



Midpeninsula Regional
Open Space District

R-13-19
Meeting 13-03
March 13, 2013

AGENDA ITEM 4

AGENDA ITEM

Approval of an Agreement to Exchange Interests in Real Property between Peter Sinclair (Sinclair) and Midpeninsula Regional Open Space District (District), at the Sinclair Property (Santa Clara County Assessor's Parcel Number: 517-16-022) located on Redhill Road, Los Gatos, California (adjacent to El Sereno Open Space Preserve); and Determine that the Recommended Actions are Categorically Exempt from the California Environmental Quality Act (CEQA)

GENERAL MANAGER'S RECOMMENDATIONS

A handwritten signature in black ink, appearing to be "G. G.", written over the end of the section header.

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 Agreement to Exchange Interests in Real Property for Patrol and Open Space easements between the District and Sinclair.
3. Adopt the Preliminary Use and Management Plan for the exchange of patrol and open space easements.

SUMMARY

The District has the opportunity to secure new easements on the Sinclair Property located adjacent to El Sereno Open Space Preserve through the exchange of easement interests. In exchange for the District quitclaiming its rights to a 1915 roadway and waterline easement, the District would gain a new twelve (12) foot wide patrol easement and a new 100 foot wide open space easement over the Sinclair property. This easement exchange would provide the District with a permanently improved patrol and maintenance easement and a 100 foot wide undisturbed buffer between the District's Preserve and the Sinclair Property while allowing Sinclair the ability to construct an underground garage for a new single family home on his property.

DISCUSSION

Background

During the summer of 2012, the District was approached by Sinclair who was interested in purchasing and developing a property adjacent to the District's El Sereno Open Space Preserve located off Redhill Road in Los Gatos. Mr. Sinclair inquired about the possibility of the District working with him to relocate a portion of an existing roadway easement across the 10.15-acre private property in order to allow the possible construction of an underground garage on the property for a new single family home. Sinclair purchased and became the owner of the property

on July 18, 2012. In 2000, the District purchased the 258.81-acre Krone/Bishop property as an addition to El Sereno Open Space Preserve (see report R-00-62). As part of this purchase, the District acquired a twenty (20) foot wide roadway and waterline easement that was reserved in a 1915 deed over what is now a portion of the Sinclair property.

In 2003, the District was sued by the predecessor in title to Sinclair in an attempt to obtain a judicial determination and declaration as to the validity, existence, nature and scope of the District's twenty (20) foot wide roadway and water pipeline easement. After a four-day trial, the trial court held that the plaintiff had failed to prove abandonment of the easement and the District's easement was in full force and affect. The Court of Appeal of the State of California concurred with the trial court's determination.

The easement is not currently utilized by the District to access the San Tomas Aquinas Creek portion of El Sereno Open Space Preserve. The roadbed within the easement is in a state of disrepair and is not easily accessible by District vehicles. The roadbed continues beyond the Sinclair property into the District's preserve paralleling San Tomas Aquinas Creek for approximately ½ mile.

Description of Agreement to Exchange Interests in Real Property (Easements)

The Agreement to Exchange Interests in Real Property is an agreement between the District and Sinclair. In exchange for quitclaiming the District's rights to the 1915 roadway and waterline easement, Sinclair will grant the District a new twelve (12) foot wide patrol easement and 100 foot wide open space easement along the common property line between his property and the District's Preserve.

Pursuant to the Exchange Agreement, Sinclair is responsible for all costs associated with the easement exchange, including but not limited to survey costs, escrow fees, recording costs and all other third party costs related to this transaction. The exchange of easements may be handled through escrow. Each of the proposed easements is discussed in more detail below.

Quitclaim of 1915 Roadway and Waterline Easement

The District acquired this easement through the purchase of the adjacent 258.81-acre Krone/Bishop property. As stated above, this easement was not maintained prior to the District's ownership and the roadway has not been maintained in a serviceable condition since the District has owned it. Although this easement has not been utilized in the past, District Operations Staff recognizes that this easement could provide useful in the future for emergency, general patrol, and maintenance needs. Under the proposed easement exchange, this easement would be quitclaimed and replaced with a new patrol and maintenance easement that would be maintained in perpetuity by Sinclair and all future property owners.

