



Midpeninsula Regional  
Open Space District

R-13-16  
Meeting 13-03  
January 23, 2013

## AGENDA ITEM 4

### AGENDA ITEM

Approval of a Right of Entry for the California Department of Transportation for construction of safety improvements along Highway 9 west of the City of Saratoga at the Saratoga Gap Open Space Preserve (Portion of Santa Clara County Assessor's Parcel Numbers 503-42-028) and consideration of the Environmental Impact Report certified by the California Department of Transportation

### GENERAL MANAGER'S RECOMMENDATIONS

A handwritten signature in dark ink, appearing to be "G.M.", is written over the text of the section header.

1. Find that the District, acting as a Responsible Agency, has independently considered the Environmental Impact Report (EIR) certified by the California Department of Transportation for the safety improvements; and adopt the California Environmental Quality Act (CEQA) findings (Attachment 1).
2. Approve the Right of Entry allowing Caltrans the ability to install an anchored wire mesh bank stabilization system, upgrade the existing lane and shoulders, install a soil-nail retaining wall, metal guardrail and place curve warning signs along Highway 9 at Saratoga Gap Open Space Preserve, and authorize the General Manager to execute the Right of Entry on behalf of the District.

### SUMMARY

The California Department of Transportation (Caltrans) is in the process of performing slope stabilization and safety work along Highway 9 to protect motorists. Part of the proposed slope improvement and safety work would need to be installed on District lands. Caltrans is requesting a Right of Entry to install these improvements, and will return to the District following completion of the project to seek a permanent slope easement and grant of fee property for these improvements. In exchange for the proposed slope easements and fee property of this project and slope easements required at two separate Caltrans projects on District property, the District is proposing that Caltrans grant the District a tunnel easement for public use under Highway 84 at La Honda Creek Open Space Preserve. This exchange of rights will be at no cost to the District. The following report presents a description of the District property, the environmental review, and the terms and conditions.

## **DISCUSSION**

The project site is located approximately four miles west of the City of Saratoga at mile marker 2.7 at the Saratoga Gap Open Space Preserve, along the south side of Highway 9 (see Attachment 2). The District parcel that would potentially be affected is dedicated as public open space as part of the 184-acre former Foster property addition in 1999 (see report R-09-35). The potential work that would be performed under the Right of Entry is the construction of an anchored wire mesh bank stabilization system to prevent the steep hillside from failing, upgrading the existing lane and shoulders, installing a soil-nail retaining wall and metal guardrail, and placing curve warning signs. Caltrans will ultimately need to acquire a 23,916-square foot Slope Easement and 11,203-square feet of fee property from the District for these improvements. Under the Right of Entry, Caltrans would be required to hydro-seed with native seed (as specified by District) and to incorporate best management practices to ensure erosion control and water quality.

The purpose of the safety work proposed by Caltrans is to improve highway safety by reducing the number of cross-centerline accidents on Highway 9 at three separate locations between the City of Saratoga and the intersection of Highway 9 with Skyline Boulevard (Highway 35). Caltrans studied the accidents on Highway 9 for an eight year period between 1999 and 2007, and determined that 53 of 269 accidents that occurred involved vehicles that crossed the centerline. All of the improvements being proposed will reduce and better assist out-of-control motorists from crossing the centerline, thereby, reducing the number of cross-centerline accidents in the future.

The proposed Right of Entry requires Caltrans to return to the District upon completion of the project to seek a permanent slope easement and grant of fee title property for the safety improvements. The District is prohibited from transferring or selling dedicated open space property under the California Public Resources Code, however, under section 5540.5 the District with the approval of a unanimous vote of its Board may exchange real property, or an interest in real property, dedicated and used for open space purposes for real property or an interest in real property that is determined to be of equal or greater value.

Pursuant to the terms of the proposed Right of Entry, Caltrans will either grant the District the desired tunnel easement adjacent to La Honda Creek Open Space Preserve or if unable to do so despite its best efforts, will negotiate with the District to agree upon other real property or real property interests that can be exchanged. Caltrans expects to commence work on the project in the summer of 2013, contingent upon the District's issuance of the proposed Right of Entry.

## **CEQA COMPLIANCE**

### **Description**

The project consists of the conveyance of a Right of Entry to Caltrans over a 35,119-square foot portion of the Saratoga Gap Open Space Preserve along the south side of Highway 9 (see project description in Discussion section on Page 2).

