



BEAR VALLEY COMMUNITY SERVICES DISTRICT

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October 2, 2025

Sent Via Email & U.S. Mail

Don Ciota
General Manager
Bear Valley Springs Association
29541 Rolling Oak Drive
Tehachapi, CA 93561

Re: Response to BVSA Letter Dated September 30, 2025

Mr. Ciota:

This letter serves as a response to your letter, dated September 30, 2025, in response to the District's Notice of Intent to Terminate (Notice) the Community Facilities Lease (Lease), dated September 26, 2025. The District disagrees with the Bear Valley Springs Association's (Association) assertions that the violations in the District's Notice are "minor" and do not "rise to the level of default sufficient to trigger a unilateral termination of the Lease."

The District's response to your claims is as follows.

1. Trail and Facility Maintenance Section 4

The Association may believe that the District's position that the Association has failed to maintain the trail system in "good repair" is based on the "opinion of one resident who was a previous employee of the Association", and, therefore, is unsupported. The source of the opinion is irrelevant when the facts clearly show the Association has failed to maintain the trail system in good repair to the extent that the trail system may be considered abandoned.

The District has been provided photos documenting the trail conditions as of September 15, 2025. The photos show numerous sections of trail that are impassable due to fallen trees, overgrowth of bushes and grasses, and erosion. In some photos it is not even clear a trail exists.

These photos are sufficient evidence for the District to conclude that the trails have not been maintained in "good repair", and that the Association has abandoned its activities at this portion of the Facilities. The Association's assertion that this is part of a "multi-phase plan" does not negate the fact that the trails are not in "good repair" as

determined by the Facilities owner, the District. “Maintain” as defined in Section 4.a means “the furnishing of services and materials for the ordinary and usual maintenance, operation, and servicing of all Facilities.” The Association has been on notice since at least August 7, 2025, that the trails had not been maintained in good repair.

The District is aware that the BVSA rushed to attempt maintenance to the Goat Springs Trailhead on the morning of August 9, 2025, in an effort to cover up the full scale of the disrepair hours before the Liaison meeting. Since this date, no additional trail maintenance has been performed. This lack of performance evidences a failure of the Association to complete repair and maintenance work required by Section 4 (c) of the lease agreement. The District reserves its right to complete the necessary repair and maintenance work and charge the Association for the costs of such work. The observed photos of the state of the trails show that they are not in the condition for ordinary and usual operation, leading to the conclusion that the Association has failed to maintain the trails as defined by the lease.

Furthermore, the Association’s assertion that Rolling Oak Drive drainage infrastructure “was in place well before current Association leadership and without documented objection from the District at the time” is irrelevant. The condition of the drainage infrastructure is the responsibility of the of the Association per Exhibit A to the Lease, which clearly states the “Only the major components of Facilities are identified. Associated buildings, sheds, and miscellaneous improvements are not individually identified.” As stated above, the Association has a duty to “keep in good repair and maintain, repair, replace and restore the Facilities.” (Section 4(a).) This is a responsibility of the Association, not the District. Any other assertion is contrary to the explicit language of the Lease.

Further, the assertion that the Association cannot be held responsible for its actions if such actions occurred under a prior Association leadership is contrary to law and an absurd conclusion. The Association is bound by the terms of the lease from the effective date until termination regardless of any leadership changes. A converse argument would hold that the District would not be bound by any of the terms of the lease any time a new Board member was seated. Again, an absurd conclusion.

The Association also argues that the District did not object at the time the drainage infrastructure was built. The mechanism of the lease does not require the District to object to any improvements made upon the Facilities. It requires the Association to “first obtain[] written consent of District to the proposed alteration or addition” otherwise the Association “will not alter or add to the Facilities”. (Section 16.b.). The Association never sought approval for the drainage infrastructure, and therefore such improvement was constructed in violation of the Lease.

In addition, the Association’s assertion that the “Districts storm drain systems and runoff from rain on Lower Valley Road are being diverted to this area and has had a drastic impact on the area in questions for many years” is irrelevant to the Association’s

failure to maintain the Facilities in “good repair.” This is a natural drainage area, not part of the District’s drainage system, and maintaining the Facilities in “good repair” is the responsibility of the Association, regardless of genesis of the runoff.

As stated in the Notice, this is not a full list of repairs and maintenance that are in violation of the Association’s duties obligated by the Lease but are provided as examples of the failure to keep the Facilities in good repair. Per Section 7.c) “Failure to fulfill any of the terms of this lease will constitute a default.” (emphasis added) Therefore, each of the failures listed above alone constitute a default and enable the District to invoke the right to terminate the lease. Further, Section 7.b states “[a] discontinuance by Association of its business or abandonment of its activities at the Facilities” constitutes a default.”

2. Insurance Documentation – Section 11

On September 15, 2025, the District’s Human Resources Administrator, Lynn McKettrick, requested from the Association copies of the Certificates of Insurance showing that the District is an additional insured as is required by the Section 11.d.1 of the Lease. on September 22, 2025, when she had not received a response from the Association, she contacted the Association’s broker, The Liberty Company Insurance Brokers, directly and was informed that the Association had the Certificates of Insurance and required the District to obtain them from the Association. Ms. McKettrick sent you a follow-up email on September 24, 2025, requesting the Certificates of Insurance. To date, she has not received a response.

Section 11.e) states “The District reserves the right to require complete, certified copies of all required insurance policies at all times.” The Association’s assertion that “at no time in the past 10 years has the District asked the Association for any insurance documentation” is incorrect. In addition, the Association asserts that the “District is encouraged to communicate directly with the Association regarding any future documentation requests rather than implying noncompliance without first attempting resolution” is predicated on the erroneous position that no direct communication has been attempted. Ms. McKettrick’s emails prove that position is false and failure to fulfill this term alone constitutes a default of the Lease. Liberty Company Insurance Broker’s insistence that the District obtain the certificates directly from the Association and being unwilling to work with the District leads the District to believe that it is not a named insured on the policies.

