peterson Decl. ¶ 8; NOL, Exs. 10, 11, 13; *see also* NOL, Ex. 40 at pp. 6-8.) Each of the site plans continued to decrease and minimize the areas of the Project situated within the old 6(f)(3) boundary, which culminated in approval of a final site plan in June 2018. (Peterson Decl. ¶ 9; NOL, Ex. 15.)

None of the testimony cited by Plaintiff changes any of the foregoing. Mr. Peterson's testimony simply reflects that no further alterations to the final site plan

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
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were considered after its adoption in June 2018, that OGALS indicated no further redesign was needed, and that the architect was not asked to prepare a "contingency design plan." (*See* Doc. 9-1 at 24:10 (citing Pl.'s Ex. 8 at 195:23-196:20, 157:8-13).)

Mr. Naslund's testimony similarly confirms that he was not asked to make further changes to the final site plan or prepare "contingency plans." (*Id.* at 24:10-11 (citing Pl.'s Ex. 32 at 38:17-24, 39:9-13, 34:21-35:2, 55:7-12).) While Mr. Naslund did not recall anyone from the District explicitly telling him not to "design improvements either into George Berkich Park, or west of the 6f3 boundary[,]" the latter of which is not surprising given Mr. Naslund was unfamiliar with the term "6F3 boundary," Mr. Naslund nevertheless testified that he was "aware from the workshops with the community that some people were stating that it was parkland …." (Pl.'s Ex. 32 at 33:18-34:2.) Mr. Naslund further explained that these people were concerned about the park and that "[the design] evolved as a consequence of those workshops." (*Id.* at pp. 35:24-36:6.)

Plaintiff also cites testimony from Mr. Naslund regarding the parking lot, namely that he did not believe alternative designs for a parking lot located entirely outside the old 6(f)(3) boundary were considered. Such testimony ignores the fact that, as noted above, the second site plan significantly shortened the length of the student pick-up/drop-off area and parking lot, thus reducing the amount of the parking lot located within the old 6(f)(3) boundary. (NOL, Ex. 8 at Revised Site Plan; NOL, Ex. 9.) Subsequent site plans also further shortened the length of the student pick-up/drop-off area and parking lot, namely the area located within the old 6(f)(3) boundary. (Peterson Decl. ¶ 6; NOL, Ex. 8.) Moreover, Mr. Naslund, who was deposed twice, explained at his depositions that the size and configuration of the parking lot in the final site plan were necessitated by both safety concerns and compliance with the City's parking requirements. (Pl.'s Ex. 32 at pp. 39:21-41:16, 54:18-55:12; *see also* NOL, Ex. 46 at 53:7-54:23.) By its own calculation, Plaintiff also disregards the fact that after the numerous revisions to the site plan, only 7,850

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square feet of the new parking lot, which totals 33,000 square feet in size, even falls within the old 6(f)(3) boundary. (NOL, Ex. 55 at 4; *see also* NOL, Ex. 50, Conversion Review at 3.) Plaintiff's assertion that alternatives were not considered therefore lacks merit.

b. NPS Properly Determined That The Replacement Property Provides Reasonably Equivalent Usefulness.

Plaintiff next attacks NPS's approval on the grounds that a parking lot, bioinfiltration basins, and hardcourts are "non-recreation use improvements," and that NPS should have deemed them inadequate to replace "grassy parkland." (Doc. 9-1 at 24:14-25:23.) Plaintiff's assertions are without merit.

As an initial matter, Plaintiff's argument is predicated on the false premise that "an in-kind exchange of land" is required, i.e., grass for grass. (*Id.* at 24:14-17; *see also id.* at 12:20-21.) The conversion regulations expressly state that "the replacement property need not provide identical recreation experiences …[,]" and grants NPS full discretion on the matter. 36 C.F.R. § 59.3(b)(3).