As the lead Agency for the overall Project under CEQA, Caltrans certified an EIR on March 25, 2011, adopted mitigation measures to minimize the Project's significant impacts, and adopted a Statement of Overriding Considerations for the Project's visual impact. The full project as analyzed in the EIR is described in part below:

“Highway 9 is a two-lane undivided conventional highway that runs north/south in Santa Clara and winds through the Santa Cruz Mountains connecting Highway 17 with the Saratoga Gap Open Space Preserve and Santa Cruz County. Within the project limits (PM 2.5 to PM 7.0), Highway 9 is designated as an official State Scenic Highway and is bordered by hills on one side and valleys on the other side. The existing facility within the project limits consists of two approximate 11-foot lanes separated by a solid double-yellow strip and outside paved shoulders that vary from less than one foot to more than eight feet in width. At many locations, there are steep hills where the toe slope abuts the existing edge of the shoulder.

This project proposes to construct improvements at three spot locations. The improvements include: improving sight distance, upgrading the existing lanes and shoulders; increasing the super-elevation; upgrading metal beam guardrails; and installing warning signs. Super-elevation is tilting the roadway to help offset centripetal forces developed as the vehicle goes around a curve. To accommodate these improvements, the existing slope will be cut back and soil nail retaining walls will be constructed.”

### **CEQA Determination**

The District is a “Responsible Agency” under CEQA for the Highway 9 Safety Improvement Project. A Responsible Agency is an agency, other than the Lead Agency, that has approval authority for a project. CEQA requires that the District, as a Responsible Agency, also adopt CEQA findings. Accordingly, the District, as to those parts of the Highway 9 Safety Improvement Project that it is considering, independently concludes that the direct and indirect environmental effects of the Highway 9 Safety Improvement Project and of the Right of Entry were adequately addressed and mitigated by the EIR and Caltrans.

CEQA also requires both a Lead Agency and a Responsible Agency to balance the environmental and other benefits of a project with unavoidable potential environmental impacts when approving a project. If an agency determines that the environmental or other benefits of a project outweigh a potential adverse environmental impact, the agency may adopt a Statement of Overriding Considerations confirming this determination. Accordingly, the District further finds, in conformity with the EIR and Statement of Overriding Considerations adopted by Caltrans, that the retaining walls installed as part of the Highway 9 Safety Improvement Project impact the visual quality of a State Scenic Highway. As a result, this potential impact on visual aspects would be significant and unavoidable at a project level. The District concludes, on balance, the benefits of the Project and Right of Entry, including the improvements to highway safety and ability to exchange property with Caltrans to further the District's mission, overrides the potential visual impacts of the Project.

## **TERMS AND CONDITIONS**

The proposed Right of Entry includes the following key terms and conditions:

- The District will issue the Right of Entry to accommodate Caltrans' construction schedule.
- The Right of Entry would grant Caltrans the right to access 35,119-square feet of District Property along the south side of Highway 9 for the construction of safety improvements.
- The term of the Right of Entry would be valid from the date of execution to the completion of the proposed safety improvements.
- In exchange for the future slope easement and grant of fee property of this project and slope easements required at two separate Caltrans projects on District property, Caltrans would agree to use its best efforts to compensate the District with the grant of a tunnel easement under Highway 84 at the La Honda Creek Opens Space Preserve for general public use (the other Caltrans projects are located on Highway 9 and Highway 84 and the work is complete).
- If, despite its best efforts, Caltrans is unable to convey the tunnel easement at La Honda Creek Open Space Preserve both parties would be obligated to negotiate in good faith to exchange other property or property interests that would serve the District's mission.
- Caltrans shall incorporate practicable erosion control and water quality Best Management Practices, comply with the EIR's mitigation, minimization and avoidance measures, and use District prescribed native seed mixes.

The proposed grant of a permanent slope easement and grant of fee property to Caltrans will be brought back to the District Board for approval at a future meeting.

## **BOARD COMMITTEE REVIEW**

Board Committee review of this item is not required.

## **FISCAL IMPACT**

The issuance of the Right of Entry to Caltrans will have no fiscal impact to the District's budget.

## **PUBLIC NOTICE**

District land surrounds the proposed safety improvements. Therefore, written notice of this item has been sent in accordance with the Brown Act and no additional notice is necessary.

