United Walnut Taxpayers v. Mt. San Antonio Community College District, et al., BC 576587

Tentative decision on (1) motion to dismiss: denied; (2) motion for preliminary injunction: denied; (3) motion for leave to file FAC: granted; (4) motion to consolidate: granted

Plaintiff United Walnut Taxpayers ("Walnut") moves to file a First Amended Complaint ("FAC") and to consolidate this matter with another case, BS 154389. Plaintiff Walnut additionally moves for a preliminary injunction against Defendant Mt. San Antonio Community College District ("District"). For its part, Defendant District moves to dismiss the Complaint and dissolve the existing preliminary injunction in this action.

The court has read and considered the moving papers, oppositions, and replies and renders the following tentative decision.

A. Statement of the Case

1. The Complaint

Plaintiff Walnut commenced this proceeding on March 24, 2015 seeking declaratory and injunctive relief and a writ of mandate. The verified Complaint alleges in pertinent part as follows.

On November 4, 2008 Measure RR, entitled and otherwise known as the "A Mount San Antonio Community College District bond proposition," appeared as a bond proposal on the November 4, 2008 ballot for voters within the District's boundaries (which include the City of Walnut (the "City")). The measure authorized a $353 bond million. To pass, a supermajority of 55% of those voting was required. Measure RR passed with 69.95% of District voters. The primary published and entitled language on the ballot read:

> "Classroom Repair, Education Improvement, Public Safety/Job Training Measure. To maintain academic excellence for students/nurses/firefighters by upgrading classrooms/laboratories/fire alarms, repairing roofs/plumbing, removing lead paint/asbestos, retrofitting buildings for earthquake safety/handicap accessibility, increasing energy efficiency, expanding job training, shall Mt. San Antonio Community College District repair, acquire, construct, equip buildings/sites/facilities by issuing $353,000,000 of bonds at legal rates, with annual audits, citizens' oversight, no money for administrators' salaries, and no tax rate increase?"

The provisions for "Classroom Repair" improvements stated as follows:

> "Upgrade, Repair, Equip, and/or Replace Obsolete Infrastructure Classrooms, Science and Computer Laboratories, Library, instructional Facilities, and Utilities; improve Disabled Access; Upgrade to Seismic Safety Standards: Remove asbestos and lead paint from classrooms; make all buildings and classrooms accessible as required by law; retrofit all buildings and classrooms for earthquake safety as required by law; repair decaying walls, drainage systems and leaking roofs;

improve campus safety by upgrading existing fire alarms, sprinklers, intercoms and fire doors; replace and upgrade 75-year old plumbing, electrical and heating systems; improve energy efficiency by replacing outdated heating and ventilation systems and expanding water recycling programs; improve central chilling plant; upgrade streets, intersections and parking capacity to improve traffic flow and prevent traffic congestion; upgrade buildings to include educational equipment and laboratories, provide state-of-the-art computer technology capability for students, repair, build, upgrade and/or replace roofs, walls, ceiling tiles, exterior finishes and flooring, plumbing, sewer and drainage systems, infrastructure, inefficient electrical systems and wiring, restrooms, heating, ventilation and cooling systems, foundations, telecommunications systems, classrooms, fields, courts and grounds, wire classrooms for computers and other technology. Increase energy efficiency, acquire equipment to increase safety, reduce operating cost through the installation of energy efficient systems to direct resources to the offering of more classes and job training, improve academic instruction, meet legal requirements for disabled access."

District is spending Measure RR money for the grading of sites for an Athletic Complex East and Retail/Solar Power Generating Plant projects, and has allocated future Measure RR money for the planning, design, study, construction or building, and implementation of those projects. Nowhere in the Measure RR Bond Project List are the proposed Athletic Complex East and Retail/Solar Power Generating Plant projects listed.

On February 11, 2015, at regularly scheduled District Board of Trustees meeting, one or more decisions were made to approve a 2,300 space parking structure project (the "Parking Project") by passing a resolution purporting to exempt the Parking Project from City zoning ordinances and entering into a lease/lease back agreement for construction of the Project (the "Parking Project Approvals"). District is currently grading areas where it plans to build the proposed Retail/Solar Power Generating Plant project on land subject to and in violation of the City's zoning ordinances. Defendants are spending, and will continue to spend Measure RR bond revenues on the Parking Project, the Athletic Complex East, and the Retail/Solar Power Generating Plant in violation of constitutional and statutory bond spending restrictions imposed by state voters via Proposition 39 and District voters via Measure RR.

The decisions for the Parking Project and the Project Approvals are "projects" under the given and legally interpreted definitions of the California Environmental Quality Act ("CEQA") such that compliance with CEQA, its regulations, and case law thereunder, is required. District has prepared one or more programmatic environmental impact reports ("EIRs") in association with campus-wide master planning efforts for facilities, as well as plan updates, but has not prepared any project-specific CEQA documents for the Projects at issue and made no CEQA decision or determination on February 11, 2015 in conjunction with the Project Approvals. Defendants have adopted and are implementing one or more policies and practices contrary to the California Environmental Quality Act ("CEQA"). The policy and practice of District involves a pattern and practice that approves and carries out projects without project specific environmental review or determinations.

In the first cause of action, the Complaint seeks a declaratory judgment and the issuance of

an injunction to enjoin and prevent District from misuse or waste of public money in spending Measure RR bond sales revenue for the planning, design, study, construction or building, and implementation of the Parking Project, Athletic Complex East, and Retail/Solar Power Generating Plant.

In the second cause of action for mandamus under CEQA, the Complaint alleges that District failed to proceed in a manner required by law by approving the Parking Project without making a determination that the Parking Project is within the scope of the programmatic EIR. Plaintiff requests a peremptory writ of mandamus ordering the District to rescind and set aside its February 11, 2015 Parking Project Approvals, and remanding the matter to District to reconsider the Parking Project consistent with the law.

The Complaint's third cause of action for mandamus alleges District's violation of City zoning ordinances for the Parking Project, which is located within the City in an area zoned Residential Planned Development Zone ("RPDZ"). Structures built within the RPDZ cannot exceed a height of 35 feet. Walnut Municipal Code §25-89.1(b)(4)(g). A parking garage structure such, as the one intended by the Parking Project, is not a permitted or authorized use in the RPDZ, unless a variance or conditional use permit is obtained and the Project can meet special conditions and special findings can be made and adopted for the same. District has not applied for or obtained a conditional use permit or variance from the City.

