



Midpeninsula Regional
Open Space District

R-16-111
Meeting 16-22
September 14, 2016

AGENDA ITEM 5

AGENDA ITEM

Proposed purchase and settlement agreement for the Rossetta property as an addition to Sierra Azul Open Space Preserve located on Mt. Umunhum Road in unincorporated Santa Clara County (Assessor's Parcel Number 562-22-017)

GENERAL MANAGER'S RECOMMENDATIONS

1. Determine that the recommended actions are categorically exempt from the California Environmental Quality Act (CEQA), as set out in the staff report.
2. Adopt a Resolution authorizing the purchase and settlement agreement for the Rossetta property at a cost of \$1,650,000 with a corresponding authorization for a budget adjustment/increase of the same amount.
3. Adopt a Preliminary Use and Management Plan for the property, as set out in the staff report.
4. Adopt a Resolution authorizing the General Manager to file, upon close of escrow, a notice of Williamson Act nonrenewal with the County of Santa Clara for Assessor's parcel number 562-22-017.
5. Withhold dedication of the Rossetta property as public open space at this time.

SUMMARY

The Midpeninsula Regional Open Space District (District) is proposing to settle the outstanding eminent domain litigation through the purchase of the 27.98-acre Rossetta property (Property), which includes the disputed 19-acre property that may overlap adjacent District land at a settlement and purchase price of \$1,650,000. This Property would be a critical addition to the Mount Umunhum Area of the Sierra Azul Open Space Preserve (Preserve) by taking ownership of a private inholding that has inhibited public trail and road access. As part of the purchase approval, a line item budget adjustment/increase of \$1,650,000 to the Fiscal Year 2016-17 budget is required to proceed with the settlement and acquisition. The following report presents a description of the Property, a Preliminary Use and Management Plan, the District's environmental review, the settlement and purchase terms, and financial considerations.

MEASURE AA

Although this proposed property purchase supports the goals of Measure AA Portfolio #23, Sierra Azul: Mt. Umunhum Public Access and Interpretation Projects, Measure AA funds would not be utilized for this settlement and purchase.

DISCUSSION

The Property is an inholding in the 18,934-acre Preserve and consists of an undisputed 27.98-acre site and a disputed 19-acre site that may overlap with adjacent District property (one parcel with a total of 46.98-acres). The entire Property is within the Guadalupe watershed and is visible from Mount Umunhum within the Preserve. Mt. Umunhum Road bisects this Property and a portion of Woods Trail may also cross this Property. The reasons for this purchase include: settling outstanding eminent domain litigation to (1) secure public vehicular access to the Mount Umunhum summit and (2) resolve a dispute on fee title ownership of 19-acres thereby solidifying public trail access on Woods Trail; increasing the acreage of protected lands for the Preserve; and protecting the Guadalupe watershed.

Background

After 3.5 years of unsuccessful negotiations to address public access and property title issues at the Preserve, the District Board of Directors, as a last resort adopted a Resolution of Necessity (RON) on December 9, 2015 (see report R-15-168). The RON set out to secure through eminent domain a 60-foot wide general public access and drainage easement over Mt. Umunhum Road as it crosses the Property, and fee title to a 19-acre (approximate) parcel boundary overlap to resolve a long standing dispute that affects the Woods Trail (segment of the Bay Area Ridge Trail). On May 5, 2016, the District was successful in securing an order for possession of the 60-foot wide easement through the Property over Mt. Umunhum Road (Easement). Trials to settle the right to take and compensation are still pending.

The proposed purchase and settlement with Mr. Rossetta resolves a long-standing boundary dispute over the 19 acres and includes the purchase of the adjacent 27.98-acre Rossetta property. The purchase and settlement would resolve the possibility of future disputes on Mt. Umunhum Road and the Woods Trail, and result in a dismissal of the outstanding eminent domain litigation.