## **NEXT STEPS**

Pending Board approval, the Right of Entry will be executed by the General Manager and transmitted to Caltrans for its execution.

Attachments:

1. Resolution
2. Project Location Map
3. Environmental Impact Report

Responsible Department Manager:  
Michael Williams, Real Property Manager

Prepared by:  
Allen L. Ishibashi, Real Property Specialist

Contact person:  
Same as above

Graphics prepared by:  
Alex Roe, Planning Technician

# ATTACHMENT 1

## RESOLUTION NO. 13-XX

### **RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT MAKING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, APPROVING A RIGHT OF ENTRY AGREEMENT AND AUTHORIZING THE PRESIDENT OF THE BOARD, GENERAL MANAGER OR OTHER APPROPRIATE OFFICER TO EXECUTE THE AGREEMENT (SARATOGA GAP OPEN SPACE PRESERVE – CALTRANS)**

---

**WHEREAS**, the California Department of Transportation (Caltrans) is undertaking the State Route 9 Safety Improvement Project (Project), which includes slope stabilization and safety work along Highway 9 to protect motorists, and;

**WHEREAS**, Caltrans has requested a Right of Entry to perform slope improvement and safety work, including the construction of an anchored wire mesh bank stabilization system to prevent the steep hillside from failing, the upgrade of the existing lane and shoulders, the installation a soil-nail retaining wall and metal guardrail, and the placement of curve warning signs on District land within the Saratoga Gap Open Space Preserve, and;

**WHEREAS**, District staff have negotiated with Caltrans the proposed Right of Entry Agreement attached to this Resolution as Attachment A, and;

**WHEREAS**, Caltrans has prepared and certified the Final Environmental Impact Report/Environmental Assessment and Section 4(f) De Minimis Finding for the Project (EIR),

**NOW, THEREFORE BE IT RESOLVED**, that:

1. The Board of Directors of the Midpeninsula Regional Open Space District (Board), acting as a “Responsible Agency” under the California Environmental Quality Act, concurs in and hereby independently certifies as adequate the California Department of Transportation’s Final Environmental Impact Report/Environmental Assessment and Section 4(f) De Minimis Finding for the State Route 9 Safety Improvement Project that was certified on March 25, 2011.
2. The Board finds that measures and procedures incorporated into the Project as described in the EIR and approved by Caltrans, including measures required under the Right of Entry Agreement, avoid or minimize the Project’s potentially significant environmental impacts related to cultural resources, water quality, geology, hazardous waste, and biology, and will ensure that these impacts will be less than significant. Implementation of all such measures and procedures identified in EIR Table S-2 is hereby made a condition of the District’s approval of the Right of Entry.
3. The Board finds that the Project as approved by Caltrans will have significant and unavoidable impacts on visual resources. The following mitigation measures will reduce

4. such impacts (though not to a less-than-significant level); implementation of these measures is hereby made a condition of the District's approval of the Right of Entry.

**Visual Mitigation (VM)-1: Tree and Vegetation Removal Measures**

Minimization or avoidance of tree/vegetation removal due to construction to the greatest possible extent:

- Minimization of existing tree and shrub removal to the greatest possible extent. The limit of work shall be kept to the minimum possible footprint, not to exceed 5 feet from the edge of retaining wall (please see EIR Figures 2.13a and 2.13b);
- Clearing and grubbing is to occur no farther than five feet from the edge of the retaining wall;
- Existing vegetation outside of clearing and grubbing limits shall be protected from the contractor's operations, equipment, and materials storage;
- Tree trimming by the contractor shall be limited to that required in order to provide a clear work area;
- High visibility temporary fencing, if feasible, shall be placed around the area where significant trees or other desirable vegetation are to be protected prior to the commencement of wall construction;
- All trees to be removed shall be marked in the field by the Contractor and approved by the Resident Engineer prior to removal; and
- As far as practicable, design exceptions shall be implemented to avoid removal of significant existing vegetation.

**Highway planting:**

- Replacement of trees and shrubs at Location 2 as identified in the EIR shall be in place, where feasible;
- Tree replacement planting may be implemented in other locations if appropriate to mitigate for major loss of tree canopy, as determined by the project landscape architect;
- Required mitigation planting shall be implemented per Chapter 29 (Highway Planting) of the Caltrans Project Development Procedures Manual and Chapter 900 (Landscape Architecture) of the Caltrans Highway Design Manual;
- All disturbed areas of native vegetation shall be replaced with similar locally-native vegetation at a minimum replacement ratio to be determined by Project Biologists; and
- Required mitigation planting shall be funded through the parent roadway contract, programmed and completed as a separate contract within two years of completion of all roadwork.

