

San Dieguito River Park
Joint Powers Authority
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**JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Chair Jill MacDonald
Solana Beach City Council

Vice-Chair Chris Khoury
Citizens Advisory Committee

Joe LaCava
San Diego City Council

Marni von Wilpert
San Diego City Council

Joel Anderson
Supervisor, County of San Diego

Terra Lawson-Remer
Supervisor, County of San Diego

Terry Gaasterland
Del Mar City Council

Consuelo Martinez
Escondido City Council

Jenny Maeda
Poway City Council

Dustin Fuller, Ex Officio
22nd District Agricultural
Association

Shawna Anderson
Executive Director

**SAN DIEGUITO RIVER PARK
JOINT POWERS AUTHORITY**

11:00 a.m.

Friday, July 18, 2025

**County Administration Center
1600 Pacific Highway, San Diego
Room 302A**

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

Introductions and Announcements

Pledge of Allegiance

Approval of the Minutes of June 20, 2025 (Page 3-7)

Executive Director's Report

CAC Report

Public Comment

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

DISCUSSION/ACTION

1. Potential Termination of Open Space Easement Grant Deed on Polo Fields (Page 8-36)
2. Update on Coast to Crest Trail at Horsepark (Oral Report)

INFORMATION

3. Project Status Updates
 - a. Osuna Segment of Coast to Crest Trail
 - b. Reach the Beach Fairgrounds Trail and Gateway
 - c. San Dieguito Lagoon Phase II Restoration (aka W-19)
 - d. CTC Trail - East San Pasqual and Sutherland Gaps Project
4. Coordination Reports (oral)
 - a. San Dieguito River Valley Conservancy
 - b. Friends of the San Dieguito River Valley
 - c. Volcan Mountain Foundation
 - d. San Dieguito Lagoon Committee
5. Jurisdictional Status Reports (oral)

An opportunity for the Board members to report on actions taken within their jurisdiction to further the park planning process.
6. Correspondence – None
7. Closed session with Legal Counsel: - None

THE NEXT REGULAR JPA MEETING will be held on August 15, 2025 **in room #302A**. If you have any questions, please contact Dewanda Vandermost at dewanda@sdrp.org or (858)674-2270

**SAN DIEGUITO RIVER PARK
JOINT POWERS AUTHORITY
Minutes of June 20, 2025**

MEMBERS PRESENT

Jill MacDonald - Chair
Chris Khoury – Vice Chair
Joe LaCava
Consuelo Martinez
Andrew Hayes, Alternate
Jenny Maeda
Dustin Fuller

MEMBERS ABSENT

Terra Lawson-Remer
Terry Gaasterland
Marni von Wilpert

VISITORS/STAFF PRESENT

Shawna Anderson
Dewanda Vandermost
Nathan Lacy
Wayne Brechtel
Lizzy Bendrick
Brian Elliot, Alternate
Maggie Brown
Karen Lare
Udo Wahn

REPRESENTING

City of Solana Beach
Citizens Advisory Committee
City of San Diego District 1
City of Escondido
County of San Diego Dist. 2
City of Poway
22nd Agricultural District, Ex Officio

REPRESENTING

County of San Diego Dist. 3
City of Del Mar
City of San Diego Dist. 5

REPRESENTING

San Dieguito River Park JPA
San Dieguito River Park JPA
San Dieguito River Park JPA
San Dieguito River Park JPA, General Counsel
County Parks & Recreation Department
City of San Diego District 1
Friends of San Dieguito River Valley
Del Mar Lagoon Committee
Del Mar Lagoon Committee

Introduction and Announcements:

Chair MacDonald convened the meeting at 11:02 a.m. A roll call was taken and a quorum of six board members were present to begin the meeting. Chair MacDonald announced and welcomed the County of San Diego Dist. 2 newly designated alternate, Andrew Hayes.

Pledge of Allegiance

Approval of the Minutes of April 18, 2025

Board Member LaCava moved to approve the minutes and Board Member Khoury seconded the motion. All in favor.

Yes votes: MacDonald, Khoury, LaCava, Martinez, Hayes, Maeda

No votes: None

Absent: Lawson-Remer, Gaasterland, von Wilpert

Abstain: None

Executive Director's Report

Executive Director Shawna Anderson provided the following updates:

Director Anderson announced the successful acquisition of an Outdoor Equity Vehicle, funded through grants from the County of San Diego, District 3, and the Dickinson Foundation. The vehicle will support the Interpretive Ranger Program and enhance outreach and educational efforts.

The annual Volunteer Appreciation Party was successfully held and well attended, with participation from several JPA Board members. Numerous volunteers were recognized for their exceptional service, and Legacy Awards were presented to John Degenfelder and Carol Carr in recognition of their long-term dedication to the San Dieguito River Park.

Director Anderson reported that the San Dieguito Lagoon project received the American Public Works Association (APWA) Award for Project of the Year, along with a civil engineering award, acknowledging the project's excellence in design and implementation.

The third year of the Outdoor Equity Escondido Explorers Program concluded in April 2025. Director Anderson noted it was the most successful iteration to date, with high participation.

Director Anderson provided an update on the W-19 restoration project and summarized the 2025 annual monitoring and performance report for the San Dieguito Phase I Wetlands Restoration Project (SCE project). She stated that the SCE restoration did not meet its performance standards in 2024 and has not obtained any mitigation credits to date and reminded the Board Members that the JPA's responsibility as the project long-term manager does not begin until 30 years of project mitigation credits are granted by the Coastal Commission.

CAC Chair's Report – Board Member Khoury reported that the Citizens Advisory Committee (CAC) has consistently exceeded quorum at its recent meetings, reflecting strong member engagement and participation.

At their June meeting, the CAC discussed and voted on the recommendation for the JPA's e-bike policy for item #4 of this JPA agenda. The CAC also heard a presentation from EcoLogik, a youth-led citizen science group. The presentation focused on water quality testing in the San Dieguito River and was well received by committee members.

Additionally, Mr. Khoury reported that Eric Jones, representing the Volcan Mountain Foundation, delivered a presentation at the same meeting. Mr. Jones provided an impressive overview of the Foundation's history, mission, community engagement, and organizational growth.

Public Comment – None

DISCUSSION/ACTION

1. FY24-25 Q3 Budget Report and Coast Q1 Report

Recommendation: none

Executive Director Shawna Anderson presented the San Dieguito River Park JPA Operations Budget Summary for the third quarter of Fiscal Year 2024–2025, along with the Coast Budget Summary for the first quarter of the 2025 calendar year. Director Anderson reported that both budgets are currently on track. She noted that the fourth quarter Operations Budget report will be prepared soon with end of year budget results.

Public Comment- no public comment

2. **Comment Letter for LOSSAN Rail Realignment Project reissued NOP**

Recommendation: Approve Staff comment letter in response to updated LOSSAN Notice of Preparation.

Environmental Planner Nathan Lacy provided an overview of the updated Notice of Preparation (NOP) released by SANDAG on May 16, 2025, for the San Diego LOSSAN Rail Realignment Project. The updated NOP follows the receipt of over 1,500 public comments received after the original submittal.

JPA staff prepared a revised comment letter addressing potential impacts to the San Dieguito Lagoon, particularly from the “San Dieguito Bridge to I-5” alignment and its northerly variation. Other alternatives reviewed include alignments under Crest Canyon, Camino Del Mar, and the Del Mar Bluffs, as well as a No Build option. Staff emphasized that several alternatives may result in surface or subterranean impacts to the Focused Planning Area (FPA).

The Board was asked to approve the revised comment letter for submission by the June 30, 2025, deadline. Staff also anticipates submitting a formal comment letter during the Draft EIR public review period.

The Board Members discussed the rail realignment alternatives, construction processes, feasibility and environmental impacts.

Public Comment- no public comment

Board Member MacDonald moved to approve the Staff comment letter in response to updated LOSSAN Notice of Preparation and Board Member Khoury seconded the motion.

All in favor.

