



Midpeninsula Regional
Open Space District

REAL PROPERTY COMMITTEE

R-17-27
February 28, 2017

AGENDA ITEM 3

AGENDA ITEM

Review and Reaffirmation of the use of Rights of First Offer and Rights of First Refusal to purchase and preserve open space lands, and General Manager authorization to initiate negotiations on specific properties.

GENERAL MANAGER'S RECOMMENDATION

Forward a recommendation to the Board of Directors to reaffirm interest in outstanding Rights of First Offer and Rights of First Refusal to preserve open space lands, and to authorize the General Manager or General Manager's designee to initiate negotiations upon notification of owners' intent to sell certain properties.

SUMMARY

One of the land acquisition tools used by the Midpeninsula Regional Open Space District (District) to purchase desired open space lands is to secure Rights of First Offer and Rights of First Refusal (rights of purchase, rights) from a land owner. This report provides a recent history on the use of rights of purchase; reviews properties where the District currently holds rights; asks the Real Property Committee (RPC) to reaffirm District interest in those properties; and affirm General Manager authorization to initiate negotiations when a notice of intent to sell has been received.

MEASURE AA

This is not a Measure AA project.

DISCUSSION

A Right of First Offer or a Right of First Refusal granted to the District by a property owner provides the District the first chance to buy a property or match an offer received from an interested third party. The District's use of these rights of purchase have been an effective tool to secure future opportunities to purchase open space lands as they become available for sale.

A Right of First Offer obligates the property owner to offer a property for sale to the District before putting it on the open market. This right typically has an election to purchase timeline of 60 days. This timeline allows for the District and seller to obtain an independent appraisal to determine the fair market value of the property as part of the negotiation process.

A Right of First Refusal allows the District the opportunity to match a purchase offer received from a bona fide third party buyer or decline to purchase. A Right of First Refusal has a shorter

election to purchase timeline, typically 15 to 30 days. The District can request an extension, but the seller is not obligated to grant the request.

Normally, when any property becomes available for purchase, the RPC is given an opportunity to review or tour the property and evaluate its value to the District's mission. The RPC then makes a recommendation to the full Board of Directors whether to proceed with the purchase. The typical process to seek approval to purchase takes a minimum of 60 days from when an interested seller first contacts the District. In actuality, it may take longer if there is a need to complete an appraisal, conduct due diligence on site conditions, negotiate terms of purchase, and schedule property tours.

The District tries to negotiate and secure both Rights of First Offer and Rights of First Refusal on properties of value to the District when possible and follows a similar Board approval process to purchase these rights. All of the District's existing rights of purchase were previously approved by the Board of Directors as part of a past land purchase or transaction. When secured, these rights of purchase are usually recorded on title. Securing either Rights of First Offer or Rights of First Refusal does not commit the District to purchase a property, as any purchase of property requires the full Board of Directors approval at the actual time of offering. Many years can elapse between when rights of purchase are secured and when the opportunity to exercise those rights emerges.

Since the District's formation in 1972, the District has negotiated rights of purchase on many parcels that then led to the purchase of some significant properties or eliminated inholdings in various preserves. Currently, the District holds rights of purchase on eleven properties within or adjacent to seven Open Space Preserves (OSP), with varying terms.

RIGHTS OF PURCHASE

Recent use of Rights of Purchase

Since 2010, the District has exercised or waived its rights of purchase on four important open space properties identified below:

1. In 2010, the District exercised its Rights of First Refusal to purchase the 97.5-acre Silva property as an addition to Russian Ridge Open Space Preserve (see report R-10-147). The Board concurrently approved an assignment of its purchase rights to Peninsula Open Space Trust (POST), and entered into a Lease and Management Agreement with POST to manage the property while in POST ownership. These actions enabled the District to secure a \$500,000 Coastal Conservancy Grant, which was applied to the District's subsequent purchase of the property from POST in 2011. This property provided for the construction of the Mindego parking area and trailhead completed in 2014-15.
2. In 2011, the District waived its Rights of First Refusal to the 117.14-acre Hendrys Creek property so that POST could purchase the property (see report R-11-84) and allow the District time to coordinate a funding partnership with the Santa Clara Valley Water District to purchase the property from POST in 2015 (MAA #22).
3. In 2013, the District exercised its Rights of First Offer to purchase the 10.79-acre Lobner Trust property as an addition to Monte Bello Open Space Preserve (see report R-13-19). This property facilitates completion of the Upper Stevens Creek Trail connection.

4. In 2015, the District exercised its Rights of First Offer to purchase the 38.97-acre Meyer/Connolly property along Mount Umunhum road (MAA# 23) as an addition to Sierra Azul Open Space Preserve (see report R-13-132) to secure public rights to a portion of the road.

In the case of the Lobner Trust, and the Meyer/Connolly properties, the District had very short timelines to exercise the rights of purchase. For the Lobner Trust property, the District had 21 days to exercise its Rights of First Offer in the midst of the December holiday season. For the Meyer/Connolly property, the District had 10 days to exercise its Rights of First Refusal. In both cases, the District needed to negotiate timeline extensions with the property owners, and even with the extended timelines, was unable to take these land purchase opportunities first to the RPC as is typically done with proposed new land purchases.

Rights of Purchase (see Exhibit 1)

The table below identifies eleven (11) properties, totaling 585 acres, which are subject to rights of purchase. Each of these properties retain their value to the District. In some instances, more than thirty years have elapsed since these rights were granted and each has timeline constraints. Because of timeline constraints inherent in these rights, it is important to review and reaffirm all of the properties subject to the rights of purchase. To do so, the RPC is asked to reaffirm the District's interest in these properties. The oldest rights of purchase date back to 1979 and the most recent rights of purchase were recorded in 2015.

Property Owner/Preserve	Acres	Board Report Date & #	Right of 1st Offer Right of 1st Refusal	Election to Purchase Timeline
Gallaway, El Corte de Madera Creek OSP	1.7	9/5/2012 R-12-50	Right of 1 st Offer Right of 1 st Refusal	60 days 30 days
Incline Trust (Rapley Ranch), Russian Ridge OSP	14	5/26/2004 R-05-130	Right of 1 st Offer* Right of 1 st Refusal *	30 days 15 days
Struggle Mountain, Foothill OSP	8.53	6/13/1979 R-79-20	Right of 1 st Refusal	21 days
Cummings, Skyline Ridge OSP	16	1/10/2003 R-02-127	Right of 1 st Offer Right of 1 st Refusal	60 days 21 days
Jenkins, Skyline Ridge OSP	53.6	6/10/1984 R-84-24	Right of 1 st Offer Right of 1 st Refusal	60 days 30 days
Lehigh Quarry (2 parcels), Rancho San Antonio OSP	55 210	8/13/2014 R-14-98	Right of 1 st Offer Right of 1 st Refusal	60 days 60 days
Consigny, Picchetti Ranch OSP	9.14	12/2/1980 R-80-23	Right of 1 st Refusal	15 days
Harris, Fremont Older OSP	1.03	R-88-55 7-13-1988	Right of 1 st Refusal	21 days
Stanton, Sierra Azul OSP	120.9	12/12/2008 R-08-134	Right of 1 st Offer Right of 1 st Refusal	60 days 21 days
Balaban Trust, Sierra Azul OSP	95.4	12-28-2011 R-11-117	Right of 1 st Offer	60 days

*Unrecorded held by POST assignable to the District

Gallaway Property, El Corte de Madera Creek Open Space Preserve. The 1.7-acre Gallaway property was retained by one of the family members as part of the District's purchase of the 58.2 Gallaway addition to El Corte de Madera Creek Open Space Preserve in 2012. This parcel is located at the terminus of the upper access road between the Gallaway and the 30.78-acre Sempervirens Fund properties as an inholding to the Preserve (see Exhibit 2).

