



San Dieguito River Park  
Joint Powers Authority  
18372 Sycamore Creek Road  
Escondido, CA 92025  
(858) 674-2270 Fax (858) 674-2280  
[www.sdrp.org](http://www.sdrp.org)

**JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

Chair Barbara Bry  
San Diego City Council

Vice-Chair Dwight Worden  
Del Mar City Council

Olga Diaz  
Escondido City Council

Dave Grosch  
Poway City Council

Mark Kersey  
San Diego City Council

Kristin Gaspar  
Supervisor, County of San Diego

Dianne Jacob  
Supervisor, County of San Diego

Judy Hegenauer  
Solana Beach City Council

Jeff Barnouw  
Citizens Advisory Committee

Dustin Fuller, Ex Officio  
22<sup>nd</sup> District Agricultural  
Association

Shawna Anderson  
Interim Executive Director

**SAN DIEGUITO RIVER PARK  
JOINT POWERS AUTHORITY  
VIA TELECONFERENCE ONLY  
Friday, October 16, 2020 ~ 11:00 A.M.**

Pursuant to the State of California Executive Order N-29-20, and in the interest of public health, San Dieguito River Park is temporarily taking actions to reduce the spread of the COVID-19 pandemic by holding the Board Meeting via teleconference. All Board members and staff will be participating remotely.

**To Join Zoom Meeting**

<https://zoom.us/j/99988232354?pwd=SmRIQ1BPRWZBbVhVVnhXRVPprMTJIUT09>

**To join this meeting via Teleconference**

**Please dial: 1-669-900-9128**

**Meeting ID: 999 8823 2354**

**Passcode: 440149**

It is highly recommended to call in to the meeting or log in to the waiting room **at least** 15 minutes prior to the commencement of the meeting.

**Introductions and Announcements**

**Approval of the Minutes of September 18, 2020 (Page 3)**

**Interim 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.

**Public Participation/Comment:** It is highly recommended to call in to the meeting or log in to the waiting room **at least** 15 minutes prior to the commencement of the meeting. Persons wishing to address the Board on matters not on the agenda may do so under Public Comment. Those wishing to speak on items on the agenda may do so when the item is being considered. To make a comment, please use the raise hand feature of Zoom or let the moderator know by using the chat function. You may also participate in the meeting by emailing comments to [Brenda@sdrp.org](mailto:Brenda@sdrp.org) by

3:00 p.m. the day prior to the meeting. The subject of your e-mail should clearly state the item number you are commenting on. All comments will be e-mailed to the Board of Directors prior to the start of the meeting. If you desire to have your comment read into the record during the meeting, please note that in the e-mail subject line. Comments may be mailed to the Board, but to be considered, must be received on or before the meeting date. Written comments should be mailed to: San Dieguito River Park, 18372 Sycamore Creek Road, Escondido, CA. 92025.

In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact Brenda Miller at 858-674-2270. Please notify Brenda at least 48 hours prior to the Board meeting.

### DISCUSSION/ACTION

1. Status Update Report of County Management Proposal and Recruitment Process Including Proposed Schedule (oral)
2. Friends of SDRV Request for Update from JPA Surf Cup Subcommittee (Page 6)

### 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 (oral)

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

5. Closed Session to evaluate the performance of the Interim Executive Director Pursuant to Government Code Section 54957(b)(1)

THE NEXT REGULAR JPA MEETING WILL BE November 20, 2020 If you have any questions, please call Shawna Anderson at (858) 674-2270 Ext. 13

**SAN DIEGUITO RIVER PARK  
JOINT POWERS AUTHORITY  
Minutes of September 18, 2020**

**MEMBERS PRESENT**

Barbara Bry- Chair  
Dwight Worden – Vice-Chair  
Dave Grosch  
Dianne Jacob  
Judy Hegenauer  
Jeff Barnouw  
Dustin Fuller

**MEMBERS ABSENT**

Olga Diaz  
Mark Kersey  
Kristin Gaspar

**VISITORS/STAFF PRESENT**

Kevin McKernan  
Wayne Brechtel  
Brenda Miller  
Shawna Anderson  
Jason Lopez  
Leana Bulay  
Brian Wilson  
David Hekel  
Felipe Franco  
Ricky Flahive  
Jill Gartman  
Carol Kerridge  
Crystal Benham  
Trish Boaz  
Adam Wilson

**REPRESENTING**

City of San Diego  
City of Del Mar  
City of Poway  
County of San Diego  
City of Solana Beach  
Citizens Advisory Committee  
22<sup>nd</sup> District Agricultural Association

**REPRESENTING**

City of Escondido  
City of San Diego  
County of San Diego

San Dieguito River Park JPA  
JPA Counsel  
San Dieguito River Park JPA  
San Dieguito River Park JPA  
San Dieguito River Park JPA  
San Dieguito River Park JPA  
San Dieguito River Park JPA  
San Dieguito River Park JPA  
San Dieguito River Park JPA  
San Diego City Council District 1  
San Dieguito Lagoon Committee  
San Dieguito Lagoon Committee  
County of San Diego Parks Department  
San Dieguito River Valley Conservancy  
County of San Diego District 2

**Introduction and Announcements**

Chair Bry convened the video conference meeting at 11:00 a.m. A quorum roll call was taken with members present: Bry, Worden, Grosch, Jacob, Hegenauer, Barnouw, and Fuller. Boardmembers Diaz, Kersey and Gaspar were absent.

