

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA # \*B-4

Urgent

*mm*  
Routine

AGENDA DATE October 28, 2014

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

*ant*  
(Information Attached)

SUBJECT:

Approval to Authorize the Director of Parks and Recreation to Execute a Grazing Lease with Houret Cattle Co. Inc., for 303.1 Acres at the Joe Domecq Wilderness Area Located South of State Route 132 and East of Lake Road

STAFF RECOMMENDATIONS:

1. Authorize the Director of Parks and Recreation, or designee, to execute a Grazing Lease with Houret Cattle Co. Inc., for 303.1 acres at the Joe Domecq Wilderness Area located south of State Route 132 and east of Lake Road, for the period of October 23, 2014, to October 22, 2019, for \$16 per acre.
2. Authorize the Director of Parks and Recreation, or designee, to exercise the option to renew the Grazing Lease for a 5 year extension from the term of this lease and to negotiate a rate increase based on the Consumer Price Index.

FISCAL IMPACT:

This lease will generate \$4,849.60 in revenue annually for a total of \$24,248 over the 5 year lease term, from October 23, 2014, to October 22, 2019. The prior lease generated revenue in the amount of \$3,520 annually for a total of \$35,200 over the 10 year lease term that began on September 1, 2004, and expired on August 31, 2014. The income has been included in the Parks and Recreation's Fiscal Year 2014-2015 estimated revenue.

BOARD ACTION AS FOLLOWS:

No. 2014-537

On motion of Supervisor Withrow, Seconded by Supervisor Monteith  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Director of Parks and Recreation to Execute a Grazing Lease with Houret Cattle Co. Inc., for 303.1 Acres at the Joe Domecq Wilderness Area Located South of State Route 132 and East of Lake Road

## **DISCUSSION:**

On March 1, 1993, the County entered into a grazing lease agreement with Houret Cattle Co. Inc., for use of the Joe Domecq Wilderness Area. The original agreement expired on August 31, 2014.

In further consideration of the grazing rights lease agreement, the Department of Parks and Recreation (Department) also performed a review of the Stanislaus County Parks Master Plan which recommends that additional trails and up to five hike-in camping sites be developed in the Joe Domecq Wilderness Area. Although these future developments may alter the grazing lease, the Department does not expect that changes will be implemented on this site prior to October 22, 2019, which is the expiration date of the proposed lease.

Like many of the Department's grazing leases, interest in the property for its use as "grazing land" generally comes from adjacent landowners to provide additional acreage for their livestock. In this particular case, the surrounding private land is owned by Paul Houret. For practical reasons (i.e., access, location to existing properties, etc.) and lack of interest from other parties, this agreement was not part of a public bid process. Also, it would be financially impractical to conduct a public bidding process for such a limited lease in the amount of \$4,849.60 annually. The costs incurred by the County would greatly exceed any potential benefit when there has historically been only one interested party.

Government Code (GC) Section 25537(b) and County Code Section 4.24.010 require a specific 15 day noticing procedure when public agencies enter into a lease outside the bidding process. Pursuant to these requirements, a Notice of Intent to lease real property for grazing was posted by the Office of the Clerk of the Board on August 29, 2014, in accordance with the aforementioned GC Section. The Notice described the property proposed to be leased, the terms of the lease, the location where offers to lease the property would be accepted, the location where leases would be executed, and any County officer authorized to execute the lease (see Attachment A).

On September 15, 2014, the County received one offer from Houret Cattle Co. Inc., who has been the grazing tenant at the said property for over 25 years and has maintained the property in good standing. This offer includes, but is not limited to: building/repairing 1,500 feet of fence destroyed by fire in May of 2014, notifying the County of trespass and theft against the County, and pursuing criminal charges against those associated with trespass and theft leading to conviction, along with all other duties associated with the grazing pasture. Therefore, the Department is recommending authorization to execute a new grazing lease agreement with Houret Cattle Co., Inc., commencing on October 23, 2014, and ending on October 22, 2019 (see Attachment B).

Approval to Authorize the Director of Parks and Recreation to Execute a Grazing Lease with Houret Cattle Co. Inc., for 303.1 Acres at the Joe Domecq Wilderness Area Located South of State Route 132 and East of Lake Road

**POLICY ISSUE:**

This action is consistent with the Board's priorities of A Healthy Community, A Strong Agricultural Heritage and Effective Partnerships. It allows the County the opportunity to be good stewards over the land while receiving revenue for services rendered.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Jami Aggers, Director of Parks and Recreation  
Telephone: 209-525-6770

(Attachment A) – Notice of Intent to Lease  
(Attachment B) - Lease Agreement



**DEPARTMENT OF PARKS AND RECREATION**

3800 Cornucopia Way, Suite C,

Modesto, Ca 95358-9492

Phone: (209) 525-6700

Fax: (209) 525-6774

**NOTICE OF INTENT TO LEASE GRAZING PROPERTY  
CORNER OF LAKE ROAD AND HIGHWAY 132  
STANISLAUS COUNTY, CA  
AUGUST 29, 2014**

**STANISLAUS COUNTY HEREBY SERVES NOTICE OF ITS INTENT** to offer for lease real property described as follows: approximately 303.1 acres of unirrigated real grazing property on the corner of Lake Road and Highway 132 (Yosemite Boulevard), La Grange, California, on portions of the following Assessor's Parcel Numbers where the real property is currently being utilized for cattle grazing: 008-022-014, 008-022-019, 008-018-027, and 008-018-033.

The lease term is from October 7, 2014, to October 6, 2019, or as mutually agreed. Rental income for 2013 was \$3,520 and in 2012 was \$3,520. A sample lease agreement is available at the address below.

Offers will be accepted at Stanislaus County Department of Parks and Recreation, Attention: Susan M. Garcia, C.P.M., 3800 Cornucopia Way, Suite C, Modesto, CA 95358, phone: (209) 525-6700, [sgarcia2@envres.org](mailto:sgarcia2@envres.org) no later than 4:30 p.m. on September 15, 2014.

The County officer authorized to execute the lease: Either the Stanislaus County Board of Supervisors Chairman, the Stanislaus County Chief Executive Officer, or the Stanislaus County Director of Parks and Recreation or designee, as determined by the Board of Supervisors.



DEPARTMENT OF PARKS AND RECREATION  
3800 Cornucopia Way, Suite C, Modesto, Ca 95358-9492  
Phone: (209) 525-6700 Fax: (209) 525-6774

## GRAZING LEASE

The County of Stanislaus, a political subdivision of the State of California herein called "Lessor," hereby leases to Houret Cattle Company Inc., herein called "Lessee," approximately **303.1 acres** of real property herein called "the Premises," in the County of Stanislaus, State of California, more particularly depicted in Exhibit "A" attached hereto and by this reference made a part hereof, on the following terms and conditions:

1. **TERM OF LEASE.** The term of this Lease shall be for the period of **five (5) years**, commencing at 12:01 a.m. **October 23, 2014**, and terminating at 11:59 p.m. **October 22, 2019**.

2. **PAYMENT.** Lessee agrees to pay to Lessor and Lessor agrees to accept as payment of **\$16 per acre** for the use and possession of the premises, the sum of **\$4,849.60 per year**, payable to the "County of Stanislaus" in advance on the first day of October of each lease year, commencing **October 23, 2014**, at the office of the Department of Parks and Recreation, 3800 Cornucopia Way, Suite C, Modesto, California 95358-9494.

3. **OPTION TO RENEW.** This Agreement may be renewed at the option of the County for a period of five (5) years from the expiration of the original term and on the same terms and conditions. Such option is to be exercised in writing at least one (1) month prior to the termination of the existing Agreement period. Renewal is subject to negotiation and may be based on the Consumer Price Index (CPI).

4. **USE OF PREMISES.**

The premises shall, during the term of this Lease, be used for grazing, pasturing, maintenance and production of livestock, and for uses normally incident to such purpose, and for no other purposes.

The area of the leased premises identified in Exhibit "A" as parcel numbers 008-022-014 (approximately 42.6 acres), 008-022-019 (approximately 134.5 acres), 008-018-027 (approximately 96 acres) and 008-018-033 (30 of the approximate 50 acres), will be available for use by the Lessee year round, except during scheduled events authorized by the Lessor. The Lessor shall notify the Lessee at least 10 days in advance of a scheduled event and the Lessee shall remove all livestock from the parcel where the event is scheduled to take place, prior to the day of the event.

5. **WASTE OR NUISANCE.** Lessee shall not commit or permit the commission by others of any waste on the premises; Lessee shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code; and Lessee shall not use or permit the use of the premises for any unlawful purposes.

6. **MAINTENANCE.** Lessee shall, at his own cost and expenses, keep and maintain the premises and improvements on the premises, in good order and repair and in as safe and clean a condition as they were when received by him from Lessor. Lessee shall keep and maintain at his sole cost and expense, all fences now upon the premises in good order and repair. Any new fences required will be at the sole expense of Lessee. All fencing repairs and new fences made by Lessee shall be at the sole expense of the Lessee and in accordance with County standards and be approved by Lessor.

7. **TAXES AND OTHER CHARGES.** It is understood that the property interest created by this Lease may be subject to property taxation and that Lessee shall pay all taxes, assessments or other charges levied or made as a result of Lessee's possession or use of the premises without contribution by Lessor.

8. **ENTRY BY OTHERS.** Lessor shall have the right to post signs forbidding trespass by persons other than Lessee or his employees upon the premises, and to deny entry upon the premises to unauthorized persons. In addition, Lessor shall have the right to grant written permission, under such rules and regulations as may be adopted by its Board of Supervisors, allowing persons to use the property or premises for recreational usage (i.e. fishing, hiking, sightseeing, etc.).

9. **ALTERATIONS.** Lessee shall not make or permit any other person to make any alterations to the premises or any improvement thereon without the prior written consent of Lessor.

10. **INSPECTIONS BY LESSOR.** Lessee shall permit Lessor's agents, representatives or employees to enter the premises at all reasonable times for the purpose of inspecting the premises to determine whether Lessee is complying with the terms of the Lease and for park purposes or doing other lawful acts that may be necessary to protect Lessor's interest.

Lessor may, after serving the Lessee ten (10) days prior written notice of failure to comply with the terms of the Lease in the manner provided for service of notices in this Lease, enter the premises and take such action, as Lessor deems necessary to protect its interest in this Lease in the premises.

11. **HOLD HARMLESS.**

(a) **Lessee Indemnity.** Lessee shall indemnify, defend with counsel reasonably acceptable to Lessor, and hold harmless Lessor, its shareholders, directors, officers, agents, employees, volunteers and representatives (the "Lessor Indemnitees") of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Lessor, and damage or destruction of property, including, but not limited to, property of Lessee, any utility company or Lessor, or other loss or damage incurred by Lessor (collectively, "Claim" or "Claims"), arising out of (i) Farm Lessee's use of the Property; (ii) the alternation, work, or things done in, on or about the Site; or (iii) the material breach by Farm Lessee of any of its obligations under this Agreement regardless of whether a Claim is caused in part by the negligent act or omission of the Lessor. The obligation to indemnify shall extend to and encompass all costs incurred by Lessor and any Lessor Indemnitee in defending such Claims, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessee's obligations pursuant to this Paragraph (a) shall not extend to Claims for liability to the extent attributable to the sole negligence or willful misconduct of Lessor, the Lessor Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties. Lessee shall pay any cost that may be incurred by Lessor or the Lessor Indemnitees in enforcing this indemnity, including reasonable attorney fees.

(b) **Lessor Indemnity.** Lessor shall indemnify, defend and hold harmless Lessee, its members, directors, officers, agents, employees, volunteers and representatives (the "Lessee Indemnitees") of and from all Claims, to the extent caused by (i) the sole negligence or willful misconduct of Lessor, its agents, officers, directors, employees or contractors, (ii) any breach by Lessor of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessor's obligations pursuant to this Paragraph shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessee, the Lessee Indemnitees, or their respective contractors, successors or assigns, or the acts of third-parties. Lessor shall pay any cost that may be incurred by Lessee or the Lessee Indemnitees in enforcing this indemnity, including reasonable attorney fees.

