



Midpeninsula Regional
Open Space District

R-13-19
Meeting 13-03
January 23, 2013

AGENDA ITEM 5

AGENDA ITEM

Approve the proposed purchase of the Lobner Trust Property as an addition to Monte Bello Open Space Preserve, located at 18000 Stevens Canyon Road in unincorporated Santa Clara County (Assessor's Parcel Number 351-13-018); Adopt the Preliminary Use and Management Plan for the Property, and; Approve a categorical exemption in accordance with the California Environmental Quality Act

GENERAL MANAGER'S RECOMMENDATIONS

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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 Lobner Trust property, and authorizing the General Manager to approve, the Assignment of Leases, and related documents necessary to complete this transaction.
3. Adopt the Preliminary Use and Management Plan contained in this report.
4. Withhold dedication of the Property as public open space.

SUMMARY

The Midpeninsula Regional Open Space District (District) is proposing to purchase the 10.79-acre Lobner Trust property at a price of \$450,000. The following report presents a description of the Lobner Trust property, a Preliminary Use and Management Plan, the District's environmental review, the purchase terms and conditions, and financial considerations, including a discussion of the potential funding contribution from Santa Clara County.

DISCUSSION

Background (see attached map)

At its meeting on March 14, 2001, the Board approved the purchase of the 40-acre Lobner property located at the end of Stevens Canyon Road in Stevens Canyon as an addition to Monte Bello Open Space Preserve along with a right of first offer to purchase the 10.79-acre retained Lobner parcel (see report R-01-31). The 10.79-acre Lobner Trust property is located adjacent to and along the eastern boundary of the 40-acre parcel. The District now has the opportunity to

exercise its right of first offer to purchase the remaining 10.79-acre Lobner Trust property situated along Stevens Canyon Road.

On May 9, 2001, the Lobner purchase agreement was amended in order to conduct a boundary survey to determine the location of the Seller's existing five rental cabins in relation to the east/west property boundary between the 40-acre Lobner property and the 10.79-acre retained Lobner property. The completed boundary survey determined that three of the five cabins were located on the parcel sold to the District. The District and Seller began work on a lot-line adjustment in 2002 to adjust the boundaries so that the five rental cabins would all be located on the 10.79-acre parcel. The lot line adjustment application was delayed because the County was in the process of revising the lot-line adjustment ordinance in 2002 and 2003.

On May 26, 2004, the Board approved a Second Amendment to the Purchase Agreement to address the lot-line adjustment and to authorize a funding agreement with Santa Clara County Parks for the purchase of the former Lobner property (see Report R-04-12). The lot line adjustment was further delayed while the property owner worked with the County's Environmental Service Agency to install leach field and pump systems to legalize the septic systems to the five cabins. Ms. Lobner passed away in 2007 and the lot line adjustment was never completed. During the ensuing years, District staff had sporadic conversations with representatives of the Lobner Trust from Georgia and California. In October 2012, Wells Fargo Bank, a successor co-trustee of the Lobner Trust, contacted staff about the District's right of first offer and current interest in the 10.79-acre parcel. In December 2012, staff notified Wells Fargo of its intent to exercise its right of first offer to purchase the subject property.

Property Description and Regional Context (see attached map)

The 10.79-acre Lobner Trust property is located at the end of Stevens Canyon Road with Stevens Creek bisecting the southern portion of the property. The rectangular shaped parcel is bounded by the Monte Bello Open Space Preserve to the north, west and east and private properties to the south. Upper Stevens Creek County Park (Santa Clara County) is to the west and south. The District's Saratoga Gap Open Space Preserve is located approximately ¼ mile to the south. Stevens Canyon Road continues through the property transitioning to the District's Canyon Trail which passes through the County Park before re-entering the preserve. Public use of the Canyon trail includes hiking, biking and equestrian. The County built a single lane bridge across the creek in 2003 and 2004 to replace an unsafe ford crossing of the creek. The property is a natural and desirable addition to the preserve because it protects the Canyon Trail and potential future trail connections, and helps to protect the Stevens Creek watershed resources, wildlife habitat and scenic riparian views.