Incline Trust Property, Russian Ridge Open Space Preserve. The seller retained the 14-acre Incline Trust property when POST purchased the 151-acre Rapley Ranch property in 2004. The District subsequently purchased the Rapley Ranch property from POST in 2006 as an addition to Russian Ridge Open Space Preserve. The 14-acre undeveloped parcel is located along the entrance road to the former Rapley Ranch property and surrounded by the Preserve on three sides. POST has an unrecorded right of first offer and right of first refusal to the subject property, which is assignable to the District (see Exhibit 3).

Struggle Mountain Property, Foothills Open Space Preserve. In 1979, the District secured a Right of First Refusal on the 8.53-acre Struggle Mountain property. The property is located on Page Mill Road, adjacent to the Foothills Open Space Preserve to the east and to the Los Trancos Open Space Preserve to the south and west across Page Mill Road. The property is improved with residential structures occupied by the Struggle Mountain community (see Exhibit 4).

Cummings Property, Skyline Ridge Open Space Preserve. The seller retained the 16-acre Cummings property as an inholding in Skyline Ridge Open Space Preserve as part of the District's 768-acre Big Dipper Ranch purchase in 2003. The District secured a Grant of Right of First Offer and Right of First Refusal at that time. The 16-acre property is improved with a residence and out buildings (see Exhibit 5).

Jenkins Property, Skyline Ridge Open Space Preserve. The seller retained the 53.6-acre Jenkins property when the District purchased the 54-acre Jenkins addition to Skyline Ridge Open Space Preserve in 1984. The property includes a residence and garage with an apartment. It also contains densely wooded forest (redwoods and Douglas fir) and the confluence of Peters and Lambert Creeks, which provides potential spawning habitat for steelhead trout and coho salmon (see Exhibit 5).

Lehigh Quarry Properties, Ranch San Antonio Open Space Preserve. The District holds purchase rights on two properties owned by Lehigh Quarry totaling 265 acres. A 210-acre parcel provides a scenic buffer to the Rancho San Antonio Open Space Preserve and the PG&E trail. The 55-acre parcel provides a scenic backdrop to the eastern portion of the PG&E trail, the Preserve, and Ranch San Antonio County Park. Rights of purchase were secured in 2014 as part of an agreement to accept two trail easements, two rights of purchase, and a conditional grant deed conveyance in exchange for dismissal of appeal in *Midpeninsula Regional Open Space District v. County of Santa Clara et al*, Court of Appeal Case No. H040839 (Lehigh EIR challenge) (see Exhibit 6).

Consigny Property, Picchetti Ranch Open Space Preserve. The 9.14-acre Consigny property is improved with a residence and located adjacent to Lower Stevens Creek County Park to the east and south. In 1980, the District recorded a Restriction Agreement covering 50 acres of property held by Consigny, including a Right of First Refusal, as part of the District's purchase of 97 acres of the total 147-acre Consigny holding. In 1982, the District waived its Right of First Refusal over a portion of the 50 acres so that POST could purchase a 40-acre portion, which was

later transferred to Santa Clara County Parks. Later, Cal Fire acquired a small portion of the property. The District's Right of First Refusal is still effective on the remaining 9.14-acre Consigny property. The Restriction Agreement held by the District also includes development and density limitations, advisory design review, and a public trail easement on the owner's remaining land (see Exhibit 7).

Harris Property, Fremont Older Open Space Preserve. The 1.03-acre Harris property is improved with a modest single-family residence and garage at the end of Prospect Road and is an inholding to the Preserve. In 1988, the District secured a Grant of Right of First Refusal when purchasing a vacant 1.22-acre parcel surrounded by the Preserve. As an inholding, the property would be very visible if improved with a large estate residence, and may be desirable to the District as a future employee residence (see Exhibit 7).

Stanton Property, Sierra Azul Open Space Preserve. In 2008, the District secured a Grant of Right of First Offer and Right of First Refusal on 120.9 acres as part of an agreement to purchase an undivided half interest in the adjacent 96-acre Stanton property. The 120.9-acre property is located off Reynolds Road and surrounded by the Rancho de Guadalupe area of the Sierra Azul Open Space Preserve on four sides, with two private improved properties to the west and one improved private property to the north. The Stanton property provides a connection to the "New Hagan" meadow area of the Preserve. The property is improved with two trailer residences and several unoccupied structures (see Exhibit 8).

Balaban Property, Sierra Azul Open Space Trust. The 95.4-acre Balaban property is a large inholding in the Alamitos Creek watershed area of Sierra Azul Open Space Preserve. In 2011, the District secured a Grant of Right of First Offer as part of an agreement to purchase 83 nearby acres from the property owner. The property is improved with a trailer residence and a recreational pond along a ridgeline (see Exhibit 9).

In addition, the District holds rights to purchase the remaining term interest in two properties sold to private parties. These term ownership interests are identified in the table below:

Term Interest Owner/ Preserve	Acres	Date Board Report	Right of 1 st Offer Right of 1 st Refusal	Election to Purchase Timeline
Guenther, Skyline Ridge OSP	10	12/17/1997 R-97-99 &109	Right of 1 st Refusal	30 days
Thornton-Simone (prior Anderson-Niswander), Long Ridge OSP	13.9	9/27/2000 R-00-120 3/24/2015 R-15-04	Right of 1 st Refusal Right of 1 st Refusal	30 days 60 days

Guenther Term Interest, Skyline Ridge Open Space Preserve. In 1997, the District sold a 50-year Term Interest in a 10-acre property off Alpine Road, including a residence, pool and pool house, cabin and outbuildings to Jake and Tamara Guenther. The term has 30 years remaining. The property is subject to reserved patrol and trail easements, design and review approval of future improvements, and a Right of First Refusal with a 30-day time to respond to any future private party purchase offers. At the end of the remaining term interest, fee title to the property reverts to District fee ownership (see Exhibit 5).

Thornton-Simone Term Interest, Long Ridge Open Space Preserve. In 2000, the District sold a 40-year Term Interest in 13.9-acre property along Portola Heights Road, including a residence, in-law unit and outbuildings, to Tom Anderson and Sherry Niswander. The property is subject to a reserved open space and trail easement as the Long Ridge Trail circles a portion of the property. The property is also subject to design and review of future improvements and a Right of First Refusal. In 2015, Anderson-Niswander sold to Thornton-Simone the remaining 26 years of their Term Interest. The District declined its Right of First Refusal to allow this Term Interest sale. As part of this sale transaction, the District negotiated an Amendment to the original agreement, which increased the District's Right of Refusal notice requirement from 30 to 60 days to give more time to consider matching any purchase offer that may be received in the future. The term has 24 years remaining. At the end of the remaining term interest, fee title to the property reverts to District fee ownership (see Exhibit 5).

