SAN DIEGUITO RIVER PARK
JOINT POWERS AUTHORITY
11:00 a.m.
Friday, February 21, 2020
County Administration Center
1600 Pacific Highway, Room 302/303
San Diego

Speaker slips will be available. Please fill out a slip and give it to the Chair prior to the meeting if you wish to speak to an item on the agenda. The Board may act on any item listed on the Consent or Action Agenda.

Introductions and Announcements

Pledge of Allegiance

Approval of the Minutes of January 17, 2020 (Page 3)

Executive Director’s Report

Public Comment

This portion of the agenda provides an opportunity for members of the public to address the Board on items of interest within the jurisdiction of the Board and not appearing on today’s agenda. Comments relating to items on today’s agenda are to be taken at the time the item is heard. Pursuant to the Brown Act, no action shall be taken by the Board on public comment items.

DISCUSSION/ACTION

1. Discussion of Marisol Specific Plan Initiative (Page 7)

2. Update from Surf Cup Subcommittee Meeting (Page 16)

INFORMATION
3. **Coordination Reports (oral)**

   a. San Dieguito River Valley Conservancy  
   b. Friends of the San Dieguito River Valley  
   c. Volcan Mountain Preserve Foundation  
   d. San Dieguito Lagoon Committee  
   e. Friends of Sikes Adobe  

4. **Jurisdictional Status Reports**

   An opportunity for the Board members to report on actions taken within their jurisdictions to further the park planning process.

5. **Communications**

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THE NEXT REGULAR JPA MEETING WILL BE March 20, 2020

If you have any questions, please call Kevin McKernan at (858) 674-2270 Ext. 15

****Due to the high cost of printing and mailing the JPA and CAC agendas, the JPA has converted to an email distribution of both agendas. Please advise the office at 858 674-2270 if you do not have an e-mail address and want other arrangements to be made. The agenda and minutes are available at no cost on the San Dieguito River Park web site at [www.sdrp.org](http://www.sdrp.org)
SAN DIEGUITO RIVER PARK
JOINT POWERS AUTHORITY
Minutes of January 17, 2020

MEMBERS PRESENT
Kristin Gaspar
Olga Diaz
Judy Hegenauer
Dianne Jacob
Dave Grosch
Mark Kersey
Jeff Barnouw
Dustin Fuller

MEMBERS ABSENT
Barbara Bry- Vice-Chair
Dwight Worden

VISITORS/STAFF PRESENT
Kevin McKernan
Wayne Brechtle
Brenda Miller
Shawna Anderson
Ricky Flahive
Jacqueline Winterer
Crystal Benham
Monique Tello
Adam Wilson
Julie Klein
Terry Gaasterland
Nikki McGinnis
Clay Westling
Bill Michalsky
Carol Kerridge
Trish Boaz

REPRESENTING
County of San Diego
City of Escondido
City of Solana Beach
County of San Diego
City of Poway
City of San Diego
Citizens Advisory Committee
22nd District Agricultural Association

REPRESENTING
City of San Diego
City of Del Mar

Introduction and Announcements
Chair Gaspar convened the meeting at 11:00 a.m. in the County Administration building, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101

Pledge of Allegiance
Chair Gaspar invited all to stand and recite the Pledge of Allegiance.

Approval of Minutes of December 13, 2019
Boardmember Barnouw made the motion to approve the minutes of December 13, 2019. Boardmember Grosch seconded the motion.
Yes votes: Gaspar, Jacob, Grosch, Barnouw, Diaz, Hegenauer, Kersey
Absent:  Bry, Worden

Executive Directors Report - None

Public Comment – None

DISCUSSION/ACTION AGENDA

1. Election of 2020 JPA Officers and Committee Appointments

   Recommendation: Board motion and vote to elect Boardmember Bry as Chair and
   Boardmember Worden as Vice-Chair for 2020 and to appoint Boardmembers Worden, Grosch, Diaz
   and Hegenauer to serve on the Budget and Administration Subcommittee.

   Boardmember Kersey moved to elect the recommended JPA Officers and Committee appointments.
   Boardmember Diaz seconded the motion.

   Yes votes: Gaspar, Jacob, Grosch, Barnouw, Diaz, Hegenauer, Kersey
   Absent:  Bry, Worden

2. JPA Board Approval of Citizens Advisory Committee (CAC) Chair/Vice-Chair Officers

   Recommendation: board motion to approve Jeff Barnouw to serve as Chair and Jacqueline
   Winterer to serve as Vice-Chair of the Citizens Advisory Committee for the term of 2020/2021 two-
   year term.

