

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

The Parties to this Settlement Agreement and Mutual Release are Save the Park and Build the School, a California unincorporated nonprofit association [“Plaintiff” and/or “STP”], and Cardiff School District, a California school district [“Defendant” and/or “the District”]. The Parties to this Settlement Agreement are collectively referred to herein as the “Parties.”

RECITALS

- A. WHEREAS, in 1993, the District and the City of Encinitas [“City”] entered into a Land and Water Conservation Fund Program Project Agreement with the State Department of Parks and Recreation [“LWCFA”], a true and accurate copy of which is attached hereto as Exhibit A;
- B. WHEREAS, among other terms, the LWCFA states that the land depicted on the boundary map attached hereto as Exhibit B on the westernmost portion of the Cardiff School site [the “6(f)(3) Boundary”] “shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity ...,” and that “[t]he Secretary [of the Interior] [or any representative lawfully delegated the authority to act, i.e., the National Park Service [‘NPS’]] shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location”;
- C. WHEREAS, in the early 2000s, the District made improvements to a portion of the area within the existing 6(f)(3) Boundary as depicted in Exhibit C hereto, which included the construction of a science and art lab building (now known as Building M) and the addition of a vehicular drop-off/pick-up area along Mozart Avenue;
- D. WHEREAS, on November 8, 2016, Cardiff voters approved the Cardiff School District General Obligation Bond of 2016, known as Measure GG, which authorized the issuance and sale of bonds for the purpose of funding projects set forth in the project list therein;
- E. WHEREAS, on June 9, 2017, the District retained Studio E Architects to carry out the design of projects listed for Cardiff School in Measure GG, known as the Cardiff School Modernization and Reconstruction Project [“Project”], which design included certain improvements located within the existing 6(f)(3) Boundary as depicted on the District’s site plan attached hereto as Exhibit D;
- F. WHEREAS, on or after February 6, 2018, the District was notified of its obligations under the LWCFA and thereafter initiated communications with the California Department of Parks and Recreation, Office of Grants and Local Services [“OGALS”] to obtain guidance for requesting a revision of the 6(f)(3) Boundary;

- G. WHEREAS, on February 7, 2019, the District, acting as the lead agency for the Project, made findings pursuant to the California Environmental Quality Act [“CEQA”] for the Project, made CEQA categorical exemption findings, certified and approved an Environmental Impact Report [“EIR”], and approved the Project;
- H. WHEREAS, on February 26, 2019, the District submitted to OGALS a Proposal Description and Environmental Screening Form [“PD/ESF”] describing its proposed revision to the 6(f)(3) Boundary;
- I. WHEREAS, STP contends that it was registered on March 6, 2019, as a California unincorporated nonprofit association to advance the interests of 250 plus online petition signers who oppose the District’s plans to use Measure GG funds to expand Cardiff School’s buildings into the open space known as George Berkich Park;
- J. WHEREAS, on March 8, 2019, Plaintiff filed a Verified Petition for Writ of Mandate against the District in an action captioned, *Save the Park and Build the School v. Cardiff School District*, San Diego County Superior Court Case No. 37-2019-00012880-CU-WM-NC [“Lawsuit”], alleging violations of CEQA in connection with the Project;
- K. WHEREAS, on April 5, 2019, Plaintiff filed a First Amended Verified Petition for Writ of Mandate and Complaint against the District alleging violations of CEQA, Taxpayer Waste, and Reverse Validation, and on April 22, 2019, Plaintiff filed a Second Amended Verified Petition and Complaint asserting the same claims;
- L. WHEREAS, on April 11, 2019, the District obtained approval of the Increment 1 Project building plans based on the site plan attached hereto as Exhibit D from the Division of the State Architect [“DSA”];
- M. WHEREAS, on June 20, 2019, the District closed the land within the existing 6(f)(3) Boundary from further public use for the duration of the Project;
- N. WHEREAS, on or about July 1, 2019, the District commenced demolition of classroom and multipurpose buildings at Cardiff School;
- O. WHEREAS, on July 15, 2019, the City issued a grading permit to the District in connection with the Project;
- P. WHEREAS, on July 24, 2019, at Plaintiff’s request, the Court issued a temporary restraining order, which, with limited exceptions, prohibited the District from carrying out construction activities within the 6(f)(3) Boundary;
- Q. WHEREAS, on October 17, 2019, Plaintiff dismissed its Reverse Validation cause of action without prejudice;
- R. WHEREAS, on October 24, 2019, the District submitted an updated/revised PD/ESF to OGALS regarding its proposed revision of the 6(f)(3) Boundary;

- S. WHEREAS, on November 18, 2019, the Court issued a ruling adjudicating Plaintiff's CEQA claim in its favor and granting Plaintiff's motion for a preliminary injunction on the basis of the Taxpayer Waste claim prohibiting the District from carrying out construction activities within the 6(f)(3) Boundary, a copy of which is attached hereto as Exhibit E, and with which the District disagrees;
- T. WHEREAS, on December 2, 2019, the Court affirmed that as a consequence of its November 18, 2019 ruling, the District was required to discontinue all construction activities whatsoever on the entire Cardiff School site;
- U. WHEREAS, on November 25, 2019, OGALS issued a letter recommending that NPS approve the District's request to revise the 6(f)(3) Boundary, and memorializing the termination of the City from the Project Agreement;
- V. WHEREAS, on November 27, 2019, NPS notified OGALS by electronic mail that a conditional approval of the District's Boundary change request will be provided;
- W. WHEREAS, on January 6, 2020, Plaintiff filed a Third Amended Verified Petition and Complaint amending its prayer for relief;
- X. WHEREAS, on January 13, 2020, based on its disagreement therewith, the District filed a Notice of Appeal of the Court's November 18, 2019, ruling, and December 2, 2019, order enjoining construction of the Project [the "Appeal"];
- Y. WHEREAS, on February 3, 2020, the District also filed a Petition for Extraordinary Writ of Mandate, Prohibition, or Other Appropriate Relief relating to the Court's November 18, 2019, ruling, and December 2, 2019, order enjoining construction of the Project [the "Writ Petition"];
- Z. WHEREAS, as of the date of this Agreement, NPS has issued no further written communications regarding the District's application for a Boundary change, and the land within the 6(f)(3) Boundary remains closed to the public; and
- AA. Now subject to the terms and conditions below, the Parties wish to settle the Lawsuit and each claim raised by the respective Parties under the terms described herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration and in consideration of the covenants contained herein, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein by this reference.