Patrol and Maintenance Easement

A new twelve (12) foot wide patrol and maintenance easement would replace the existing twenty (20) foot wide 1915 roadway easement over the Sinclair property. For approximately 100 feet, the new easement would follow a slightly different path than the original 1915 easement in order to provide a reasonable buffer between the easement and the planned underground garage. Per the easement agreement, Sinclair would be responsible for constructing and reviving a five (5) foot wide roadbed within the easement area that is suitable for standard off-road utility vehicles.

Sinclair and all future property owners would also be responsible for maintaining the easement roadbed in perpetuity.

Open Space Easement

As additional consideration for quitclaiming the 1915 roadway and waterline easement, Sinclair had also agreed to grant the District a 100-foot wide open space easement along three sides of his property that are adjacent to El Sereno Open Space Preserve and San Tomas Aquinas Creek. The proposed open space easement will cover approximately 37% or 3.75-acres of the 10.15-acre Sinclair property. The easement will protect in perpetuity the views, open space, and natural habitat of the area.

USE AND MANAGEMENT

Preliminary Use and Management Plan (Next Steps)

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 El Sereno Open Space Preserve.

Structures and Improvements:	Monitor the construction of the new roadbed for the patrol and maintenance easement.
Inspection:	Conduct regular inspections of the Open Space Easement.
Name:	Name the easements as an addition to El Sereno Open Space Preserve.
Dedication:	Withhold dedication of these easements.

CEQA COMPLIANCE

Project Description

The project consists of relocating a portion of an existing roadway from the original roadway/waterline easement through the execution of a new patrol and maintenance easement and acceptance of an open space easement, and the associated minor grading/repair of the roadbed for the patrol and maintenance easement.

Sinclair would grant a twelve (12) foot wide patrol and maintenance easement to the District in order to relocate approximately 100 feet of the existing 700-foot easement. The portion of the easement that is relocated would give Sinclair the option of placing the garage of his proposed home under the former easement area (underground). Sinclair would be responsible for minor grading of the relocated easement area and repair of the old easement area along with the maintenance related to the overall easement roadbed in perpetuity. The roadbed shall be maintained in a rural manner so that only standard four wheel drive utility vehicles would be able to access. Under the new patrol and maintenance easement, the maximum width of the roadbed within the easement would be five (5) feet.

Finally, an open space easement would be granted to the District along three sides of his property that are adjacent to the El Sereno Open Space Preserve and San Tomas Aquinas Creek. The proposed open space easement will cover approximately 37% or 3.75-acres of the 10.15-acre Sinclair property.

CEQA Determination

The District concludes that this project will not have a significant effect on the environment. The project is categorically exempt from CEQA under Article 19, Sections 15301, 15304 and 15317 of the CEQA Guidelines as follows:

Section 15301 exempts operation, repair, restoration, 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. The partial roadway easement relocation enabled by the proposed patrol and maintenance easement is for purposes of lessening the width and impact of the easement on Sinclair property, with no expansion of the easement use anticipated. The minor grading for the purpose of public safety is also exempt under Section 15301.

Section 15304 exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes, including minor trenching and backfilling where the surface is restored. The five-foot wide roadbed under the proposed patrol and maintenance easement would be a reduction in size when compared to the 1915 roadway and waterline easement that is being replaced. In addition, the new easement roadbed will be kept in a natural condition and will be over a majority of the original easement roadbed to specifications that will only allow standard four-wheel drive utility vehicles the ability to access. No trees will be removed or affected because of the new easement.

Section 15317 exempts the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area.

This proposed project is categorically exempt from CEQA under these three sections.

