



Midpeninsula Regional  
Open Space District

R-18-26  
Meeting 18-13  
March 28, 2018

## AGENDA ITEM 4

### AGENDA ITEM

Big Dipper Ranch Grazing Lease at Skyline Ridge Open Space Preserve

### ACTING GENERAL MANAGER'S RECOMMENDATION

Adopt a resolution authorizing the Acting General Manager to enter into a five-year grazing lease with an optional five-year extension with current tenant, Vince Fontana, at Big Dipper Ranch in Skyline Ridge Open Space Preserve.

### SUMMARY

For the past ten years, Midpeninsula Regional Open Space District (District) has leased Big Dipper Ranch located in the Skyline Ridge Open Space Preserve (Preserve) to Vince Fontana for cattle grazing (Attachment 1). Consistent with District Resource Management and Property Management Policies, the Acting General Manager recommends adoption of a resolution by the Board of Directors (Board) to execute a new long-term grazing lease with the operator to continue the District's conservation grazing program at the Preserve (Attachments 2 and 3). The conservation grazing program serves as a tool to manage native grasslands and wildland reduce fuel loads, and furthers the goals of the Coastal Service Plan by supporting sustainable agriculture on the San Mateo County coast.

### DISCUSSION

The Board adopted an amendment to the Skyline Ridge Open Space Preserve Comprehensive Use and Management Plan that incorporated a Grazing Management Plan on October 24, 2007 for the 955 acre Big Dipper Ranch (R-07-107, Attachment 4). The Board authorized the implementation of the plan by directing staff to issue a Request for Proposals to solicit potential grazing tenants. The lease was awarded to Vince Fontana on December 12, 2007 (R-07-135, Attachment 5). The lease term was for five years with the option of a one-time, five-year extension. The extended term expired January 1, 2018.

Vince Fontana is a lifelong resident of the San Mateo Coast and is well known and respected in the community. He has been in the cattle business for over 50 years and has ran cattle over much of the coastal grazing lands. During his tenure as lessee on the Big Dipper Ranch, Mr. Fontana has worked closely in collaboration with District staff to address predation concerns and additional fencing needs to keep cattle secured within designated pastures. Mr. Fontana has also been helpful to staff by sharing his valuable knowledge of the area and local resources.

In the past, the Board has approved entering into long-term leases with existing tenants in good standing without issuing a request for proposals. As part of the management of grazing leases, District staff utilizes the following standards to evaluate grazing tenant performance:

- Rent paid on time
- Stayed within the acceptable range for Residual Dry Matter as prescribed in Rangeland/Grazing Management Plan and lease
- Followed stocking rate guidelines
- Completed or made progress on annual work plans
- Refrained from performing unauthorized work
- Worked cooperatively with District staff to attain resource management goals
- Met District, local, state, or federal laws, regulations or policies
- Accommodates public use of the property (this property is closed to the public use at this time)

Mr. Fontana has satisfactorily met the above listed performance standards, and the District’s land stewardship and sustainability goals with respect to the Big Dipper Ranch. As such, Mr. Fontana is deemed a tenant in good standing. Continuing the conservation grazing program on this property under a lease to Mr. Fontana is the most efficient way to meet the District’s resource management goals to protect grassland habitat and native biodiversity, reduce wildland fuel loads, and meet Coastal Service Plan commitments to support sustainable agriculture on the San Mateo County coast.

**FISCAL IMPACT**

Sufficient funds remain in the Land & Facilities Department budget to cover maintenance costs associated with the recommendation during the remaining fiscal year, which are primarily for spraying and/or mowing of invasive thistles and brush. This lease will also generate income, which will fluctuate depending on the current Animal Unit Month (AUM) price and the number and age of cattle on the property.

	<i>FY2018-19 Budget Estimates</i>
Rental income	\$3,650.00
Spraying/mowing expense	\$2,500.00

**BOARD COMMITTEE REVIEW**

A Board Committee did not previously review this item.

**PUBLIC NOTICE**

Public notice was provided as required by the Brown Act.

**CEQA COMPLIANCE**

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

## NEXT STEPS

If approved, the Acting General Manager would sign a five-year cattle grazing lease with a five year option, for a total not to exceed ten years, with Vince Fontana, provided Mr. Fontana has met all District requirements including appropriate insurance certificates and endorsements.

### Attachments

1. Location Map
2. Resolution Approving the Award of a Grazing Lease to Vince Fontana (Big Dipper Grazing Unit, Skyline Ridge Open Space Preserve)
3. Big Dipper Ranch Grazing Lease
4. Board Report R-07-107
5. Board Report R-07-135

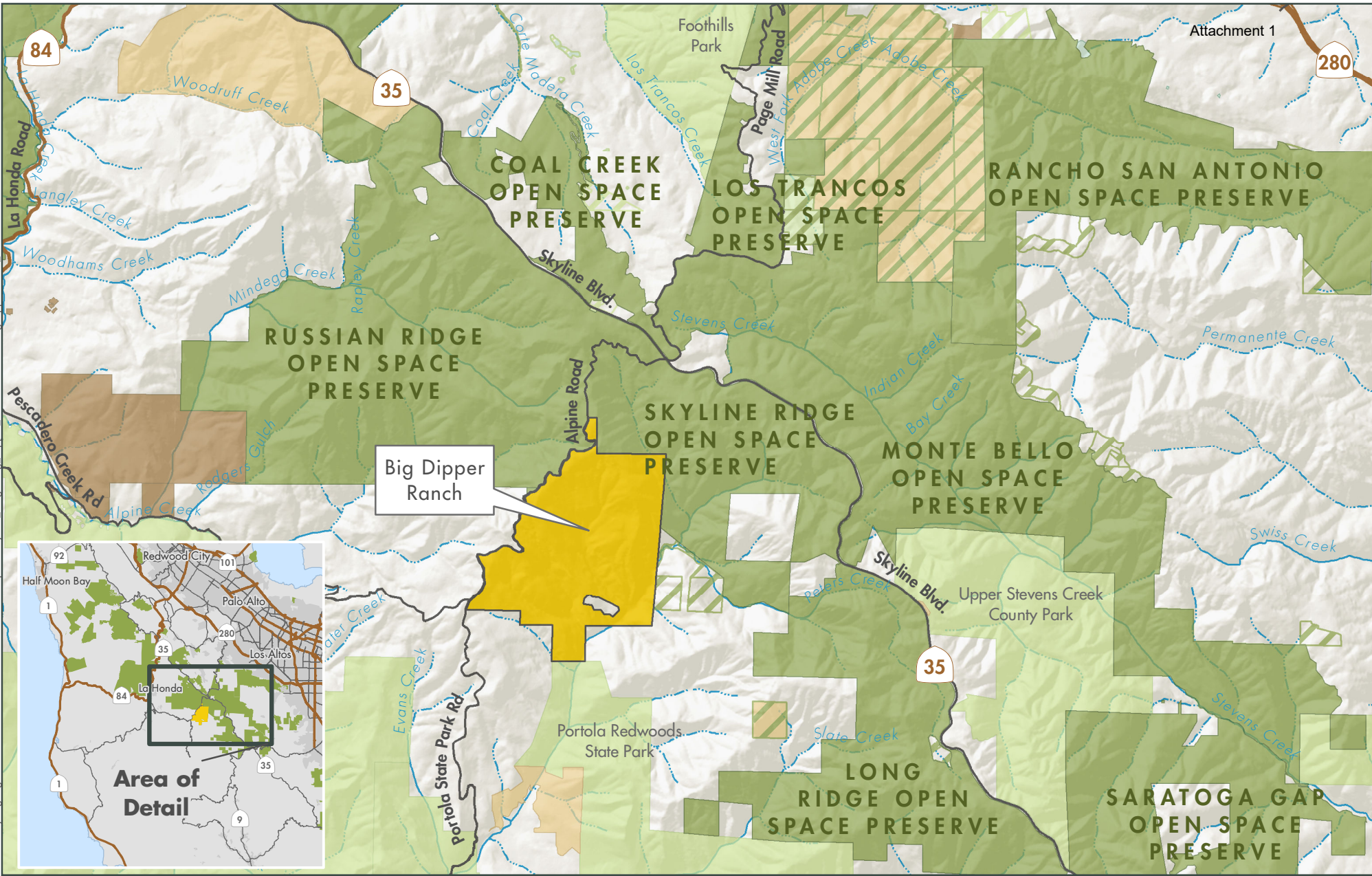
Responsible Department Head:

Elaina Cuzick, Acting Land & Facilities Services Manager

Prepared by:

Susan Weidemann, Property Management Specialist II

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Created By: ngrtg



### Big Dipper Ranch

- MROSD Preserves
- Land Trust
- Big Dipper Ranch
- Other Protected Lands
- Other Public Agency
- MROSD Easement Over Land Trust
- Private Property
- MROSD Conservation or Agriculture Easement

Midpeninsula Regional  
Open Space District  
(MROSD)  
March 2018



While the District strives to use the best available digital data, these data do not represent a legal survey and are merely a graphic illustration of geographic features.