The property elevation ranges from 1000 feet along Stevens Creek and ascends steeply to 1,400 at the highest point along the south facing, densely wooded hillside. The property has flat areas along the north side of the creek where four cabins are located. The property is heavily wooded including oaks, madrones, Douglas firs and bay laurel. The common fauna includes deer, bush rabbits, coyotes, bobcat, a variety of small birds and small animals. The San Andreas rift zone is located in Stevens Canyon with clay soils on the south side and sandstone on the north side. The southern portion of the property where Stevens Creek flows year round is subject to flooding in years with heavy rainfall.

The property is within the planning corridor for the proposed extension of Stevens Creek Trail, a joint effort by the County of Santa Clara and the District to connect Stevens Creek County Park to Upper Stevens Creek County Park and Monte Bello Open Space Preserve. This proposed trail linkage is identified in the Countywide Trails Master Plan of Santa Clara County. In addition to bringing the District and County one step closer to completing the land assemblage required to achieve this trail linkage goal, purchase of the Lobner Trust property will provide for protection of important watershed land and wildlife habitat, and will help preserve the natural and scenic character of the Stevens Canyon corridor and the District's surrounding Preserves. Over the last twelve years, the District has purchased approximately 800 acres of open space lands linking the Monte Bello and Saratoga Gap Open Space Preserves to both Upper and Lower Stevens Creek Park. Santa Clara County Parks has partnered with the District to jointly purchase and preserve three properties along the north side of Stevens Canyon totaling approximately 280 acres since 2005.

Improvements

Stevens Canyon Road is gated with an equestrian stile just east of the eastern boundary of the property, preventing public vehicular traffic through the west end of the road and onto the property. The gated road provides access to the tenants residing in the four occupied cabins located on the property. Tenants have keys to the pad-locked metal County gate. Just before the bridge, a driveway forks to the north side of the creek providing access to the four cabins located on the north side of the creek. One of these cabins is boarded up and vacant due to the poor condition of the structure. These four cabins are located within fifty feet of the upper banks of Stevens Creek. The fifth cabin is located on the south side of the creek via the single lane bridge. The five cabins have a combined building area of approximately 3,500 square feet. Each cabin is reported to have one bedroom. The four occupied cabins are in fair to poor condition with an estimated \$75,000 of deferred maintenance upgrades. These cabins are served by four septic and leach field systems and an unpermitted well on an electric pump. Electric service is provided by overhead utility lines. Access to each of the cabins is by dirt and gravel driveways off Stevens Canyon Road.

USE AND MANAGEMENT

Planning Considerations

The subject property is located within unincorporated 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 consists of one legal parcel and has a density as one residential site. Access to the property is from Stevens Canyon Road.

The District's 1998 Regional Open Space Study shows a potential regional trail connection in the vicinity of the property and, as noted earlier in this report, Santa Clara County's Countywide Trails Master Plan identifies this trail corridor for the extension of the Stevens Creek Trail connecting the Stevens Creek County Park to Upper Stevens Creek County Park and Monte Bello Open Space Preserve.

The property is improved with five cabins, four of which are occupied as rental units and one cabin is vacant and boarded up.

Preliminary Use and Management Plan

The principal purpose of the Preliminary Use and Management Plan is to establish a status quo land management approach to be effective in the interim between the purchase and the completion of a subsequent long-term plan. The Preliminary Use and Management Plan will take effect at the close of escrow and remain effective until the plan is amended or a Comprehensive Use and Management Plan or Master Plan is approved for Monte Bello Open Space Preserve. The Preliminary Use and Management Plan includes securing the site, posting signs, conducting resource management activities, the demolition and removal of the five cabins and miscellaneous debris, and to restore the property to a natural condition, as described more fully below. After this work is done, the property will be maintained in a natural condition, with no development or 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.