General Manager Authorization to Exercise Rights of Purchase

The older rights to purchase typically have short purchase election timelines of less than 30 days. Six (6) properties have short election timelines: Incline Trust, Struggle Mountain, Cummings, Consigny, Harris, and Stanton. Shorter timelines do not provide the opportunity to bring these purchase opportunities to the RPC for individual consideration and it is not certain that the District would be able to negotiate extension of terms. As mentioned previously, most of the District's Rights or First Offer provide 60 days to allow time to obtain an independent fair market value appraisal of the property. An appraisal usually takes 30 to 40 days to complete, which leaves between 20 and 30 days for the seller and District to negotiate and agree upon the purchase price and terms. Therefore, the timelines for these future purchase opportunities may not provide an opportunity to bring these opportunities back to the RPC for consideration.

If the RPC reaffirms interest in these properties, the General Manager recommends initiating negotiations directly when the District receives a notice of intent to sell from the property owner, and inform the Board of negotiations at the earliest possible date (bi-weekly report or FYI at next Board meeting). This reaffirmation includes an understanding from the RPC that given the short timelines, these items may not come before the RPC for review, but may go instead directly to the full Board for consideration of purchase. As noted above, any future purchase of one these properties requires the full Board of Directors to consider purchase approval.

FISCAL IMPACT

No fiscal impact.

PUBLIC NOTICE

The property owners subject to the Districts right to purchase were notified of this meeting. Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Following RPC consideration, the General Manager will forward the RPC's recommendations to the full Board of Directors for consideration and approval.

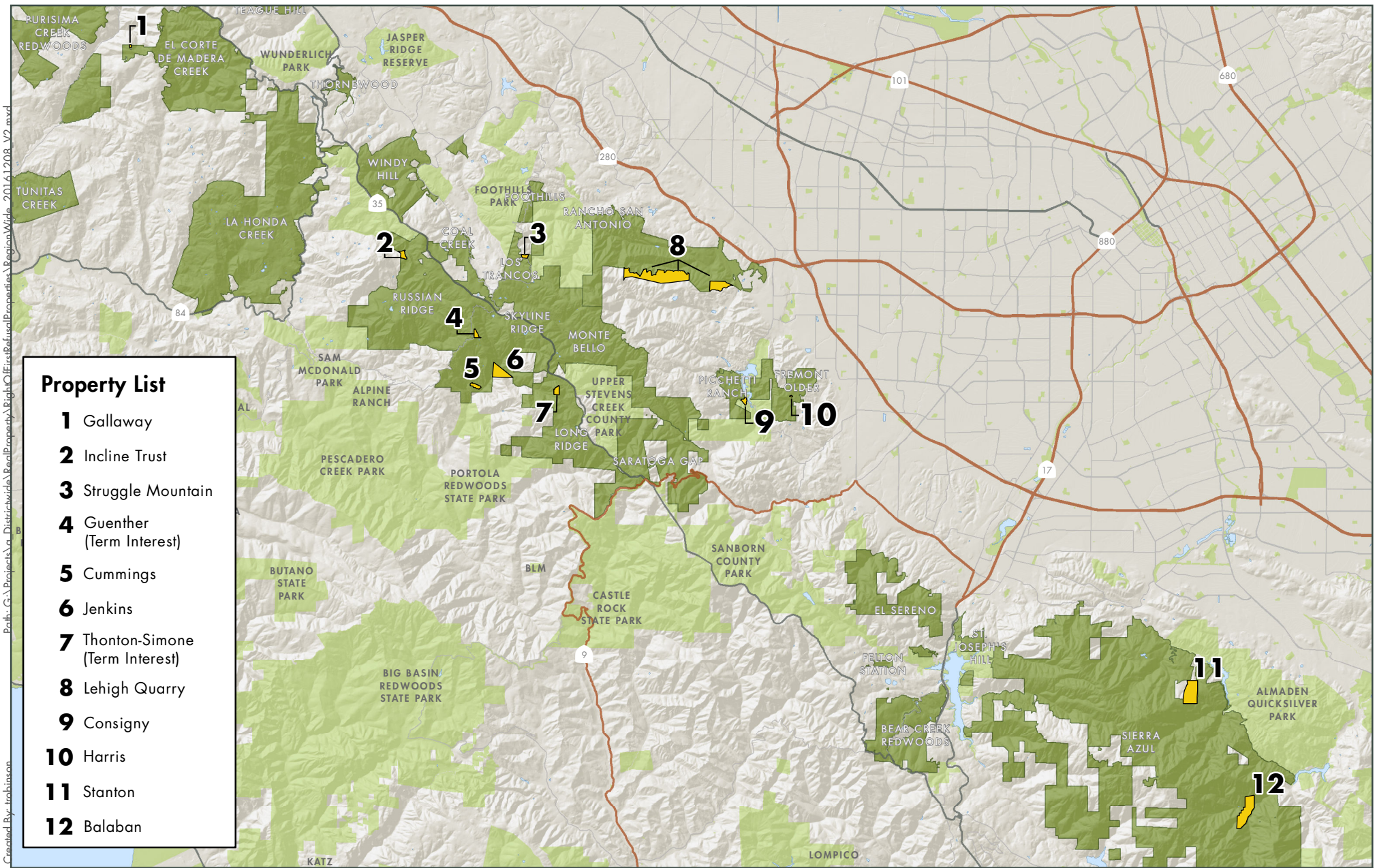
Attachments

1. Exhibits 1 through 9: Location maps for the properties described in this report

Responsible Department Head:
Michael Williams, Real Property Manager




Prepared by:
Michael Williams, Real Property Manager

Graphics Prepared by:
Torie Robinson



- Property List**
- 1** Gallaway
 - 2** Incline Trust
 - 3** Struggle Mountain
 - 4** Guenther (Term Interest)
 - 5** Cummings
 - 6** Jenkins
 - 7** Thonton-Simone (Term Interest)
 - 8** Lehigh Quarry
 - 9** Consigny
 - 10** Harris
 - 11** Stanton
 - 12** Balaban

Exhibit 1. Properties with District Rights of Purchase

-  MROSD Preserves
-  Other Protected Open Space or Park Lands
-  Subject Property

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(MROSD)
February 2017



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.