Yes votes: MacDonald, Khoury, LaCava, Martinez, Hayes, Maeda

No votes: None

Absent: Lawson-Remer, Gaasterland, von Wilpert

Abstain: None

3. **Horsepark Coast to Crest Trail Update**

Recommendation: None

Executive Director Anderson reported that repairs to the Horsepark Trail have been successfully completed by JPA rangers following an agreement with the Horsepark operator, HITS, to address a washed-out section of the trail. Additionally, a second agreement between HITS and the JPA has enabled the establishment of a detour around the sinking bridge, allowing the trail to be reopened for public use.

Director Anderson noted that collaborative efforts between the JPA and the 22nd District Agricultural Association are ongoing to identify a long-term solution for repairing the sinking bridge. Ex-Officio Board Member Dustin Fuller recommended that in the interest of a long-term solution that the JPA Board formally request that HITS consider an alternate sustainable route through Horsepark. He noted that other areas along the trail are subject to erosion, either from tidal action or runoff.

Public Comment- no public comment

4. **E-bike Policy and Discussion**

Recommendation: Affirm current JPA e-bike policy and/or provide staff with other guidance.

Executive Director Anderson provided an overview of the San Dieguito River Park JPA's current e-bike internal policy, in place since 2019, which permits Class 1 and Class 2 e-bikes on all SDRP trails where traditional bicycles are allowed. This policy aligns with the regulations of the JPA's member agency jurisdictions.

In light of increased e-bike usage and related concerns regarding safety, trail maintenance, and user conflicts, JPA staff and the Citizens Advisory Committee (CAC) have been monitoring trends and evaluating other jurisdictions' policies. Executive Director Anderson specifically noted the County's recent thorough review of its e-bike policy and its conclusion to continue allowing e-bikes on all County trails where regular bicycles are allowed. She noted that e-bikes are not allowed in a few County preserves but none are located in the SDRP. At its June 6, 2025 meeting, the CAC recommended maintaining the JPA's current policy and enhancing trail signage and public education to clarify where e-bikes are permitted and to ensure e-bike classification labels are visible. Staff supports the CAC's recommendation to improve signage and outreach regarding e-bike use and etiquette. Director Anderson noted enforcement challenges due to the difficulty in identifying modified or unclassified e-bikes. JPA rangers, supported by volunteer patrols, continue to educate trail users and enforce rules using non-citation methods.

The Board was asked to affirm the current policy or provide alternative direction. Board members asked for clarification of the signage content and the impact on the trails due to e-bike use. Director Anderson stated that JPA rangers have not noticed maintenance impacts to its trails from e-bike usage and that staff would work with the CAC Trails Committee on signage content.

Board Member La Cava moved to approve and affirm the current JPA e-bike policy and Board Member Martinez seconded the motion.

Public Comment- none

All in favor.

Yes votes: MacDonald, Khoury, LaCava, Martinez, Hayes, Maeda

No votes: None

Absent: Lawson-Remer, Gaasterland, von Wilpert

Abstain: None

INFORMATION

5. **Project Status Updates**

- a) **Osuna Segment of Coast to Crest Trail** – JPA staff reported that the project is continuing to make progress but several unique challenges have slowed the project and that staff is preparing a detailed timeline to meet the grant deadline.
- b) **Reach the Beach Fairgrounds Trail** – No report.
- c) **San Dieguito Lagoon Phase II Restoration (aka W-19)** – Covered in Directors Report.
- d) **CTC Trail – East San Pasqual and Sutherland Gaps Project** – Anderson reported that she and the Conservancy had planned a donor tour for all CTC Trail gap campaign donors for a project update and trail alignment tour, but RSVPs were low so a presentation at the Lagoon Ranger Station was given instead. Turnout was low thus a progress letter will be sent as a follow-up. . The San

Dieguito River Valley Conservancy is sponsoring a video that will highlight the CTC Gaps and the progress being made which will be presented during their Valley Vibes event.

Director Anderson reported that work is continuing with the consultants and preparation of the CEQA analysis has begun. The engineers are working out details on bridges and crossings, etc. Further details will be reported once available.

6. Coordination Reports (oral)

- a. **San Dieguito River Valley Conservancy** – No report
- b. **Friends of the San Dieguito River Valley**- Maggie Brown inquired about a state-mandated disaster evacuation plan and how it is being implemented at the Surf Cup Sports Complex. She also reported that collaborative efforts are ongoing with the San Dieguito River Valley Conservancy to address fishing-related concerns at the San Dieguito Lagoon.
- c. **Volcan Mountain Foundation** – No report
- d. **San Dieguito Lagoon Committee** – Karen Lare reported on ongoing concerns related to fishing activity at the San Dieguito Lagoon. She informed the Board of a recent permit application submitted by the Southern California Edison (SCE) monitoring team for the installation of a continuous monitoring device on one of the lagoon bridges, which is expected to enhance understanding of lagoon flow dynamics.

Ex-Officio Board Member Dustin Fuller, representing the 22nd District Agricultural Association, requested contact information for the California Department of Fish and Wildlife to assist in protecting least tern nesting sites that are being disturbed by fishing activity.

7. **Jurisdictional Status Reports** –Ex-Officio Board Member Dustin Fuller provided an update on recent coordination efforts. He reported that signed rights of entry and construction permits have been executed with agencies associated with the City's El Camino Real Bridge Replacement Project. Mr. Fuller also noted that the Del Mar Fair is currently underway and for a second year hosting the Eco Hut environmental education and sustainability information booth with several participating organizations including the SDRVC.

8. **Correspondence** – None

Chair MacDonald adjourned the meeting at 12:11 p.m.

Agenda Item 1

July 18, 2025

TO: JPA Board

FROM: Staff

SUBJECT: Potential Termination of Open Space Easement Grant Deed on Polo Fields

RECOMMENDATION:

Oppose City of San Diego's proposed termination of Open Space land use restrictions on Polo Fields site and authorize Executive Director to testify at Council hearing.

JPA staff recently learned that the San Diego City Council is considering terminating the open space easement on City-owned open space currently occupied by the Surf Cup Sports and Fairbanks Ranch Country Club leases. This termination is described in an *Ex Parte* Application issued on June 30th associated with a lawsuit between the City and Surf Cup Sports as defendants and Fairbanks Polo Club Homes as plaintiff (Attachment 1). The document was sent by a private party to JPA staff and other organizations and individuals.

The "Notice of *Ex Parte* Application" states that "the City intends to present a resolution at City Council which would result in a termination of the use restrictions..." and is "trying to docket that resolution before the August recess" or September at the latest (page 2).

The subject City-owned property is 616 acres of designated open space for "natural and recreational purposes" encompassing the San Dieguito River Valley east of El Camino Real deeded to the City in 1983 for purposes of public open space in exchange for development of 341 residential units on the surrounding hillsides. The City's Fairbanks Ranch Country Club Specific Plan outlines the development plan for this area, including the 616 acres of public open space designated for natural open space and recreational uses (Attachment 2). The deeded open space is governed by a Corporation Grant Deed that is the subject of the *Ex Parte* communication and in effect the "open space easement" (Attachment 3). Exhibit B of the Grant Deed includes land use restrictions intended to minimize land uses and impacts to the nearby riparian and upland habitats.

SUMMARY of ISSUES

The Grant Deed and Removing Land Use Restrictions

The Grant Deed is not typical for an open space easement. The grantor who holds an interest in the surrounding land (the single-family homes), called the "Benefited Land", retains rights in the grant deed including land use restrictions over the open space, called

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the “Affected Land”. The Country Club, land “contiguous to the country club”, and the property on the north side of the river (now the Surf Cup lease) is the “Affected Land” designated as open space.

The JPA has long supported the public open space designation on the subject property as consistent with the goals of the San Dieguito River Park Concept Plan and has advocated in writing and in public testimony many times for the land use restrictions as an important enforcement mechanism. The open space property and leases have been the subject of several investigations and lawsuits by affected parties regarding violations and the lack of enforcement. The City is now considering terminating all land use restrictions on the property with no public input other than a rushed approval hearing (in August/September according to the *Ex Parte* communication). Modifying or terminating the land use restrictions in this manner seems irresponsible and directly conflicts with the commitments that were made to preserve the “natural and recreational” open space character of the property. JPA staff is investigating whether the open space was also “mitigation” for the development in the Fairbanks Country Club EIR.

