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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO, HALL OF JUSTICE

12 Friends of the San Dieguito River Valley, a)
13 California Non-Profit Public Benefit Corporation,)
14 Petitioner,)
15 vs.)
16 CITY OF SAN DIEGO, a public entity;)
17 and DOES 1 through 5, inclusive,)
18 Respondent,)

GENERAL CIVIL (CEQA)
CASE NO.: 37-2016-00030312-CU-TT-CTL

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

18 SURF CUP SPORTS, LLC, a limited liability)
19 company and Ocean Industries, Inc., a California)
20 Corporation; and DOES 6 through 10,)
21 Real Parties in Interest.)

Judge: Hon. Gregory W. Pollack
Dept.: C-71
Petition Filed: August 29, 2016
Hearing Date: December 16, 2016
Hearing Time: 3:30 p.m.

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Pub. Resources Code § 15300.2(c)4, 5, 10

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1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act
(Cont. Ed. Bar 2d ed. 2008, On Law) §5.714

1 Petitioner Friends of the San Dieguito River Park (“FSDRV”) hereby submits the following
2 memorandum in support of its motion for a preliminary injunction.

3
4 **I. INTRODUCTION**

5 Petitioner is requesting a preliminary injunction to preserve the status quo and prevent harm to
6 the environment pending the resolution of a Petition for Writ of Mandate under the California
7 Environmental Quality Act (“CEQA”). Respondent City of San Diego (“City”) approved a 28-year
8 lease of the project site to Real Party-in-Interest, Surf Cup Sports, LLC on July 25, 2016. FSDRV
9 has a reasonable probability of prevailing on the merits at trial and the public will suffer more harm
10 from the denial of this application than Real Party-In-Interest will suffer from its grant. (*Friends of*
11 *Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, citing, *Robbins v. Superior Court*
12 (1985) 38 Cal.3d 199, 205-206 and *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70 (“*IT*
13 *Corp.*”).)

14 The City was granted the project site in 1983 as mitigation for Watt Industries/San Diego Inc.’s
15 development of the community of Fairbanks Ranch. The grant deed for the project site limits use of
16 the project site to passive, non-commercial recreational use (picknicking, walking, hiking) and active
17 non-commercial recreational uses not involving large assemblages of people or cars (equestrian
18 activities, jogging, frisbee). (Request for Judicial Notice (“RJN”) Ex. 1, lease p. 37.) The 1981
19 Environmental Impact Report (“EIR”) for the Fairbanks Ranch Country Club required 25 acres of
20 riparian habitat where there is now none; this mitigation requirement has never been fulfilled. (RJN
21 Ex. 2, Response to Letters of Comment, p. 21.)

22 The project site is 114 acres located along the northern bank of the San Dieguito River,
23 extending east from El Camino Real to the community of Whispering Palms. The site is bounded on
24 the south by the San Dieguito River, on the north by vacant land and a residential project, on the east
25 by Whispering Palms and on the west by El Camino Real, the San Dieguito Lagoon, and the San
26 Dieguito Wetland Restoration Project. The portion of the project site along the San Dieguito River
27 contains environmentally sensitive habitat that provides nesting habitat for the endangered least Bell’s
28 vireo and the endangered light-footed clapper rail (recently renamed Ridgeway’s rail). (RJN Ex. 2;

1 RJN Ex. 3.) There is a strip of hillside between the eastern portion of the site and the adjacent
2 residences to the north that contains environmentally sensitive habitat that provides nesting habitat for
3 the threatened coastal California gnatcatcher. The project site is located entirely within the 100-year
4 floodplain. (RJN Ex. 2.)

5 The project site is currently developed with polo fields established on the site through a 1986
6 lease between the City and the Fairbanks Polo Club (now the Rancho Santa Fe Polo Club) (“Polo
7 Club”). The current development includes dirt access roads and parking areas, grass fields, and a
8 portion of the public Coast to Crest trail. A Mitigative Negative Declaration (“MND”) was prepared
9 for the Polo Club lease in 1986. The Polo Club contracted with Surf Cup for use of the Polo Fields
10 for soccer tournaments beginning in 1992. (RJN Ex. 1, June 20, 2016 Memorandum, pp. 1-2.) Over
11 the years, the use on the project site has included a variety of different activities including Christmas
12 tree sales, dog shows, soccer tournaments, lacrosse tournaments and a variety of other special events.
13 (*Ibid.*) The use of the site has increased from the original use for polo to the current use for events
14 that was limited to no more than 25 days per year without the required approval or authorizations.¹
15 The Polo Club’s lease of the project site expired on March 31, 2012 – the Polo Club has been using
16 the Polo Fields on a month-to-month holdover basis since that date. (*Id.* at p. 3.)

