



Midpeninsula Regional
Open Space District

R-16-140
Meeting 16-26
October 26, 2016

AGENDA ITEM 10

AGENDA ITEM

Consideration of San Mateo County Farm Bureau Request for Indemnification of Grazing Tenants and Request for Meeting with Board Members

GENERAL MANAGER'S RECOMMENDATIONS

1. Affirm continued use of standard grazing lease language that requires District grazing tenants to indemnify the District.
2. Review a draft Board response letter to the Farm Bureau and direct the General Manager to revise if necessary and send.

SUMMARY

Current District grazing leases require the grazing tenant to indemnify the District and require the tenant to carry insurance naming the District as an additional insured party. In communications with District staff, as well as communications directly with the Board, the Farm Bureau has expressed concern about grazing tenants' potential increased liability associated with public access on grazed properties. Their request is to change existing leases to require that the District indemnify the grazing tenant instead of the tenant indemnifying the District. The Farm Bureau has also requested to meet with the full Board, or at least three members of the District's Board, to discuss this issue. The General Manager recommends the Board send the attached letter to the Farm Bureau (Attachment 1) affirming continued use of standard grazing lease language requiring District grazing tenants to indemnify the District, and clarifying that the Board has delegated handling of Farm Bureau issues to the General Manager and that members of the Farm Bureau's Board are welcome to attend and provide input at District Board meetings.

MEASURE AA

This is not a Measure AA project.

DISCUSSION

The San Mateo Farm Bureau has expressed its apprehension about public access on District grazing properties, especially since the opening of Mindogo Hill area of Russian Ridge Preserve and plans to open La Honda Creek Preserve.

District staff have taken the following actions to understand and respond to their concerns:

- The District has committed to consulting with the Farm Bureau over management plans in the Coastside Protection Area as part of the Memorandum of Understanding between the District and the Farm Bureau (MOU).
- On February 1, 2016 the Farm Bureau raised the issue of indemnification at the monthly meeting. Mike Williams, Real Property Manager, responded to the Farm Bureau on March 2, 2016 explaining why the District requires grazing tenants to indemnify the District.
- Staff have done extensive outreach with the Farm 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 and District grazing tenants 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 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. AGM Kevin Woodhouse responded in a letter of September 9, 2016 that reiterated the reasons for the indemnification clause and offered to meet with staff rather than the Board.
- Jess Brown the Farm Bureau Executive Director spoke at the Board Meeting on September 14th requesting a meeting with the Board and made the same request via email to the Board. The letter of September 9th and an FYI were included in the Board packet for that meeting.
- District staff and President Kishimoto attended the next Farm Bureau meeting on October 3rd, 2016 and listened to their concerns regarding grazing and public access.

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. The District's 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. In addition:

- 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 indemnification terms, and insurance requirements, 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).

At the Farm Bureau meeting on October 3rd, 2016, several discussion points were raised by the Farm Bureau that the Board could consider in response to their request. These points are summarized below, with additional staff input noted:

1. Some Farm Bureau members felt that, because of the MOU between the District and the Farm Bureau, the grazing tenants should be treated differently than tenants of comparable agencies.

Staff comments: The Farm Bureau-District MOU requires the District to consult with the Farm Bureau and has specific mitigation measures. There are no requirements to follow the Farm Bureau's recommendations and none of the mitigation measures addresses grazing lease provisions.

2. Add a dual indemnification clause where the grazing tenant would indemnify the District over liability due to their operation and the District would indemnify the tenant for any interactions with visitors.

Staff comments: This option is inconsistent with standard lease practices and with comparable Bay Area agencies.

3. Implement a discounted grazing lease rate that factors in the unique situation on the San Mateo Coast and the potential for an increase in insurance premiums with the public access.

Staff comments: There already is a discounted rate compared to other agencies due to remoteness from livestock services such as infrastructure suppliers and certified meat processing plants and due to the smaller size of most District grazing properties. The comparable agency rates include many lands with public access, and grazing tenants on public lands are able to secure insurance for their operations and still run profitable operations.

4. Fence all public access trails out of grazing areas.

Staff comments: The MOU mitigation measure AGR-3a calls for locating trails away from prime agricultural lands. If trails must traverse cultivated lands "adequate buffers, signs and other measures" are called for. Trails that bisect grazing lands are specifically called out as an exception to this mitigation measure. Excluding livestock from trails to prevent interaction between livestock and visitors would be impractical, aesthetically displeasing to visitors, and create unnecessary barriers to livestock grazing operations.