As to the parking lot, Plaintiff claims that NPS previously opined the parking lot was not eligible replacement property, and that a parking lot is a mere "support facility" under the LWCF Manual, albeit without including a copy of the Manual with its moving papers. (Doc. 9-1 at 24:18-28.) As to the former, in March 2019, NPS stated that the parking lot would be ineligible ***if*** it had already been available for park use. (NOL, Ex. 26, ¶ 1.) As correctly noted in NPS's evaluation one year later in April 2020, however, "[the parking lot] was outside the 6(f) boundary and isolated from the park by a chain link fence[,]" and "[i]t could be closed to access by a locking gate, and park users commented that they had to park on the street when using the park." (NOL, Ex. 50, Conversion Review at 6.) Plaintiff's "support facility" argument is even more disingenuous. While the LWCF Manual notes that various recreational facilities are eligible for LWCF assistance, the Manual expressly

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655 WEST BROADWAY, 15TH FLOOR
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recognizes that support facilities, including parking areas, are also eligible for LWCF assistance. (NOL, Ex. 60 at 3-10, 3-13.)

As to the bioinfiltration basins, Plaintiff's characterization of the same also misses the mark. Although ignored by Plaintiff, and as evidenced by similar basins installed in local City parks, the ground level surface of the basins will consist of grass. (Peterson Decl. ¶ 37; NOL, Ex. 58; Vinson Decl. ¶ 33; NOL, Ex. 61.) Moreover, through the Project's incorporation of boulders and other landscape elements into their design, the basins will function as an extension of the interactive playfield areas and can serve as outdoor instructional areas. (Peterson Decl. ¶ 37.) Accordingly, the area for both basins will still be used for recreational purposes.[9]

Regarding the hardcourts, Plaintiff claims they do not constitute eligible replacement property because they were previously dedicated for recreational purposes in perpetuity under the District's 1991 Master Joint Use Agreement ("JUA") with the City. The critical flaw in Plaintiff's reliance on the JUA is that it was subject to termination upon a mere six months' notice by either party. (NOL, Ex. 1 at ¶ 13.) Indeed, as noted *supra*, the District approved termination of the JUA in December 2019. (NOL, Ex. 47; *see also* Pl.'s Ex. 27; Doc. 9-1 at 19:26-28.)

c. Plaintiff's CEQA Arguments Are Foreclosed By The Settlement Agreement.

Plaintiff also takes exception to NPS's approval on the grounds that the Project EIR violates CEQA. (Doc. 9-1 at 25:24-26:2). Plaintiff's argument completely disregards the Settlement Agreement and its legal effect. As noted above, Plaintiff has forever released the District from any claims asserted in the lawsuit, including any claim that the District's EIR violates CEQA, (NOL, Ex. 48 at 2, 5-6, ¶¶ J, 10), and thus cannot rely on the same to attack NPS's approval.

[9] In addition to their recreational use, the basins also constitute an eligible support facility because they will increase the usability of the playfields, as they will serve to reduce flooding and ponding on the playfields during rain events. (Peterson Decl. ¶ 37.)

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Plaintiff also dismissed the entire lawsuit with prejudice. (NOL, Ex. 52.) Under California law, "[a] dismissal with prejudice is the modern name for a common law retraxit." *Rice v. Crow*, 81 Cal. App. 4th 725, 733 (2000).

> A retraxit is a judgment on the merits preventing a subsequent action on the dismissed claim. It "has always been deemed a judgment on the merits against the plaintiff, estopping him from subsequently maintaining an action for the cause renounced.... [¶] It has been frequently held that a judgment or order dismissing an action, based upon a stipulation or agreement of the parties settling and adjusting the claim or cause of action in suit and providing for the dismissal[,] is a bar to another action for the same cause." *Id.* at 733-34 (quoting *Torrey Pines Bank v. Superior Court*, 216 Cal. App. 3d 813, 822 (1989)).

"The statutory term 'with prejudice' clearly means the plaintiff's right of action is terminated and may not be revived." *Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 793 (2010) (internal quotation marks omitted). "'Dismissal with prejudice is determinative of the issues in the action and precludes the dismissing party from litigating those issues again.'" *Fed. Home Loan Bank of San Francisco v. Countrywide Fin. Corp.*, 214 Cal. App. 4th 1520, 1527 (2013) (quoting *Torrey Pines Bank*, 216 Cal. App. 3d at 820). The dismissal of the lawsuit with prejudice therefore also bars Plaintiff from pursuing any claim alleging that the District's EIR violates CEQA.