2. Limitation on Construction within 6(f)(3) Boundary: Except as provided in this paragraph 2 and in Paragraphs 4, 5, and 6 herein, the District shall not perform any construction activities for the Project, including, without limitation, the construction of any improvements, facilities, utilities, pavement, grading, or trenching, or otherwise alter the land within the 6(f)(3) Boundary depicted in Exhibit B, without unconditional, written approval from NPS permitting such activity or advance written confirmation from OGALS and/or NPS that no approval is needed. Except as provided in Paragraph 6 herein, the District shall also not remove any landscaping for the Project within the 6(f)(3) Boundary without NPS written approval or advance written confirmation from OGALS and/or NPS that no approval is needed. Plaintiff has no objection to the work to be carried out in connection with Buildings M and F as set forth in the DSA approved plans, and this work may be carried out in accordance with this Paragraph. However, Plaintiff reserves its right to make any challenge in connection with Buildings M and F as part of its rights reserved under Paragraph 10(a) herein.
3. Construction Outside the 6(f)(3) Boundary: Upon full execution of this Agreement, Plaintiff will not object to the District immediately proceeding with construction of classroom buildings (Buildings A, B, C, D, F, H, and J) and related support spaces for the Project outside the 6(f)(3) Boundary so long as such construction does not impact the land within the 6(f)(3) Boundary except as permitted pursuant to Paragraphs 2, 4, 5, and 6.
4. Partial Infiltration Basins. Upon full execution of this Agreement, the District may proceed with construction of its two partial infiltration basins that were approved pursuant to the City of Encinitas Planning Commission Resolution No. PC 2019-16, which approved a Coastal Development Permit in connection with the Project.
 - a. NPS Denial of Conversion. In the event NPS does not approve in writing the conversion of the land within the 6(f)(3) Boundary used to construct the partial infiltration basins, the District shall restore the subject land to its original condition and shall commence the restoration process within thirty (30) days of NPS's denial. For purposes of this Agreement, "Original Condition" means the condition that existed prior to closure of the land for construction.
 - b. NPS Does not Approve or Deny Conversion. In the event NPS has not approved or denied the conversion of the land within the 6(f)(3) Boundary used to construct the partial infiltration basins within two (2) years of the full execution of this Agreement, the District shall restore the subject land to its original condition and shall commence the restoration process within thirty (30) days thereof.
 - c. Time is of the Essence. In the event the District's obligations under Paragraph 4.a or 4.b are triggered, the District shall reasonably use its best efforts to assure that its contractors and/or consultants complete the restoration as quickly as possible.
5. 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.

6. 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.
7. Settlement Payment. Within fourteen (14) business days of the full execution of this Agreement, and the receipt of a W-9, the District shall issue and deliver a check in the sum of Five Hundred Thousand Dollars (\$500,000.00), made payable to "Save the Park and Build the School," for legal fees and costs incurred by STP in this litigation.
8. Correspondence to OGALS and/or NPS. Until the time NPS approves or denies the conversion of the land within the 6(f)(3) Boundary for the Project, or two (2) years after full execution of this Agreement, whichever occurs first, the Parties each agree to carbon copy the other Party on all correspondence to OGALS and NPS, and the Parties shall each ask OGALS and NPS in writing to carbon copy the other Party on all correspondence from OGALS and NPS.
9. Dismissal of the Lawsuit, Appeal, and Writ Petition. Upon full execution of this Agreement, the District shall immediately notify the Fourth District Court of Appeal of the fact of this settlement. Once the monies specified in Paragraph 7 have posted to STP's account, and within no later than five (5) days therefrom, Plaintiff shall file a dismissal of its Lawsuit with prejudice. Within no later than three (3) days from Plaintiff's dismissal of the Lawsuit, the District shall dismiss its Appeal and Writ Petition. Except as provided in Paragraph 7, each party shall bear all attorney's fees and costs (including expert fees/costs) incurred by such Party in connection with the Lawsuit.
10. Mutual Release of Claims. Except as provided for in Paragraph 10.a, effective on the date of dismissal of the Lawsuit with prejudice, the Parties, and each of them, and their respective officers, directors, members, employees, agents, representatives, attorneys, predecessors, successors, beneficiaries, heirs and assigns, forever release and discharge each other, and their respective officers, directors, members, employees, agents, representatives, attorneys, predecessors, successors, beneficiaries, heirs and assigns, from any and all claims, demands, damages (including attorney's fees and costs), 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 save and except for the obligations created pursuant to this Agreement. This mutual release is intended to be a general release of all claims, known or unknown in connection with the Lawsuit.

- a. Exception to Mutual Release. The Parties agree that neither STP nor the District are releasing or waiving any claims, causes of action, defenses, and/or administrative challenges of whatsoever character, nature and kind, in law or in equity, 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 any future application for a conversion of any land within the 6(f)(3) Boundary. The Parties further agree that STP may use any ruling issued and any evidence obtained in this Lawsuit to challenge any action taken, or to be taken, by OGALS and/or NPS in connection with the District's current or any future application for revision of the 6(f)(3) Boundary or conversion of land within the 6(f)(3) Boundary. The Parties also agree that the District retains the right to challenge the meaning, effect, or significance of any rulings or evidence used by STP in such proceedings.

