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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)	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 AUGMENT THE
18 and DOES 1 through 5, inclusive,)	ADMINISTRATIVE RECORD;
19 Respondent,)	MEMORANDUM OF POINTS AND
20)	AUTHORITIES IN SUPPORT THEREOF
21)	
22)	
23)	Judge: Hon. Gregory W. Pollack
24)	Dept.: C-71
25)	Petition Filed: August 29, 2016
26)	Ex Parte Hearing Date: November 17, 2017
27)	Ex Parte Hearing Time: 2:30 p.m.
28)	

23 TO: RESPONDENT AND REAL PARTIES IN INTEREST:

24 NOTICE IS HEREBY GIVEN that on November 17, 2017 at 2:30 pm, or as soon thereafter as
25 the matter may be heard, in Department C-71 of the above entitled Court, Petitioner FRIENDS OF
26 THE SAN DIEGUITO RIVER VALLEY ("FRSDRV") will move the Court to augment the
27 administrative record Respondent CITY OF SAN DIEGO ("City") intends to certify.
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1 This motion is made on the grounds that the Jenny Goodman, Deputy City Attorney for the
2 City has informed FSDRV’s attorney the City intends to improperly exclude documents from the
3 administrative record it will certify for FSDRV’s Petition for Writ of Mandate (“Petition”).
4 Specifically, the City has stated it will not certify the record with any documents pre-dating the
5 Request for Proposals for the Ground Lease of the Polo Fields issued in July 2015. All of the
6 materials Petitioner is proposing to include in the record are materials the City provided to Petitioner
7 for the preparation of the record from City files. FSDRV seeks to augment the administrative record
8 with the materials identified in the Notice of Lodgment and Lodgment filed with this motion.

9 This motion is based on this Notice of Motion, the Memorandum of Points and Authorities in
10 attached hereto, Notice of Lodgment and Lodgment in Support of Petitioner's Motion to Augment the
11 Administrative Record; all papers, records and documents on file in this action; and such evidence as
12 may be presented at the hearing on the motion.

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16 Dated: October 23, 2017

Respectfully Submitted,

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19 _____
20 Julie M. Hamilton
21 Attorney for Petitioner
22 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 Augment the Record.

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 site is currently developed with polo fields established on the site through a 1986
23 lease between the City and the Fairbanks Polo Club (now the Rancho Santa Fe Polo Club) (“Polo
24 Club”). The Polo Club development included dirt access roads and parking areas, grass fields, and a
25 portion of the public Coast to Crest trail. A Mitigative Negative Declaration (“MND”) was prepared
26 for the Polo Club lease in 1986. The Polo Club contracted with Surf Cup for use of the Polo Fields
27 for soccer tournaments beginning in 1992. (RJN Ex. 1, June 20, 2016 Memorandum, pp. 1-2.) Over
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1 the years, the use on the project site has included a variety of different activities including Christmas
2 tree 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. Surf Cup has been operating under that lease since it’s approval.

11 FSDRV served the Petition and a Request for Administrative Record on the City September 2,
12 2016, the request included a request for the following documents:

- 13 1. All Project application materials, including all Request for Proposal (“RFP”) materials
14 relating to the lease of the Polo Fields.
- 15 2. All materials relating to the original Grant Deed for the Polo Fields and any subsequent
16 materials relating to the title of the property and any subsequent leases of the Polo Fields.
- 17 3. All materials relating to the adoption of Negative Declaration END-85-0785, adopted
18 by the City in 1986, for the lease agreement with Fairbanks Polo Club.
- 19 4. All materials relating to the adoption of the 2011 Mitigated Negative Declaration for
20 restoration of the Coast to Crest Trail along the San Dieguito River.
- 21 5. All staff reports and related documents prepared by the City with respect to compliance
22 with the substantive and procedural requirements of the California Environmental Quality Act
23 (“CEQA”) and with respect to any ministerial and discretionary actions on the Project.
- 24 6. All transcripts and minutes of the proceedings at which any decision-making body of
25 the City heard testimony on, or considered any environmental document on, the Project, and any
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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 transcripts and minutes of proceedings before any advisory body to the City which were presented to
2 the decision-making body prior to action on the environmental documents or Project.