Any claimed invalidity of the EIR is also foreclosed by other express provisions of the Settlement Agreement. Plaintiff specifically agreed therein to allow the District to immediately resume all construction for the Project located outside the old 6(f)(3) boundary, and to proceed with certain activities within the old 6(f)(3) boundary, including construction of the two partial infiltration basins. (NOL, Ex. 48 at 4-5, ¶¶ 2-6.) Plaintiff cannot agree in the Settlement Agreement to allow the District to complete the bulk of the Project, and now claim there is no valid EIR for the Project. If there was no valid EIR, then none of the Project could be constructed. Not only does Plaintiff's agreement to allow the District to resume the Project thus

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655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

undermine Plaintiff's renewed attack on the EIR, but such terms are also entirely consistent with the release and dismissal of the CEQA action.[10]

d. NPS Appropriately Determined The District's Conversion Qualifies For A Categorical Exclusion Under NEPA.

Plaintiff also claims the District's conversion does not qualify for a categorical exclusion under NEPA because the conversion was "highly controversial." Relying solely on the "State Court litigation and the rulings of the Superior Court," Plaintiff argues "there is a substantial dispute as to the environmental effects of the 6(f)(3) conversion and the inadequacies of the District's environmental review." (Doc. 9-1 at 26:24-27.) Plaintiff adds that, "[b]y the very nature of the claims raised in the State Court Litigation, the District's conversion proposal is 'highly controversial.'" (*Id.* at 26:27-27:1.)

Plaintiff's argument once again completely disregards the Settlement Agreement. Pursuant thereto, and as recognized by NPS, "[the State Court Action] was eventually dismissed along with all challenges to the legitimacy of the CEQA decision[.]" (NOL, Ex. 50, Conversion Review at 5.) Additionally, as noted above, Plaintiff released the District for any claims asserted in the State Court Action, including any claim that the District's EIR violates CEQA. (NOL, Ex. 48 at 5-6, ¶ 10.) Given the State Court Action was settled and dismissed, it does not establish any ongoing controversy regarding the environmental effects of the District's conversion.[11]

[10] Plaintiff's motion also repeatedly asserts that the EIR was "decertified." (Doc. 9-1 at 18:15, 20:7, 25:28.) Contrary to Plaintiff's assertion, the state court never directed the District to decertify the EIR, which would have occurred through issuance of a writ of mandate, and the District never took any action to decertify the EIR. Instead, the parties settled the State Court Action, and Plaintiff accordingly released and dismissed its CEQA action.

[11] Plaintiff also claims in a perfunctory manner that other violations of the LWCF Act exist. (Doc. 9-1 at 14:15-17, 27:14-28:7.) Not only do such arguments lack merit, (*see* NOL, Ex. 53 at 8-11, 20-21, 25, 26-29), but they should also be disregarded. *See Sokaogon Gaming Enter. Corp. v. Tushie-Montgomery Assocs., Inc.*, 86 F.3d 656, 658 (7th Cir. 1996) (argument "presented in the form of a short sentence" and "purely as a conclusion, without any effort to support it" deemed waived).

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ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

B. PLAINTIFF IS UNLIKELY TO SUFFER IRREPARABLE HARM IN THE ABSENCE OF AN INJUNCTION.

While the Court need not address the remaining requirements for issuance of a preliminary injunction due to Plaintiff's failure to establish a likelihood of success on the merits, *see Garcia*, 786 F.3d at 740, Plaintiff also fails to make a sufficient showing of irreparable harm. The crux of Plaintiff's claim is that absent an injunction, the George Berkich Park portion of the school site will suffer an environmental injury. (Doc. 9-1 at 28:8-30:6.) While environmental injury is often deemed irreparable, this does not mean that "any potential environmental injury" warrants an injunction. *Lands Council*, 537 F.3d at 1005. Indeed, "the Supreme Court has instructed [courts] not to 'exercise [its] equitable powers loosely or casually whenever a claim of 'environmental damage' is asserted.'" (*Ibid.* (citations omitted).)