**RESOLUTION 18-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING THE AWARD OF A GRAZING LEASE TO VINCE FONTANA (BIG DIPPER GRAZING UNIT, SKYLINE RIDGE OPEN SPACE PRESERVE)**

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**WHEREAS**, the Midpeninsula Regional Open Space District (District) may, under the provisions of California Public Resources Code section 5540, lease property owned by the District; and

**WHEREAS**, the lease of the Big Dipper Grazing Unit for grazing and rangeland management purposes is compatible with park and open space purposes, and the lease of such premises is in the public interest; and

**WHEREAS**, the District wishes to renew its lease of the Big Dipper Grazing Unit to Vince Fontana on the terms hereinafter set forth.

**NOW, THEREFORE**, the Board of Directors of Midpeninsula Regional Open Space District does hereby resolve as follows:

1. The Grazing Lease between the Midpeninsula Regional Open Space District and Vince Fontana, a copy of which is attached hereto and incorporated herein by this reference, is approved.
2. The General Manager is authorized to execute the Grazing Lease on behalf of the District. The General Manager, with the concurrence of the General Counsel, is authorized to make minor changes to the Grazing Lease that do not materially amend the terms and conditions thereof.
3. The General Manager is authorized to grant an extension of the Grazing Lease on the terms and conditions set forth in the Grazing Lease. The General Manager shall report any such extension of the Grazing Lease to the Board of Directors at the Board meeting immediately following the granting of the extension. The General Manager or designee is further authorized to sign and approve all other documents necessary or appropriate to entering into the Grazing Lease.

\* \* \* \* \*

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on \_\_\_\_\_, 2018, at a regular meeting thereof, by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

**ATTEST:**

**APPROVED:**

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Secretary  
Board of Directors

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President  
Board of Directors

**APPROVED AS TO FORM:**

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General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

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District Clerk



**GRAZING LEASE**

**between**

**MIDPENINSULA REGIONAL**

**OPEN SPACE DISTRICT**

*Lessor*

**And**

**VINCE FONTANA**

*Lessee*

With respect to the following property

**BIG DIPPER RANCH**

A portion of

**SKYLINE RIDGE OPEN SPACE PRESERVE**

Effective Date

**April 1, 2018**

**GRAZING LEASE  
BIG DIPPER RANCH GRAZING UNIT  
SKYLINE RIDGE OPEN SPACE PRESERVE**

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## SUMMARY OF GRAZING LEASE TERMS

This is a summary (“Summary”) of the principal terms and conditions of the Grazing Lease. Each item below shall be deemed to incorporate all of the terms and conditions set forth in the Grazing Lease pertaining to such item. In the event of any conflict between the information in this Summary and any more specific provision of the Grazing Lease, the more specific Grazing Lease provision shall control.

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<b>Landlord:</b>	Midpeninsula Regional Open Space District
<b>Acres:</b>	<u>955</u> Gross Acres excepting the District employee residence and the Cummings in-holding property.
<b>Tenant:</b>	<b>Vince Fontana</b>
<b>Term:</b>	Five (5) year Initial Term commencing <u>April 1, 2018</u> (“Commencement Date”)
<b>Grazing Season:</b>	Annual (Annual adjustments pursuant to Section 6)
<b>Grazing Capacity:</b>	<b><u>144</u></b> AUMs (Annual adjustments pursuant to Section 6)
<b>Permitted Use:</b>	Cattle grazing and authorized adjunct activities
<b>Rent Payment Dates:</b>	Bi-annual payments on January 2 <sup>nd</sup> and July 1 <sup>st</sup>
<b><u>District Contact Information:</u></b>	<b><u>Tenant Contact Information:</u></b>
Primary Contact: Property Management Specialist II Tel: (650) 691-1200 Alternate: Skyline Area Superintendent Tel: (650) 949-1848	Primary Contact: Vince Fontana Tel: 650-726-2621  Alternate Contact: Doug Edwards Tel: 650-245-6808
<b><u>Notice Addresses of District:</u></b>	<b><u>Notice Address of Tenant:</u></b>
Midpeninsula Regional Open Space District Attn: Property Management Specialist II 330 Distel Circle Los Altos, CA 94022	Vince Fontana P O Box 512 Half Moon Bay, CA 94019

## GRAZING LEASE

THIS GRAZING LEASE (“LEASE”) IS MADE BY AND BETWEEN THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT (“DISTRICT”) AND VINCE FONTANA (“TENANT”) UPON THE FOLLOWING TERMS AND CONDITIONS:

### 1. RANGELAND MANAGEMENT PLAN

District has prepared a grazing management plan for the Premises (“Rangeland Management Plan”), incorporated herein by this reference as Exhibit A, and has provided Tenant with a copy of said Rangeland Management Plan. Tenant hereby acknowledges receipt thereof. Tenant shall manage and use the Premises throughout the Term in a good and proper manner, according to approved methods of range management and grazing practice as more specifically set forth in the Rangeland Management Plan, and as may be established and modified from time to time by District. The Rangeland Management Plan serves this Lease as a management tool for developing and implementing range activities in accordance with and complementary to the District’s overall land management, resource administration, public use, and other open space policies, guidelines and goals. The Rangeland Management Plan may be amended by District from time to time, with Tenant’s input, and any such amendment by District shall be effective upon thirty (30) days written notice to Tenant thereof.

### 2. PREMISES

- (a) **Premises.** District leases to Tenant, and Tenant leases from District, upon the terms and conditions herein, 955 gross acres less cited exceptions located in the Skyline Ridge Open Space Preserve, San Mateo County, CA (“Premises”) as depicted in Exhibit B attached hereto.
- (b) **Reserved Rights.** Tenant’s use of the Premises is subject to all existing easements, servitudes, leases and rights of way for ditches, levees, roads, public utilities, pipelines and any other purposes, whether of record or not, and including the right of District to authorize its directors, officers, employees, agents, and volunteers to use the Premises for District purposes. District reserves the right to use the Premises for all public open space purposes, including but not limited to, natural resource restoration and management, natural resource monitoring, road grading, mowing, plowing, seeding, fertilizing, prescribed burning and performing any other appropriate or customary seasonal work. District further specifically reserves the right to make use of all roads and trails on the Premises for patrol, maintenance and such other uses as District may reasonably desire to make of such roads or trails. District also reserves the right to make the Premises open to the general public for low intensity open space recreation, subject to reasonable restrictions as determined by District, and including the right to construct trails, public trailhead facilities, and other facilities for such public use purposes.
- (c) **As Is Condition of Premises.** District makes no warranties or representations to Tenant concerning the suitability of the Premises for grazing purposes. Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation of the Premises and the suitability of the Premises for Tenant’s intended use. Tenant is fully aware of the needs of its grazing operations and has determined, based solely on its own inspection, that the Premises are suitable for its operations and intended use. Tenant acknowledges, agrees to, and hereby accepts, the Premises in their present condition, “AS IS, WITH ALL FAULTS”, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, rules and regulations governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any

and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that District, including without limitation its directors, officers, employees and agents, has not made, and District hereby disclaims making, any representations or warranties, express or implied, concerning (i) any title or survey matters affecting the Premises; (ii) the physical, geological or environmental condition of the Premises including without limitation, and notwithstanding any provisions of the Rangeland Management Plan, the availability, suitability, sufficiency, or existence of any sources of water, livestock watering system, or water rights of any kind; (iii) the present or future capacity or suitability of the Premises for livestock grazing; (iv) the feasibility, cost or legality of constructing any improvements on the Premises if required for Tenant's use as permitted under this Lease; (v) the condition of any fences, roads, gates or range improvements; or (vi) any other matter whatsoever relating to the Premises or its use, including, without limitation, any implied warranties of fitness for a particular purpose.

- (d) **Withdrawal of Premises.** Pursuant to California Public Resources Code Section 5563, District hereby reserves the right, at any time, to reduce the size of the Premises leased hereunder, in whole or by any portion thereof. Should the District Board of Directors ("Board") determine to use such lands for park, open space or other District purpose inconsistent with Tenant's use, the Lease shall terminate as to those lands so identified. District will notify Tenant of the tentative scheduling of any agenda item for Board consideration to act under Section 5563, as to the Premises, no less than sixty (60) days in advance of the meeting proposed for consideration of such an item. Should less than the entire Premises be removed from the Lease pursuant to this Section, the animal unit months ("AUM"), as hereinafter defined, and as permitted hereunder, and the corresponding rental amount, shall be reduced proportionate to the reduction in the area, based on acreage and grazing capacity, subject to the Lease. In the alternative, Tenant may elect to terminate the Lease in its entirety and shall have no further rights or obligation hereunder except as to those matters specifically identified as surviving such termination. In the event of such early termination, Tenant's sole claim against District shall be to a pro-rata refund of any grazing rent actually paid in advance, if any such rent has been paid for the next lease year.