17 The City issued a Request for Proposals (“RFP”) in July 2015 and subsequently determined
18 Surf Cup’s proposal to be the only responsive proposal. (RJN Ex. 1, Council Action Executive
19 Summary Sheet, p. 1.) The new lease was approved by the City on July 25, 2016. The new lease
20 allows up to 25 events per year and allows Surf Cup to make the following modifications to the
21 project site:

- 22 • Improve existing irrigation system and equipment.
- 23 • Install replacement fencing and gates around the property and wayfinding signage
consistent with the San Diego Municipal Code.
- 24 • Replace existing turf with new turfgrass and make improvements to existing
landscaping throughout the property.
- 25 • Improve all existing roads and parking areas.
- 26 • Remove any unsafe non-native trees or foliage.

27 ¹ Surf Cup had been using the vacant land between the Polo Fields and Via de la Valle for parking, this
28 use was discontinued in 2016 and Surf Cup has since modified the parcel to provide for 2000 parking
spaces on areas previously used as playing fields.

- Disassemble and recycle existing barns, stables, temporary storage areas, and other structures.
- Replace existing trailers to support existing staff.
- Remove and properly dispose of and/or recycle all trash/abandoned equipment and unused fixtures on site.
- Remove and replace existing dilapidated clubhouse and offices.
- Remove and relocate existing maintenance yard and associated structures.
- Miscellaneous improvements to ensure compliance with the City’s Municipal Code.
- Remove the existing equestrian arena.
- Install temporary caretaker housing to support polo uses on-site.
- Remove polo scoreboard and billboards.

(RJN Ex. 1, June 20, 2016 Memorandum, p. 2.)

In September 2016, Surf Cup conducted grading activities on the project site. This activity included the use of heavy machinery. (Decl. Scott.) Surf Cup also dismantled/demolished structures on the project site. (Decl. Farrell.) FSDRV is concerned the continued activity on the project site will irreparably harm the environmentally sensitive habitat and the threatened and endangered bird species adjacent to the project site.

II. ARGUMENT

The Court must consider two factors in determining whether to grant a preliminary injunction:

- The likelihood that the plaintiff will prevail on the merits at trial; and
- The interim harm that will occur if the injunction is denied as compared with the harm that the defendant would be likely to suffer if the preliminary injunction were issued.

(*Department Fish & Game v. Anderson-Cottonwood Irrig. Dist.* (1992) 8 Cal.App.4th 1560.)

The likelihood of petitioner’s ultimate success on the merits affects the showing necessary to a balancing of hardships analysis. The more likely it is that petitioners will ultimately prevail, the less severe the harms they must allege will occur if the injunction does not issue. (*Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160 Cal.App.4th 336, 342, *citing King v. Meese* (1987) 43 Cal.3d 1217, 1227.) “[I]f the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits, the trial court has the discretion to issue the injunction notwithstanding that party’s inability to show that the balance of harms tips in his favor.” (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 447.) In *Right Site Coalition*, the trial court

1 refused to consider petitioner’s likelihood of success on the merits and focused instead on the
2 balancing of the harms analysis. The Court of Appeal overturned the Court’s decision denying
3 petitioner’s motion for a preliminary injunction and remanded the matter back to the trial court to
4 determine the motion for preliminary injunction with due consideration to the two interrelated factors
5 – the petitioner’s likelihood of success on the merits and a balancing of the harms. (*Right Site*
6 *Coalition v. Los Angeles Unified School Dist.*, *supra*, 160 Cal.App.4th at p. 346.)

7 **A. Petitioner is likely to prevail on the merits at trial.**

8 CEQA establishes a comprehensive scheme to provide long-term protection to the
9 environment. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1092
10 (“*Berkeley Hillside*”).) The Secretary of Natural Resources has established a list of classes of projects
11 that have been determined not to have a significant effect on the environment and shall be exempt
12 from CEQA. (*Id.*, Pub. Resources Code § 21084(a).) The City approved the subject lease relying on
13 multiple categorical exemptions in the CEQA Guidelines. The City's reliance on these exemptions
14 does not comply with CEQA because the Project is subject to an exception to the CEQA Guidelines as
15 specified in CEQA Guidelines § 15300.2(c).