Property Description and Regional Context (see attached map)

The triangular 27.98-acre undisputed portion of the Property and 19-acre disputed overlapping portion total 46.98-acres and consists of one legal parcel, situated in unincorporated Santa Clara County (County). Access to the Property is from Mt. Umunhum Road. The Property is approximately 0.6 miles west of the intersection of Mt. Umunhum Road and Hicks Road, and a quarter mile north of Bald Mountain and the Bald Mountain parking lot. Rising to approximately 1,840 feet in elevation, the Property offers views of the Preserve, Almaden Quicksilver County Park, Santa Clara Valley, and the Diablo Range. Situated within the Guadalupe watershed, the property drains into Guadalupe Creek and then flows into Guadalupe Reservoir.

The landscape of the property consists of oak woodland and mixed chaparral on a ridgeline above a steep canyon. The Property contains stands of oak woodland, including tan oak and canyon live oak, as well as manzanita, chamise, and other plants associated with mixed chaparral. The Property provides varied habitat for animals associated with the middle elevations of the Preserve, including large mammals such as deer, coyotes, bobcats, and mountain lions. A wide variety of bird species occupy and migrate through the general area.

Land Use and Improvements

The Property is unimproved with no permanent structures. A graded dirt road network provides direct access to both Mt. Umunhum Road and Woods Trail. A number of personal property

items, such as vehicles, trailers, construction items, and debris, are concentrated within one area of the Property.

Water Rights

An existing spring provides water to a residential trailer on the Property.

USE AND MANAGEMENT

Planning Considerations

The Property is comprised of one legal parcel, located in the unincorporated County, and outside the urban service area or sphere of influence of any incorporated municipality. The General Plan designation is Hillside, with a zoning designation of Hillside District (HS District). Per the County General Plan and zoning regulations, recreation, open space, and natural preserves are allowable uses in HS Districts. A finding of compliance with the County's General Plan for all open space acquisitions by the District was made by the County Planning Department in 1999.

If purchased, the Property would be incorporated into the Preserve. Subsequent planning for the Property would include consultation with appropriate agencies and organizations, as well as public workshops to gather input on draft and final plans. Further environmental review would be prepared as needed.

Williamson Act Considerations

The Property is subject to a Land Conservation Agreement between the County and James F. Peckham under the California Land Conservation Act of 1965 (also known as the Williamson Act), recorded in 1975 (Document #4952815). The Williamson Act Contract (Contract) is a voluntary agreement between a landowner and the County to encourage ongoing commercial agricultural use in exchange for a property tax reduction. The Contract provides for the compatible uses of open space and recreation. If the purchase is approved, the District will comply with the Contract provisions for the term of the Contract and file a notice of non-renewal with the County. A Resolution for the Board's approval of that filing is attached and part of the recommended actions.

Preliminary Use and Management Plan

The Preliminary Use and Management Plan (PUMP) establishes an interim status quo land management approach until a subsequent long-term plan is completed. The PUMP would take effect at the close of escrow and remain effective until the PUMP is amended or a Comprehensive Use and Management Plan or Preserve Plan is approved. The PUMP includes clean-up and minor restoration and maintenance of the Property, as described more fully below.

- | | |
|--------------------------|--|
| Public Access: | Designate Mt. Umunhum Road and Woods Trail as open to the public, subject to regular day-to-day controls and closures for preserve and construction management as needed, with the remaining Property 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 access roads to prevent unauthorized entry and use |

Roads and Trails:	Maintain access roads for District patrol, maintenance, and emergency purposes. Implement maintenance and minor erosion and sediment control measures in accordance with District standards.
	Improve portions of the Property underlying Mt. Umunhum Road per the contract with O.C. Jones and Company, which was approved on August 10, 2016 (R-16-101).
	Maintain Woods Trail per District Standards (status quo).
Water Rights and Water Resources:	Determine if the existing spring should be maintained or restored.
Patrol:	Routinely patrol property.
Structures and Improvements	Upon expiration of the six-month license allowing the former owner to enter and remove personal property, remove and dispose of all remaining temporary structures, incidental improvements, and personal property per District Policy 4.08, Construction and Demolition Waste Diversion.
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.
Name:	Name the property as an addition to Sierra Azul Open Space Preserve.
Dedication:	Withhold dedication of the subject property as open space at this time.
Subsequent Planning:	Subsequent planning for the property, including additional trail corridors, trail connections, and potential access points would be coordinated with the District's continuing planning efforts for the Preserve and/or planning for the Mount Umunhum area of the Preserve.