For all of the reasons noted and based on staff comments to the discussion points raised by the Farm Bureau, the General Manager and General Counsel recommend that the District continue use of standard grazing lease language requiring District grazing tenants to indemnify the District.

Concerning the Farm Bureau's request to meet directly with the District Board, the draft response letter clarifies that Farm Bureau Board members currently have the ability to address the District Board through the District's public meeting processes and that the Board has delegated handling of Farm Bureau issues to the General Manager. As policy questions arise, as in this case, the General Manager may raise the issues to the District Board for consideration in a public meeting. Members of both Boards are able to regularly attend the other Board's meetings, just as representatives from the District Board have attended Farm Bureau Board meetings in the past.

FISCAL IMPACT

No fiscal impact.

BOARD COMMITTEE REVIEW

No committee review.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. The San Mateo Farm Bureau was notified as well.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Send response letter to Farm Bureau, as approved by Board, advising of decision.

Attachments

1. Draft Response Letter from the District Board to the Farm Bureau
2. Farm Bureau Email to the Board 9/14/16
3. District Letter to the Farm Bureau 2/1/16
4. District Letter to the Farm Bureau 9/9/16
5. Board FYI 9/14/16
6. MOU Between Farm Bureau and District

Responsible Department Head:
Kevin Woodhouse, Assistant General Manager

Prepared by:
Brian Malone, Land and Facilities Services Department Manager

DRAFT RESPONSE FOR BOARD CONSIDERATION

Dear Mr. Brown:

The Midpeninsula Regional Open Space District (District) Board of Directors appreciates your attendance and oral communications at our meeting on September 14, 2016. Additionally, the Board of Directors has received your follow-up e-mail communication of that same evening. This letter is in response to your e-mail.

The District understands the important role of the San Mateo County Farm Bureau and values the cooperative relationship we have built together since the 2004 Coastal Annexation Service Plan and the consultative obligations provided for in the Memorandum of Understanding with the Farm Bureau. The District looks forward to continuing this relationship.

Regarding cattle grazing on District public lands currently open to public access, and planned for opening in the future, District staff has consulted with the Farm Bureau, including arranging a special demonstration tour of cattle grazing operations run by other local public agencies. The Farm Bureau has requested that the District reverse its grazing lease indemnification provision. The Board of Directors agrees with the recommendation of the District's General Manager and General Counsel to leave the indemnification clause unchanged, the reasons for which have been explained in staff communications to the Farm Bureau.

Your e-mail also requests an opportunity for your Board to meet directly with the District Board of Directors. District Board of Directors' meetings, including 3-person regular committee meetings of the Board, are open public meetings, publicly noticed and conducted according to the Ralph M. Brown Act of California (1953). As such, Farm Bureau Board members are welcome to attend and provide comment to the District Board. Similarly, as you are aware, members of the District's Board of Directors (recently Board President Kishimoto) occasionally attend your Board meetings; District staff also regularly attend your Board meetings. The District Board of Directors has delegated handling of Farm Bureau issues to the General Manager. If issues rise to the level of needing policy consideration by the Board of Directors, as in this case of the Farm Bureau's request regarding indemnification in grazing leases, the General Manager may bring the issue before the Board for a decision.

The District Board of Directors looks forward to continuing to fulfill our Coastal mission, with its emphasis on preserving agricultural, and working with the Farm Bureau in doing so.

Sincerely,

Yoriko Kishimoto

President, Board of Directors

Brian Malone

Subject: FW: Full Board of Directors and District Clerk - Board Contact Form

From: jessbrown@sbcglobal.net [<mailto:no-reply@wufoo.com>]

Sent: Wednesday, September 14, 2016 7:55 PM

To: web <web@openspace.org>; Clerk <clerk@openspace.org>

Subject: Full Board of Directors and District Clerk - Board Contact Form

Name * Jess Brown

Select a Full Board of Directors and District Clerk

Choice *

Email * jessbrown@sbcglobal.net

Location: 765 Main St., Half Moon Bay

(i.e. City,

Address

or

District

Ward)

Daytime (831) 818-1193

Phone

Number

(if you

wish to

be

contacted

by

phone)

Comments: *

To MROSD Board of Directors,

It was nice to meet you during your meeting's oral communications tonight. Below is the email request we made to your staff on 7/14/16 to have our officers meet with your officers. We were disappointed that it took two month to receive

(received via email 9/14/16) a written response regarding the issue, but it was apparent our request for a meeting was never sent to you by your staff.

