



Midpeninsula Regional
Open Space District

R-19-17
Meeting 19-03
February 13, 2019

AGENDA ITEM 4

AGENDA ITEM

Maintenance and Indemnification Agreement between the County of Santa Clara and Midpeninsula Regional Open Space District

GENERAL MANAGER'S RECOMMENDATION

Adopt a resolution approving the Maintenance and Indemnification Agreement between the County of Santa Clara and Midpeninsula Regional Open Space District and authorizing the General Manager to execute and record the Agreement.

SUMMARY

The General Manager recommends entering into a Maintenance and Indemnification Agreement (Agreement) with the County of Santa Clara (County) to satisfy the County's requirement for the District's planned at-grade pedestrian crossing within the County Right-of-Way on Bear Creek Road. This at-grade crossing is a critical improvement for the opening of west Bear Creek Redwoods Open Space Preserve, which is scheduled for June 2019. The Agreement requires the District to retain responsibility for the maintenance and repair of the improvements along and within Bear Creek Road. The District applied for a County encroachment permit to install trail crossing and safety improvements at Bear Creek Road, including advance warning signs, retroreflective flashing beacons, crosswalk striping, and other items. As a condition precedent to the approval of the encroachment permit, the County requires the District to enter into and record the Agreement acknowledging that the District is responsible for the maintenance and repair of the improvements along and within Bear Creek Road.

BACKGROUND

Bear Creek Redwoods Open Space Preserve (Preserve) was established in 1999 with the purchase of two large properties from Peninsula Open Space Trust. Purchase of the former Holmes Lumber Company property in 2010 brought the Preserve to its current size of 1,432 acres and closed the gap in the southernmost and upper reaches near Summit Road. On January 25, 2017 and following a robust, multi-year public planning process, the Board approved the Bear Creek Redwoods Preserve Plan and certified the project's Environmental Impact Report (R-17-15). The Preserve Plan is a long-term use and management plan for the Preserve that identifies phased implementation actions to protect and restore natural resources, manage cultural and historic resources, and provide opportunities for low-intensity public access and interpretation. Midpen has been working toward implementing Phase I actions, which includes design and construction of a new parking area, formalizing a trail crossing across Bear Creek Road, and opening the west area of the Preserve to public access.

As part of Phase I, the Planning and Natural Resources Committee reviewed and forwarded the schematic design of a new parking lot and trailhead to the full Board on March 28, 2017 (R-17-39). At the regular meeting of October 25, 2017, the full Board confirmed the design for the Alma College Parking Area and Trail Crossing. The approved design includes the first formal public parking area for the Preserve as a gateway to open the west area to general public use.

On April 2018, the Board awarded a construction contract to Graniterock Company for the Bear Creek Redwoods Public Access Project, including parking lot construction and a new trail crossing with safety improvements at Bear Creek Road (R-18-39). Approval of the Agreement (Attachment 2) and the subsequent encroachment permit will allow the District to install the trail crossing at Bear Creek Road. Grand Opening of the Preserve is tentatively set for June 2019.

FISCAL IMPACT

This Agreement will have no direct fiscal impact on the District. Future maintenance costs for the crossing, signs, and other site improvements will be included in future Fiscal Year Operating Budgets.

BOARD COMMITTEE REVIEW

The Planning and Natural Resources Committee forwarded the schematic design of the parking lot and trail crossing to the full Board for approval at their March 28, 2017 meeting (R-17-39).

PUBLIC NOTICE

Public notice of this Agenda Item was provided as required by the Brown Act.

CEQA COMPLIANCE

Construction of the trail crossing and safety improvements for the Bear Creek Redwoods Public Access Project is consistent with the Bear Creek Redwoods Preserve Plan Environmental Impact Report, which the Board certified on January 25, 2017 (R-17-15).

NEXT STEPS

Upon approval by the Board of Directors, the General Manager will execute the Agreement and submit it to the County. The County will record the Agreement on the District's properties on either side of Bear Creek Road. The County will subsequently issue an encroachment permit to allow the District to install the trail crossing and safety improvements at Bear Creek Road.

