



Midpeninsula Regional
Open Space District

R-24-33
Meeting 24-07
March 13, 2024

AGENDA ITEM 5

AGENDA ITEM

Exchange of Real Property Interests between Hicks Land LLC (“Hicks Land”) and Midpeninsula Regional Open Space District (District) Related to Access Easements - District to receive an Access Easement through Hicks Land property (portion of Santa Clara County APNs 575-11-009 and 575-11-024) in Exchange for Granting an Access Easement to Hicks Land through Sierra Azul Open Space Preserve (portion of Santa Clara County APN 575-11-008).

GENERAL MANAGER’S RECOMMENDATIONS *den*

1. Determine that the recommended actions are categorically exempt from the California Environmental Quality Act (CEQA), as set out in the report.
2. Adopt a resolution authorizing the exchange of interests in real property between the District and Hicks Land, at no cost to either party.
3. Amend the Use and Management Plan to include the exchanged interest in real property.
4. Withhold dedication of the exchanged property as public open space at this time.

SUMMARY

The General Manager recommends an exchange of access easement interests with Hicks Land that provides net benefits to both parties. The District land to be conveyed is not currently dedicated for park and open space purposes. The District would obtain an access easement for patrol and maintenance purposes over portions of the Hicks Land Property to reach a network of dirt roads in the Rancho de Guadalupe area of Sierra Azul Open Space Preserve (Preserve). In exchange, the District would convey an easement for general access over portions of District land through the Preserve to allow Hicks Land to access the westerly portion of their property, including general access to and maintenance of an existing operational well, but excluding access for new development (Attachment 2). This exchange of easement rights would be at no cost to the District and Hicks Land. The following report presents a description and the terms of the proposed exchange of real property interests, an amendment to the Use and Management Plan, and the environmental review findings.

DISCUSSION

Background

Hicks Land owns the improved 21631 Hicks Road Property (Hicks Land Property) in Los Gatos, adjacent to Sierra Azul Open Space Preserve (Preserve), and is seeking to obtain an access easement over an existing access road that commences at Hicks Road and crosses portions of the Hicks Land Property and the Preserve.

The District purchased the 24.02-acre former Kahn Property (District Property) that is adjacent to the Hicks Land Property on May 24, 2017 ([R-17-59](#)). The District Property is vacant with a graded dirt road (the main access road) that connects directly to Hicks Road and extends to the interior of the property. However, the District does not hold a recorded access easement over the entirety of the main access road. There is a separate seasonal access road on adjacent District properties north of the former Kahn property, but this secondary road has not been accessed for several years due to landslides and is currently in an unknown condition.

In fall of 2023, Hicks Land contacted the District with a request to obtain an access easement over two (2) segments of the main access road that weaves onto District Property in order to access their existing water well and generally maintain the western portion of their property. District staff proposed an easement exchange in which the District would obtain an access easement over three (3) segments of the main access road that weaves onto Hicks Land for the purpose of patrol and maintenance.

Descriptions of Exchanged Properties

Hicks Land to District: Under the Agreement, Hicks Land would convey a patrol and maintenance access easement to the District over three (3) segments of the dirt access road that extends into the Hicks Land Property.

District to Hicks Land: Under the Agreement, the District would convey an access easement over two (2) segments of the dirt access road that extends into District Property for general maintenance and access to the westerly portion of the Hicks Land Property, including for the construction, operation, maintenance and repair of the existing well facilities, but excluding access use to facilitate or conduct further development. This exclusion would be incorporated in the access easement that would be recorded by the County.

USE AND MANAGEMENT

Amended Use and Management Plan

In May 2017, the Board of Directors (Board) adopted a Preliminary Use and Management Plan for the Kahn Property. This exchange of interests in real property requires an amended Use and Management Plan. Amendment of the Use and Management Plan to incorporate the easement exchange with Hicks Land would take effect at the close of the transaction and remain effective until further amended. Amendments to the Kahn Property's Use and Management Plan are shown in tracked changes below:

Name:	Name the property <u>and easement</u> as an addition to Sierra Azul Open Space Preserve.
Dedication:	Indicate the District's intention to withhold dedication of the subject property as open space at this time.
Public Access:	Designate the Property as closed to public use at this time.
Signs and Site Security:	Install preserve boundary and closed area signs.
Fences and Gates:	Install gates and fencing on the access roads and property boundary as necessary to prevent unauthorized entry and use.
Roads and Trails:	Maintain the seasonal access route <u>and main access route</u> to the site and on the site in a serviceable condition. Implement maintenance and minor erosion and sediment control measures in accordance with District standards. Access roads to be used for District patrol, maintenance and emergency purposes.
Water Rights and Water Resources:	There are no wells on the property. There is a spring located near the northwest property boundary. As recorded on title, the property has the right to use one-half the normal flow of water from a spring located on the adjacent parcel to the southeast (APN 575-11-009). The District has no plans to exercise its rights at this time.
Patrol:	Routinely patrol property using existing seasonal access road <u>and/or the main access road</u> . until permanent access rights can be secured over the main access point.
<u>Easement Monitoring:</u>	<u>Conduct regular inspections of the easement area to ensure compliance with the terms of the exchange.</u>
Resource Management:	Conduct invasive plant and animal management activities consistent with the District's Resource Management Policies.
Wildfire Fuel Management:	Implement standard District-wide fuel management and defensible space practices consistent with the District's Resource Management Policies.

CEQA COMPLIANCE

Project Description

The project consists of an Agreement to exchange interests in real property between Hicks Land and the District. Per the terms and conditions of the Agreement, the District would convey an access easement over two segments of dirt road at Sierra Azul Open Space Preserve to Hicks Land. In exchange, Hicks Land would convey to the District an access easement over three

segments of dirt road over Hicks Land Property in Los Gatos. The easement to be conveyed to the District is of equal or greater value and would be used for park purposes.

CEQA Determination

The District concludes that the project would not have a significant impact on the environment. The project is categorically exempt from the California Environmental Quality Act (CEQA) under Article 19, Sections 15301 and 15325 (f). Section 15301 exempts the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, or topographical features, involving negligible or no expansion of existing or former use. Section 15325 (f) exempts the acquisition, sale, or other transfer to preserve open space or lands for park purposes. The easement exchange is a transfer that serves park purposes and maintains existing vehicular access use and is not anticipated to result in an impact on the environment.

TERMS AND CONDITIONS

As part of the proposed Agreement, the District and Hicks Land agree to convey the easements to each other at no cost to either party.

FISCAL IMPACT

This reciprocal, no-cost exchange of easements has no immediate fiscal impact.

PRIOR BOARD OR COMMITTEE REVIEW

None

PUBLIC NOTICE

Property owners of land located adjacent to or surrounding the project site have been mailed a copy of the agenda for this meeting. Accordingly, all notice required by the Brown Act and District policy has been provided.

NEXT STEPS

Upon approval by the Board of Directors, the General Manager would execute and carry out the Agreement, including the conveyance and acceptance of easements. The General Manager would also take the next steps identified in the Use and Management Plan. The District's Foothills Field Office would continue to patrol and manage the Rancho de Guadalupe area of the Preserve.

Attachments:

1. Resolution Authorizing Execution of Exchange Agreement, Authorizing General Manager or Other Officer to Execute the Easement Deeds, Authorizing General Manager or Other Officer to Execute Certificate of Acceptance of Grant to District, Authorizing General Manager or General Manager's Designee to Execute any and all Other

Documents Necessary or Appropriate to Closing of the Transaction (Sierra Azul Open Space Preserve)

2. Overall Project Location Map

Responsible Department Manager:

Allen Ishibashi, Real Property Manager, Real Property Department

Prepared by:

Jasmine Leong, Real Property Specialist I, Real Property Department

Graphics prepared by:

Anna Costanza, GIS Technician

RESOLUTION NO. 24 -__

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING EXECUTION OF EXCHANGE AGREEMENT, AUTHORIZING GENERAL MANAGER OR OTHER OFFICER TO EXECUTE THE EASEMENT DEEDS, AUTHORIZING GENERAL MANAGER OR OTHER OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT TO DISTRICT, AUTHORIZING GENERAL MANAGER AND GENERAL COUNSEL TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (LAND OF HICKS LAND LLC - SIERRA AZUL OPEN SPACE PRESERVE)

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

SECTION ONE. The Board of Directors of the Midpeninsula Regional Open Space District (District) authorizes the General Manager to execute the Exchange Agreement (Agreement) between Hicks Land LLC (Hicks Land) and the District, a copy of which Agreement is attached hereto and by reference made a part hereof, and authorizes the President of the Board of Directors, General Manager, or other appropriate officer to execute all related transactional documents on behalf of the District to acquire and exchange the real property described therein.

SECTION TWO. The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute the easement deeds to the District and Hicks Land, respectively.

SECTION THREE. The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute a Certificate of Acceptance for the easement to the District.

SECTION FOUR. The General Manager or the General Manager’s designee is authorized to provide notice of acceptance to Hicks Land and to extend escrow if necessary.