We would still like to have the meeting, and it now appears we need to add as an agenda item to that meeting – how can our boards better interact with one another on areas of concern since there is an MOU with both parties.

Thank you for listening to my comments tonight.

Jess Brown, Executive Director
San Mateo County Farm Bureau

-----Original Message-----

From: Jess Brown [<mailto:jessbrown@sbcglobal.net>]

Sent: Thursday, July 14, 2016 5:56 PM

To: Mike Williams <mwilliams@openspace.org>

Subject: Re: Meeting

Hi Mike,

The Farm Bureau executive committee met this week and discussed the request to meet with MROSD regarding Farm Bureau's concerns with increased liability for ranch tenants on property with public trails. The executive committee appreciates MROSD staff's time in discussing the issue on previous occasions and arranging tours of existing grazing land with public trails.

The Farm Bureau executive committee requests that the next meeting with MROSD regarding this issue be with the MROSD executive committee to finalize a resolution on this matter.

Thanks,
Jess



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

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.)



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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



Midpeninsula Regional
Open Space District

Memorandum

DATE: September 9, 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 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.

PROPOSED
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SAN MATEO COUNTY FARM BUREAU
AND
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

WHEREAS, the mission of the San Mateo County Farm Bureau ("Farm Bureau") includes the preservation of existing and potential agricultural operations in San Mateo County in order to keep the maximum amount of agricultural land in production and to provide support and expertise to its members and to private and public entities for those purposes; and

WHEREAS, the Midpeninsula Regional Open Space District ("District") has filed an application with San Mateo County Local Agency Formation Commission ("LAFCo") to extend its boundaries to the San Mateo County Coast and has adopted a related Service Plan for the purposes of preserving open space and agricultural land, encouraging viable agricultural use of land, and preserving agricultural operations in conformance with the San Mateo County General Plan; and

WHEREAS, the Farm Bureau and the District desire to work together cooperatively to support and preserve agricultural operations and to protect the economic and physical integrity of agricultural lands on the San Mateo Coast; and

WHEREAS, the Farm Bureau and the District believe that by such cooperative efforts the Farm Bureau will help enable the District to better accomplish its mission for the Coastside Protection Area for the benefit of its members and all residents of San Mateo County; and

WHEREAS, the Service Plan establishes the policy of the District to insure that where open space recreation or public access occurs, it is planned and managed in a manner that avoids adverse impacts to adjacent agricultural operations; and

WHEREAS, the District desires to consult with the Farm Bureau in planning for open space recreation and public access to ensure that such uses avoid adverse impacts to adjacent agricultural operations; and

WHEREAS, the Service Plan prohibits the District's use of the power of eminent domain in the area proposed for annexation ("Coastside Protection Area"), and the Farm Bureau has requested that this prohibition be established through state legislation so as to further insure the permanence of this District policy; and

WHEREAS, the Board of Directors of the District desires to sponsor such legislation to further insure to the satisfaction of the Farm Bureau and all San Mateo County coastside residents that its policy prohibiting the use of eminent domain in the proposed Coastside Protection Area will be secure and permanent; and

