



Midpeninsula Regional
Open Space District

R-18-27
Meeting 18-13
March 28, 2018

AGENDA ITEM 3

AGENDA ITEM

Tunitas Creek Ranch Grazing Lease at Tunitas Creek Open Space Preserve

ACTING GENERAL MANAGER'S RECOMMENDATION

A handwritten signature in cursive script, likely belonging to the Acting General Manager.

Adopt a resolution authorizing the Acting General Manager to enter into a five-year grazing lease with a five-year extension with current tenant, Doug Edwards, at Tunitas Creek Ranch in Tunitas Creek Open Space Preserve.

SUMMARY

For the past ten years, Midpeninsula Regional Open Space District (District) has leased Tunitas Creek Ranch at Tunitas Creek Open Space Preserve (Preserve) to Doug Edwards 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 reduce wildland fuel loads, and furthers the goals of the Coastal Service Plan by supporting sustainable agriculture on the San Mateo County coast.

DISCUSSION

The Board approved the acquisition of the 707.48-acre Tunitas Creek Property from Peninsula Open Space Trust on February 7, 2007 (R-07-19, Attachment 4). At the time of acquisition, local rancher Doug Edwards was the grazing tenant on the property. Pursuant to the District's Coastal Service Plan, the District assumed the existing year-to-year lease. Service Plan Permanent Policy PA.1 states, "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."

On March 25, 2008, the Board adopted an amendment to the Preliminary Use and Management Plan for the Preserve that incorporated a new Grazing Management Plan and awarded a five-year grazing lease with a five-year option to Mr. Edwards (R-08-18, Attachment 5). The extended term expired January 31, 2018.

Mr. Edwards was born and raised near Half Moon Bay on the San Mateo Coast. He followed his father in the cattle industry and is a highly respected San Mateo County cattleman with more than 20 years of ranching experience.

Mr. Edwards has worked closely with the District to protect areas of sensitive habitat on Tunitas Creek Ranch. He understands District policies and follows District guidelines, which include halting mowing activities during the nesting bird season and allowing the District to survey potential mowing areas to determine whether, when, and how mowing should proceed to avoid impacts to natural resources. Mr. Edwards has made good progress on improving the grasslands at Tunitas Creek Ranch through a methodical plan of coyote bush removal. He utilizes mechanical brush removal followed by a replanting of approved grasses. Converting brush into grassland prevents the loss of grassland habitat on the coast and provides cattle forage. Typically, Mr. Edwards treats approximately 20 to 30 acres a year in this manner.

In the past, the Board has approved entering into a long-term lease with existing tenants in good standing without issuing a request for proposals. As part of the management of grazing leases, District staff utilize 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. Edwards has satisfactorily met the above listed performance standards, and the District's land stewardship and sustainability goals with respect to Tunitas Creek Ranch. As such, Mr. Edwards is deemed a tenant in good standing. Continuing the conservation grazing program on this property under a lease to Mr. Edwards is the most efficient way to achieve 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 the maintenance costs associated with the recommendation during the remaining fiscal year, which are primarily for chopping and/or raking of invasive coyote bush. Staff will request similar maintenance budgets for future fiscal years. The 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	\$2,850
Spraying/mowing expense	\$3,200

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 Doug Edwards, provided Mr. Edwards has met all District requirements, including appropriate insurance certificates and endorsements.

Attachments

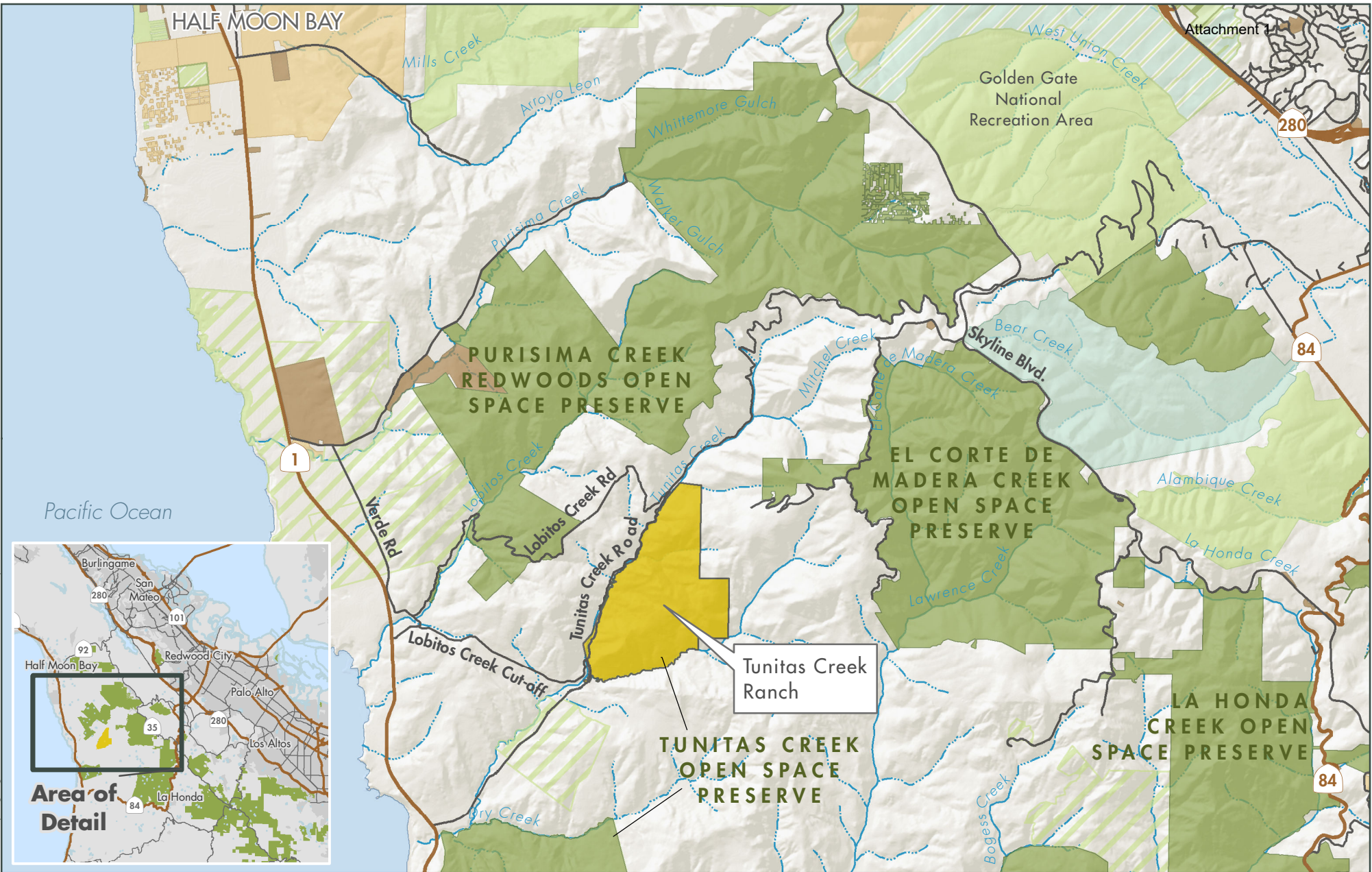
1. Location Map
2. Resolution Approving the Award of a Grazing Lease to Doug Edwards (Tunitas Creek Ranch, Tunitas Creek Open Space Preserve)
3. Tunitas Creek Ranch Grazing Lease
4. Board Report R-07-19
5. Board Report R-08-18