   Boardmember Kersey made the motion to approve the CAC Chair/Vice-Chair Officer positions and
   Boardmember Jacob seconded the motion.

   Yes votes: Gaspar, Jacob, Grosch, Diaz, Hegenauer, Kersey
   Abstain: Barnouw
   Absent:  Bry, Worden

3. Discussion of Marisol Specific Plan Initiative Draft EIR

   Principal Planner Shawna Anderson introduced the agenda item as a project being proposed in the City
   of Del Mar on the north side of Dog Beach, at the top of the bluff next to the North Bluff Preserve.
   The property is privately owned and zoned for low density development and will be placed as a voter
   initiative on Del Mar's March 3, 2020 election ballot. The project includes a resort, 118-182 hotel
   rooms, 22 affordable housing units, underground parking garage, event space, restaurants, perimeter
   trail, and structures up to 3 stories in height. The property location is in the focused planning area of
   the San Dieguito River Park. Ms. Anderson presented the San Dieguito River Park’s Concept Plan as
   it relates to this project. The DEIR was released December 15th with comments due February 3rd. Ms.
   Anderson explained the DEIR comments and asked the Board to approve sending the comment letter,
   attachment five of the agenda item.
Public Speaker Clay Westling from Solana Beach spoke supporting the comment letter, asked that the Board send the letter to the City of Del Mar and take a formal position opposing the project.

Public Speaker Terry Gaasterland representing the Friends of Del Mar North Bluff named the overlay zones that would disappear if the project passes and thanked the staff for writing the comment letter. She asked the Board to send the staff report with the comment letter and create a working group to determine if the Board should be more firm than just making comments to the DEIR.

Public Speaker Bill Michalsky resident of Del Mar said that the process is broken and agreed with Gaasterland's remarks. The project is vague and should be identified clearly and suggested JPA request more information, impacts not well understood, the DEIR is not helpful and empty. Mr. Michalsky asked the Board to send the comment letter.

Public Speaker Carol Kerridge resident of Del Mar asked the Board to write a strong letter against the project stating that a lot of issues are not addressed in the DEIR.

Boardmember Kersey made the motion to not send the comment letter. Boardmember Gaspar seconded the motion. Boardmember Barnouw said that the Board would be doing their part in the process by sending the comment letter. Boardmember Jacob stated that she would not support the motion, stating that it is the responsibility of the JPA to comment on projects to protect the interest of the Coast to Crest Trail and San Dieguito River Park. Boardmember Jacob asked the Board to consider sending the comment letter and possibly taking a position on the project.

Boardmember Jacob made the substitute motion to submit the comment letter as written and take a position to oppose the project based on the fact that changes are not compatible with the goals and objectives of the Joint Powers Authority. Boardmember Hegenauer seconded the motion. Boardmember Jacob asked to defer action until the February meeting to allow Counsel Brechtel to research the legal aspects and staff to determine if the zone change is compatible with the JPA goals and objectives. Counsel Brechtel reminded the Board that the comment period ends February 3rd, and if a letter is sent after that date, responses are not required to the comments. Boardmember Jacob changed the substitute motion to approve sending the comment letter as written because of the time deadline and to not take a position. Boardmember Hegenauer seconded the motion. A roll call vote was taken.

Yes votes: Hegenauer, Diaz, Barnouw, Jacob
No votes: Kersey, Grosch, Gaspar
Absent: Bry, Worden

Boardmembers directed staff to bring this project to the next meeting to consider whether the project is consistent with the San Dieguito River Park Concept Plan and asked counsel to research legal issues with the project. Director McKernan stated that the comments made on the project were not for or against the project, just pointing out the inadequacies of the findings in the DEIR documents.

Boardmember Gaspar left the meeting at 11:50 a.m.

INFORMATION

4. Project Status Updates
a. **Ranger Station** – Director McKernan reported that the Ranger Station is almost done and that it is on budget. Staff expects to move into the building in February or March and is working with partner organizations to hold an open house in late April or May. The solar will be installed after the project is final inspected and the cost has been pledged by the San Dieguito River Valley Conservancy.