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| Public Access: | Designate the property as open to public use along the public right of way along Stevens Canyon Road. |
| Signs and Site Security: | Install Preserve boundary and closed area signs where appropriate. Install gates as necessary to prevent unauthorized vehicular entry. |
| Structures and Improvements: | Upon vacancy of four occupied cabins, board up and secure all structures until demolition is undertaken at a future date. Test for any asbestos-containing material or lead-based paint prior to demolition and removal of all improvements, and associated infrastructure. Following demolition, revegetate affected areas as needed. |
| Resource Management: | Conduct invasive plant and animal management activities consistent with the District's standard policies and procedures. |
| Patrol: | Routinely patrol the property utilizing existing roads. |
| Roads and Trails: | Maintain existing driveways in a serviceable condition in order to facilitate demolition and removal of all structures and improvements. Following demolition, determine which driveways should be maintained and which should be properly abandoned. Implement minor erosion and sediment control measures as needed to prevent erosions and water quality degradation. |
| Site Safety Inspection: | Upon vacancy of cabins, clean up cabin area of property after purchase, including removal and proper disposal of any hazardous materials or hazardous wastes found during clean up. |
| Name: | Name the property as an addition to Monte Bello Open Space Preserve. |
| Dedication: | Indicate your intention to withhold dedication of the subject property as public open space at this time. |

CEQA COMPLIANCE

Project Description

The project consists of the purchase of 10.79-acre Lobner Trust property as an addition to the District's open space preserve system, and the concurrent adoption of a Preliminary Use and Management Plan for the property. The project also includes the eventual demolition of five cabins along Stevens Creek which will require permits from the County.

Under the proposed Preliminary Use and Management Plan, existing structures including the five small cabins will be demolished and removed after being vacated by the tenants. Minor erosion control and sediment control measures may be conducted at the cabin sites and along existing driveways as needed to prevent water quality degradation. Minor resource management activities may be conducted as needed to control invasive plants. The land will be permanently preserved as open space and maintained in a natural condition.

CEQA Determination

The District concludes this project will not have a significant effect on the environment. It is categorically exempt from the California Environmental Quality Act (CEQA) under Article 19, Sections 15301, 15316, 15317, 15325 and 15061 of the CEQA Guidelines as follows:

Section 15301 exempts the repair, maintenance, or minor alteration of existing public or private structures, facilities, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination, including the demolition of individual small structures. The project proposes demolishing the five cabins, performing minor erosion control work as necessary along existing roads, and performing minor restoration activities in order to return the structure demolition sites to a natural condition.

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 in order to maintain the open space character of the property.

This purchase qualifies under these four sections. The actions recommended in the Preliminary Use and Management Plan are also exempt under section 15061(b)(3), as there is no possibility the recommended actions will have a significant effect on the environment.

TERMS AND CONDITIONS

In December 2012, the District notified Wells Fargo Bank, as co-trustee of the Lobner Trust, of its intent to exercise its right of first offer to purchase the 10.79-acre Lobner Trust property at a price of \$450,000, which will be paid on an all cash basis at the close of escrow. The purchase price is supported by a fair market appraisal prepared for the seller, and supported by recent sales of property in this market area. Santa Clara County Parks and Recreation Department staff has

agreed to recommend a contribution of one half (50%) of the purchase price, or \$225,000. The County has previously approved similar funding agreements for the District's purchase of the former Keyani, Hall and Powell properties along the north side of Stevens Canyon and within the planning corridor for the extension to Stevens Creek Trail. This contribution is subject to the approval of the County Board of Supervisors. In exchange for this contribution, the District will grant the County a conservation easement over the 10.79-acre property requiring that the property be maintained in a natural condition for the conservation of natural habitat and wildlife, and for passive public recreational use. Approval of a funding agreement with the County and the conservation easement will come to you as a future agenda item. Since a funding agreement has not been approved by the County, the Board should make its purchase determination based upon payment of the full purchase price, although staff considers the County contribution highly likely.

