



Midpeninsula Regional  
Open Space District

R-17-104  
Meeting 17-18  
August 9, 2017

## AGENDA ITEM 6

### AGENDA ITEM

Implementation of the Stipulation for Judgement and Final Order of Possession (Settlement) with Mount Umunhum Limited Partnership regarding Midpeninsula Regional Open Space District (District) vs The Mount Umunhum Limited Partnership in Superior Court of the State of California for the County of Santa Clara (Case No. 15CV289553)

### GENERAL MANAGER'S RECOMMENDATION

Adopt a Resolution implementing the grant of an access easement over Mt Umunhum Road to the Mount Umunhum Limited Partnership, with corresponding authorization for a Fiscal Year 2017-18 budget increase of \$441,000.

### SUMMARY

The Midpeninsula Regional Open Space District (District) settled the outstanding eminent domain litigation with the Mount Umunhum Limited Partnership (Partnership) on July 26, 2017. As part of the settlement, the District agreed to grant an easement to the Partnership over the portions of Mt Umunhum Road owned by the District. As part of the approval, a line item budget increase of \$441,000 to the Fiscal Year 2017-18 budget is required to implement the settlement. The following report presents the background and a description of the Settlement.

### DISCUSSION

On July 26, 2017, the District reached a settlement with the Partnership regarding the eminent domain litigation the District implemented in order to secure the needed rights to allow the general public to access the summit of Mount Umunhum. In addition, to the compensation agreed to in the settlement, the District also agreed to grant the Partnership an access easement over the District owned portions of Mt Umunhum Road.

### Background

After four years of unsuccessful negotiations to address public access to the summit area of Mt Umunhum, the District Board of Directors, as a last resort adopted a Resolution of Necessity (RON) on December 9, 2015 (see report R-15-167). The RON set out to secure through eminent domain a 60-foot wide general public access and drainage easement over Mt. Umunhum Road, a 40-foot wide fee strip of property over Mt. Umunhum Road, and a 60-foot wide patrol and maintenance easement over the road to Mt Thayer. On May 26, 2016, the District was successful in securing an order for possession for all of the property rights sought through a Stipulation and Order for Possession. The outstanding item after the District secured the property rights was the amount of compensation for the property rights secured. Negotiations have occurred since May of 2016 regarding the amount of compensation and other related terms. Agreement on the final

compensation in the amount of \$421,000 plus \$20,000 for relocation of surveillance equipment for a total of \$441,000, and deal terms including the grant of an access easement to Mount Umunhum Road to the Partnership was reached on July 24, 2017 and the Settlement was executed filed with the court on July 26, 2017. As part of the settlement, a line item budget adjustment/increase of \$441,000 to Fiscal Year 2017-18 budget is required to implement the settlement and property rights acquisition.

## **TERMS AND CONDITIONS**

The final deal terms reached in the Settlement Agreement are identified below:

1. Total cash compensation is \$421,000 (District's original offer was \$380,000)
2. District granting of an access easement over Mt Umunhum Road to Partnership (valued at \$22,500).
3. Per the Stipulation and Order for Possession approved on May 26, 2016 the District also agreed to increase the reimbursable amount to relocate the Partnership surveillance equipment to \$20,000 from \$10,000 (This is in addition to the \$421,000).

## **FISCAL IMPACT**

A budget adjustment/increase of \$441,000 to the General Fund Land Purchase Fiscal Year 2017-18 budget is required.

### **FY 2017-2017 New Land Purchases:**

Mount Umunhum Limited Partnership Amount	\$441,000*
Total Land purchases approved to date for FY 2017-2018**	\$0
Total Land Purchases	\$441,000

\*The District deposited \$380,000 into the State condemnation escrow account (recorded as a deposit receivable in the District's accounting records, not an expense), which will be refunded to the District.

## **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 other notice required by the Brown Act has been provided as well.

## **CEQA COMPLIANCE**

The District Board of Directors certified the Final Environmental Impact Report for the Project at its public meeting on October 17, 2012 (R-12-91). Three Addenda to the Final Environmental Impact Report were approved by the Board, on October 17, 2012 (R-12-91), December 9, 2015 (R-15-165), and on August 10, 2016, (R-16-96). The implementation of the Settlement Agreement (payment of funds, granting of access deed perfecting a property right for a use that was evaluated in the EIR) will

result in no additional impacts to the environment beyond those identified and evaluated in the EIR and its Addenda.

**NEXT STEPS**

Staff will proceed with implementing the terms of the Settlement.