Limited Public Access

Although the 616 acres were designated for open space, much of the area is inaccessible to the general public as the Fairbanks Ranch Country Club (entire south side) and expansive soccer fields under the Surf Cup lease (former polo fields) (Attachment 4). The Surf Cup lease addresses public access, but most of the area is occupied by active soccer and other uses and inaccessible. (An incidental number of surrounding residents occasionally use the east soccer field for passive recreation like dog exercise). Public access and open space for the San Dieguito River Park is effectively limited to a narrow strip of land adjacent to the riverbank (the future Coast to Crest Trail to be improved by Surf Cup as required by their lease remains unfinished).

Opposition by other Organizations

The JPA’s partners in preserving and protecting the San Dieguito River Valley are many. The San Dieguito River Valley Conservancy at their July 16 board meeting will consider approving a letter to the City Council opposing the elimination of the land use restrictions. The Friends of the San Dieguito River Valley strongly oppose the removal of the land use restrictions and have long advocated for better enforcement of the restrictions by the City, as do the surrounding residents and other environmental organizations.

Points for JPA’s Opposition and Testimony

JPA staff recommends the following points be made in a potential letter to the Council and Mayor and during public testimony at a Council hearing on the matter:

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- The deed of the subject property to the City in 1983 was intended for public open space as promised to its citizens for protection of open space resources in exchange for developing the surrounding properties. Its expressed use under the grant deed and Specific Plan is “open space in a natural condition” or for “only those uses” specified in the grant deed “and no others”. Without the open space easement, this land can easily be rezoned for non open space use.
- The grant deed and approval documents related to the Fairbanks Ranch Country Club Specific Plan including an approved CEQA document govern the allowable activities on this property. Allowable uses include agriculture, non-commercial passive recreation, and active non-commercial recreation that “does not involve large assemblages of people or automobiles”. The restrictions should not be ignored nor removed using a fast-tracked process with little to no public input simply because the restrictions may be an inconvenience.
- Hundreds of millions of public dollars have been invested in restoring the San Dieguito Lagoon directly adjacent to the deeded open space. The land uses on the subject City property should be controlled and restrictions enforced as intended by the grant deed to minimize impacts to the surrounding sensitive habitat. The restrictions were written to preserve the open space character of the property that is now being threatened. Instead, the restrictions should be enforced to improve the habitat value of the corridor.
- The land use restrictions contained in the grant deed serve a purpose to protect the adjacent 1.3 miles of wetlands along the San Dieguito River including endangered species and other wildlife dependent on the riparian habitat that is part of the open space land from harmful impacts associated with activities such as lights, noise, pollution, sedimentation, and other harmful effects.
- This property is an important wildlife corridor from the inland open space to the wetlands at the San Dieguito Lagoon and deserves protection to minimize disturbance to the wildlife that move through this area. The “natural” open space is being whittled down to a narrow strip of land adjacent to the north riverbank with little to no buffer between the intense activities occurring on the Surf Cup lease (concerts, amplification, nighttime use, noise and lights) and the adjacent river. The deed’s land use restrictions should be enforced, not removed thereby eliminating any ability to control uses harmful to the open space value.
- Wholesale removal of the restrictions would eliminate an enforcement mechanism and remove City discretion. Why would the City give up land use control and what is their intent. If written restrictions are removed, the City’s power to enforce the open space character of the property and its accountability are substantially limited. The CTC Trail is an example of this as City staff has long claimed they cannot force Surf Cup to complete the trail in a reasonable time

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frame (nine years now) because a written deadline is not provided in the City's lease.

CAC RECOMMENDATION:

The July CAC meeting was not held because the first Friday of the month when the CAC regularly meets fell on the July 4th holiday. However, the CAC is knowledgeable on continuing issues with the subject open space and regularly informed on activities including delays with this Coast to Crest Trail segment. Member organizations of the CAC including the Friends of the San Dieguito River Valley, Sierra Club, and others have long been involved in issues associated with the property and have advocated for its protection as public open space. There is no doubt that the CAC would oppose the City's plan to remove the land use restrictions.

RECOMMENDATION:

Oppose City of San Diego's proposed termination of Open Space land use restrictions on Polo Fields site and authorize Executive Director to testify at Council hearing.

ALTERNATIVES

1. Approve Staff recommendation.
2. Approve Staff recommendation and provide additional direction.
3. Do not approve and give other direction.

Respectfully submitted,

Shawna Anderson
Executive Director

Attachment 1: Notice of *Ex Parte* Application, June 30, 2025

Attachment 2: Fairbanks Ranch Country Club Specific Plan, location map and development plan

Attachment 3: Corporation Grant Deed, Recorded October 24, 1983

Attachment 4: Aerials of subject open space and adjacent SDRP CTC Trail

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Attorneys for Defendant-in-Intervention
SURF CUP SPORTS, LLC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
NORTH COUNTY DIVISION

FAIRBANKS POLO CLUB HOMES, a
California non-profit, mutual benefit
corporation; SCOTT C. KAMERON, an
individual,

Plaintiff,

v.

CITY OF SAN DIEGO and DOES 1 through
25, inclusive,

Defendant, and

SURF CUP SPORTS, LLC,

Defendant-in-Intervention.

Case No. 37-2023-00015356-CU-OR-NC

Hon. Earl H. Maas III (Dept. N-28)

**DEFENDANTS CITY OF SAN DIEGO
AND SURF CUP SPORTS, LLC'S
NOTICE OF *EX PARTE*
APPLICATION AND *EX PARTE*
APPLICATION FOR STAY OF
PROCEEDINGS AND TO VACATE
THE TRIAL DATE; MEMORANDUM
IN SUPPORT THEREOF**

[Filed Concurrently With: (1) Declarations
of Jenny K. Goodman, Randy S. Grossman,
and Christopher Chase in support of *Ex*
Parte Application, and (2) Proposed Order]

Date: June 30, 2025
Dept.: N-28
Time: 8:30 a.m.

Complaint Filed: April 13, 2023
FAC Filed: May 16, 2025
Trial Date: December 5, 2025

NOTICE OF EX PARTE APPLICATION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on June 30, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department N-28 of the Superior Court of California, County of San Diego, located at 325 S. Melrose, Vista, CA 92081, Defendant City of San Diego (“City”) and Defendant-in-Intervention Surf Cup Sports LLC (“Surf Cup”) (collectively, “Defendants”), will and hereby do apply *ex parte* for a stay of proceedings and to vacate the current December 5, 2025 trial date. Defendants also request this Court make a determination that the case *Fairbanks Polo Club Homes v. Ocean Industries, Inc.* (Case No. 25CU021914N) currently pending in Department 27 is deemed related.

This Application is made pursuant to California Rules of Court 3.1200 *et seq.* As set forth more fully in the attached Memorandum, this Application is made on the grounds that the City intends to present a resolution at City Council which would result in a termination of the use restrictions that are the subject of this litigation. The City Attorney’s Office is trying to docket that resolution before the August recess, but it is not certain when the routing of that item can be accomplished and the matter docketed. At the latest, it is anticipated that the resolution will be docketed in September.

The use restrictions that are the subject of this lawsuit are contained within Exhibit B to the 1983 Corporation Grant Deed that conveyed the property commonly known as the Polo Fields to the City. Exhibit B includes a provision that allows for amendment or termination of the use restrictions so long as the original grantor (or its successor as defined in that provision) owns any part of the Benefitted Land (a term defined in Exhibit B). Until recently, the City (and all other parties) believed that Ocean Industries, Inc. (“Ocean”), the successor by merger to the original grantor, no longer owned any of the Benefitted Land. However, the City has recently determined that Ocean does, in fact, own two parcels of property within the Benefitted Land. Ocean, as Grantor, is agreeable to terminating the use restrictions contained in Exhibit B to the Grant Deed with the City, as Grantee.

On June 23, 2025, Senior Lead Deputy City Attorney Jenny K. Goodman briefed the City Council in closed session and has been instructed to place on the open session docket a resolution authorizing the mayor or his designee to enter into a termination agreement with Ocean.