(c) **No Consequential Damages.** Notwithstanding any provision in this Lease to the contrary, neither the Lessee nor the Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease. The foregoing provision shall not prohibit the Lessee or the Lessor from seeking and obtaining general contract damages for a breach of this Lease.

12. **INSURANCE.**

a. **COVERAGE BY THE PARTIES.** Lessee shall maintain all insurance and the policies of insurance specified in Exhibit "B" attached hereto, in the amounts and on the terms set forth herein or therein to the extent that it is available on commercially reasonable terms during the periods that are mentioned herein or therein. Nothing contained herein shall prevent either Party, at its sole cost and expense, from procuring any insurance coverage that is in addition to that which is specified herein or in Exhibit "B" attached hereto.

b. **NO LIMITATION INTENDED.** The insurance coverage to be provided by each Party under this Agreement is not intended to and shall not in any manner limit or qualify the obligations of either Party hereunder except to the extent that any proceeds of such insurance are actually received by such Party and applied to the satisfaction of any of its obligations hereunder.

c. **FAILURE TO OBTAIN AND/OR MAINTAIN COVERAGE.** The failure by either Party to obtain and/or maintain the insurance required hereunder to the extent that it is available on commercially reasonable terms shall entitle the other Party, in addition to any other remedies available under this Agreement, at law or in equity, to obtain such coverage at the expense of the Party which fails to obtain and/or maintain such insurance; provided, however, that such Party shall reimburse the other Party for the cost of obtaining and/or maintaining such insurance.

13. **ASSIGNMENT.** Lessee shall not assign, sublet, encumber or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the premises without the prior written consent of Lessor. Without the consent of Lessor, any attempted assignment or transfer of this Lease or any interest therein, either by voluntary or involuntary act of Lessee or by operation of law or otherwise, shall, at the option of Lessor, terminate this Lease. The Stanislaus County Department of Parks and Recreation Director is authorized to grant the consent of Lessor, as required by this paragraph.

14. **DEFAULT BY LESSEE.** All covenants and agreements contained in this Lease are declared to be conditions to this Lease. Should Lessee default in the performance of any condition or agreement contained in this Lease, Lessor may terminate and re-enter and regain possession of the premises in the manner then provided by the laws of unlawful detainer in the State of California then in effect.

15. **ATTORNEY'S FEES.** Should any litigation be commenced between the parties to this Lease concerning the premises, this Lease or the rights and duties in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for the attorney's fees in such litigation which shall be determined by the court in such litigation or in separate action brought for that purpose.

16. **GOVERNING LAW AND VENUE.** This Lease shall be deemed to be made under, and shall be governed by the construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Lease shall have venue in the County of Stanislaus, State of California.

17. **NOTICES.** Notices desired or required to be given by this Lease, or by any law now or hereinafter in effect, may be given by enclosing the same in a sealed envelope, addressed to the party for whom intended and by depositing such envelope, with postage prepaid, in the United States Post Office or any substation thereof, or any public letter box. Any such notice and the envelope containing the same shall be addressed to Lessee as follows:

Houret Cattle Company Inc.  
P.O. Box 35  
La Grange, CA 95329  
Attn: Tom Houret

or such other place as may hereinafter be designated in writing by Lessee and the notices and envelopes containing the same to Lessor shall be addressed as follows:

Stanislaus County  
Department of Parks and Recreation  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Attn: Susan M. Garcia, C.P.M.

or such other place as may hereinafter be designated in writing by Lessor.

18. **BINDING ON HEIRS.** This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as consent by Lessor to any assignment of this Lease or any interest therein by Lessee except as provided in Section 13, "**ASSIGNMENT**".

19. **TERMINATION.** Lessor may terminate this Lease for any reason at their sole discretion with 30-day notice.

20. **TIME OF ESSENCE.** Time is expressly declared to be the essence of this Lease.

21. **WAIVER.** The waiver of any breach of any of the provisions of this Lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this Lease.