3. Alterations, Permitting, and Environmental Compliance – Section 16

In the cattail removal matter, the Association has refused, and continues to refuse, to provide documentation between the Association and the California Department of Fish and Wildlife regarding the maintenance of the lakes. On August 24, 2025, you responded to a request by BVCS D Director Hernandez for this information with a statement that requests should be submitted between General Managers. On August

24, 2025, I responded with a request for this information using this protocol. To date, I have not received any of the requested information.

Irrespective of the Association's assertion that it has been "in constant contact with the CDFW and are in the process of applying for a 10-year routine maintenance agreement for the lakes at the suggestion of the CDFW", the District has received no communication and cannot determine that the Association's use of the Facilities is not "in violation of Federal, State, County and/or local laws, ordinances or regulations", as required by Section 14, without documentation in the form of the requested correspondence or permits.

In the pickleball court matter, the Association's assertion that it "has been transparent in its efforts to accommodate community amenities" and that the District's approval process "was changed without the Association's knowledge" is disingenuous. The procedure is clearly spelled out in the Lease and has been the process back to past leases. To reiterate, Section 16.b of the Lease states "Association agrees that, except for required repairs, it will not alter or add to the Facilities or permit the Facilities to be altered or added to without having first obtained the written consent of District." However, the Association has disregarded the process in the past (as noted in the 2013 notice) and continued to do so up to the pickleball court matter. As a point of fact, none of the first four pickleball courts were proposed to the District nor did the District approve them, which is obvious by the fact that Addendum #7 to the Lease, which revised Exhibit A to the Lease to include the Historic Cemetery and Jack's Hole Retention Basin, did not include the pickleball courts.

Regardless of the source and how this project came to the attention of the District, the Association is in violation of the Lease by not utilizing the process to propose, and receive approval for, and alter the Facilities. The Association continued to brazenly disregard the requirement to seek approval from the District prior to making improvements to the Facilities with the fifth pickleball court. After the District became aware of the Association's commencement of work on the fifth pickleball court, District informed the Association, by a cease and desist instruction on May 21, 2025, that such work was not approved by the District, and must be approved prior to continuing any work. A second instruction to cease and desist work on the pickleball court was emailed to the Association on May 22, 2025. The District observed the Association on May 27, 2025, continuing to pour concrete on the pickleball court site in direct and willful violation of the cease and desist instruction.

The Association's assertion that the matters presented as failures under this section of the Lease are "dated and previously addressed" and, therefore, irrelevant disregards that the historical issues presented, regardless of resolution or status, demonstrates an ongoing and willful failure to meet the terms of the Lease. In addition, the more recent issues demonstrate a pattern of the Association's disregard for, and willful refusal, to comply with the terms of the Lease. Any instance of failure to fulfill the terms of the Lease constitutes default and is grounds for termination of the Lease.

4. Nuisance or Unlawful Use – Section 14

This section of the Lease states that “Association shall not commit, nor allow others to commit, any waste on the premises, or nuisance, and it shall not use or allow in the Facilities to be used in violation of Federal, State, County and/or local laws, ordinances or regulations.” On September 26, 2025, a member of the public posted on Nextdoor that golfers on the OTCC golf course have been observed urinating “in public on the course not 50’ from the provided restrooms.” Another member of the public posted a comment that they had reported it to Association staff and was told “Oh, I wouldn’t worry about that too much. It’s just guys drinking and having too much fun.”

California Penal Code section 372 states “[e]very person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any duty relating to the removal of a public nuisance, is guilty of a misdemeanor.” California courts have held public urination to be a public nuisance under California Penal Code section 370. (*People v. McDonald*, 137 Cal.App.4th 521.) This type of behavior, and demonstrated lack of concern, violates this section of the Lease because the Association is permitting others to commit nuisance and allowing the Facilities to be used in violation of State law. This reflects poorly on both the Association and the District in how the amenities are maintained and operated and constitute default and is grounds for termination of the Lease.

5. Non-potable and Potable Water – Lease Addendum 7 Attachment 2

Section 6.b) of the Lease, and revised by Addendum 7, states that the “Association shall be responsible for any and all bills accruing from the use of potable and non-potable water used for lake-fill and golf course irrigation purposes. The Association’s assertion that the District owes the Association the “Recreation Credit in the amount of \$339,018.96” does not relieve the Association of its obligation under this section of the Lease to pay its bills related to lake-fill water use. The last payment made to the District for lake-fill water use was December 10, 2024. Not paying for the lake-fill water use is a failure to fulfill the terms of the Lease and constitutes default and is grounds for termination of the Lease.

Based on the identified violations and failures to fulfill the terms of the Lease, any one of which constitutes default, the District asserts there are sufficient grounds to terminate the Lease. This response and the Notice of Intent to Terminate, dated September 26, 2025, serves as notice that the District intends to issue a notice of termination if the Association does not take corrective action that is acceptable to the District.

The District is willing to meet with the Association to discuss an opportunity for the Association to correct the violations and terms for a new Lease that could resolve these violations and failures going forward. We have scheduled the District Board room on October 13, 2025, at noon to meet and discuss this matter. If the Association does not attend this meeting, the

District will issue a notice of termination and terms for reverting all leased property to the District to operate.

Respectfully,

A handwritten signature in blue ink, appearing to read "Beverli A. Marshall". The signature is fluid and cursive, with the first name "Beverli" being more prominent than the last name "Marshall".

Dr. Beverli A. Marshall, ICMA-CM, CSDM
General Manager

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