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9 Attorneys for Petitioner, FRIENDS OF THE SAN DIEGUITO RIVER VALLEY

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

12 FRIENDS OF THE SAN DIEGUITO RIVER)	GENERAL CIVIL (CEQA)
13 VALLEY, a California Non-Profit Public Benefit)	CASE NO.: 37-2016-00030312-CU-TT-CTL
14 Corporation,)	
15 Petitioner,)	
16 vs.)	PETITIONER’S NOTICE OF MOTION AND
17 CITY OF SAN DIEGO, a public entity;)	MOTION TO ALLOW AMENDED AND
18 and DOES 1 through 5, inclusive,)	SUPPLEMENTAL PETITION FOR WRIT OF
19 Respondent,)	MANDATE
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20 SURF CUP SPORTS, LLC, a limited liability)	Judge: Hon. Gregory W. Pollack
21 company; and OCEAN INDUSTRIES, INC., a)	Dept.: C-71
22 corporation of unknown origin; and DOES 6)	Petition Filed: August 29, 2016
23 through 10,)	Ex Parte Hearing Date: November 17, 2017
24 Real Parties in Interest.)	Ex Parte Hearing Time: 2:30 p.m.
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25 TO: RESPONDENT AND REAL PARTIES IN INTEREST:

26 NOTICE IS HEREBY GIVEN that on November 17, 2017 at 2:30 pm, or as soon thereafter as
27 the matter may be heard, in Department C-71 of the above entitled Court, Petitioner FRIENDS OF
28 THE SAN DIEGUITO RIVER VALLEY (“FRSDRV”) will move the Court to allow the filing of an
Amended and Supplemental Petition for Writ of Mandate.

1 This motion is made on the grounds that substantial activity has occurred on the Polo Fields
2 since the filing of the original FSDRV's original Petition for Writ of Mandate. This activity
3 constitutes new facts, these facts are material to the Petitioner and are grounds for an additional cause
4 of action.

5 This motion is based on this Notice of Motion, the Memorandum of Points and Authorities in
6 attached hereto, all papers, records and documents on file in this action; and such evidence as may be
7 presented at the hearing on the motion.

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11 Dated: October 23, 2017

Respectfully Submitted,

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14 _____
15 Julie M. Hamilton
16 Attorney for Petitioner
17 Friends of the San Dieguito River Valley
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1 Petitioner FSDRV hereby submits the following Memorandum of Points and Authorities in
2 support of its Motion to Allow Amended and Supplemental Petition for Writ of Mandate.

3 **I. INTRODUCTION & BACKGROUND**

4 FSDRV filed a Petition for Writ of Mandate (“Petition”) on August 29, 2016, seeking an
5 administrative writ of mandate under Code of Civil Procedure section 1094.5 (“CCP 1094.5”) and
6 Public Resources Code section 21168 (“PRC 21168”). The City approved a 28-year lease of the
7 project site to Real Party-in-Interest, Surf Cup Sports, LLC on July 25, 2016. The City was granted
8 the project site in 1983 as mitigation for Watt Industries/San Diego Inc.’s development of the
9 community of Fairbanks Ranch. The grant deed for the project site limits use of the project site to
10 passive, non-commercial recreational use (picknicking, walking, hiking) and active non-commercial
11 recreational uses not involving large assemblages of people or cars (equestrian activities, jogging,
12 frisbee). (See, Petitioner’s Request for Judicial Notice and Lodgement in Support of Request for
13 Preliminary Injunction filed November 28, 2016 (“RJN”) Ex. 1, lease p. 37.) The 1981
14 Environmental Impact Report (“EIR”) for the Fairbanks Ranch Country Club required 25 acres of
15 riparian habitat where there is now none; this mitigation requirement has never been fulfilled. (RJN
16 Ex. 2, Response to Letters of Comment, p. 21.)