3 7. All notices issued by the City to comply with CEQA or with any other law governing
4 the processing and approval of the Project.

5 8. All written evidence, comments, or correspondence submitted to, or transferred from,
6 the City with respect to this Project or compliance with CEQA.

7 9. All written evidence, comments, or correspondence (including e-mails) submitted to, or
8 transferred from, the City with respect to the use of the Polo Fields between 1986 and July 25, 2016.
9 This includes any complaints or comments from community members regarding the use of the Polo
10 Fields.

11 10. Any proposed decisions or findings submitted to the decision-making body of the City
12 by its staff, or the project proponent, project opponents, or other persons.

13 11. The documentation of the final City decision, including all documents, in addition to
14 those referenced above, cited to or relied on in the findings pursuant to CEQA.

15 12. Any other written materials relevant to the City compliance with CEQA or to its
16 decision on the merits of the Project, including drafts of any environmental document, or portions
17 thereof, which have been released for public review. This includes studies or other documents relied
18 upon in any environmental document prepared for the in the City's files.

19 13. All internal agency communications, including e-mails, staff notes, and memoranda
20 related to the Project or to compliance with CEQA. This includes e-mails to/from the City Council
21 offices and staff, Real Estate Assets, the Mayor's office and staff, Code Compliance, the City
22 Attorney's office and staff, and any other city department involved with this Project in any way.

23 14. The full written record before any inferior administrative decision-making body whose
24 decision was appealed to a superior administrative decision-making body prior to the filing of
25 litigation.

26 FSDRV also requested the City provide an estimate of the cost to prepare the Administrative
27 Record and reserved the right to prepare the record as allowed under PRC §21167.6. FSDRV never
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1 received an estimate of the cost to prepare the record from the City; but informed the Attorney for the
2 City of its election to prepare the record at the Mandatory Settlement Conference on November 14,
3 2016. to allow Peititioner to ”). On December 21, 2016, Counsel for Petitioner was informed by the
4 Deputy City Attorney Jenny Goodman that she was still reviewing the documents for attorney/client
5 privelege and the documents would be provided to FSDRV the next week. Petitioner’s attorney
6 received the documents the second week of January.

7 In January 2017, FSDRV began indexing the documents received from the City for the
8 administrative record. On April 5, 2017, FSDRV emailed an initial draft index of the administrative
9 record to the City for review. Jenny Goodman, attorney for the City, stated she would be having back
10 surgery and would not be able to review the index until April 17, 2017. FSDRV made some edits to
11 the draft index, and sent the updated index to the City on April 17, 2017. On May 10, 2017, FSDRV
12 emailed the City an updated version of the draft index of the administrative record.

13 On June 2, 2017, Julie Hamilton, attorney for FSDRV, called Ms. Goodman to check on the
14 status of the record and discuss continuing the hearing on the petition for writ of mandate. Ms.
15 Goodman stated she estimated she would finish her review of the draft index of the administrative
16 record by June 19, 2017. Ms. Hamilton received Ms. Goodman’s changes to the index on July 14,
17 2017 with a letter in which Ms. Goodman stated the City would not include any documents predating
18 the Solicitation for Proposals in July, 2015.

19 On September 1, 2017 Ms. Hamilton sent her requets for additional items to be included in the
20 record, on October 3, 2017 Ms. Goodman informed Ms. Hamilton the City would not be including any
21 of the requested items in the certified record.