WHEREAS, it is the joint desire of the Farm Bureau and the District to enter into this Memorandum of Understanding in order to formalize the goals and understandings of both parties in their efforts to preserve agriculture in San Mateo County.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The San Mateo County Farm Bureau desires to insure that eminent domain not be used to acquire land in the District's proposed Coastside Protection Area. The Farm Bureau has requested that the District sponsor state legislation permanently removing the District's power of eminent domain in the proposed Coastside Protection Area. The District has agreed to sponsor such legislation. A copy of the proposed legislation is attached hereto, marked "Exhibit A" and incorporated by this reference. The Farm Bureau has agreed to support this legislation without amendment. The enactment of this legislation, in the form set out in Exhibit A, is a condition precedent of the parties' obligations in this MOU. The parties recognize that minor changes to this legislation may be made by the State Legislative Counsel in the normal course of its review and approval of legislative language and the parties shall continue to support and propose such legislation as approved by Legislative Counsel, provided that only minor and technical changes are made by Legislative Counsel. Any other changes shall require the prior written agreement of both the Farm Bureau and the District.
2. The San Mateo County Farm Bureau and the District desire to insure that the District's implementation of the Service Plan and its Coastside Protection Program preserve and encourage viable agricultural operations, and avoid adverse effects on agriculture. To accomplish this goal, the Farm Bureau and the District agree that:
 - a. As part of its Coastside Protection Program, the District has adopted a set of Mitigation Measures to preserve agriculture and to avoid adverse impacts on agriculture. A copy of these Mitigation Measures is attached hereto, marked "Exhibit B" and incorporated by this reference. The Farm Bureau has requested and the District has agreed that these Mitigation Measures shall be incorporated into this MOU. The District agrees that it will implement these Measures, and that implementation of these Measures is a commitment from the District to the Farm Bureau. These Mitigation Measures may not be amended by the District unless required by law.
 - b. The District will consult with the Farm Bureau in the development of site-specific use and management plans and site-specific agricultural production plans in the Coastside Protection Area as set out in Mitigation Measure AGR-3h.
 - c. When practicable and consistent with the Mitigation Measures, when planning for the preservation of land in agricultural production, the District will consider first

- whether acquisition of a conservation easement is the best method to enable the land to remain in private ownership and in agricultural production.
- d. When considering the proposed use and management of any agricultural land acquired by the District in the Coastside Protection Area, the District will provide the Farm Bureau prior written notice of any hearings at which site use and management plans, agricultural production plans, reviews or amendments will be considered. Further, the District will provide a prior opportunity for the Farm Bureau to review and comment on any such plans. This will insure that the Farm Bureau has the opportunity to share its expertise, resources and viewpoints with the District prior to any decision concerning future use or management of such lands. In addition, District staff will meet with representatives of the Farm Bureau from time to time on an informal basis upon request of either party to consult regarding development of such plans.

3. The San Mateo County Farm Bureau determines that, based upon the specific terms and conditions of this MOU, the District's Coastside Protection Program will benefit and help preserve agriculture in San Mateo County, and will help to protect agriculture's physical and economic integrity in the County. The elimination of the District's power of eminent domain by legislation is a key component that will further protect agricultural lands from being removed from production. On that basis the San Mateo County Farm Bureau expresses its support for and endorsement of the District's Coastal Protection Program.
4. The San Mateo County Farm Bureau requests that LAFCo approve the District's application for annexation of the San Mateo County Coastside Protection Area as filed on October 28, 2003, in its entirety.
5. This MOU may not be amended without the written consent of both the Farm Bureau and the District.
6. Any written notice sent pursuant to this MOU shall be addressed as follows:

Farm Bureau: Executive Administrator
 San Mateo County Farm Bureau
 765 Main Street
 Half Moon Bay, CA 94019

District: General Manager
 Midpeninsula Regional Open Space District
 330 Distel Circle
 Los Altos, CA 94022

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized officers to be effective as of the date of final execution by the District.

FARM BUREAU:

DISTRICT:

By: [Signature]
Date: 1/28/04

By: Mary Danes
Date: 1/28/04

EXHIBIT A

SECTION 1. Section 5572.2 is added to the Public Resources Code to read:

5572.2. The Midpeninsula Regional Open Space District shall not exercise the power of eminent domain to acquire any real property or any interest in real property in the San Mateo County Coastal Annexation Area as defined in the Resolution of Application for Annexation Proceedings No. 03-20 adopted by the Board of Directors of the Midpeninsula Regional Open Space District on June 6, 2003.

SECTION 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances applicable only to this proposed project of the Midpeninsula Regional Open Space District. The District has adopted an ordinance and policy prohibiting the use of the power of eminent domain in an area of San Mateo County currently proposed for annexation to the District. This policy was adopted due to the special and unique circumstances of the particular annexation project and the particular nature of the territory proposed for annexation and in response to input from a Citizens' Advisory Committee formed to recommend policies particular to this proposed project. This legislation will further that policy and ordinance. The Legislature further finds and declares that this need is not common to all districts formed under the Regional Park District law nor to other projects of the District.