17 The project site is 114 acres located along the northern bank of the San Dieguito River,
18 extending east from El Camino Real to the community of Whispering Palms. The site is bounded on
19 the south by the San Dieguito River, on the north by vacant land and a residential project, on the east
20 by Whispering Palms and on the west by El Camino Real, the San Dieguito Lagoon, and the San
21 Dieguito Wetland Restoration Project.

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

7 The City issued a Request for Proposals (“RFP”) in July 2015 and subsequently determined
8 Surf Cup’s proposal to be the only responsive proposal. (RJN Ex. 1, Council Action Executive
9 Summary Sheet, p. 1.) The new lease was approved by the City on July 25, 2016 and amended on
10 August 2, 2016. FSDRV’s Petitioner for Writ of Mandate was filed on August 29, 2016.

11 Since the Petitioner for Writ of Mandate was filed, Surf Cup has undertaken the following
12 activities:

- 13 • Removed clubhouse, tack room, barns, store, and stalls.
- 14 • Buried gasoline tanks.
- 15 • Created and graded new parking areas.
- 16 • Graded and widened the access road.
- 17 • Graded new storage areas.
- 18 • Increased the use of the project site for a variety of events and practices.
- 19 • Removed the polo school arena from the Polo Fields.
- 20 • Gated the entrance to the Polo Fields.
- 21 • Constructed new curb, gutter, sidewalk and signage.
- 22 • Install lights for use at night.
- 23 • Disposed of horse bedding material in the south west corner of the property.

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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.

1 All of these activities are new facts that were not available at the time the Petition was filed.
2 These new facts are material to the causes of action alleged in the Petition; therefore a Supplemental
3 Petition is appropriate. [See Exhibit 1 for Amended and Supplemental Petition.]

4 II. ARGUMENT

5 California Code of Civil Procedure section 464 allows the plaintiff, on motion, to make a
6 supplemental complaint alleging facts material to the case occurring after the former complaint.
7 FSDRV intends to allege the City should require a grading permit, conditional use permit, stormwater
8 pollution prevention plan, best management practices and must enforce its illegal dumping ordinance.
9 These allegations are properly plead under Code of Civil Procedure section 1085, mandating the City
10 to fulfill its mandatory duty to enforce the San Diego Municipal Code. *Blankenship v. Michalski*
11 (1957) 155 Cal.App.2d 672 (if an ordinance imposes a mandatory duty on respondent to commence a
12 proceeding to enforce the ordinance, mandamus will lie even if other remedies may also exist);
13 *Terminal Plaza Corp. v. City* (1986) 186 Cal.App.3d 814, 830 (the traditional mandamus provisions of
14 Code of Civil Procedure 1085 may be employed to compel the performance of a duty that is purely
15 ministerial in character, but they cannot be applied to control discretion as to a matter lawfully
16 entrusted to the City).

17 In this case, FSDRV will be asking the Court to compel the City to enforce the provisions of
18 the municipal code relating to grading, this use in this location, stormwater control and illegal
19 dumping. FSDRV is not asking this Court to control the City's discretion in enforcing the code.
20 Should this Court choose not to allow the Supplemental Petition, FSDRV would be left with no choice
21 by to file a new petition, increasing the burden on the Court and all parties. FSDRV anticipates
22 relying on declaratory evidence provided by parties witnessing each activity. FSDRV does not
23 anticipate formal discovery.

24 At the time the City Smart Growth and Land Use Committee recommended approval of the
25 ground lease for Surf Cup, the Committee and staff anticipated Surf Cup would be receiving the
26 necessary permits and environmental review for the above described work. [NOL Ex. 1, 99:24-
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1 101:10.] Surf Cup has not applied for and the City has not required the necessary permits as discussed
2 at the Smart Growth and Land Use Committee and required by the San Diego Municipal Code.

3 **III. CONCLUSION**

4 For the reasons stated above, the Court should grant Petitioner's Motion to Allow Amended and
5 Supplemental Petition for Writ of Mandate.

