



Real Estate Assets Department
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SURF CUP SPORTS LLC

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AGREEMENTS



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USE RESTRICTIONS AFFECTING POLO FIELDS/SURF CUP SITE
(January 2023)

I. Executive Summary

The Polo Fields site and the adjacent Fairbanks Country Club are subject to recorded use restrictions that will remain in effect through December 31, 2044. Those use restrictions designate the Polo Fields site as open space and floodway zone, but identify certain categories of allowable uses, including "active non-commercial recreational uses not involving large assemblages of people or cars." While the use restrictions do not clearly define the permissible scope of active non-commercial recreational uses, this category of allowable use includes the holding of 25 days of "special events" on the Polo Fields site, including dog shows, soccer tournaments, and lacrosse tournaments, cumulatively throughout each calendar year. The City interprets a special event to mean an event that uses at least 75% of the fields or the available parking on the property.

This document describes the historical background and interpretation of the current limitation of 25 days of special events per year on the Polo Fields site. This document also addresses the typical complaints that the City receives from neighbors with respect to operations on the site, as well as the City's response to those complaints.

II. Background

A. Conveyance of 600 Acres to the City in 1983

In 1983, Watt Industries (Grantor) conveyed approximately 600 acres of land to the City of San Diego (City) to be used as open space mitigation for Grantor's nearby residential development project. The Grant Deed conveyed lots 1, 2, 4, 9 and 10 of Map No. 10730 of the Fairbanks Country Club No. 1 dated 9/29/83.

Lots 1, 4, 9 and 10 became what is now commonly referred to as the Polo Fields (and in the Grant Deed is referred to as the Affected Land), consisting of approximately 114 acres from the original grant of land. Lot 2 became what is now the Country Club and golf course and is included in the Affected Land.

The Grantor retained ownership of Lots 1 through 18 of Parcel Map 12638 filed 3/25/83, which is referred to in the Grant Deed as the Benefitted Land. Some of the neighbors to the Polo Fields own a few of the lots in the Benefitted Land.

B. Grant Deed Restrictions

Exhibit B to the recorded Grant Deed (Grant Deed Exhibit) sets forth use restrictions in effect through December 31, 2044, designating the Affected Land as open space and floodway zone and stating that it be kept as open space in a natural condition as near as possible. The Grant Deed Exhibit identifies certain categories of allowable uses, including "active non-commercial recreational uses not involving large assemblages of people or cars." The Grant Deed Exhibit does not specify the uses within this category or provide any guidance on what is considered "large assemblages of people or cars." For example, even though the Grant Deed restrictions apply to the Country Club parcel as well as the Polo Fields, the Country Club regularly holds golf tournaments without any limitation on the number of those

tournaments and has numerous wedding or corporate events in its ballrooms which can accommodate up to 500 people at a time. The Grant Deed Exhibit allows the Grantor to define or expand allowable uses and states that the Grantor may not unreasonably withhold its consent to additional allowable uses. So long as the Grantor or certain of its "successors or assigns" (as defined in Section 17 of the Grant Deed Exhibit) owns any portion of the Benefitted Land, the use restrictions and allowable uses in the Grant Deed Exhibit could be amended or terminated.

C. Polo Club Lease and Use

In 1986, the City signed a long-term lease with the Polo Club¹ for operation of a polo facility on the Polo Fields, allowing the Polo Club to grade the land, construct stables, corrals, and tack rooms to accommodate several hundred horses, develop an equestrian center, conduct weekly polo matches, construct a lighted polo arena, install perimeter fencing, construct a large grandstand area and clubhouse, and install portable office trailers for the Polo Club's use. At the time of lease signature, the land was otherwise unusable brushland. The Polo Club invested over two million dollars to improve the site including significant grading and construction of barns, corrals, clubhouse, and horse arenas. The City conducted all required CEQA review and issued a Negative Declaration.