TERMS AND CONDITIONS

As part of the proposed Easement Exchange Agreement, Sinclair would agree to the following:

1. Grant a twelve-foot wide patrol and maintenance easement to the District.
2. Grade and repair a five-foot wide roadbed for District use to accommodate a four wheel drive utility vehicle.
3. Maintain the easement roadbed in perpetuity.
4. Grant a 100-foot wide open space easement to the District along three sides of his property.
5. Cover all associated costs of the easement exchange including but not limited to survey work, recording costs, escrow costs, etc.

As part of the proposed Easement Exchange Agreement, the District would agree to relocate a short portion of the original 1915 roadway/waterline easement through the execution of a new

patrol and maintenance easement with Sinclair. Under the new easement, the District would not retain the waterline rights.

The District has determined that the exchange of interest in real property is of equal or greater value to the public and, the exchange has been determined to be in accordance with the District's enabling legislation set out in Section 5500 *et seq.* of the Public Resources code of the State of California.

FISCAL IMPACT

Sinclair is responsible for all costs associated with the Agreement to Exchange Interests in Real Property. There are no fiscal impacts to the District associated with this project.

BOARD COMMITTEE REVIEW

Board Committee review is not required for this agenda item.

PUBLIC NOTICE

Public notice was also provided as required by the Brown Act. Adjoining property owners and interested parties have been mailed a copy of the agenda for this public meeting.

NEXT STEPS

Upon approval by the Board of Directors, staff will work to record the easement agreements and will oversee the construction phase of the project.

Attachments:

1. Resolution
2. Exhibit A: Location Map

Responsible Department Manager:
Michael Williams, Real Property Manager

Prepared by:
Allen Ishibashi, Real Property Specialist

Contact person:
Same as above

Graphics prepared by:
Michelle Lanctot, GIS Intern

ATTACHMENT 1

RESOLUTION 13-XX

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING AND AUTHORIZING ACCEPTANCE OF AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY, AUTHORIZING THE PRESIDENT OF THE BOARD, GENERAL MANAGER OR OTHER OFFICER TO EXECUTE EASEMENT DEEDS WITH PETER SINCLAIR AND CERTIFICATES OF ACCEPTANCE FOR THE EASEMENT DEEDS TO DISTRICT, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (EL SERENO OPEN SPACE PRESERVE - LANDS OF SINCLAIR)

The Board of Directors of the Midpeninsula Regional Open Space District does resolve as follows:

Section One. The Board of Directors of the Midpeninsula Regional Open Space District does hereby accept the Agreement to Exchange Interests in Real Property between Peter Sinclair and the Midpeninsula Regional Open Space District and authorizes the President of the Board, General Manager or appropriate officer to execute the Agreement on behalf of the District.

Section Two. The General Manager, President of the Board or other appropriate officer is authorized to execute the patrol/maintenance and open space easement deeds to District and certificates of acceptance.

Section Three. The General Manager and General Counsel are authorized to execute any and all other documents necessary or appropriate to the closing of the transaction approved in this Resolution. The General Manager and General Counsel are further authorized to approve minor, or technical revisions to the Agreement and Easement Deeds that do not involve any substantial change to any terms of the Agreement and Easement Deeds, and which are necessary or appropriate to the closing or implementation of this transaction.