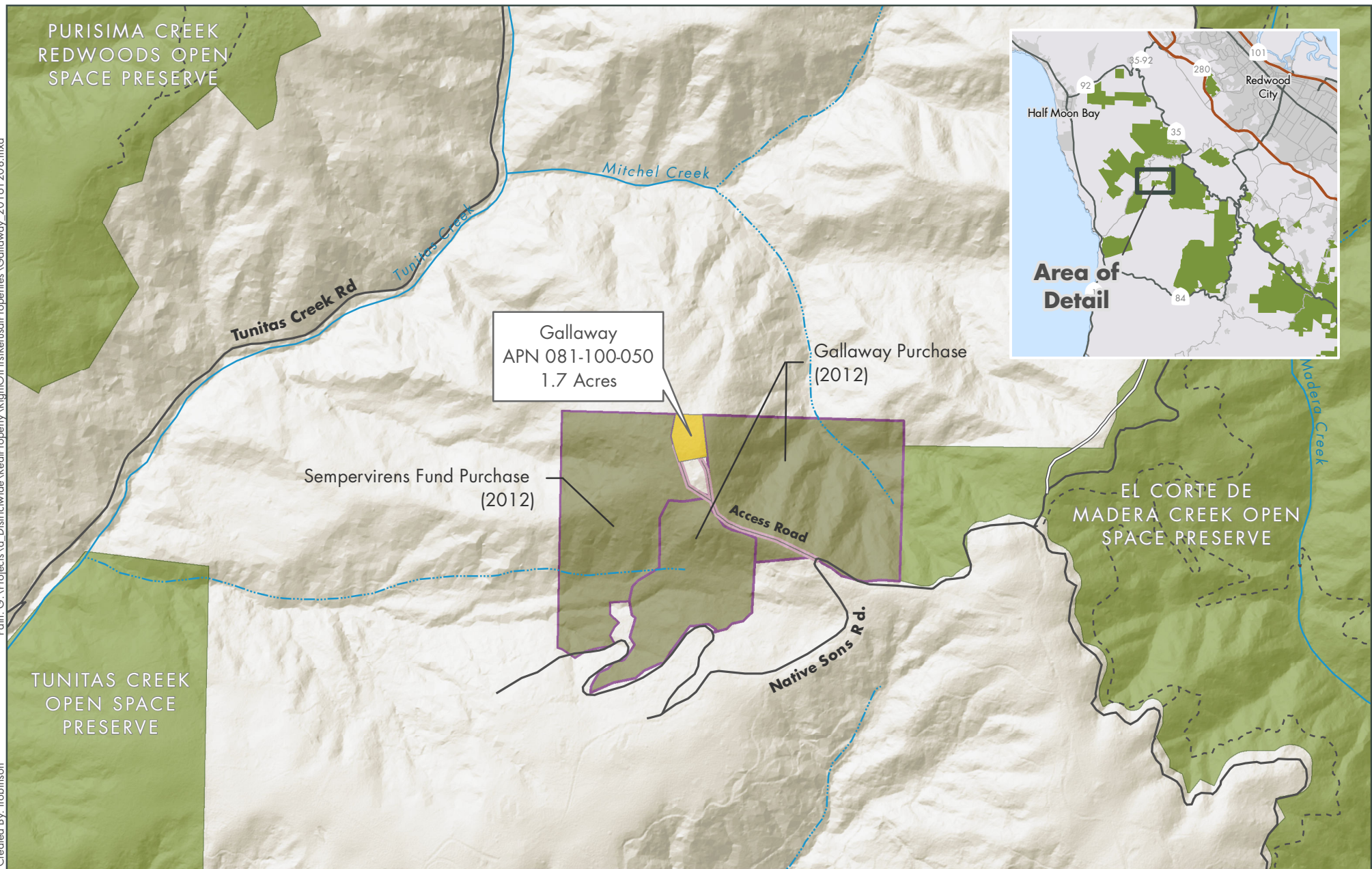


Exhibit 2. Gallaway Property (El Corte de Madera OSP)

- MROSD Preserves
- Private Property
- Subject Property
- Gallaway Purchase (2012)
- Sempervirens Fund Purchase (2012)
- Property Access Road

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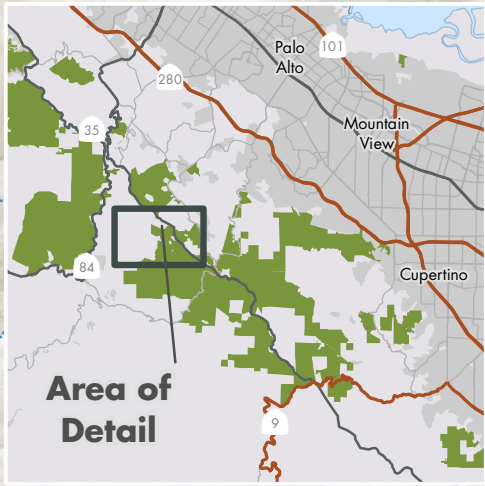
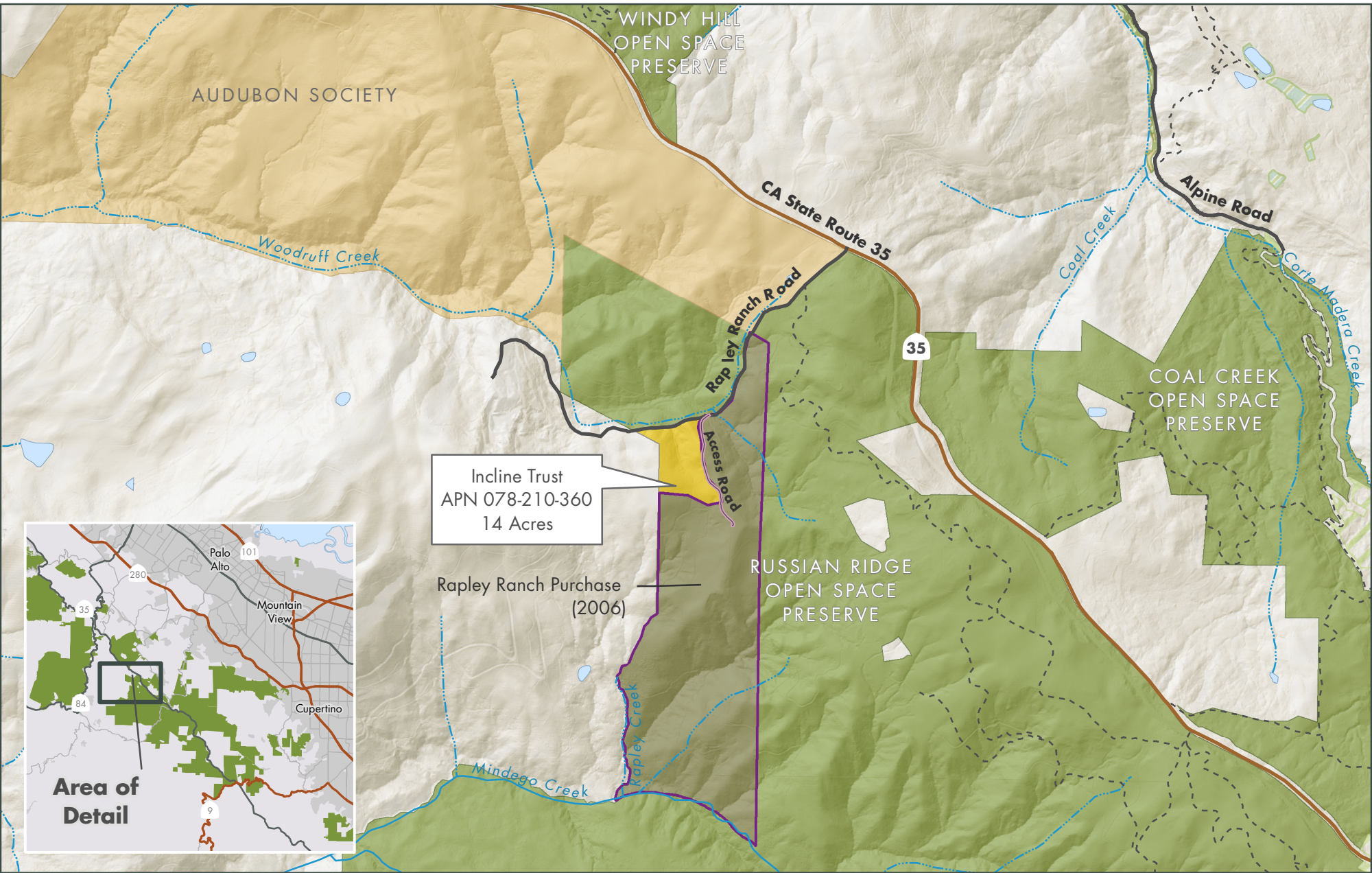