Responsible Department Head:

Elaina Cuzick, Acting Land & Facilities Services Manager

Prepared by:

Susan Weidemann, Property Management Specialist II



Tunitas Creek Ranch

- | | | |
|---|---|---|
|  MROSD Preserves |  Land Trust |  Tunitas Creek Ranch |
|  Other Protected Lands |  Other Public Agency |  Non-MROSD Easement Over Water |
|  Private Property |  Watershed Land |  Non MROSD Conservation or Agricultural 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 DOUG EDWARDS (TUNITAS CREEK RANCH, TUNITAS CREEK OPEN SPACE PRESERVE)

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 Tunitas Creek Ranch for grazing and range 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 Tunitas Creek Ranch to Doug Edwards 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 Doug Edwards, 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:

Secretary
Board of Directors

President
Board of Directors

APPROVED AS TO FORM:

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.

District Clerk



GRAZING LEASE

between

MIDPENINSULA REGIONAL

OPEN SPACE DISTRICT

Lessor

And

DOUG EDWARDS

Lessee

With respect to the following property

TUNITAS CREEK RANCH

A portion of

TUNITAS CREEK OPEN SPACE PRESERVE

Effective Date

APRIL 1, 2018

**GRAZING LEASE
TUNITAS CREEK RANCH GRAZING UNIT
TUNITAS CREEK 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.

Landlord:	Midpeninsula Regional Open Space District
Acres:	<u>707</u> Gross Acres excepting the District owned residence and yard area around it.
Tenant:	Doug Edwards
Term:	Five (5) year Initial Term commencing <u>April 1, 2018</u> (“Commencement Date”)
Grazing Season:	Annual (Annual adjustments pursuant to Section 6)
Grazing Capacity:	<u>489</u> AUMs (Annual adjustments pursuant to Section 6)
Permitted Use:	Cattle grazing and authorized adjunct activities
Rent Payment Dates:	Bi-annual payments on January 2 nd and July 1 st

District Contact Information:

Primary Contact: Property Management
Specialist II
Tel: (650) 691-1200

Alternate: Skyline Area Superintendent
Tel: (650) 949-1848

Notice Addresses of District:

Midpeninsula Regional Open Space District
Attn: Property Management Specialist II
330 Distel Circle
Los Altos, CA 94022

Tenant Contact Information:

Primary Contact: Doug Edwards
Tel: 650-245-6808

Alternate Contact: Bob Edwards
Tel: 650-726-0648

Notice Address of Tenant:

Doug Edwards
P O Box 1112
Half Moon Bay, CA 94019

GRAZING LEASE

THIS GRAZING LEASE (“LEASE”) IS MADE BY AND BETWEEN THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT (“DISTRICT”) AND DOUG EDWARDS (“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, gross acres less cited exceptions located in the Tunitas Creek 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 February 1, 2018 ("Commencement Date") and expiring on January 31, 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 31, 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 forth in the 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 15th 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 15th 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 15th 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:

Ana M. Ruiz, Acting General Manager

Doug Edwards

Date: _____

Date: _____

Approved as to form:

Attest:

Hilary Stevenson, Acting 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.