11. Waiver of Civ. Code Section 1542. Except as provided for in Paragraph 10.a, the Parties specifically waive their rights under California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties each acknowledge that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to the release of claims and agree that this Agreement shall remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

12. Continuing Jurisdiction to Enforce. The San Diego County Superior Court shall retain personal and subject matter jurisdiction over the Parties to enforce, interpret or otherwise obtain judicial or quasi-judicial relief in connection with the terms of this Agreement. By their signatures below, the Parties acknowledge and stipulate that this Agreement is entered into pursuant to Code of Civil Procedure section 664.6 specifically and that this Agreement constitutes a stipulation as anticipated by Code of Civil Procedure section 664.6. The Parties further agree that the Court can order specific performance of the terms of this Agreement and order injunctive relief. The Parties shall execute the Stipulation Requesting Retention of Jurisdiction and Proposed Order Thereon in the form

attached hereto as Exhibit F no later than concurrently with execution of this Agreement, which shall be immediately filed with the Court upon full execution of the Agreement.

- a. Injunctive Relief. The Parties further agree that in the event the District breaches Paragraph 2 herein, STP shall be entitled to an injunction. STP reserves its right to seek such relief by ex parte application and/or noticed motion.
 - b. Attorney's Fees and Costs. In the event specific performance of any term herein and/or injunctive relief is awarded, the prevailing party shall be entitled to its reasonable attorney's fees and costs.
13. Notice and Opportunity to Cure. In the event STP believes that the District is in breach or default of this Agreement, and prior to taking any action under Paragraph 12 above, counsel for STP shall give written notice to the District's counsel, Tyree K. Dorward, by email at tyree.dorward@bbklaw.com, and Matthew L. Green, by email, at matthew.green@bbklaw.com, and provide the District at least 5 business days' opportunity to cure the alleged breach or default.
14. Joint Statement. Upon full execution of this Agreement, the Parties agree to issue a joint statement, which shall read as follows: "On February ____, 2020, the District and Save the Park and Build the School entered into a written settlement agreement to resolve Superior Court Case #37-2019-00012880. Under the settlement, the District will immediately resume construction and operate the classroom buildings (Buildings A, B, C, D, F, H, and J) and related support spaces for the Project outside the existing LWCF 6(f)(3) boundary. The parties have agreed that the District will not construct any improvements within the existing 6(f)(3) boundary, – including, without limitation, Building L (Multi-Purpose Room), the Student Drop Off/Pick Up and Parking Lot Improvements, the Outdoor Assembly and Seating Area, and Building K (not to be constructed currently) with the exception of the partial infiltration basins – without unconditional, written approval from the National Park Service ("NPS"). Under the settlement, the parties have also reserved their respective rights with regard to the NPS approval process. The District continues to affirm its commitment to complying with its obligations under the 1993 LWCF Project Agreement."
15. References to STP and the Lawsuit. Within no later than five (5) business days of full execution of this Agreement, the District shall remove all references, documents, and publications on its website which reference STP and/or any of its directors, members and supporters, except for the Writ Petition, which the District may add to, or maintain on, its website. Nothing in this Agreement shall preclude the District from publishing information on its website in the future regarding the Project, the District's current or any future application for a conversion of any land within the 6(f)(3) Boundary, the actions of OGALS or NPS relating thereto, or future litigation relating thereto, so long as such publications do not reference any directors, members and supporters of STP.

16. Further Assurances. The Parties hereto hereby agree to cooperate and execute such other documents and to take such other action as may reasonably be necessary to further the purposes of this Agreement.
17. Time is of the Essence. Time is of the essence for each obligation required under this Agreement.
18. Benefit and Burden. This Agreement shall be binding upon and inure to the benefit and burden of the Parties hereto and their respective heirs, representative, successors and assigns.
19. Governing Law/Jurisdiction. This Agreement was negotiated and entered into in the State of California and shall be governed by, construed, and enforced in accordance with the internal laws of the State of California without regard to its conflict of law principles.
20. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute one and the same instrument. Electronic, copied, facsimile, or emailed signatures shall be acceptable in lieu of originals for any and all purposes.
21. Severability. In the event that any condition or covenant contained in this Agreement is held to be invalid or void by any court of competent jurisdiction, such condition or covenant shall be deemed severable from the remainder of this Agreement and shall not affect any other condition or covenant contained herein. If such condition or covenant is deemed to be invalid due to the scope or breadth, the remaining portions of such provision shall remain valid to the extent and scope permitted by law.
22. Authority. Any individuals signing this Agreement and those executing on behalf of an entity represent and warrant that this Agreement is executed with the authority of such entity.
23. Voluntary Agreement. The Parties hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they sign the same freely and voluntarily. The terms of this Agreement have been negotiated at arms-length and have been jointly prepared by Counsel for each of the Parties.
24. Entire Agreement. This document contains the full, complete and exclusive understanding and agreement of the Parties with respect to the matters set forth herein. No prior or contemporaneous oral or written agreements exist in connection with this Agreement or between or among the Parties other than as provided for in this Agreement. All prior and contemporaneous discussions, negotiations and agreements of the Parties are of no force and effect. The relationship of the Parties is and shall be governed exclusively by the terms of this Agreement.
25. Independent Advice of Counsel. The Parties hereto and each of them represent and declare that in executing this Agreement, they rely upon the advice and recommendations of their own counsel concerning the nature, extent and duration of their rights and claims

and that they have not been influenced to any extent whatsoever in executing the same by any of the Parties hereto or by any person representing them.

- 26. No Admission of Liability. Each Party agrees that this settlement is made in compromise of disputed claims, and that by entering into and performing the obligations of this Agreement, neither party concedes or admits the truth of any claim or any fact alleged by the other Parties, and the execution and performance of this Agreement shall not be construed as an admission of liability or damages by any Party.
- 27. Underscored References. All underscored references and headings in this Agreement are included for convenience of reference only, and are not to be relied upon in construing the terms of this Agreement.
- 28. Modifications. This Agreement may not be amended or modified by oral agreement. No amendment or modification of this Agreement is effective unless made in writing and executed by the Parties hereto.