Attachments:

1. Resolution Approving the Maintenance and Indemnification Agreement
2. Maintenance and Indemnification Agreement APNs: 544-31-003 & 544-33-001

Responsible Department Manager:

Jason Lin, Engineering & Construction Manager

Prepared by:

Sean Smith, Capital Project Manager

RESOLUTION NO. 19-__

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING THE MAINTENANCE AND INDEMNIFICATION AGREEMENT WITH SANTA CLARA COUNTY FOR BEAR CREEK ROAD AND AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO EXECUTE AND RECORD THE AGREEMENT

WHEREAS, the District is the fee owner of that certain real property commonly known as Bear Creek Redwood Open Space Preserve (“Preserve”) located along Bear Creek Road, County of Santa Clara (“County”); and

WHEREAS, Bear Creek Road, a County maintained road, bisects the Preserve; and

WHEREAS, the District has applied to the County for an encroachment permit to install certain improvements for an at-grade pedestrian, equestrian, and bicycle trail crossing at Bear Creek Road to link the western area of the Preserve to its new parking area; and

WHEREAS, as a condition precedent to the requested encroachment permit, the District has agreed to retain all responsibility for the maintenance and repair of the improvements within the County right of way and to indemnify and defend the County from any and all liability and damage arising from the improvements; and

WHEREAS, the District and the County have memorialized the terms and conditions of their understanding in the attached Maintenance and Indemnification Agreement (“Agreement”).

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Midpeninsula Regional Open Space District hereby:

1. Approves the Agreement; and
2. Authorizes the General Manager or designee to execute the Agreement and any related documents on behalf of the District necessary to record the Agreement; and
3. Authorizes the General Manager and General Counsel to approve any technical revisions to the Agreement and documents, which are necessary or appropriate to execute or record the Agreement.

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on February _____, 2019, at a regular meeting thereof, by the following roll call 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

RECORDING REQUESTED BY:
County of Santa Clara

WHEN RECORDED MAIL TO:
The County of Santa Clara
Roads and Airports Department
101 Skyport Drive
San Jose, CA 95110-1302
Attention: Jim Walsh
APNs: 544-31-003 & 544-33-001

Space Above For Recorder's Use

MAINTENANCE AND INDEMNIFICATION AGREEMENT
APNs: 544-31-003 & 544-33-001

THIS MAINTENANCE AND INDEMNIFICATION AGREEMENT (“Agreement”) is made and entered into as of the date fully executed by Mid-peninsula Regional Open Space District, a California independent special district, (“District”) and the County of Santa Clara, a political subdivision of the State of California, (“County”), collectively referred to herein as the “Parties” and individually, a “Party”.

RECITALS

WHEREAS, the District is the fee owner of that certain real property commonly known as Bear Creek Redwood Open Space Preserve located along Bear Creek Road, County of Santa Clara, State of California, APNs 544-31-003 & 544-33-001 as depicted in the map labeled as Exhibit A, attached hereto and incorporated herein (the “Preserve”); and

WHEREAS, District is a special district organized pursuant to California Public Resources Code section 5500 *et seq.*, formed by voter initiative to acquire real property and interests therein for public park, recreation, scenic, open space and natural resource restoration and management purposes; and

WHEREAS, the District has developed and adopted the Bear Creek Redwoods Preserve Plan (“Plan”) which establishes framework for the long-term use and management of the Preserve; and

WHEREAS, the Plan identifies the development of a continuous trail network from State Route 17 at the easterly Preserve boundary to State Route 35 at the westerly Preserve boundary; and

WHEREAS, Bear Creek Road, a County maintained road, bisects the Preserve, thereby creating an eastern Preserve zone and a western Preserve zone; and

WHEREAS, the Plan calls for the formalization of an at-grade pedestrian and equestrian trail crossing of Bear Creek Road to link the Preserve entrance and its only parking area which is situated in the eastern Preserve zone with the trail system in the western Preserve zone to create a continuous trail network; and

MAINTENANCE AND INDEMNIFICATION AGREEMENT

APNs: 544-31-003 & 544-33-001

WHEREAS, District applied for an encroachment permit to install aforementioned at-grade trail crossing consisting of advanced warning signs, retroreflective flashing beacons (RRFBs), thermoplastic crosswalk striping, streetlight, Americans with Disabilities Act (ADA)-compliant detectable warning surfaces, resin paving trail surface, split rail fencing, and necessary electrical systems and appurtenances (collectively “Improvements”) within County right-of-way along Bear Creek Road (“County ROW”) as shown on Exhibit B, attached hereto and incorporated herein, to provide a formal at-grade trail crossing for the Preserve; and