**Attachments:**

1. Resolution implementing the stipulation and judgement and final order of possession, authorizing the General Manager to execute the grant of access easement to Mount Umunhum Limited Partnership and a certificate of acceptance and any other documents necessary or appropriate to implementing the settlement, and authorizing a budget adjustment related thereto.
2. Two Location Maps

Responsible Department Manager:  
Michael Williams, Real Property Manager

Prepared by:  
Allen Ishibashi, Senior Real Property Agent

**RESOLUTION 17-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT IMPLEMENTING STIPULATION AND JUDGMENT AND FINAL ORDER OF POSSESSION, AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE GRANT OF ACCESS EASEMENT TO MOUNT UMUNHUM LIMITED PARTNERSHIP AND A CERTIFICATE OF ACCEPTANCE AND ANY OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO IMPLEMENTING THE SETTLEMENT (SIERRA AZUL OPEN SPACE PRESERVE - LANDS OF MOUNT UMUNHUM LIMITED PARTNERSHIP), AND AUTHORIZING A BUDGET ADJUSTMENT RELATED THERETO,**

---

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 implement the Settlement reached with the Mount Umunhum Limited Partnership and authorizes the General Manager to execute the grant of an access easement to Mount Umunhum Limited Partnership, a certificate of acceptance of the easements acquired by the District from the Mount Umunhum Limited Partnership, and any other document necessary or appropriate to implementing the Settlement.

**SECTION TWO.** The Board of Directors of Midpeninsula Regional Open Space District authorizes the budget adjustment/increase of \$441,000.00 to the Real Property FY 17-18 Budget (Fund 40). Except as herein modified, the FY 2017-18 Budget and Action Plan, Resolution No. 17-14 as amended, shall remain in full force and effect.

**SECTION THREE.** The General Manager and General Counsel are further authorized to approve any technical revisions to the documents, which do not involve any material change to any term of the Agreement or documents, which are necessary or appropriate to the implementation of this Settlement.

\* \* \* \* \*

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on \_\_\_\_\_, 2017, 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:**

---

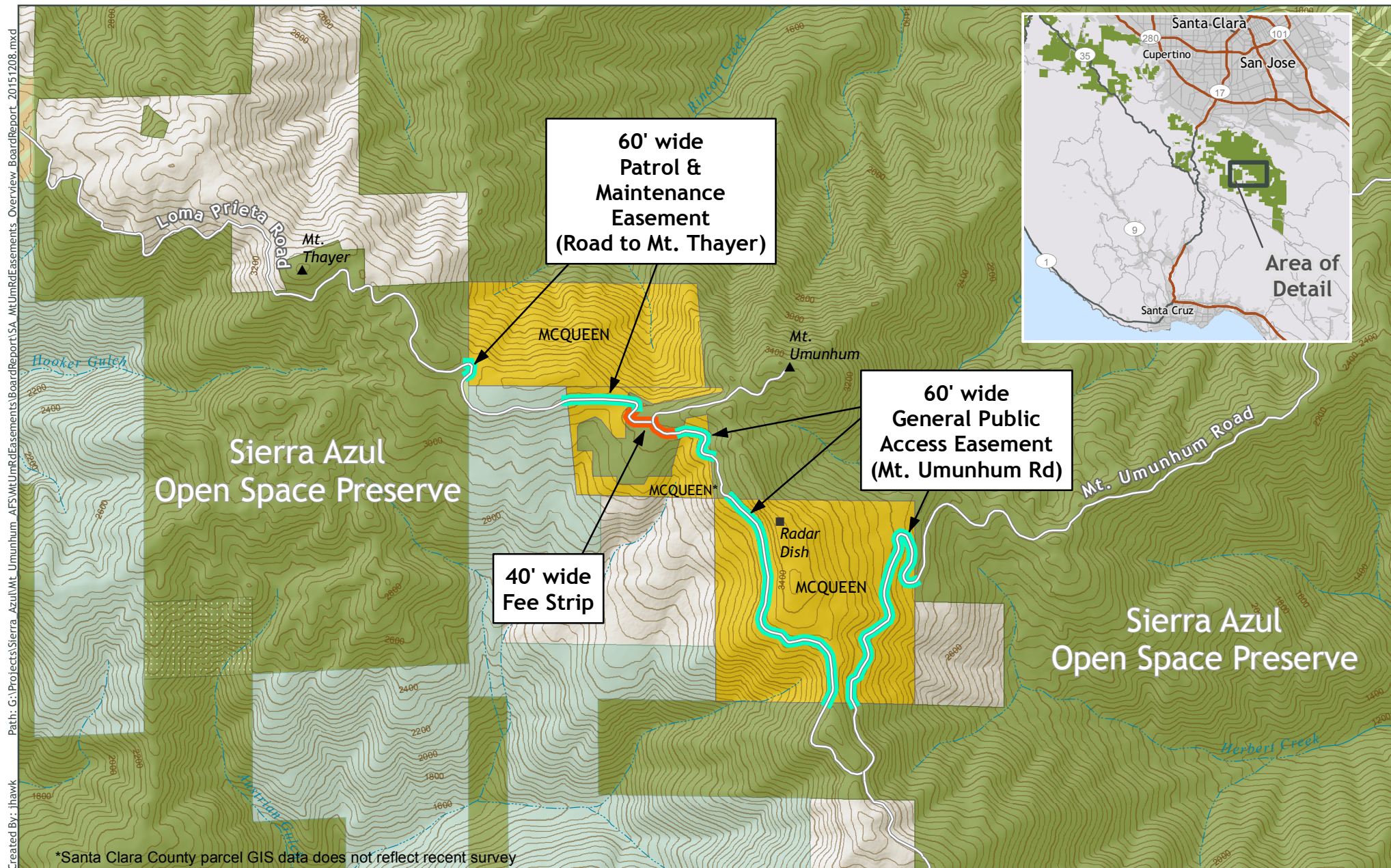
General Counsel

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





- |   |  |
|---|--|
|  MROSD Preserves       |  Highlighted Property                   |
|  Other Protected Lands |  Patrol/Maintenance Easement (60' wide) |
|  Watershed Land        |  Fee Strip (40' wide)                   |
|  Private Property      |  |