Chair Bry asked for public comment and received no public comments prior to adjourning to Closed Session. Director McKernan also noted that no public comments were received by mail or email. The Board adjourned to Closed Session.

1. Closed Session Pursuant to California Government Code Section 54957(b)(1) for Exit Interview of Executive Director

2. Closed Session to Interview Candidate and Consider the Appointment of an Interim Executive Director Pursuant to Government Code Section 54957(b)(1)

Upon returning to Open Session Counsel Brechtel announced that the Board met in closed session to discuss agenda item 1 for Exit Interview of Executive Director, and agenda item 2 to Interview Candidate and Consider the Appointment of an Interim Executive Director and said that no reportable action was taken.

**Approval of Minutes of June 19, 2020**

Vice-Chair Worden moved to approve the minutes of June 19, 2020 and Boardmember Jacob seconded the motion. Chair Bry asked for a roll call vote and the motion passed unanimously.

Yes votes: Bry, Worden, Grosch, Jacob, Hegenauer, Barnouw

Absent: Diaz, Kersey, Gaspar

**Public Comment**– No Public Comments

**DISCUSSION/ACTION AGENDA**

3. Approve Appointment of Interim Executive Director

**Recommendation:** appoint Shawna Anderson as Interim Executive Director pursuant to the terms of the attached employment agreement.

Vice-Chair Worden introduced the topic; stating that Executive Director McKernan has given his notice of resignation, effective October 8, 2020. The Budget/Administration/Policy Committee met to discuss the options and determined that Shawna Anderson would be the best candidate to serve as Interim Executive Director for the anticipated three to six month recruitment period. Ms. Anderson has agreed to the terms of the employment agreement attached. When asked, there were no public comments. Vice-Chair Worden made the motion to appoint Shawna Anderson as Interim Executive Director. Boardmember Barnouw seconded the motion. A roll call vote was taken and the item passed unanimously.

Yes votes: Bry, Worden, Grosch, Jacob, Hegenauer, Barnouw

Absent: Diaz, Kersey, Gaspar

4. Approve Executive Director Recruitment and Transition Process

**Recommendation:** authorize the Budget Subcommittee to start and lead the recruitment process for a new Executive Director.

Vice-Chair Worden introduced the item stating that the Subcommittee would conduct an open and broad based search expected to last three to six months. The Subcommittee will collect resumes and make recommendations to the full Board. Boardmember Jacob announced that Brian Albright, Director of San Diego County Parks is interested in the County Parks Department possibly managing the San Dieguito River Park. After discussion, Vice-Chair Worden made the motion that a new ad-hoc committee be formed made up of Board members Worden, Jacob, Diaz and Grosch to provide guidance to the Board of first vetting the option of County management of San Dieguito River Park and then leading the recruitment process. Boardmember Jacob stated that she did not have a bias one way or another on the subject of the County management of the River Park. The committee will report to the Board at the meeting on October 16, 2020. The motion was seconded by Jeff Barnouw. There were no public comments. A roll call vote was taken and the vote was unanimous.

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

5. Resolution of Appreciation for Outgoing Executive Director

Vice-Chair Worden presented Resolution of Appreciation to Kevin McKernan thanking him for his five years of service to the San Dieguito River Park. All Boardmembers expressed their personal thanks to Kevin. There were no public comments. Vice-Chair Worden made the motion to present Resolution 20-2 Thanking Kevin McKernan for his five years of dedicated service to the JPA as our Executive Director. Chair Bry seconded the motion. A roll call vote was taken and the item passed unanimously.

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

**INFORMATION**

6. Coordination Reports

- a. San Dieguito River Valley Conservancy – No Report
- 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

7. Jurisdictional Status Reports

Vice-Chair Worden reported on the progress of the plans for the next phase of River Path Del Mar to extend the trail to Crest Canyon with funding from the San Dieguito River Valley Conservancy and the Del Mar Foundation. Dustin Fuller reported that Tim Fennell CEO of the Fairgrounds has resigned and Carlene Moore will replace him as Interim CEO. Dustin also reported that the Fairgrounds will be holding drive-in concerts and movies to generate revenue and use the empty parking lots. He added that it was a successful least tern season on the nesting sites west of I-5 with 13 fledglings documented.