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

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
A. Infrastructure for Grazing Management, Grazing Operations, and Related Stewardship					
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. Grazing Management and Operations					
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	
C. Conservation Services (for general land care, support of the land's "ecosystem services," and conservation purposes)					
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	
D. Monitoring					
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	
E. Administration and Coordination					
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

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

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-08-40
Special Meeting 08-08
March 25, 2008

AGENDA ITEM 2**AGENDA ITEM**

Authorization to Amend the Preliminary Use and Management Plan for the Tunitas Creek Open Space Preserve to Incorporate a Grazing Management Plan; Authorization to Award a Grazing Lease for the Tunitas Creek Grazing Unit

GENERAL MANAGER'S RECOMMENDATIONS

1. Determine that the project is categorically exempt from the California Environmental Quality Act (CEQA), based on the findings contained in this report.
2. Adopt an amendment to the Preliminary Use and Management Plan for the Tunitas Creek Open Space Preserve to incorporate a Grazing Management Plan.
3. Approve the attached Resolution authorizing the General Manager to award a five-year grazing lease to Doug Edwards for the Tunitas Creek Grazing Unit on the terms and conditions set forth in the attached Grazing Lease.

BACKGROUND

The District purchased the former Peninsula Open Space Trust (POST) Tunitas Creek property in February 2007. The District Board of Directors designated the property as the Tunitas Creek Open Space Preserve, and adopted a Preliminary Use and Management Plan for this newest addition to the District's open space preserve system. POST had leased a portion of the property to local grazing operator Doug Edwards on a year-to-year basis beginning in July 2005. This grazing lease was assigned to the District at the time the District purchased the property. Under the terms of the existing lease, Mr. Edwards has been running a year-round cow-calf operation on approximately 262 acres of grassland and shrubland areas suitable for cattle grazing (referred to in this report as the Tunitas Creek Grazing Unit).

COASTSIDE PROTECTION PROGRAM PROCESS

The Tunitas Creek Open Space Preserve is located within the Coastsides Protection Area. The San Mateo County coastal annexation process, the District's *Service Plan* for the Coastsides Protection Area and subsequent conditions approved by the San Mateo County Local Area Formation Commission (LAFCo) established a number of policies and procedures for implementing the District's Coastsides Protection Program. The Program now guides the District's purchase, use, and management of open space land within the Coastsides Protection Area. The Program requires consultation with interested public agencies, officials, organizations, and community interest groups to solicit input into the decision-making and

planning process prior to the Board's consideration of significant decisions regarding use or improvements on District-owned lands within the Coastside Protection Area.

The continuation of grazing on the Tunitas Creek property was first considered and discussed during several consultations held in early 2007 at the time of the District's proposed purchase. These consultations included field visits and meetings with the San Mateo County Farm Bureau and the San Mateo County Agricultural Advisory Committee, as well as a coastside meeting of the District Board's Real Property Committee.

More recently, the District Board's Use and Management Committee held a meeting on site to review the proposed Grazing Management Plan and solicit comment from neighbors and interested parties. This meeting was held on August 30, 2007, after notice was distributed to property owners of land located adjacent to or surrounding the Tunitas Creek Open Space Preserve, Coastside public officials, community-interest groups, non-profit land trusts, conservation-oriented organizations, elected officials, government agencies, and government-sponsored organizations within the Coastside Protection Area. Thirteen members of the community attended the committee meeting, which was convened at the District's Skyline Area Field Office and continued with a site visit to Tunitas Creek Open Space Preserve. Staff reported on the history of the property and the details of the Grazing Management Plan, and gathered comments from the committee and from the public. District staff has also reported on the proposed Grazing Management Plan and grazing lease as an informational item at recent meetings of the Farm Bureau on March 3, 2008 and Agricultural Advisory Committee on March 10, 2008.

AMENDMENT TO PRELIMINARY USE AND MANAGEMENT PLAN

The proposed Grazing Management Plan for the Tunitas Creek Grazing Unit will be an amendment to the Preliminary Use and Management Plan for the Tunitas Creek Open Space Preserve, and will serve as the guiding document for grazing operations under the proposed grazing lease. The Grazing Management Plan is an encompassing guide to conservation grazing that is tailored to suit the management needs of the grazing unit (see attached Executive Summary). The Plan was developed in consultation with the District's grazing consultant Sage & Associates, and is consistent with the District's Grazing Management Policy. It includes 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 photo documentation of baseline rangeland conditions. The Grazing Management Plan makes specific recommendations for number, type, distribution, and movement of livestock within the grazing unit, as well as the necessary infrastructure and equipment improvements to meet the District's resource management goals.

The resource management goals for the Tunitas Creek Grazing Unit are to manage 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 a continuation of year-round cattle grazing, rotating a yearly average of 41 cow-calf pairs or animal units through the existing pastures. A

number of rangeland infrastructure improvements are recommended, including upgrades to the existing water developments on the property and maintenance of fencing.

The Grazing Management Plan includes a monitoring program to ensure rangeland uses are in compliance with District resource management goals and with National Resource Conservation Service and UC Cooperative Extension standards for rangeland habitat health. The monitoring program includes an annual rangeland habitat health assessment.

Inclusion of the Grazing Management Plan within the Preliminary Use and Management Plan for the Tunitas Creek Open Space Preserve would take effect upon approval by the District Board, and would remain effective until the Preliminary Use and Management Plan is further amended, or until a Comprehensive Use and Management Plan or Master Plan is developed.

GRAZING LEASE

Retention of Current Grazing Tenant

Staff recommends that the Board approve the award of a five-year grazing lease to the current grazing tenant, Doug Edwards. Mr. Edwards is a local operator with years of experience and familiarity with coastside ranching in San Mateo County. He has the necessary qualifications to run a grazing operation consistent with the Grazing Management Plan and the District's resource management objectives. Further, the District's *Service Plan* discourages displacing current operators of agricultural lands purchased by the District provided that the operator has an interest in staying on and a willingness to work with the District in running the operation in a manner that supports the District's public use and resource management goals.