SECTION 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:
Enactment of this legislation will enable the District to implement the particular policies regarding eminent domain it has adopted for this specific project at the earliest possible time. In order for the prohibitions created by this act to become incorporated into this project, it is necessary for the act to take effect immediately.

Attachment 6

EXHIBIT B
Midpeninsula Regional Open Space District Coastside Protection Program
Mitigation Measures

AGRICULTURE

Mitigation AGR-1a: No new buildings or staging areas shall be located on prime agricultural lands or on Unique Farmlands or Farmlands of Statewide Importance as shown on Farmland Mapping and Monitoring Program of the California Resources Agency that are being used for agricultural purposes. To implement this Mitigation Measure, in order to avoid conversion of Farmland to non-agricultural use, the Draft Service Plan should be revised to provide that the ranger office/maintenance facility and the staging areas may not be located on prime agricultural lands or on Unique Farmlands or Farmlands of Statewide Importance as shown on Farmland Mapping and Monitoring Program of the California Resources Agency Farmland in agricultural use.

Mitigation AGR-1b: Trails and habitat preservation areas shall either be located to avoid prime agricultural lands and Unique Farmlands or Farmlands of Statewide Importance as shown on Farmland Mapping and Monitoring Program of the California Resources Agency or traverse such lands in a manner that does not result in interference with agricultural activities or substantially reduce the agricultural potential of those lands. Owners and operators of active agricultural activities lands shall be consulted to identify appropriate routes on those lands they cultivate. The agricultural activities and the agricultural potential of traversed lands shall be protected and buffered from trail user impacts by means of distance, physical barriers (i.e., sturdy fences), or other non-disruptive methods.

Mitigation AGR-1c: The District shall adopt Draft Service Plan Policy P.1 by ordinance. This policy reads as follows: "Within the Coastal Annexation Area, the District shall only acquire lands or interests in lands from willing sellers. The power of eminent domain will not be exercised by the District within the Coastal Annexation Area. This policy is a Basic Policy for the Coastal Annexation Area."

Mitigation AGR-1d: Amend the Draft Service Plan to include the following:

The term "prime agricultural land" as used in this Plan means:

- a) All land which qualifies for rating as Class I or Class II in the U.S. Department of Agriculture Soil Conservation Service Land Use Capability Classification, as well as all Class III lands capable of growing artichokes or Brussels sprouts.
- b) All land which qualifies for rating 80-100 in the Storie Index Rating.
- c) Land which supports livestock for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the U.S. Department of Agriculture.
- d) Land planted with fruit or nut bearing trees, vines, bushes, or crops which have a non-bearing period of less than five years and which normally return during the commercial bearing period, on an annual basis, from the production of unprocessed agricultural plant production not less than \$200 per acre.
- e) Land which has returned from the production of an unprocessed agricultural plant product an annual value that is not less than \$200 per acre within three of the five previous years.

The \$200 per acre amount in subsections d) and e) shall be adjusted regularly for inflation, using 1965 as the base year, according to a recognized consumer price index.

The term "prime agricultural land" as used in this Plan shall also include Unique Farmland and Farmland of Statewide Importance as shown on the Farmland Mapping and Monitoring Program of the California Resources Agency.

Mitigation AGR-2: See Mitigation LU-2

Mitigation AGR-3a:

Guideline 3.2 in the *Draft Service Plan* should be modified to state:

"Improvements or public uses located upon open space lands other than agriculture...shall be located away from existing prime agricultural lands and Unique Farmlands or Farmlands of Statewide Importance as shown on Farmland Mapping and Monitoring Program of the California Resources Agency toward areas containing non-prime agricultural lands, unless such location would not promote the planned, orderly, efficient use of an area. To the extent feasible, all All trails and other public facilities should be located so as not to fragment agricultural operations unless no feasible alternative is available. While trails that bisect grazing lands would not be likely to fragment grazing operations, trails that bisect cultivated crops could adversely affect the vitality of agricultural operations and should be avoided where feasible. If trails must traverse cultivated lands then they shall be permitted only if adequate buffers, signs, and other measures necessary to ensure that trail use does not interfere with the agricultural operations shall be are implemented."

Mitigation AGR-3b: The District shall provide private property signs where appropriate and provide trail users information regarding private property rights to minimize public/private use conflicts and trespassing. The District shall clearly sign trails adjacent to active agriculture and provide trail users with information regarding property rights to minimize trespassing and conflicts with agricultural users.