### 3. TERM

- (a) **Term.** The Premises are leased for an initial five (5) year term ("Initial Term") beginning January 2, 2018 ("Commencement Date") and expiring on January 1, 2023, unless extended as provided for herein. Provided Tenant is in compliance with the terms, covenants, and provisions of this Lease (including the Rangeland Management Plan), District may in its sole discretion elect to extend the Lease for one additional five (5) year period ("Subsequent Term"), for a maximum total Term of no more than ten (10) years, unless the Lease is terminated by District or Tenant as otherwise provided for herein. The Subsequent Term shall expire on January 1, 2028. Collectively, the Initial Term and Subsequent Term, if any, are referred to herein as the "Lease Term".
- (b) **Grazing Capacity and Grazing Season.** The definition of the "Grazing Capacity" and the "Grazing Season" for all purposes of this Lease is that set forth in Section 6 of this Lease. Tenant will graze the Premises only during the Grazing Season and in compliance at all times with the authorized Grazing Capacity. Tenant may go on to the Premises during other times of the year (the "Off-Season") to conduct activities reasonably related to permitted grazing, including infrastructure maintenance and repair and related to such new leasehold

improvements as may be authorized in writing by District.

- (c) **Termination of Lease at End of Term.** District or Tenant may terminate this Lease at the end of the Initial Term, or at the end of any Subsequent Term, if District or Tenant gives written notice to the other party at least ninety (90) days prior to the Expiration Date of the then effective Term. This right of termination is in addition to any and all rights of termination by District or Tenant as set out herein.
- (d) **Possession.** Tenant agrees that in the event of the inability of District to deliver possession of the Premises at the Commencement Date, District shall not be liable for any damage caused thereby nor shall this Lease be void or voidable, but Tenant shall not be liable for Rent (as described hereunder) until such time as District offers to deliver possession of the Premises to Tenant. The Term of the Lease shall not be extended by any such delay.

#### 4. RENT

- (a) **Lease Year Rent.** Each year during the Term, Tenant shall pay to District annual rent (“Rent”) as payment for grazing on the Premises. Rent for the first year of the Initial Term is the calculated as set out in Exhibit C. Rent shall be adjusted each lease year thereafter (“Annual Adjustment of Rent”) as set forth below. Rent shall be payable in two lump sum payments for the actual livestock use that occurs over the Grazing Season, and shall be paid on or before the dates set forth in the Summary (“Rent Payment Date”) at the address shown for District in the Summary. Rent shall be paid in advance without demand, deduction, offset or counterclaim whatsoever, except as may otherwise be specifically permitted herein.
- (b) **Annual Adjustment of Rent.** Rent shall be adjusted upward or downward for each lease year depending upon the Grazing Capacity, Grazing Season, and per AUM rental rate as set out in Exhibit C for the Premises, as determined by District prior to the beginning of the Grazing Season, and on whether the average selling price of beef cattle is higher or lower than the corresponding average selling price for the preceding lease year (“Rent Adjustment”). Tenant shall be notified by the District on or before July 15<sup>th</sup> of each current lease year of the new per AUM rental rate for the next Grazing Season. Rent Adjustments will be calculated pursuant to the formula set forth in the Calculation of Annual Grazing Rent, attached hereto and incorporated herein as Exhibit C of this Lease. Rent shall be due immediately following the District’s notification of total amount due.
- (c) **Performance of Work for Rent Credit.** Tenant may request permission from District to improve grazing infrastructure and/or promote resource protection (“Work”) on the Premises, in lieu of all or a portion of the Tenant’s annual Rent by the following procedures and subject to the following conditions:
  - (i) Only Work that qualifies for Rent Credit as outlined in Exhibit D may be submitted.
  - (ii) Prior to commencing any such Work, Tenant shall submit a written proposal and schedule for completion of Work to District for approval and shall provide an estimate of the value of such Work itemizing the estimated cost for outside contractors, materials, labor, and equipment (Exhibit E).
  - (iii) The construction and installation of the improvements shall be in accordance with District’s specifications and instructions. A biological monitor may be required by District in its sole discretion to monitor Work in areas where sensitive species may be affected.
  - (iv) District shall review such Tenant proposal and value estimate, and may elect, in its sole discretion, to authorize the performance of such Work, or may counter

the offer of Tenant, either as to the scope of Work or valuation thereof. If acceptable to Tenant, District and Tenant may agree that such Work be performed in lieu of all or a portion of Rent in the agreed-upon amount. Any such authorization shall be in writing and signed by a duly authorized District representative or shall be of no force and effect.

- (v) In the event District approves specific Work to be performed by Tenant in lieu of all or a portion of Rent, all such Work shall be performed in a timely and professional manner, to the reasonable satisfaction of District.
- (vi) Tenant acknowledges that any Work to be performed by Tenant in lieu of all or a portion of Rent may trigger reporting requirements by the District under federal and state tax law. Tenant agrees that Tenant is solely responsible for all tax obligations, if any, arising from such payments or offsets, to whatever degree required by state or federal law.
- (vii) Tenant shall notify District upon completion of the authorized Work and shall arrange for inspection of such Work by District. If District, after inspection, accepts the Work as fully and correctly performed, it shall authorize, in writing, that such Work be either substituted for all or a portion of Tenant's Rent obligations for the agreed upon amount. If District determines that the Work has not been fully or correctly performed, it shall notify Tenant of the deficiencies and Tenant shall have a reasonable period of time to correct the identified deficiencies. Tenant shall thereafter notify District and request further inspection.
- (viii) Tenant shall not accept any federal cost-sharing payments, grants, or donations for conservation practices that would result in a duplicate payment.
- (ix) In any agreement entered into between Tenant and outside contractor(s), said contractor shall act as an independent professional and not as an agent of the District, and nothing contained in this agreement or any contractor agreement shall create a contractual relationship between any contractor or subcontractor and the District. Tenant shall obtain written permission from District prior to retaining any contractor to perform work at the Premises. Tenant shall notify the District at least seven (7) days prior to the commencement of said approved work and immediately upon completion.
- (x) Any and all work performed by Tenant or his or her agents and contractors that requires a license shall be performed only by a qualified and appropriately licensed professional as required by State law.
- (xi) In no event shall credit for Work performed in lieu of Rent exceed the amount of Rent due for the remainder of the then current Grazing Season and any excess claimed may not be carried over or otherwise applied to rental obligations arising thereafter. Should District terminate this Lease for any reason permitted hereunder, District shall, prior to the full application of any such credit to Rent due, reimburse Tenant for Work that was approved by District and correctly performed by Tenant, provided that District's termination of this Lease is not due to a material default or breach of Tenant that results in a determination by a court of competent jurisdiction that any such credit accrues to the benefit of the District.

**(d) Performance of Work as a Contractor.** Tenant may request permission from District to

improve grazing infrastructure and/or promote resource protection (“Work”) on the Premises for direct compensation as a contractor by the following procedures outlined above in section 4(c) except as noted below.

- (i) For performance of Work for compensation, Tenant is required to sign a contract for the Work proposed with the District after the Work proposal has been approved.
  - (ii) Tenant is required to provide any additional insurance as specified.
  - (iii) Compensation for said Work will be directly paid to the Tenant instead of in lieu of all or a portion of Rent.
  - (iv) Tenant acknowledges that any Work to be performed by Tenant for compensation may trigger reporting requirements by the District under federal and state tax law. Tenant will be required to submit a W9 to the District. Tenant agrees that Tenant is solely responsible for all tax obligations, if any, arising from such payments or offsets, to whatever degree required by state or federal law.
  - (v) Nothing contained herein shall be construed to make Tenant an employee or agent of District and Tenant shall be and remain an independent contractor.
- (e) **Late Charge.** Any Rent received by District five (5) or more days past the Payment Date on which such amount was due, shall be subject to a penalty of 10% of the amount due to District, and Tenant shall pay such additional sum concurrently with the late payment.
- (f) **Livestock Lien.** Tenant hereby acknowledges that all Rent not paid on a Payment Date set herein shall become a lien on any and all livestock located on the Premises as authorized by California Civil Code §3080, *et seq.*, and District shall have the right to take possession and retain all such livestock, without resort to additional legal proceeding, until all unpaid amounts are satisfied in full.

## 5. TAXES

Tenant agrees to be responsible for, and to pay promptly when due, all possessory interest taxes and any other such taxes that are assessed on the basis of this Lease or the grazing operations permitted hereunder. Tenant shall pay any such possessory tax prior to delinquency thereof, and shall not be entitled to offset the amount of such tax against Rent payable under this Lease. Taxes assessed on any personal property of Tenant shall be solely the obligation of Tenant.

Tenant acknowledges that any rent offsets or compensation paid by other means for work done on the property may trigger reporting requirements by the District under federal and state tax law, regarding such payments or offsets credited to the Tenant. Tenant agrees to provide any information required about the business structure under which Tenant operations to assist the District in determining its tax reporting obligations. Tenant agrees that Tenant is solely responsible for all tax obligations, if any, arising from such payments or offsets, to whatever degree required by state or federal law.

## 6. ANNUAL GRAZING CAPACITY AND GRAZING SEASON DETERMINATION

- (a) **Definition of Grazing Capacity.** Grazing capacity, for all purposes herein, is the level of livestock use allowed on the Premises consistent with forage production, resource conservation, and open space preservation objectives (the “Grazing Capacity”). The unit of measure of Grazing Capacity shall be the animal unit month (“AUM”), defined herein as the amount of forage, equivalent to 1,000 pounds of dry, herbaceous plant material, necessary to

sustain a mature cow for a period of one month. District shall regulate the kind and number of livestock and the amount of time the Premises are grazed by same, to assure conformity to Grazing Capacity estimates.