5. **Coordination Reports**

   a. **San Dieguito River Valley Conservancy** - Trish Boaz reported on the many events the Conservancy is involved in throughout the Park including hikes, restoration and fuel reduction projects, a possible property acquisition with the County in the Del Dios area and phase 3 of River Path Del Mar. Ms. Boaz advocated for the JPA's successful education program funding to collaborate and keep the programs going. Four signs at the Grand Avenue Overlook are being replaced with Wild Coast grant funds. Ms. Boaz offered the Conservancy help to the JPA whenever needed.

   b. **Friends of the San Dieguito River Valley** - No report

   c. **Volcan Mountain Preserve Foundation** - No report

   d. **San Dieguito Lagoon Committee** - No report

   e. **Friends of Sikes Adobe** - No report

6. **Jurisdictional Status Reports**

Boardmember Fuller reported that the 22nd Agricultural District has launched a strategic planning process and inviting the JPA, Conservancy and members of the public to attend workshops in February, March and April. Boardmember Diaz reported that while on a walk at the Sikes Adobe she saw volunteers having an issue with water and contacted Director McKernan, the City of Escondido water department and the City of San Diego to fix the problem. She was happy to report that eventually the issue was taken care of. Boardmember Diaz continued to state that Sikes is a remote location and often times it is difficult to know who to contact and asked if annexation of the property from the City of San Diego to the City of Escondido would be worth exploring again as an option. Boardmember Jacob thanked everyone who came to the grand opening of the Santa Ysabel Nature Center and invited everyone to tour the facility and enjoy the surrounding trails.

Boardmember Jacob adjourned the meeting at 12:02 p.m.

These minutes approved by Board action.
TO: JPA Board
FROM: Staff
SUBJECT: Marisol Specific Plan Project

SITUATION:

At the January 2020 JPA meeting, your Board authorized staff to send a comment letter on the Draft EIR for the Marisol Specific Plan project (Attachment 1). As you recall the project is located on the coastal bluff mesa top above North Beach (also known as Dog Beach) on the north side of the lagoon inlet in the City of Del Mar (Attachment 2) and within the SDRP's Focused Planning Area. The project is a developer initiative on Del Mar's March 2020 ballot for a public vote on whether to approve the Specific Plan. As part of the discussion, your Board asked that staff put the project on the February meeting agenda to 1) answer questions raised by Board members concerning the Specific Plan's status regarding CEQA and 2) consider whether the project is consistent with the San Dieguito River Park Concept Plan goals and objectives.

INFORMATION:

The project's CEQA status is addressed in a memorandum prepared by JPA General Counsel Wayne Brechtel (Attachment 3).

Regarding the project's consistency with the SDRP Concept Plan, it is JPA staff's opinion that the project is inconsistent with two stated objectives of the Concept Plan. This opinion is based on staff's review of the project details, Del Mar's existing regulations for the site, and input from the JPA's Project Review Committee. The two objectives are:

CONSERVATION OF SENSITIVE RESOURCES – Preserve the existing natural character, visual quality, and sensitive resources of the open space corridor, including the preservation, enhancement, and protection of sensitive coastal wetlands, hillsides, riparian and other freshwater habitat, native vegetation and historical and cultural resources. (Emphasis added)

ESTABLISHMENT OF DESIGN GUIDELINES – Establish and seek to have enforced design and development standards for future development within the Focused Planning Area that would ensure the retention of the largely rural character of the planning area and would limit the visual and physical encroachment of development into the Focused Planning Area. (Emphasis added)
The primary reasons why the Marisol Specific Plan project does not meet these objectives are as follows:

-The Specific Plan would allow over 70 percent of the site to be developed with a 3-story hotel, resort, and other development totaling 410,970 square feet (currently zoned for single family units), far more than what would be allowed under the existing zone. It would specifically remove three existing zone overlay protections in place to protect the bluff and existing natural character of the site. Although 7 to 23 dwelling units could be developed on the site under existing zoning, how those overlay regulations are implemented is discretionary with much authority for the City to require clustering, setbacks, trails, and other measures that would allow some development while preserving the site's open space and natural character. Del Mar recently used these measures when they approved a 5-unit single family project on this site in 2015 (Lazier tentative map).

-The substantial increase in lighting and noise would intrude into the existing visual quality of the surrounding scenic area that is the San Dieguito River Park (beach, bluffs, lagoon, trails).

-The project would greatly increase impervious surfaces compared to the existing condition and thus increase runoff (from rainfall and irrigation) into the nearby lagoon. All stormwater would be directed to the City's stormwater system that discharges into the lagoon. Although the project would be required to comply with current stormwater runoff standards including filtering stormwater onsite, the quantity of site runoff would greatly increase and could cause impacts to the lagoon (this was considered insignificant in the EIR).

