



Midpeninsula Regional
Open Space District

R-11-117
Meeting 11-33
December 14, 2011

AGENDA ITEM 11

AGENDA ITEM

Proposed purchase of the Balaban property as an addition to the Mount Umunhum area of Sierra Azul Open Space Preserve, located approximately ½ mile south of Almaden Reservoir along Alamitos Road (Santa Clara County Assessor's Parcel Number 562-23-005) ("83.4 acre Balaban Property"); Accept Grant of Right of First Offer for the Balaban property located at the end of Alamitos Road (Santa Clara County Assessor's Parcel Number 562-22-039) ("95.4 acre Balaban Property"); and Determine that the Recommended Actions are Categorically Exempt from the California Environmental Quality Act

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 83.4 acre Balaban property and accepting the Grant of Right of First Offer for a separate, proximate 95.4 acre Balaban property.
3. Adopt the Preliminary Use and Management Plan recommendations contained in this report and name the 83.4 acre Balaban Property as an addition to the Mount Umunhum Area of Sierra Azul Open Space Preserve.
4. Withhold dedication of the property as public open space at this time.

SUMMARY

The Midpeninsula Regional Open Space District (District) is proposing to approve a purchase agreement for the 83.4 acre Balaban Property, at a price of \$800,000 and accepting the Grant of First Offer for the separate and proximate 95.4 acre Balaban Property. The following report presents a description of the Balaban properties, a Preliminary Use and Management Plan, the environmental review, the purchase terms and conditions, and the financial impacts of the proposed transactions.

DISCUSSION

The 83.4 acre Balaban Property is located east of Los Gatos and southwest of Almaden Reservoir near the end of Alamitos Road. Situated in the Alamitos Creek watershed, the property is a natural addition to the Mount Umunhum Area of Sierra Azul Open Space Preserve. Almaden Reservoir and Almaden Quicksilver County Park are located approximately a half mile to the north. The 83.4 acre Balaban Property is bordered by District land to the north, west and south. Private properties are along the easterly boundary including the private Twin Creeks property. Alamitos Road runs along the southerly boundary of the property. The property includes densely wooded riparian corridor and scenic wooded hillside habitat. Purchase of the 83.4 acre Balaban Property would provide protection of valuable riparian and scenic resources and wildlife habitat, and may offer future regional trail connection along Alamitos Road.

The irregular shaped 83.4 acre Balaban Property is accessible from the unpaved portion of Alamitos Road, a County maintained road, which delineates the southerly boundary of the property. At the southwest corner of the property, an unsurfaced road parallels Alamitos Creek to a small clearing in the middle of the property. The clearing consists of rolling terrain which enjoys good views of the surrounding hillsides. The property includes mixed evergreen forest including Douglas fir, oaks and madrones on the lower hillsides near Alamitos Creek with oak woodland and chaparral covering the upper slopes of the property. Several seasonal creeks and springs flow into Alamitos Creek. Common mammals in the chaparral community include black-tailed deer, coyote, brush rabbit, and dusky-footed wood rat.

Although mostly undeveloped, the clearing in the middle of the 83.4 acre Balaban Property does include a couple of minor improvements such as a storage shed, picnic table and miscellaneous debris. All of these improvements will be removed by the seller before the property transfers to the District.

The Balaban family also owns the 95.4 acre Balaban Property which is located approximately a quarter of a mile southeast of the 83.4 acre Balaban Property at the end of Alamitos Road. The 95.4 acre Balaban Property is situated at the confluence of Herbert and Alamitos Creeks. This property is accessible from an unsurfaced road at the end of Alamitos Road. As part of the proposed transaction, the District will receive a right of first offer (see below) to purchase the 95.4 acre Balaban Property in the future.

USE AND MANAGEMENT

Planning Considerations

The 83.4 acre Balaban Property is located within the unincorporated area of Santa Clara County and is zoned HS (Hillside), requiring a 20 to 160 acre minimum lot size based upon a slope density formula. The property is comprised of one legal parcel and has a potential density of one residential site. Residential development of the clearing on the property would likely require a separate bridge across Alamitos Creek from Alamitos Road.

Preliminary Use and Management Plan (Next Steps)

The principal purpose of the Preliminary Use and Management Plan is to establish interim status quo District land management to be in effect between the purchase and the completion of a subsequent long-term plan. The Preliminary Use and Management Plan will remain effective until the Master Plan is approved for Sierra Azul Open Space Preserve. The Preliminary Use and Management Plan include posting signs and routine patrol. The 83.4 acre Balaban Property will be maintained in its current condition, with no changes anticipated. If changes to land use or the physical environment are proposed in the future, the plan would be subject to further environmental review and public input.

Public Access: Closed to public use.

Signs and Site Security: Review and install preserve boundary signs where appropriate.

Patrol: Routinely patrol the property utilizing the existing access road.

Site Safety Inspection: An existing storage shed, picnic table and miscellaneous debris will be removed by seller before the property is transferred to the District. There are no known safety hazards on the site.

Name: Name the property as an addition to the Mt. Umunhum area of Sierra Azul Open Space Preserve.

Dedication: Withhold dedication of the property as public open space at this time.