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7 DATED: _____

Respectfully Submitted,

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9 LAW OFFICES OF JULIE M. HAMILTON

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11 By: _____
12 Julie M. Hamilton
13 Attorney for Petitioner
14 Friends of the Canyon
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EXHIBIT 1

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9 Attorneys for Petitioner, FRIENDS OF THE SAN DIEGUITO RIVER VALLEY

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)	GENERAL CIVIL (CEQA)
13 California Non-Profit Public Benefit Corporation,)	CASE NO.:
14 Petitioner,)	
15 vs.)	AMENDED AND SUPPLEMENTAL
16 CITY OF SAN DIEGO, a public entity;)	PETITION FOR WRIT OF MANDATE
17 and DOES 1 through 5, inclusive,)	(CCP Sections 1085, 1094.5, and PRC Section
18 Respondent,)	21168)
19)	
20 SURF CUP SPORTS, LLC, a limited liability)	
21 company and OCEAN INDUSTRIES, INC., a)	
22 California Corporation; and DOES 6 through 10,)	
23 Real Parties in Interest.)	

24 Petitioner FRIENDS OF THE SAN DIEGUITO RIVER VALLEY (“FSDRV”), hereby
25 petition this Court for a Writ of Mandate under Section 1094.5 of the Code of Civil Procedure and
26 Section 21168 of the Public Resources Code, directed to Respondent CITY OF SAN DIEGO ("City"),
27 and by this verified Petition represents that:
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1 **GENERAL ALLEGATIONS**

2 1. FSDRV is a California Non-Profit Public Benefit Corporation. Established in 1986 as a
3 non-profit, and supported by a network of members and affiliates, the FSDRV promotes and supports
4 conservation, restoration, preservation and enhancement of the natural scenic, ecological and open-
5 space resources of the San Dieguito River Valley through advocacy, study, monitoring,
6 and education. The members of CARA reside in or visit the San Dieguito River Valley in City of San
7 Diego and County of San Diego, State of California.

8 2. FSDRV believes in preserving and ensuring a quality of life by protecting the
9 environment, through wise planning, lawful stewardship of lands, and following the policies,
10 ordinances, and laws which apply to the San Dieguito River Valley in the City of San Diego. As
11 residents, community members, and visitors to the San Dieguito River Valley, members of FSDRV are
12 directly affected by the July 25, 2016 decision of Respondent to authorize an approximate 28 year
13 Ground Lease with Surf Cup Sports, LLC, for the 114 acres of City-owned property located at 14555
14 El Camino Real/14955 Via de la Valle known as the "Polo Fields" ("Project"). Respondent based this
15 decision on its determination that the Project is covered by the General Rule, California Environmental
16 Quality Act (CEQA) Section 15061(b)(2) and (3), and is categorically exempt from CEQA pursuant to
17 CEQA Guidelines Sections 15323, 15301, 15304 and 15311, and that an exception to the exemptions
18 as set forth in CEQA Guidelines Section 15300.2 does not apply.

19 3. Subsequent to Respondent's approval of the Ground Lease and categorical exemptions,
20 Surf Cup has demolished temporary corrals and tack rooms, graded the road and other areas of the site,
21 disposed of stall bedding in native habitat, increased use of the site, removed trees, installed new chain
22 link fencing, added road bed material, constructed a new entrance off Via de la Valle, constructed a
23 new arena and trenched along the access road. There is no evidence the City has required or
24 considered any permits for this work.

25 4. FSDRV and its members are directly affected by the failure of the City of San Diego to
26 require permits for the ongoing activities on the Polo Fields.

1 16. In 2015, the City’s Real Estate Assets Department issued a Request for Proposals to
2 lease and operate the property. The City received three proposals and determined Real Party-In-
3 Interest SURF CUP SPORTS, LLC’s (“Surf Cup”) proposal was the only proposal responsive to the
4 RFP.