CARDIFF SCHOOL DISTRICT

By: *Judith*

Dated: 2/25/2020

Its: Superintendent

SAVE THE PARK BUILD THE SCHOOL

By: _____

Dated: _____

Its: _____

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

Dated: 2/25/20

By: *[Signature]*

TYREE K. DORWARD
MATTHEW L. GREEN
Attorneys for Defendant and Appellant

PROCOPIO CORY HARGREAVES & SAVITCH, LLP

Dated: _____

By: _____

REBECCA L. REED
Attorneys for Plaintiff and Respondent

EXHIBIT A

STATE OF CALIFORNIA
Department of Parks and Recreation
PROJECT AGREEMENT
Land and Water Conservation Fund Program

Project Title George Berkich Park Development

Participant City of Encinitas and Cardiff School District

Project Period 5/7/93 to 6/30/97 Project Number 06-01346

Project Scope: Development will consist of play area, open sportsfields, picnic facilities and associate facilities.

The participant agrees to submit plans and specifications for the proposed development by December 31, 1993.

Stage Covered by this Agreement Complete

Project Cost:

Amount of Total Project Costs Eligible for Federal Funding	\$ <u>300,000</u>	(1)
Surcharge--State Administrative Assessment <u>6.4</u> % of Line (1) (subject to adjustment, see Section III.C.2)	\$ <u>19,200</u>	(2)
Total Eligible Project Costs Plus Surcharge (Line 1 plus Line 2)	\$ <u>319,200</u>	(3)
Federal Participation--up to 50% of Line (3), or up to 50% of actual costs, whichever is the lesser, not to exceed:	\$ <u>159,600</u>	(4)
Estimated Payment to Participant Deduct State Administrative Assessment: [Federal Participation (Line 4) Less Surcharge (Line 2), Subject to Adjustment]	\$ <u>140,400</u>	(5)

Continued on are 6 pages numbered 2 through 7 inclusively.

STATE DEPARTMENT OF PARKS
AND RECREATION

By H. Denny

Date 9.7.93

City of Encinitas

PARTICIPANT

By [Signature]

Title Community Services Director

Date 6-23-93

And

Cardiff School District

Participant

By [Signature]

Title Superintendent

**LAND AND WATER CONSERVATION FUND
PROJECT AGREEMENT PROVISIONS**

I. Definitions

- A. The term "NPS" as used herein means the National Park Service, United States Department of the Interior.
- B. The term "Secretary" as used herein means The Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.
- C. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.
- D. The term "Liaison Officer" as used herein means the California Director of Parks and Recreation, or other State officer as designated by the Governor.
- E. The term "Manual" as used herein means the Land and Water Conservation Fund Grants Manual.
- F. The term "Project" as used herein means the project or project segment which is the subject of this agreement as defined in the Project
- G. The term "Project Proposal" as used herein means the form and all supplemental attachments used to describe and estimate the cost of planning, acquisition, or development project filed with the Liaison Officer in support of an application for federal financial assistance.
- H. The term "State" as used herein means the State of California, and/or its official representative, the Department of Parks and Recreation.
- I. The term "Participant" as used herein means the recipient of the federal funds to be disbursed in accordance with the terms of this agreement.
- J. The term "State Funds" as used herein means those moneys made available by the State or a Participant as matching money for projects under the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964).
- K. The term "Leased Land" or "Lease" as used herein means land leased from the Federal Government.

II. Continuing Assurances

The parties to the project agreement specifically recognized that the Land and Water Conservation Fund assistance project creates an obligation to maintain the property described in the project agreement consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is acknowledged intent of the parties hereto that recipients of assistance will use moneys granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the State cost-share, in a participant's outdoor recreation. It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

- A. The participant agrees, as recipient of this assistance, that it will meet the following specific requirements and the terms of the project agreement.
- B. The participant agrees that the property described in the project agreement and the dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance or is integral so such acquisition or development, and that, without the approval of the Liaison Officer, the Director, and/or the Secretary the Interior, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location. This replacement land becomes subject to Section 6(f) (3) protection. The approval of conversion shall be at the sole discretion of the Secretary, or his designee. Prior to the completion of this project, the participant, the Liaison Officer, and the Director may mutually alter the area described in the project agreement and the dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded Section 6(f) (3) protection as Fund reimbursement is provided.

In the event the National Park Service provides Land and Water Conservation Fund assistance for the acquisition and/or development of property subject to reversionary interests with full knowledge of those reversionary interests, conversion of said property to other than public outdoor recreation uses as a result of such reversionary interest being exercised is approved. In receipt of this approval, the participant agrees to notify the State of the conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions. The participant further agrees to effectuate such replacement within a reasonable period of time, acceptable to the State, after the conversion of property takes place. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed known and agreed to by the State; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the State.

- C. The participant agrees that the benefit to be derived by the State from the full compliance by the participant with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of assistance under the terms of this agreement. The participant agrees that payment by the participant to the State of an amount equal to the amount of assistance extended under this agreement by the State would be inadequate compensation to the State for any breach by the participant of this agreement. The participant further agrees, that the appropriate remedy in the event of a breach by the participant of this agreement shall be the specific performance of this agreement.
- D. The participant agrees to comply with the policies and procedures set forth in the National Park Service Grants-in-Aid manual. Provisions of said manual are incorporated into and made a part of the project agreement.
- E. The participant agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by manual requirements.
- F. The participant agrees that a permanent record shall be kept in the participant's public property records and available for public inspection to the effect that the property described in the scope of the project agreement, and the dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the liaison Officer, the Director, and/or the Secretary of the Interior.
- G. Nondiscrimination
 1. The participant shall comply with Title VI of the Civil Rights Act of 1964 (P.L.88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any property or facility acquired or developed pursuant to the project agreement. The participant shall immediately take any measures necessary to effectuate this provision. This assurance shall be binding on the participant or any political subdivision or other appropriate public agency to which Fund assistance or property acquired or developed with Fund assistance has been transferred for public recreation purposes.
 2. The participant shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
 3. The participant shall comply with the regulations and guidelines promulgated pursuant to the Civil Rights Act of 1964 by the Secretary of the Interior and the National Park Service.
 4. The provisions of the first three paragraphs apply to any part of the recreation system within which the assisted facility or property exists.
 5. The participant shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the manual.