-The City's existing zoning standards that apply to the project site were adopted many years ago specifically to protect the coastal bluffs and resources. Because the JPA does not have land use authority the Concept Plan addresses "the responsibilities of other public agencies and the region at large for the long term protection of the river valley." Del Mar's existing development standards are in place to protect the site resources and the removal of those standards and replacement with the Marisol Specific Plan would not be consistent with the SDRP Concept Plan. According to the Del Mar Municipal Code, the purpose of the BSC overlay zone is to "preserve the scenic sandstone bluffs and related canyons and steep slopes which characterize the area within the zone". The overlay zone also requires standards such as "in order to preserve viewsheids and the open space appearance of the area from a distance structures shall be designed to be subservient to the natural landforms on the site..." and "no structure shall exceed a height of 14 feet..." These standards are in place to limit visual and physical encroachment. The Marisol Specific Plan would greatly increase the amount of physical development and remove the ability to enforce these established protective standards.

For these reasons, the project is considered by staff to be inconsistent with the SDRP Concept Plan.
Agenda Item 1  
February 21, 2020

CAC RECOMMENDATION:

At their February 7, 2020 meeting the CAC voted in favor of recommending that the JPA Board take a position that the Marisol project is inconsistent with the SDRP Concept Plan.

Respectfully submitted,

Shawna Anderson  
Principal Planner

Attachments:
   1. JPA EIR Comment Letter  
   2. Marisol project site  
   3. General Counsel Wayne Brechtel Memorandum re Marisol EIR
January 27, 2020

Attn: Matt Bator, Senior Planner
City of Del Mar
1050 Camino Del Mar
Del Mar, CA 92014

Via email: mbator@delmar.ca.us

Subject: Comments on Marisol Specific Plan Initiative Draft EIR
SCH #2017091081

Dear Mr. Bator:

Thank you for the opportunity to comment on the Marisol Draft EIR. On January 17, 2020, the San Dieguito River Park JPA Board took action to approve the DEIR comments included in this letter. Our comments are as follows:

1. The DEIR does not address the privately-owned remnant parcel located east of Camino Del Mar (APN 2982410700, DEIR Figure 3-1). Based on discussions with Del Mar staff in 2017, we understand that the parcel is to be preserved as open space. What is the status of the remnant parcel and how will it be preserved? The JPA supports incorporating the parcel into the surrounding lagoon open space and requests that any restrictions imposed by the city not preclude the possibility of placing the Coast to Crest Trail on a portion of the parcel in the future.

2. As described in the DEIR (page 4.1-14), the project would be visible from the Coast to Crest Trail and the Dust Devil Nature Trail and, due to elevation of the prominent coastal bluff and the proposed height of the structures, the resort and villas would be visible and extend above the Del Mar Fairgrounds. The aesthetic analysis in the DEIR (pages 4.1-34 and 39) seems to rely on architectural details and paint color as mitigation for visual impacts, none of which has been determined (to be determined in future discretionary reviews). The DEIR understates the dramatic change between potential low-density residential allowed on the bluff top under current zoning and what is proposed by the Specific Plan. The DEIR concludes that visual impacts would be less than significant from key viewpoints that include views from public trails. It is the JPA's opinion that the proposal to prepare an Enhanced Landscaping Plan is not adequate mitigation and impacts to the viewshed of the San Dieguito River Park would be significant and unmitigated.
3. The purpose of the BSC and Coastal Bluff overlay zones in place on the project site for many years are to "preserve view sheds and the open space appearance of an area from a distance", to ensure that "structures be subservient to the natural landforms on site", and to prevent intrusion of development on a scenic resource. Design review standards associated with BSC overlay zone include restricting building heights to a maximum of 14 feet. However, the DEIR states that single-family residences on the site could be up to two stories (26 feet high). The proposed project does not comply with the goals and standards of the overlay zones, which also help to implement the objectives of the San Dieguito River Park Concept Plan to preserve the area's open space character.

Although the proposed 40-foot setback from the bluff edge would help to reduce impacts, it would not mitigate what would be a dramatic change in the open space and natural character of the bluff with the introduction of multiple 3-story structures on a majority of the site. The proposed building mass, heights, and lighting would interfere with public views of the ocean and coastal bluffs and the impact would be significant and unmitigated.