The Complaint's fourth cause of action for mandamus under CEQA and Government Code section 53094(b) alleges that District failed to proceed in a manner required by law because it made no findings concerning land use and zoning conflicts and purported to find the Parking Project exempt from local zoning laws. Plaintiff requests a peremptory writ of mandamus ordering the District to rescind and set aside its February 11, 2015 Project Approvals, and remanding the matter to District to reconsider the Parking Project consistent with the law.

The Complaint's fifth cause of action alleges a pattern and practice violation of CEQA. District continues to misinterpret the spirit, intent, and purpose of CEQA. Plaintiff requests a declaratory judgment and the issuance of an injunction to enjoin and prevent any District action proceeding with the quasi-legislative policy of implementing projects without performing required environmental review and making proper and adequate CEQA determinations for its master plan and programmatic EIR projects.

2. <u>Course of Proceedings</u>

On April 15, 2015, Plaintiff Walnut applied *ex parte* for a temporary restraining order ("TRO") and order to show cause re: preliminary injunction ("OSC") with respect to the Parking Project. Department 82 granted the TRO and set an OSC hearing on the preliminary injunction.

After a May 13, 2015 OSC hearing, Department 82 granted the preliminary injunction. The court found that Plaintiff was likely to prevail on its third and fourth causes of action alleging violation of the City's zoning ordinance. A parking structure is a non-classroom facility that cannot be exempted from the City's zoning laws. As a separate ground, the court also found that Plaintiff was likely to succeed on its first cause of action alleging that the parking structure was not sufficiently identified in Measure RR when presented to voters.

Defendants were enjoined from performing or conducting any further construction or dirt removal activity on the proposed parking structure site, or from spending any Measure RR funds on any aspect of the Parking Project. Plaintiff was ordered to post an undertaking in the amount

of $127, 076, and did so on May 28, 2015.

On July 27, 2015, this action was reassigned to Department 85.

B. Motion for Judgment/Dissolve Preliminary Injunction

Defendant District moves for judgment on the pleadings as to the Complaint. District also moves to dissolve or modify the preliminary injunction enjoining District from expending Measure RR funds on the Parking Project.[1]

1. Governing Law

Like demurrers, motions for judgment on the pleadings are permitted in mandamus proceedings. CCP §§1108, 1109. A motion for judgment on the pleadings has the same function as a general demurrer, but is made after the time for demurrer has expired. Weil & Brown, Civil Proceedings Before Trial, ¶7:275, 7-78 (1998). The rules governing demurrers apply to motions for judgment on the pleadings except as provided by CCP section 438. Cloud v. Northrop Grumman Corp., (1998)67 Cal.App.4th 995, 999; Lance Camper Mfg. Corp. v. Republic Indemnity Co. of America, (1996) 44 Cal.App.4th 194, 198. A motion by defendant can be made on the ground that (1) the court lacks jurisdiction of the subject of one or more of the causes of action alleged, or (2) the complaint (or any cause of action) does not state facts sufficient to state a cause of action. CCP §438(c). Except with leave of court, a motion for judgment on the pleadings cannot be made after entry of a pretrial conference order (CRC 212, CCP §575) or 30 days before the initial trial date, whichever is later. CCP §438(e).

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[1] Walnut argues that District's notice of motion is improper under CRC 3.1110(a) because it does not identify the motion is styled as a motion to dismiss, not a motion for judgment on the pleadings. Opp. at 3-4. While Walnut is correct, it points to no prejudice from District's failure.

Real Party Tilden-Coil purports to join in District's motion. There is no statutory basis for a joinder, and most are merely cheerleading efforts. To be effective, a joinder must be supported by a memorandum of points and authorities and served on a16 court day notice. Real Party's joinder January 5, 2016 is untimely and unsupported.

The court has ruled on the parties' objections, interlineating the original authenticating declarations for the requests for judicial notice where an objection was sustained.

District asks for judicial notice of exhibits (Exs. A-K). The Board agendas, minutes, and Resolution (Exs. A, C, D, E, F, H), the FMP (Ex. B) are official acts and are judicially noticed. Evid. Code §452(c). The existence, but not the truth, of matters stated in the documents is judicially noticed. The pleadings in this case (Ex.s I, J) need not be judicially noticed. The minute order from BS 154389 is judicially noticed. Evid. Code §452(d). The termination letter (Ex.G) is not subject to judicial notice and the request is denied.

Walnut asks the court to judicially notice five exhibits (Exs. A-E). The May 13, 2015 order by Judge Lavin (Ex. A) need not be judicially noticed to be considered. Nor do the Education Code provisions (Exs. D, E). Only the agenda, and not the staff report In Exhibit B is subject to judicial notice. The staff report would be legislative history and part of the administrative record from any final District action, but is not by itself subject to notice. The December 9, 2015 letter (Ex. C) is not subject to judicial notice. Therefore, the request is denied for Exhibit B (staff report portion) and Exhibit C.

Both a demurrer and a motion for judgment on the pleadings accept as true all material factual allegations of the challenged pleading, unless contrary to law or to facts of which a court may take judicial notice. The sole issue is whether the complaint, as it stands, states a cause of action as a matter of law. Mechanical Contractors Assn. v. Greater Bay Area Assn., (1998) 66 Cal.App.4th 672, 677; Edwards v. Centex Real Estate Corp., (1997) 53 Cal.App.4th 15, 27. On a motion for judgment on the pleadings a court may take judicial notice of something that cannot reasonably be controverted, even if it negates an express allegation of the pleading (e.g., in this case, a recorded trustee's deed). Columbia Casualty Co. v. Northwestern Nat. Ins. Co., (1991) 231 Cal.App.3d 457. Evans v. California Trailer Court, Inc., (1994)28 Cal.App.4th 540, 549.

In the case of either a demurrer or a motion for judgment on the pleadings, leave to amend should be granted if there is any reasonable possibility that the plaintiff can state a good cause of action. Virginia G. v. ABC Unified School Dist., (1993) 15 Cal.App.4th 1848.

2. District's Evidence

District presents the following evidence subject to judicial notice in addition to the allegations of the Complaint.

On July 23, 2008, the District's Board of Trustees ("Board") considered and approved Resolution No. 08-01 ("Measure RR"), which had ordered a general obligation bond election in November 2008, requesting voters to approve a $353-million bond to fund the 2008 Master Plan. District RJN Ex. A. The full text of the proposition was attached to the Measure RR Resolution as Exhibit B and specifically listed a parking structure project as an approved project, as follows:

- "upgrade...parking capacity to improve traffic flow and prevent traffic congestion (Id. at p. 8);
- "expand parking capacity" as a project" Id. at p. 9.