16 CEQA Guidelines § 15300.2(c) provides: “A categorical exemption shall not be used for an
17 activity where there is a reasonable possibility that the activity will have a significant effect on the
18 environment due to unusual circumstances.” Petitioner carries the burden of producing evidence
19 supporting an exception to the categorical exemptions applied to the project. (*See* 1 Kostka &
20 Zischke, Practice Under the Cal. Environmental Quality Act (Cont. Ed. Bar 2d ed. 2008, On Law)
21 §5.71.) *Berkeley Hillside* provides two methods to establish the exception applies. In the first method,
22 petitioner must prove unusual circumstances by showing the project has some unusual feature that
23 distinguishes it from others in the exempt class, such as its size or location. (*Berkeley Hillside, supra*,
24 60 Cal.4th at 1105; *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 819.) “Once an
25 unusual circumstance is proved under this method, then the ‘party need only show a reasonable
26 possibility of a significant effect due to that unusual circumstance’.” (*Citizen’s for Environmental*
27 *Responsibility v. State ex rel. 14th Dist. Ag. Assn* (2015) 242 Cal.App.4th 555, 574 (“*Citizens*”).)
28

1 Utilizing the second method cited in *Berkeley Hillside*, a petitioner “may establish an unusual
2 circumstance with evidence that the project will have a significant environmental effect.” (*Berkeley*
3 *Hillside, supra*, 60 Cal.4th at 1115.) FSDRV has proven the exception cited in CEQA Guidelines
4 §15300.2 applies to this project under both methods.

5 **1. The Project will have a significant effect on the environment due to unusual**
6 **circumstances.**

7 Whether the project presents unusual circumstances under the first method cited above is a
8 factual inquiry and the court must apply the substantial evidence test. (*Berkeley Hillside, supra*, 60
9 Cal.4th at p. 1114.) The Court must resolve all evidentiary conflicts in the agency’s favor and indulge
10 in all legitimate and reasonable inferences to uphold the agency’s finding. (*Citizens, supra*, 242
11 Cal.App.4th at p. 575.)

12 As Exhibit A to the lease shows, the project site is located along the northern bank of the San
13 Dieguito River, within the boundaries of the San Dieguito River Park. (RJN Ex.1.) The northern
14 property line is bounded by coastal sage scrub and provides habitat for the threatened coastal
15 California gnatcatcher. (RJN Ex., 2, p. 6.) The southern property line abuts the San Dieguito River
16 which provides habitat for the endangered light-footed clapper rail (renamed Ridgway’s Rail) and the
17 endangered least Bell’s vireo. (*Ibid.*; p. 10.) The project site is sandwiched between environmentally
18 sensitive habitat on the north and environmentally sensitive habitat on the south. (RJN Ex. 2, Initial
19 Study, p. 3; Decl. Mary C. Scott, Ex. A.) The project site was designated Open Space, Floodway and
20 Floodplain Fringe when originally granted to the City of San Diego by Watt Industries. (RJN Ex. 2,
21 Initial Study, p. 3.)

22 In 2011, the City approved Site Development Permit No. 169091 allowing the Polo Club to
23 restore an existing multi-use public trail for pedestrians, bicyclists, and equestrians, restore impacts to
24 environmentally sensitive lands, and allow a separate private equine exercise track. The City’s report
25 to the Planning Commission included exhibits clearly identifying significant portions of the project
26 site as coastal brackish marsh, southern willow scrub and steep hillside. (RJN Exhibit 5, p. 25.) The
27 City adopted a Mitigation Monitoring and Reporting Program (“MMRP”) for the Site Development
28