Exhibit 3. Incline Trust Property (Russian Ridge OSP)

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|--|--|
|  MROSD Preserves |  Subject Property |
|  Private Property |  Rapley Ranch Purchase (2006) |
|  Land Trust |  Property Access Road |

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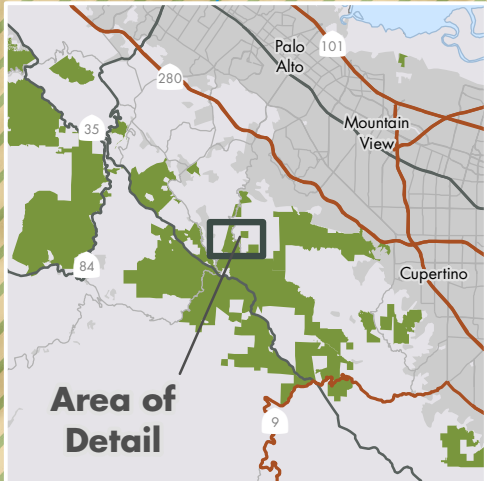
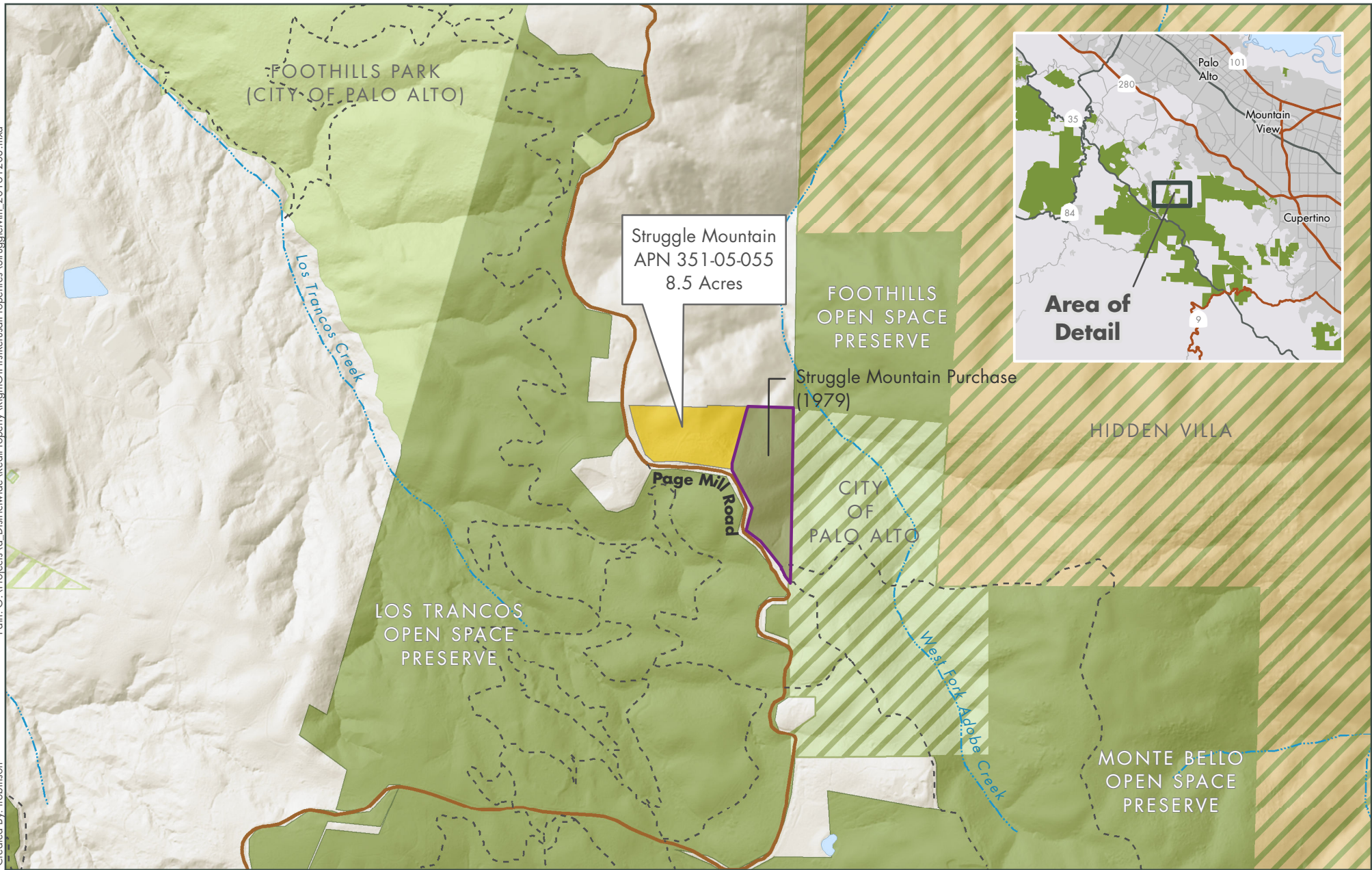


Exhibit 4. Struggle Mountain Property (Los Trancos OSP)

- MROSD Preserves
- Private Property
- Other Protected Lands
- MROSD Easement over Other Protected Land
- Non-MROSD Easement over Private Land
- MROSD Easement over Land Trust
- Subject Property
- Struggle Mountain Purchase (1979)

