



Midpeninsula Regional
Open Space District

R-16-38
Meeting 16-08
April 13, 2016

AGENDA ITEM 5

AGENDA ITEM

Approval of Right-of-Way Contract with California Department of Transportation (Caltrans) for fee and easement rights for 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 503-37-009) and along Highway 84 west of the unincorporated community of La Honda at the La Honda Creek Open Space Preserve (Portion of San Mateo County Assessor's Parcel Number 082-170-040), in exchange for a quitclaim deed for the existing 8 foot by 8 foot concrete tunnel that runs under Highway 84 that connects two District properties within the La Honda Creek Open Space Preserve (APNs: 082-130-130 and 082-170-040).

GENERAL MANAGER'S RECOMMENDATIONS

1. Determine that the recommended actions are categorically exempt from the California Environmental Quality Act (CEQA) for the reasons set out in the staff report.
2. Adopt a resolution authorizing the execution of the Right-of-Way Contract for the exchange of property rights between the District and Caltrans at no cost to the District.
3. Adopt the Preliminary Use and Management Plan for the Highway 84 tunnel undercrossing as set out in the staff report.

SUMMARY

The California Department of Transportation (Caltrans) performed slope stabilization and safety work on District Property at three sites along Highway 9 and Highway 84 to protect motorists in 2012 and 2015 through Right of Entry Agreements executed with the District in 2011 and 2013, respectively (R-11-30, R-11-65 and R-13-16). At the time the Right of Entry Agreements were executed, it was anticipated that Caltrans would return to the District following completion of the projects to seek permanent slope easements and fee property for these improvements. In both Right of Entry Agreements, the District proposed that Caltrans grant the District property rights such as public use of the tunnel crossing under Highway 84 at La Honda Creek Open Space Preserve as the property along Highway 9 was dedicated open space. The following report presents a description of the District property, the environmental review, and the specific proposed terms and conditions which, to be executed, require unanimous Board approval. This transaction is an exchange of rights at no cost to the District or Caltrans.

DISCUSSION

Highway 84, La Honda Creek Open Space Preserve

The first Caltrans project site is located just west of the community of La Honda at the westerly corner of the La Honda Creek Open Space Preserve along Highway 84 (see Attachment 2). The road embankment where a majority of the work was performed is located within the Caltrans right-of-way. The top of the embankment is within District ownership, and it is along the top of the embankment that Caltrans construct a concrete-lined drainage ditch as part of the slope stability project. The area subject to the grant of fee property is a 15-18 foot wide strip of land running along the District's boundary with the Caltrans right-of-way for approximately 644 feet containing 11,314 square feet. A pasture fence runs along the top edge of the embankment at this location, and this portion of the District's Preserve is utilized by the District's grazing tenant. The Caltrans work was completed in February of 2012.

Highway 9 (Mile Marker 2.7) Saratoga Gap Open Space Preserve

The second Caltrans 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 3). The District parcel of interest is dedicated as public open space as part of the 184-acre former Foster property addition in 1999 (see report R-99-35). The work that was performed under the Right of Entry was 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. The area subject to the grant of fee property contains 11,203 square feet and the slope easement contains 23,916 square feet. The Caltrans work was completed in October of 2015.

Highway 9 (Mile Marker 1.6)

The third Caltrans project site is located approximately five miles west of the City of Saratoga at the Saratoga Gap Open Space Preserve, along the south side of Highway 9 (see Attachment 2). The affected District parcel is dedicated as public open space as part of the 17.4-acre former POST Zabel property addition in 1999 (see report R-99-35). The slope stabilization work was performed at two locations along the highway both within the Caltrans right-of-way and on District land, on the steep side slopes of Highway 9. Under the Right of Entry, Caltrans constructed bank stabilization improvements on District property consisting of an anchored wire mesh bank stabilization system to prevent the steep hillside from failing. The area subject to the grant of slope easements contains a total of 13,057 square feet (9,667+3,390). The Caltrans work was completed in November of 2012.