Plaintiffs Fairbanks Polo Club Homes and Scott C. Kameron's (collectively, "**Plaintiffs**") lawsuit is based entirely on the use restrictions set forth in Exhibit B to the Grant Deed. Specifically, Plaintiffs seek to enforce their interpretation of the use restrictions in this lawsuit. Therefore, if the City Council adopts a resolution allowing the City to enter into a termination agreement with Ocean thereby eliminating Exhibit B from the Grant Deed, Plaintiffs' entire case will become moot. Considering this potentially case-dispositive event, a stay of the proceedings pending the outcome of the City's consideration of the resolution to enter into a termination agreement with Ocean is appropriate and in the interests of judicial economy and efficiency. Vacating the trial date is also necessary to avoid prejudice to the parties in light of the requested stay because there are numerous impending discovery and trial-related deadlines in July and August.

Significantly, Ocean has agreed to terminate the Grant Deed with the City, subject to City Council approval. (Declaration of Christopher Chase, ¶ 3.)

Additionally, Defendants request this Court make a determination on the Notice of Related Case that Plaintiffs filed with their First Amended Complaint. All parties agree that the case *Fairbanks Polo Club Homes v. Ocean Industries, Inc.* (Case No. 25CU021914N) should be deemed related and transferred to this Court.

As required by California Rule of Court 3.1202(a), below are the names and contact information of counsel for Plaintiffs:

Dave Peck
COAST LAW GROUP
1140 South Coast Highway 101
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Counsel for Ocean Industries:

Christopher Chase
Law Office of Christopher Chase
1678 Northwood Road
Nipomo, CA 93444
(310) 795-4105

The parties met and conferred on Tuesday, June 24, 2025, at 9:00 a.m. (*See* Declaration of Jenny K. Goodman, ¶ 5.) Written *ex parte* notice of this Application was given to counsel for Plaintiffs on Tuesday, June 24, 2025 at 4:36 p.m. by email to all counsel. (*Id.* ¶ 6, Exh. B.) Plaintiffs' response to the *ex parte* notice is that they do not oppose a 90-day stay, but for reasons other than those in this Application. (*Id.* ¶ 5, Exh. B.)

Plaintiffs filed a Notice of Related Case for the lawsuit entitled *Fairbanks Polo Club Homes v. Ocean Industries* (Case No. 25CU021914N) currently pending in Department 27. Defendants herein request the case be deemed related. Counsel for Ocean, Chris Chase, concurs with the requested relief. (Declaration of Christopher Chase, ¶ 4.) It is unlikely Mr. Chase will attend the *ex parte* hearing because his office is a five-hour drive from the courthouse. If possible, Mr. Chase could appear via Teams. (*Id.* ¶ 5.)

This Application is based upon the Memorandum attached hereto, the Declarations of Jenny K. Goodman, Randy S. Grossman and Christopher Chase filed concurrently herewith, the Proposed Order for Stay of Proceedings submitted herewith, the pleadings, papers, and records on file herein, and on such oral and documentary evidence as may be presented at the time of hearing.

1 Dated: June 25, 2025

HEATHER FERBERT, CITY ATTORNEY

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By: /s/ Jenny K. Goodman

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Jenny K. Goodman
Attorneys for Defendant
CITY OF SAN DIEGO

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6 Dated: June 25, 2025

MANATT, PHELPS & PHILLIPS, LLP

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By: /s/ Randy S. Grossman

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Randy S. Grossman
Viral Mehta
Andrew Beshai
Victoria E. Lew
Attorneys for Defendant-in-Intervention
SURF CUP SPORTS, LLC

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MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION

I. INTRODUCTION

This case involves a dispute over use restrictions in a 1983 Grant Deed pertaining to property commonly referred to as the Polo Fields. Plaintiffs Fairbanks Polo Club Homes (“FPCH”) and Scott C. Kameron (collectively, “**Plaintiffs**”) allege that the City of San Diego (“**the City**”), the “Grantee” under the Grant Deed, and Surf Cup Sports, LLC (“**Surf Cup**”), which leases the Polo Fields from the City (collectively, “**Defendants**”) have violated certain use restrictions contained in Exhibit B to the Grant Deed. Plaintiffs seek declaratory and injunctive relief to compel compliance with the use restrictions contained in Exhibit B to the Grant Deed.

Exhibit B to the Grant Deed expressly allows the Grantor and the Grantee to amend or terminate the use restrictions without approval of any of the benefitted homeowners if the grantor owns any part of the Benefitted Land and if the City owns any of the Affected Land (a defined term in Exhibit B which encompasses the Polo Fields). While the City’s ownership of the Affected Land has always been known, the parties have long believed that Ocean Industries, Inc., (“**Ocean**”), the successor by merger to the original grantor, did not own any land within the Benefitted Land as required to trigger the termination provision. Recently, however, the City has discovered that Ocean does, in fact, own two parcels of land within the Benefitted Land. Based on this new information, **Ocean, as Grantor, is agreeable to terminating the use restrictions contained in Exhibit B to the Grant Deed with the City, as Grantee.** To enter into a termination agreement with Ocean pursuant to Exhibit B to the Grant Deed, the City Council has instructed the City Attorney’s Office to docket a resolution for consideration in open session of the proposed termination of the use restrictions. The City Attorney’s Office is endeavoring to docket this item prior to the August recess but it is not certain if there will be sufficient time to get this matter docketed in that time frame. At the latest, it could be docketed soon after the August recess. The City could not contemplate termination of the use restrictions sooner because it only recently discovered the information that triggers the termination provision in Exhibit B.

1 If the City Council adopts the resolution to enter into a termination agreement, Plaintiffs'
2 lawsuit would become moot because all the claims, and the relief sought, are rooted exclusively
3 in the use restrictions contained in Exhibit B to the Grant Deed. The termination agreement would
4 eliminate Exhibit B to the Grant Deed

5 In light of this new development, Defendants request that the Court stay proceedings in
6 this lawsuit and vacate the current trial date pending the outcome of the City Council action
7 regarding the termination of the use restrictions in the interest of judicial economy. The next six
8 weeks contain a significant number of case deadlines, including (i) four depositions (three of
9 which are person-most-qualified (“PMQ”) depositions); (ii) deadlines to respond to over 160
10 recently propounded discovery requests (from new counsel and to the recently added plaintiff),
11 collectively; (iii) the expert disclosure deadline; and (iv) the deadline to file motions for summary
12 judgment. Given that the impending public hearing could result in a vote that moots this entire
13 case, Defendants seek a stay pending the outcome of the vote. This stay is appropriate because it
14 would preserve the resources of both the Court and the parties, and it would obviate the need for
15 potentially unnecessary heavy motion practice and continued extensive discovery.

16 Defendants and Ocean additionally request that the Court deem the reformation lawsuit
17 brought by Plaintiffs against Ocean (Case No. 25CU021914N) related to this case pursuant to the
18 Notice of Related Case that Plaintiffs filed. All parties hereto concur that the reformation lawsuit
19 is related to this case.

20 **II. STATEMENT OF FACTS**

21 **A. Procedural Posture of Litigation and Impending Deadlines.**

22 The original complaint in this case was filed on April 13, 2023, solely against the City. On
23 November 3, 2023, this Court granted Surf Cup the right to intervene as a defendant in the action.
24 On May 16, 2025, after Plaintiffs brought in new litigation counsel, Plaintiffs filed their First
25 Amended Complaint (“FAC”) to correct the legal name of the homeowners’ association and to
26 add an individual plaintiff for purposes of standing. The FAC alleges that the City and Surf Cup
27 have violated the use restrictions contained in Exhibit B to the 1983 Grant Deed and seeks a
28 declaration of rights and future enforcement of the use restrictions. Plaintiffs also filed a separate

lawsuit against Ocean seeking reformation of an assignment of rights that Ocean executed in favor of Fairbanks Polo Club Homeowners Association in 2017. That assignment, in the name of an entity that does not legally exist, purports to assign residual rights that Ocean may have held pursuant to the 1983 Grant Deed. Ocean's response to that lawsuit is currently due on June 30, 2025 (the same day as this *ex parte* has been scheduled).