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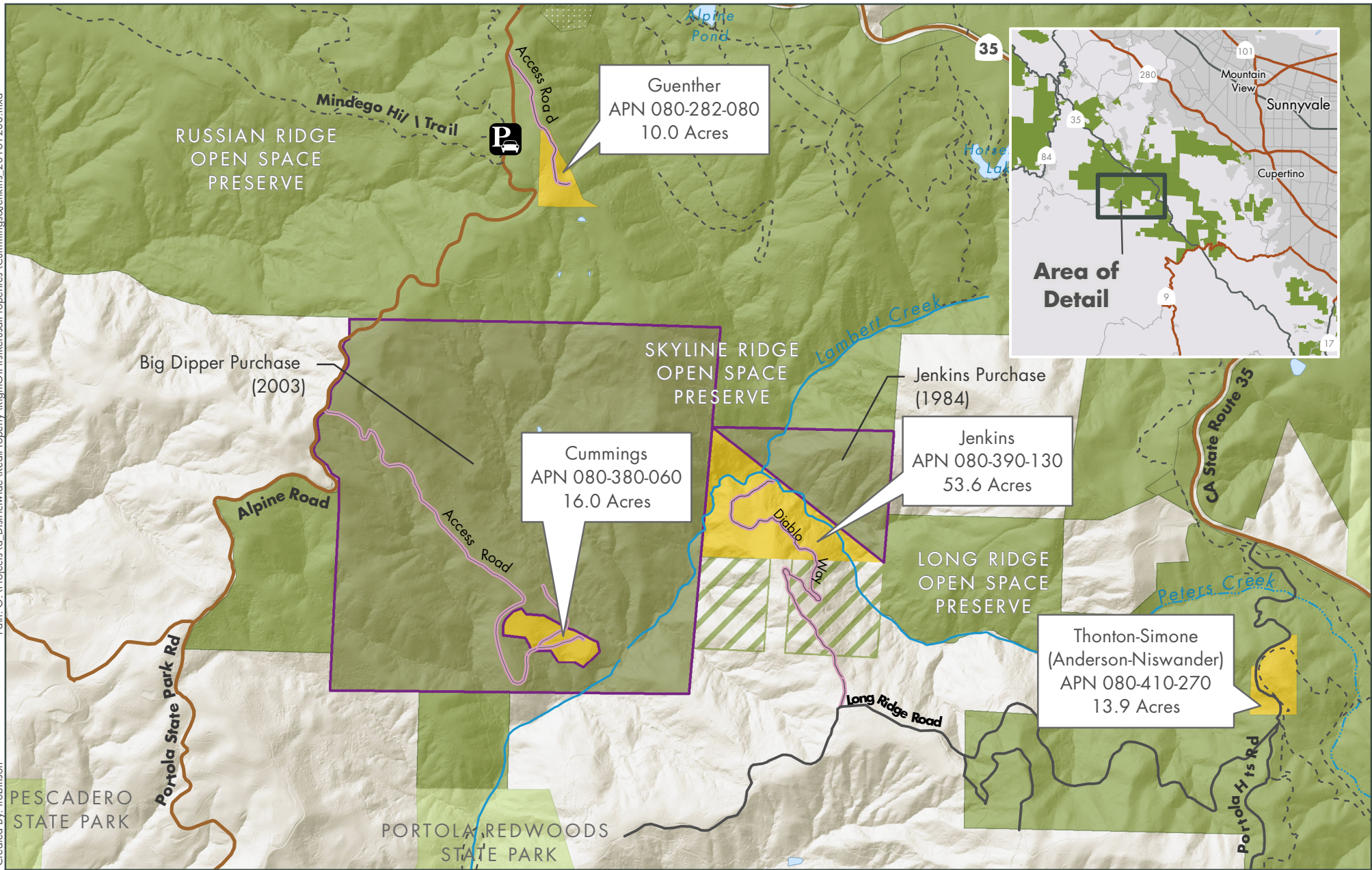


Exhibit 5. Cummings, Jenkins, Guenther, Thonton-Simone Properties (Skyline Ridge & Long Ridge OSP)

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|-----------------------|--|---|
| MROSD Preserves | MROSD Conservation or Agriculture Easement | Subject Property |
| Other Protected Lands | MROSD Easement over Land Trust | Big Dipper Purchase (2003)
Jenkins Purchase (1984) |
| Private Property | Partial MROSD Ownership | Property Access Road |

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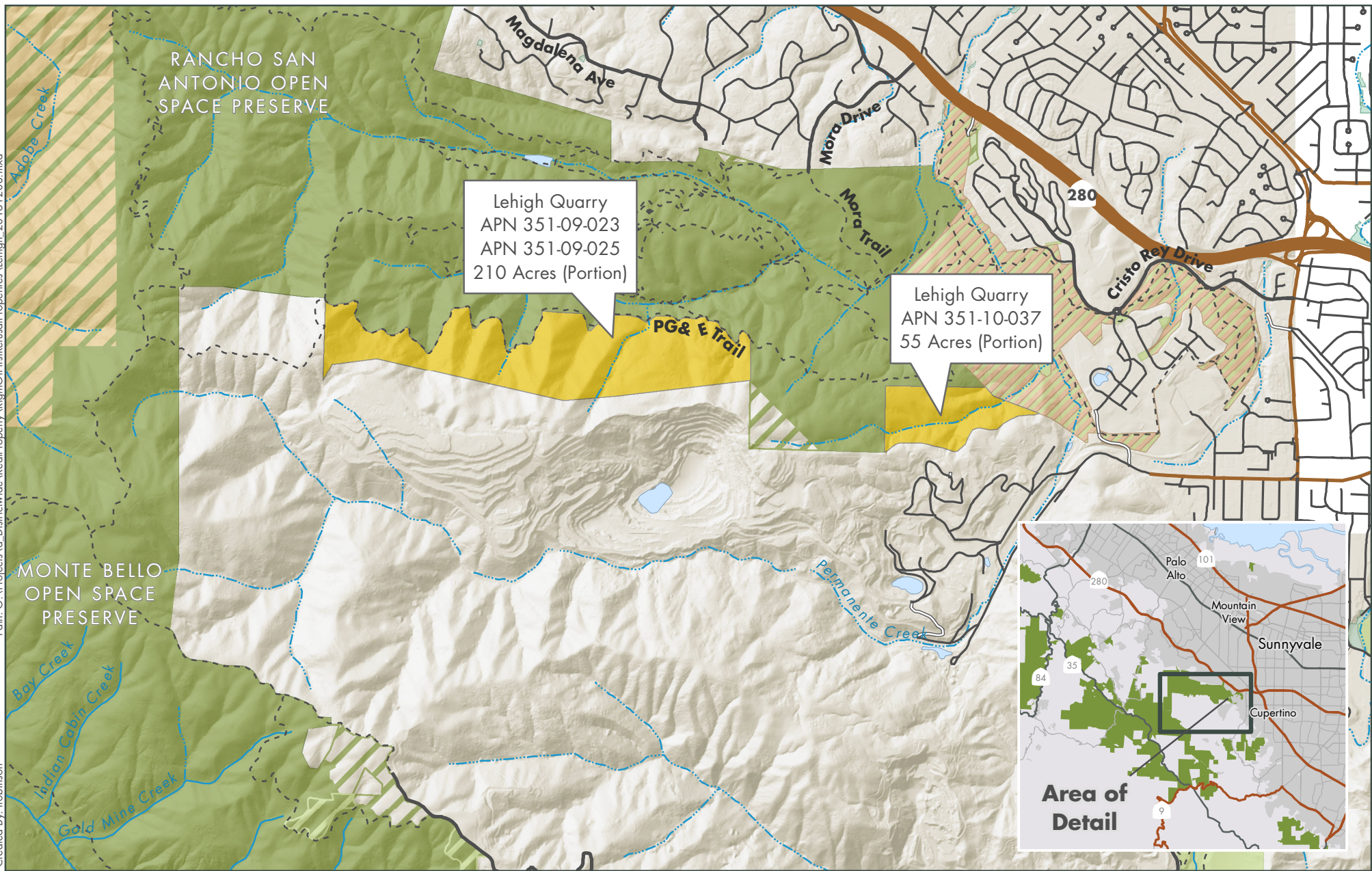