III. Project Assurances

A. Applicable Federal Circulars

The State shall comply with applicable regulations, policies, guidelines and requirements including 43 CFR Part 12.41-12.92, Administrative Requirements and Cost Principles for Assistance Programs, Office of Management and Budget Circulars No. A-102 (Uniform administrative requirements for grants-in-aid to State and local governments), A-87 (cost principles for State and local governments), and A-128 (audits of State and local government) as they relate to the application, acceptance and use of Federal funds for this federally assisted project.

B. Project Proposal

1. The project proposal for Federal assistance bearing the same project number as the agreement and associated documents is by this reference made a part of this agreement.
2. The participant possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion or similar action has been duly adopted or passed authorizing the filing of the project proposal, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the participant to act in connection with the project proposal and to provide such additional information as may be required.
3. The participant has the ability and intention to finance the non-federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

C. Project Execution

1. It is understood by the parties hereto that this agreement shall not obligate State of California funds for the project costs described herein. The participant hereby promises, in consideration of the promises made by the Liaison Officer herein, to execute the project stage described herein, in accordance with the terms of this agreement. Any disbursement hereunder shall not be made unless and until funds therefor are received by the Liaison Officer from the National Park Service. This item shall not apply when the participant is an agency of the State of California.

2. The Liaison Officer hereby promises, in consideration of the promises made by the participant herein, to accept appropriated federal funds for the purposes of the project and disburse the same to reimburse the participant up to 50 percent of the eligible project cost not to exceed 50 percent of the direct project cost shown in this agreement; except for a surcharge for administrative costs to be applied to twice the federal share of direct eligible project costs. The surcharge is to be deducted from the reimbursements received from the Federal Government applicable to this project and will be computed at the federally approved surcharge rate in effect at the time the billing is submitted to the Federal Government.
3. The project period shall begin with the date of approval of the project agreement or the effective date of a waiver of retroactivity and shall terminate at the end of the stated or amended project period unless the project is completed or terminate sooner in which event the project period shall end on the date of completion or termination. For project elements added to a consolidated project, the project period will begin on the date the project element is approved.
4. The participant will cause work on the project to be commenced within a reasonable time after receipt of notification that funds have been approved and assure that the project will be prosecuted to completion with reasonable diligence.
5. The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480), and DOI Section 504 Regulations (43 CFR Part 17). The participant will be responsible for conducting all inspections.
6. The participant shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable federal, state, local laws and regulations.
7. In the event the project covered by the project agreement, including future stages of the project, cannot be completed in accordance with the plans and specifications for the project; the participant shall bring the project to a point of recreational usefulness agreed upon by the participant and, the Director or his designee, and the Liaison Officer.
8. The participant will provide for and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.
9. The participant will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.
10. The participant will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement of water pollution, and Executive Order 11920, relating to the protection of wetlands.
11. The participant will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.
12. The participant will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities, pursuant to 40 CFR, Part 15.20 and that it will notify the State and NPS of the receipt of any Communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA. The participant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. The participant further agrees to insert this clause into any contract or subcontract in excess of \$100,000.
13. The participant will assist the State and NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470) Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CFR Part 800.8) by the activity, and notifying the federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties.
14. The participant will comply with Executive Order 12432, "Minority Business Enterprise Development as follows:
 - a. Place minority business firms on bidder's mailing lists.
 - b. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.
 - c. Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms.
 - d. For any project involving \$500,000 or more in grant assistance (except for projects involving acquisition only) the participant shall submit, prior to the commencement of construction and every fiscal year quarter thereafter until project completion, reports documenting the efforts to hire minority business firms. These reports, SF 334, will be submitted one month following the end of each fiscal quarter (i.e., January 31, April 30, July 31, and October 31) to the National Park Service Regional Office in San Francisco.

D. Construction Contracted for by the Participant Shall Meet the Following Requirements:

1. Contracts for construction in excess of \$10,000 shall be awarded through a process of competitive bidding involving formal advertising, with adequate purchase description, sealed bids, and public openings. Copies of all advertisements, bids, and a copy of the contract shall be retained for inspection by the Director and the State.
2. The participant shall inform all bidders on contracts for construction that federal funds are being used to assist in construction.
3. Written change orders shall be issued for all necessary changes in the facility being constructed under contracts of \$10,000 or more. Such change orders shall be made a part of the project file and should be kept available for audit.
4. Contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by Department of Labor regulations (29 CFR, Part 3).
5. The participant will comply with other procurement standards of OMB Circular A-102, Attachment O, except for provisions related to compliance with Davis Bacon Act requirements (unless required by a program providing supplemental funding). Should supplemental funding be provided which requires compliance with Davis Bacon Act requirements, all construction contracts awarded by the grantee and subgrantee in excess of \$2,000 shall include a provision for compliance with such Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5).
6. The participant shall incorporate, or cause to be incorporated, into all construction contracts exceeding \$10,000 (ten-thousand), the following provisions:

"During the performance of this contract the contractor agrees as follows:

- *(1) The contractor will not discriminate any employee or applicant for employment because of race, religion, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include, but not be limited to, the following: Employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- *(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.
- *(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 as amended (3CFR 169 (1974)), and shall post copies of notices in conspicuous places available to employees and applicants for employment.
- *(4) The contractor will comply with all provision of Executive Order No. 11246, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- *(5) The contractor will furnish all information and reports required by Executive Order No. 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, record, and accounts by the contracting agency, the State, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- *(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, as amended, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
- *(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. The participant shall (1) comply with the above provisions in construction work carried out by itself, (2) assist and cooperate actively with the Secretary of the Interior and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the above contract provisions and with the rules, regulations, and relevant orders of the Secretary of Labor, (3) obtain and furnish to the Secretary of the Interior and to the Secretary of Labor such information as they may require for the supervision of such compliance, (4) enforce the obligation of contractors and subcontractors under such provisions, rules, regulations, and orders, (5) carry out sanctions and penalties for violation of such obligations imposed upon contractors imposed upon contractors and subcontractors by the State, or the Secretary of Labor, or the Secretary of the Interior pursuant to Part II, Subpart D, of Executive Order No. 11246, as amended and (6) refrain from entering into any contract with a contractor debarred from government contracts under Part II, Subpart D, of Executive Order No. 11246, as amended. In addition, the participant agrees that if it fails or refuses to comply with these undertakings, the NPS may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the department of Justice for appropriate legal proceedings.