District's 2012 FMP identifies the Parking Structure Project as a proposed Measure RR project to accommodate anticipated increased student enrollment. District RJN Ex. B, pp. 4, 11, 12, 21. The 2012 FMP identifies Lot A as the location of the Parking Structure Project and describes the project as providing 2,300 additional parking spaces for students. Id. at p.21.

On February 27, 2013, the Board published notice of its agenda for a regular meeting and specifically identified "Professional Design and Consulting Services" for action. District RJN Ex. C, p.37. The agenda specifically notes: "In order to commence design on construction and renovation projects, it is necessary to retain the services of qualified professionals." Id. The agenda adds: "Anticipating the first issuance of Measure RR bonds will take place later this year, project-specific proposals for three major projects were solicited from [] previously approved architectural firms." Id. The agenda lists Hill Partnership, Inc. ("Hill Partnership") as "Consultant" for the "Parking Structure." Id. The agenda describes the proposed services for "[p]rofessional architectural and engineering services including construction administration and close out for the $55,000,000.00, 2,200-2,300-space Parking Structure." Id. The approved contract amount for such services is $2,775,306.00. Id. The agenda lists "Measure RR Bond Anticipation Note" as the funding source for the professional services. Id. at p.41. The Board approved the professional services contract with Hill Partnership for professional design services for the Parking Project. District RJN Ex. D, p.2.

Minutes of the Board of Trustees December 11, 2013 regular meeting shows that the Board of Trustees conducted a public hearing regarding certification of the subsequent final environmental impact report ("2012 Final SEIR") for the FMP update 2012. District RJN Ex. E. The minutes reflect comments from local residents concerning the Parking Project. Id. One resident noted that she was "glad the parking structure project is being constructed." Id. The Board closed the public hearing and moved for approval of the 2012 Final SEIR. Id. at pp.10-11.

On February 11, 2015, the Board approved a lease leaseback contract with Tilden-Coil for construction of Phase I of the Parking Project.

On July 8, 2015, the Board at a duly noticed meeting took action to cease the expenditure of Measure RR funds for the Parking Project and remove the project from the Measure RR project list. District RJN Ex. F, p. 2. Measure RR funds for the Parking Project were diverted to the new Student Center. Id., p.3.

2. Analysis

a. First Cause of Action

District contends that Walnut's action should be dismissed because it is an untimely reverse validation action challenging the validity of Measure RR projects and expenditures.

A validation action under CCP section 860 *et al.* is a lawsuit filed and prosecuted for the purpose of securing a judgment determining the validity of a particular local governmental decision or act. N.T. Hill, Inc. v. City of Fresno, (1999) 72 Cal.App.4th 977. The validation proceeding is *in rem* and is binding on the agency seeking the judgment and on all other parties. Id. The purpose of the validation statutes is to provide a simple and uniform method for testing the validity of government action. Embarcadero Municipal improvement Dist. v. County of Santa Barbara, (1998) 63 Cal.App.4th 781. The key objective of a validation action is to limit the extent to which delay due to litigation may impair a public agency's ability to operate. Friedland v. City of Long Beach, (1998) 62 Cal.App.4th 835. Education Code section 15110 ("section 15110") specifically provides for determination of the validity of bonds and ordering of improvements. McLeod v. Vista Unified School District, (2008) 158 Cal.App.4th 1156, 1165-66.

Where the public agency does not initiate a validation proceeding, CCP section 863 allows "any interested person [to] bring an action within the time and in the court specified by Section 860 to determine the validity of such matter." This type of action is referred to as a "reverse validation action." California Commerce Casino, Inc. v. Schwarzenegger, ("California Commerce Casino") (2007) 146 Cal.App.4th 1406, 1420, n.12.

CCP sections 861-64 impose additional notice and service requirements on both validation and reverse validation actions. A validation action must be filed within 60 days of the public agency's action. CCP §860. CCP sections 860 and 863 make clear that reverse validation actions also must be brought within 60 days of the challenged action. "Given the policies underlying the validation statutes, including the need to limit the extent to which delay due to litigation may impair a public agency' s ability to operate financially, the 60-day limitations period for filing a validation action . . . is not unreasonable." California Commerce Casino, *supra*, 146 Cal.App.4th at 1420.

District argues that the Complaint must be dismissed because Walnut failed to comply with any of the procedural requirements for a reverse validation action, including issuance of a reverse validation summons and publication notice to all interested persons under CCP section 861-82.

Mot. at 7-9. Further, District contends that the action is untimely as the 60-day statute of limitations began running when District "passively validated" the Project as a valid Measure RR project when it adopted the 2012 FMP, on February 27, 2013 when it approved a professional services contract with Hill Partnership for design services for the Parking Project, and on December 13, 2013 when the Board certified the 201 Final SEIR which included comments on the Project. Mot. at 10-11.

The procedural requirements and 60-day statute of limitations in a reverse validation action do not apply to the Complaint. The first cause of action, the only cause of action that refers to Measure RR, is a taxpayer waste action under CCP sections 526(a) and 1060. Walnut is not challenging the validity of Measure RR itself; it seeks only to prevent the expenditure of Measure RR funds on the Parking Project. Such an action was clearly distinguished from a reverse validity action in Ontario v. Superior Court of San Bernardino City, (1970) 2 Cal.3d 335, 344 (to the extent plaintiffs sought injunctive relief related to the *performance* of the public agency agreement subject to validation, "no reason appears to deny them their normal and long-standing taxpayers' remedy"). *See also* Taxpayers for Accountable School Bond Spending v. San Diego Unified School District, (2014) 215 Cal.App.4th 1018, 1033 (taxpayer could sue to challenge school district's improper use of bond funds).[2]

The reverse validation statute does not apply to the Complaint.

b. Third Cause of Action

District challenges the Complaint's third cause of action for violation of local zoning and general plan height restrictions. District contends that Walnut does not have standing to seek a writ of mandate because District has no clear and present ministerial duty to enforce the ordinances -- only ~~Walnut~~ does. Mot. at 12.