The parties have conducted substantial written discovery already in this case and devoted significant time and effort to mediation and other settlement efforts to no avail. The deadline to file motions for summary judgment is quickly approaching. There are several significant case milestones in the next six weeks. After Plaintiffs substituted in current counsel (in May 2025), Plaintiffs served additional written discovery on Defendants. Plaintiffs propounded over 60 new requests for production, requests for admission, and interrogatories to the City and Surf Cup. (Declaration of Randy S. Grossman ("**Grossman Decl.**"), ¶ 2.) Surf Cup has served the newly added plaintiff, Scott C. Kameron, with requests for production, requests for admission, special interrogatories, and form interrogatories. (*Id.*) Responses to all these discovery requests are due at various points throughout July. (*Id.*) In addition, there are three PMQ depositions currently set in late June and early July, and the parties are currently working to schedule the deposition of Plaintiff Scott C. Kameron in Colorado where he claims to be a permanent resident. (*Id.* ¶ 3.) The parties' expert exchange deadline is July 31, 2025, and the deadline to file a motion for summary judgment, which Surf Cup and the City anticipate filing, is August 13, 2025. (*Id.* ¶ 4.) In sum, there is a significant amount of work to be done on this case in the next six weeks, some of which will necessitate heavy motion practice and expend the Court's resources.

B. Plaintiffs' Allegations in this Action.

In 1983, Watt Industries, San Diego, Inc. (WISD) conveyed some of its property to the City, which includes the Polo Fields but which was subject to certain use restrictions as listed in Exhibit B to the Grant Deed. (FAC, ¶ 1.) Exhibit B defines the property conveyed to the City as the "Affected Land" and states that the use restrictions are for the benefit of future homeowners on nearby property that WISD still owned and planned to develop. (FAC ¶ 23.)

1 Plaintiffs allege that Exhibit B to the Grant Deed imposes various use restrictions on the
2 Affected Land and that Defendants have allegedly violated these use restrictions by engaging in
3 prohibited uses of the Polo Fields. (FAC ¶ 25.) Plaintiffs seek declaratory relief that Defendants
4 have violated the use restrictions in Exhibit B to the Grant Deed, as well as injunctive relief
5 enjoining future prohibited uses of the Polo Fields. (FAC at p. 16.) Plaintiffs' claims and relief are
6 rooted exclusively in the use restrictions contained in Exhibit B to the Grant Deed. Defendants
7 deny any wrongdoing or any violations of the Grant Deed.

8 **C. The City and Ocean Plan to Terminate Exhibit B to the Grant Deed.**

9 Exhibit B to the Grant Deed contains a termination provision, which provides that so long
10 as WISD or "its successors or assigns . . . owns any portion of the Benefited Land," then the
11 grantor may agree with the City to terminate the use restrictions in Exhibit B of the Grant Deed..
12 (Declaration of Jenny K. Goodman ("Goodman Decl."), Ex. A, ¶ 17.) Plaintiffs acknowledge
13 that Ocean is the successor-by-merger to WISD. (FAC p. 7, ¶ 76.)

14 To address concerns regarding Plaintiffs' standing in this case, the City retained a title
15 expert to examine the ownership within the Benefitted Land area. The expert recently discovered
16 that Ocean still owns two parcels of property within the Benefited Land. (Goodman Decl. ¶ 3.)
17 Therefore, the conditions which trigger the termination provision in Exhibit B to the Grant Deed
18 have been met. Upon learning of the ownership of the two parcels, Ocean is agreeable to
19 terminating Exhibit B to the Grant Deed with the City. (Declaration of Christopher Chase
20 ("Chase Decl."), ¶ 3.) On June 23, 2025, the City Council met in closed session and instructed
21 the City Attorney's Office to move forward with a public hearing to consider a resolution
22 authorizing the mayor or his designee to enter into a termination agreement with Ocean.
23 (Goodman Decl. ¶ 5.) If the City Council adopts the resolution and the City enters into a
24 termination agreement with Ocean, Exhibit B to the Grant Deed would no longer exist and there
25 would no longer be any use restrictions to interpret or enforce, thereby mooted Plaintiffs' claims.

26 Considering this potentially case-dispositive event, Defendants seek a stay of the litigation
27 and request that this Court vacate the current trial date pending the outcome of the City's public
28

1 vote to adopt a resolution that would result in a termination of the use restrictions in Exhibit B to
2 the Grant Deed.

3 **III. GOOD CAUSE WARRANTS A STAY OF PROCEEDINGS**

4 “Every court has the inherent power, in furtherance of justice, to regulate the proceedings
5 of a trial before it; to effect an orderly disposition of the issues presented; and to control the
6 conduct of all persons in any manner connected therewith. The exercise of this power is a matter
7 vested in the sound discretion of the trial court . . .” *Schimmel v. Levin*, 195 Cal. App. 4th 81, 87
8 (2011). Part of the Court’s inherent powers is to ensure the orderly administration of justice and
9 to control its own calendar and docket. *Walker v. Superior Court*, 53 Cal. 3d 257, 266-67 (1991)
10 (“We have often recognized the ‘inherent powers of the court . . . to insure the orderly
11 administration of justice.’”). Thus, the Court has the inherent power to grant a stay in this matter if
12 it determines that the interests of justice and judicial economy will be served. *Thompson v.*
13 *Continental Ins. Co.*, 66 Cal. 2d 738, 747 (1967); *see also* 1A *Corpus Juris Secundum* Actions
14 §317 (“The granting of a stay of proceedings being largely a matter for the discretion of the court,
15 the grounds on which a stay will be granted vary according to the requirements of the particular
16 case in which the stay is sought. Generally, proceedings may be stayed to ensure that justice is
17 done or to provide for the efficient and economic use of judicial resources.”).

18 Good cause exists for a stay of proceedings pending the forthcoming City Council
19 meeting to adopt a resolution that would ultimately terminate the use restrictions contained in
20 Exhibit B to the Grant Deed. The City Attorney’s Office is trying to docket this item before the
21 City Council’s August recess, but if it cannot get on the agenda before the break, it is anticipated
22 that it will be docketed soon thereafter. (Goodman Decl. ¶ 5.) If the City Council authorizes the
23 termination agreement with Ocean, the use restrictions in Exhibit B will no longer be in force,
24 and Plaintiffs’ lawsuit will be moot.

25 Given the case-dispositive nature of this vote, a stay of the proceedings in this case and
26 vacating the trial date would further the interests of judicial economy—especially considering the
27 significant deadlines and discovery, which are anticipated to occur over the next six weeks. The
28 parties need not expend significant time and resources litigating the terms and provisions of

Exhibit B to the Grant Deed for the next six weeks if the exhibit may be terminated in short order. Not only are the parties currently preparing responses to multiple sets of written discovery, but there are also four depositions set over the next month. (Grossman Decl. ¶¶ 2-3.) In addition, absent a stay, the parties would have to expend considerable resources preparing expert disclosures, which are due at the end of July, and summary judgment motions, which are due in early August. (*Id.* ¶ 4.)

A stay of proceedings is appropriate here for the convenience of the parties, the interests of justice, and judicial economy. Indeed, requiring the parties to prepare for and take four depositions, respond to over 160 discovery requests, prepare and file summary judgment motions, and engage in expert discovery—all while the claims at issue may be mooted soon—would result in a substantial waste of judicial and party time and resources.

Defendants request that the Court set a status conference in October 2025 regarding the status of the City Council’s docket and any outcome thereof.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court order a stay of proceedings and vacate the current trial date until after the City Council can consider the resolution authorizing the City to execute a termination agreement with Ocean. Defendants further request the Court deem the reformation lawsuit against Ocean (Case No. 25CU021914N) related.

