



Midpeninsula Regional  
Open Space District

# Memorandum

DATE: September 14, 2016

MEMO TO: Board of Directors

MEMO THROUGH: Steve Abbors, General Manager *SAA*

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

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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 Mindego 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 Mindego, 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.