Grazing Lease Terms and Conditions

The lease term is for five (5) years, extendable for an additional five (5) years at the District's election, if the tenant is willing, on the terms and conditions set forth in the grazing lease. The effective date of the grazing lease will be retroactive to February 1, 2008. Annual rent under the existing grazing lease assigned to the District is a nominal \$384.00. First year rent under the new lease will be adjusted upward to a market rate of \$1,900.00 based upon a grazing rent market analysis conducted by District staff. Rent will be adjusted annually thereafter to reflect any changes in authorized grazing capacity as well as fluctuations 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 improvements to the ranch infrastructure, such as improvements to the cattle watering system. The tenant is responsible for routine maintenance of the existing ranch infrastructure. The District is responsible for overseeing the maintenance of interior ranch roads to a District standard.

The grazing unit will be operated on a year-round basis. The length of the grazing season and the authorized grazing capacity may be modified at any time in consultation with the tenant and 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 Management Plan.

CEQA COMPLIANCE

Project Description

The project consists of amending the District's Preliminary Use and Management Plan for the Tunitas Creek Open Space Preserve to allow for the continuation of cattle grazing under specific prescriptions and range management practices set forth in a Grazing Management Plan, by award of a five-year lease to the current grazing tenant. In addition to maintaining existing ranch infrastructure including fencing and stockwatering facilities, the Grazing Management Plan calls for minor improvements to the stockwatering system to ensure a more dependable water supply throughout the property to aid in the distribution of cattle, improve the existing water supply, and provide wildlife-friendly watering facilities.

CEQA Determination

The District concludes that this project will not have a significant effect on the environment. It is categorically exempt from the California Environmental Quality Act (CEQA) under Article 19, Sections 15301 and 15304 of the CEQA Guidelines as follows:

Section 15301 exempts the operation, repair, maintenance, leasing, or minor alteration of existing structures, facilities, or topographical features not expanding existing uses. The proposed Preliminary Use and Management Plan amendment and Grazing Lease represent a continuation of ongoing cattle grazing on the property with negligible or no expansion of use.

Section 15304 exempts minor alterations in the condition of land, water, or vegetation that do not affect sensitive resources. Agricultural property alterations or maintenance may result from the project, but these are minor in nature and will not affect sensitive resources.

PUBLIC NOTIFICATION

Written notice of the public meeting at which the District Board of Directors will consider this item has been sent to property owners of land located adjacent to or surrounding the Preserve, as well as to Coastside public officials, community interest groups, nonprofit land trusts, conservation oriented organizations, elected officials, government agencies, and government sponsored organizations within the Coastside Protection Area.

Report prepared by:

Michael Reeves, Real Property Specialist

Stella Cousins, Open Space Planner I

Sandra Sommer, ASLA, AICP, Senior Real Property Planner

Maps prepared by:

Contact Person:

Michael Reeves, Real Property Specialist

Attachments:

- Grazing Management Plan Executive Summary – Tunitas Creek Open Space Preserve
- Grazing Lease for the Tunitas Creek Grazing Unit

RESOLUTION NO. 08-____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
APPROVING THE AWARD OF A GRAZING LEASE TO DOUG EDWARDS
(TUNITAS CREEK OPEN SPACE PRESERVE)**

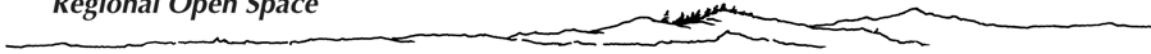
The Board of Directors of the Midpeninsula Regional Open Space District does resolve as follows:

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 Tunitas Creek Open Space Preserve 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 Tunitas Creek 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 Doug Edwards, 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, said Grazing Lease to be effective as of February 1, 2008. The General Manager, with the concurrence of the General Counsel, is authorized to make minor changes to the Grazing Lease that does 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.

* * * * *

Regional Open Space**MIDPENINSULA REGIONAL OPEN SPACE DISTRICT**

R-07-19
Meeting 07-03
February 7, 2007

AGENDA ITEM 2**AGENDA ITEM**

Purchase of the Peninsula Open Space Trust (Tunitas Creek) Property as an Addition to the District's Open Space Preserve System, located in unincorporated San Mateo County at 330 Tunitas Creek Road, Half Moon Bay (San Mateo County Assessor's Parcel Numbers 066-260-040; 081-090-020, -040 and -050)

GENERAL MANAGER'S RECOMMENDATIONS

1. Determine that the recommended actions are categorically exempt from the California Environmental Quality Act (CEQA) as set out in this Report.
2. Adopt the attached Resolution authorizing the purchase of the Peninsula Open Space Trust property and approving the related Assignment of Lease.
3. Adopt the Preliminary Use and Management Plan recommendations contained in this Report.
4. Designate the property as a new open space preserve named: "Tunitas Creek Open Space Preserve."
5. Indicate your intention to dedicate the property as public open space.

DISCUSSION

The 707.48-acre Peninsula Open Space Trust (POST) Tunitas Creek property is located within the Coastsides Protection Area, an area that was annexed into the District boundaries in 2004. As part of the annexation process, the District prepared a Service Plan for the San Mateo Coastal Annexation Area and a Final Environmental Impact Report that was approved by the Board of Directors on June 6, 2003. An annexation application was then submitted to the San Mateo Local Agency Formation Commission (LAFCo) and approved on April 7, 2004. The Coastsides Protection Area, as the annexation area is referred to, includes lands in the western portion of San Mateo County lying from south of the City of Pacifica—generally between Skyline Boulevard and the Pacific Ocean—to the Santa Cruz County line.