4. The DEIR concludes that impacts from increased lighting on the mesa top in comparison to existing conditions would be significant. The JPA agrees with this conclusion but is concerned that proposed mitigation of a lighting plan and some lighting restrictions would be inadequate to fully mitigate the impacts from such a dramatic increase in night lighting. Impacts to the San Dieguito River Park could be significant and unmitigated.

5. The DEIR compares the proposed project with what could potentially be built on the site under the existing zoning regulations. However, the conclusions reached regarding the significance determinations regarding existing zoning scenarios and the proposed resort and 182 units is the same (Table 7-1). The DEIR draws the conclusion that there would be only a small reduction in impacts for aesthetics and lighting but they would largely be the same under low density development and the proposed project. This conclusion of site alternatives dismisses the difference that appears significant between the two scenarios.

6. The proposed project would be required to comply with water quality regulations for stormwater including treating all runoff onsite before it enters the City stormwater system. Because the stormwater would eventually be discharged into the San Dieguito Lagoon (currently minimal site runoff drains onto the beach), the quality and quantity of that stormwater could greatly impact the lagoon over the life of the project. As described in the DEIR, stormwater runoff quantities would greatly increase due to the increase in impervious surfaces compared to the existing condition. The JPA would appreciate being
consulted and included in reviewing all project stormwater treatment design proposals, structural BMPs, construction and post-construction BMPs, and hydromodification plan.

7. Related to the stormwater issue mentioned above, the restoration of the San Dieguito Lagoon by SCE and the future restoration by SANDAG (W-19) have and will continue to greatly improve the health of the San Dieguito Lagoon. These restoration projects should be considered in designing project stormwater BMPs and hydromodification measures so as not to damage the gains made by these important restoration projects.

Please feel free to contact our Principal Planner Shawna Anderson at shawna@sdrp.org if you would like to discuss these comments further.

Sincerely,

[Signature]
Kevin McKernan
Executive Director

Passed January 17, 2020 JPA Board Meeting:

AYES: 4 (BARNOUW, DIAZ, JACOB, HEGENAUER)
NOES: 3 (GASPAR, GROSCH, KERSEY)
ABSTAIN: 0
ABSENT: 2 (BRY, WORDEN)
**Figure 3-2 Conceptual Site Plan**

- Includes event gardens/lawns, ballrooms, and banquet facilities
- Includes all associated public and private amenities, e.g. restaurants, spa, and retail components

**Legend**
- Specific Plan Area Boundary
- Visitor-Serving Accomodations*
- Event Space**
- Attached Villas
- Detached Villas
- Villa Amenity
- Lower-Cost Shared Visitor-Serving Accomodations
- Affordable Housing
- Restrooms and Storage
- New Bluff Access Stairway and Facilities

**Source:** Dudek 2019

**City of Solana Beach**

**North Beach**

**CITY OF DEL MAR**

**40 Foot Setback**

**Top of Bluff**

**Toe of Bluff**

**Bluff Top Trail**

**Pacific Ocean**

**New Access Path**
To: Board of Directors, San Dieguito River Park JPA
From: D. Wayne Brechtel, General Counsel
Date: February 9, 2020
Re: Marisol Environmental Impact Report

Overview

This memorandum addresses questions that were raised during the January Board meeting regarding the legal status of the environmental impact report (“EIR”) for the Marisol Specific Plan Initiative that has been circulated for public review and comment by the City of Del Mar.

A. The Draft Marisol EIR is an Informational Document that is outside the scope of CEQA.

Initiatives are not discretionary projects subject to CEQA compliance. CEQA only applies to projects over which a public agency has discretion, such as the ability to say yes or no or impose conditions as a condition of project approval. In this instance, the project considered in the Draft EIR is a ballot measure over which the City of Del Mar has no discretionary authority, the Marisol Specific Plan Initiative (“Marisol Initiative”). The Marisol Initiative will be approved or disapproved by City of Del Mar voters in March 2020. Because the initiative is exempt from CEQA, the City of Del Mar has no discretion to condition approval of the Marisol Specific Plan on implementation of mitigation measures and alternatives considered in the Draft EIR, and it could not be certified by the City of Del Mar because the action it considers is exempt from CEQA.

\[1 \text{ DeVita v. County of Napa (1995) 9 Cal.4th 763; See also Elections Code report prepared for the City of Del Mar dated November 4, 2019, page 23.}\]
The City has voluntarily prepared the Draft EIR to provide the public with information regarding the potential impacts of the Marisol Specific Plan. However, it is not technically an EIR pursuant to CEQA because it does not review a “project” subject to CEQA.