E. Conflict of Interests

1. No official or employee of the participant, State, or Federal Government who is authorized in his official capacity to negotiate, make, accept, or approve, or take part in such decisions regarding a contract or subcontract in connection with this project shall have any financial or other personal interest in any such contract or subcontract.
2. No person performing services for the participant in connection with this project shall have a financial or other personal interest other than his employment or retention by the participant, in any contract or subcontract in connection with this project. No officer or employee of such person retained by the participant shall have any financial or other personal interest in any real property acquired for this project unless such interest is openly disclosed upon the public records of the participant, and such officer, employee or person has not participated in the acquisition for or on behalf of the participant.
3. No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise hereupon, unless such benefit shall be in the form of an agreement made with a corporation for its general benefit.
4. The participant, State, and the Director shall be responsible for enforcing the above conflict of interest provisions.

F. Hatch Act

The participant will comply with the provisions of the Hatch Act which provides that no officer or employee of the participant whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the political activity prescribed in the Hatch Political Activity Act, 5 U.S.C. Sec. 118k (1964), with the exceptions therein enumerated.

G. Project Administration

1. Project costs eligible for assistance shall be determined upon the basis of the criteria set forth in the manual and OMB Circular A-87.
2. The agreement may include the use of the indirect cost rate currently approved, in accordance with A-87, for the participant that is a party to this agreement.

H. Project Administration

1. The participant shall promptly submit such reports and documentation as the Director or Liaison Officer may request.
2. Any moneys advanced to the participant are "public moneys" and shall be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage shall be collaterally secured as provided for in 12 U.S.C. 265.
3. The participant shall use any funds received by way of advance payment from the State under the terms of this agreement solely for the project or project stage described in the agreement.
4. Properties and facilities acquired or developed with Fund assistance shall be available for inspection by the State or the NPS at such intervals as the Liaison Officer or the Director shall require.

I. Audit, Retention and Custodial Requirements for Records

1. Financial records, supporting documents, statistical records, and all other records pertinent to this grant shall be retained for a period of three years in accordance with 43 CFR Part 12.41-1292; except the records shall be retained beyond the three-year period if audit findings have not been resolved.
2. The retention periods starts from the date of the final expenditure report for the project or the consolidated project element.
3. State and local governments are authorized to substitute microfilm copies in lieu of original records.
4. The Liaison Officer, Secretary of the Interior, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the participant and their subgrantees which are pertinent to a specific project for the purpose of making audit, examination, excerpts and transcripts.
5. The participant will comply with the provisions of OMB Circular A-28 (as provided under the Single Audit Act of 1984) establishing audit requirements for state and local governments that receive federal assistance.

J. Project Termination

1. The Liaison Officer or the Director may temporarily suspend State assistance under the project pending corrective action by the participant or pending a decision to terminate the grant by the NPS or the State.
2. The participant may unilaterally terminate the project or consolidated project element at any time prior to the first payment on the project or consolidated project element. After the initial payment, the project may be terminated, modified, or amended by the participant only by mutual agreement.
3. The Liaison Officer or the Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Liaison Officer or Director will promptly notify the participant in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the participant or recoveries by the State under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
4. The Director, State, or participant, may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The participant shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the participant for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.
5. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the participant, the Liaison Officer, and the Director, or that all funds provided by the National Park Service be returned.

K. Fund Acknowledgment

The participant will permanently display in a conspicuous place a bronze plaque which acknowledges Land and Water Conservation Fund assistance. The plaque will be provided by the State Department of Parks and Recreation and its installation by the participant will be required upon initial development of the property.

L. Hold Harmless

The participant shall indemnify the State of California and its officers, agents and employees against and hold the same free and harmless from any and all claims, demands, damages, losses, costs, and/or expenses of liability due to, or arising out of, either in whole or in part, whether directly or indirectly, the organization, development, construction, operation, or maintenance of the project.

EXHIBIT B

EXHIBIT C

Figure 3-7 - Existing 6(f)(3) Boundary Map
3. Environmental Setting



0 160
Scale (Feet)