Dated: June 25, 2025

HEATHER FERBERT, CITY ATTORNEY

By: /s/ Jenny K. Goodman
Jenny K. Goodman
Attorneys for Defendant
CITY OF SAN DIEGO

1 Dated: June 25, 2025

MANATT, PHELPS & PHILLIPS, LLP

2

3

By: /s/ Randy S. Grossman
Randy S. Grossman
Viral Mehta
Andrew Beshai
Victoria E. Lew
Attorneys for Defendant-in-Intervention
SURF CUP SPORTS, LLC

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PROOF OF SERVICE

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Manatt Phelps & Phillips LLP, 2049 Century Park East, Suite 1700, Los Angeles, California 90067. On June 25, 2025, I served a true and correct copy of the within document(s):

**DEFENDANTS CITY OF SAN DIEGO AND SURF CUP SPORTS, LLC'S
NOTICE OF *EX PARTE* APPLICATION AND *EX PARTE* APPLICATION
FOR STAY OF PROCEEDINGS AND TO VACATE THE TRIAL DATE;
MEMORANDUM IN SUPPORT THEREOF**

on the interested parties in this action as follows:

David A. Peck, Esq.
Livia B. Beaudin, Esq.
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Email: livia@coastlawgroup.com
Email: kirstie@coastlaw.com

Attorneys for Plaintiff
FAIRBANKS POLO CLUB
HOMEOWNER'S ASSOCIATION

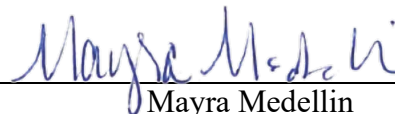
Heather Ferbert, Esq.
M. Travis Phelps, Esq.
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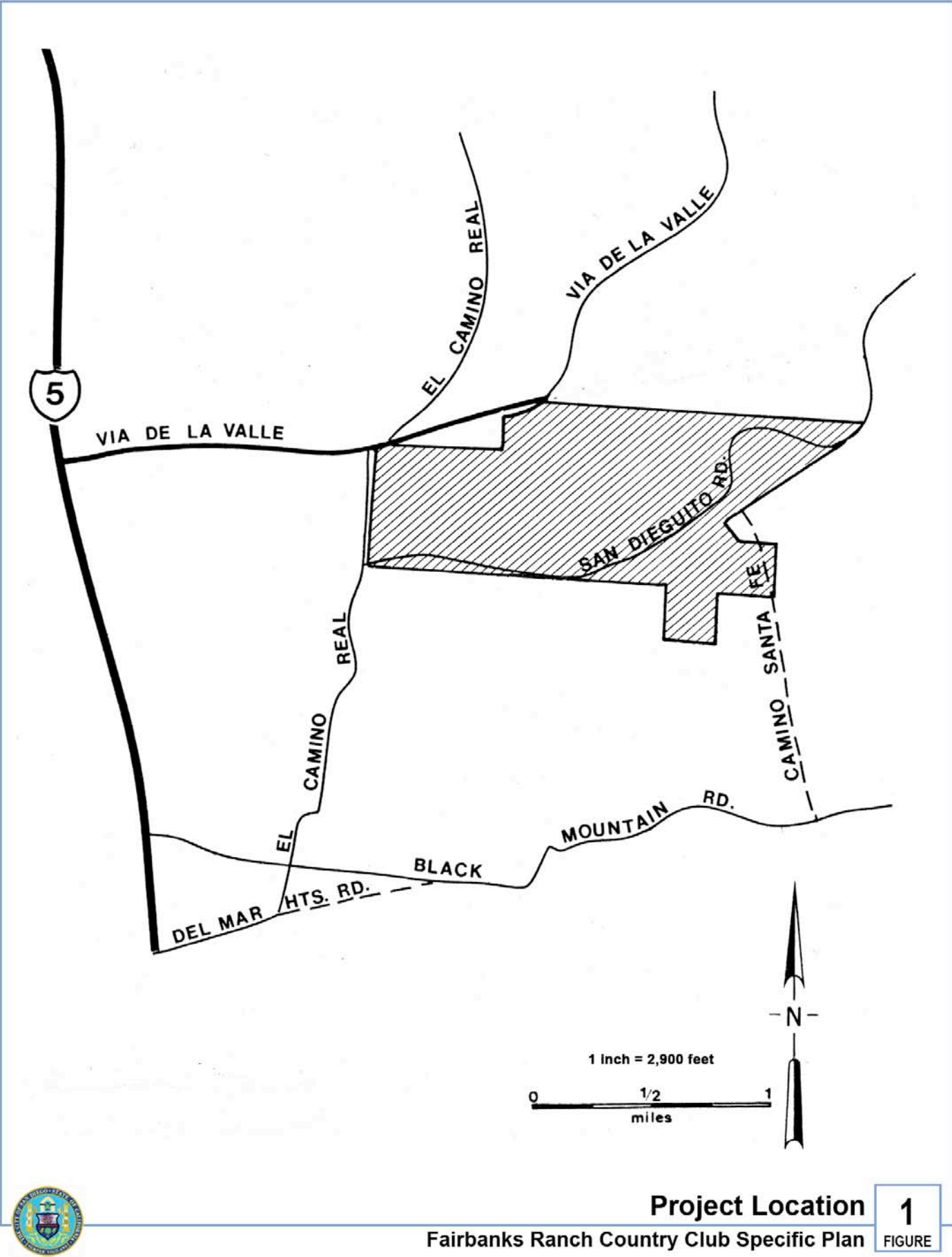
Attorneys for Defendant
CITY OF SAN DIEGO

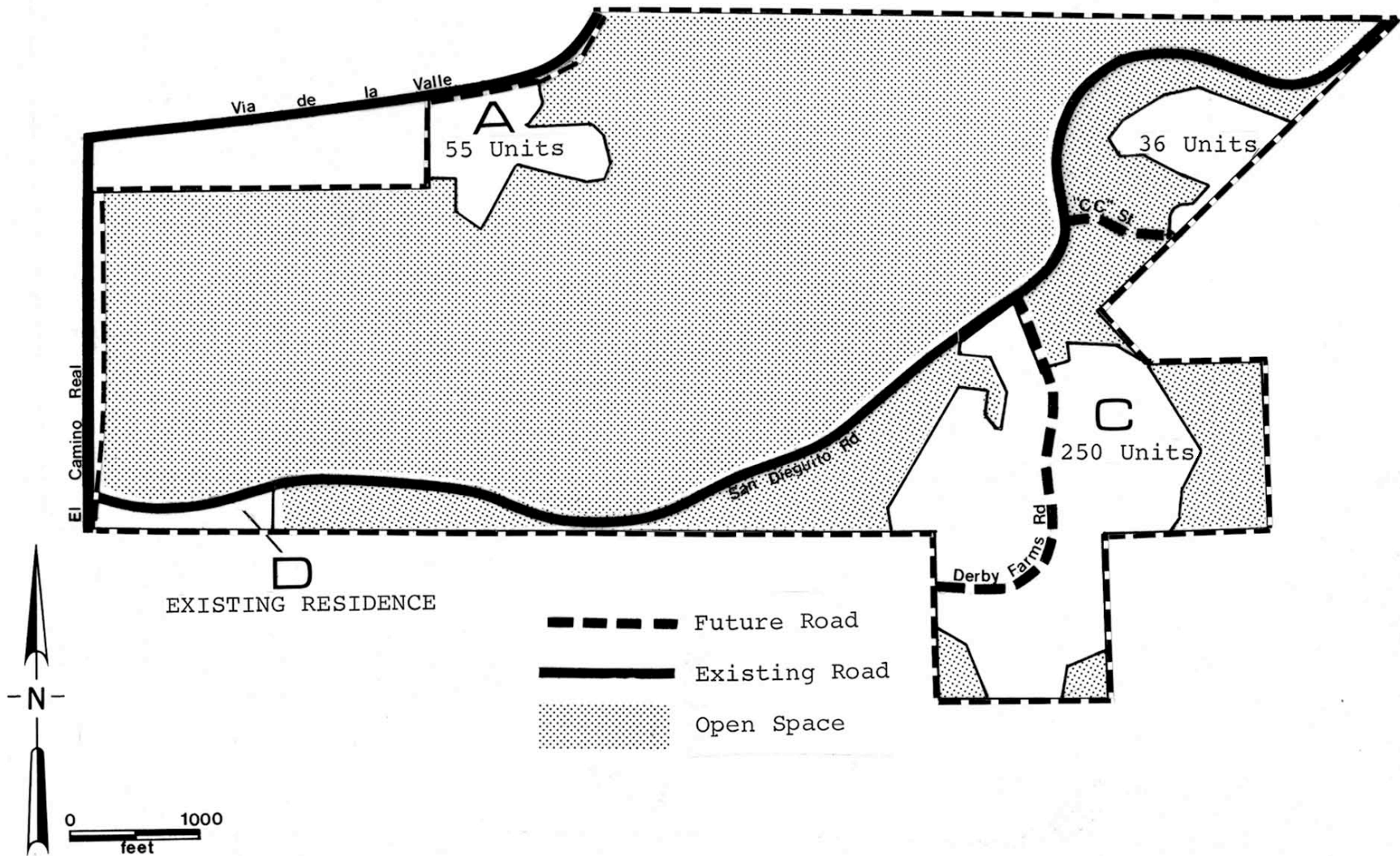
Christopher Chase, Esq.
Law Office of Christopher Chase
1678 Northwood Road
Nipomo, CA 93444
Telephone: (310) 795-4105
Email: cchaselaw@gmail.com

By transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the email address(es) set forth above. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 25, 2025, at Los Angeles, California.