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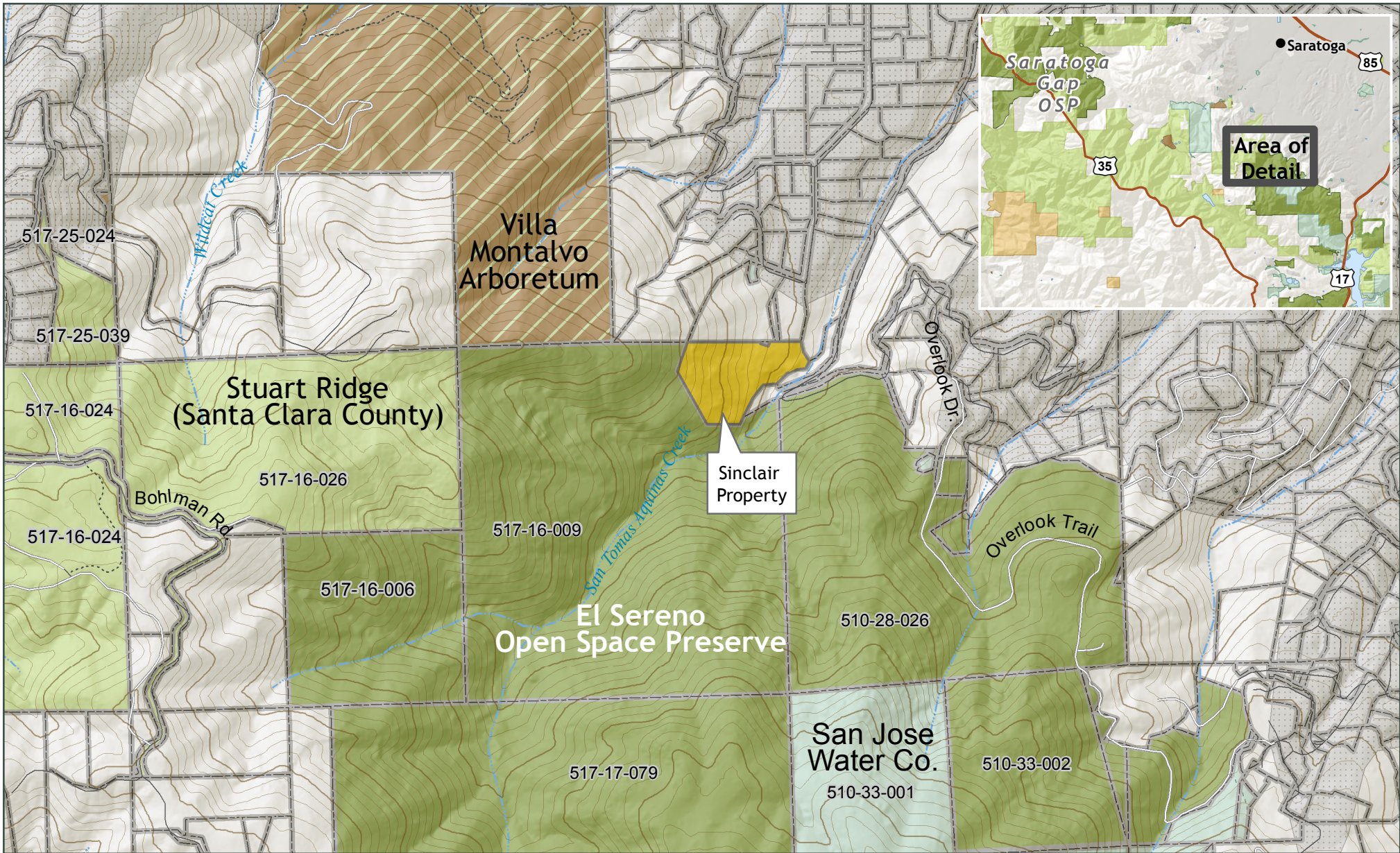


Exhibit A: El Sereno Open Space Preserve

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|---|---|--|
|  MROSD Preserves |  Other Public Agency |  Private Property |
|  Watershed Land |  Non MROSD Easement Over Public Land |  Developed Land |
|  Other Protected Open Space or Park Lands |  Highlighted Property |  Parcel Boundary |

Midpeninsula Regional
Open Space District
(MROSD)



March, 2013



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.