--- Existing 6(f)(3) Boundary

Source: Google Earth Pro, 2018

EXHIBIT D

Proposed Site Plan

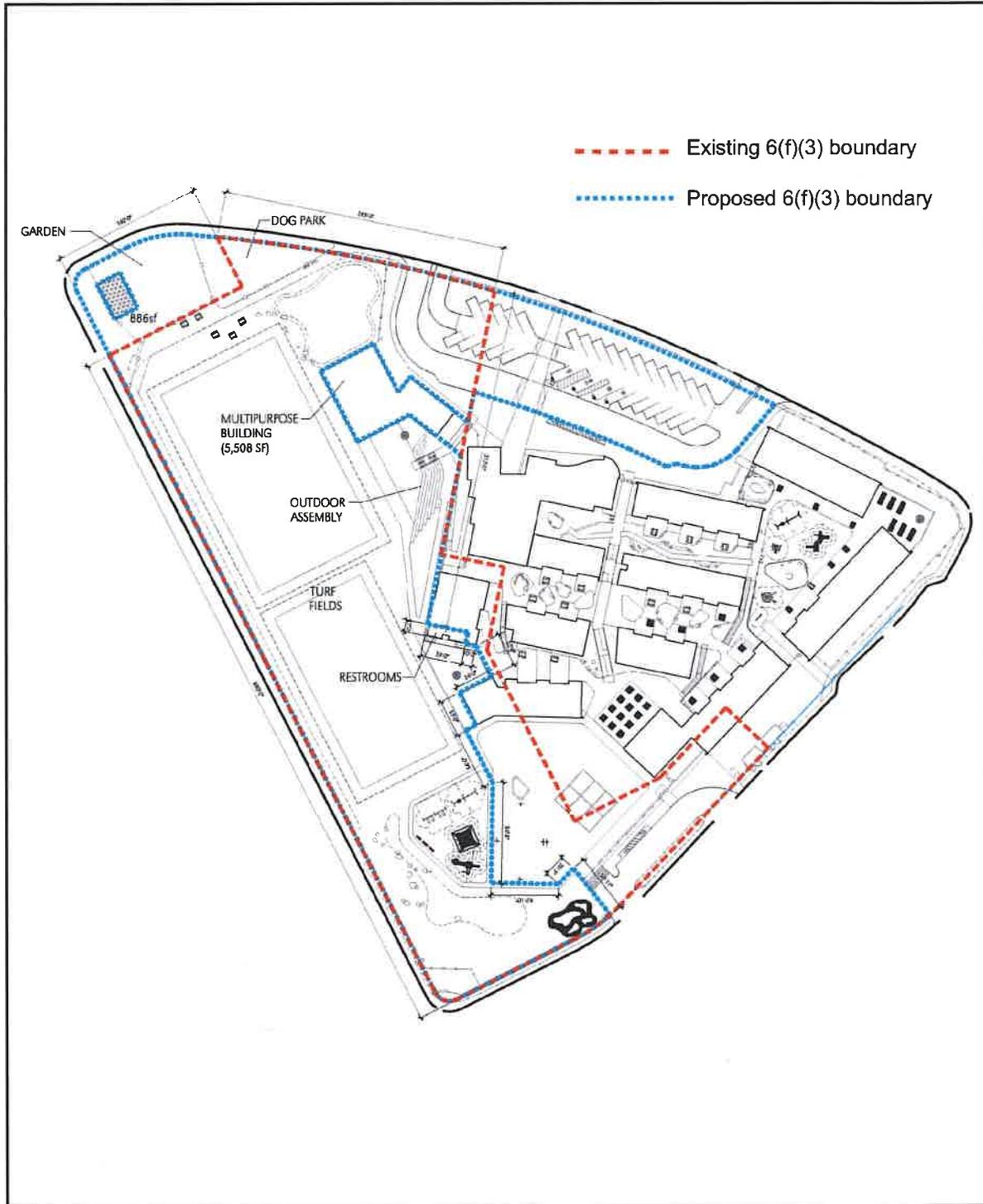


EXHIBIT E

FILED
Clerk of the Superior Court

NOV 18 2019

By: N. McKinley, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH**

SAVE THE PARK AND BUILD THE
SCHOOL, a California unincorporated
nonprofit association,

Petitioner and Plaintiff,

v.

CARDIFF SCHOOL DISTRICT, a California
public school district; ALL PERSONS
INTERESTED IN THE VALIDITY OF THE
AUTHORIZATION, ISSUANCE, SALE AND
DELIVERY OF GENERAL OBLIGATION
BONDS ELECTION OF 2016 FOR THE
CARDIFF SCHOOL MODERNIZATION
AND RECONSTRUCTION PROJECT ALSO
KNOWN AS CARDIFF SCHOOL GENERAL
OBLIGATION BOND OF 2016; and ROES 1
through 10, inclusive,

Respondent and Defendant.

Case No. 37-2019-00012880-CU-WM-NC

COURT'S RULING

Petitioner's Motion for Preliminary Injunction is Granted.

Petitioner has established a reasonable likelihood of success on the merits of its claim that Respondent has breached the accountability requirements set forth in Measure GG by constructing improvements not authorized by Measure GG. Respondent has not made a sufficient showing that the improvements at issue are within the types of projects listed in Measure GG.

Petitioner also argues that Respondent is precluded from using taxpayer funds in violation of state or federal law and the encroachment into the park violates section 6(f)(3) of the federal

1 Land and Water Conservation Fund ("LWCF") Act. The Court is not persuaded by Respondent's
2 argument that is compliance with the LWCF Agreement is immaterial to Petitioner's taxpayer waste
3 claims. The petition alleges that the fact that there is encroachment into the park means that the
4 District will be required to adjust the boundary line and thus, the District cannot rely on a Class 14
5 exemption - minor addition to existing school. See ¶ 47. See also ¶ 72: "Because the EIR shows
6 that the requirements of the L&WCF Act for conversions have not been met, which are required to
7 be met before CEQA analysis, the EIR violates CEQA". See also ¶ 74: Stated project objection of
8 maintaining compliance with LWCF is not met.

9 Petitioner has also established that it will suffer irreparable harm if the preliminary
10 injunction is not issued. In balancing the relative hardships, Petitioner will suffer greater harm if
11 the injunction is denied.

12 The Petition for Writ of Mandate is Granted.

13 Petitioner has not failed to exhaust its administrative remedies as to the categorical
14 exemptions. "[T]he exhaustion-of-administrative-remedies requirement set forth in [Public
15 Resources Code § 21177(a)] applies to a public agency's decision that a proposed project is
16 categorically exempt from CEQA compliance as long as the public agency gives notice of the
17 ground for its exemption determination, and that determination is preceded by public hearings at
18 which members of the public had the opportunity to raise any concerns or objections to the
19 proposed project." *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 291. Petitioner
20 received an email which was unclear regarding the District's exemption determination before the
21 2/7/19 special meeting. The District's Notice of Special Meeting, Board Staff Report and Final EIR
22 posted on its website via hard copy at its office, were not sufficient in this unique circumstance.

23 Substantial evidence does not support the District's finding that one or more categorical
24 exemptions apply to the project. *North Coast Rivers Alliance v. Westlands Water District* (2014)
25 227 Cal.App.4th 832, 852. Several exemptions may be combined to find an entire project exempt.
26 *Surfrider Foundation v. Ca. Coastal Commission* (1994) 26 Cal.App.4th 151, 156. Respondent
27 relies on six categorical exemptions, which do not completely cover the entire project.