The Polo Club began using the property for weekly polo matches, charity fundraisers, concerts, seasonal Christmas tree sales, seasonal pumpkin sales, airshows, and car shows. Polo matches included special event food sales, merchandizing, and on-site parking revenue and extravagant entertainment events during half-time and post-match. Many of these events included the sale of alcohol. The Polo Club also provided boarding and equestrian training for horses (there was a capacity for well over 100 horses). In 1992, the Polo Club allowed Surf Cup to begin holding daily soccer practices on-site and hosting soccer tournaments periodically throughout the year. The Polo Club also continued having weddings, charity fundraisers, lacrosse tournaments, dog shows, and concerts on the Polo Fields.

In 2002, WISD, the successor to the Grantor (Watt Industries), clarified in writing that the Grant Deed Exhibit did not prohibit the uses that the Polo Club was allowing on the Polo Fields. WISD expressly confirmed and gave its consent for 1) dog shows, 2) soccer tournaments, 3) lacrosse tournaments, 4) Christmas tree sales, 5) golf equipment testing, 6) youth soccer practices, and 7) up to six on-site live-in groundskeepers. WISD, however, limited the number of days that the Polo Club could hold dog shows, soccer tournaments, and lacrosse tournaments to 25 days cumulatively throughout each calendar year. WISD did not impose any restrictions or day limits on any of the other uses that WISD confirmed were allowable under the Grant Deed. The "special event days" were in addition to the generally 13 days each year when the Polo Club held its polo matches, which attracted hundreds of spectators and cars. Between 2002 and 2016, the Polo Club/Surf Cup held between 17 and 28 days of special events annually. Before WISD limited special events to 25 days annually starting in 2002, Polo Club/Surf Cup held as many as 40 special event days (in 1994) and consistently held at least 30 special event days.

In 2014, Ocean Industries, successor in interest to WISD, consented to allow Polo Club/Surf Cup to expand the special event days to 25 events, rather than 25 days. However, Ocean Industries did not have clear authority to grant that consent because it no longer owned any of the Benefitted Land. Therefore, Ocean Industries revoked its permission to expand the allowable uses to 25 events, and the

¹ The Polo Club was originally named the Fairbanks Ranch Polo Club, but later became the Rancho Santa Fe Polo Club. The name of the Polo Club is not pertinent to this analysis.

City has not relied on that consent. Accordingly, the City considers the 25-day limitation to be the applicable restriction for the cumulative annual number of days of dog shows, soccer tournaments, and lacrosse tournaments because that is the historically allowed use of the site under the Grant Deed Exhibit. In 2015, immediately before the City signed the Surf Cup lease, there were 27 special event days of activities in addition to the 13 weekly Sunday polo matches.

D. Surf Cup Lease and Use

In 2016, following a request for proposal process, the City and Surf Cup signed a new lease with a term expiring December 31, 2044 (the same date as expiration of the Grant Deed use restrictions). The lease makes Surf Cup's use of the site subject to the Grant Deed Exhibit. In its lease proposal, Surf Cup defined a "major event" to mean an event that uses 75% or more of the fields. Surf Cup expressed its desire to expand the number of "major events" held each year. The City interprets "major event" as synonymous with "special event" for purposes of identifying uses that trigger the 25-day special event limitation that has historically occurred on the property. For purposes of evaluating the environmental impacts of the proposed Surf Cup lease in 2016, the City relied on the historical usage of the property, which was a variety of allowable uses like weddings, small concerts, polo matches, charity fundraisers, and up to 25 cumulative days of special event activities. The City used the 25-day limitation on special event days as its baseline in conducting the required CEQA review for the lease.

The lease requires Surf Cup to provide a schedule of activities and operations 90 days prior to the end of each calendar year, enabling the City to determine the number of special event days that will take place. The City's Department of Real Estate and Airport Management (DREAM) is responsible for monitoring Surf Cup's compliance with the 25-day limitation on special event days. The City is entitled to quarterly base rent payments, plus percentage rent payments equal to 10% of the gross revenue from all field, stall, and arena rentals and from all sublessees and licensees. The City is not entitled to a percentage of revenue from Surf Cup's merchandise or food sales, registration fees, or parking fees.