- (b) **Procedure for Establishing Annual Grazing Capacity and Grazing Season.** The Grazing Capacity and Grazing Season for the Premises for the first lease year is that set forth in the Summary. The procedure for establishing the Grazing Capacity and Grazing Season thereafter shall be:
- (i) District shall conduct an annual range assessment of the Premises to identify areas District considers suitable for grazing and to estimate the available forage production for the forthcoming lease year. Tenant will be provided an opportunity to participate in this annual range assessment.
  - (ii) Residual Dry Matter (RDM) targets described in Section 6(f) herein shall be subtracted from the estimated total amount of available forage within the Premises to determine how much forage is available for livestock to consume in an average year, a wet year, and a dry year. The District's determination of Grazing Capacity and corresponding Grazing Season for the Premises shall be based upon the estimated forage production in an average rainfall year and may be subject to change by District.
  - (iii) Prior to November 15<sup>th</sup> of each year, District shall notify Tenant in writing of the authorized Grazing Capacity and Grazing Season for the Premises for the forthcoming lease year. The notice shall set forth any required changes to Tenant's range management methods or grazing practices in accordance with the Rangeland Management Plan, and shall also list any natural resource management or other range or open space management activities appropriate for the Premises during the forthcoming lease year from which Tenant may propose to do Work, as defined in Section 4(c) and 4(d).
  - (iv) Subject to the provisions of Section 6(c) through 6(e) below, the authorized Grazing Capacity for the Premises shall remain the same throughout the lease year.
- (c) **District as Sole Judge of Grazing Capacity and Grazing Season.** At all times District shall be the sole judge as to the Grazing Capacity and Grazing Season of the Premises and any pasture thereof. In determining the Grazing Capacity and Grazing Season of the Premises or any pasture thereof, District may take into account, by way of example only and without limitation thereby, such factors as erosion control, re-forestation, native and invasive vegetation, water quality, fisheries, wildlife, recreation or any other conditions that may affect the use, operation, and conservation of the District's lands for open space purposes.
- (d) **Emergency Reduction of Grazing Capacity.** At any time and from time to time, District may reduce the authorized Grazing Capacity or Grazing Season or impose a full or partial grazing moratorium in the District's discretion when such action is necessary or appropriate due to an emergency that poses a threat to the physical or environmental condition of the Premises. Written notice of any such reduction will be given by District to Tenant, who shall have ten (10) days in which to implement the reduction. In implementing such reduction, Tenant may either (i) reduce animal numbers, or (ii) feed weed-free hay of good quality at the equivalent of three (3) AUMs per ton fed. In the event Tenant desires to use option (ii), Tenant shall first obtain District's written approval. In giving such approval, District may require Tenant to concentrate all or part of the livestock into selected areas for feeding and control. In

the event of such reduction, the Rent shall be adjusted pursuant to Section 4(b) hereof.

- (e) **Exceeding Grazing Capacity without Authorization.** Tenant shall limit the number of livestock to be grazed upon the Premises and the period of use so that the authorized number of AUMs is not exceeded. Should the Premises, or any portion thereof, unintentionally be grazed in excess of the authorized number of AUMs, Tenant shall immediately remove all or such number of livestock as are necessary to comply with the Grazing Capacity authorized by District. In addition to all other rights which District may have or exercise under this Lease, in the event that Tenant grazes the Premises in excess of the authorized Grazing Capacity, the charge per AUM shall be three (3) times the annual Rent provided for in this Lease for each AUM or portion thereof grazed in excess of said authorized number, for any length of time, such amount being hereby agreed upon as the liquidated minimum damages to District from such excess usage and District shall be entitled to prove and be awarded any greater damage amount, or other relief sought, by a court of competent jurisdiction. Tenant shall pay such amount to District promptly upon demand.
- (f) **Minimum Residual Dry Matter (RDM) Requirements.** Residual dry matter (“RDM”), as used herein, is a measure of the amount of dry vegetation left on the ground, typically measured at the end of summer or in the fall, prior to rainfall. The height in inches of standing vegetation remaining on the ground is a general indicator of RDM levels; however the pounds per acre measurement shall be used for the purposes of monitoring and enforcing minimum RDM requirements. The District has set the following minimum RDM requirements for the Premises depending upon average slope:
- 1) On 0% to 30% slopes, the average minimum RDM shall be 800 – 1,000 pounds per acre, or approximately 2 to 3 inches of standing vegetation.
  - 2) On slopes greater than 30%, the average minimum RDM shall be 1,200 pounds per acre, or approximately 3 to 4 inches of standing vegetation.

A layer of RDM shall be maintained by Tenant throughout the Grazing Season to minimize soil erosion and enhance both the quality and quantity of forage produced. Tenant and District acknowledge that localized over-utilization will occur adjacent to watering facilities, corrals, and salting areas. As such, these areas will not be used to determine the RDM levels of a pasture. If the RDM levels drop below the amounts specified above, District shall notify Tenant, and Tenant shall immediately remove all livestock from the affected pasture(s) until such time as District determines that such pasture(s) have recovered sufficiently for restocking.

## 7. ANNUAL STOCKING AND WORK PROGRAM

Tenant shall prepare an annual stocking and work plan (“Stocking and Work Program”) prior to the beginning of each Grazing Season. No later than **December 1st** of each year, Tenant shall deliver to District a proposed Stocking and Work Program, in a form substantially similar to the example attached hereto as Exhibit F that shall include information on the number and type of all livestock proposed to be grazed upon the Premises during the forthcoming Grazing Season. The Stocking and Work Program shall set forth the number of AUMs to be stocked on each pasture, based on current forage conditions and the Grazing Capacity and the forthcoming Grazing Season established by District, and shall specify all proposed management activities related to herd health, pest control, infrastructure maintenance, and/or the development of range resources that may be warranted for the conditions and circumstances on the



Premises. The range management work proposed by Tenant shall be in full conformance with the Rangeland Management Plan. Within twenty (20) working days of receipt of the Stocking and Work Program, District shall notify Tenant in writing whether it is acceptable. If unacceptable, District shall state in its notice all changes to be made to the Stocking and Work Program. Tenant shall incorporate all changes into the Stocking and Work Program and resubmit it to District for approval. For the length of the Grazing Season, Tenant shall submit monthly stocking reports as outlined in Exhibit G.

## 8. LIVESTOCK

- (a) **Health of Livestock.** Tenant covenants and warrants that all livestock on the Premises shall be in general good health and physical condition and that they have been inoculated with all appropriate vaccinations according to good husbandry practice.
- (b) **Outbreaks of Disease.** Tenant shall immediately report to District and all proper governmental authorities any case of infectious animal disease appearing in livestock on the Premise, and shall, at Tenant's sole cost, take all steps required to isolate, control, and eliminate any such disease. Livestock exhibiting symptoms of disease communicable to humans shall be immediately removed from the Premise.
- (c) **Livestock Identification.** All livestock and their offspring shall be branded or marked with the brand or mark of the Tenant. The District, under certain conditions, may require Tenant to identify livestock with distinctive ear tags for to facilitate public or District personnel reporting of any problem or aggressive livestock.
- (d) **Disposal of Livestock Carcasses.** Tenant shall remove from the Premises, any livestock that may die on the Premises. Tenant is strictly forbidden to bury livestock carcasses on any District land. Tenant shall immediately notify District upon discovering any dead livestock on or near the Premises.

## 9. USE OF PREMISES

- (a) **Tenant's Permitted Use.** Tenant may use the Premises for the uses specified in the Rangeland Management Plan, and for no other purpose or use without the prior written consent of District, the exercise of which shall be in its sole discretion. Livestock grazed on the Premises must be either owned by the Tenant or grazed under the direct supervision of Tenant.
- (b) **Grazing Within Premises.** Tenant shall, at all times, prevent livestock from trespassing onto lands on which Tenant is not authorized to graze and adjacent third-party lands, whether private or public. Notwithstanding the foregoing, nothing in this subsection (c) shall be construed to require Tenant to install additional fencing on the Premises beyond that required elsewhere in this Lease or by the Rangeland Management Plan.
- (c) **Supplemental Feeding.** Subject to verbal authorization from the District's Area Superintendent or other authorized District representative, Tenant may provide supplemental feed to maintain the health and vitality of permitted livestock. Tenant may not conduct supplemental feeding on the Premises to prolong grazing use in areas where the forage levels specified in the approved annual Stocking and Work Program have been reached or exceeded. Any supplemental feed shall be certified to be free of non-native, invasive plant materials, commonly known as "weed free" feed or forage.
- (d) **Motorized Vehicles and Heavy Equipment.** Tenant acknowledges that use of roads and vehicle accessible trails and areas of the Premises, both during and immediately following wet weather carries the potential for serious degradation of road and ground surfaces, including

but not limited to, rutting and erosion. Tenant shall refrain, to the maximum extent feasible consistent with reasonable grazing practices, from using motorized vehicles on the Premises during wet conditions. All motorized vehicle use by Tenant during wet conditions is restricted to the use of balloon-tired, all-terrain vehicles. All motorized vehicles and equipment used by Tenant on the Premises must be outfitted with appropriate spark arrestors and mufflers. No heavy equipment, including, but not limited to bulldozers, backhoes, excavators, or trenchers is allowed to cross or operate on the Premises without District's prior written consent. District may, in its sole discretion, close any or all roads, or promulgate and enforce use restrictions on road use for resource management, erosion control, law enforcement purposes, or other purposes necessary or appropriate for the sound management of the Premises, by providing Tenant with prior written notice thereof.