5 17. On March 29, 2016 several truck loads of fill material were dumped and spread in the
6 north east corner of the site.

7 18. In May 2016, unknown parties began demolishing the club house, barns, stables and
8 tack rooms.

9 19. On June 29, 2016, the City’s Smart Growth and Land Use Committee considered a 28-
10 year lease of the project site to Surf Cup and recommended approval to the San Diego City Council.
11 Members of FSDRV and other members of the public provided oral and written testimony in
12 opposition to the approval of the lease.

13 20. On July 25, 2016, the City approved a 28-year lease to Real Party-In-Interest that
14 allowed for use of the property for youth sports, youth polo instruction, occasional polo matches, horse
15 drop-off facilities for the public trail and partnering with other sports organization for sports-related
16 special events and other ancillary uses. The Lease proposal included the following components:

- 17 • Improve existing irrigation system and equipment
- 18 • Install replacement fencing and gates around the property and wayfinding signage
- 19 • Replace existing turf with new turfgrass and make improvements to existing
20 landscaping throughout the property
- 21 • Improve all existing roads and parking areas
- 22 • Remove unsafe non-native trees or foliage
- 23 • Disassemble and recycle existing barns, stables, temporary storage areas and other
24 structures
- 25 • Replace existing trailers to support existing staff
- 26 • Remove and properly dispose of and/or recycle all trash/abandoned equipment and
27 unused fixtures on site

- 1 • Remove and replace existing dilapidated clubhouse and offices
- 2 • Remove and relocate existing maintenance yard and associated structures
- 3 • Miscellaneous improvements to ensure compliance with the City’s Municipal Code
- 4 • Remove the existing equestrian arena
- 5 • Install caretaker housing to support polo uses on-site
- 6 • Remove polo scoreboard and billboards

7 The City determined the Lease and associated components is exempt from the provisions of
8 CEQA. Members of FSDRV and other members of the public provided written and oral testimony to
9 the City Council prior to the close of the hearing at the City Council on July 25, 2016. The City
10 Council decided to approve the lease.

11 21. The City filed a Notice of Exemption with the County Clerk of the County of San
12 Diego on July 26, 2016.

13 22. On July 28, 2016 unknown parties began spreading gravel on the access roads at the
14 project site.

15 22. The City approved an amendment to the Resolution of Approval for the Lease on
16 August 2, 2016.

17 23. The City filed a second Notice of Exemption with the County Clerk of the County of
18 San Diego on August 4, 2016.

19 24. FSDRV is informed and believes that filing of the Notice of Exemption is the final
20 action Respondent intends to take regarding approval of the Project under CEQA and other applicable
21 laws.

22 25. At unknown times after the ground lease approval in 2016, parties have buried gasoline
23 tanks, repeatedly created and graded new parking areas, repeatedly graded and widened the access
24 road, graded new storage areas, and significantly increased the use of the project site for a variety of
25 events and practices.

26 26. In January 2017 parties began removing the polo school arena from the Polo Fields.
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1 8. That Petitioner be awarded reasonable attorney’s fees pursuant to Cal. Code of Civil
2 Procedure Section 1021.5; and

3 9. For such other legal or equitable relief that the Court deems just and proper.
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5 Dated: October 23, 2017

Respectfully Submitted,

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8 Julie M. Hamilton
9 Attorney for Petitioner
10 Friends of the San Dieguito River Valley
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VERIFICATION

I, Susan Hopps-Tatum declare:

I am President of the COLLEGE AREA RESIDENTS ASSOCIATION, petitioner in this action. I have read the above Petition for Writ of Mandate and know its contents. All the facts alleged in the Petition not otherwise by citation to the record, exhibits, or other documents are true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Diego, California, this _____ day of October, 2017.

Susan Hopps-Tatum
COLLEGE AREA RESIDENTS ASSOCIATION