To be clear, prior to the time the Marisol Specific plan proposal was converted to an initiative, it was a discretionary project over which the City of Del Mar had discretionary authority, and as such, was a project subject to CEQA compliance. However, once the Marisol Initiative qualified for the ballot, it was no longer a project subject to CEQA.

B. The Draft EIR provides the public with a preview of the likely analysis, findings and mitigation measures that would be part of future environmental review.

If the Marisol Initiative passes, discretionary approvals by the City of Del Mar would be required to implement the specific plan including, among others, a Tentative Map Approval, Design Review Permit, Land Conservation Permit, Tree Removal Permit and Coastal Development Permit. These City approvals would be projects subject to CEQA review and would likely trigger circulation of a new EIR for public review and comment. The Draft EIR in its current form cannot serve as the environmental document for these future projects because they were not part of the document when it was circulated for public review and comment. Also, the scope and text of future environmental document would differ from the Draft EIR in a number of respects. Most notably, the Marisol Specific Plan would be the planning document used to determine community plan consistency. However, it is reasonable to presume that the Draft EIR would be the foundation for future CEQA review, and as such, comments on the document at this time would be considered by the City as part of future environmental review if the Marisol Initiative passes.

Respectfully Submitted,

WORDEN WILLIAMS LLP

By: D. Wayne Brechtel, General Counsel
dwb@wordenwilliams.com

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2 Tuolumne Jobs & Small Bus. Alliance v Superior Court (2014) 59 C4th 1029
DATE: February 21, 2020

TO: JPA Board of Directors

FROM: Staff

SUBJECT: JPA Board Ad Hoc Sub-Committee on issues concerning Coast to Crest Trail at Surf Cup Park Report

BACKGROUND:

At its December 2019 meeting, the JPA Board established an ad hoc subcommittee to address the ongoing issues regarding the Coast to Crest Trail segment on the Surf Cup Sports (formerly Polo Fields) lease property. The subcommittee directed JPA Counsel to research the matter and provide his legal opinion on the requirement of the lessee, Surf Cup Sports, to construct the Coast to Crest Trail segment on the property pursuant to the lease, permit requirements and other supporting information. That opinion is included in Attachment 1.

It was also brought to staff’s attention that Surf Cup operations involving impacts to the surrounding community was discussed at the January 2020 public meeting of the Carmel Valley Community Planning Board, at which Surf Cup Sports submitted a letter (Attachment 2) in lieu of attending the meeting. Their letter also addressed the trail. The planning board voted in favor of submitting a letter to the City/Surf Cup stating that they "must address the concerns of the community with solutions (such as no use of lights, excessive use of play field, etc)".

RECOMMENDATION:

This information is provided for further Board discussion, potential action and/or further direction to the Board Subcommittee, staff and/or Counsel.

Respectfully submitted,
Kevin McKernan
Executive Director

Attachments:
1. Memorandum from JPA Counsel
2. Surf Cup Sports letter to Carmel Valley Community Planning Board
To: Board of Directors Sub Committee re Surf Cup  
From: D. Wayne Brechtel, General Counsel  
Date: February 9, 2020  
Re: Obligation to Restore Public Trail

Overview

I was asked to address the question of whether Surf Cup is obligated by its Ground Lease to complete restoration of the Public Trail along the San Dieguito River. In my opinion, Surf Cup is obligated to complete the public trail because it is a contractual condition of its Ground Lease and a requirement of a site development permit that runs with the land covered by the Ground Lease.

A. The Ground Lease Requires Restoration of the Public Trail.

Section 1.5 of the Ground Lease, approved in August 2016 (“Lease”), provides that the “Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the Premises . . “ (Ground Lease, Section 1.5, page 4; emphasis added.)

Section 9.1 of the Lease identifies Site Development Permit No. 618626 (“SDP”) as “a covenant running with the Premises.” (Lease, Section 9.5, page 27; emphasis added.) The SDP was recorded in the San Diego County Recorder’s Office as Document No. 2011-0473204 and copy is attached to the Lease as Exhibit C. The SDP provides for several things, including a new equestrian track and restoration of the Public Trail. Section 9.1 confirms the need to complete the Public Trail:

The private exercise track for equestrians [] has been completed. The restoration of the Public Trail remains to be completed in conformance with the SDP.”
(Lease, Section 9.5, page 27; emphasis added.) These provisions make clear that completion of the Public Trail in conformance with SDP 618626 is a contractual obligation of the Lease. The Lease is subject to all “covenants pertaining to the Premises, and the SDP requiring restoration of the Public Trail is a covenant that runs with the property covered by the Lease.