- (e) **Weed and Pest Control.** Except as set forth in Section 9(d) above, District will have the right, but not the obligation, at its sole cost and expense, and in its sole discretion as to the manner, time or extent of such efforts, for the control of noxious weeds and animal pests on the Premises. Tenant shall fully cooperate with District in any programs designed to control or eradicate weed and pest populations, including relocation of livestock if necessary. District shall provide Tenant with at least 48 hours' notice, verbal or written, prior to the commencement of such control programs. Tenant shall not introduce any noxious vegetation onto or about the Premises. In no event shall District be liable to Tenant for the presence or introduction of noxious vegetation or animal pests on the Premises.
- (f) **Integrated Pest Management Program.** Tenant, and any pest management contractors operating on the leased property, shall comply with all requirements of the District's Integrated Pest Management (IPM) Program. These requirements include, but are not limited to: using the least harmful method(s) to control identified pests, using only pesticides on the current District Pesticide List, posting notifications of all pesticide applications one day before treatment, leaving these postings for three days after treatment, and reporting all pesticide use by staff or contractors. Tenant must obtain prior written authorization from District before using any pesticide on the Premises.
- (g) **Hazardous Substances.** Tenant is absolutely prohibited from transporting, mixing, generating, applying, storing, or disposing of pesticides (including herbicides or rodenticides) or any hazardous substances, except for equipment and vehicle fuel and fueling operations typical for use in grazing operations, upon the Premises without the prior express written consent of District. Fuel will be kept in properly sealed containers, suitable for the substance, and all fuel transfer operations will be conducted with sufficient care and diligence to prevent contamination of or on the Premises.
- (h) **Events.** Tenant shall obtain a permit pursuant to District's permit process for any event held on the Premises for twenty (20) attendees or above.
- (i) **Unforeseen Circumstances.** At any time, District may require Tenant to temporarily relocate livestock, and/or temporarily cease grazing activities on a portion of the Premises if, in the District's discretion, such action is necessary or appropriate due to unforeseen circumstances which pose a threat to the physical or environmental condition of the Premises. District will notify Tenant at least seventy-two (72) hours previous to an action. In the event of such reduction, the Rent shall be adjusted pursuant to Section 4(b) hereof.
- (j) **Cannabis.** Cannabis shall not be cultivated, stored, transported, packaged or possessed on District premises notwithstanding legality of cannabis within the local jurisdiction.

## 10. MAINTENANCE OF IMPROVEMENTS

- (a) **Routine Maintenance.** Tenant responsibilities for maintenance are outlined in Exhibit E. Please refer to Section 4(c & d) for a full description of the requirements for either performance of work for rent credit or direct compensation where applicable.
- (b) **Emergency Road Repairs.** Tenant may perform limited emergency repairs to any road that is impassable for uses authorized hereunder. Tenant must make a reasonable, good faith effort to notify District prior to commencing emergency work undertaken pursuant to this section. "Emergency" for purposes of this section shall mean imminent danger to the health or safety of humans, the natural resource values of the Premises, water bodies or structures, or to livestock permitted on the Premises hereunder. All emergency work undertaken pursuant to this section shall be performed, to the maximum extent feasible, in a manner consistent with District road repair standards. No material may be permitted to enter waterways. Tenant shall be responsible for remediation of any emergency road repair work, as such may be ordered by District or by lawful regulatory authority, including proper permitting, associated fees and charges and for any fines levied. Tenant shall not be entitled to reimbursement or rent credit for any such emergency repairs.

## 11. ALTERATIONS

Tenant agrees to obtain and fully comply with all applicable permits, authorizations, laws, ordinances, and regulations, and to obtain the prior written consent of District before making any alterations of, changes in, or additions to the Premises. All alterations, additions and improvements made in, to, or on the Premises, except unattached, movable fixtures, are the property of the District and will remain upon, and be surrendered with, the Premises upon termination of this Lease.

## 12. ENTRY AND INSPECTION BY DISTRICT

Tenant agrees that District and its directors, officers, employees, agents and authorized volunteers may enter the Premises at any time to inspect the Premises, or to make any changes, alterations or repairs which District in its sole discretion considers appropriate for the protection, improvement or preservation of the Premises, and to post any notice provided for by law or otherwise to protect the rights of District. Nothing herein contained shall be construed to obligate District to make any changes, alterations or repairs to the Premises.

## 13. COMPLIANCE WITH LAW

Tenant will comply with all applicable laws, permits, statutes, ordinances, rules, governmental orders, regulations, and requirements pertaining to the occupancy and use of the Premises, including without limitation, District Land Use Regulations and District Ordinances (copy provided to Tenant). Tenant shall not use, nor permit others to use, the Premises for any unlawful or prohibited purpose or purposes except as may otherwise be specifically authorized hereunder.

## 14. DISTRICT RIGHT TO TERMINATION FOR BREACH OR DEFAULT

- (a) **District Right to Terminate for Default.** District shall have the right to terminate this Lease at any time upon default of this Lease by Tenant. In the event of such earlier termination by District, Tenant shall be allowed thirty (30) days following the giving by District of written

notice of termination to Tenant in which to vacate the Premises. In the event of such early termination, Tenant's sole claim against District shall be to a pro-rata refund of grazing rent actually paid in advance.

- (b) **Default.** The occurrence of any of the following shall constitute a material default under and breach of this Lease by Tenant:
- (i) Any failure by Tenant to pay the Rent or any other monetary sums required to be paid hereunder (where such failure continues for three (3) business days after written notice to quit or pay rent by District to Tenant).
  - (ii) The abandonment of the Premises by Tenant.
  - (iii) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by District to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.
  - (iv) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or, the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days. Tenant agrees that in the event of the occurrence of any of the above-specified circumstances, this Lease, or any interest in or to the Premises, shall not become an asset in any of such proceedings.
- (c) **Remedies.** In the event of any material default or breach by Tenant, District may, at any time thereafter, and without thereby limiting District in the exercise of any right or remedy, at law or in equity, that District may have by reason of such default or breach:
- (i) Maintain this Lease in full force and effect and recover the Rent and other monetary charges as they become due, without terminating Tenant's right to possession irrespective of whether or not Tenant has abandoned the Premises. In the event District elects not to terminate the Lease, District shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as District deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new Tenant taking possession of the Premises, notwithstanding failure by District to elect to terminate the Lease initially. District at any time during the Term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant.

(ii) Terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to District. In such event District shall be entitled to recover from Tenant all damages incurred by District by reason of Tenant's default, including without limitation thereto, the following: (a) the worth at the time of award of any unpaid Rent which has been earned at the time of such termination; plus (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (c) any other amount necessary to compensate District for all the detriment proximately caused by Tenant's failure to perform any obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus (d) at District's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry District shall have the right to make any reasonable repairs, alterations or modifications to the Premises, which District, in its sole discretion, deems reasonable and necessary. As used in (a) above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum from the date of default. As used in (b), the "worth at the time of award" is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus one percent (1%). The term "Rent," as used in this Section, shall be deemed to be and to mean the Rent to be paid pursuant to Section 4 hereof and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

(d) **Cumulative Rights.** All rights, options and remedies of District contained in this Lease, including but not limited to the rights set out in Section 2(d) herein, shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and District shall have the right to pursue any one or all of such remedies and any other remedy or relief which may be provided for by law or in equity, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by District of any Rent or other payments due hereunder or any omission by District to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of District to or of any act by Tenant requiring District's consent or approval shall not be deemed to waive or render unnecessary District's consent or approval to or of any subsequent similar acts by Tenant.

## 15. TENANT'S RIGHT TO TERMINATE

If, after reviewing the average selling price of beef cattle for the month of June as set out in Exhibit C, Tenant determines that the Rent for the subsequent lease year will not enable Tenant to conduct an economically viable grazing operation, Tenant shall have the right to terminate this Lease, effective at the Commencement Date of the next lease year, by providing written notice to District at the address shown on the Summary on or before August 15<sup>th</sup> of any lease year. In the event of such earlier termination by Tenant, Tenant shall be allowed ninety (90) days following the receipt by District of written notice of termination by Tenant in which to vacate the Premises in conformity with this Lease. In the event of such early termination, Tenant's sole claim against District shall be to a pro-rata refund of any grazing rent actually paid in advance, if any such rent has been paid for the next lease year.

## **16. SURRENDER OF PREMISES**

Tenant agrees that upon termination of this Lease to promptly surrender the Premises and all appurtenances to District in the same condition as when received, reasonable use, wear and tear, damage by fire, acts of God or nature are an exception, and to remove all of Tenant's livestock and personal property from the Premises.

## **17. ASSIGNMENT AND SUBLETTING**

Pursuant to the provisions of Civil Code §1995.230, this Lease is personal to Tenant and may not be assigned, sublet or otherwise transferred by Tenant, in whole or in part, in any manner whatsoever without first obtaining the express written consent of District which may approve or disapprove such assignment, sublease or other transfer in its sole discretion based on its review and assessment of the proposed transferee's experience with grazing, especially on public lands, general business experience and financial stability on a level comparable to that of Tenant, and proposed transferee's ability to competently and timely perform all aspects of the Rangeland Management Plan.