Local agencies shall comply with local building and zoning ordinances. Govt. Code §53091(a). As an exception, school districts are not required to comply with local zoning ordinances unless (1) the zoning ordinance makes provision for the location of public schools, and (2) the city or county has adopted a general plan. Govt. Code §53094(a). Additionally, the governing board of a school district may render a local zoning ordinance inapplicable to a proposed use of school district property, but only when the use is not for non-classroom facilities. Gov. Code §53094(b).

Department 82 previously ruled that "the parking structure is a nonclassroom facility that cannot be exempted from the City's zoning laws under Section 53094." Sherman Decl. Ex. A, p.4. Walnut further alleges that District is not entitled to the exemption in Government Code section 53094(a) because District is a community college district, not a school district. Thus, under Government Code section 53091, Walnut adequately alleges that District has a mandatory duty to comply with ~~Walnut~~'s zoning laws.

This is sufficient for standing under CCP section 1085.

c. Second, Fourth, and Fifth Causes of Action

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[2] McLeod v. Vista Unified School District, (2008) 158 Cal.App.4th 1156, 1160, is consistent with this rule as it merely held that the 60-day limitations period passed for a challenge to a school district's issuance of bonds, not how the fund funds were spent.

District challenges the second, fourth, and fifth causes of action in the Complaint on the grounds that they are untimely challenges to the 2012 Final SEIR.

Public Resources Code section 21167 establishes statutes of limitations for all actions and proceedings alleging violations of CEQA. When an agency approves a project without determining whether it will have a significant effect on the environment, the limitations period is 180 days from project approval or, if there was no formal approval, 180 days from the commencement of construction. Pub. Res. Code §21167(a). An action asserting that the agency has improperly determined whether a project subject to CEQA will have a significant environmental effect must be commenced within 30 days after the agency files the required notice of project approval (which notice must indicate the agency's determination about the project' s effect on the environment). Pub. Res. Code §§21108(a), 21152(a), 21167 (b). A suit claiming that an EIR prepared for the project, or any other act or omission by the agency, does not comply with CEQA must be filed within 30 days after the above described notice of project approval is filed. Pub. Res. Code §21167(c), (e).

District claims that the statute of limitations period began running when the Board certified the 2012 Final SEIR on December 11, 2013. The second cause of action alleges that District failed to do a project-specific EIR for the Project, and failed to make a determination that the Project was within the scope of the 2012 Final SEIR. Compl. ¶¶ 33-37. The fourth cause of action similarly alleges that the District failed to make any findings regarding the District's exemption of the Project from CEQA. Compl. ¶¶52-55. And the fifth cause of action alleges a pattern and practice of CEQA violations – specifically, that the District's alleged policy of relying on piecemeal programmatic EIR updates without performing project-specific environmental review. Compl. ¶57.

None of these CEQA causes of action challenge the validity of the 2012 Final SEIR. Instead, the second and fourth claims challenges the Board's February 11, 2015 failure to determine whether the Project would have a significant effect on the environment, did not determine that the 2012 Final SEIR applied to the Parking Project, and did not make any findings that the Project was exempt from CEQA. The fifth cause of action alleges that the District has a pattern and practice of such failure for all projects, including the Solar Project. Such claims do not challenge the 2012 Final SEIR, but rather the approval of projects thereafter. The claims properly fall under the 180 day statute of limitations in Public Resources Code section 21167(a), commencing on the February 11, 2015 date when the failure occurred and the Parking Project was approved. Walnut filed claim 41 days after the February 11, 2015 action.

The second, fourth, and fifth causes of action are not untimely under CEQA.

d. Fourth Cause of Action

District challenges the fourth cause of action on the additional ground that it is moot. On July 8, 2015, the Board took official action to cease the expenditure of Measure RR funds on the Parking Project and removed it from the Measure RR project list. RJN Ex. F p.2. Measure RR funds for the Project were diverted into the new Student Center. Id. at p.3.

The minutes of the July 8, 2015 meeting indicate that the Board's actions were intended to comply with the preliminary injunction, not necessarily an abandonment of the Parking Project. District RJN Ex. F, p.2. The parking structure remains in the master plan and there are no plans to relocate it. Id. District has not taken formal action to rescind the February 11, 2015 action

exempting the Parking Project from local zoning restrictions. The Board's July 8, 2015 action also only affected the future use of Measure RR funds, and the issue of restitution of expended funds remains.

The fourth cause of action is not moot.

e. Dissolve or Modify the Preliminary Injunction

District moves to dissolve or modify the preliminary injunction on the grounds that Walnut failed to comply with the reverse validation action procedures, and that the Complaint is untimely. As discussed above, the court has determined that the reverse validation action procedures do not apply to this case, and the Complaint is timely.

District's motion to dissolve the preliminary injunction is denied.

C. Motion for a Preliminary Injunction

Plaintiff Walnut seeks a preliminary injunction with respect to the Solar Project.

1. Applicable Law

An injunction is a writ or order requiring a person to refrain from a particular act; it may be granted by the court in which the action is brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the court. CCP §525. An injunction may be more completely defined as a writ or order commanding a person either to perform or to refrain from performing a particular act. *See* Comfort v. Comfort (1941) 17 Cal.2d 736, 741. McDowell v. Watson (1997) 59 Cal.App.4th 1155, 1160.[3] It is an equitable remedy available generally in the protection or to prevent the invasion of a legal right. Meridian, Ltd. v. City and County of San Francisco, et al. (1939) 13 Cal.2d 424.

The purpose of a preliminary injunction is to preserve the *status quo* pending final resolution upon a trial. *See* Scaringe v. J.C.C. Enterprises, Inc. (1988) 205 Cal.App.3d 1536. Grothe v. Cortlandt Corp. (1992) 11 Cal.App.4th 1313, 1316; Major v. Miraverde Homeowners Assn. (1992) 7 Cal.App.4th 618, 623. The *status quo* has been defined to mean the last actual peaceable, uncontested status which preceded the pending controversy. Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995, quoting United Railroads v. Superior Court (1916) 172 Cal. 80, 87. 14859 Moorpark Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396. 1402.

A preliminary injunction is issued after hearing on a noticed motion. The complaint normally must plead injunctive relief. CCP §526(a)(1)-(2).[4] Preliminary injunctive relief requires

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[3]The courts look to the substance of an injunction to determine whether it is prohibitory or mandatory. Agricultural Labor Relations Bd. v. Superior Court, (1983) 149 Cal.App.3d 709, 713. A mandatory injunction--one that mandates a party to affirmatively act, carries a heavy burden: "[t]he granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established." Teachers Ins. & Annuity Assoc. v. Furlotti, (1999) 70 Cal.App.4th 187, 1493.