Mayra Medellin





Fairbanks Ranch Country Club Specific Plan

3
FIGURE

RECORDING REQUESTED BY
Deed to open space lots and golf course in Fairview Country Club Unit No. 1
 AND WHEN RECORDED MAIL TO
 CITY CLERK
 202 "C" ST.
 SAN DIEGO CA
 92101

1878

82964

RECORDED IN
 OFFICIAL RECORDS
 OF SAN DIEGO COUNTY, CA.

1983 OCT 24 PM 2:21

VERA L. LYLE
 COUNTY RECORDER

MAIL TAX STATEMENTS TO

NO FEE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Grant Deed

486-073-01

TO 1921 CA (12-74)

THIS FORM FURNISHED BY TICOR TITLE INSURERS

A.P.N.

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ none

() computed on full value of property conveyed, or

() computed on full value less value of liens and encumbrances remaining at time of sale.

() Unincorporated area: () City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, WATT INDUSTRIES/SAN DIEGO, INC.

a corporation organized under the laws of the State of California

hereby GRANTS to

THE CITY OF SAN DIEGO, a municipal corporation

the following described real property in the City of San Diego
 County of San Diego, State of California:

See legal description of property granted hereby set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

The covenants, conditions and restrictions set forth on Exhibit "B" attached hereto are by this reference made a part hereof.

RESERVING THEREFROM, until December 31, 2044, as a mineral interest and not as a royalty interest, all of the minerals of every kind, including, but not limited to, all oil, gas, hydrocarbons and associated substances in, under or that may be extracted, produced and saved from said real property but without the right of entry to the surface of said real property or the top 500 feet of the subsurface of said real property for the purposes of exploring for, developing and removing such materials.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its Vice President and Assistant Secretary thereunto duly authorized.

Dated: September 19, 1983

WATT INDUSTRIES/SAN DIEGO, INC.

STATE OF CALIFORNIA } SS.

COUNTY OF San Diego

On September 19, 1983 before me, the under-

signed, a Notary Public in and for said State, personally appeared Stephen C. Games, known

to me to be the Vice President, and

Robert Mincer, known to me to be

Asst. Secretary of the Corporation that executed the

within instrument, known to me to be the persons who executed the

within instrument on behalf of the Corporation therein named, and

acknowledged to me that such Corporation executed the within instru-

ment pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Diane E. Thatcher

By [Signature] Vice President
[Signature] Assistant Secretary



(This area for official notarial seal)

Title Order No.

Escrow or Loan No.

1879

EXHIBIT "A" TO GRANT DEED

Lots 1, 2, 4, 9 and 10 of Map No. 10730 of
FAIRBANKS COUNTRY CLUB NO. 1 filed in the
Office of the County Recorder of San Diego
County, on SEPTEMBER 29, 1983

This is to certify that the interest in real property conveyed
by this instrument to the City of San Diego, a municipal
corporation, is hereby accepted by the undersigned officer
on behalf of the City of San Diego, pursuant to authority
conferred by Resolution No. 198686, adopted by the Council
of the City of San Diego on December 18, 1969, and the
grantee consents to recordation thereof by its duly
authorized officer.

Dated 9-27-83 By [Signature]
ASSISTANT TO THE City Manager

AFTER RECORDING, MAIL TO CITY CLERK

R- 259343

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EXHIBIT "B" TO GRANT DEED

BY THE CONVEYANCE AND ACCEPTANCE of this Grant Deed, WATT INDUSTRIES/SAN DIEGO, INC., a California corporation ("Grantor") and THE CITY OF SAN DIEGO, a municipal corporation ("Grantee"), declare, covenant and agree as follows:

1. Grantor is the owner, owns an interest in or is a partner of a partnership which is the owner (or formerly was such owner) of that certain real property located in the City of San Diego, County of San Diego, California, more particularly described as follows:

Lots 1 through 18, inclusive, of Parcel Map No. 12638 filed in the Office of the County Recorder of San Diego County on March 25, 1983

("Benefited Land").

2. Pursuant to that certain Percentage Lease between Grantor and Grantee approved by San Diego City Council Resolution No. R-257594 on December 6, 1982 ("Lease"), the real property conveyed by this Grant Deed consists of (a) premises leased for the purpose of constructing and maintaining a country club, golf course and related activities, more particularly described as follows:

Lot 2 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on SEPT. 29, 1983

("Country Club"), and (b) real property contiguous to the Country Club to be preserved and maintained as "Open Space" areas, more particularly described as follows:

Lots 1, 4, 9 and 10 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on SEPT. 29, 1983.

The Open Space is referred to herein as the "Affected Land", and, pursuant to the Lease, is to be maintained by Grantor.

3. The Affected Land is presently designated open space and as floodway zone, floodplain fringe zone and Agricultural zone (A-1-1) by the City of San Diego Progress Guide and General Plan, the Fairbanks Country Club Specific Plan and the City of San Diego's zoning maps.

4. Grantee for and on behalf of itself, and on behalf of each successive owner, during its, his, her or their ownership of any portion of the Affected Land herein granted by Grantor to Grantee, and each person having any interest in the Affected land derived through any such owner, covenants, and agrees that it, he, she or they:

(a) Shall keep and preserve the Affected Land as Open Space in a natural condition as near as possible, or may permit it to be utilized for any or all of the following purposes and no others:

(i) All agricultural uses relating to the growing, harvesting, processing or selling of field or grain crops, fruit and vegetables;

(ii) Passive non-commercial recreational uses (e.g., picnicking, walking, hiking, and similar activities), and reasonable support facilities, including any restrooms and parking facilities as may be reasonably required, for such uses;

(iii) Active non-commercial recreational uses not involving large assemblages of people or automobiles, nor involving the use of motor-driven machines or vehicles (e.g., equestrian activities, jogging, frisbee, and similar activities).

(b) Shall, notwithstanding any other provision hereof, prevent any of the following purposes, uses and activities from being conducted upon the Affected Land:

(i) Apiaries;

(ii) Aviaries;

(iii) Parking lots which are designated and intended to serve facilities located on the Affected Land other than as specifically allowed above;

(iv) Single-family dwellings;

(v) Churches, schools or day care facilities;

(vi) Public utility substations;

(vii) Raising, killing or dressing of livestock, poultry, fowl, rabbits or any other animal;

(viii) Airways, taxiways and pads of heliports and helistops;

(ix) Establishments or enterprises involving large assemblages of people or automobiles, including, but not limited to, recreational facilities publicly or privately operated;

(x) Fairgrounds;

(xi) Natural resources development and utilization, including, but not limited to, extracting, processing, storing, selling and distributing sand, gravel, rock, clay, decomposed granite and soil, and the manufacturing, producing, processing, storing, selling and distributing of asphaltic concrete, Portland Cement concrete, concrete products and clay products;

(xii) Racetracks;

(xiii) Travel trailer parks together with incidental facilities for the convenience of occupants;

(xiv) Dams and reservoirs;

(xv) Ground water replenishment works, including, but not limited to, diversion dams, percolation beds, spreading grounds and injection wells; provided, however, that desiltation facilities are expressly permitted to be built and maintained upon the Affected Land;

(xvi) Accessory buildings, other than as may be specifically allowed hereinabove, and uses customarily incidental to any of the above uses, including, but not limited to:

(A) The boarding and lodging of farm or other employees;

(B) Construction and maintenance of living quarters for farm or other employees with or without their immediate families;

(C) Lighted signs, commercial signs or unlighted signs, single-faced or double-faced exceeding 12 square feet in area for each face;

(xvii) Any other use similar in character to the uses, including accessory uses, enumerated in this section and inconsistent with the purpose and intent of this deed restriction.