Mitigation AGL-3c: Trails shall either be located to avoid prime agricultural lands and Unique Farmlands or Farmlands of Statewide Importance as shown on Farmland Mapping and Monitoring Program of the California Resources Agency or traverse such lands in a manner that does not result in interference with agricultural activities or substantially reduce the agricultural potential of those lands. Operators of active agricultural activities on lands owned by or under easement to the District shall be consulted to identify appropriate routes on lands they cultivate. Owners and operators of active agricultural activities on lands adjacent to District lands used for non-agricultural purposes shall be consulted to identify routes that will avoid adverse effects on agricultural operations. The agricultural activities and the agricultural potential of traversed lands shall be protected and buffered from trail user impacts by means of distance, physical barriers (i.e., sturdy fences), or other non-disruptive methods.

Mitigation AGL-3d: The District lands or easements ~~that comprise the trail setting upon which trails are sited~~ shall provide width sufficient for management and/or buffer space from adjacent uses so as not to preclude the viability of those uses. Buffers established to separate recreation and other open space uses from agricultural operations shall be designed and managed in accordance with the following standards:

- a) Buffers shall be designed in relation to the nature of the adjoining land use, potential land uses and proposed public access;
- b) Buffers shall be designed in relation to the topography and other physical characteristics of the buffer area;
- c) Buffers shall be designed with consideration of biological, soil, and other site conditions in order to limit the potential spread of non-native invasive species or pathogens onto agricultural lands;
- d) Buffers shall be of sufficient width to allow agricultural use of adjoining

- agricultural lands including application of pesticides and other agricultural chemicals on all lands needing treatment taking into account the likelihood and extent of potential pesticide drift.
- e) All lands used for buffers should be on land or interests in land owned by the District; adjoining landowners shall not be required to provide land for buffers.
 - f) The District shall be responsible for the management and maintenance of all lands used as buffers.
 - g) If a specific buffer fails to resolve conflicts between a recreational use and adjacent agricultural uses the recreational use shall be moved to a different location.

All buffers shall be developed in consultation with the owners and operators of adjoining agricultural lands.

Mitigation AGR-3e: Where pesticides are used, including pesticides for control of noxious weeds, they must be handled, applied, and disposed of in such a manner that they do not adversely affect adjacent agriculture, including organic agriculture. Pesticide use shall be guided by label restrictions and any advisories published by the California Department of Pesticide Regulation (CDPR) or the County Agricultural Commission. These chemicals shall only be applied by a person who is properly trained in their application.

Mitigation AGR-3f: The District shall conduct its land management practices such that they do not have an adverse significant impact on the physical and economic integrity of timberland preserves on or contiguous to properties owned or managed by the District and so that the safety of visitors to District preserves is not compromised by timber harvesting (e.g., establishing appropriate buffers on District lands).

Mitigation AGR-3g: When acquiring lands in agricultural use, the acquisition shall be subject to continued use by the owner or operator until such time as it is sold or leased pursuant to the use and management plan adopted for the property. All agricultural land which is not needed for recreation or for the protection and vital functioning of a sensitive habitat will be permanently protected for agriculture and, whenever legally feasible, the District will offer for sale or lease the maximum amount of agricultural land to active farm operators on terms compatible with the recreational and habitat use. Lands that do not have significant recreation or sensitive habitat values and which can clearly support productive agricultural operations will generally be offered for sale while other agricultural lands will generally be offered for lease.

Mitigation Measure AGR-3h: Revise *Draft Service Plan* Guideline G.6.3 as follows:

GUIDELINE G.6.3

Inherent in the preservation of open space resources in the Coastal Annexation Area is the protection of: rare, threatened and endangered plant and animal species; ecological systems; agricultural resources, water quality; visual resources; unique biological resources, including heritage and significant trees; and the unique cultural resources in the Coastal Annexation Area, including historic, archaeological and paleontological resources. Therefore, prior to making any lands available to low-intensity public recreational access, the District shall prepare and adopt a use and management plan, which, includes site-specific resource management and public access components plan for any lands acquired by the District or managed through contract for other public or private non-profit property owners. All lands acquired by the District within the Coastal Annexation Area will be inventoried to identify and prioritize resource management issues. Where there are critical issues, such as the presence of non-native invasive species which threaten the habitat of endangered species or the economic viability of an adjacent agricultural operation, resource management plans will be prepared for these areas even if they remain closed to the public.