[4]However, a court may issue an injunction to maintain the *status quo* without a cause of action in the complaint. CCP §526(a)(3).

the use of competent evidence to create a sufficient factual showing on the grounds for relief. See e.g. Ancora-Citronelle Corp. v. Green, 41 Cal.App.3d 146, 150. Injunctive relief may be granted based on a verified complaint only if it contains sufficient evidentiary, not ultimate, facts. *See* CCP §527(a). For this reason, a pleading alone rarely suffices. Weil & Brown, California Procedure Before Trial, 9:579, 9(II)-21 (The Rutter Group 2007). The burden of proof is on the plaintiff as moving party. O'Connell v. Superior Court, (2006) 141 Cal.App.4th 1452, 1481.

A plaintiff seeking injunctive relief must show the absence of an adequate damages remedy at law. CCP §526(4); Thayer Plymouth Center, Inc. v. Chrysler Motors, (1967) 255 Cal.App.2d 300, 307; Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1565. The concept of "inadequacy of the legal remedy" or "inadequacy of damages" dates from the time of the early courts of chancery, the idea being that an injunction is an unusual or extraordinary equitable remedy which will not be granted if the remedy at law (usually damages) will adequately compensate the injured plaintiff. Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1565.

In determining whether to issue a preliminary injunction, the trial court considers two factors: (1) the reasonable probability that the plaintiff will prevail on the merits at trial (CCP §526(a)(1)), and (2) a balancing of the "irreparable harm" that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. CCP §526(a)(2); 14859 Moorpark Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396. 1402; Pillsbury, Madison & Sutro v. Schectman (1997) 55 Cal.App.4th 1279, 1283; Davenport v. Blue Cross of California (1997) 52 Cal.App.4th 435, 446; Abrams v. St. Johns Hospital (1994) 25 Cal.App.4th 628, 636. Thus, a preliminary injunction may not issue without some showing of potential entitlement to such relief. Doe v. Wilson (1997) 57 Cal.App.4th 296, 304. The decision to grant a preliminary injunction generally lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. Thornton v. Carlson (1992) 4 Cal.App.4th 1249, 1255.[5]

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. *See* CCP §529(a); City of South San Francisco v. Cypress Lawn Cemetery Assn. (1992) 11 Cal.App.4th 916, 920.

2. Statement of Facts[6]

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[5] District contends that a preliminary injunction is an "extraordinary remedy" and the test for a preliminary injunction involves a "high burden of proof." Opp. at 1, 8. As Walnut argues (Reply at 2), there is no high burden and a preliminary injunction is only extraordinary because it is unavailable if there is an adequate remedy at law.

[6] The court has ruled on District's evidentiary objections, interlineating the original evidence where an objection was sustained. Almost all of the objections to the Declaration of Dennis G. Majors were sustained.

District asks the court to judicially notice a series of documents (Exs. A-T) characterized as follows: (1) a Program EIR and Subsequent EIR, Facilities Master Plan ("FMP") and Addendum (Ex. A-B, F, R), (2) District's Board of Trustees agendas and minutes of meetings (Exs. C, D, G, H, J, K, M-Q), (3) two memoranda (Exs. I, L), and (4) two pleadings from this case (Exs. S, T).

District is the largest single campus community college district in the State of California with over 421 acres and is located in the City. Lindmark Decl. ¶3. District is an institution of "public higher education" and is required under Public Resources Code section 21080.09 to develop long range development plans ("LRDPs") that address physical development and land use planning to meet its academic and institutional objectives. CEQA requires that an environmental impact report ("EIR") be prepared for a LRDP with sufficient detail to identify the potential environmental impacts of its projects. Id. District uses "Facility Master Plans" ("FMPs") to serve a purpose similar to Master Plans, Specific Plans, and Area Plans for other public agencies. Id.

District prepared LRDPs in the form of facility master plans ("FMPs") in 2002, 2005, 2008 and 2012, which were evaluated in a Final Program EIR certified in December 2002. In order to address substantial changes in the projects identified in the Final Program EIR, District certified a Supplement to the Final Program EIR in January 2006, a Subsequent Final EIR in September 2008, and a Subsequent Final EIR in December 2013. Lindmark Decl. ¶4; District RJN Ex. F..

The Solar Project is an approximately 1.941 megawatt electrical energy facility that will produce and generate approximately 21,671,525 Kwh of clean electrical energy over the next five years, and 103,124,789 Kwh of clean electrical energy over the 25-year life cycle of the project. SCE has confirmed the project qualifies under the California Solar Initiative Program ("CSI Program") for performance based incentives ("PBI") totaling over $750,000 over the next five years based on the estimated electrical energy "produced [by the system]." Absher Decl. Ex. A. The funding source for the Solar Project is not Measure RR funds. District RJN Exs. J, P.

District's evaluation for the Solar Project began in 2008. Lindmark Decl. ¶5. At the time, there was no solar project yet identified on the West Parcel -- the now designated location of the Solar Project -- but the initial biological resources evaluations for the West Parcel were completed as part of the 2008 draft EIR. District RJN Ex. B; Lindmark Decl. ¶5. The West Parcel had been shown in the 2002 draft EIR as a "Future Asset Management Area." District RJN Ex. A; Lindmark Decl. ¶5.

In 2012, District approved FMP 2012 to, among other things, identify six campus zones of use to guide infrastructure development and future planning. District RJN Ex. F. The Campus Zoning Plan is a planning document and identifies the West Parcel as "Solar & Retail." Id.; Lindmark Decl. ¶6.

District prepared a draft subsequent 2012 EIR ("Draft 2012 SEIR") that identified the Solar Project and also analyzed its potential environmental impacts. District RJN Ex. F; Lindmark Decl. ¶6. On page 136 in Section 3.9 ("WEST PARCEL SOLAR/RETAIL"), the Draft SEIR states:

> "The solar project will cover approximately 6.6 acres of the West Parcel. Preliminary plans are for a 1.5-2.0 MW electrical output system with ground-mounted tracking solar photovoltaic panels and a small masonry structure to house equipment. The solar tracking panels change their orientation to capture the most sunlight. The steel support system may be 6-10 feet in height and the panels would

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Documents from the court file (Exs. S,T) need not be judicially noticed to be considered. The EIR and FMP documents (assuming that they were filed), minutes, and agenda are official acts and are judicially noticed. Evid. Code §452(c). The memoranda are not, and the request is denied for Exs. I and L.

extend 3-6 feet above the support structure. The solar system will interconnect to the main electrical 12 KW system on campus. A typical solar panel is capable of generating 350 watts. Once the support structures and equipment building are finished, the solar panels may be installed in 90-120 work-days. The preliminary construction schedule for the solar project, once USFWS permits are obtained for impacts on biological resources, is six to twelve months. Grading of the West Parcel will result in the removal of 9.45 acres of Non-Native Grassland (NNG) and removal of 8.60 acres of Venturan Coastal Sage Scrub (CSS)." District RJN Ex. F; Lindmark Decl. ¶10.