“As-Is” Purchase and Site Clean Up

The property is being purchased on an “As-Is” basis. Staff has conducted due diligence investigations, including a review of Santa Clara County Planning, Building and Environmental Services records and files pertaining to the subject property as well as contacting Santa Clara Valley Water District, and is satisfied that no underground storage tanks or hazardous conditions exist on the property. The District has also commissioned a Phase I Environmental Site Assessment which will be completed before the close of escrow. Several abandoned vehicles adjacent to one of cabins and near the creek will need to be evaluated for potential leaking of fuels.

Staff is recommending retaining the services of Cal-Western, a property management company that has managed the rental cabins on the Lobner Trust property for many years, until the structures are vacated. Staff will work with the existing residential tenants to reach amicable terms for vacating the property under the General Manager's authority. The demolition of all cabins and associated structures located on the subject property will be scheduled after tenants have moved from the property and County permits have been obtained. Preliminary demolition and site cleanup costs are estimated at \$75,000.

BUDGET CONSIDERATIONS

2012–2013 Budget for New Land Purchases:

New Land (Mid-Year Adjusted Amount)	\$8,500,000.00
Land purchased this year	(\$ 5,366,100.00)
Lobner Trust Property	(\$ 450,000.00)
New Land Purchase Budget Remaining	\$ 2,683,900.00

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.

BOARD COMMITTEE REVIEW

In order to meet the strict timeline requirements contained within the District's First Right of Offer this item was not presented to the Real Property Committee.

PUBLIC NOTICE

The residential tenants, Santa Clara County Parks and property owners of land located adjacent to or surrounding the subject property have been mailed a copy of the agenda for the public meeting at which the Board of Directors will consider this purchase.

NEXT STEPS

Upon approval by the Board of Directors, staff will proceed with the close of escrow for the purchase of the property, and will take the next steps identified in the Preliminary Use and Management Plan contained in this report. The proposed funding agreement and conservation easement with Santa Clara County Parks will come to the Board as a future agenda item. Approval of a demolition and site cleanup contract will return to the Board as future agenda item. The District's Skyline Field Office will manage the property as an addition to Monte Bello Open Space Preserve.

Attachments:

1. Resolution
2. Exhibit A: Location Map

Prepared by:

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Allen Ishibashi, Real Property Specialist

Contact person:

Michael Williams

Graphics prepared by:

Alex Roa, GIS Intern

ATTACHMENT 1

RESOLUTION 13-XX

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF PURCHASE AGREEMENT AND ASSIGNMENT OF LEASES, 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 (MONTE BELLO OPEN SPACE PRESERVE - LANDS OF LOBNER TRUST (DARLENE ANNETTE LOBNER))

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 between Wells Fargo Bank, N.A., as successor in interest by merger to Wachovia Bank N.A., and Sandra Verbena Jones Hausle, as Co-Trustees for the benefit of Sofia Verbena Martin under the Will of Darlene Annette Lobner, also known as Darlene Lobner Martin and Darlene Lobner Stager, Deceased, as established by Decree of Distribution filed March 27, 2009 in Case No. 1-08-PR162737 Santa Clara Superior Court 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 and all related transactional documents on behalf of the District to acquire the real property described therein (“the Lobner Trust Property”).

Section Two. The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute Certificate of Acceptance for the Grant Deed 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.