Chair Bry adjourned the meeting at 11:25 a.m.

These minutes approved by Board action.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Interim Executive Director

## **Agenda Item 2**

### **October 16, 2020**

**TO:** JPA Board

**FROM:** Staff

**SUBJECT:** Request for update from Ad-hoc Committee regarding Surf Cup segment of the Coast to Crest Trail

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The Friends of the San Dieguito River Valley is requesting that the JPA Board resurrect their efforts to resolve the issue regarding the lack of progress from Surf Cup Sports to restore the segment of Coast to Crest Trail on their City leasehold as required (Attachment 1).

At the December 13, 2019 JPA Board meeting, an ad-hoc committee of the Board was appointed, chaired by Boardmember Bry, to review the trail issue and advise the Board on a course of action to compel Surf Cup Sports to restore the trail as required by their City lease. A memo from JPA general counsel Wayne Brechtel confirming that Surf Cup Sports is legally obligated by their lease to restore the trail was provided at the JPA's February 21, 2020 meeting as requested by the ad-hoc committee (Attachment 2). The Board then asked the ad-hoc committee to meet with Surf Cup representatives to discuss the matter.

A meeting with Surf Cup representatives was not able to be scheduled and subsequently the coronavirus pandemic halted progress on this topic.

Respectfully submitted,

Shawna Anderson  
Interim Executive Director

Attachment 1: Letter from Friends of the San Dieguito River Valley, August 7, 2020

Attachment 2: Memorandum from D. Wayne Brechtel, General Counsel, February 9, 2020



www.FSDRV.org

Agenda Item 2  
October 16, 2020

*Friends of the*  
San Dieguito River Valley  
P.O. Box 973 Del Mar California 92014

August 7, 2020

Board of Directors

Maggie Brown  
President  
*Solana Beach*

Candy Bowman  
Vice President  
*San Diego*

Bill Farrell  
Treasurer  
*San Diego*

Mary Farrell  
Secretary  
*San Diego*

Jacqueline Winterer  
*Del Mar*

Ann Gardner  
*San Diego*

San Dieguito River Park  
Joint Powers Authority  
18372 Sycamore Road  
Escondido, California 92025

To: Chair, Barbara Bry,  
From: Friends of the San Dieguito River Valley

Dear Chair Bry and JPA Board,

In the February 21, 2020 meeting of the JPA Board, Agenda Item 2, a letter written by Wayne Brechtel, General Counsel, was presented to the Board of Directors, Sub Committee re Surf Cup. This letter detailed his legal opinion regarding whether Surf Cup is obligated to complete restoration of the public trail.

As we know through numerous previous communications, Surf Cup has used the FSDRV lawsuit against the City of San Diego and Surf Cup as a basis for refusal to restore a portion of the Coast to Crest Trail. In numerous public documents, Surf has continued to claim that this lawsuit "is the only roadblock to its completion. If the FSDRV can commit to dropping the appeal to the lawsuit, Surf Cup can commit to starting work in earnest on the trail."

In his overview, Wayne states:

"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 the site development permit that runs with the land covered by a Ground Lease."

Due to the circumstances of Covid-19, some meetings since February have not been held, and certain issues have gone unaddressed, understandably,

as we all learn to deal with overwhelming cultural changes, while we move through personal and professional challenges.

At the July 22, 2020 meeting of the FSDRV Board, a motion was made, and unanimously approved, to request that Item 2 from the February JPA meeting be placed on the JPA's August, 2020 agenda, with the goal of making public any discussions or forward actions considered by the Sub Committee. The timing of California's Covid lockdown has reasonably placed many issues on a back burner, and the Friends would like to move this particular item back to the front burner, and seek progress towards resolution.

Given the success, so far, of the grant competition for Federal dollars for the Osuna Trail segment, contiguous to the Surf Cup segment, we believe that it is quite timely to reactivate this issue.

Thank you for your attention to this item, and its importance to the public, our communities, and to the Park.

Respectfully Submitted,

  
Maggie Brown  
President

Friends of the San Dieguito River Valley

CC: Kevin McKernan  
Executive Director, SDRP

Shawna Anderson  
Principal Planner, SDRP

ATTACHMENT: Wayne Brechtel letter of February 21, 2020



## Memorandum

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.**”

#### Areas Of Practice

Real Estate  
Estate Planning &  
Administration  
Business  
Land Use &  
Environmental  
Litigation  
Public Agency

#### Attorneys

D. Wayne Brechtel  
Kristen McBride  
Jason R. Schingler  
Tomer T. Gutman  
Gregory L. Murrell  
*Of Counsel*  
D. Dwight Worden  
*Retired*  
W. Scott Williams  
*Retired*

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(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