As evaluated in the Draft 2012 SEIR, approximately 261,000 cubic yards of fill for the Solar Project will be hauled (or imported) to the 9.9 acre West Parcel site. Id. Mitigation Measure 2c (adopted in the 2012 Mitigation Monitoring Program ("MMP") limits the hauling of earth materials to outside of peak-hour traffic periods, which will also avoid significant traffic impacts. District RJN Ex. F; Lindmark Decl. ¶7. In Table 3.2.15, the 2012 Draft SEIR analyzed the air quality impact of importing far more than the 261,000 cubic yards for the West Parcel Solar Project, as well as importing 383,000 cubic yards for the construction of four projects simultaneously (Fire Training Academy, Athletic Education Building, Parking Project, and Solar Project). District RJN Ex. F; Lindmark Decl. ¶8.

The anticipated noise from the construction of the Solar Project was first analyzed in Section 3.4 of the 2008 FMP EIR. Lindmark Decl. ¶9. It evaluated the City's noise limitations and found that construction noise in general would not be significant because the City had already determined that construction noise during certain daytime hours is acceptable. Id. The Solar Project's construction will adhere to those daytime hours. Id. An additional noise analysis was prepared by Greve & Associates, LLC dated September 9, 2015. Lindmark Dec. ¶9. Section 3.9 of the 2012 Draft SEIR provided additional impact analyses of the Solar Project's potential aesthetic, greenhouse gas, and biological impacts and appropriate mitigation measures were adopted. District RJN Ex. F; Lindmark Decl. ¶10.

The 2012 Final SEIR shows the Solar Project grading plan, clarified that the solar project would be 2.0 MW on 10.6 acres, and noted that grading will result in the removal of two drainages classified as non-wetland waters of the United States by the U.S. Corps of Engineers. District RJN Ex. F; Lindmark Decl. ¶12. The 2012 Final EIR was certified by District's Board of Trustees ("Board") on December 11, 2013. District RJN Ex. D.

On July 8, 2015, District's Board approved Resolution No. 15-01 for "Assessment, Design, Installation, and Operation and Maintenance of a Photovoltaic Solar System." Sherman Decl. ¶7, Ex. B; District RJN Ex. G.[7] The Board's agenda states that the Solar Project "Was approved as part of the Mt. San Antonio College Facility Master Plan 2012 and received ... CEQA lead agency clearance by the Board of Trustees' certification of the 2012 Master Plan's Subsequent EIR." District RJN Ex. G; Lindmark Dec. ¶14. This finding was supported by a CEQA memorandum. District RJN Ex. G; Lindmark Dec. ¶14.

Walnut objected to the Resolution on the grounds that it violates multiple laws, including

[7] Despite a change in terminology, the "Photovoltaic Solar System" referred to is the Solar Plant Project complained of by Walnut in the Complaint. Sherman Decl. ¶¶ 7-9.

CEQA, zoning and land use, and Measure RR spending. Sherman Decl. ¶¶ 7-9, Ex. J. The District's Board re-noticed the award of the Solar Project for its September 9, 2015 Board meeting where it concluded that no subsequent EIR was required for the Solar Project. District RJN Ex. J.

On September 16, 2015, District awarded the Solar Project at a special meeting. District RJN Ex. M. Walnut has made public records act requests and requested (through multiple meet and confers) that District disclose its expenditures of Measure RR funds on the Solar Project. District has not responded with that information. Sherman Decl. ¶¶ 12-13, Ex. I. Counsel for District originally indicated that construction on the Solar Project would begin in November of 2015. Sherman Decl. ¶20; Majors Decl. ¶31.

On November 18, 2015, the Board awarded five individual multi-prime bid packages for the South Campus Site Improvements project (Bid Nos. 3055-3059) required to prepare the West Parcel site for the Solar Project. District RJN Ex. P. The five bid packages are for fencing, solar array installation, civil engineering, landscaping and electrical work. Since the CEQA evaluation included analysis of construction noise, construction air quality, geology/soils, grading, truck hauling, drainage, water quality and aesthetics, the District determined that existing CEQA evaluation was also adequate and sufficient for the bid packages. Id. No additional environmental analysis was required under CEQA as the environmental impacts of the site and grading components of the Solar Project had been addressed in the 2012 Final Master Plan SEIR. Id.; see Lindmark Decl., ¶18.

District is presently considering extending construction truck traffic for an additional two hours per day during non-peak hours for the Solar Project. In addition, minor edits to four existing mitigation measures adopted in the 2012 MMP are also being considered to: (1) accommodate the extended construction truck traffic time (MIv1-2c); (2) require parking supply studies on regular intervals to more precisely determine when the parking supply mitigation is required to be implemented (MM-2k); (3) remove the requirement for grading permits, since the District does not require them (MM-3a); and (4) align the paint VOC requirements with current industry practices and California Emissions Estimator Model (CalEEMod) standards (MIVI-3i). Additionally, four components of the Truck Haul Plan specific to the Solar Project are proposed to reduce potential traffic congestion if other drivers make unsafe vehicular movements near trucks along the haul route for soil import to the West Parcel. Lindmark Decl. ¶19.

The above changes to the 2012 MMP that support the certified 2012 FMP FEIR will require that the Board approve the Addendum. Lindmark Decl. ¶20. The Addendum is on the agenda for Board review and approval at its January 13, 2016 meeting. District RJN Ex. Q.