CEQA COMPLIANCE

Project Description

The project consists of the purchase of the 46.98-acre Rossetta Property as an addition to the District's Sierra Azul Open Space Preserve and concurrent adoption of a Preliminary Use and Management Plan (PUMP), including clean-up/removal of personal property items remaining after the close of escrow and minor sediment control measures conducted along existing driveways and roads to prevent erosion and water quality degradation. Resource management activities may be conducted to control invasive plants.

CEQA Determination

The District concludes that 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, and 15061 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. The PUMP specifies no alteration or expansion of use at this time beyond the clean-up, maintenance of existing access roads, installation of standard District access gates, and minor maintenance activities and erosion and sediment control measures in accordance with District standards.

Section 15316 exempts the acquisition of land 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 PUMP specifies that the land will not be developed, will remain in a natural condition, and will be designated as an addition to the Preserve.

Section 15317 exempts the acceptance of fee interests to maintain the open space character of an area. The District will acquire fee interest to maintain the open space character of the property.

Section 15061(b)(3) exempts actions recommended in the PUMP as it has been determined that there is no possibility the recommended actions will have a significant effect on the environment.

TERMS AND CONDITIONS

The 46.98-acre (including the 19-acre overlap area) Rossetta Property is proposed for settlement at a sale price of \$1,650,000 (\$35,121 per acre). The District's fair market appraisal for the entire Property is \$1,226,000 (27.98-acres at \$30,000 and 19-acres at \$20,000) and the Rossetta fair market appraisal for the entire property is \$1,879,000 (\$39,995 per acre). The property would be purchased on an "As-Is" and all-cash basis. Escrow would close by December 31, 2016. As part of the transaction, Mr. Rossetta would have the ability to exercise a 6-month license to enter the property after the close of escrow and remove any remaining personal items (the District would be responsible for removing all remaining items at an estimated cost of \$50,000 to \$100,000). Finally, Mr. Rossetta may install a small sign/plaque on the Property to recognize his parents.

FISCAL IMPACT

Beginning in FY2016-17, the District amended its approach on budgeting for land acquisitions. For FY2016-17, the District only budgeted for costs associated with appraisals, property purchase research, and early negotiations. Land acquisitions bought before the Board for approval would include a budget adjustment/increase to the adopted budget.

If the purchase of the Rossetta Property is approved, a budget adjustment/increase of \$1,650,000 to Fiscal Year 2016-17 budget is required.

Rossetta Property Purchase Amount	\$1,650,000*
Total Land purchases approved to date for FY 2016-2017	\$ 700,000
Total Land Purchases (if approved)	\$2,350,000

*The District currently has \$452,225 in the State condemnation escrow account that would be refunded to the District if the purchase is approved.

BOARD COMMITTEE REVIEW

This item was not reviewed by a Board Committee.

PUBLIC NOTICE

Property owners of land located adjacent to or surrounding the subject property have been mailed a copy of the agenda for this meeting. All notice required by the Brown Act has been provided.

NEXT STEPS

Upon approval by the Board of Directors, staff would proceed with the close of escrow by December 31, 2016, and take the next steps identified in the enclosed PUMP. The District's South Area Outpost Field Office would manage the property as an addition to the Preserve.

Attachments:

1. Resolution Authorizing Acceptance of Purchase and Settlement Agreement Authorizing General Manager or Other Officer to Execute Certificate of Acceptance of Grant to District, Amending the Budget for Fiscal Year 2016-17, Authorizing General Manager to Execute any and all Other Documents Necessary or Appropriate to Closing of the Transaction (Sierra Azul Open Space Preserve - Lands of Rossetta), and Authorizing the General Counsel to Dismiss the Related Condemnation Action.
2. Resolution authorizing the General Manager to file, upon close of escrow, a notice of Williamson Act nonrenewal.
3. Location Map

Responsible Department Manager:
Michael Williams, Real Property Manager

Prepared by:
Allen Ishibashi, Senior Real Property Agent

RESOLUTION 16-__

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF PURCHASE AND SETTLEMENT AGREEMENT, AMENDING THE FISCAL YEAR 2016-17 GENERAL FUND CAPITAL BUDGET, AUTHORIZING GENERAL MANAGER OR OTHER APPROPRIATE OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT TO DISTRICT, AUTHORIZING GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (SIERRA AZUL OPEN SPACE PRESERVE - LANDS OF ROSSETTA), AND AUTHORIZING THE GENERAL COUNSEL TO DISMISS THE RELATED CONDEMNATION ACTION, AND AMEND THE BUDGET FOR FISCAL YEAR 2016-17.