The use and management plan shall include an agricultural production plan for District-owned agricultural lands or District lands adjacent to agricultural lands. For district-owned lands, the plan shall describe the crop and/or livestock potential for the property together with the management actions required to protect existing agricultural production (e.g., growing seasons, water requirements, pesticide, manure, and waste management) and the agricultural potential of the land. The plan shall consider the following factors:

- a) Availability of labor, including farm labor housing;
- b) Availability of farm support services and goods;
- c) Necessary capital improvements (e.g. water storage, fencing, land leveling)
- d) Farm operations, including erosion control, the season(s) and times of pesticide or herbicide usage, manure and waste management;
- e) Water use and availability;
- f) Access to transportation and markets; and
- g) Promoting agricultural production on District-owned land.

In the case of District lands adjacent to agricultural production, the agricultural production plan shall develop site-specific measures to prevent activities on District lands from interfering with adjacent agricultural production.

The development of use and management plans will include consultation with the current owner or operator of any agricultural operations on the land, adjoining landowners, the San Mateo County Environmental Services Agency in addition to other include opportunities for public involvement.

Mitigation Measure AGR-3i: Amend *Draft Service Plan* Guideline G.2 as follows:

Prior to making any lands available to public access for low-intensity recreation in the Coastal Annexation Area, the District shall have personnel and equipment available to manage public access such that: there would be no

significant negative impact on existing services; and adequate stewardship to protect natural and agricultural resources will be provided.

Mitigation Measure AGR-3j: Amend the *Draft Service Plan* to include the following policy:

The District shall actively work with lessees of District lands and with the owners of land in which the District has an agricultural easement interest to:

- a. Facilitate the provision of farm worker housing on District-owned lands by providing technical assistance in obtaining permits for such housing from the County of San Mateo.
- b. Seek grant funding for the continuation or establishment of viable agriculture through the California Farmland Conservancy Program and other agriculture grant programs.
- c. Provide technical assistance to secure water rights for the continuation or establishment of viable agriculture consistent with protection of sensitive habitats.

Mitigation Measure AGR-3k: Amend the *Draft Service Plan* to include the following policy:

The District shall actively pursue opportunities to enter agricultural easements and leases with interested farmers and ranchers. All agricultural easements and agricultural leases in the Coastal Annexation Area shall:

- a. Be tailored to meet individual farmers and ranchers needs while respecting the unique characteristics of the property;
- b. Specify uses that are unconditionally permitted pursuant to the easement or lease to provide certainty to the farmer or rancher entering the lease or easement with the District;
- c. Include terms that allow farmers and ranchers to adapt and expand their operations and farming practices to adjust to changing economic conditions;
- d. Include terms that ensure farmers or ranchers may provide farm labor housing as defined and approved by San Mateo County;
- e. Ensure compatibility of resource protection and management, low-intensity public recreation and viable agricultural operations; and
- f. In the case of leases, be for a sufficient period of time to gain a return on the investment in the agricultural operation.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

CERTIFICATION

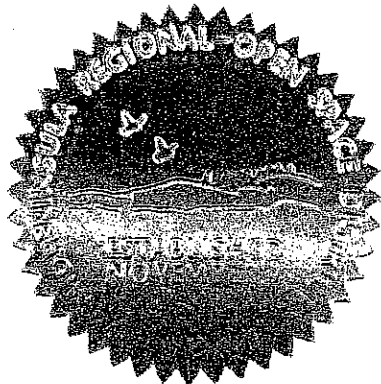
I, Sally Thiel foldt, declare:

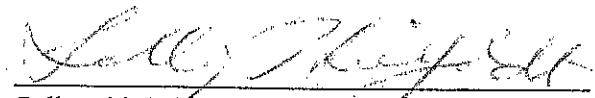
I am the duly appointed and acting Clerk of the Midpeninsula Regional Open Space District.

The original of the attached Memorandum of Understanding Between The San Mateo County Farm Bureau and Midpeninsula Regional Open Space District dated January 28, 2004 has been and is under my custody and control.

I certify that the attached is a true and correct copy of said document. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Altos, California on February 6, 2004.




Sally Thiel foldt, District Clerk
Midpeninsula Regional Open Space District