Highway 84 Undercrossing Tunnel, La Honda Creek Open Space Preserve:

In the 2011 and 2013 Right of Entry Agreements, in lieu of monetary compensation to the District for the property rights, District staff proposed that Caltrans grant the District access rights for public ingress and egress through an existing underpass that crosses Highway 84. In August 2015, the District purchased the 11.83 acre Event Center as part of a larger land purchase as an addition to the La Honda Creek Open Space Preserve (see report R-15-101). The tunnel undercrossing connects the Event Center to the Preserve on the north side of Highway 84. Securing public access rights through this underpass would provide for future potential trail connections on the south side of Highway 84 and formalize the existing agricultural uses associated with the District's grazing tenant.

The District is prohibited by its enabling legislation from transferring or selling dedicated open space property. Under Public Resources Code section 5540.5, however, the District 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. This option requires a unanimous vote of the full Board.

Caltrans is agreeable to executing a quitclaim deed to the District transferring any rights they have in the 8 foot by 8 foot tunnel that runs under Highway 84 and connects the District's property on the south side of Highway 84 to the larger La Honda Creek OSP located north of Highway 84 (see Attachment 2 map and Attachment 4 photo). The quitclaim deed will secure the same rights as a potential access easement in that the District will have the ability to fully utilize the tunnel for its conservation grazing program, patrol, maintenance, land management, and public access if desired.

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.

USE AND MANAGEMENT

Planning Considerations

The proposed quitclaim deed of the Highway 84 tunnel undercrossing connects the Event Center area to the larger La Honda Creek Open Space Preserve on the north side of the highway for patrol and maintenance access, land management activities, livestock transfer between holding area and the Preserve and potential future public access. Subsequent planning for the Highway 84 tunnel undercrossing would be done in conjunction with future planning for the Event Center and Apple Orchard properties.

Preliminary Use and Management Plan

The Preliminary Use and Management Plan for the public trail easement includes the following elements:

Public Access:	The Highway 84 tunnel will be closed to public use at this time.
Signs and Site Security:	No additional District boundary signs are needed at this time.
Patrol:	Continue to use the tunnel for patrol and access purposes between the Event Center and the Preserve.
Site Safety Inspection:	Preliminary site safety inspection has been conducted and there are no known safety hazards within the trail easement area.
Dedication:	Indicate the Board's intention to withhold dedication of the Highway 84 tunnel at this time.

California Environmental Quality Act (CEQA) COMPLIANCE

Highway 84

1. In 2011, the District Board, acting as a Responsible Agency under CEQA, considered and agreed with the lead agency’s determination that the project was Categorical Exempt from CEQA along Highway 84.

Highway 9

1. In 2011, the District Board acting as a Responsible Agency under CEQA, considered and agreed with the lead agency’s determination that the project was Categorical Exempt from CEQA along Highway 9 at mile marker 1.6
2. In 2013, the District, acting as a Responsible Agency, independently considered the Environmental Impact Report (EIR) certified by the California Department of Transportation for the safety improvements. The District, as to those parts of the Highway 9 Safety Improvement Project that it considered, independently concluded that the direct and indirect environmental effects of the Highway 9 Safety Improvement Project at mile marker 2.7 and of the Right of Entry were adequately addressed by the EIR and mitigated by actions to be undertaken by Caltrans.

Lead Agency CEQA Determination – Acceptance of Tunnel Quitclaim Deed

The District concludes that the acceptance of the quitclaim deed will not have a significant effect on the environment. It is categorically exempt from CEQA under Article 19, Section 15325 of the CEQA Guidelines as follows:

Section 15325 exempts transfers of ownership of interest in land in order to preserve open space or lands for park purposes. The acquisition of the tunnel quitclaim deed will preserve a connection to the Preserve on the north and south side of Highway 84 for continued agricultural operation and future public access purposes.