As part of the annexation process, the Service Plan and subsequent conditions approved by LAFCo established a number of policies and procedures for conducting the Coastsides Protection Program. Although the District would be authorized to purchase the POST property even if the Coastsides Protection Program had not been approved, that Program now guides the District's purchase, use, and management of open space land within this area. The proposed purchase of the POST property described in this Report and the accompanying Preliminary Use and Management Plan is consistent with the policies and procedures contained in the Coastsides Protection Program. The following Report presents a description of the subject property, future planning considerations, a Preliminary Use and Management Plan, and environmental review of the project.

DESCRIPTION (see attached map)

The POST (Tunitas Creek) property encompasses 707.48 acres on the western slope of the Santa Cruz Mountains in coastal San Mateo County. Located on Tunitas Creek Road two miles east of Highway 1 and eight miles south of Half Moon Bay, its gently rolling hills and ridges provide a transition between flat coastal plain and steep upper mountain slopes. The property straddles the lower reaches of Durham Ridge down to its toe at the confluence of Tunitas Creek and the East Fork of Tunitas Creek. An open landscape of coastal scrub and grassland along Durham Ridge affords expansive coastal views along the interior ranch roads. The property includes two and one-half miles of frontage along the main stem of Tunitas Creek and the East Fork of Tunitas Creek, both providing spawning and rearing habitat for steelhead trout, which is federally listed as a threatened species. The property also contains the lowest elevation redwood grove in the Tunitas Creek watershed, including a number of old growth redwood trees. The property has a history of agricultural use, including cattle grazing and dry land farming, and a portion of the property is currently under lease by a local grazing tenant on a year-to-year basis. The purchase of this land is most important in terms of protecting valuable habitat, watershed and scenic resources while supporting environmentally sustainable agricultural use within the lower Tunitas Creek watershed.

The property is not immediately adjacent to existing District lands, but is located within one-quarter mile downstream of Purisima Creek Redwoods Open Space Preserve within the Tunitas Creek watershed. El Corte de Madera Creek Open Space Preserve lies approximately one mile east of the property. Although the property is not far from existing District lands, the future potential for connecting the property to either open space preserve is unknown, and staff recommends designating the property as a new and separate open space preserve. The potential for future trail connections linking this landscape to other District lands is addressed in this report under Use and Management planning considerations.

A former ranch compound is located on the edge of the property along Tunitas Creek Road. Ranch improvements include a residence that is believed to have been built sometime during the 1940's, a serviceable old barn and adjoining corral, and a number of outbuildings in poor repair. The residence has been unoccupied since the El Niño winter storms of 1998 triggered a landslide that washed out a section of the access driveway from Tunitas Creek Road and undermined the foundation of the residence. The grazing tenant has reopened an old ranch road to provide an alternate access to the barn and adjoining corral, which are currently in use as part of the grazing operation. Nearby springs that once supplied water for the residence and ranch compound were damaged in the 1998 landslide, but have been partially restored by the tenant to serve the grazing operation. Another spring located on the opposite side of the ridge near the East Fork of Tunitas Creek currently is not in use. A dirt ranch road leads from the ranch compound and up the ridge into the interior of the property where the majority of the pastureland is found. A few ranch roads branch off of this primary road to provide access to other pastureland along the ridge. Remnant sections of boundary and cross-fencing remain from a large fire that swept through the area in the early 1960's, and the grazing tenant has repaired and replaced fencing as needed to restrict cattle movement to the ridge top pasturelands.

In recognition of the diverse habitat values to be found on the property, the California Department of Parks and Recreation awarded the District a \$462,500 Habitat Conservation Fund grant in support of this proposed purchase.

USE AND MANAGEMENT PLANNING CONSIDERATIONS

The property is located within an unincorporated area of San Mateo County within the Coastal Zone. The majority of the property, approximately 636 acres, is zoned PAD (Planned Agricultural District) and RM-CZ (Resource Management-Coastal Zone). The remaining 72 acres is zoned TPZ-CZ (Timber Production Zone-Coastal Zone). Pursuant to Government Code Section 65402, the San Mateo County Planning

Commission made a determination on December 13, 2006 that the District's proposed purchase of the POST Tunitas Creek property conforms to the County General Plan and Local Coastal Program.

Approximately 625 acres of the property are in an "agricultural preserve" subject to a Land Conservation Agreement (Williamson Act contract) dated March 6, 1967 between San Mateo County and the predecessor landowner. Pursuant to Government Code Section 51291, the District has notified the State Department of Conservation (DOC) of the proposed purchase of land within an agricultural preserve.

According to an appraisal commissioned by the District, the property appears to have the potential for up to five residential sites. However, subdivision and development of the property into several residential sites would be difficult due to limiting physical characteristics and associated costs of extending a road and other infrastructure into the interior of the property.

The District's 1998 Regional Open Space Study and the San Mateo County Trails Plan show two potential regional trails through the property. One potential trail connection would link the property with El Corte de Madera Creek Open Space Preserve, the other with Purisima Creek Redwoods Open Space Preserve. Although surrounding private land ownership and uses make both of these trail connections unlikely in the immediately foreseeable future, the property could nonetheless form an important part of a future trail system through the Tunitas Creek watershed linking the Bay Area Ridge Trail with the Coastal Trail.