The fundamental flaw in Plaintiff's irreparable injury claim is that the entirety of George Berkich Park has already been demolished to make way for the new Project improvements. Plaintiff itself notes that there are no fields, "walking track," or dog park to be preserved.[12] (Doc. 9-1 at 29:19-23.) Given the purported damage has already been done, Plaintiff's irreparable harm argument rings hollow. *See Weiss v. Secretary of U.S. Dept. of Interior*, 459 Fed. Appx. 497, 500 (6th Cir. 2012) (concluding court was "without power to stop" conversion of park where the project was almost finished and thus "the damage (to the extent there is any) has already been done[]"). The irony of Plaintiff's request to stop further construction of the Project within the old 6(f)(3) boundary should also not go unnoticed. If the District cannot continue the Project, which is actually improving and adding in excess of

[12] Plaintiff asserts that the track, along with a baseball backstop, were removed before NPS's approval in March 2020, in violation of the Settlement Agreement because the District knew "that the San Diego Superior Courts were closed on account of COVID-19." (Doc. 9-1 at 20:21-26.) Not only is Plaintiff's suggestion that the District took advantage of the COVID-19 pandemic to advance the Project baseless and offensive, but the District also addressed the issue with Plaintiff at the time. (Pl.'s Ex. 29.) More importantly, the issue also became moot upon NPS's approval in April 2020. (*See* NOL, Ex. 50.)

23,000 square feet to the former 6(f)(3) boundary area, (NOL, Ex. 50, Conversion Review at 3), the land at issue will remain demolished and unusable for any recreational purposes whatsoever, which runs directly counter to the LWCF Act's purpose of maintaining public outdoor recreation use.[13]

Moreover, Plaintiff's delay in seeking injunctive relief implies a lack of urgency and thus undercuts a claim of irreparable injury. *Garcia*, 786 F3d at 746; *Oakland Tribune, Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1377 (9th Cir.1985). As noted above, Plaintiff and its members, all four of whom live across the street from Cardiff School, (*see* NOL, Exs. 44, 62), sat by and watched the purported damage that they now seek to stop. Absent from Plaintiff's moving papers is any attempt to explain its delay in requesting a TRO following NPS's approval in April 2020. The likely explanation is that Plaintiff understands it agreed in the Settlement Agreement that such activities could occur (including its express agreement regarding the bioinfiltration basins and new turf), that it has "buyer's remorse" regarding the settlement, and in disregard thereof has embarked on a last ditch effort to stop completion of the Project.

Furthermore, insofar as the injunction may be aimed at preventing further construction within the old 6(f)(3) boundary, and in the unlikely event the Court ultimately finds some violation of the LWCF Act, the multipurpose building, which is the only new building located within the former boundary, need not be torn down despite Plaintiff's assertion to the contrary. (*See* Doc. 9-1 at 32:27-33:2.) The remedy for an unauthorized conversion is replacement of the property with mitigation

[13] Although cited by Plaintiff, *Ft. Funston Dog Walkers v. Babbitt*, 96 F. Supp. 2d 1021 (N.D. Cal. 2000) is inapposite. The issue in *Ft. Funston* was NPS's alleged failure to comply with an NPS regulation requiring publication in the Federal Register before closing Fort Funston in the Bay Area. 96 F. Supp. 2d at 1022-23, 1032. In contrast to the dog walkers in *Ft. Funston*, who could simply resume walking their dogs upon reopening the Fort, George Berkich Park cannot be used for any recreational purposes because it has been demolished to make way for new and improved recreational uses.

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655 WEST BROADWAY, 15TH FLOOR
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property, *see* 54 U.S.C. § 200305(f)(3); 36 C.F.R. § 59.3, which the District would be able to continue to work with OGALS and NPS to achieve.[14]

C. THE BALANCING OF EQUITIES ALSO WEIGHS STRONGLY AGAINST ISSUANCE OF AN INJUNCTION

To obtain injunctive relief, Plaintiff must also establish that the balance of equities tips in its favor. *Am. Trucking*, 559 F.3d at 1052. Namely, "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24 (internal quotation marks omitted).