**VM-2: Retaining Wall Measures**

- Use appropriate context-sensitive wall texture and color treatments to minimize contrast with the existing natural and/or historic setting. All walls will be treated with color and texture to reduce reflectivity of retaining walls visible from to the valley floor viewshed;

- Employ integral coloring in bottom barrier portion of upslope retaining walls to reduce overall color contrast of the walls; and
- Wall and barrier texture treatments shall be coordinated and carry consistent themes throughout the corridor.

**VM-3 Light and Glare Measures**

- Construction activities shall limit all construction lighting to within the area of work and avoid light trespass through directional lighting, shielding, and other measures as needed.

**VM-4 Construction Impact Measures**

- Unsightly material and equipment storage and staging shall not be visible within the foreground of the highway corridor to the extent feasible.
  - Where such siting is unavoidable, material and equipment shall be visually screened where feasible to minimize visibility from the roadway and nearby sensitive off-road receptors;
  - Construction, staging, and storage areas shall be screened where feasible by visually opaque screening wherever they will be exposed to public view for extended periods of time;
  - Construction activities shall be phased to minimize the duration of disturbance to the shortest feasible time;
  - All areas disturbed by construction, staging and storage shall be re-vegetated when feasible; and
  - Construction activities adjacent to residences shall limit all construction lighting to within the area of work and avoid light trespass.