WHEREAS, the District seeks to design, construct, operate, maintain, and repair trails and other improvements in order to provide a positive visitor experience while serving the environmental stewardship and restoration goals articulated in District policies; and

WHEREAS, in the event that County determines that the Improvements or any portion thereof must be removed from the County ROW, County and District intend to cooperate in identifying an alternate trail alignment, if feasible; and

WHEREAS, as a condition precedent to the requested encroachment permit, District has agreed to retain all responsibility for the maintenance and repair of the Improvements within County ROW and to indemnify and defend the County from any and all liability and damage arising from the Improvements; and

WHEREAS, the Parties desire to memorialize such agreement in writing.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation. The above Recitals are hereby incorporated herein and made a part hereof.
2. Maintenance and Repair. District shall, at no cost or expense to County, at all times during the term hereof maintain, or cause to be maintained, the Improvements in good and operational condition, which shall include periodic inspection. Improvements maintenance shall consist of the following (collectively, “Maintenance”):
 - a. Periodic inspection of the integrity and operability of the retroreflective flashing beacons (RRFBs), advanced warning signs, and thermoplastic pavement markings and prompt repair and/or replacement of any element that has been damaged or otherwise compromised and prompt removal of any graffiti or defacing that reduces the effectiveness of any element so as to maintain the operational and safety enhancements associated with the formal at-grade trail crossing.
 - b. Periodic inspection of the integrity and soundness of the split rail fence and prompt repair and/or replacement of any fence section that has been damaged or otherwise compromised so as to maintain the delineation of the trail crossing location.
 - c. Periodic inspection of the integrity and operability of the resin paving trail surface and ADA-compliant detectable warning surfaces and prompt repair and/or replacement of

MAINTENANCE AND INDEMNIFICATION AGREEMENT

APNs: 544-31-003 & 544-33-001

any section that has been damaged or otherwise compromised so as to maintain a safely traversable surface treatment.

- d. Periodic inspection of all light fixtures, structures, electrical conduits and conductors, service points and boxes, pull boxes, and any other device, feature, equipment, assembly or facility associated with the new streetlight so as to maintain good working order.
 - i. The District will be responsible for the payment of all electrical services for the new streetlight.

The District shall complete or cause to be completed all Maintenance to the satisfaction of the County Director of Roads and Airports Department. County shall have the right to monitor or otherwise evaluate the Maintenance and all work performed in connection with the Improvements. District agrees that any damages caused by Improvements (direct or indirect) to the County ROW, public drainage system, or any public structures within County ROW shall be restored to their original condition by District in its sole cost and expense. All work shall be conducted in accordance with the County’s standard specifications to the satisfaction of the Director of Roads and Airports Department.

- 3. Failure to Maintain. If District fails to perform the Maintenance as required herein, County shall give District a 30-day notice to comply with District’s Maintenance obligations under this Agreement unless there is an immediate safety concern. In the event of an immediate safety concern, or after the 30-day notice, County may, at its option, provide the Maintenance not performed by District and collect all costs incurred by County to perform the Maintenance not performed by District under the notice from County. County’s Maintenance activities shall not alter the design of the Improvements, without the written approval of the District.
- 4. Obligation to Remove. In the event the Director of Roads and Airports determines in his sole discretion that a necessary work of improvement requires that the Improvements or a portion thereof, must be removed from the County ROW, the County will give District a minimum of 30 days notice to remove those portions of the Improvements that prevent implementation of said work of improvement. In the event that District fails to remove those portions of the Improvements upon expiration of the time limit imposed by the County, the County may, at its option, remove those portions of the Improvements and collect all costs from District which costs will include administrative charges. In the event that County removes the Improvements without the concurrence of District, District’s duty to indemnify is limited as described in Paragraph 5. Upon removal of the Improvements and the payment of all costs of removal charged by the County, the District will be deemed to be fully and completely released from obligations hereunder. The County will record a release from this Agreement upon the termination pursuant to this section.

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MAINTENANCE AND INDEMNIFICATION AGREEMENT

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5. Indemnification. The District shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this MIA by District and/or its agents, employees or sub-contractors, except for any loss, injury, or damage caused by the sole negligence or willful misconduct of County’s employees or agents. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. District shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the District contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

6. Insurance. District shall provide insurance as described in Exhibit “C” – “Insurance Requirements”, attached hereto and incorporated herein.