In the event the requested injunction is granted, the harm to the District will be catastrophic. If construction within the old 6(f)(3) boundary does not continue as scheduled, certain new utilities, the parking lot and drop-off/pick-up area, playfields and ADA accessible walkways will be unfinished. (Peterson Decl. ¶¶ 46-49.) If these items are not completed as scheduled, Cardiff School cannot reopen for the 2020-21 school year. (*Ibid*.) Any further delays will also result in increased construction costs of more than $200,000 per month, (Peterson Decl. ¶ 46); *Earth Island*, 626 F.3d at 475 (noting economic harm may be considered when balancing the harms), and jeopardize the Project due to a lack of funding. *See Weiss*, 580 F. Supp. 2d at 191 (finding harm to public weighed against injunction "because construction delays are expensive and delay could jeopardize the entire project due to the risk of lost financing"). Plaintiff's scant discussion of the harm to the District fails to acknowledge the foregoing effects of the injunction it seeks.[15] (*See* Doc. 9-1 at 32:14-25.)

[14] Plaintiff's reliance on *Brooklyn Heights Ass'n, Inc. v. NPS*, 777 F. Supp. 2d 424 (E.D.N.Y. 2011) is misplaced. In *Brooklyn Heights*, "there [was] no dispute that … NPS did not follow the conversion process laid out in section 6(f)(3) of the LWCFA." 777 F. Supp. 2d at 437. Rather, the principal issue was whether the conversion process was even triggered. *Id.* at 437-38.

[15] If a preliminary injunction is issued, the lack of playfields at Cardiff School, which make up the bulk of the school's outdoor space, will also adversely affect the District's ability to safely educate students, as current public health guidelines require

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Rather than meaningfully address the foregoing harms to the District, Plaintiff argues that the District "jumped the gun" by starting the Project in June 2019, before receiving NPS approval, and by purportedly "fast tracking" construction because it knew this action and request for a TRO was forthcoming. (Doc. 9-1 at 31:22-25; *see also id.* at 10:1-2, 11:18-20.)

As to the former, the instant action arises from NPS's approval of the District's conversion and boundary adjustment in April 2020; it has nothing to do with the District's prior construction activities dating back to June 2019. While such activities may have been relevant to the State Court Action, which was ultimately settled and dismissed, they are immaterial to the present action.

Plaintiff's contention regarding the District's post-NPS approval construction activities fares no better. Plaintiff agreed in the Settlement Agreement that such activities could occur upon NPS approval. (NOL, Ex. 48 at 4, ¶ 2.) The injunction sought by Plaintiff also improperly extends to the bioinfiltration basins and new turf playfields, which Plaintiff expressly agreed could be constructed even without NPS approval. (*Id.* at 4-5, ¶¶ 4, 6.)

Moreover, Plaintiff's assertions that the District expedited work after the NPS approval, and that the District did so because it knew a lawsuit and TRO request would be filed, are unsubstantiated and meritless. The operative construction schedule was created by the District's contractor on or about March 1, 2020, following the Settlement Agreement. (Peterson Decl. ¶ 38; NOL, Ex. 49 at 11.) The schedule shows that construction of the multipurpose room (Building L) was scheduled to commence the last week of April, with the hope that NPS approval would be achieved by then, and the new parking lot was to be built starting in early June. (*Ibid.*) The Cardiff School Rebuild Timeline submitted by Plaintiff is consistent with this schedule. (Pl.'s Ex. 34.) The District also had no knowledge of this lawsuit

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schools to fully utilize campuses for social distancing in light of the COVID-19 pandemic. (Vinson Decl. ¶¶ 29-32.)

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until after its filing on June 12, 2020, or of Plaintiff's intention to seek a TRO until Plaintiff informed the District of the same on June 23, 2020, two months after NPS's approval. (Vinson Decl. ¶ 34.)

Plaintiff's balancing of the harms argument also repeats the same environmental injury claim addressed under the irreparable injury prong, which is unavailing for the reasons already stated. Similar to the irreparable injury element, Plaintiff's delay in seeking an injunction is also "quite relevant to balancing the parties' potential harms." *Quince Orchard Valley Citizens Ass'n, Inc. v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989). Indeed, since NPS's approval in late April 2020, the District has expended in excess of $1.23 million in Project improvements located within the old 6(f)(3) boundary. (Peterson Decl. ¶ 41.)