3. Analysis

Petitioner Walnut seeks a preliminary injunction enjoining District from (1) expending Measure RR bond funds on any aspect of the Solar Project; (2) expending Measure RR funds on litigation or defense of the Solar Project; and (3) conducting any construction, dirt removal, or other environmental destruction activities on or at the Solar Project site.

a. Reasonable Likelihood of Success

Walnut asserts that it is likely to succeed on its first and third causes of action. Walnut's first cause of action is for taxpayer waste under CCP section 526a. Walnut presents evidence that the Solar Project is not listed in Measure RR, and argues that Measure RR funds cannot be used

on the Solar Project. Sherman Decl. ¶11, Exs. D, E. Under the recently decided case of Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist., (2013) 215 Cal.App.4th 1013, 1029-30, projects funded with bond proceeds authorized by voting taxpayers must be specifically listed as a project in the proposition and bond measure.

District argues that Walnut did not properly follow the procedures for a reverse validation action. Opp. at 9-10. The court has already ruled *ante* that this is not a reverse validation action, but rather a taxpayer waste action for improper spending of Measure RR funds.

District also argues that it is not expending Measure RR funds on the Solar Project. However, on February 7, 2015, the District listed the Solar Project as a Measure RR project, and stated that $1.9 Million in funding was from Measure RR funds. Sherman Decl. Ex. C p.4. District provides no evidence that this statement was false, the planned expenditure was cancelled, or that District has changed the funding source for the Solar Project. District's argument is not well taken.

The Complaint's third cause of action is for violation of local zoning ordinances. The court need not address the merits of Walnut's zoning arguments because, as District point out, the third cause of action concerns the Parking Project, not the Solar Project. The complaint must plead a cause of action concerning the matter for injunctive relief. CCP §526(a)(1)-(2); Korean American Legal Advocacy Foundation v. City of Los Angeles, (1994) 23 Cal.App.4th 376, 398-99. Thus, Walnut has not demonstrated that it is likely to succeed on the third cause of action with respect to construction of the Solar Project.

The parties debate District's CEQA compliance for the Solar Project. District points out that the Complaint's second cause of action alleges only District's failure to make proper determination and finding with respect to the Parking Project. While the fifth cause of action alleges District's custom and practice of violating CEQA, including for the Solar Project, Walnut's moving papers do not rely on CEQA. Opp. at 12.

In reply, Walnut argues that the second cause of action includes the Solar Project, and the District's Program FEIR does not insulate it from the two-step process of (1) evaluating the Solar Project to determine if it is covered by the program FEIR or instead could result in environmental effects that the FEIR did not address and (2) if covered by the Program FEIR, whether any new environmental effects may occur or new mitigation measures required. District has not even performed the first step. Reply at 7-8. The short answer is that Walnut neither pled a violation of CEQA for the Solar Project nor raised it in its moving papers. It cannot do so for the first time in reply. Regency Outdoor Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333 (new evidence/issues raised for the first time in a reply brief are not properly presented and may be disregarded).

Walnut is reasonably likely to succeed only on the first cause of action for taxpayer waste related to the Solar Project.

b. Balance of Harms

In support of its position, Walnut argues that injunctive relief is authorized by statute (CCT §526a), and it need not show irreparable harm. Mot. at 8.

Walnut is wrong. Where a governmental agency seeks injunctive relief based on violation of a statute or ordinance which provides for that relief, a presumption arises that the potential harm to the public outweighs the potential harm to the defendant. IT Corp. v. County of Imperial, (1983) 35 Cal.App.3d 63, 72. Walnut is not a governmental agency and this presumption has no

application to it. Walnut must present irreparable harm.

Walnut asserts that an injunction is necessary to prevent harm to the environment and harm to the public from wasteful spending of public funds. Mot. at 10. Walnut has presented no admissible evidence of harm to the environment. District argues that a taxpayer's general interest in avoiding public waste is not the type of irreparable harm supporting a preliminary injunction. *See* White v.Davis, (2003) 30 Cal.4th 528, 561. Opp. at 13. Walnut distinguishes White on the ground that it never decided the issue, but it does cite "a number of Court of Appeal decisions' that have concluded that taxpayer standing is not a "substitute for the high degree of existing or threatened injury" required for a preliminary injunction." 30 Cal.4th at 554-55.

District has asserted that no Measure RR funds are currently being used for the Solar Project. Nor is there any immediacy to the Solar Project moving forward as several permits from third party agencies are required. Even if this is wrong and the Solar Project will move forward soon with Measure RR funds, Walnut must wait until trial and is not entitled to a preliminary injunction to prevent that waste.

The motion for a preliminary injunction with respect to the Solar Project is denied.

E. Motion to File FAC

Walnut moves for leave to file a FAC which would expand the allegations concerning the Solar Project, add a real party, and add a new claim based on the February 11, 2015 lease-leaseback to Real Party Tilden-Coil.[8]

1. Applicable Law

California courts employ a liberal approach to amendment of pleadings in light of a strong policy favoring resolution of all disputes between parties in the same action. Nestle v. Santa Monica, (1972) 6 Cal.3d 920, 939; Morgan v. Superior Court, (1959) 172 Cal.App.2d 527, 530. Pursuant to this liberal policy, requests for leave to amend will normally be granted unless (a) the party seeking to amend has been dilatory in bringing the proposed amendment before the court; and (b) the delay in seeking leave to amend will cause prejudice to the opposing party if leave to amend is granted. Hirsa v. Superior Court, (1981) 118 Cal.App.3d 486, 490. Absent a showing of prejudice, delay in seeking an amendment alone does not justify denial of leave to amend. Higgins v. Del Faro, (1981) 123 Cal.App.3d 558, 564-565. Moreover, where the plaintiff is the party seeking leave to amend, mere proximity to the trial date, absent any prejudice, does not constitute ground for denial if the plaintiff is amenable to a continuance of the trial date. Mesler v. Bragg Mgt. Co., (1985) 39 Cal.3d 290, 297.

The reason for a liberal policy is that if a plaintiff has a good cause of action, which by accident or mistake he has failed to set out in his complaint, the court, on motion for judgment on the pleadings, should, on his application so to do, permit him to amend; the granting of the motion without leave to amend would in many cases be an absolute denial of justice, and is directly opposed to the policy of the law that cases should be tried and decided on the merits. Higgins, *supra*, 123 Cal.App.3d at 564-65. Hence, where an amendment provides merely the addition of matters essential to make the original cause of action complete, effecting no change in the nature

[8] Tilden-Coil again purports to join District's opposition, and again the joinder is untimely and unsupported by memorandum.

of the case and thus causing no surprise or prejudice to the adverse party, the amendment should certainly be allowed by the court. Id. at 565.