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 Purchase and Settlement Agreement between Michael Rossetta, a single man, and the Midpeninsula Regional Open Space District, a copy of which purchase and settlement 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 acquire the real property described therein (“the Rossetta Property”).

SECTION TWO. The Board of Directors of Midpeninsula Regional Open Space District authorizes the expenditure of \$1,650,000.00 covering the purchase and settlement of the Rossetta Property, including a deposit of \$10,000.00.

SECTION THREE. The Board of Directors of Midpeninsula Regional Open Space District authorizes amending the Budget and Action Plan for the Midpeninsula Regional Open Space District for Fiscal Year 2016-17 by increasing the General Fund Capital budget in the amount of \$1,650,000.00. Except as herein modified, the FY 2016-17 Budget and Action Plan, Resolution No. 16-25 as amended, shall remain in full force and effect.

SECTION FOUR. The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute a Certificate of Acceptance for the Grant Deed on behalf of the District.

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

SECTION SIX. The General Manager or the General Manager’s designee is authorized to expend up to \$10,000.00 to cover the cost of title insurance, escrow fees, and other miscellaneous costs related to this transaction and up to \$100,000 for the clean-up of the property.

SECTION SEVEN. The General Counsel is authorized to dismiss the pending condemnation action, *Midpeninsula Regional Open Space v. Michael Rossetta, et al* (Santa Clara

County Superior Court Case Number 1-15-CV-289568), after close of escrow as provided by the settlement agreement.

SECTION EIGHT. 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
Board of Directors

President
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

RESOLUTION 16-__

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT PURSUANT TO GOVERNMENT CODE SECTION 51245 APPROVING THE FILING OF A NOTICE OF NONRENEWAL OF THE WILLIAMSON ACT LAND CONSERVATION AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND JAMES F. PECKHAM

WHEREAS, the Midpeninsula Regional Open Space District (“District”), upon close of escrow, will own a parcel of land in the County of Santa Clara, known as Assessor Parcel Number 562-22-017, which is subject to a Land Conservation Agreement between the County of Santa Clara and James F. Peckham under the California Land Conservation Act of 1965 (also known as the Williamson Act); and

WHEREAS, the mission of the District includes preservation of open space lands in perpetuity so that acquisition of such contracted lands accomplishes the purposes of the Williamson Act; and

WHEREAS, the procedures established by the County of Santa Clara for administering such contracts serve no useful purpose when land is owned by a park or open space agency preserving such lands’ open space resources, yet such procedures can impose a procedural and financial burden on the District’s ability to efficiently carry out its operations; and

WHEREAS, the benefits of reduced property tax in exchange for such land preservation is no longer relevant once the District has acquired such lands, as the District is exempt from property tax in most situations.

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

SECTION ONE. Authorizes the General Manager of the District, pursuant to Government Code Section 51245, to file a notice of nonrenewal with the County of Santa Clara for Assessor’s Parcel Number 562-22-017 upon close of escrow.

SECTION TWO. Authorizes the General Manager as agent of the District to execute and submit all documents and take such actions as may be necessary or convenient to accomplish the purpose of this Resolution, or to comply with the requirements of the County of Santa Clara or the State Williamson Act, in order to accomplish the nonrenewal of the contract described above.