Midpeninsula Regional  
Open Space District  
(MROSD)



Miles

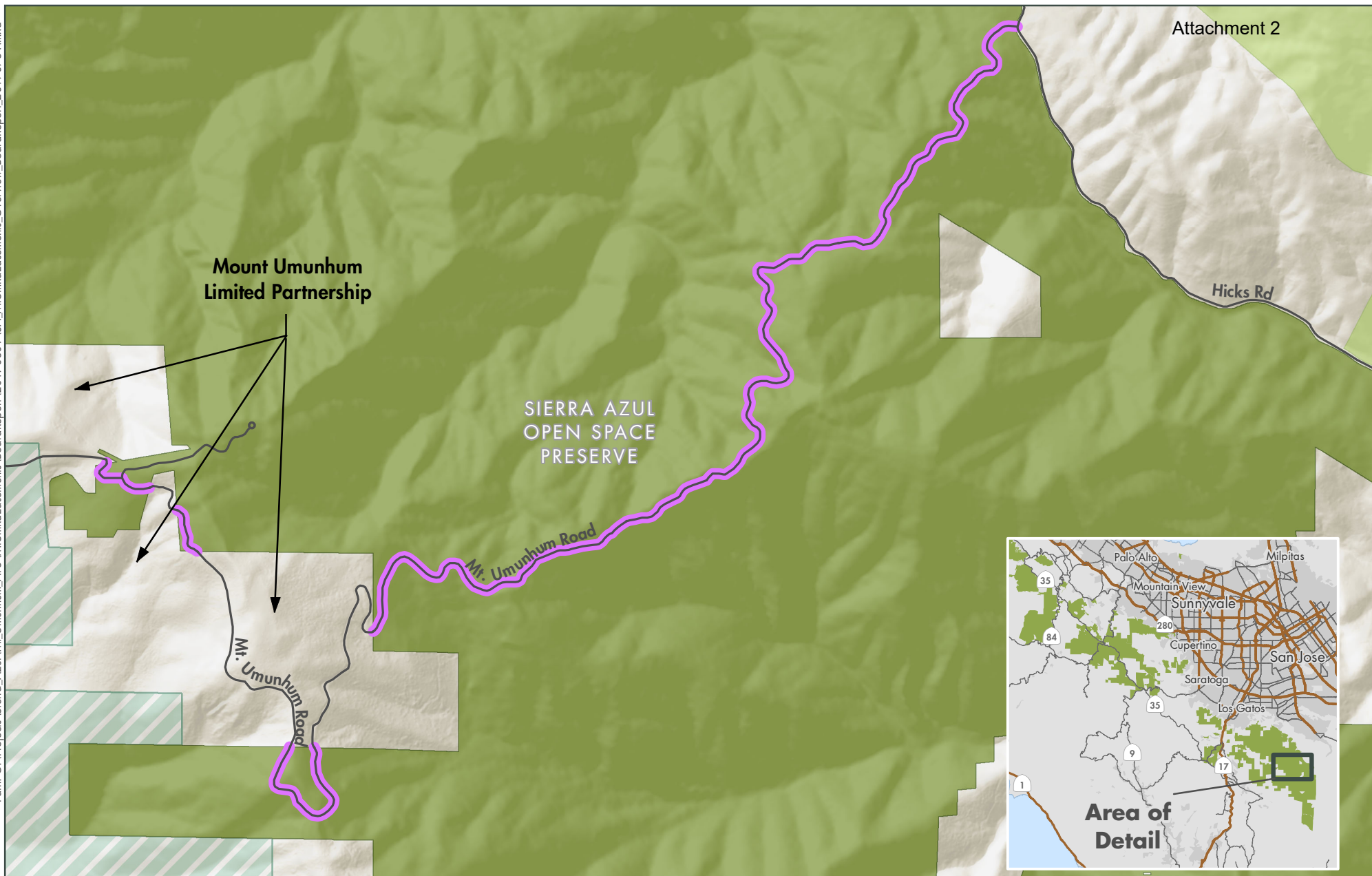
0

0.25




0.5

December, 2015





## Mt. Umunhum Road Easement

-  MROSD Preserves
-  Other Protected Lands
-  Watershed Land
-  Private Property
-  Easement to Mount Umunhum Limited Partnership

Midpeninsula Regional  
Open Space District  
(MROSD)  
August 2017



Miles 0 0.25 0.5