## **18. INDEMNIFICATION**

Tenant agrees to indemnify, protect, defend, and hold District harmless from and against any and all claims, losses, damages, demands, liabilities, suits, penalties, costs, expenses (including, without limitation, attorneys' fees), causes of action, claims and/or judgments arising out of or arising in connection with any injury or damage to any person or property including, without limitation, District and its directors, officers, employees, agents volunteers, and guests from any cause or causes whatsoever while in, upon or in any way connected with this Lease, the Premises, or its appurtenances during the Term of the Lease.

## **19. INSURANCE**

Tenant agrees to obtain, and keep in force during the term of the Lease, all at Tenant's own cost and expense, a policy or policies of Commercial General Liability Insurance and Business Auto Coverage insurance, each in an amount of not less than \$1,000,000.00 aggregate and per occurrence or accident for all covered losses. Such policy or policies shall name District as an additional insured, and evidence of such endorsement, by a duly executed Certificate of Insurance (ACORD 25-S, or a successor or comparable form, subject to prior approval by District) shall be provided District within ten (10) days of execution hereof and shall be updated thereafter as necessary. Each of the policies must contain a provision that such policy will not be cancelled or materially changed without thirty (30) days prior written notice to District. Tenant shall also comply with all applicable statutory worker compensation requirements. Upon request by District, Tenant shall direct his insurer or insurance agent to furnish District with a copy of any policy required by this Lease, certified to be a true and complete copy of the original.

## **20. ABANDONMENT**

Tenant shall be deemed to have abandoned the Premises if Tenant fails to pay any rental amount due District at the times or in the manner provided, fails to observe and perform any of the other covenants or conditions of this Lease, where such failure to observe or perform continues for a period of fifteen (15) days after written notice by District to Tenant, or ceases active grazing use of the Premises for a continuous period of sixty (60) days during a Grazing Season. In the event Tenant is deemed to have abandoned the Premises,

any prepaid Rent shall belong entirely to District and shall not be refunded, in whole or in part, to Tenant.

## 21. WAIVER OF RELOCATION BENEFITS

Tenant specifically waives any and all rights to relocation benefits or assistance that might otherwise be available to Tenant upon termination of this Lease (for any reason or under any circumstances) including, but not limited to, those authorized under California Government Code §7260 *et seq.* or otherwise.

## 22. UTILITIES

District shall have no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant shall have the sole responsibility to locate such utilities and to protect them from damage. Tenant shall make all arrangements directly with utility companies for delivery, and shall timely pay for any and all utilities and services furnished to or used by Tenant, including without limitation, gas, electric, water and telephone service for all deposits, connection, installation and usage charges.

## 23. NO RIGHT TO REPAIR AND DEDUCT

No residential tenancy is created by or permitted hereunder, and Tenant expressly waives the benefit of any existing, or subsequently enacted or set out, law, judicial or administrative decision, that might otherwise permit Tenant to make repairs or replacements at District's expense, or to terminate this Lease because of District's failure to keep the Premises, improvements, or any part thereof, in good order, condition and repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or improvements or any part thereof being in need of repair or replacement except as is specifically authorized pursuant to Section 4 (c & d) hereof. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code §1932 or any similar laws with respect to the right of Tenant to terminate this Lease.

## 24. GENERAL PROVISIONS

- (a) **Amendments; Entire Agreement.** Neither this Lease nor any term or provision hereof may be changed, waived, amended, discharged or terminated except by a written instrument signed by the Parties hereto or as otherwise permitted hereunder. This Lease, including the Exhibits hereto, contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease or the Rangeland Management Plan and any changes therefrom) may be introduced in any judicial, administrative or other legal proceedings involving this Lease. Tenant hereby acknowledges that neither District, nor District's directors, officers, employees or agents, have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.
- (b) **Severability.** If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- (c) **Time.** Time is of the essence to every term and condition hereof to which time is a material factor.

- (d) **Governing Law and Venue.** This Lease shall be construed pursuant to California law and proper venue for all purposes shall be in the County of Santa Clara.
- (e) **Attorneys' Fees; Costs of Suit.** If legal action shall be brought by either of the parties, the party prevailing in said action shall be entitled to recover from the party not prevailing shall bear the costs of the suit and reasonable attorney's fees. For purposes of this Lease, reasonable fees of attorneys employed by District shall be based on the fees regularly charged by private attorneys with an equivalent number of years of experience in the subject matter area of the law and actively practicing within the jurisdiction of District.
- (f) **Holding Over.** Tenant specifically waives the provisions of Code of Civil Procedure §1161(2). Any holding over after expiration of the Term with the express written consent of District shall be construed to automatically extend the Term of this Lease only on a month-to-month basis. All other terms, conditions and covenants of the Lease shall remain in effect during the hold over period so far as applicable.
- (g) **Notices.** Wherever this Lease provides for notices between the parties, or wherever the law requires or gives the right of serving a notice, the same shall be in writing and either served personally or sent by registered or certified mail, postage prepaid and addressed to the appropriate party as shown in the Summary. District and Tenant may at any time, in the manner provided herein, change the place or person designated for receiving notice.

IN WITNESS WHEREOF the parties hereto subscribe their names.

DISTRICT:

TENANT:

\_\_\_\_\_  
Stephen E. Abbors, General Manager

\_\_\_\_\_  
Vince Fontana

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Attest:

\_\_\_\_\_  
Sheryl Schaffner, General Counsel

\_\_\_\_\_  
Jennifer Woodworth, District Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A  
TO  
GRAZING LEASE**

**Rangeland Management Plan  
(under separate cover)**

**EXHIBIT B  
TO  
GRAZING LEASE  
PREMISES**

**EXHIBIT C  
TO  
GRAZING LEASE**

**CALCULATION OF ANNUAL GRAZING RENT**

The Lease Summary specifies the Rent to be paid by Tenant during the first lease year. For each lease year thereafter, annual Rent shall be adjusted upward or downward based upon two factors:

- 1) The Grazing Capacity in AUMs authorized by District for the upcoming lease year.
- 2) An increase or decrease in the per AUM rental rate based upon whether the average selling price of beef cattle is higher or lower than the average selling price for the preceding year.

For the purpose of calculating the per AUM rental rate, the average selling price of beef cattle shall be taken as the average selling price of Medium Frame No.1 Muscling Steers and Heifers, 500-800 lbs., as reported by the Cattle Marketing Information Service, Inc. (Cattle-Fax) for the month of June prior to the start of the new lease year. In the event that the average sales price of beef cattle is not obtainable in any year from Cattle-Fax as now constituted, then the average sales price to be used in determining the rental rate shall be obtained from some other authentic source to be selected by District as providing a comparable price for this purpose.

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**EXAMPLE:**

Assume the Grazing Capacity authorized by the District for the first lease year is as follows:

Property Name - xxx AUMs per month for x months (month - month) = xxx AUMS

Total Grazing Capacity = xxx AUMS

Per AUM Rent = \$xx.xx

Rent for first lease year = xxx AUM X \$xx.xx = \$xx.xx

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The total authorized AUMs for each upcoming lease year shall be established by the District on the basis of the Grazing Capacity of the Premises as determined by District, and stocking levels shall be computed by calculating the relative forage requirements of each of the kind or kinds of livestock intended to be grazed on the Premises in any one grazing year, as expressed by the following conversion factors:

<u>Type of Livestock</u>	<u>Animal Unit Months (AUMs)</u>
Adult Cow with Calf up to 6 months old	1.00

Heifer or Steer, 2 years & older (1,000 lbs. or more)	1.00
Yearling to 2-year-old (750 to 1,000 lbs.)	0.75
Weaned Calf to Short Yearling (up to 750 lbs.)	0.50
Bull	1.00

Tenant shall use the Premises only for grazing the type of livestock permitted by District under the terms of the Lease.