28 ///

1 Substantial evidence supports the finding that the Class 1 exemption (Existing Facilities)
2 applies to at least a portion of the project consisting of minor alterations to existing structures, to
3 wit, Library/Media Center, (2) Science/Art Lab and (3) Administrative and Specialty Classroom.
4 AR 193.

5 Substantial evidence supports the finding that the Class 2 exemption (Replacement or
6 Reconstruction) applies to a portion of the project in that the replacement of existing structures will
7 be located on the same overall project site as the structure replaced to provide a safe environment.
8 For purposes of this exemption, the new buildings need not be in precisely the same physical
9 location as the old one. *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 837. The
10 Resolution states that the modernization and reconstruction is in part to provide earthquake resistant
11 structures. AR 23. The multipurpose building was constructed in 1961. The permanent classroom
12 buildings were built between 1950 and 1960. AR 163.

13 Substantial evidence supports the finding that the Class 3 exemption (New Construction or
14 Conversion of Small Structures) applies to a portion of the project in that the project involves the
15 construction of new, small structures.

16 Substantial evidence does not support the finding that the Class 4 exemption (Minor
17 Alterations to Land) applies to a portion of the project. The project involves substantial alterations
18 in the condition of land and vegetation and new landscaping. Forty-seven trees are being removed
19 to make way for the project. The EIR states:

20 "Site clearance for the proposed project would require removal of 37 trees from the
21 campus, due to the trees' poor condition and/or because the trees are on the sites of
22 proposed improvements and installation of a new landscape planting plan that
23 includes 44 trees, shrubs, and a variety of other plants such as sod. The landscape
plan includes about 3.1 acres of landscaping, that is approximately 43 percent of the
project site." AR 194

24 This land is in close proximity to the coast and is not a "minor alteration."

25 Substantial evidence does not support the finding that the Class 14 exemption (Minor
26 Additions to School) applies to a portion of the project. The project overall would not appear to be
27 a "minor addition" under any analysis.

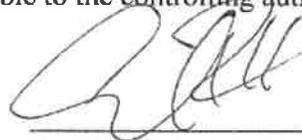
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1 Substantial evidence supports the finding that the Class 31 exemption (Historical Resource
2 Restoration/Rehabilitation) applies to the rehabilitation of the Little Brick Building. See
3 Resolution, AR 64-65.

4 Further, Petitioner has met its burden of establishing that an exception applied and that there
5 is a reasonable possibility of a significant effect on the environment due to unusual circumstances.
6 14 CCR § 15300.2(c); *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086,
7 1116. Petitioner has produced substantial evidence that the project "will" have a significant effect
8 on the environment. Respondent's admission that the project will have significant effect on the
9 environment is sufficient. Respondent's claim of "mistake" is not persuasive.

10 Finally, Respondent, as of this ruling, has not resolved the issues over the federal Land and
11 Water Conservation Fund Act issues. It has now been over one year and Respondent's inability to
12 establish acceptable replacement property acceptable to the controlling authorities.

13
14 Dated: 11/18/19



15 EARL H. MAAS, III
16 Judge of the Superior Court
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EXHIBIT F

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7 Attorneys for Respondent and Defendant
CARDIFF SCHOOL DISTRICT

EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO -- NORTH COUNTY REGIONAL CENTER

11
12 SAVE THE PARK AND BUILD THE
SCHOOL, a California unincorporated
13 nonprofit association,

14 Petitioner and Plaintiff,

15 v.

16 CARDIFF SCHOOL DISTRICT, a
California public school district; ALL
17 PERSONS INTERESTED IN THE
VALIDITY OF THE AUTHORIZATION,
18 ISSUANCE, SALE AND DELIVERY OF
GENERAL OBLIGATION BONDS
19 ELECTION OF 2016 FOR THE CARDIFF
SCHOOL MODERNIZATION AND
20 RECONSTRUCTION PROJECT ALSO
KNOWN AS CARDIFF SCHOOL
21 DISTRICT GENERAL OBLIGATION
BOND OF 2016; and ROES 1 through 10,
22 inclusive,

23 Respondent and Defendant.

Case No. 37-2019-00012880-CU-WM-NC
Judge: Hon. Earl H. Maas, III

STIPULATION REQUESTING RETENTION
OF JURISDICTION; [PROPOSED] ORDER
THEREON

Petition Filed: March 8, 2019

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

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RECITALS

WHEREAS, Petitioner and Plaintiff Save the Park and Build the School (“STP”) and Respondent and Defendant Cardiff School District (“District”) have reached a settlement of the above-captioned action and have accordingly executed a Settlement Agreement and Mutual Release (“Settlement Agreement”).

WHEREAS, among and subject to other terms of the Settlement Agreement, STP has agreed to dismiss the above-captioned action, and STP and the District have agreed that the Court shall retain jurisdiction over the parties to enforce the Settlement Agreement pursuant to Code of Civil Procedure section 664.6.

STIPULATION

IT IS HEREBY STIPULATED by and between STP, on the one hand, and the District, on the other hand, and hereby requested, that the Court retain jurisdiction over the parties to enforce the Settlement Agreement pursuant to Code of Civil Procedure section 664.6.

IT IS FURTHER STIPULATED that this stipulation may be executed in one or more counterparts, each of which will be deemed an original copy of the stipulation, and all of which, when taken together, shall be deemed to constitute one and the same stipulation.

Dated: February ____, 2020

SAVE THE PARK AND BUILD THE SCHOOL

By: _____
Eleanor Musick, Director

Dated: February 25, 2020

CARDIFF SCHOOL DISTRICT

By:  _____
Jill Vinson, Superintendent

///
///
///

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

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ORDER

Having read and considered the foregoing stipulation and for good cause shown, the Court shall retain jurisdiction over the parties to enforce the Settlement Agreement pursuant to Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT