




Midpeninsula Regional
Open Space District

Memorandum

DATE: September 14, 2016

MEMO TO: Board of Directors

MEMO THROUGH: Steve Abbors, General Manager 

FROM: Kevin Woodhouse, Assistant General Manager-Visitor & Field Services
Brian Malone, Land & Facilities Services Manager

SUBJECT: Letter to San Mateo County Farm Bureau re: Grazing Tenant
Indemnification Requirements

The San Mateo County Farm Bureau requested, through staff, to meet with the District's Board of Directors to discuss the indemnification clause in District grazing leases. The Farm Bureau continues to express its apprehension about public access on District grazing properties, especially since the opening of Mindogo Hill and plans to open La Honda Creek Preserve. In response to concerns raised about public access and grazing, District staff have taken the following actions.

- The District has committed to consulting with the Farm Bureau over management plans in the Coastside Protection Area as part of the MOU between the District and the Bureau.
- Staff have done extensive outreach with the Bureau about the introduction of public use onto grazed areas, including holding field meetings with their executive board before opening Mindogo, and most recently regarding the plans to open La Honda in 2017.
- Staff attend monthly Farm Bureau meetings to present on new projects and answer questions.
- Staff also set up a tour to show the Farm Bureau several grazing properties in the East Bay on public lands that have high visitation and successful grazing operations, showing that public use and grazing can be compatible.
- The District's formal communication with the Farm Bureau on March 2, 2016 is attached.
- Staff has offered to meet and discuss this issue with the Farm Bureau.

The Farm Bureau's request is to change the terms of District grazing leases to indemnify the tenant rather than the tenant indemnifying the District. Staff has carefully considered the issue of public safety and liability concerns on District grazing properties. District grazing leases take into account these concerns and represent an allocation of risk that is consistent with other District contracts, and the District's overall approach to risk allocation. In general, the manner in which any tenant's activities are managed, including grazing operations, affects the level of risk.

Our grazing tenants are in the best position to control their operations and therefore control their exposure to risk. Therefore, the terms of District grazing leases require the grazing tenant to indemnify the District.

- The indemnification clause is standard for other public agencies for contractual agreements where the private party is gaining a benefit from the agency.
- All Bay Area agencies surveyed have similar terms in their grazing leases.
- District General Counsel has reviewed the grazing leases and concurs that a clause indemnifying the District is reasonable and affords the District the best liability protection.
- Indemnification clauses protecting the District are a best management practice according to the California Joint Powers Authority (our insurance pool).

After a review of the Farm Bureau's request, the General Manager and General Counsel recommend to continue to use the District's existing lease language. The response to the Farm Bureau is attached, and includes an offer for the Farm Bureau to meet with Land and Facilities Manager Brian Malone and Assistant General Manager Kevin Woodhouse.



Midpeninsula Regional Open Space District

GENERAL MANAGER
Stephen E. Abbors

BOARD OF DIRECTORS
Pete Siemens
Yoriko Kishimoto
Jed Cyr
Curt Riffle
Nonette Hanko
Larry Hassett
Cecily Harris

September 9, 2016

Mr. BJ Burns, President
San Mateo County Farm Bureau
765 Main Street
Half Moon Bay, CA 94019

RE: Farm Bureau Request to Meet with the District Board of Directors in Regards to Having the District Indemnify Grazing Tenants

Dear Mr. Burns,

This letter is in response to your request to have the Farm Bureau's executive board members meet with the District's Board of Directors. Our understanding is that this request was made in order to discuss the Farm Bureau's request to have the District indemnify the District's grazing tenants. The District's General Manager and General Counsel have reviewed your request. The District's position remains the same as communicated to you in detail in the March 2, 2016 letter to you from District Real Property Manager Mike Williams (letter attached).

The District will continue to require grazing tenants to indemnify the District, which is a widely accepted best practice for public agencies managing lands on behalf of the public. The basic reason that applies to all contracts is that risk, in the form of liability, is best placed on the party that has the most control of the actions that affect risk. In the case of a grazing lease, the party with the most control of the grazing operation is the grazing tenant.

The District's Board of Directors will be copied on this response and provided background information about the indemnification issue. The District looks forward to continuing to consult with the Farm Bureau and our grazing tenants to ensure the successful combination of grazing and public use on certain District grazing properties. We had previously offered to have managerial level staff meet with the executive members of the Farm Bureau Board, and that offer still stands. Please let me, or Land and Facilities Services Manager Brian Malone, know if you are interested in meeting with us.

The District looks forward to our continued relationship with the Farm Bureau to work together to fulfill our coastal mission: To acquire and preserve in perpetuity open space land and agricultural land of regional significance, protect and restore the natural environment, preserve

rural character, encourage viable agricultural use of land resources, and provide opportunities for ecologically sensitive public enjoyment and education.

Sincerely,

Kevin S. Woodhouse
Assistant General Manager, Visitor & Field Services

cc: District Board of Directors
Steve Abbors, General Manager
Brian Malone, Land & Facilities Services Manager
Mike Williams, Real Property Manager
Jess Brown, Executive Director San Mateo Farm Bureau



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Stephen E. Abbors

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March 2, 2016

BJ Burns, President
San Mateo Farm Bureau
765 Main Street
Half Moon Bay, CA 94019

RE: Public Trail Use and Grazing Concerns

At the meeting on February 1, 2016, District staff met with the Farm Bureau to discuss public trail signage for grazed lands at the Mindego Ranch area of Russian Ridge Open Space Preserve. We appreciate the Farm Bureau members and the District grazing tenants input on the signage plan. The signs that were presented at the meeting were generally well received, and no input was received after the meeting, so the signs were ordered as presented. Several members present at the meeting suggested adding a sign identifying the grazing tenant. District staff discussed this possibility with the current Mindego Ranch grazing tenant, who was not interested in having their name posted and preferred that the District handle any public inquires. In the future, we will discuss with other grazing tenants whether they would like to explore the possibility of such signage if a grazed property is opened for public access.

Other questions, concerns and requests expressed during the meeting are addressed below.

1. Mindego Hill Trail closures during high fire danger

One of the questions raised at the meeting concerned closing the Mindego Hill Trail during high fire danger. The closure of access to the section of the Mindego Hill trail within the Coastside Protection Area will be accomplished by installing a closure gate on the Mindego Hill Trail. This gate will be posted closed when there is a Cal Fire Red Flag Warning for that response area. The Mindego-Alpine Road Parking lot will remain open to provide access to other areas of the preserve outside the Coastside Protection Area.

2. Grazing lease indemnity and liability questions.

Another concern expressed by grazing tenants and the Farm Bureau is related to safety issues and potential liability resulting from opening Mindego Hill and other grazed properties for public access. We certainly understand these concerns and are aware that public access on grazed properties is new on the San Mateo coast.

In putting together the District's grazing leases, the District has reviewed and considered insurance requirements and indemnity language from seven other public open space, park and water company grazing programs, including Santa Clara County Parks and Recreation, Santa Clara Valley Open

Space Authority, East Bay Regional Park District, San Francisco Public Utilities Commission, Marin County Open Space District, Contra Costa County Water District and East Bay Municipal Utility District. All of these agreements include indemnity and insurance provisions similar to those in the District's grazing lease. The tenant/licensee is required to provide either \$1 million or \$2 million general liability coverage naming the public agency as an additional insured. The current requirement in District grazing leases is \$1 million per occurrence.

The District has carefully considered the issue of public safety and liability concerns that are shared by the District and its grazing tenants. Our grazing leases take into account these concerns and represent an allocation of risk that is consistent with other District contracts, and our overall approach to risk allocation. In general, the manner in which any tenant's activities are managed, including grazing operations, affects the level of risk. Our grazing tenants are in the best position to control their operations. Therefore the terms of the grazing lease require tenants to share in the risk.

There was also concern that a grazing tenant could have to pay an insurance claim which could jeopardize their ability to maintain insurance coverage at a reasonable cost. We would have to resolve this on a case by case basis. Depending on the particular circumstances of an incident, it is possible that the District might be able to recommend that the District work with the tenant to fund the additional costs of any required replacement coverages.

The District has reviewed the email provided by the Farm Bureau from Carl Borden, the Associate Counsel from the California Farm Bureau Federation, suggesting that the District incorporate different indemnity provisions in our grazing leases. The District carefully re-considered this issue as requested, but the analysis and conclusion remain the same. The District feels that the existing allocation of risk remains appropriate.

Finally, although the District does not provide legal advice to persons outside our agency, perhaps counsel for the Farm Bureau could advise grazing tenants regarding the Recreational Use Statute (California Civil Code section 846) as a possible defense in lawsuits related to recreational uses of leased properties (Statute attached).

3. Field trip to view private grazing operations with public trail use.

As requested at the meeting, Clayton Koopmann will work with Jess Brown to set up a field trip for San Mateo County Farm Bureau members, District grazing tenants, and District staff to visit grazed public land with a recreational component to better understand how the operations function successfully and mitigating measures to overcome potential challenges. The field trip will be held sometime in May 2016 and will look at both cow/calf and stocker operations on public land in the east bay including meeting with the current grazers. Janet Burback from Santa Clara County Farm Bureau has agreed to help with the field trip.

4. District's Conservation Grazing Program: Tenant and District relationship

The District's conservation grazing program is managed with a lease which includes a prescribed Grazing Plan with the goals of grassland management, fuel load reduction and protection of watersheds. The Grazing Plan is adjusted each year based on the available grassland forage to account for wetter years and drier years. Unlike some grazing leases on private lands which allow the rancher to make decisions on stocking rates and grazing season, the District Rangeland Ecologist meets with grazing

tenants to establish annual stocking rates, the grazing season and to prioritize maintenance and infrastructure improvements.

The District's grazing lease reserves the right for the District to open properties for public trail improvements and use. Before opening grazed lands to public trail use, District staff will work with grazing tenants to review trail plans, identify necessary fencing, gates and address other concerns. Ongoing communication between District staff and grazing tenants will be important to the successful transition to public trail use on the District's grazed lands. In addition, the District continues to fulfill the MOU with the Farm Bureau with consultation and information sharing of new public trail plans prior to opening open space lands for public use.

I hope this information and the field trip in May will improve the understanding of how public trail use and grazing can be compatible.

Sincerely,



Michael Williams
Real Property Manager

cc: Stephen E. Abbors, General Manager
Jess Brown, Executive Director



CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] (*Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.*)

PART 2. REAL OR IMMOVABLE PROPERTY [[755.] - 945.5] (*Part 2 enacted 1872.*)

TITLE 3. RIGHTS AND OBLIGATIONS OF OWNERS [818 - 855] (*Title 3 enacted 1872.*)

CHAPTER 2. Obligations of Owners [840 - 848] (*Chapter 2 enacted 1872.*)

846. An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on those premises to persons entering for a recreational purpose, except as provided in this section.

A “recreational purpose,” as used in this section, includes activities such as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, private noncommercial aviation activities, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for that purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of the person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

(*Amended by Stats. 2014, Ch. 52, Sec. 1. Effective January 1, 2015.*)