There may be some confusion regarding this issue because in some instances, the City refers to restoration of the Public Trail as an obligation that is not part of the Lease. For example, the Council resolution approving the Lease states that “Independent of the proposed Lease, Surf Cup will . . . restore the Coast to Crest Trail . . .” (Resolution No. 310619, page 2.). This is a bit of form over substance. Restoration of the Public Trail is technically a requirement that is independent of the Lease. Restoration is required to resolve outstanding code enforcement actions and is a requirement of the SDP, both of which are obligations that run with the land and would require restoration of the Public Trail even if there was no Surf Cup Lease. However, the Lease makes Surf Cup responsible for the SDP that requires restoration of the Public Trail. Thus, regardless of how the Public Trail restoration obligation is characterized, it is an obligation that has been assumed by Surf Cup as part of its Lease.

B. The SDP Requires Restoration of the Public Trail

SDP 618626 has three general components: 1) restoration of the Public Trail, 2) restoration of wetland habitat impacted by unauthorized grading activity, and 3) creation of a new equestrian track. (SDP 618626, page 1.) The equestrian track authorized by SDP 618626 has been completed and is being used and enjoyed by Surf Cup. This partial completion of work authorized by SDP 618626 vested the permit and triggered a requirement that all of its conditions be completed. This was confirmed in a Planning Department memorandum prepared for the Mayor and City Council in anticipation of the Surf Cup Lease. “[W]ork authorized under SDP No. 618626 has begun since the private exercise track for equestrians has been completed and therefore, since the permit has been utilized, the remaining portion of the work must be completed . . .” (City Memorandum dated June 20, 2016 prepared by Myra Herrmann, Senior Planner, Planning Department – Supporting Information for a Proposed Lease Agreement between Surf Cup Sports, LLC (Proposed Lease) and the City of San Diego . . “., page 4; emphasis added.)
C. To the Extent There is Any Question or Ambiguity With Regard to the Public Trail Obligation, Extrinsic Evidence Makes Clear That All Parties Understood and Intended that Surf Cup Would Assume Responsibility for Restoration of the Public Trail.

The general rule of contract interpretation is that when the written provisions are clear, they govern and evidence of statements and agreements outside of the contract are not considered. However, when the language of a contract is found to be ambiguous, extrinsic evidence may be considered to ascertain the intent of the parties. (See e.g. ASP Properties Group, L.P. v. Fard, Inc. (2005) 133 Cal.App.4th 1257, 1266.) In this instance, I do not believe the Lease is ambiguous with regard to restoration of the Public Trail. However, to the extent there is any ambiguity regarding the issue, there is abundant extrinsic evidence that makes clear the parties to the Lease intended Surf Cup to be responsible for restoration of the Public Trail. A few examples are set forth below.

Request for Lease Proposals

“The SDP is a covenant running with the Property and all its requirements and conditions will be binding upon the successful Proposer who is awarded the Lease”. (RFP dated July 15, 2015, page 3.)

Addendum B to Request for Proposals

“The SDP runs with the land and the successful proposer will be responsible for the trail restoration and other SDP requirements.” (Addendum B dated August 24, 2015.)

Resolution Approving Lease

“Surf Cup will resolve the outstanding work pursuant to the SDP, which is to restore the Coast to Crest Trail portion of the Polo Fields, with an estimated cost of $1,000,000.” (Resolution No. 310619, page 2.)

Surf Cup Representations

"As we have stated many times, Surf Cup Sports fully intends to build the Coast to Crest trail bordering the property as promised." (Surf Cup Letter dated January 21, 2012). There are numerous other letters and representations by Surf Cup that confirm its promise to restore the Public Trail.
The written expressions set forth above, along with numerous other representations that have been made by the parties over the years leave no doubt of their intent with regard to restoration of the Public Trail. It is an obligation that was assumed by Surf Cup as a condition of its Lease.