1 Permit "to ensure that site development would avoid significant environmental impacts." (RJN Ex. 2,
2 p.2.)

3 The California Department of Fish and Game and the United States Fish and Wildlife Service
4 ("Wildlife Agencies") commented on the Draft MND on July 23, 2010. This letter clearly
5 demonstrates the unique circumstances associated with the project site, noting the presence of 28
6 breeding pairs of the endangered clapper rail in the sensitive habitat adjacent to the project site during
7 the 2010 breeding season. (RJN Ex. 2, Response to Letters of Comment, p. 11.) The Wildlife
8 Agencies also note the impact of noise on the endangered birds adjacent to the project site. (RJN Ex.
9 2, Response to Letters of Comment, p. 17.) In fact, the Wildlife Agencies noted the EIR for the
10 Fairbanks Ranch Country Club required the creation of 25 acres of riparian habitat on this leasehold;
11 that habitat was not created. (RJN Ex. 2, Response to Letters of Comment, p. 21.) The Wildlife
12 Agencies took the time and made the effort to submit a 20-page letter of comment on the City's
13 previous proposal to allow restoration of a public trail, restore habitat and allow a separate private
14 exercise track for horses. In that letter, the Wildlife Agencies noted that Surf Cup is hosting two
15 tournaments per year on the project site and questioned how this could occur without CEQA review.
16 (RJN Ex. 2, Response to Letters of Comment, p. 22.) This letter clearly documents the unique
17 circumstances and potential for significant impacts that create an exception to the provisions for a
18 categorical exemption for the Project.

19 The Initial Study for the 2011 MND noted the 2011 project had the potential to generate
20 sediment, nutrients and bacteria; and required specific mitigation measures to reduce impacts to the
21 river below a level of significance. (RJN Ex. 2, Initial Study p. 19.) The concerns identified in the
22 2011 MND further demonstrate the unique circumstance created by proximity of the project site to the
23 San Dieguito River.

24 The adopted MMRP forbids any grading, construction, restoration, or revegetation within the
25 100-foot wetland buffer during breeding season February 1-September 15 as general bird mitigation.
26 In addition, the MMRP forbids clearing, grubbing, grading, restoration, revegetation or other
27 construction activities within the 100-foot wetland buffer, adjacent to the river or in gnatcatcher
28

1 habitat between March 1 and August 15 to protect the endangered coastal California gnatcatcher.
2 Work outside of the breeding season is only authorized if strict standards assuring the protection of
3 gnatcatchers are followed. Similarly, no clearing, grubbing, grading, revegetation, restoration or other
4 construction activities are allowed within the river/wetlands or within the 100-foot wetland buffer
5 between March 15 and September 15 to protect the endangered least Bell's vireo. Finally, the MMRP
6 forbids any clearing, grubbing grading, revegetation, restoration or other construction activities within
7 the river/wetlands or the 100-foot wetland buffer between February 1 and September 15 to protect the
8 endangered light-footed clapper rail (Ridgway's rail). The wetland buffer is depicted on the plans
9 attached to the Planning Commission Staff Report dated June 9, 2011.² (RJN Exhibit 5, Attachment
10 6.)

11 The City relied on a conclusory memo from Senior Planner Myra Hermann stating the project
12 qualified for several categorical exemptions but provided no response to FSDRV's comments the
13 project would result in significant environmental impacts due to the unique circumstances associated
14 with the project site. (RJN Ex. 1.) The City went to lengthy measures in 2011 to protect the
15 threatened and endangered species found on and adjacent to the project site. The proximity of the
16 project site to the San Dieguito River and environmentally sensitive habitat is an unusual feature that
17 distinguishes this project from others that might qualify for the categorical exemptions relied on by the
18 City in approving the lease.

19 **2. The record contains substantial evidence to support a fair argument the Project may**
20 **have a significant effect on the environment.**

21 "Once an unusual circumstance is proved under this method, then the party need only show a
22 reasonable possibility of a significant effect due to that unusual circumstance." (*Berkeley Hillside*,
23 *supra*, 60 Cal.4th at p. 1105.) The Court applies the "fair argument" standard to the City's
24 determination of whether the unusual circumstances give rise to a reasonable possibility that the
25 Project will have a significant effect on the environment. (*Berkeley Hillside, supra*, 60 Cal.4th at
26

27 ² Petitioners have included a staff report from the San Dieguito River Park Joint Powers Authority
28 addressing the Site Development Permit solely for the purpose of providing clear graphics of the
location of habitat and the 100-foot wetland buffer.

1 1114.) “[I]f the lead agency is presented with a fair argument that a project may have a significant
2 effect on the environment, the lead agency shall prepare an EIR even though it may also be presented
3 with other substantial evidence that the project will not have a significant effect.” (CEQA Guidelines
4 § 15064(f)(1).)