A motion to amend a pleading shall (1) include a copy of the proposed amendment or amended pleading; (2) state the effect of the amendment; (3) be serially numbered to differentiate the amendment from previous amendments; and (4) state the page, line number, and wording of any proposed interlineation of material. CRC 327(a). The motion shall be accompanied by a separate declaration specifying the effect of the amendment, why it is necessary and proper, when the facts giving rise to it were discovered, and the reasons why the request for amendment was not made earlier. CRC 327(b).

In ruling on a motion for leave to amend, a trial court will not normally consider the viability of the proposed amendments. Kittredge Sports Co. v. Superior Court, (1989) 213 Cal.App.3d 1045, 1048. The court, however, has discretion to deny an amendment that fails to state a cause of action or defense. Foxborough v. Van Atta, (1994) 26 Cal.App.4th 217, 230. The court also has discretion to deny "sham" amendments, *i.e.*, those that omit or contradict harmful facts alleged in the original pleading, unless sufficient excuse exists. Green v. Rancho Santa Margarita Mortgage Co., (1994) 28 Cal.App.4th 686, 692; Berman v. Bromberg, (1997) 56 Cal.App.4th 936, 945-946 ("sham" amendment rule does not apply to change of legal theories).

2. Analysis[9]

Walnut seeks to file a FAP to (1) add additional factual allegations regarding the Solar Project, specifically the action taken by the District on July 8, 2015 approving Resolution 15-01 and the September 16, 2015 revision to Resolution 15-01; (2) add Real Party-In-Interest Borrego Solar Systems, Inc. ("Borrego"), the company awarded the Solar Project contract; and (3) add a new claim challenging the February 11, 2015 lease-leaseback contract between District and Tilden-Coil. Walnut has complied with the procedural requirements of CRC 327(a).

The first cause of action alleges the waste of taxpayer funds on the Solar Project. After the Complaint was filed, District took actions on the Solar Project by adopting Resolution 15-01 and awarding the Solar Project to Borrego. Walnut seeks to add allegations relating to the Solar Project to the first, third, [10] and fifth causes of action. A plaintiff is permitted to make a supplemental complaint alleging facts material to the case that occurred after the former complaint. CCP §464(a). Walnut additionally, in an abundance of caution, seeks to add Borrego as a Real Party-in-Interest in order to provide Borrego with a right to appear and defend itself.

Walnut also seeks to add a sixth cause of action alleging that the lease-leaseback arrangement between District and Real Party Tilden-Coil violates Public Contract Code section 17406[11] and Government Code section 1090 as a sham in which there is no actual lease in order to pay Tilden-Coil more money in contravention of the competitive bidding process.

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[9] District asks the court to judicially notice another series of minutes and agendas (Exs. A, C-F, H), pleadings in this case (Exs. I, J), FMP (Ex. B), and a termination for convenience (Ex. G). As this information is virtually irrelevant to the motion for leave to amend, the request is denied in its entirety.

[10] Although Walnut contends that the Solar Project is challenged in the Complaint's third causes of action, it is not. *See* Mot. at 7-8.

[11] The court could not find any Public Contract Code section 17406.

A new cause of action may be added to a complaint so long as the amended and original pleadings seek recovery on the same general set of facts. Austin v. Massachusetts Bonding & Ins. Co., (1961) 56 Cal.2d 596, 601; Grudt v. L.A., (1970) 2 Cal.3d 575, 584. The facts that form the basis for this sixth cause of action were pled in the Complaint -- that on February 11, 2015, the District approved a lease-leaseback contract with Tilden-Coil for construction of the Parking Project. Since filing the Complaint, Walnut has gained an opportunity to fully investigate the lease-leaseback contract by reviewing the proposed administrative record documents. Additionally, the recent decision in Davis v. Fresno Unified School Dist., (2015) 237 Cal.App.4th 261 affirmed the validity of the new allegations.

District opposes the motion to file a FAC, but merely reiterates the same arguments set forth in its Motion to Dismiss.

The motion to file a FAC is granted.

F. Motion to Consolidate

Plaintiff Walnut moves to consolidate for all purposes this action with City of Walnut v. David K. Hall, et al., Case No. BS 154389.[12] Defendant District does not oppose consolidation, but contends that the issue is moot because it has withdrawn the Parking Project and terminated the underlying parking contract.

Trial courts have broad discretion to consolidate related cases that involve "common questions of law or fact." *See* CCP §1048. Relevant factors for consolidation include: the predominance of common legal or factual issues; overlap in evidence and witnesses; the convenience of parties and attorneys; the relative advancement of the actions; and judicial efficiency. Todd-Stenberg v. Dalkon Shield Claimants Trust, (1996) 48 Cal. App. 4th 976, 979-80; Estate of Baker, (1982) 131 Cal.App.3d 471, 485.

This case is a mandamus action[13] arising out of the Parking Project, the Solar Project, and the Athletic Complex East. BS 154389 is a mandamus and declaratory relief action by the City also concerning zoning violations in connection with the Parking Project.

This case was filed on March 24, 2015 and BS 154389 was filed on March 26, 2015. The cases have been related by Department 82. Consolidation would eliminate the need for duplicative discovery, and allow the court to resolve all disputes between the parties without the risk of conflicting rulings. The motion to consolidate this action with Case No. BS 154389 is granted. This case (BC 576587) shall be the consolidated case number.

There is a third lawsuit (BC 600860) in which Walnut seeks mandamus and declaratory relief action for violation of the Brown Act in the Board's September 16, 2015 action awarding the Solar Project at a special meeting to Borrego. District RJN Ex. M. The Board's September 16, 2015 action is also the subject of the FAC's first cause of action in this case. The court will discuss with counsel whether this third suit should be consolidated with the others.

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[12] Walnut's proposed order does not consolidate the cases for all purposes, but rather only for trial with separate decisions. There is little value to such a proposal, which is inconsistent with Plaintiff's notice.

[13] Although the FAC includes non-mandamus claims, Walnut agrees that the case can be tried on an administrative record as a writ of mandate. Mot. for Leave at 10.

G. Conclusion

The motion to dismiss (judgment on the pleadings is denied. The motion for a preliminary injunction also is denied. The motion to file a FAC is granted and the proposed FAC is ordered to be separately filed as of this date. Plaintiff is to serve Real Party Borrego forthwith with the Summons and FAC. Finally, the motion to consolidate this action with Case No. BS 154389 is granted, and the cases are consolidated for all purposes. The court will discuss with counsel whether the third lawsuit (BC600860) should also be consolidated.