Respectfully Submitted,

WORDEN WILLIAMS LLP

By: D. Wayne Brechtel, General Counsel
dwb@wordenwilliams.com
January 21, 2020

CARMEL VALLEY COMMUNITY PLANNING BOARD
13400 Sabre Springs Pkwy, Ste. 200
San Diego, CA 92128

Dear Board Members:

We understand that certain aspects of our organization will be discussed at tonight’s meeting and we would like to make sure pertinent facts are included in this discussion. We believe the two topics in front of the board are traffic and the Coast to Crest Trail. Most importantly we want to make it clear that we are committed to being great members of this community.

TRAFFIC

The Board will certainly hear tonight that events on the property have increased in size and number, which has had a negative effect on traffic in the area. Both of these pieces of information are incorrect. While the nature and number of events on the fields have shifted over the past 30 years, the total number has stayed remarkably consistent and today we have fewer event days than in years past. Our events have remained exactly the same, attendance-wise, since 1992 due to the simple fact that we can only fit so many athletic fields on the grass, and can only play games during daylight hours.

Traffic problems along El Camino Real and Via De La Valle has increased every year as neither road has been widened and at the same time the population has exploded in the surrounding areas. We realize managing traffic is important to our community with that in mind these are some of the actions we’ve taken:

- Widened and improved the legal entrance to the property which is on Via De La Valle next to Morgan Run Resort.
- Directed almost all traffic to enter and exit from the improved entrance to keep the cars from contributing to the back up on El Camino Real.
- We are currently engaged in ongoing discussions with city traffic control engineers with a focus on improving safety and reducing speeds.
- Together with the 22nd Agriculture District, commissioned a traffic study that analyzed traffic at our busiest event on the weekend before the 4th of July as the Fair was in full swing.
That traffic study showed that even during one of our large events, and during the busiest fair weekend, traffic was delayed an average of 11 seconds per vehicle. Eleven seconds.

**COAST TO CREST TRAIL**

As we have stated many times, Surf Cup Sports fully intends to build the Coast to Crest trail bordering the property as promised. In 2018-19, we spent over $60,000 on securing the necessary permits to complete the work. We have also done some preliminary removal of invasive species along the trail, some of which is taking place in the next few days. The only thing preventing the trail from completion is the lingering lawsuit filed by the FSDRV. It does not make sense to invest in an improvement that will yield no return while there is a possibility, however slim, that the lease might be voided and possibly awarded to another organization, turned into a public park, or another city need. This is the only roadblock to its completion. If the FSDRV can commit to dropping the appeal to the lawsuit, Surf Cup Sports can commit to starting work in earnest on the trail.

Further, we want to make clear our current relationship with the group presenting against us tonight. Surf Cup Sports was first introduced to the FSDRV group during the process to bid and award the lease for the Polo Fields in 2015 and 2016. On the first day of our lease agreement with the City of San Diego, FSDRV filed a Temporary Restraining Order against Surf Cup Sports. The judge ruled in favor of Surf Cup Sports. Then, FSDRV filed for an injunction to prevent all activities on the fields. The judge again ruled in favor of Surf Cup Sports. The FSDRV then filed a lawsuit attempting to overturn the award of the lease. The judge ruled in favor of Surf Cup Sports. The decision was appealed by FSDRV, and is currently awaiting final judgement. We believe this group, having lost repeatedly in the court system, (along with a few self-interested neighbors) is resorting to spreading untruths to rally the local community against Surf.

Finally, we would like to remind the community that Surf Cup Sports creates an abundance of economic and youth development benefits to our community including:

- According to the San Diego Taxpayer Advocate, more than $120 million in annual economic impact
- We’re the largest provider of hotel room nights to the City of San Diego
- We’re credited with creating over 1500 jobs in San Diego County
- Our athletes have earned more than $30 million in college scholarships in the past 10 years
- San Diego Surf Soccer Club is the premier soccer club in the nation with 11 national championships and the home to 1,000 of the top soccer players in the nation
- 98% of our female athletes since 1994 have received scholarship funding
- Since our inception, our leadership group has re-invested all organizational profits into our scholarship program and the facility

On average, our fields are unused 84% of each day. Our facility is open to the public. We offer much needed field access for youth sports. We serve local kids and families as well as those
across the county. We continue to invest in water conservation and environmental improvements. We invest heavily into improving and beautifying our facility. We care about safety, traffic, noise and dust. We’re making a positive contribution to our kids and their families. We believe we are good neighbors and we are always open to reasonable feedback and discussion on how to improve.

Thank you,

Team Surf

cc: Karen Billing, Del Mar Times

The Surf Mission “To create the best of the best experiences and opportunities for youth soccer players through our clubs, events and facilities.”