22. **COMMUNICATION.** Lessee shall work and communicate closely with the owner or managers of leased land. This would include, but is not limited to emergency responses concerning cattle, public concerns, contract needs, damage control and continuing good relations with staff.

23. **STEWARDS OF THE LAND.**

a. Being good stewards of the land would include, but not be limited to, issues such as overgrazing, herd management and recreational needs that co-exist with the grazing lands.

b. Lessee shall exercise good grazing practices to avoid overgrazing of the Lease Premises. Lessor may at any time during the Lease term, make an analysis of forage conditions utilizing accepted range management practices. Such analysis shall indicate grazing conditions and may include a determination of forage levels, at various times, during the year. Lessor shall have the right to require Lessee to move cattle to or from any area of the Lease Premises where any overgrazing situation may exist for a period of time consistent with the grazing analysis. If supplemental feeding is utilized, distribution of feed will be such that



livestock are not concentrated so as to cause damage to vegetation and soil and Lessee shall only allow supplemental feeding of certified weed-free feed.

24. **GOOD NEIGHBOR.** Being a good neighbor with adjacent land owners would include, but not be limited to, frequency of fence line inspection and repairs, the frequency of herd counts and inspections and herd management practices.


EXECUTED ON October 1<sup>st</sup> 2014 at Modesto, California.

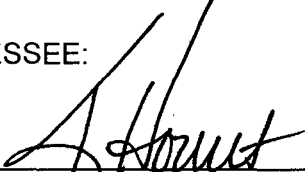
**STANISLAUS COUNTY:**

**HOURET CATTLE COMPANY INC.**

LESSOR:

LESSEE:

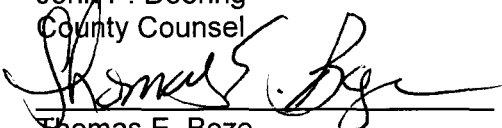
  
\_\_\_\_\_  
Jami Aggers  
Department of Parks and Recreation

  
\_\_\_\_\_  
Kathleen Houret  
Treasurer

10/29/14  
\_\_\_\_\_  
Date

Oct 1 2014  
\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

John P. Doering  
County Counsel  
  
\_\_\_\_\_  
Thomas E. Boze  
Deputy County Counsel

9/25/14  
\_\_\_\_\_  
Date

## EXHIBIT B

### Insurance Requirements

Throughout the Term, Lessee shall, at Lessee's sole cost and expense, keep in force the following insurance coverage:

- (a) **General Liability Insurance.** Lessee and all contractors working on behalf of Lessee shall maintain a commercial general liability policy in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, and two million dollars (\$2,000,000) in the aggregate, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Lessor as additional insured.
- (b) **Automobile Insurance.** Lessee and all contractors working on behalf of Lessee shall maintain comprehensive automobile liability coverage in the amount of one million dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles. Automobile liability policies shall name the Lessor as additional insured.
- (c) **Worker's Compensation.** Farm Lessee will deliver or cause to be delivered to Lessor evidence satisfactory to Lessor that Lessee and all contractors with whom Farm Lessee has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation as required by law.
- (d) **Increase in Insurance Amount Required.** Once every five (5) years during the Term, the amount of the insurance required pursuant to this Paragraph shall be increased. The increase shall be equal to the percentage increase of the producer price index ("PPI") for the County of Stanislaus for the prior sixty (60) month period (November 1 of year one (1) through October 31 of year five (5) of the applicable prior five-year time period).
- (e) **Additional Requirements.** Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-: VII or such other rating as approved by Lessor. The Commercial General Liability and comprehensive automobile policies required hereunder shall name Lessor and its respective officers, officials, agents, employees, and representatives as additional insureds. Property insurance shall name Lessor as loss payee. Prior to commencement of the lease and any construction work, Farm Lessee shall furnish Lessor with certificates of insurance in form acceptable to Lessor evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify Lessor of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. Coverage provided by Farm Lessee shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Lessor, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of Lessor. Lessee shall furnish the required certificates and endorsements to Lessor within the time provided herein, and shall provide Lessor with certified copies of the required insurance policies upon request of Lessor.