Coastside Protection Program Service Plan – Agricultural Land Use

The Coastside Protection Program requires that when agricultural land is purchased by the District, an agricultural production plan will be developed as part of the Final Use and Management Plan. As a portion of the property is currently in agricultural use and has historically been in agricultural use, the Final Use and Management Plan will include an agricultural production element that will include an evaluation of integrating livestock grazing into the overall resource management objectives for the property. The property is not classified as Prime Agricultural Land, Unique Farmland, or Farmlands of Statewide Importance as designated in the California Department of Conservation's Farmland Mapping and Monitoring Program (FMMP). Portions of the property are designated as grazing lands under the FMMP. While immediately adjacent properties are not in agricultural production, per se, the surrounding area within the Tunitas Creek watershed supports cattle grazing and equestrian operations, among other agricultural uses. Opportunities for managing the property through continued grazing are discussed below.

Coastside Protection Program Service Plan – Coastside Consultation

The Coastside Protection Program requires consultation with interested public agencies, officials and interested organizations to solicit input into the planning process prior to the Board's consideration of purchasing the property. The following consultations were conducted:

1. **Farm Bureau** – Staff conducted an on-site consultation with the San Mateo County Farm Bureau staff on October 31, 2006. The Farm Bureau provided written comments following the consultation, including an overview of historical agricultural use on the property, recommended infrastructure improvements to enhance grazing potential, and recommendations for structuring a grazing lease. Recommendations for improving ranch infrastructure include assessing perimeter and cross fencing needs, looking into improving existing springs and developing stock watering ponds, and conversion of brush land to grassland. A minimum 5 year grazing lease with a 5 year extension option was recommended, particularly if the grazing tenant will be involved in undertaking infrastructure improvements. A periodic performance evaluation was also recommended to ensure that the lease terms, including stocking rates and agreed upon infrastructure improvements, are being

accomplished so that the management goals of both the tenant and the District are being achieved.

2. **County Agricultural Advisory Committee** – An on-site consultation was held with members of the San Mateo County Agricultural Advisory Committee on November 3, 2006, and the District's proposed purchase was subsequently discussed at a November 13, 2006 meeting of the Committee. Comments received during the site visit and at the Committee meeting centered on suggestions for fostering a stable grazing operation, including establishing a long term lease arrangement, ensuring that the grazing management plan for the property is economically feasible and practical for the grazing tenant, and supporting the grazing tenant in addressing any infrastructure repairs or improvements that would help ensure a viable grazing operation.
3. **District Real Property Committee** – The Board's Real Property Standing Committee held a meeting in Half Moon Bay on December 7, 2006 in order to acquaint the Committee with the property and solicit public input on the proposed purchase from neighbors and interested parties within the San Mateo County coastal community. Notice of the meeting was distributed to adjacent property owners, coastside public officials, community interest groups, nonprofit land trusts, conservation organizations, elected officials, government agencies, and government-sponsored organizations within the Coastsides Protection Area. Despite this public notification and outreach effort, attendance was limited. However, the comments received were helpful and specific in recommending ranch infrastructure repairs and improvements to help support a viable and sustainable grazing operation.

All of the comments received as part of the consultation process will be used in developing the Final Use and Management Plan. That process will also provide broad public notice and opportunities for additional public input and participation.

Range Management

As noted above, POST has leased a portion of the property to a local cattle grazer for seasonal grazing on a year-to-year basis. The grazing lease includes approximately 200 acres of grassland in the interior of the property and along Durham Ridge where cattle grazing historically occurred. The lease includes grazing management and fence maintenance prescriptions designed to protect sensitive resources such as creeks and ensure that pastures are properly grazed. The current lease is up for renewal in July 2007, and the District will assume the lease upon purchase of the property from POST. Continued grazing of the property under District ownership would serve two important purposes under the Coastsides Protection Program: 1) it would serve as a useful grasslands management tool, and 2) it would support the continued viability of the local agricultural economy. Staff anticipates that, upon purchase of the property from POST, the District will seek to negotiate with the current tenant a renewal of the current year-to-year grazing lease for a longer term in accordance with the Coastsides Service Plan. The Draft Grazing Management Policy will also be a useful tool in developing a longer term lease.

Structures and Roads

As noted earlier in this report, ranch improvements include a residence, barn, corral and a number of outbuildings. A large and deep-seated landslide underlies the hillside and terraced bench on which the residence is located. A landslide in 1998 seriously damaged the primary access driveway to the residence from Tunitas Creek Road, and undermined the structural integrity of the residence. The residence has been uninhabitable since that event. Staff consulted with an engineering geologist and a building contractor to determine whether the driveway and residence were repairable. The residence is considered a teardown due to extensive structural damage from the landslide and the need for very expensive drainage improvements and deeply excavated engineered footings to support the structure. A residence in this location would also require extensive driveway improvements to ensure year-round vehicular and

emergency access. The potential for future slide movement would likely preclude rebuilding the structure at the current location. The abandoned residence also constitutes an “attractive nuisance” that has suffered from incidences of trespass and vandalism. The residence is considered unnecessary for a viable tenant grazing operation. Staff’s recommendation is that this structure be demolished and removed from the site.

The barn appears to be structurally sound, and both it and the adjacent corral are useful to the current grazing operation. The barn is in need of a new roof, and staff recommends replacing the roof after an inspection to determine the structural integrity of the barn to see if there is a need for other structural repairs. There are two dilapidated outbuildings near the barn that are in danger of collapsing and should be removed. However, all of these buildings would be further inspected in order to assure staff that the barn is viable for long-term use, and that the buildings to be removed do not provide any additional habitat value.