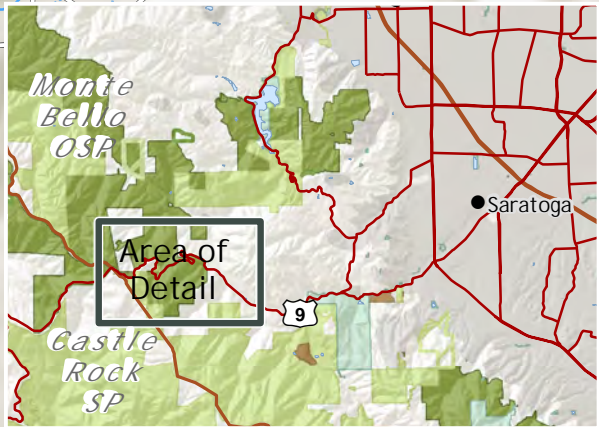
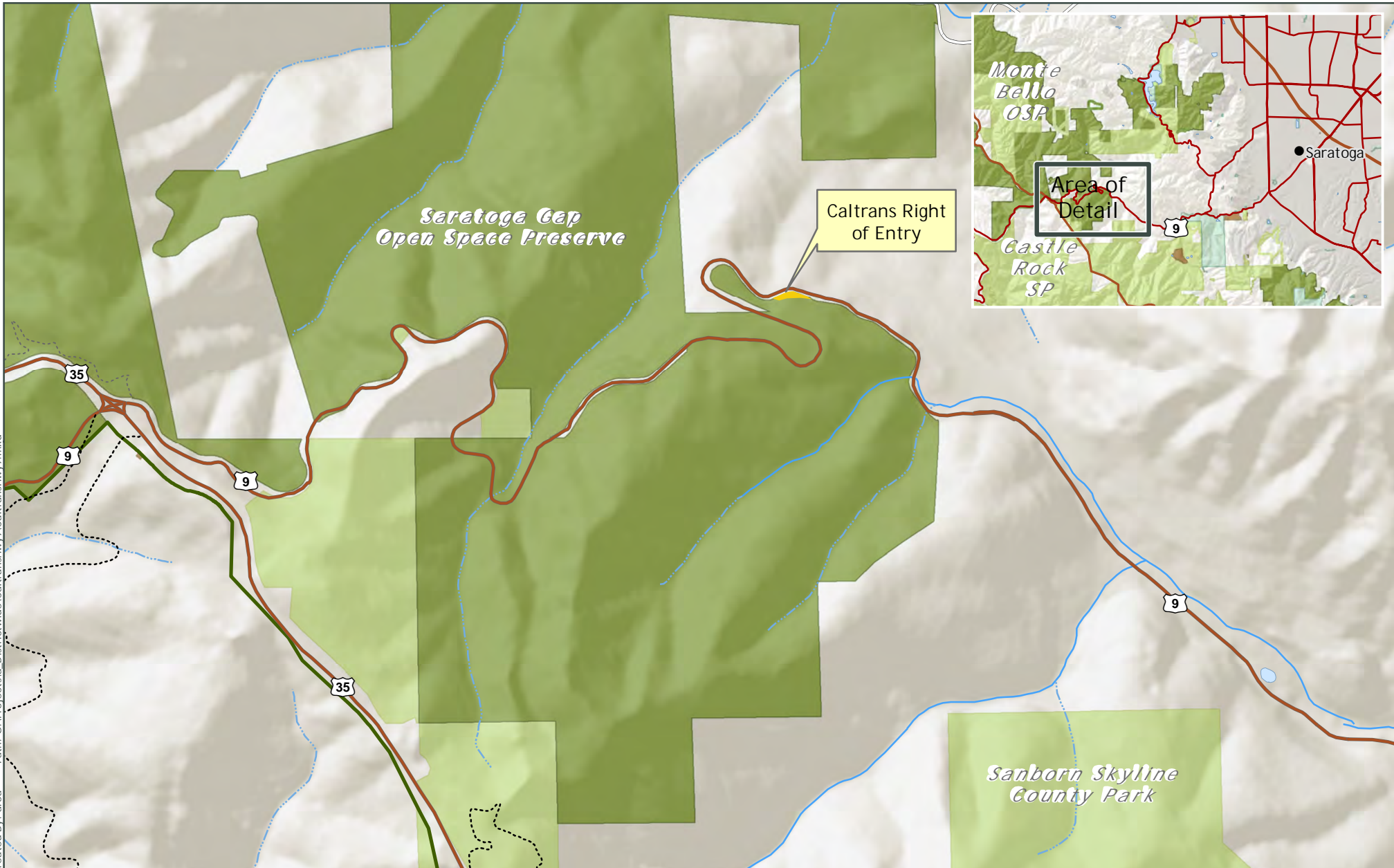
5. The Board finds that there are no feasible alternatives to the proposed Project that would meet the Project’s objective of improving safety on Highway 9, as explained in the EIR at pages 8 and 9.
6. The Board finds that the following benefits of the Project are overriding considerations that outweigh its significant and unavoidable adverse impacts on visual resources:
  - The Project will improve highway safety by reducing the number of cross-centerline accidents on Route 9, as described on page vi of the EIR.
  - Following completion of the Project, Caltrans will seek to grant to the District a tunnel easement adjacent to La Honda Open Space Preserve or other real property or interest in real property, thus furthering the District’s mission by serving visitors and/or protecting habitat.
7. The Board hereby approves the Right of Entry Agreement between the California Department of Transportation and the Midpeninsula Regional Open Space District attached to this Resolution as Attachment A, and authorizes the President of the Board, General Manager or other appropriate officers to execute the Right of Entry on behalf of the District.








8. The Board hereby authorizes the General Manager and General Counsel to execute any and all other documents necessary or appropriate to complete the transaction approved in this Resolution. The General Manager and General Counsel are further authorized to take any further steps necessary or appropriate to the closing or implementation of this transaction, including but not limited to approving minor or technical revisions to the Right of Entry Agreement that do not involve any substantial change to any terms.

\* \* \* \* \*

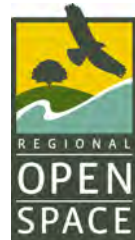
Created By: arua Path: G:\Projects\Districtwide\Caltrans\Hwy9\CaltransHwy9.mxd



### Caltrans, Highway 9

-  Parcels - Scale and Location Approximate
-  Other Protected Open Space or Park Lands
-  Watershed Land
-  Other Public Agency
-  MROSD Preserves

Midpeninsula Regional Open Space District (MROSD)



November, 2012



While the District strives to use the best available digital data, this data does not represent a legal survey and is merely a graphic illustration of geographic features.

# **ATTACHMENT 3**

**COPIES OF THE STATE ROUTE 9  
SAFETY IMPROVEMENT PROJECT  
ENVIRNOMENTAL IMPACT REPORT**

**IS AVAILABLE AT THE  
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT  
ADMINISTRATION OFFICE.**

**PLEASE CONTACT DISTRICT CLERK MICHELLE RADCLIFFE  
AT 650-691-1200 OR MRADCLIFFE@OPENSOURCE.ORG**