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

The proposed Right-of-Way Contract includes the following key terms and conditions:

The District will grant permanent rights along Highway 9 (Saratoga Gap OSP) and along Highway 84 (La Honda Creek OSP) for previously installed safety improvements constructed by Caltrans in exchange for Caltrans quitclaiming all property rights to the 8 foot by 8 foot tunnel under Highway 84 that connects the former Driscoll Event Center with the larger La Honda Creek OSP. Please see the chart below for more details:

Entity	Area	Rights	Square Feet	Purpose
Caltrans	Highway 84	Fee	11,314 SF	Safety Improvements
Caltrans	Highway 9 (2.7)	Fee	11,203 SF	Safety Improvements

Caltrans	Highway 9 (2.7)	Easement	23,916 SF	Safety Improvements
Caltrans	Highway 9 (1.6)	Easement	13,057	Safety Improvements
District	Highway 84 (tunnel)	Quitclaim	-	Access Rights

FISCAL IMPACT

The Right-of-Way Contract with Caltrans will have no fiscal impact to the District's budget.

BOARD COMMITTEE REVIEW

The Real Property Committee held a meeting at the Event Center on June 23, 2015 recommending to the full Board the purchase of the Event Center and Apple Orchard properties. This meeting included a discussion about securing rights to the Highway 84 tunnel undercrossing for continued use of transporting cattle between livestock infrastructure at the Event Center and the Preserve and that the Event Center and tunnel may provide for future public staging and access for the Preserve.

PUBLIC NOTICE

District land surrounds the proposed safety improvements. Therefore, no special notice to affected neighbors was triggered by this proposed action. Regular 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-Way Contract will be executed by the General Manager and transmitted to Caltrans for its execution.

Attachments:

1. Resolution Authorizing Acceptance of Right of Way Contract, Authorizing General Manager or Other Officer to Execute Fee and Easement Deeds, and Authorizing General Manager to Execute any and all Other Documents Necessary or Appropriate to Closing of the Transaction (La Honda And Saratoga Gap Open Space Preserve - California Department of Transportation)
2. Project Location Map Highway 84
3. Project Location Map Highway 9
4. Tunnel Photo

Responsible Department Manager:
Michael Williams, Real Property Manager

Prepared by:
Allen L. Ishibashi, Senior Real Property Agent

RESOLUTION 16-__

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF RIGHT OF WAY CONTRACT, AUTHORIZING GENERAL MANAGER OR OTHER OFFICER TO EXECUTE FEE AND EASEMENT DEEDS, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (LA HONDA AND SARATOGA GAP OPEN SPACE PRESERVE - CALIFORNIA DEPARTMENT OF TRANSPORTATION)

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

SECTION ONE. The Board of Directors of Midpeninsula Regional Open Space District (District) does hereby accept the offer contained in that certain Right of Way Contract (Agreement) between California Department of Transportation (State) and the Midpeninsula Regional Open Space 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 the Agreement and all related transactional documents on behalf of the District to complete the real property transaction described therein.

SECTION TWO. The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute fee and easement deeds to the State.

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

SECTION FOUR. 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.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2016, at a regular meeting thereof, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Secretary

President

Board of Directors

Board of Directors

APPROVED AS TO FORM:

General Counsel

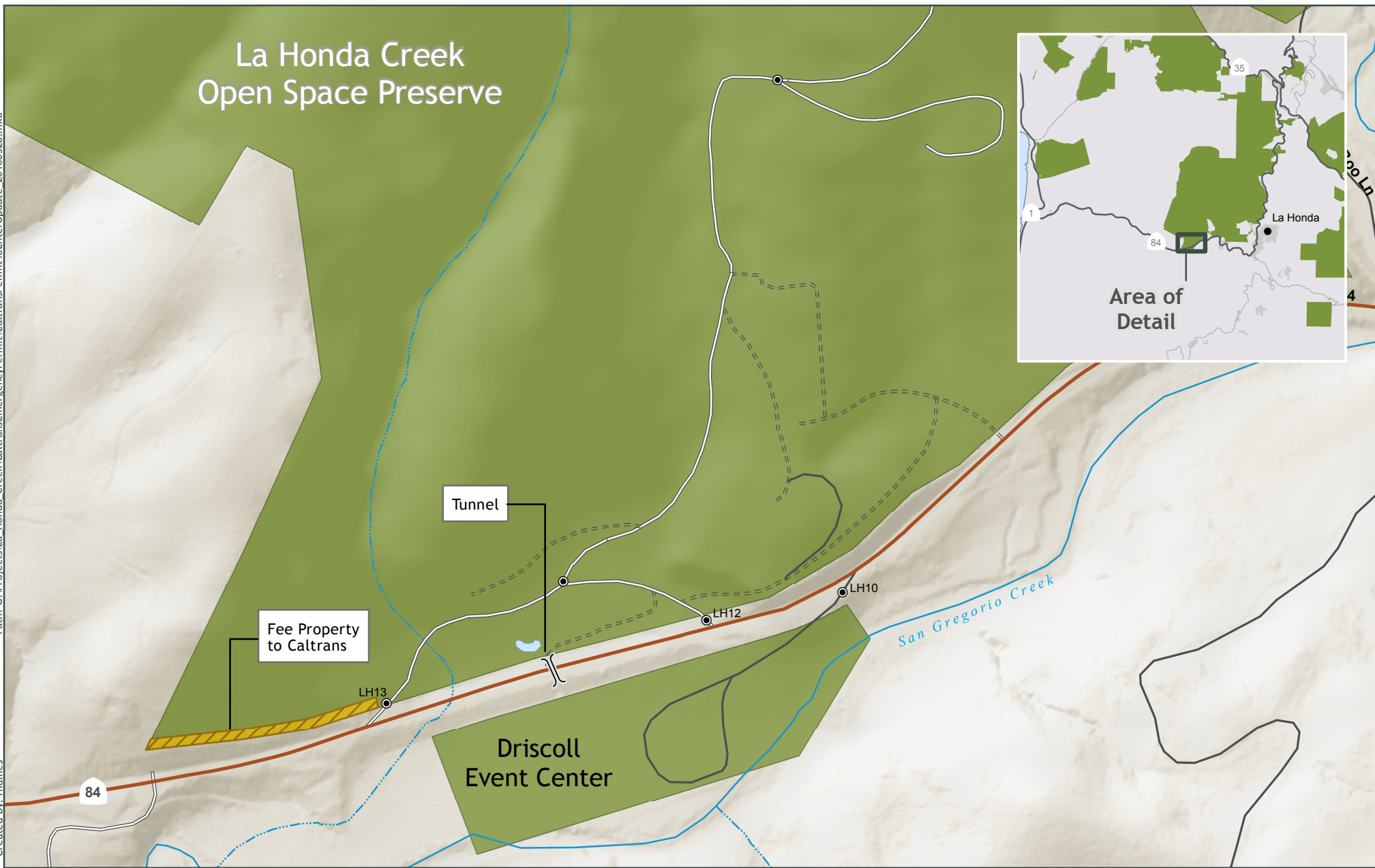
I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above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