As noted earlier, the main driveway leading from Tunitas Creek Road to the ranch compound was damaged by landslides during the 1998 El Niño storm event. During the future planning process, staff will evaluate repairing the driveway to a ranch standard in order to provide primary access for agricultural use and District patrol and resource management purposes. The bypass road that was recently reopened by the grazing tenant provides adequate access in the interim. Operations staff will work with the grazing tenant to maintain the bypass road in a serviceable condition.

PRELIMINARY USE AND MANAGEMENT PLAN

The proposed Preliminary Use and Management Plan will take effect upon the close of escrow, and remain in effect until a Final Use and Management Plan for the property is developed and adopted. Within the Coastside Protection Area, the process for developing a Final Use and Management Plan involves conducting detailed resource inventories to be used in formulating resource management and public access plans; consultation with interested government officials, agencies and organizations; and an extensive public input process. The Final Use and Management Plan will also be subject to additional environmental assessment to ensure that land use decisions are consistent with ecological values.

The Preliminary Use and Management Plan represents a status quo approach to management, with an emphasis on managing the property to support continued grazing in conformity with the provisions of the Service Plan for the Coastside Protection Program:

Public Access: Closed to general public recreational access until resource inventories are completed, and a Final Use and Management Plan is adopted.

Grazing Management: Work with current grazing tenant on extending the existing year-to-year lease with a longer-term lease, if possible, and grazing management plan in accordance with the District’s Coastside Service Plan. The Draft Grazing Management Policy will also be a valuable resource in structuring a longer-term lease.

Resource Management: Conduct a detailed resource inventory as part of the process of developing a Final Use and Management Plan.

Roads and Trails: Conduct a detailed road and trail assessment as part of the process of developing a Final Use and Management Plan, including evaluating the feasibility of repairing the main driveway to a “ranch standard” adequate to provide access for patrol, resource management and agricultural use purposes. In the interim, maintain, and where necessary, improve the current bypass access road and the interior ranch roads to provide access for patrol, resource management and grazing operations.

Structures: Remove the residence and outbuildings that are in a state of disrepair and unfeasible to restore or stabilize. Obtain a building inspection of the barn, and undertake reasonable and necessary repairs, including replacement of the roof, depending on long-term structure viability.

Cleanup: Remove debris in and around the ranch compound.

Site Safety Inspection: A site safety inspection has been conducted and there are no known safety hazards on the site.

Barriers and Signage: Existing gates at entrance to property are adequate to control access and prevent trespass. Install “Closed Area” signs and boundary plaques where appropriate.

Patrol: Regularly patrol the property utilizing existing seasonal roads.

Dedication: Indicate your intention to dedicate the property as public open space.

Name: Name the property the “Tunitas Creek Open Space Preserve.”

CEQA COMPLIANCE

Project Description

The project consists of purchasing a 707.48-acre property as an addition to the District’s open space preserve system, and the concurrent adoption of a Preliminary Use and Management Plan for the property. In the interim, prior to development of a Final Use and Management Plan, the current use of a portion of the property for cattle grazing under an agricultural lease is anticipated. An existing barn will be repaired and re-roofed, and an unoccupied and damaged farm house and dilapidated outbuildings will be removed. Ultimately, a Final Use and Management Plan will be developed for the property. The land will be permanently preserved as open space and maintained in a natural condition. It is anticipated that the Final Use and Management Plan will continue appropriate agricultural use unless environmental obstacles to such use exist.

CEQA Determination

The District concludes that this project will not have a significant effect on the environment. It is categorically exempt from CEQA (California Environmental Quality Act) under Article 19, Sections 15301, 15316, 15317, 15325, and 15061 of the CEQA Guidelines as follows:

Section 15301 exempts operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The Preliminary Use and Management Plan specifies the property will be operated and maintained in a natural condition and there will be no expansion of use. The property will be closed to the public, cattle grazing on a portion of the property will continue under a grazing lease, the existing barn will be repaired and re-roofed, existing ranch roads will be maintained to an agricultural use standard, and the uninhabited ranch house, now in a state of disrepair and located within an active landslide area, will be removed.

Section 15316 exempts the acquisition of land in order to create parks if the site is in a natural condition and the management plan proposes to keep the area in a natural condition. The Preliminary Use and Management Plan specifies that the land will not be developed and will remain in a natural condition.

Section 15317 exempts the acceptance of fee interests in order to maintain the open space character of an area. The District will acquire fee interest and maintain the open space character of the area. No new development is proposed as part of this project.

Section 15325 exempts transfers of ownership of interests in land in order to preserve open space. This acquisition will transfer fee ownership of the property to the District and ensure that it will be preserved as public open space by incorporating it into the District’s open space preserve system.

This proposed purchase qualifies under four sections. The actions proposed in the Preliminary Use and Management Plan are also exempt under section 15061, as there is no possibility the actions may have a significant effect on the environment.

TERMS AND CONDITIONS

POST received a donation of the Tunitas Creek property in 1994. An appraisal commissioned by the District has estimated the fair market value of the property to be \$4,245,000, or approximately \$6,000 per acre. The property would be purchased by the District at a bargain sale purchase price of \$462,500, or approximately \$654 per acre. The balance of \$3,782,500 is being gifted to the District by POST. The District was awarded a \$462,500 Habitat Conservation Fund (HCF) grant from the California Department of Parks and Recreation to apply to this purchase. The criteria of the HCF grant program require a local matching financial contribution. This match can be provided by an equal or greater value gift of land. The \$3,782,500 gift in land value from POST more than fulfills the grant-matching requirement.