7. Integrated Pest Management. The County has adopted Santa Clara County Ordinance Division B28, attached hereto as “Exhibit D”, concerning integrated pest management and pesticide use, referred herein as the “IPM Ordinance” and incorporated into this Agreement by reference. Pursuant to Section B28-2(d) of the IPM Ordinance which may be amended from time to time, compliance with the IPM Ordinance is required for activities within the County ROW. To extent that the Improvements within the County ROW do not include vegetation; District will not conduct IPM activities within the ROW and the IPM Ordinance will not apply. District warrants and represents that its duly authorized and adopted Integrated Pest Management program applies to land owned in fee by District, specifically APNs 544-31-003 & 544-33-001 as depicted in Exhibit A.

8. Attorney's Fees. In the event a Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party, to be fixed by the court in the same action. The term “legal proceedings” as used above shall be deemed to include appeals from a lower court judgment and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The term “Prevailing Party” as used above in reference to proceedings in the Federal Bankruptcy Court shall be deemed to mean the prevailing Party in any adversary proceeding or contested matter, or any other actions taken by the non-bankrupt Party which are reasonably necessary to protect its rights under the terms of this Agreement.

9. Recordation. This Agreement shall be recorded in the appropriate public records of Santa Clara County, California.

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MAINTENANCE AND INDEMNIFICATION AGREEMENT

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10. Term. This Agreement is effective upon the date that all parties hereto have executed this agreement. It shall remain effective until terminated by (1) mutual agreement of the Parties in writing, (2) by at least thirty (30) days' prior written notice of termination from one party to the other, or (3) otherwise pursuant to the terms of this Agreement. In the event that County determines that the Improvements or a portion thereof must be removed from the County ROW, prior to termination of the Agreement, County and District agree to meet and confer in order to identify an alternate trail alignment, if feasible. Prior to termination of the Agreement pursuant to this section, County shall have the right to require District to remove the Improvements and return the County ROW to its original condition at District's sole expense. If District does not remove the Improvements prior to termination of the Agreement, County may elect to remove the Improvements, return the County ROW to its original condition, and collect all costs thereof from District. Upon removal of the Improvements and the return of the County ROW to its original condition, or if applicable, the payment of all costs of removal charged by the County, the District shall be fully and completely released from obligations hereunder. The County will record a release from this Agreement.
11. Inurement. This Agreement shall run with the land and shall inure to the benefit of and be binding on the Parties, and their heirs, personal representatives, successors and assigns having a fee ownership interest in and to any part of the Preserve. "District" shall include the District and the successors in interest, transferees and assigns of the District.
12. No Property Interest. District shall not acquire any interest or estate in County's property pursuant to this Agreement.
13. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be given (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner.

To the County:

Land Development Unit
County of Santa Clara
Roads and Airports Department
101 Skyport Drive
San Jose, CA 95110
Ph. No: (408) 573-2400
Fax No: (408) 441-0276

To the District:

General Manager
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022
Phone: (650) 691-1200
Fax: (650) 691-0485

Such communications may also be given by facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon receipt, or upon attempted delivery thereof if delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery.

14. Future Improvements. Additional improvements on the County ROW are not allowed without an appropriate encroachment permit issued by the County Roads and Airports Department.

MAINTENANCE AND INDEMNIFICATION AGREEMENT

APNs: 544-31-003 & 544-33-001

15. Law and Permits. The Parties shall comply with all applicable laws and regulations. District shall obtain all required permits including an encroachment permit from the County Roads and Airports Department prior to entry and construction on the County ROW. District shall obtain an encroachment permit from the County Roads and Airports Department with an approved Traffic Control Plan to conduct any maintenance activities that affect the road travel way or shoulder.

16. Governing Law and Venue. This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

17. Miscellaneous. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party. This Agreement may be modified or amended only by a writing duly executed by both Parties. The invalidity or unenforceability of any provision of this Agreement or the applicability or inapplicability to either Party, as determined by a court, shall in no way affect the validity or enforceability of any of the remaining provisions hereof or their applicability to the other Party.