District Clerk

La Honda Creek Open Space Preserve



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Caltrans Highway 84

- MROSD Preserves
- Private Property
- Fee Property to Caltrans
- Gate
- Tunnel

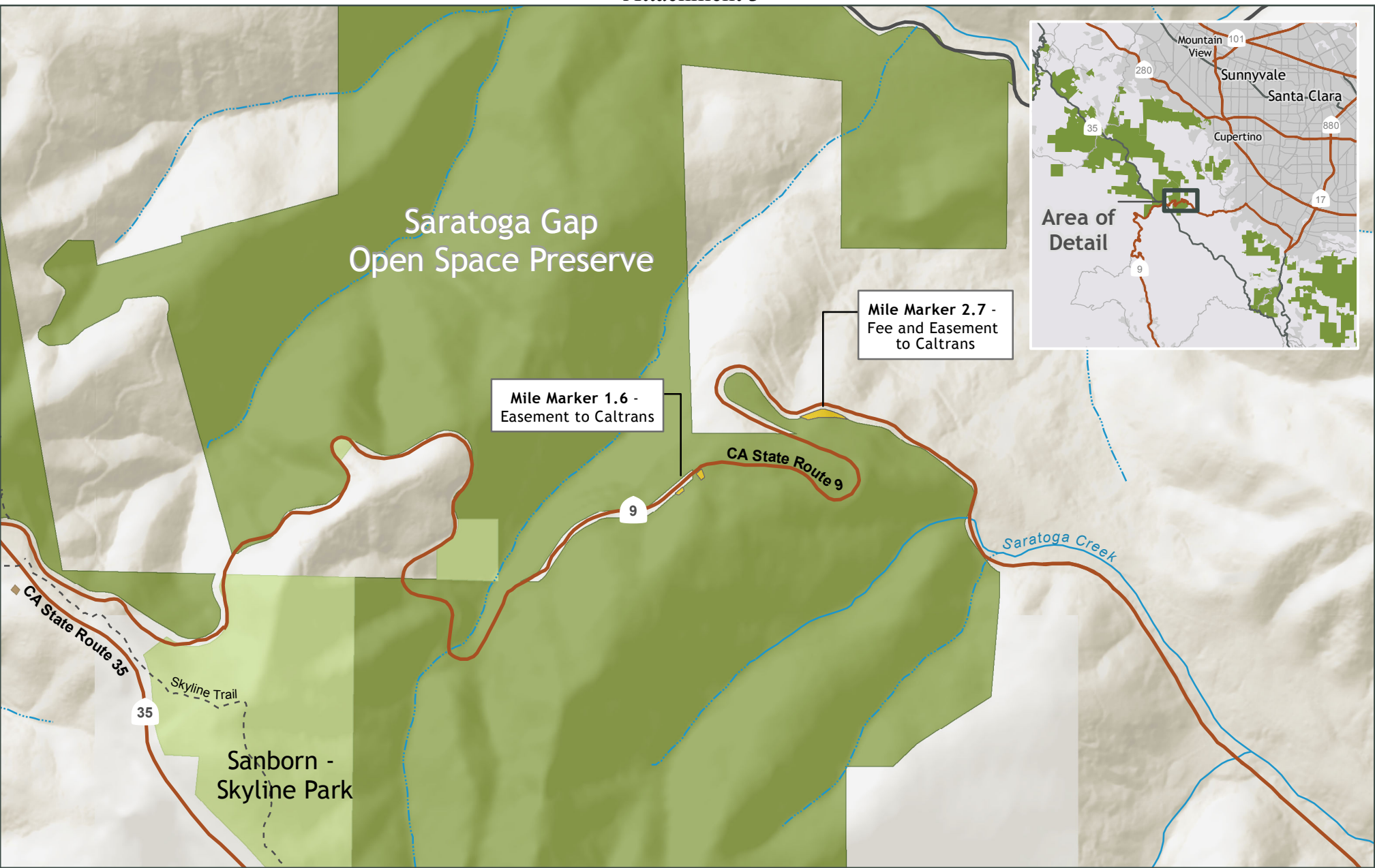
Midpeninsula Regional
Open Space District
(MROSD)



March, 2016
Feet 0 250 500

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.

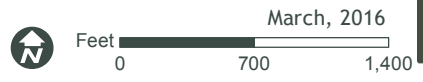
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Caltrans, Highway 9

- Highlighted Property
- MROSD Preserves
- Other Protected Open Space or Park Lands
- Private Property

Midpeninsula Regional
Open Space District
(MROSD)



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Attachment 4



Highway 84 Tunnel