In *Quince Orchard*, two citizens groups filed an action seeking to halt construction of a new county road through land subject to the LWCF Act, alleging, *inter alia*, that NPS's approval of the conversion was unlawful. 872 F.2d at 75-78. In affirming the district court's denial of the plaintiffs' motion for a preliminary injunction, the Fourth Circuit relied on the plaintiffs' delay in seeking injunctive relief. *Id.* at 79-80. The Fourth Circuit reasoned in relevant part:

> Equity demands that those who would challenge the legal sufficiency of administrative decisions concerning time sensitive public construction projects do so with haste and dispatch. To require any less could well result in costly disruptions of ongoing public planning and construction. *Id.* at 80.

Based on the foregoing, Plaintiff has not met its heavy burden of demonstrating that the equities favor the granting of a preliminary injunction.

D. THE PUBLIC INTEREST ALSO MILITATES AGAINST GRANTING AN INJUNCTION

With regard to the public interest, courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (internal quotation marks omitted). In other words, "[t]he public

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655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

interest inquiry primarily addresses impact on non-parties rather than parties." *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014) (internal quotation marks omitted).

The gist of Plaintiff's public interest argument is that it is against the public interest to violate federal law. (Doc. 9-1 at 31:26-32:13.) Plaintiff's argument, however, is based on the false premise that there has been a violation of federal law, which is addressed above in connection with the merits element. Moreover, the public, and particularly the Cardiff community, has a stronger, countervailing interest in having a school for its children to attend this fall. Indeed, in California, children from kindergarten through grade 12 have a state constitutional right to attend public school. *Butt v. State of Cal.*, 4 Cal. 4th 668, 680 (1992). There is simply no comparison between the public interest in, and the right to, having a school for grades K-2 to attend and the personal interests of Plaintiff and its four members. Injunctive relief therefore must be denied in this matter due to the detrimental impact it would have on the public.[16]

E. SECURITY SHOULD BE REQUIRED IN THE EVENT AN INJUNCTION IS ISSUED

A preliminary injunction may be issued "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Among other purposes, the bond requirement ensures that the moving party will bear the cost of an erroneous injunction and allows the wrongfully-enjoined party a source from which it may collect damages without regard to the moving party's solvency. *Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1037 (9th Cir. 1994).

[16] The Cardiff community has also provided its overwhelming support to the District and emphasized the need to promptly finish the Project. (Vinson Decl. ¶ 35; NOL, Ex. 64.)

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655 WEST BROADWAY, 15TH FLOOR
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Despite the substantial financial impacts that the requested injunction would have on the District, Plaintiff boldly suggests that no bond should be required because its members have limited financial resources. (Doc. 9-1 at 33:5-22.) Plaintiff's argument fails for the simple reason that Plaintiff has provided no information whatsoever regarding the financial condition of its four members. *Western Watersheds Project v. Zinke*, 336 F. Supp. 3d 1204, 1246 (D. Idaho 2018) (requiring bond where nonprofits' financial condition was "not clear from the record, and the contention that they are non-profit environmental groups is not a basis to conclude that they possess insufficient resources to post a bond when seeking injunctive relief"); *see also Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005) (upholding imposition of bond where plaintiff failed "to show that the imposition of anything other than a nominal bond would constitute an undue hardship"). In the event an injunction is granted, the District accordingly requests that Plaintiff be required to provide a bond that is sufficient to protect the District in the amount of at least $200,000 per month, or $2.4 million per year, for the pendency of the action in this Court. (Peterson Decl., ¶¶ 46, 48.)

V.

CONCLUSION

For the reasons set forth above, the Court should deny Plaintiff's motion for a preliminary injunction.

Dated: July 10, 2020

BEST BEST & KRIEGER LLP

By: /s/ Matthew L. Green
TYREE K. DORWARD
MATTHEW L. GREEN
LINDSAY D. PUCKETT
Attorneys for Defendant
CARDIFF SCHOOL DISTRICT

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

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

PROOF OF SERVICE

I, Lisa Atwood, declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On July 10, 2020, I served a copy of the within document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION;

DECLARATION OF TYREE K. DORWARD IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION;

DECLARATION OF RANDAL L. PETERSON IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION;

DECLARATION OF JILL VINSON IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION;

REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION;

NOTICE OF LODGMENT OF EVIDENCE IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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

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

Executed on July 10, 2020, at San Diego, California.

_____/s/ Lisa Atwood _____

LAW OFFICES OF
BEST BEST & KRIEGER LLP
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CA 92101