22 II. ARGUMENT

23 This Petition was filed under PRC 21168 and the administrative mandamus provisions of CCP
24 1094.5 for review of an adjudicatory or quasi-judicial action by an agency when the agency is required
25 by law to provide a hearing before issuing its decision. This court must determine if the findings made
26 by the City were supported by substantial evidence “in light of the whole record.” (CCP § 1094.5(c).)
27 This standard militates in favor of a comprehensive record.
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1 **A. THIS REQUEST TO AUGMENT THE RECORD COMPLIES WITH PUBLIC**
2 **RESOURCES CODE SECTION 21167.6(e).**

3 The California Environmental Quality Act (“CEQA”) clearly defines the contents of the record
4 when challenging a quasi-judicial decision under CEQA. Petitioner’s Request for Administrative
5 Record relied on the specific language for the contents of the record of proceedings laid out in PRC
6 21167.6 (e). Subdivision (e) enumerates 11 categories of material that must be included in the
7 administrative record. “The language is mandatory – *all* items described in any of the enumerated
8 categories *shall* be included in the administrative record.” (*San Francisco Tomorrow v. City and*
9 *County of San Francisco* (2014) 229 Cal.App.4th 498, 531 (emphasis in original).) Subdivision (e)
10 “contemplates that the administrative record will include pretty much everything that ever came near a
11 proposed development or to the agency’s compliance with CEQA in responding to that development.”
12 (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.)

13 The agency’s decision approving the Project could be overturned if there is not substantial
14 evidence in the record to support it, so it behooves the agency to err on the side of inclusion and
15 completeness when preparing the administrative record. FSDRV contends the documents listed in the
16 accompanying Notice of Lodgment and Lodgment are crucial for a complete and accurate
17 administrative record. The administrative record must include any and all documents related to the
18 project that were considered by the City in making its decision to grant the lease based on categorical
19 exemptions from CEQA. Prior to approval by the City Council, the lease was reviewed by the Smart
20 Growth and Land Use Committee of the City Council (“SGLU”). At the SGLU hearing, City staff and
21 members of the committee relied heavily on the historical documents of this property in reaching a
22 decision. [SGLU Transcript: 99:18 – 114:19.] The City intends to improperly exclude the historical
23 documents from the administrative record it certifies.

24 Although Respondent argues the materials subject to this Motion to Augment are not part of
25 the administrative record because they were “not before” the City when it made the decision
26 challenged in the Petition, it is clear from the transcript the Smart Growth and Land Use Committee
27 relied on these historical records in making its recommendation to the City Council. It is also clear
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1 City staff was familiar with the historic records associated with the property in developing its staff
2 recommendation.

3 All of the materials included in this Motion to Augment the Record were received from the
4 City in response to Petitioner’s Request for Administrative Record. The historic files on this property
5 include previous environmental review that relied on specific mitigation measures that affect this
6 property. Without this information the record would be incomplete.

7 **B. POLICY FAVORS INCLUSION WHEN DETERMINING WHICH MATERIALS**
8 **SHOULD BE PART OF THE CERTIFIED ADMINISTRATIVE RECORD.**

9 In its third cause of action, FSDRV alleges the City’s determination the Project is categorically
10 exempt from CEQA is not supported by substantial evidence in the record. This court must determine
11 if the findings made by the City were supported by substantial evidence “in light of the whole record.”
12 (CCP § 1094.5(c).) A complete administrative record is important because the absence of substantial
13 evidence in the record to support approval of the project will result in severe consequences – reversal
14 of the Project approval. (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 373.)
15 In fact, in the CEQA context, “the burden of showing prejudice from any overinclusion of materials
16 into the administrative record must be on the project opponents, who have the most to gain from any
17 underinclusion.” (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 13.)

18 Moreover, providing a complete record is prudent because unexpected issues may be raised by
19 the parties or *sua sponte* by the court, in which case a complete record ensures the evidence needed to
20 respond to that issue is in the record. (1 *Abbot et al.*, Cal. Administrative Mandamus (3d ed. 2015)
21 The Administrative Record, § 4.8A, p. 4-10.) Therefore, the Motion to Augment the Administrative
22 Record should be granted.

1 **III. CONCLUSION**

2 For the reasons stated above, the Court should grant Petitioner's Motion to Augment the
3 Administrative Record with the materials attached to the Notice of Lodgment and Lodgment filed
4 herewith.

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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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