5 **a. Biological Resources**

6 FSDRV presented competent testimony from Dr. Ed Mirsky of the presence of threatened and
7 endangered species in the vicinity of the project site. (RJN Ex. 3 (This letter was submitted to the city
8 Council, a similar letter was also submitted to the Smart Growth and Land Use Committee.)) In
9 addition, the 2011 MND for the trail restoration project on the project site included a letter of
10 comment from the Wildlife Agencies clearly documenting the potential for significant impacts on
11 threatened an endangered species. (RJN Ex. 2, Response to Letters of Comment, pp. 6-17.) This letter
12 of comment clearly documents the presence of 28 breeding pairs of the endangered light-footed
13 clapper rail along the section of San Dieguito River adjacent to the project site in 2010. (*Id.* at p. 11.)
14 The Wildlife Agencies specifically demanded a 100-foot buffer from the edge of the restored wetland
15 with no active or passive recreational uses to mitigate impacts to the clapper rail. (*Id.* at p. 12.) The
16 Project proposes grading access roads, increasing active uses, and making significant improvements
17 with no limitation on the location of this activity. As the plans attached to the 2011 Site Development
18 Permit clearly show, the current access road and many of the site improvements currently lie within
19 this proposed buffer. (RJN Ex. 1.) Although many of these improvements exist and active uses have
20 occurred within this buffer; the new lease allows for demolition of existing improvements and
21 construction of new improvements as well as an increase in the allowed active uses of the project site.

22 Specifically, the Wildlife Agencies found that the proposed uses within the buffer would be
23 inappropriate and the City did not give sufficient consideration to the potential project related indirect
24 effects on the clapper rail, vireo, gnatcatcher, and other sensitive species that occur in and rely on the
25 wetland/riparian habitats supported by the San Dieguito River. (RJN Ex.2, Response to Letters of
26 Comment, p. 13.) The Wildlife Agencies commented on the potential for significant effects on the
27
28

1 clapper rails and vireos created by human activities; especially noise and disturbance of line-of-sight.
2 (*Id.* at p. 16.)

3 Perhaps most direct and on-point, the Wildlife Agencies specifically state in their letter of
4 comment on the 2011 MND:

5 We are concerned about the biological impacts from the non-equestrian uses that occur
6 on the Polo Club leasehold. Though these uses are unrelated to the proposed project, we
7 are compelled to comment on one such use – the Surf Cup soccer tournaments that were
8 the subject of the noise study attached to the MND. Information on the Polo Club’s and
9 Surf Cup’s websites (<http://sandiegopolo.com/schedule> and <http://www.surfcup.com>,
10 respectively) reveals that:

- 11 • This year’s tournaments on the Polo Club leasehold are scheduled this year for
12 July 24, 25 and 26 AND July 31, August 1 and 2;
- 13 • attendance at the tournaments ranges from 25,000 to 28,000 people on each
14 weekend; and
- 15 • parking for these tournaments is on the leasehold and on the property between the
16 leasehold and Via de la Valle.

17 Our biological concerns are similar to those addressed in this letter regarding the
18 proposed project and operational uses, including the fact that, in Southern California,
19 clapper rail are known to continue to lay eggs into the third week of July, their incubation
20 period lasts 18-29 days, and the fledgling period lasts 63-70 days.

21 The City’s 1986 Lease Agreement with the Polo Club (a) restricts the uses of the
22 leasehold to those related to boarding and training horses and polo games and matches,
23 and (b) disallows any activity on the premises involving large assemblages of people or
24 automobiles. Assuming the City knows about and allows the Surf Cup soccer
25 tournaments, the Wildlife Agencies request responses to the following items:

- 26 a. why and how the City allows them to occur on this property given the language of the
27 Lease Agreement;

- 1 b. assuming that the City authorizes the tournaments, what sections of the municipal
2 code the City uses to authorize them;
3 c. if/how the City’s authorization occurs without CEQA review;
4 d. about all the other non-equestrian activities and events that occur on the leasehold;
5 e. whether the USACE has been informed of the parking allowed on the property
6 between the leasehold and Via de la Valle – we ask this because the USACE may
7 consider this area jurisdictional.³

8 (RJN Ex. 2, Response to Letters of Comment, pp. 21-22.)

9 The letter of comment from the Wildlife Agencies is substantial evidence to support a fair
10 argument the proposed project may have a significant impact on biological resources. This letter
11 provides the evidence necessary to meet the second test of the exception to categorical exemptions;
12 that there is a reasonable possibility the project will have a significant effect on the environment.