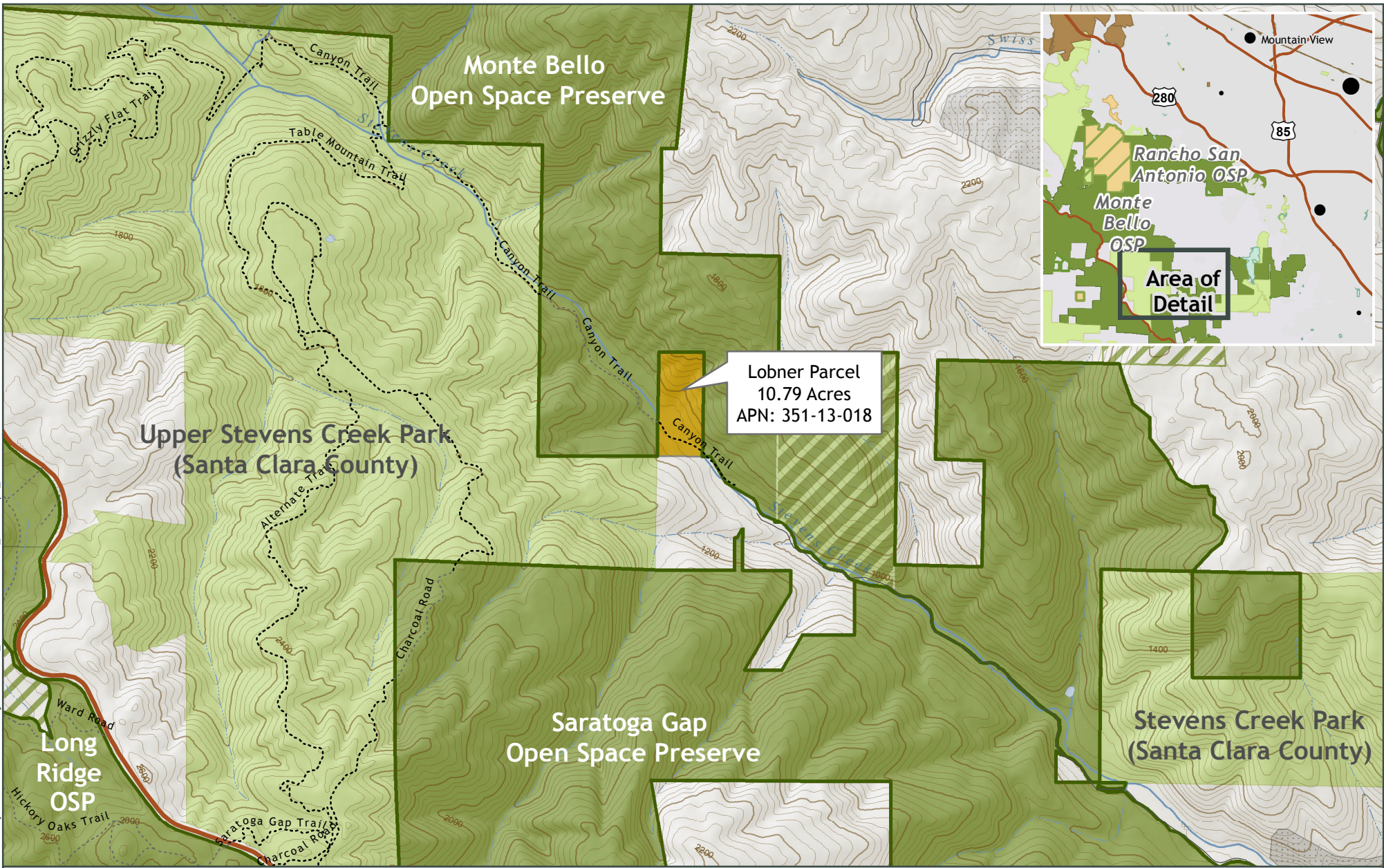
Section Four. The General Manager is authorized to expend up to \$15,000.00 to cover the cost of title insurance, escrow fees, and other miscellaneous costs related to this transaction.

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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Lobner Parcel
10.79 Acres
APN: 351-13-018

Lobner Property

- Lobner Parcel
- MROSD Preserves
- Other Protected Open Space or Park Lands
- Watershed Land
- Private Property
- Developed Land

- Non MROSD Conservation or Agricultural Easement
- MROSD Conservation or Agricultural Easement

Midpeninsula Regional Open Space District (MROSD)



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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.