Exhibit 6. Lehigh Quarry Properties (Rancho San Antonio OSP)

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|---|--|---|
|  MROSD Preserves |  MROSD Easement over Land Trust |  Subject Property |
|  Private Property |  MROSD Mgt. Agreement over Other Protected Land | |
|  Other Protected Lands |  MROSD Easement over Private Land | |

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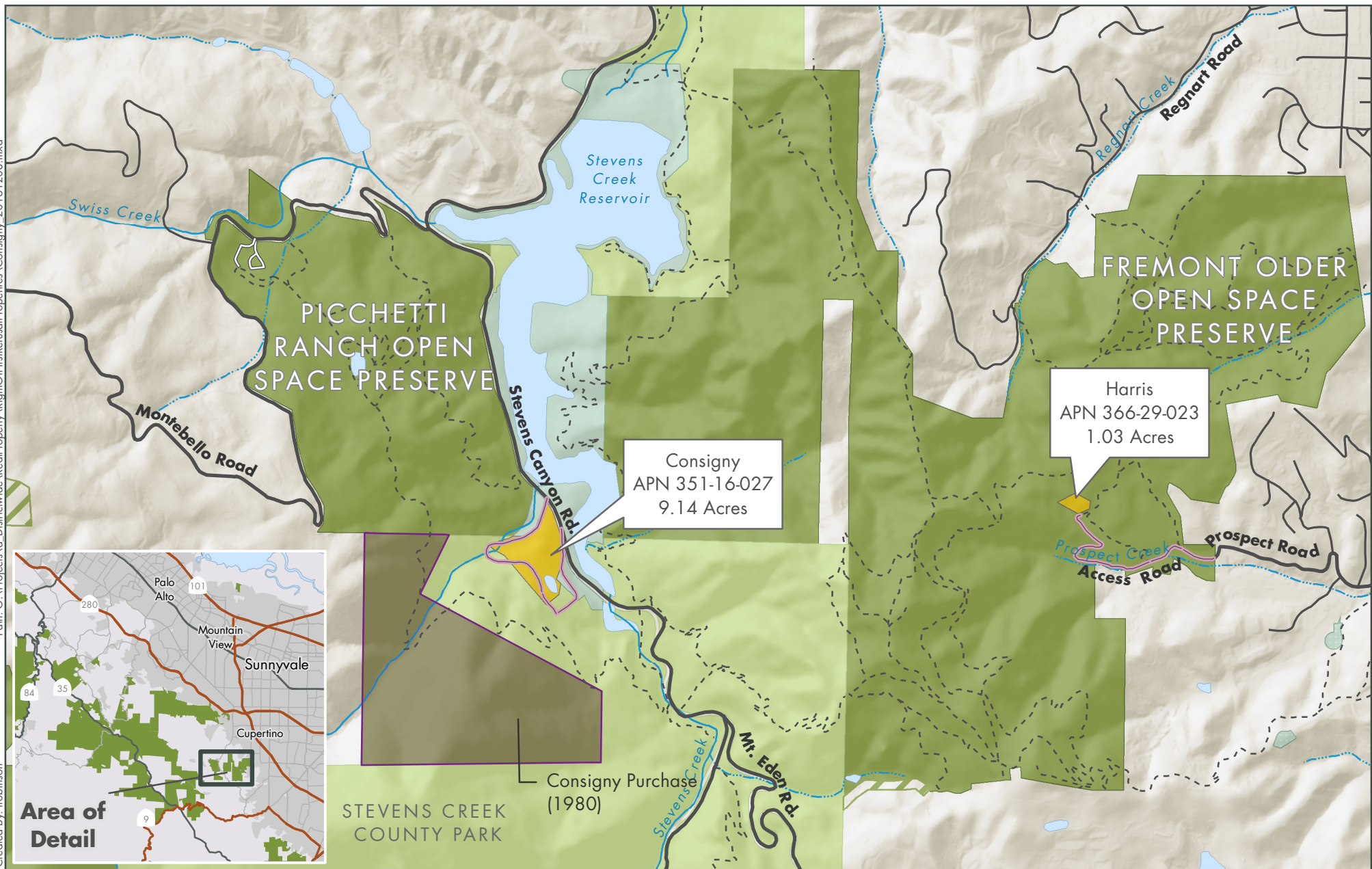











Exhibit 7. Consigny Property (Picchetti Ranch OSP) and Harris Property (Fremont Older OSP)

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|---|--|--|
|  MROSD Preserves |  Non-MROSD Easement over MROSD Preserve |  Subject Property |
|  Private Property |  MROSD Easement over Private Land |  Consigny Purchase (1980) |
|  Other Protected Lands |  Watershed Land |  Property Access Road |

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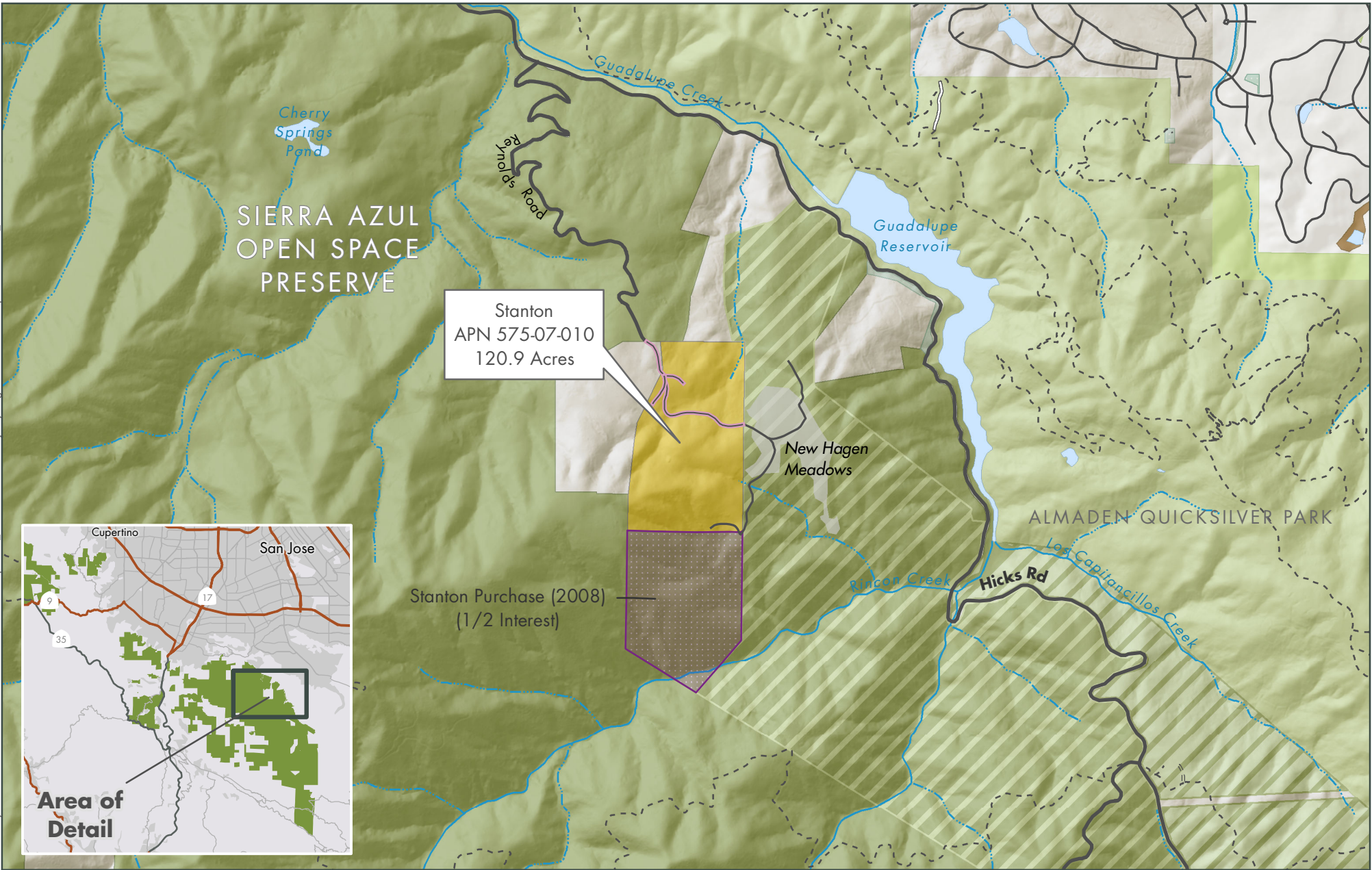











Exhibit 8. Stanton Property (Sierra Azul OSP)

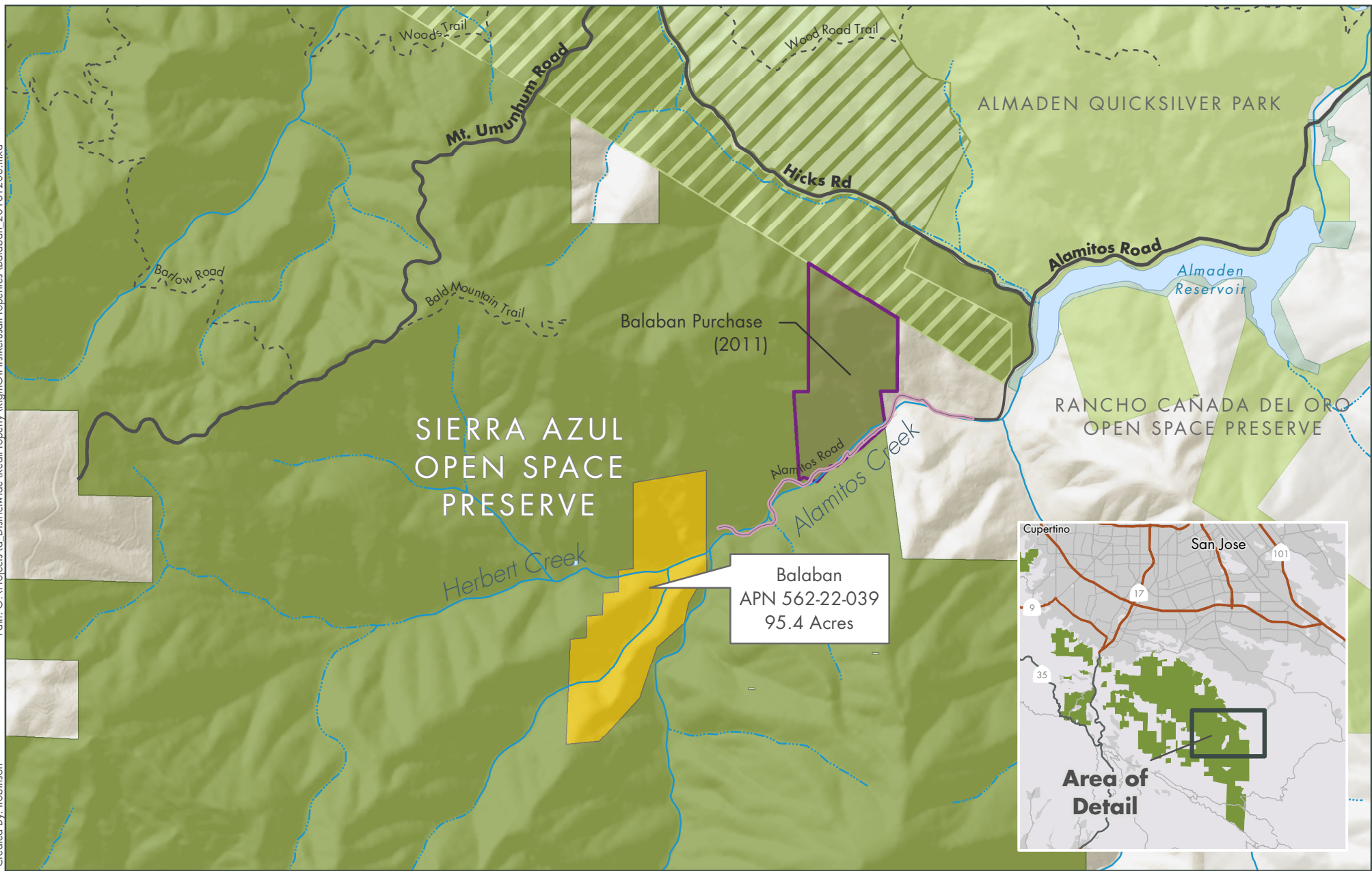
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|  MROSD Preserves |  MROSD Easement over Other Protected Land |  Subject Property |
|  Private Property |  Non-MROSD Easment over MROSD |  Stanton Purchase (2008) (1/2 Interest) |
|  Other Protected Lands |  Partial MROSD ownership |  Property Access Road |

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SIERRA AZUL OPEN SPACE PRESERVE

Balaban
APN 562-22-039
95.4 Acres

Exhibit 9. Balaban Property (Sierra Azul OSP)

- | | | |
|-----------------------|--|-------------------------|
| MROSD Preserves | MROSD Easement over Other Protected Land | Balaban Purchase (2011) |
| Private Property | Non-MROSD Easement over MROSD Preserve | Property Access Road |
| Other Protected Lands | Subject Property | |

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