The lease expressly prohibits noisemakers or horns. Surf Cup cannot make improvements or alterations to the property without the City's prior written consent. The City is also authorized to conduct periodic audits of Surf Cup's books to evaluate whether the City is receiving the appropriate percentage rent payments under the lease.

E. CEQA Litigation

After the City approved the Surf Cup lease, Friends of the San Dieguito River Valley (Friends) sued the City claiming that Surf Cup was impermissibly expanding the allowable uses on the Polo Fields and that the City had not conducted proper CEQA review to examine the environmental impacts of the increased use. The Superior Court denied Friends' petition for writ of mandate, finding that the City properly used the historical site usage as the baseline for its CEQA determination. Friends appealed, and the Court of Appeal upheld the judgment in the City's favor noting that WISD's consent in 2002 constituted an amendment of the Grant Deed which authorized the 25 days of special events. The Court of Appeal held that despite the increased intensity of use from 1986 to 2016, prior to the execution of the Surf Cup lease, the normal operations of the property did not disrupt sensitive biological resources.

III. City's Response to Complaints

Despite the City prevailing in the CEQA litigation, City officials and employees continue to receive coordinated complaints regarding Surf Cup's use of the Polo Fields from a small group of nearby homeowners. DREAM employees have tried to meet with the neighbors who are primarily responsible for these complaints but have not been successful in appeasing them. The following addresses the typical complaints that the City receives and its response thereto:

A. Intensification of Use

In most of their complaints, the neighbors argue that Surf Cup is increasing the intensity of its use at the Polo Fields. A similar argument was made during the CEQA litigation. Many of the complaints seem to equate any activity on the site as subject to the 25-day special event limitation. This is incorrect. The Grant Deed and the Surf Cup lease do not limit the number of days that Surf Cup can use the site for otherwise allowable activities not constituting special events. For example, the 25-day limitation on special events does not pertain to daily soccer practices or other historically allowable uses of the fields, such as weddings, concerts, or charitable fundraisers. The 25-day limitation on special events pertains solely to cumulative days for three types of special events: dog shows, lacrosse tournaments, and soccer tournaments. The 25-day limitation does not appear in the Grant Deed but is something the Grantor expressly authorized in 2002 when it clarified that the ongoing uses that the Polo Club was conducting on the site were allowable uses.

Surf Cup defined activities where 75% of the fields were being used as "major events" in its response to the City's request for lease proposals. The City considers "major events" as subject to the 25-day special event baseline that the City utilized in its previous environmental analysis. The City has extrapolated that percentage to events which would require 75% of the available parking on the property, even if that event itself does not utilize 75% of the fields. Activities using less than 75% of the fields or parking spaces would not be subject to the Grant Deed prohibition against a "large assemblage of people or cars" based on the types of allowable events that have occurred on the site since 1986, including polo matches. If an event exceeds 75% of the fields or parking, the City interprets that as a special event day subject to the 25-day annual limitation.

DREAM continues to monitor Surf Cup's use of the fields to ensure that the 25-day limitation on these special events and other daily uses of the fields comply with the historically allowable uses. DREAM reviews the calendar of events that Surf Cup submits each year to identify the number of special event days planned for the following calendar year and conducts periodic audits of Surf Cup's books. In addition, DREAM has done regular site visits to make visual surveys of the property. DREAM has not observed any activities which were not consistent with the historical uses of the site. The same tournaments occur each year along with other activities that are not otherwise prohibited under the Grant Deed. Surf Cup has not added any new tournaments to its event calendar that would be otherwise prohibited under the Grant Deed. Despite the City's request, one complainant has failed to produce any evidence supporting its allegation that Surf Cup expanded its use to 45 special event days in 2021. DREAM does not have sufficient staffing to visit the site every weekend to "disprove" allegations made by a small group of nearby homeowners. When and if the City becomes aware of any activities at the Polo Fields that are not allowable uses, it will act accordingly to enforce the lease.

B. Signs

The Grant Deed has a provision which appears to limit signage on the property. That provision is a subsection of a provision prohibiting accessory buildings other than as may be otherwise allowable on the site. That accessory building subsection prohibits "lighted signs, commercial signs or unlighted signs exceeding 12 square feet." However, the Grant Deed allows accessory buildings "customarily incidental" to the allowable uses on the site. The City interprets this provision as allowing accessory buildings such as merchandise tents and food trucks used during tournaments. There have been some complaints about signs at the property, particularly during tournaments, which include the event title and include inspirational quotes (e.g., "Best of the Best") and other tournament related signage. While the Grant Deed is ambiguous as it relates to what signs are prohibited, the City has generally interpreted this provision as prohibiting any permanent commercial signs that exceed 12 square feet. Temporary, non-permanent signs relating to the special events or permanent signs that identify Surf Cup itself are not prohibited. Temporary signs associated with food trucks or sponsors of a tournament which are temporary in nature have not been prohibited.

C. Improper Grading and/or Site Improvements

There have been some complaints alleging that Surf Cup is improperly grading the internal roads on the site. DREAM investigated these alleged grading activities and has concluded that Surf Cup has not expanded the width of the road. Indeed, the steep incline of the adjacent hillside and vegetation preclude any expansion of the road. Surf Cup has smoothed the existing dirt road and overlaid it with decomposed granite (DG), which is an allowable activity contemplated under the lease. In fact, adding the DG helps reduce the amount of dust generated when vehicles traverse the dirt road – alleviating a common past complaint from neighbors. DG has also been used to cover dirt areas where Surf Cup removed barns, corrals, or other dilapidated structures. Surf Cup did not improperly grade these areas, but instead removed old buildings and placed DG over the resulting dirt areas.

There have also been complaints that Surf Cup was improperly grading the site and constructing illegal site improvements. DREAM investigated and discovered that Surf Cup had performed some grading work to make a previously raised area in the center of the site ADA accessible and to install stairs and railings around the detention pond on the east side of the property. DREAM advised Surf Cup that a grading permit was required for those activities, and Surf Cup worked with DSD to obtain proper permits. DREAM is not aware of any other grading activities or site improvements that would require a permit. The site improvements are consistent with the proposed activities contemplated under the lease. Surf Cup has expended significant money to clean up the property, including removal of dilapidated structures and old rusty junk left from the Polo Club. Surf Cup has significantly enhanced the beauty of the property and has not violated the lease in doing so. As soon as DREAM raised the issue, Surf Cup corrected its failure to obtain proper permits in advance of site improvements contemplated under the lease.

D. Noisemakers

Nearby neighbors have complained about noise during tournaments. The City's lease prohibits noisemakers or horns during special events. Surf Cup posts those rules on its tournament websites. City personnel have been present at several tournaments and did not observe any prohibited noisemakers or horns. Nonetheless, certain neighbors have complained that they hear trucks backing up early in the

mornings, car alarms going off throughout the day, and whistles and cheering from spectators during the tournaments.

Surf Cup encourages participating families to mute any car alarms they may have on their vehicles but does not have the ability to disarm car alarms. Surf Cup does not allow access to the site before 6:30 a.m. and does everything it can to minimize noise from trucks backing up. While whistles and cheering are inherent for any sporting activity, City personnel have observed the level of noise both at the field level and in the surrounding neighborhoods during Surf Cup tournaments and do not agree that the noise from these activities exceeds allowable decibel levels.

F. Lights

Any use of lights at the fields must comply with the San Diego Municipal Code. The Grant Deed does not prohibit the use of lights. Historically, several large light poles were used on the polo arena in the area closest to the houses that border the fields. Though under no requirement to do so, Surf Cup disabled those lights and took down those light poles to avoid any lighting impacts on the nearby residents. During the winter months, Surf Cup uses small portable lights for its soccer practices on the front fields which are the furthest away from the residences. Those practices typically end by 8:30 p.m. each day, and the portable lights used are not particularly powerful light sources. The use of those lights does not violate the Municipal Code.

G. Bogs

In mid-2022, some neighbors lodged coordinated complaints that Surf Cup's irrigation of fields was causing "bogs" that were impacting the nearby San Dieguito River. The "bogs" turned out to be minor wet areas attributable to overspray from the nearby sprinklers on the grass fields. The overspray caused some very minor wet areas on the adjacent dirt area, which quickly evaporated and caused no environmental impacts at all. The complaints also suggested that Surf Cup was using some type of fertilizer or chemical in its irrigation as evidenced by small patches of "white residue" left on the soil in areas near the fields. This "white residue" consisted of salt deposits common throughout the region due to the proximity to the ocean and high levels of salt in the soil; the residue was not the result of any activities or watering behavior attributable to Surf Cup.

H. Milan Lot

Recently, Surf Cup purchased an adjacent property on the north side of the Polo Fields commonly referred to as the Milan Lot. Surf Cup has not submitted any development plan to the City indicating what its intended use of this property will be. The Surf Cup lease does not control or prohibit Surf Cup from purchasing other properties and does not dictate Surf Cup's use of the Milan Lot. DREAM will continue to monitor Surf Cup's activities on the City-owned property (i.e., the Polo Fields site) to ensure that activities from the Milan Lot do not pose any issues for the City-owned property. Until a development plan is submitted or activities are observed that are prohibited under the Municipal Code or other regulations, the City does not have authority over Surf Cup's purchase or use of the Milan Lot.

I. Fencing

Recently, Surf Cup partnered with the adjacent golf course and country club to erect fencing on the country club property. There have been complaints regarding this fencing alleging it interferes with

wildlife movement. A complaint was made with the County, which opened up a code compliance investigation. However, the County closed the investigation without taking any actions against either Surf Cup or the country club. The fencing does not violate the Surf Cup lease, and the City has no enforcement authority over fencing not located on its leasehold or outside its geographical jurisdiction.

J. Coast to Crest Trail

In November 2021, Surf Cup initiated work on the trail via a contractor to stake the trail alignment, grade, and remove invasive species. On December 4, 2021, Surf Cup, the San Dieguito River Park, and San Diego Mountain Biking Association hosted a Volunteer C2C Trail Build Event at the Surf Cup Sports Fields. Work included raking, compacting, and finishing trail tread. In early May 2022, Surf Cup's contractor removed additional invasive species along the trail alignment, including ice plant. Surf Cup is contracting with third parties to perform additional clearing and will also repair a storm drain that impacts the trail. In September 2022, additional invasive plant removal occurred in the river and along the area between the river and the trail. The City is satisfied that Surf Cup is making good faith progress on the remediation work.

K. San Diego Wave Soccer Team

In 2022, Surf Cup licensed the use of a portion of the soccer fields to the women's professional soccer team commonly known as the San Diego Wave. The Wave is using two full-sized fields for its daily soccer practice and has also brought in portable trailers to use as locker rooms and meeting space. The Wave maintains administrative offices elsewhere and holds its soccer matches at the new Snapdragon Stadium (and previously used the fields at USD for its games until Snapdragon Stadium was completed). The Wave will not be using the Polo Fields for its games or to erect a new stadium as the nearby residents feared and complained about. The use of the Polo Fields for the Wave team's daily practices is not prohibited under the Grant Deed or the Surf Cup lease (subject to the City's consent to the license agreement between Surf Cup and the Wave). The use of the portable trailers is also not prohibited.