**Exhibit D:  
Rangeland Management Activities and Responsibilities\***

Rangeland Management Activities & Responsibilities:	Primary Benefits:		Responsible Party:		
	Conservation	Livestock Production	Landowner	Livestock Operator	
				Standard Lease Term	Potential Fee Credit Or Comp
<b>A. Infrastructure for Grazing Management, Grazing Operations, and Related Stewardship</b>					
Essential infrastructure: Access roads, culverts and road drainage, related parking and turnaround areas, livestock handling and staging facilities, fencing, gates, cattle-guards, and watering system/facilities: stockponds, spring-boxes, wells, pumps, tanks, troughs and hardware, foundations/armoring of tank/trough sites, wildlife escape ramps					
1. Develop (new or replace) essential infrastructure (see above) of adequate quality for a viable grazing operation following the Rangeland Management Plan (Repeat such development when each element has exceeded its expected lifespan)	X	X	X		X
2. Maintain and clean existing essential infrastructure (see above) of adequate quality.		X		X	
3. Maintain stockponds for both watering and habitat	X	X	X		X
4. Clear blocked culverts and drainage dips on dirt access roads.	X	X		X	
5. Maintain primary and other useful dirt access roads	X	X	X		X
6. Replace or repair infrastructure damaged due to vehicle accidents and vandalism.	X	X	X		X
7. Replace or repair all damage to infrastructure caused by livestock.		X		X	
<b>B. Grazing Management and Operations</b>					
1. Maintain health of livestock, remove individual animals deemed "problems" or diseased livestock	X	X		X	
2. Supervise Livestock Operator's employees and subcontractors		X		X	
3. Gather and handle livestock		X		X	
4. Move livestock to designated locations or otherwise to achieve the specified grazing objectives, other than for "targeted grazing" (refer to #C.2)	X			X	
5. Patrol to assess and respond to infrastructure and resource conditions and livestock escapes	X	X		X	

Rangeland Management Activities & Responsibilities:	Primary Benefits:		Responsible Party:		
	Conservation	Livestock Production	Landowner	Livestock Operator	
				Standard Lease Term	Potential Fee Credit Or Comp
8. Be available and conduct rapid response to emergency requests for assistance and maintenance, or general visitor assistance	X		X	X	
9. Patrol for site security, notify Skyline Area Superintendent of trespass activity	X	X	X	X	
<b>C. Conservation Services (for general land care, support of the land's "ecosystem services," and conservation purposes)</b>					
1. Remove/clean-up abandoned fence, equipment, trash, and debris	X	X			X
2. Conduct targeted grazing or exclusion for maintenance and enhancement of special habitats (special-status plants or animals, riparian woodland, ponds, wetlands, native grasses, or oaks).	X	X			X
3. Control of invasive plant, reduction of fire hazards, and other special resource projects; activities might include herbicide application, construction, manual work, and specialized equipment work	X	X	X		X
4. Conduct other activities not part of a "normal" grazing lease for regular or one-time purposes (construction, manual work, and specialized equipment work)	X	X			X
5. Participate in educational events and visitor relations organized by the Landowner	X	X	X	X	
<b>D. Monitoring</b>					
1. Work assigned to Livestock Operator (per Grazing Management Plan, Resource Management Plan, and Habitat Management Plan)	X	X		X	
2. Work assigned to Landowner (per Grazing Management Plan, Resource Management Plan, and Habitat Management Plan)	X	X	X		X
3. Make general "naturalist" observations of sightings of unusual animals, plants, natural events (weather, wildflower displays, wildfires, new pest plant infestations, insect infestations, landslides, tree-falls, high/low streamflow, etc.) or other things of interest, and provide periodic reports	X		X	X	
<b>E. Administration and Coordination</b>					
1. Manage lease and operations activity		X	X	X	

Rangeland Management Activities & Responsibilities:	Primary Benefits:		Responsible Party:		
	Conservation	Livestock Production	Landowner	Livestock Operator	
				Standard Lease Term	Potential Fee Credit Or Comp
2. Maintain appropriate insurance for liability and workers compensation		X		X	
3. Manage Livestock Operator personnel		X		X	
4. Coordinate with Landowner representative	X	X	X	X	
5. Propose stewardship activities and negotiate lease fee credit for those activities; prepare and review annual and monthly stewardship work plans and progress reports	X	X	X		X
6. Project management and contract administration	X	X	X	X	
7. Participate in administrative meetings with Landowner to review monitoring results, including compliance with lease and Landowner management plans; review and recommend minor adjustments to management activities as well as adaptations to the formal management plans; plan subsequent year; and complete required reports and other communications	X	X	X	X	
8. Consult to Landowner as requested on grazing management, operations, infrastructure, planning, monitoring, and conservation issues	X	X			X

\* Thanks to Larry Ford and Sheila Barry (with contributions from D. Sweet, P. Van Hoorn, and M. Swisher) for the foundation information for this Rangeland Management Activities and Responsibilities table as originally noted in their "Rangeland Management Activities by Livestock Operators and Landowners for Grazing Leases of Conservation Lands" work.

**EXHIBIT E**  
**TO**  
**GRAZING LEASE**

**PROPOSED WORK FOR RENTAL CREDIT OR AS A CONTRACTOR**

<b>Date Submitted:</b>	<b>Proposed Date of Completion:</b>  (please attach a schedule)
<b>Tenant:</b>	
<b>Grazing Property (ex. Big Dipper):</b>	
<b>Project Description:</b>	
<b>Outside Contractor(s) (a copy of the contractor's bid):</b>	
<b>Total Estimated Contractor Costs:</b>	
<b>Materials (include itemized list of materials needed to complete the project and their cost; attach additional page(s), if necessary):</b>	
<b>Total Estimated Materials Costs:</b>	
<b>Labor (include name(s) of person(s) contributing labor, their estimated time involved in the project, and their cost per hour per day):</b>	
<b>Total Estimated Labor Cost:</b>	
<b>Rental Equipment (include type of equipment needed, estimated rental time, and cost per hour or day, include hourly rate of equipment operator if this is a separate expense):</b>	
<b>Total Estimated Rental Equipment Cost:</b>	

**Total Estimated Project Cost: \_\_\_\_\_**



**EXHIBIT F  
TO  
GRAZING LEASE**

**Annual Work & Stocking Plan**

**Location:**

**Grazing Season:**

**Tenant:**

**ANNUAL STOCKING PLAN:**

Current Stocking Rate:

Proposed Stocking Rate:

Grazing Season Challenges:

Grassland Goals:

**ANNUAL WORK PLAN:**

Proposed Projects for Rental Credit:

Proposed Projects for Compensation:

Proposed Projects for NRCS funding:

Requested Projects for District funding:

Proposed Schedule for Improvements:

**EXHIBIT G**  
**TO**  
**GRAZING LEASE**  
**Monthly Stocking Report**

Reporting Period:

Grazing Season AUM Rate:

<u>Date in</u>	<u>Date out</u>	<u>No. of Livestock</u>	<u>Type of Livestock</u>	<u>Days on Pasture</u>
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Totals

*Regional Open Space*

## MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

R-07-107  
Meeting 07-23  
October 24, 2007

**AGENDA ITEM 2****AGENDA ITEM**

Authorization to Amend the Use and Management Plan to Incorporate a Grazing Management Plan and to Solicit Proposals from Potential Grazing Tenants for the Skyline Ridge Open Space Preserve

**GENERAL MANAGER'S RECOMMENDATIONS**

1. Adopt a Use and Management Plan Amendment to incorporate a Grazing Management Plan for the former Big Dipper and Silva/Kenyon Ranches area of Skyline Ridge Open Space Preserve.
2. Authorize staff to solicit proposals from potential grazing tenants for the implementation of the Grazing Management Plan.
3. Determine that the project is categorically exempt from the California Environmental Quality Act (CEQA), based on the findings contained in this report.

**BACKGROUND**

The former Big Dipper and Silva/Kenyon Ranches (Ranches), totaling approximately 955 acres, comprise the majority of the closed areas at Skyline Ridge Open Space Preserve. About a quarter (240 acres) of the land area on the Ranches is rolling hillside grasslands, which have been grazed by cattle since approximately the 1920's. The contiguous properties were managed as two separate ranches for much of the last century: the larger Big Dipper Ranch was operated from the retained home site and from a separate barn higher on the property. The smaller upper ranch, which in recent decades was owned by the Silva family who still own land located across Alpine Road, was operated from a caretaker residence with adjacent corrals.

The District completed the purchase of the Ranches in November 2002, incorporating the properties into Skyline Ridge Open Space Preserve and adopting Use and Management Plan amendments over the following years. Grazing operations on the former Silva property ceased in November 2000. On Big Dipper Ranch, the prior tenant continued some grazing use through spring of this year. After replacement of the boundary fences and necessary repairs to water sources, the District engaged a local rancher to continue grazing operations on the Ranches and assist in evaluation of the rangeland infrastructure. This arrangement was a temporary and limited operation, lasting from June through August of this year.

In addition to the various rangeland uses on the Ranches, as of August the District has been leasing the former caretaker residence at the Silva property to a District staff member with expertise in resource management. This person will be responsible for conducting portions of the annual monitoring required for the grazing operation as well as assisting with day-to-day monitoring and oversight as part of the rent for the residence.

## DISCUSSION

### *Use and Management Committee Meeting*

On August 30, 2007, the Use and Management Committee reviewed the Grazing Management Plan for the Ranches as well as one for the Tunitas Creek Open Space Preserve. Thirteen members of the community attended the committee meeting, which was held at the Skyline Area Field Office and continued with site visits to the each of the subject properties. Staff reported on the history of the properties and details of the Grazing Management Plan and gathered comments from the Committee and from the public. The Committee recommended adopting an amendment to the Comprehensive Use and Management Plan for Skyline Ridge Open Space Preserve to implement a Grazing Management Plan for the portion of the Preserve formed by the Big Dipper and Silva/Kenyon Ranches.

### *Grazing Management Plan*

The Grazing Management Plan for the former Big Dipper and Silva/Kenyon Ranches is an encompassing guide to conservation grazing that is customized to suit the management needs of the Ranches. It includes a documentation of the natural resources of the site, an inventory and assessment of infrastructure related to grazing operations, analysis of soils and rangeland productivity, and baseline photo documentation of the Ranches. Further, the Grazing Management Plan makes specific recommendations for number, type, distribution, and movement of livestock on the property, as well as the necessary infrastructure and equipment improvements to meet the District's resource management goals.