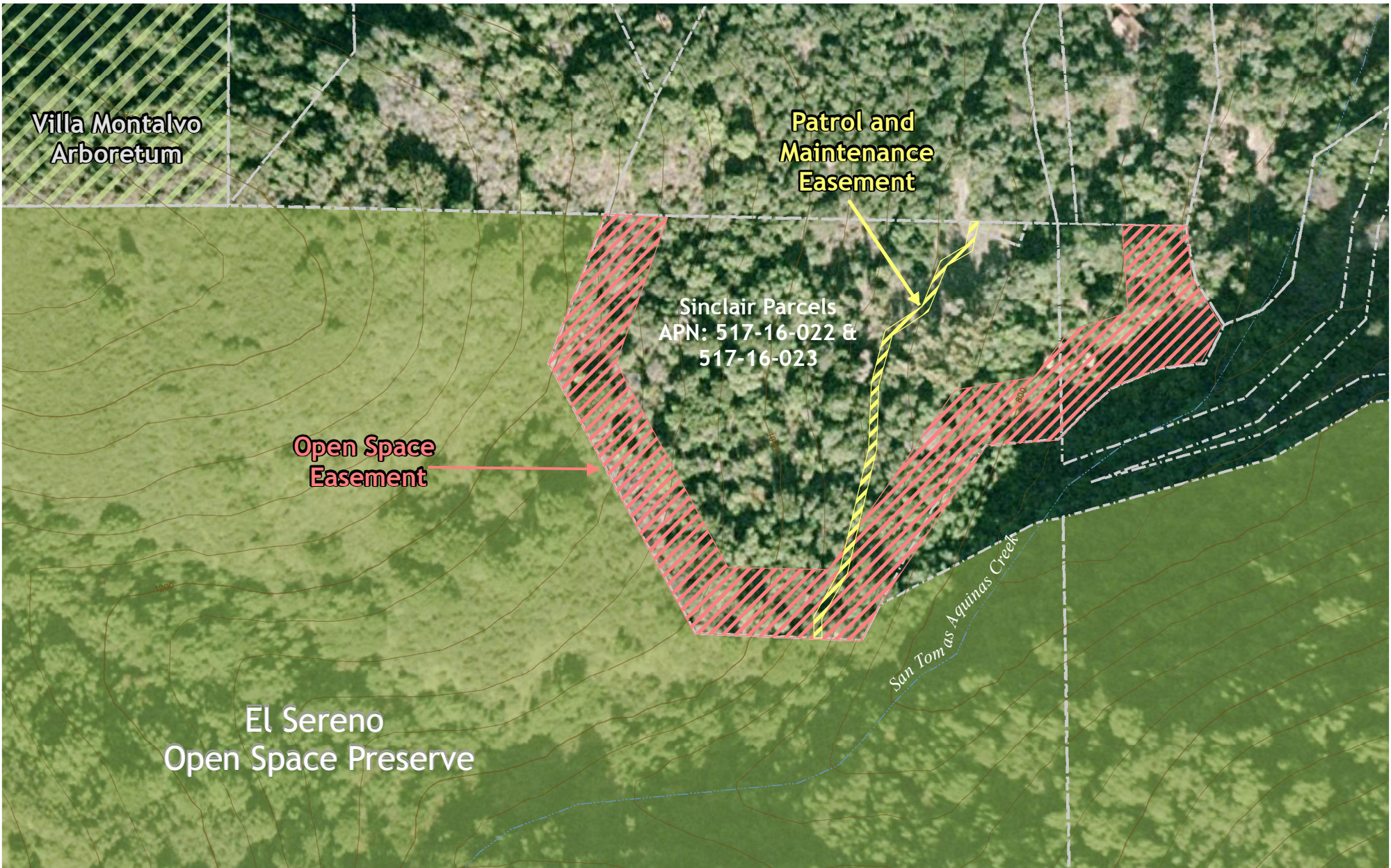


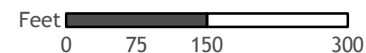
Exhibit B: Overall Easement Map

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|--|---|--|
|  MROSD Preserves |  Non MROSD Conservation or Agricultural Easement |  Parcel Boundary |
|  Other Protected Open Space or Park Lands |  Open Space Easement |  Private Property |
|  Watershed Land |  Patrol and Maintenance Easement |  Developed Land |

Midpeninsula Regional Open Space District (MROSD)



February, 2013



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