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, and which are necessary or appropriate to the closing or implementation of this transaction.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2024, at a regular meeting thereof, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Curt Riffle, Secretary
Board of Directors

Margaret MacNiven, President
Board of Directors

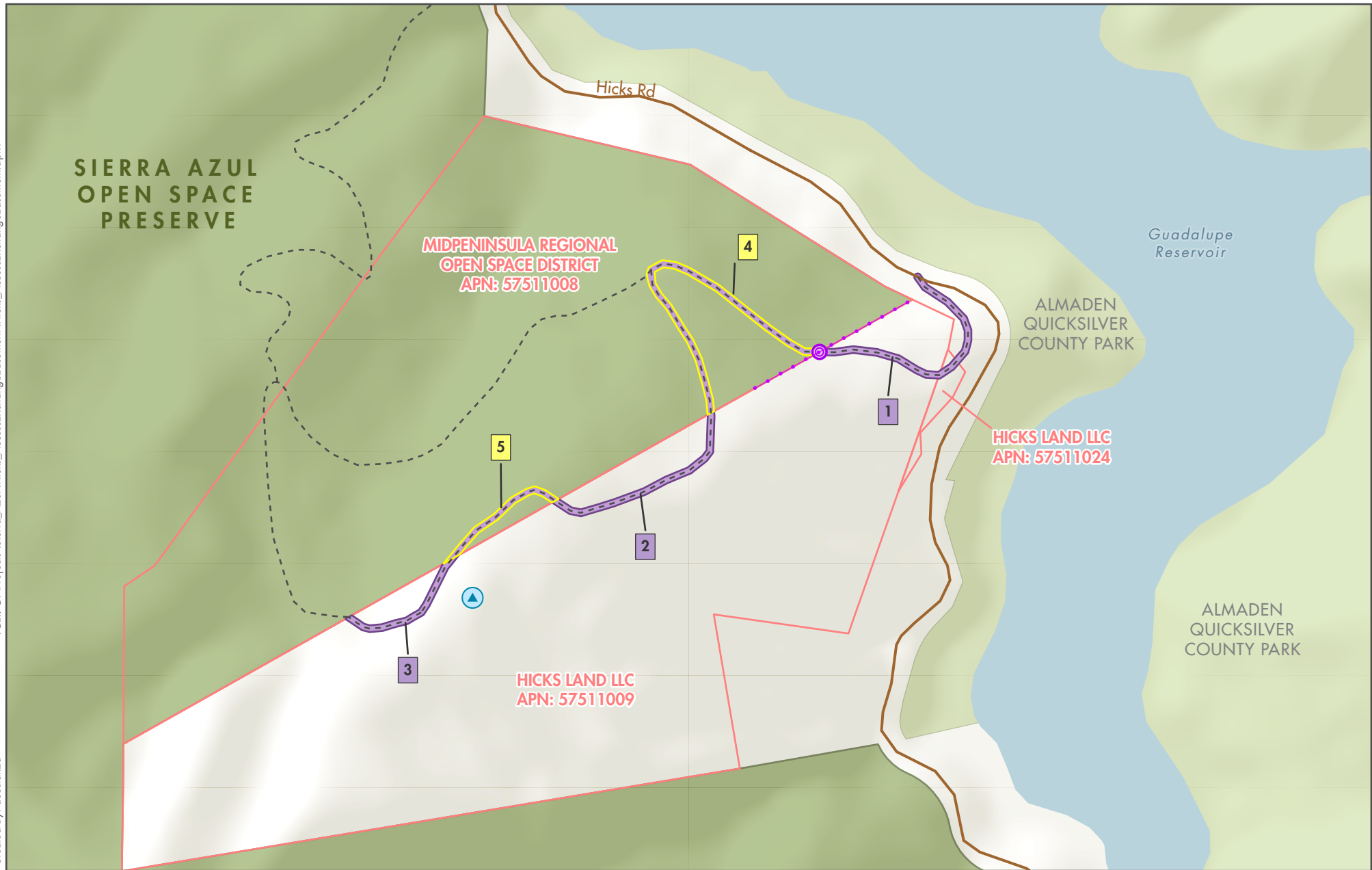
APPROVED AS TO FORM:

Hilary Stevenson, General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

Maria Soria, District Clerk

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Attachment 2 - Hicks and District Properties

- Midpen preserves
- Other protected lands
- Private property
- Easement over MROSD fee
- MROSD easement over private land
- Existing dirt road
- Well
- Proposed fence
- Proposed gate

Midpeninsula Regional
Open Space District
(Midpen)
1/5/2024



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