The District's resource management goals for the Grazing Management Plan at the Ranches are to manage the livestock grazing in a manner that is compatible with public access, maintain and enhance the diversity of native plant and animal communities, manage vegetative fuel for fire prevention, help sustain the local agricultural economy, and foster appreciation for the region's rural agricultural heritage. Specifically, the Grazing Management Plan calls for seasonal cattle grazing in the late winter through early summer, rotating 30 to 60 head through the existing pastures. A number of rangeland infrastructure improvements are recommended, including upgrades to the network of water developments on the property and maintenance of fencing. Further, a comprehensive plan for monitoring the Ranches, employing the National Resource Conservation Service and UC Cooperative Extension standards for rangeland habitat health, is outlined in the Grazing Management Plan.

The Grazing Management Plan is proposed not only as a portion of the Preserve's comprehensive Use and Management Plan, but serves also as the primary component of a grazing lease. Through the Grazing Management Plan, a grazing tenant operating at the Ranches will be aware of the District's specific resource management goals and other important expectations of the operator. In soliciting proposals from potential grazing tenants, the Grazing Management Plan will serve as a key reference both for District staff and prospective tenants.

### *Grazing Tenant Solicitation Process*

Should the Board approve this Agenda item, Staff will commence to release a request for proposals from potential grazing tenants for the Ranches. A list of prospective grazing tenants has been collected during the development of the Grazing Management Policy. This list will be used to directly contact parties regarding the availability of grazing land at the Ranches.

Additionally, advertisements will be run in local newspapers and notices will be distributed to local partner agencies such as the San Mateo County Resource Conservation District, Natural Resources Conservation Service, San Mateo County Farm Bureau, and San Mateo County Agricultural Advisory Committee. District staff will review proposals received from prospective tenants and will select a potential tenant based on: (1) ability to best meet the District's criteria for experience; (2) ability to meet Resource Management goals; (3) a review of references, potentially including a review of other properties managed by producer; and (4) the applicant's proposed lease price. In adherence to the District's Grazing Management Policy, preference will be given to local producers. Staff will return to the Board for authorization to award a lease to the selected grazing operator.

### **PUBLIC NOTIFICATION**

Property owners of lands located adjacent to and surrounding the subject property have been mailed written notices of this proposed Use and Management Plan Amendment. Local newspaper advertisements, written mailings to parties interested in the District's resource management program, and notices to potentially involved agencies and organizations were also utilized in publicizing the proposed amendment. Additionally, surrounding property owners, organizations and individuals with interest in the District's resource management program, and various coastside agencies and organizations were mailed a written notice of the Use and Management Committee meeting at which the draft Grazing Management Plan was discussed. The Ranches are not located in the Coastside Protection Program area.

### **CEQA DETERMINATION**

The project is categorically exempt from the California Environmental Quality Act (CEQA) under Sections 15301 and 15304 as follows:

Section 15301 exempts the operation, repair, maintenance, leasing, or minor alteration of existing structures, facilities, or topographical features not expanding existing uses.

Section 15304 exempts minor alterations in the condition of land, water, or vegetation that do not affect sensitive resources.

Prepared by:  
Stella Cousins  
Open Space Planner I

Kirk Lenington  
Resource Planner II

Contact Person:  
Kirk Lenington  
Resource Planner II

*Regional Open Space*  
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

R-07-135  
Meeting 07-27  
December 12, 2007

**AGENDA ITEM 1****AGENDA ITEM**

Authorization to Award Grazing Lease for the Big Dipper Grazing Unit at Skyline Ridge Open Space Preserve

**GENERAL MANAGER'S RECOMMENDATION**

Approve the attached Resolution authorizing the General Manager to award a five-year grazing lease to Vince Fontana for the Big Dipper grazing unit on the terms and conditions set forth in the attached Grazing Lease.

**DISCUSSION**

At your meeting of October 24, 2007, the Board adopted an amendment to the Comprehensive Use and Management Plan for Skyline Ridge Open Space Preserve that incorporated a Grazing Management Plan for the former Big Dipper and Silva/Kenyon ranch properties (referred to here as the Big Dipper Grazing Unit). In addition, you authorized staff to implement the Grazing Plan by soliciting proposals from potential grazing tenants.

A Request for Proposals and Qualifications (RFP) for a grazing tenant was announced on October 26th. The RFP was mailed to 21 prospective tenants from a list that had been compiled over the past year during the development of the Grazing Management Policy. Notices were also mailed to local partner agencies, including the San Mateo County Resource Conservation District, Natural Resources Conservation Service, San Mateo County and Santa Clara County Farm Bureaus, and the San Mateo County Agricultural Advisory Committee. Two prospective grazing tenants, Bob Meehan and Vince Fontana, attended a November 13<sup>th</sup> pre-proposal site tour, and both of them submitted proposals by the November 19<sup>th</sup> deadline. No other proposals were received.

The RFP evaluation panel included staff from Operations, Planning, and Real Property Departments. The two proposals were evaluated on the basis of four primary criteria: 1) demonstrated experience in cattle operations and rangeland management, 2) ability to perform services and partner with the District in meeting land management objectives, 3) the applicant's proposed stocking plan and work program, and 4) the rent amount offered. Each of these criteria was assigned a maximum possible numerical score. Each evaluator separately scored the proposals; these scores were then tallied to determine the selected proposal. The evaluation process included phone interviews with references provided by each applicant, as well as field meetings to discuss each applicant's current grazing lease operations.

Both applicants have the necessary qualifications to run a grazing operation consistent with the Grazing Plan and the District's resource management objectives. Both are local operators with

years of experience and familiarity with coastside ranching in San Mateo County. Consequently, the proposals scored closely overall. The proposal submitted by Vince Fontana received the highest scoring, and staff recommends the Board approve the award of the Grazing Lease to Mr. Fontana.

### **LEASE TERMS AND CONDITIONS** (refer to template Grazing Lease)

The lease terms is for five (5) years, extendable for an additional five (5) years at the District's election on the terms and conditions set forth in the Grazing Lease. First year rent will be \$2,000.00, with annual adjustments thereafter to reflect any adjustments in authorized grazing capacity as well as changes in the market price of beef cattle from year to year. Rent credit for performance of work by the tenant may be granted on a case-by-case basis for authorized improvements to the ranch infrastructure such as installation of new fencing or improvements to the cattle watering system. The tenant is responsible for routine maintenance of existing ranch infrastructure. The District is responsible for maintaining the interior ranch roads to a District standard.

The grazing season for the Big Dipper grazing unit will typically run from February 1<sup>st</sup> through June 30<sup>th</sup>. The length of the grazing season and the authorized grazing capacity may be modified at any time at the sole discretion of the District depending on changes in range conditions. The tenant is required to manage and operate the grazing unit according to the prescriptions and range management practices set forth in the Grazing Plan.

### **CEQA COMPLIANCE**

The award of a grazing lease for the Big Dipper Grazing Unit was anticipated in the Board's previous action on October 24, 2007 adopting a Grazing Management Plan for the property and authorizing staff to solicit bids from potential tenants to implement the Grazing Plan. The Board's CEQA determination at that time therefore covers the award of a Grazing Lease, and no further CEQA action is required for the award being recommended in this Report.

### **PUBLIC NOTIFICATION**

Copies of the Board Agenda and this Board Report have been mailed to the partner agencies listed in this Report. A copy of the Board Agenda was mailed to property owners of land located adjacent to or surrounding the Big Dipper grazing unit.

Report prepared by:  
Michael Reeves, Real Property Specialist

Map prepared by:  
Stella Cousins, Planner I

Contact Person:  
Michael Reeves, Real Property Specialist

Attachment: Exhibit A

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT  
APPROVING THE AWARD OF A GRAZING LEASE TO VINCE FONTANA  
(BIG DIPPER GRAZING UNIT)  
(SKYLINE RIDGE OPEN SPACE PRESERVE)**

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The Board of Directors of the Midpeninsula Regional Open Space District does resolve as follows:

**Section One.** The District may, under the provisions of Section 5540 of the Public Resources Code, lease property owned by the District, and the Board of Directors hereby finds that the lease of a portion of the former Big Dipper and Silva/Kenyon properties for grazing and range management purposes is compatible with park and open space purposes, and finds the lease of such premises (referred to as the Big Dipper Grazing Unit) to be in the public interest on the terms hereinafter set forth.

**Section Two.** The Board of Directors does hereby approve the Grazing Lease between the Midpeninsula Regional Open Space District and Vince Fontana, a copy of which is attached hereto and by reference made a part hereof, and does hereby authorize the General Manager to execute said Grazing Lease on behalf of the District. The General Manager, with the concurrence of the General Counsel, is authorized to make minor changes to the Grazing Lease that do not materially amend the terms and conditions thereof.

**Section Three.** The General Manager is authorized to grant an extension of the Grazing Lease on the terms and conditions set forth in the Grazing Lease. The General Manager shall report any such extension of the Grazing Lease to the Board of Directors at the Board meeting immediately following the granting of the extension. The General Manager or the General Manager's designee is further authorized to sign and approve all other documents necessary or appropriate to entering into the Grazing Lease.

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