* * * * *

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
Board of Directors

President
Board of Directors

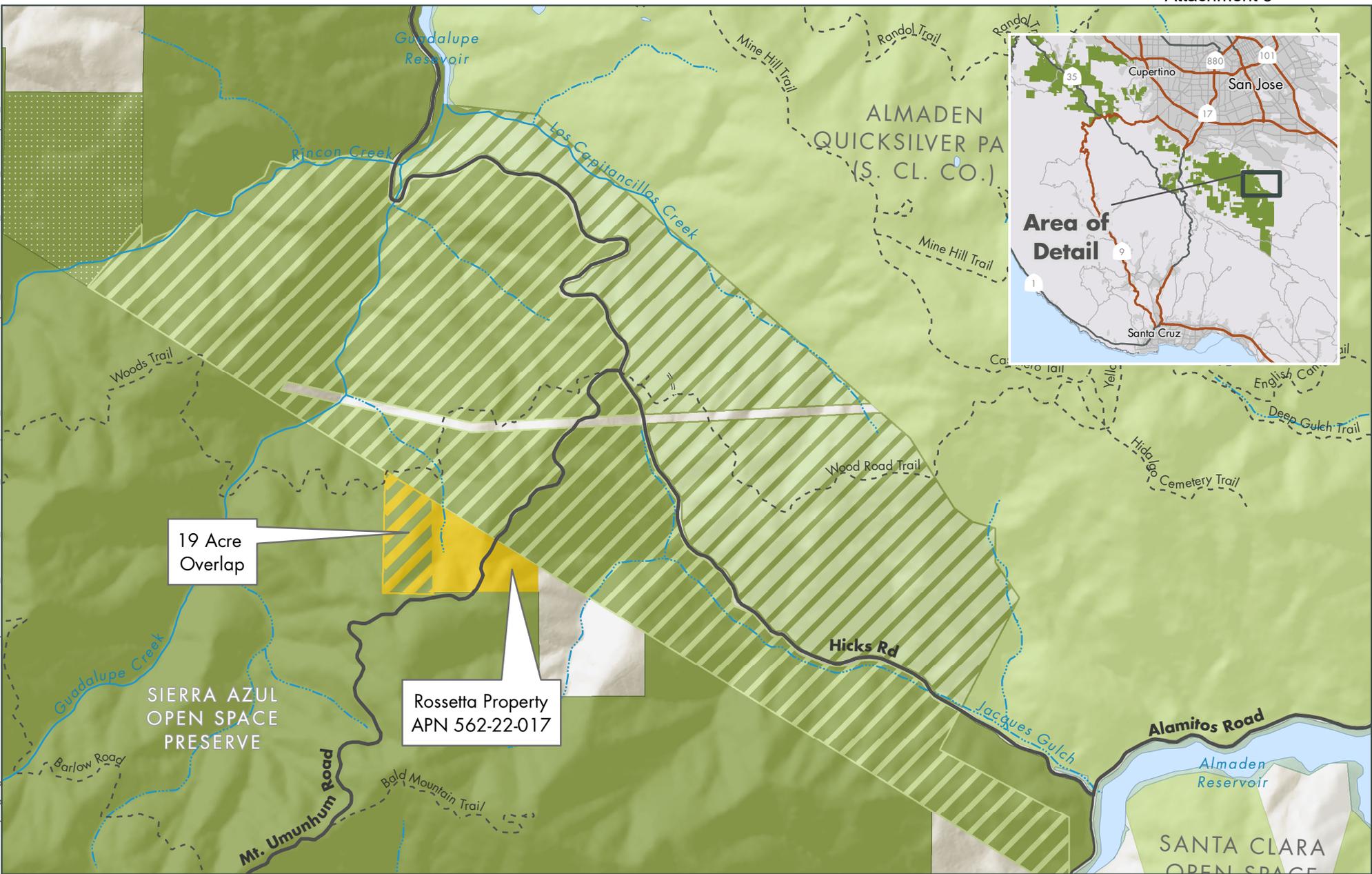
APPROVED AS TO FORM:

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

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19 Acre Overlap

Rossetta Property
 APN 562-22-017

Rossetta Property

- MROSD Preserves
- Other Protected Lands
- Private Property
- Watershed Land (Public)
- Non-MROSD Easement Over MROSD Preserve
- MROSD Easement Over Other Open Space
- Highlighted Property
- Dispute Area

Midpeninsula Regional
 Open Space District
 (MROSD)
 August 2016



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.