The Purchase Agreement with POST includes an Assignment of Lease for the year-to-year grazing lease on the property. The current term of the Lease runs through July 14, 2007, at which time District staff anticipates negotiating a longer-term lease agreement with the existing grazing tenant in accordance with the District’s Service Plan and with guidance from the Draft Grazing Management Policy. Any such lease would be returned to the Board for final approval.

The Purchase Agreement with POST also includes a covenant that provides POST a period of five years to recognize significant donors for specific areas, trails or land formations on the property in accordance with the District’s “Policies for Site Naming and Gift Recognition.”

Staff has conducted due diligence investigations and inspections of the property. Staff has reviewed all of San Mateo County’s property records and files, and is satisfied that no underground storage tanks, contamination or hazardous conditions exist on the property.

BUDGET CONSIDERATIONS

The 2005-2006 budget for new land purchases:

New Land*	\$19,755,120
New Land Purchased this year	(17,210,974)
POST Tunitas Creek property	(462,500)
New land purchase budget remaining	\$2,081,646

**Reflects Mid-Year Budget Adjustment*

Controller M. Foster was consulted on this proposed purchase and has indicated that, considering cash flow and account balances, funds are available for this property purchase.

Current Coastside Protection Area Fiscal Considerations

The 707.48-acre property is located in the Coastside Protection Area and is subject to the *Agreement Between San Mateo County and the Midpeninsula Regional Open Space District (Regarding Fire Services)*. As part of the County Fire Agreement, the District will pay to San Mateo County Fire

Department annual fees for fire services that are not currently provided within the State Responsibility Area by the California Department of Forestry and Fire Protection. The Fire Services Fee will be \$336.22 based upon the assessed value of the subject property. The fire services fee will increase 2% annually. The property is not located within the La Honda-Pescadero Unified School District jurisdiction and therefore no educational service fees are applicable to this purchase.

Staff has analyzed the conditions of the site and financial considerations associated with the proposed purchase and subsequent management of the property to ascertain whether the District has sufficient resources to sustain the project. The Coastside Protection Program includes a Fiscal Analysis conducted by Economics Research Associates confirming the feasibility of implementing that Program. The proposed purchase, Preliminary Use and Management Plan, and expected long-term management strategy are consistent with the Coastside Protection Program. The site assessment indicates that management costs associated with the proposed purchase are expected to be consistent with those projected in the Fiscal Analysis and Basic Service Plan. Staff has reviewed the revenue and other cost projections in the Fiscal Analysis and concluded that there have been no changes since the analysis was prepared that would affect its conclusions. Staff has further reviewed the expected management costs in light of the District's operating expenses and Controller's estimated tax revenue and cash flow projections for the current fiscal year and for the next ten years. Based on this analysis, staff concludes that purchasing and managing this property will not result in any significant impact to the District's existing services.

Furthermore, staff assessed the costs associated with this project and compared them to the Controller's ten-year projections of cash flow, property tax revenue, and operating expenses. Using the assumptions established in the Basic Service Plan and Fiscal Analysis for staffing needs and land management expenses, staff determined that the District has the resources to sustain this project over the long term.

PUBLIC NOTIFICATION

Written notices of the District's proposed purchase of the property and of the Board meeting scheduled for this purpose have been mailed to property owners of land located adjacent to or surrounding the subject property, and to coastal public officials, community-interest groups, non-profit land trusts, conservation-oriented organizations, elected officials, government agencies and government-sponsored organizations within the Coastside Protection Area, as well as to attendees of the December 7, 2006 public workshop.

Prepared by:
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RESOLUTION _____

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF PURCHASE AGREEMENT, AUTHORIZING GENERAL MANAGER OR OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT TO DISTRICT, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (TUNITAS CREEK OPEN SPACE PRESERVE – LANDS OF PENINSULA OPEN SPACE TRUST)

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

Section One. The Board of Directors of Midpeninsula Regional Open Space District does hereby accept the offer contained in that certain Purchase Agreement between Peninsula Open Space Trust, a California non-profit, public benefit corporation and Midpeninsula Regional Open Space District, a California public agency, a copy of which is attached hereto and by reference made a part hereof, and authorizes the President or appropriate officers to execute the Agreement on behalf of the District.

Section Two. The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute a Certificate of Acceptance and Assignment of Lease on behalf of the District.

Section Three. The General Manager of the District or the General Manager’s designee shall cause to be given appropriate notice of acceptance to the seller. The General Manager and General Counsel are further authorized to approve any technical revisions to the attached Agreement and other transactional documents which do not involve any material change to any term of the Agreement or other transactional documents which are necessary or appropriate to the closing or implementation of this transaction.

Section Four. The General Manager of the District is authorized to expend up to \$45,000 to cover the cost of title insurance, escrow fees, site clean up, and other miscellaneous costs related to this transaction.

Section Five. It is intended, reasonably expected, and hereby authorized that the District's general fund will be reimbursed in the amount of \$4,245,000 from the proceeds of the next long-term District note issue. This Section of this Resolution is adopted by the Board of Directors of Midpeninsula Regional Open Space District solely for purposes of establishing compliance with the requirements of Section 1.103-18 of the Treasury Regulations. The reimbursement of this payment expenditure is consistent with the District's budgetary and financial circumstances. There are no funds or sources of moneys of the District that have been, or are reasonably expected to be, reserved or allocated on a long-term basis or otherwise set aside to pay the costs of this open space land purchase project, which are to be paid or reimbursed out of proceeds of indebtedness to be issued by the District. The Board of Directors hereby declares the District's official intent to use proceeds of indebtedness to reimburse itself for this open space land purchase project expenditure.

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