13 (CEQA Guidelines § 15300.2(c), *Berkeley Hillside*, *supra*, 60 Cal.4th at 1105.)

14 **b. Water Quality**

15 The record before the City contains substantial evidence to support a fair argument the project
16 may have a significant effect on water quality. The City prepared an MND for the original lease to the
17 Polo Club in 1986. In a letter of comment on that MND, the United States Fish and Wildlife Service
18 (“USFWS”) raised significant concerns with the impact of the project on the quality of the San
19 Dieguito River. (RJN Ex. 4.) Specifically, the letter stated “[t]he inclusion of an automobile parking
20 lot within the 100-year floodplain could increase levels of contaminants such as oils, petroleum
21 residues, lead and heavy metals in San Dieguito Lagoon.” (*Id.* at p. 2.) As mitigation for this impact,
22 USFWS requested implementation of specific erosion, sedimentation, and runoff control plans to be
23 carried out throughout the life of the project. (*Id.* at p.3.) Rather than implement the requested
24 measures, the City has allowed the Polo Club and Surf Cup to continue unabated with multiple
25 violations of the lease and requested mitigation for years. The City is now proposing to exacerbate the
26

27 _____
28 ³ This City has since determined that parking on the land between the leasehold and Via de la Valle was
illegal and that land is no longer being used for parking.

1 situation by increasing the number of events allowed on the project site with no consideration of the
2 environmental impacts.

3 **B. Balancing of the harms.**

4 The decision whether to grant a preliminary injunction is within the trial court’s discretion. (*IT*
5 *Corp., supra*, 35 Cal. 3d at 69.) Two interrelated factors must be evaluated when the court makes this
6 determination: (1) the likelihood petitioner will prevail on the merits; and (2) the interim harm that
7 will occur if the preliminary injunction is denied compared to the harm the respondent would likely
8 suffer if the preliminary injunction were issued. (CCP § 526(a); *Department of Fish & Game v.*
9 *Anderson-Cottonwood Irrig. Dist.* (1992) 8 Cal.App.4th 1554, 1560.) In balancing these factors, the
10 court should consider the advancement of the public interest. (*County of Inyo v. City of Los Angeles*
11 (1976) 61 Cal.Ap.3d 91, 100.) “We believe no one would contend that the law has lesser concern for
12 the overall public welfare than for individual private rights.” (*Bayside Timber Co. v. Board of*
13 *Supervisors* (1971) 20 Cal.App.3d 1, 14.) A court’s decision must be “guided by a mix of the
14 potential-merit and interim-harm factors; the greater the plaintiff’s showing on one, the less must be
15 shown on the other” (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678.)

16 If the court determines FSDRV will likely succeed at proving the City did not comply with
17 CEQA, the Court is justified in presuming public harm will result. (*IT Corp., supra*, 35 Cal.3d at 70.)
18 “Where a legislative body has enacted a statutory provision proscribing a certain activity it has already
19 determined that such activity is contrary to the public interest.” (*Ibid.*) The legislature has determined
20 lead agencies must comply with the requirements of CEQA before approving projects. The City did
21 not comply with CEQA when it approved this project; the Court is justified in presuming public harm
22 will result. If the Project proceeds, the environment will be irreparably harmed. This outweighs any
23 potential injury to the City or Surf Cup. The Court should enjoin the Project until the City fully
24 complies with CEQA to preserve the environmental status quo.

25 The Project may have a significant effect on biology, traffic/parking, water quality, and noise.
26 The impacts on biology and water quality are irreparable once they occur. In 2016, Surf Cup removed
27 environmentally sensitive habitat that supports coastal California gnatcatchers to improve the access
28

1 roads prior to approval of the lease. (Decl. Scott.) Surf Cup has also dismantled/demolished
2 structures on the project site, within the previously described Wetland Buffer during nesting season.
3 (Decl. Farrell.)

4 After heavy rains in 2015, Surf Cup drained ponded water actively used by migratory birds and
5 allowed that water to drain through a channel into the San Dieguito River. Surf Cup then graded the
6 area that was drained without consideration for the wetland species that had grown in the area. (Decl.
7 Weir.) As the City documented, in 2011; any clearing, grubbing, grading, restoration, revegetation or
8 other construction activities within the 100-foot wetland buffer or in gnatcatcher habitat between
9 February 1 and September 15 could result in significant impacts to biological resources. (RJN Ex. 5,
10 Attachment 9.) Similarly, any parking of cars on the project site could result in significant impacts to
11 water quality. (RJN Ex. 4, p. 1027.)