CEQA COMPLIANCE**Project Description**

The project consists of entering into an agreement to purchase the 83.4 acre Balaban Property as an addition to the Mount Umunhum Area of the Sierra Azul Open Space Preserve, and the concurrent adoption of a Preliminary Use and Management Plan for the property. As part of the transaction, the District will receive a Grant of First Offer to the 95.4 acre Balaban Property. If changes to land use or the physical environment are proposed in the future, the plan would be subject to further environmental review and public input.

CEQA Determination

The District concludes this project will not have a significant effect on the environment. It is categorically exempt from CEQA under Article 19, Sections 15301, 15316, 15317, 15325 and 15061(b)(3) 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. Under the terms of the

Preliminary Use and Management Plan, there will be no expansion of use, and the property will remain in a natural condition and closed to public use.

Section 15316 exempts the acquisition of land in order to create parks if the land 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 property.

Section 15325 exempts transfers of ownership of interests in land in order to preserve open space. The Preliminary Use and Management Plan ensures that the property is preserved as open space by incorporating it into the Mt. Umunhum Area of Sierra Azul Open Space Preserve.

The project is also exempt under 15061(b)(3), as there is no possibility the actions can have a significant effect on the environment.

TERMS AND CONDITIONS

The 83.4 acre Balaban Property is being purchased at a price of \$800,000 (approximately \$9,592 per acre) on an all cash basis at the close of escrow. The purchase price is considered fair and reasonable for a single building site and is supported by sales within this real estate market area. The property is vacant and being purchased on an “As-Is” basis. As a condition of this transaction, the Seller has agreed to remove personal property and debris by the close of escrow. The District is withholding \$5,000 in escrow to ensure that these items are cleaned and removed to the District’s satisfaction. Staff has also conducted site inspections of the property and contacted Santa Clara County’s Planning, Building and Environmental Health Departments and is satisfied that no underground storage tanks or hazardous waste exist on the property.

As part of this transaction, the District is also receiving a Grant of Right of First Offer to purchase the 95.4 acre Balaban Property. The District’s Right of First Offer allows for a transfer to immediate members of the Balaban family. The Right of First Offer requires the seller to first offer to sell the 95.4 acre Balaban Property to the District before placing the property for sale on the open real estate market, and allows the District to match any unsolicited third party purchase offer received by the seller.

BUDGET CONSIDERATIONS

FY2011–12 Budget for New Land Purchases:

New Land	\$13,495,000
Land purchase commitments this fiscal year	(\$4,364,000)
POST Barret Creek Uplands property (also on	(\$250,000)

this agenda)	
Balaban property	(\$800,000)
New Land Purchase Budget Remaining	\$ 8,081,000

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

PUBLIC NOTICE

In addition to required Brown Act notice, property owners located adjacent to the Balaban property have been mailed a copy of the agenda for this property purchase.

NEXT STEPS

Upon approval by the Board of Directors, staff will proceed with the close of escrow for the purchase of the 83.4 acre Balaban Property. The District's Foothills field staff will manage the property as an addition to the Mt. Umunhum area of the Sierra Azul Open Space Preserve.

Attachments:

- 1. Resolution
- 2. Map

Prepared by:

Michael Williams, Real Property Manager

Contact person:

Same as above

Graphics prepared by:

Zachery Alexander, Planner 1

RESOLUTION 11-XX

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL
OPEN SPACE DISTRICT AUTHORIZING APPROVAL OF PURCHASE AGREEMENT
AND GRANT OF RIGHT OF FIRST OFFER, AND AUTHORIZING GENERAL
MANAGER OR OTHER 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 (SIERRA AZUL OPEN SPACE PRESERVE -
LANDS OF BALABAN)**

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 with Jason Balaban, MD Pension Plan Trust, and the Midpeninsula Regional Open Space District, a copy of which purchase agreement is attached hereto and by reference made a part hereof, and authorizes the President or other appropriate officer to execute the Agreement on behalf of the District to acquire the real property described therein (“the Balaban Property”).

Section Two. The General Manager, President of the Board of Directors or other appropriate officer is authorized to execute Grant of Right of First Offer and the General Manager, President of the Board of Directors or other appropriate officer is authorized to execute the attendant Certificates of Acceptance on behalf of the District.

Section Three. The General Manager or the General Manager’s designee shall cause to be given appropriate notice of acceptance to the seller and to extend escrow if necessary.

Section Four. The General Manager is authorized to expend up to \$5,000 to cover the cost of title insurance, escrow fees, and miscellaneous costs related to this transaction.

Section Five. The General Manager and General Counsel are further authorized to approve any technical revisions to the attached Agreement and documents which do not involve any material change to any term of the Agreement or documents, which are necessary or appropriate to the closing or implementation of this transaction.

Section Six. The purpose of this Section is to enable the District to reimburse its general fund for the cost of certain land acquisitions. The District wishes to finance certain of these real property acquisitions and expects to use tax-exempt debt, such as bonds, but a tax-exempt financing is not cost-justified for the District unless the principal amount of the financing is large enough to justify the related financing costs. Consequently, it is the District’s practice to buy property with its general funds and, when a tax-exempt financing is cost-justified based on the aggregate value of acquisitions, to issue tax-exempt obligations to reimburse itself for previous expenditures of general funds. These general funds are needed for operating and other working capital needs of the District and are not intended to be used to finance property acquisitions on a long-term basis.

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