

Ric Rando

*- annual report
- CC?
- insurance?
2 wks*

**LEASE AND AGREEMENT TO CONSTRUCT, OPERATE AND MAINTAIN
A PUBLIC PARK IN SUMMERLAND, CALIFORNIA**

**THIS LEASE AND AGREEMENT TO CONSTRUCT, OPERATE AND MAINTAIN A
PUBLIC PARK IN SUMMERLAND, CALIFORNIA (hereafter "AGREEMENT") is made by
and between the County of Santa Barbara, a political subdivision of the State of
California (hereafter "COUNTY") and the SUMMERLAND CITIZENS ASSOCIATION,
having its mailing address at Post Office Box 508 Summerland, CA 93067 (hereafter
"LESSEE") with reference to the following:**

LLC articles

**WHEREAS, COUNTY is the owner of that certain real property in the village of
Summerland, California, County of Santa Barbara, previously used for a county road yard
and now known as the "Summerland Greenwell Preserve" A.P.N. 005-080-004,
hereafter known as the "Property"; and**

**WHEREAS, the PROPERTY is no longer needed for road yard use and the Parks
Department wishes to use such property for a county park; and**

**WHEREAS, LESSEE has extended an offer to the COUNTY to assist the COUNTY
in creating a park on the Property and is willing to construct, operate and maintain such
park as provided herein.**

**WHEREAS, COUNTY is empowered by Government Code Section 25536 to lease
land for park use without the usual provisions for leasing provided that the Board of
Supervisors approves such a lease by a four-fifths vote.**

**NOW, THEREFORE, in consideration of the mutual covenants and conditions
contained herein, the parties agree as follows:**

**1. DESIGNATED REPRESENTATIVE. The Director of Parks, at (805) 568-2461,
is the representative of COUNTY and will administer this AGREEMENT for and on behalf
of COUNTY. The President, Summerland Citizens Association, at (805) 969-1971, is
the authorized representative for LESSEE. Changes in designated representatives shall
be made only after advance written notice to the other party.**

**2. NOTICES. Any notice or consent required or permitted to be given under this
AGREEMENT shall be given to the respective parties in writing, by first class mail,
postage prepaid, or otherwise delivered as follows:**

**To COUNTY: Santa Barbara County Parks
Director of Parks
610 Mission Canyon Rd.
Santa Barbara, CA 93105**

To LESSEE: President, SCA

P.O. Box 508
Summerland, CA 93067

and to

Chairman
Summerland\Greenwell Preserve Project Subcommittee
P.O. Box 1353
Summerland, CA 93067

or at such address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. LEASED PROPERTY: COUNTY hereby leases to LESSEE and LESSEE hereby takes from COUNTY that property known as the Summerland Greenwell Preserve, A.P.N. 005-080-004 which consists of three building structures, an asphalt parking lot and miscellaneous landscaping, is referred to herein as the Property and is shown as the diagonally slashed area on Exhibit A attached hereto and incorporated herein by reference.

4. TERM. The term of this AGREEMENT shall be for a period of five (5) years commencing on the date of execution of this Agreement by COUNTY and ending five (5) years from such date, unless earlier terminated as provided herein. The Santa Barbara County Park Director may renew this AGREEMENT on behalf of the Board of Supervisors for two additional five-year terms by mutual agreement of LESSEE and Director, provided there is no material variation in its terms as determined by County Counsel.

5. COMPENSATION. Consideration for this AGREEMENT from LESSEE shall be the provision of services as detailed herein. COUNTY shall make no payment to LESSEE for LESSEE's services to be provided under this AGREEMENT except for those grant funds to be paid to LESSEE for performing those capital improvements described in Exhibit B, attached hereto and incorporated herein by reference.

6. USE OF THE PROPERTY AND SCOPE OF SERVICES: LESSEE shall use the Property for the operation of a public park at no cost to users (except for special events) and in accordance with the provisions herein and of Exhibit B and Exhibit C, attached hereto and incorporated herein by reference. LESSEE shall also have use of buildings on the Property as described on said Exhibits.

LESSEE shall permit COUNTY and its authorized agents, employees, and independent contractors to enter onto the Property at all reasonable times for the purpose of inspecting the Property to determine whether LESSEE is complying with the terms of this AGREEMENT, for the purpose of doing other lawful acts that may be necessary to protect the COUNTY's interest in said Property, for the purpose of performing any duties and obligations on COUNTY's part to be performed under this AGREEMENT, and for any incidental matter which does not interfere with use by LESSEE.

7. MAINTENANCE AND REPAIRS: LESSEE shall operate, maintain and repair at its own expense the existing grounds and facilities developed on the Property as defined and set forth in Exhibit B. Said operations and maintenance shall be performed as necessary to keep said grounds and facilities in clean, neat, sanitary and safe condition. It is mutually understood that all operations, maintenance and repair work is the sole responsibility of LESSEE and such work will be done in a competent and workmanlike manner.

The parties expressly agree that this AGREEMENT is intended to be at no cost to COUNTY and that COUNTY shall have no obligation to operate or maintain the Property nor any improvements, structures, landscaping, or grounds during the term of this AGREEMENT.

8. ALTERATIONS AND CONSTRUCTION: During the term of this AGREEMENT, LESSEE shall not commence with any construction, alterations, or improvements to any grounds, building or structure located on the Property without the prior written approval of the Director of Parks, who may request additional information in writing, including those provided in Exhibit B.

Any exterior construction or interior alteration project in, on, or about the Property shall be presented to the Director of Parks in written form with proposed plans and specifications prior to any construction or alterations. Prior to approving any construction or alteration relative to the Property, the Director shall obtain the approval of a licensed COUNTY employee certifying that such plans and specifications meet COUNTY standards for such project. Any plans and specifications submitted pursuant to this section which fail to obtain the approval of the Director and the licensed employee shall be redone until such approval is made. No construction or alteration which has been disapproved by the Director and/or the licensed employee shall be performed, except where the Director and licensed employee issues a subsequent written approval of such work.

The Director's approval shall be deemed conditioned upon LESSEE acquiring appropriate permits to proceed from governmental and regulatory agencies, the furnishing of a copy thereof to the Director, or designee, prior to the commencement of the work, and the compliance by LESSEE with all conditions of said permit in a prompt and expeditious manner. Any and all permits or clearances required shall be made only on the merits of the application thereof, and nothing in this AGREEMENT shall be construed to require that COUNTY, or any other government agency, is required to grant such permits or clearances. LESSEE shall give the Director, or designee, not less than ten (10) days written notice prior to the commencement of any work in, on or about the Property, and COUNTY shall have the right to post Notices of Nonresponsibility in or on the Property as provided by law.

Any construction or alterations by LESSEE pursuant to this AGREEMENT shall keep the leasehold and improvements free and clear of liens for labor and materials expended by or for LESSEE or on its behalf and LESSEE shall hold COUNTY harmless and defend COUNTY with respect to any construction or alterations.

9. UTILITIES AND SERVICES: LESSEE shall pay for utilities and services furnished to or used by it on the Property, including but not limited to, pest or mosquito abatement, water, electrical, sewer, trash collection and natural gas, and for any required connection

company the total cost of said utilities or service. LESSEE shall pay for all services provided for on the Property by the Santa Barbara Coastal Vector Control District (District) as stipulated in contract agreement between COUNTY and District. LESSEE shall pay invoices submitted to LESSEE by District for services provided.

LESSEE agrees that any utilities constructed or placed on the Property, either permanent or temporary in nature, after the effective date of this AGREEMENT shall be subject to prior written consent by the Director.

If LESSEE's utility or service requirements increase over the existing level of utility or service use as of the date the term commences, upon approval by the Director, LESSEE, ~~at its sole cost and expense, may install new utility or services on the Property.~~ Installation costs shall include not only the costs of installing utilities or services on the Property, but also the cost of bringing such utilities or services to the Property. If LESSEE is constructing or remodeling improvement(s) and additional utility or service is required (i.e., wiring, plumbing, conduits, and mains) as a result of LESSEE's changes or increased utility or service requirements, LESSEE shall pay on demand the public utility or service company(ies) the total costs of said utility and/or service.

10. **REVENUES:** Any and all revenue generated by LESSEE from the Property, including, but not limited to, ticket sales, membership, donations, gifts, benefits, and subleases shall be retained by LESSEE. LESSEE agrees that any and all revenues received by LESSEE shall be spent on the Property and other expenses associated with LESSEE's operations and activities of the Property.

11. **INDEPENDENT CONTRACTOR.** LESSEE shall perform all of its services under this AGREEMENT as an independent contractor and not as an employee of COUNTY. LESSEE understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation, and protection of tenure.

12. **STANDARD OF PERFORMANCE.** LESSEE represents that it has skills, expertise, and licenses/permits necessary to perform the services required under this AGREEMENT. Accordingly, LESSEE shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which LESSEE is engaged. LESSEE shall correct or revise any errors or omissions, at COUNTY's request without additional compensation. Permits or licenses shall be obtained and maintained by LESSEE without additional compensation.

13. **ANNUAL REPORT:** LESSOR shall provide COUNTY with an annual report on January 1 of each year during the term of this AGREEMENT, which shall consist of LESSEE's current Board of Directors with names, addresses, and telephone numbers; information regarding general operation and management of the Property during the preceding year, improvements completed or planned and an accounting of all income and expenses.

14. **TAXES.** COUNTY shall not be responsible for paying any taxes on LESSEE's behalf, and should COUNTY be required to do so by state, federal, or local taxing

agencies, LESSEE agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

LESSEE acknowledges that this lease may constitute a taxable possessory interest in the Property and agrees to pay all possessory interest taxes, if any.

15. CONFLICT OF INTEREST. LESSEE covenants that LESSEE presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT. LESSEE further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by LESSEE.

16. RECORDS, AUDIT, AND REVIEW. LESSEE shall keep such business records pursuant to this AGREEMENT as would be kept by a reasonably prudent practitioner of LESSEE's profession and shall maintain such records for at least four (4) years following the termination of this AGREEMENT. All accounting records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents at any time during LESSEE's regular business hours or upon reasonable notice.

17. TITLE AND WARRANTIES: Title to the Property and all buildings and improvements now located or hereafter constructed thereon is and shall be vested in the COUNTY at all times. The title to all items of personal property located in, upon, or around the Premises shall be vested in LESSEE unless otherwise expressly agreed between the parties. The LESSEE agrees to take and accept the Property in its present condition and the COUNTY shall have no responsibility to remove or replace any existing structures, installation, utility or pipelines except as stipulated herein and on Exhibits B and C.

18. INDEMNIFICATION AND INSURANCE. COUNTY shall defend, indemnify and save harmless the LESSEE, its officers, agents and employees from any and all claims arising out of or in connection with this AGREEMENT except those claims resulting from the willful acts or gross negligence of the LESSEE, its officers, agents, or employees.

LESSEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this AGREEMENT.

LESSEE shall provide such insurance as is specified in Exhibit C, attached hereto and incorporated herein by reference and shall deliver proof of such insurance within thirty (30) days of COUNTY's execution of this AGREEMENT.

19. NONDISCRIMINATION. COUNTY hereby notifies LESSEE that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this AGREEMENT and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and LESSEE agrees to comply with said ordinance.

20. **ASSIGNMENT.** Since COUNTY is contracting not only for use of its property, but for the provision of personal services, LESSEE shall not assign any of its rights nor transfer any of its obligations under this AGREEMENT without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

21. **AGENTS' INSURANCE:** LESSEE shall require all agents, contractors, permittees, and licensees performing any activities or duties on said Premises, to carry such general liability insurance as is customary among prudent operators of similar businesses under comparable circumstances. ~~The COUNTY shall be named as additional insured.~~

22. **ENVIRONMENTAL IMPAIRMENT:** LESSEE at LESSEE's expense, shall comply with and perform all applicable laws, regulations, rules, and orders, regardless of when they become or became effective, including without limitation those relating to construction, grading, signage, health, safety, noise, environmental protection, waste disposal, clean-up and water and air quality, and shall furnish the COUNTY satisfactory evidence of such compliance upon the request of COUNTY.

23. **TOXICS:** LESSEE shall not manufacture or generate hazardous waste on the Property unless specifically authorized under other terms of this AGREEMENT. LESSEE shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored or transported on the Property during the term of this AGREEMENT and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. LESSEE shall notify COUNTY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances, or materials.

24. **COMPLIANCE WITH THE LAW:** LESSEE shall comply with all applicable federal, state, county, and municipal laws, statutes, rules, ordinances, and regulations in effect during the term or any part of the term hereof regulating the use of the Property.

25. **DEFAULT.** Except as otherwise specified herein, should either party at any time be in default hereunder with respect to any material covenant contained herein, the nondefaulting party shall give notice to the defaulting party specifying the particulars of the default and the defaulting party shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of twenty-one (21) calendar days from such notice, then this AGREEMENT shall terminate at the option of the nondefaulting party unless the cure of such default shall reasonably take more than twenty-one (21) calendar days in which case the defaulting party shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

26. **REMEDIES.** In the event of a default or breach either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including but not limited to the following:

A. The nondefaulting party may waive the default or breach in accordance with Section 33, WAIVER, below.

B. The nondefaulting party may maintain this AGREEMENT in full force and effect and recover whatever monetary loss(es) may have resulted from such default or breach.

C. Where COUNTY is the nondefaulting party, COUNTY may terminate this AGREEMENT and LESSEE vacate said Property within thirty (30) days written notice by COUNTY.