12 In addition to the presumption of harm discussed in *IT Corp.*, Petitioner has provided
13 substantial evidence of irreparable harm to the environment that has and will occur if Surf Cup are not
14 prevented from moving forward with further improvements and increased use of the property during
15 the pendency of this litigation.

16 Although the City and Surf Cup may suffer some financial harm if the preliminary injunction is
17 granted; the harm to the public significantly outweighs these losses. (*County of Inyo v. City of Los*
18 *Angeles, supra*, 61 Cal.Ap.3d at 100; *Bayside Timber Co. v. Board of Supervisors, supra* 20
19 *Cal.App.3d at 14.*) FSDRV is willing to allow Surf Cup to continue to host the events it has already
20 planned while a decision on the merits is pending, limited to 25 days per year (for anything with more
21 than 100 cars or 300 attendees anticipated), so long as Surf Cup provides off-site parking for these
22 events. This will minimize the harm to the environment that may occur from thousands of cars driving
23 on the unpaved roads adjacent to residences and the river. FSDRV is also asking the Court to enjoin
24 Surf Cup from modifying the project site in any way while a decision on the merits is pending –
25 including demolition of existing structures, installation of new structures or facilities, grading, soil
26 amendments, use of fertilizers or herbicides, modification of the landscaping, and any other activity
27 that will change the project site. Surf Cup would also be required to implement the Cowbird
28

1 Management Plan included in the MMRP for the 2011 site development permit. (RJN, Ex. 5.) The
2 City would be enjoined from issuing any permits for the project site. Any harm to the City or Surf
3 Cup is substantially outweighed by the harm to FSDRV, the environment, and the public at large if the
4 project moves forward without considering all environmental impacts.

5 **C. The Court Should Require No More Than a Nominal Bond.**

6 Under CCP § 529, a bond is usually required when a trial court issues a preliminary injunction.
7 FSDRV asks the Court to waive the bond requirement or require no more than a nominal bond.
8 (*Mangini v. J.G. Int'l* (1994) 31 Cal.App.4th 214, 217 (“*Mangini*”) [court has discretion to require a
9 nominal bond if larger bond would “deny access to judicial review”]; *South Pasadena v. Slater* (C.D.
10 Cal. 1999) 56 F.Supp.2d 1106, 1148 [“courts routinely impose either no bond or a minimal bond in
11 public environmental cases.”].)

12 No published California decision has considered whether such principles apply in CEQA cases.
13 However, in *Mangini*, the court cited federal case law as providing much-needed guidance for
14 California courts. There, the court denied the waiver of bond because Plaintiff was a for-profit entity,
15 and no appreciable financial hardship would occur if a bond issued. Conversely, FSDRV is a non-
16 profit organization – anything more than a nominal bond would significantly limit FSDRV’s access to
17 judicial review. (Decl. Farrell.) FSDRV does not stand to benefit financially from the action, and
18 does not have the financial resources for a sizable bond. (*Ibid.*) Therefore, FSDRV should not be
19 required to post anything more than a nominal bond.

20 CEQA relies almost entirely on the public for enforcement. Requiring a substantial
21 undertaking to protect the environment pending the outcome of litigation will substantially limit the
22 ability of public interest organizations to continue to assist in protecting California’s environmental
23 resources. FSDRV is an organization dedicated to protecting the resources of the San Dieguito River
24 Valley. FSDRV is requesting this preliminary injunction to protect the habitat of two endangered
25 species and one threatened species. FSDRV should not be required to post a bond to protect the
26 environment from further harm due to the City’s failure to follow the law.

1 **IV. CONCLUSION**

2 For the foregoing reasons, FSDRV respectfully requests the Court issue a preliminary
3 injunction enjoining the City of San Diego and Surf Cup Sports LLC from any of the following:

- 4 (1) Parking more than 100 cars on the project site at any time.
5 (2) Hosting tournaments or events where more than 100 cars and/or 300 attendees are expected
6 to attend more than 25 days per year.
7 (3) Clearing, grubbing, grading, restoration, revegetation, construction, using fertilizers or
8 herbicides, use of any soil amendments, demolition or any other activity that will alter the
9 project site.

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11 Dated: November 28, 2016

Respectfully Submitted,

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Julie M. Hamilton
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