5. (a) Grantee or its successors shall permit no use of the Affected Land in violation of the provisions hereof. In the event any use is contemplated which is not specifically permitted by the terms of this document, such use shall not be allowed without Grantee having first obtained Grantor's (or Grantor's successors') written consent thereto. Grantor or its successors shall not unreasonably withhold such consent. If Grantor or its successors disapprove a contemplated use, such disapproval shall be in writing and shall specify, with reasonable particularity, the reason(s) for such disapproval. If Grantor or its successors fail either to so approve or disapprove such contemplated use within thirty (30) days after the same have been submitted to Grantor or its successors, it shall be conclusively presumed that Grantor or its successors have approved such use. Such submission shall be deemed effective if Grantee submits its written request for consent to Grantor, or its corporate successors, and any homeowners associations in the Benefited Land area and posts signs describing such proposed use in at least twenty (20) locations reasonably calculated to give adequate notice of such proposed use to all of Grantor's successors.

(b) Grantor and Grantee agree that in the event of a dispute between them or their successors with respect to whether Grantor or its successors have unreasonably withheld their approval of a contemplated use submitted in accordance with the foregoing, they shall submit any such dispute to arbitration in accordance with the following provisions:

(i) Within fifteen (15) days after the written demand by either of the parties for arbitration, each of the

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parties shall choose an arbitrator and give the other written notice of such choice, or in case of the failure of either party so to do, the other party shall have the right to appoint an arbitrator to represent the defaulting party. The two arbitrators thus appointed (in either manner) shall select and appoint in writing a third arbitrator and give written notice thereof to Grantor and Grantee or their successors, or if within ten (10) days after the appointment of said second arbitrator, the two arbitrators shall fail to appoint a third, then either party shall have the right to make application to the Superior Court of San Diego County to appoint such third arbitrator.

(ii) The three arbitrators so appointed (in either manner) shall promptly fix a convenient time and place for hearing the matter to be arbitrated and shall give written notice thereof to each party at least ten (10) days prior to the date so fixed. The hearing date shall be set for not more than sixty (60) days from the date of the demand for arbitration unless it is necessary to apply to the Superior Court for appointment of a third arbitrator. In such latter event, the hearing date shall be set for not more than thirty (30) days after the date such third arbitrator is so appointed. The arbitrators shall, within ten (10) business days after the hearing, render their decision with respect to whether Grantor or its successors have unreasonably withheld their approval of a contemplated use submitted to them.

(iii) The decision or award of the majority of the arbitrators shall be final and nonappealable except that upon the satisfaction of the conditions set forth in Section 1286.4 of the California Code of Civil Procedure, the decision or award of the majority of the arbitrators may be vacated upon the grounds set forth in Section 1286.2 of said Code of Civil Procedure. Further, any decision or award of the majority of the arbitrators may, upon satisfaction of the conditions set forth in Section 1286.8 of the Code of Civil Procedure, be corrected in accordance with the provisions of Section 1286.6 of said Code of Civil Procedure.

(iv) If two of the three arbitrators first appointed as aforesaid shall fail to reach an agreement in the determination of the matter in question, the same shall be decided by three new arbitrators, who shall be appointed and shall proceed in the same manner and within the same time frame, as hereinabove set forth, and said process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

(v) Each party shall pay the costs and fees of the arbitrator chosen by such party and shall pay one-half of such costs and fees of the third arbitrator.

(c) Neither Grantor nor its successors shall be liable in damages to anyone on whose behalf a contemplated use is submitted for approval. Every person who submits a contemplated use for approval, either directly or through Grantee, agrees that he, she or it will not bring any action or suit against Grantor or its successors to recover any such damages.

6. Notwithstanding any other provision hereof, for a period of ten (10) years following the date of execution of this Grant

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Deed, Grantor, or its successors, shall have the right to acquire easements from Grantee, at no cost, for utilities and public right of way required by governmental agencies, including Grantee, to serve the Benefited Land.

7. Notwithstanding any other provision hereof, Grantee shall have the right to establish underground utility easements upon the Affected Land provided said easements do not adversely affect or interfere with Open Space or Golf Course activities conducted on the Country Club portion of the deeded property.

8. Notwithstanding any other provision hereof, Grantor reserves the right to relocate all or a portion of Via de la Valle upon the Affected Land upon the request of Grantee's City Engineer.

9. Notwithstanding any other provision hereof, Grantor reserves a water utility easement in gross, in, over, under and across the Affected Land and the Benefited Land, to serve the Country Club, for the purpose of importing water from public or private sources to benefit the Country Club. However, in exercising its rights under this provision, Grantor will not unreasonably interfere with Grantee's use of, nor the open space nature of, the Affected Land.

10. Notwithstanding any other provision hereof, Grantor shall be permitted to build and maintain upon the Affected Land no more than five (5) signs promoting and advertising Olympic Games and/or Grantor's real property development upon the Benefited Land and the Country Club portion of the deeded property. The locations, style and design of such signs shall be at Grantor's sole discretion, subject to applicable City ordinances, as shall the period of time during which such signs, or any of them, shall remain erected. In no event, however, shall any such signs remain erected after ten (10) years from the date of execution of this Grant Deed.

11. Monetary damages for the breach of the covenants contained herein are declared to be inadequate and Grantee or its successors may be enjoined by any court of competent jurisdiction from commencing or proceeding with the construction of any improvements to, or permitting any use upon, the Affected Land which are in violation of the covenants set forth herein, or, if an improvement is constructed, may be ordered by any court of competent jurisdiction to remove such improvements.

12. Each successive owner, during its, his, her or their ownership, of any portion of the Affected Land, and each person having any interest in the Affected land derived through any such owner, shall be bound hereby for the benefit of the Benefited Land. Each successive owner, during its, his, her or their ownership, of any portion of the Benefited land, and each person having any interest in the Benefited Land derived through the Grantor, shall be benefited by the covenants contained herein, it being intended that the burden and benefit of the covenants shall run with the land.

13. Any violation of the covenants herein contained shall be deemed to be a continuing violation hereof and no delay in the delivery of any notice of any violation hereof or in the enforcement of any rights or the seeking of any remedies provided hereunder shall constitute, or be deemed to constitute, a waiver of

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the right to give such notice, enforce such right or seek such remedy at any time after the occurrence of such violation.

14. Except in the event of arbitration in accordance with Paragraph 5 above, if any owner(s) of the Affected Land or the Benefited land commences litigation for the judicial interpretation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and other costs incurred.

15. The covenants herein contained are for the benefit of the Benefited Land and have been made with the intent of satisfying the requirements of Section 1468 of the California Civil Code.

16. In the event any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect the validity of any other term, covenant, condition, provision or agreement herein contained.

17. So long as WATT INDUSTRIES/SAN DIEGO, INC., a California corporation, its successors or assigns, or any partnership of which WATT INDUSTRIES/SAN DIEGO, INC. is a partner, owns any portion of the Benefited Land, and THE CITY OF SAN DIEGO, a municipal corporation, owns any portion of the Affected Land, the provisions contained within this Exhibit "B" to this Grant Deed may be terminated or amended by an instrument in writing executed by both and recorded in the Office of the County Recorder of San Diego County, California, without the need for approval by any other owner of any portion of the Benefited Land or the Affected Land. The term "successors or assigns" as used in this Paragraph only, shall mean the named corporation or any person or entity hereafter acquiring all of the then existing assets of the same by purchase, liquidation, merger or reorganization.

GRANTEE hereby accepts the above covenants, conditions and restrictions to this Grant Deed. These covenants, conditions and restrictions shall terminate and be of no further force or effect at 11:59 p.m. on December 31, 2044.

THE CITY OF SAN DIEGO

By *Juane Hoover*
ASSISTANT TO THE City Manager

APPROVED as to form and legality this 27 day of September,
1983.

JOHN W. WITT, City Attorney

By *W. J. Witt*
Deputy

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