D. Where LESSEE is the nondefaulting party, LESSEE may terminate the ~~AGREEMENT and surrender possession of the Property.~~

27. TERMINATION. This AGREEMENT shall terminate and all rights of LESSEE shall cease and LESSEE shall quietly and peacefully deliver to COUNTY, possession and interest in the Property and upon such delivery, shall be relieved of all future liability:

A. At the expiration of the term as provided in Section 4 TERM, above; or

B. Upon failure of either party to satisfy, observe, or perform any of the covenants, conditions, or reservations set forth in this AGREEMENT and the expiration of the cure period as provided in Section 25, DEFAULT, above; or

C. Upon ninety (90) days notice given by COUNTY at any time.

28. SURRENDER OF PREMISES: Upon expiration of the term or other termination of this AGREEMENT within thirty (30) days of such expiration/termination LESSEE shall vacate and surrender possession of the Property to COUNTY in good condition, except for ordinary wear and tear.

LESSEE shall remove all its personal property within the above stated time. At the sole option of COUNTY, LESSEE shall remove all improvements placed by LESSEE on the Property and perform restoration of the Property within the above stated time. COUNTY may elect to retain or dispose of in any manner any alterations or LESSEE's personal property that LESSEE does not remove from the Property on expiration or termination of the term as allowed or required by this Agreement by giving at least thirty (30) days' notice to LESSEE. Title to any of LESSEE's personal property that COUNTY elects to retain or dispose of on expiration of the thirty (30) day period shall vest in COUNTY. LESSEE waives all claims against COUNTY for any damage to LESSEE resulting from COUNTY's retention or disposition of any such alterations or LESSEE's personal property. LESSEE shall be liable to COUNTY for COUNTY's costs for storing, removing, and disposing of any alterations or LESSEE's personal property.

If LESSEE fails to surrender the Property to COUNTY on expiration or thirty (30) days after termination of the term as required by this section, LESSEE shall hold COUNTY harmless from all damages resulting from LESSEE's failure to surrender the Property, including, without limitation, claims made by a succeeding lessee resulting from LESSEE's failure to surrender the Property.

29. SECTION HEADINGS. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

30. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this AGREEMENT shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

31. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or served to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

32. **TIME IS OF THE ESSENCE.** Time is of the essence in this AGREEMENT and each covenant and term is a condition herein.

33. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this AGREEMENT to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

34. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with matters considered herein, this AGREEMENT contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This AGREEMENT may be altered, amended or modified only by an instrument in writing, executed by the parties to this AGREEMENT and by no other means. Each party waives their future right to claim, contest or assert that this AGREEMENT was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

35. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this AGREEMENT, by or on behalf of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

36. **COMPLIANCE WITH LAW.** LESSEE shall, at his sole cost and expense, comply with all County, state and federal ordinances and statutes now in force or which may hereafter be in force with regard to this AGREEMENT. The judgment of any court of competent jurisdiction, or the admission of LESSEE in any action or proceeding against LESSEE, whether COUNTY be a party thereto or not, that LESSEE has violated any such ordinance or statute, shall be conclusive of that fact as between LESSEE and COUNTY.

37. **CALIFORNIA LAW.** This AGREEMENT shall be governed by the laws of the State of California. Any litigation regarding this AGREEMENT or its contents shall be

filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

38. EXECUTION OF COUNTERPARTS. This AGREEMENT may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as parties shall preserve undestroyed, shall together constitute one and the same instrument.

39. AUTHORITY. All parties to this AGREEMENT warrant and represent that ~~they have the power and authority to enter into this AGREEMENT in the names, titles~~ and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this AGREEMENT have been fully complied with. Furthermore, by entering into this AGREEMENT, LESSEE hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which LESSEE is obligated, which breach would have a material effect hereon.

40. PRECEDENCE. In the event of conflict between the provisions contained in the numbered sections of this AGREEMENT and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

41. FACSIMILE SIGNATURES. In the event that the parties hereto utilize facsimile transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission of the facsimile, except that funds shall not be released upon a facsimile signature nor shall facsimile signed documents be accepted for recordation by the Clerk-Recorder of the COUNTY.

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IN WITNESS WHEREOF, the parties have executed this AGREEMENT to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

By: [Signature]
Chair, Board of Supervisors

Date: 8/18/98

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD
By: Joanna Bushee
Deputy

LESSEE
By: [Signature]
President, Summerland Citizen
Association
Tax ID Number 77-0321266

APPROVED AS TO FORM
STEPHEN SHANE STARK
COUNTY COUNSEL
By: [Signature]
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER
By: [Signature]
Deputy

APPROVED:
JENNIFER BRIGGS
DIRECTOR OF PARKS
By: [Signature]
Director

APPROVED AS TO FORM:
CHARLES MITCHELL
RISK MANAGER
By: [Signature]
Risk Manager