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MAINTENANCE AND INDEMNIFICATION AGREEMENT

APNs: 544-31-003 & 544-33-001

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first above written.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: _____
Ana Ruiz Date
General Manager

APPROVED AS TO FORM AND LEGALITY:

By: _____
Hilary Stevenson Date
General Counsel

(ATTACH NOTARY FORM)

COUNTY OF SANTA CLARA

By: _____
Harry Freitas Date
Director, Roads and Airports Department

APPROVED BY OFFICE OF THE COUNTY EXECUTIVE:

By: _____
Sylvia Gallegos Date
Deputy County Executive

APPROVED AS TO FORM AND LEGALITY:

By: _____
Christopher Cheleden Date
Lead Deputy County Counsel

PARCEL IN QUESTION

AREA OF WORK

PARCEL IN QUESTION

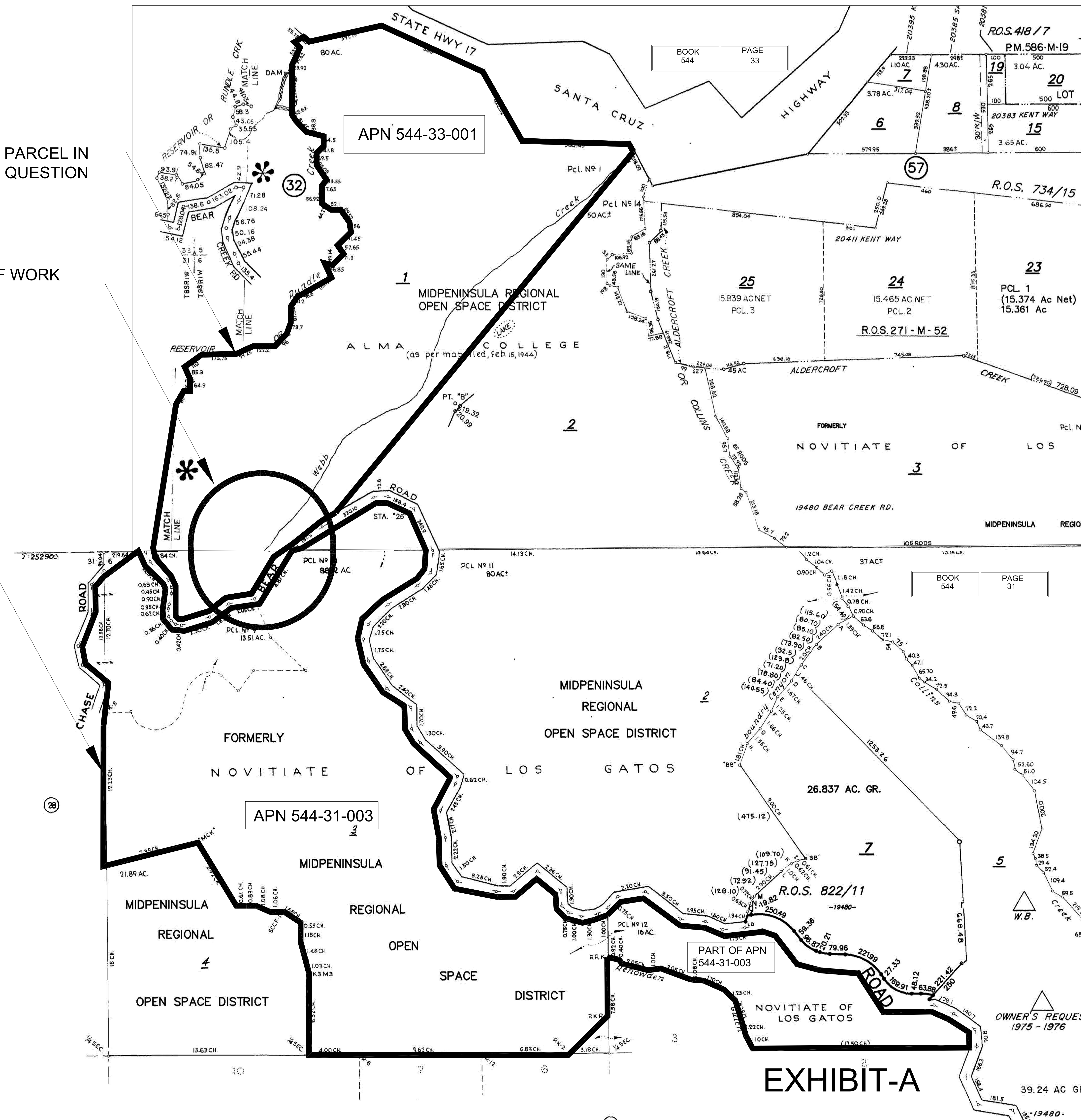


EXHIBIT-A

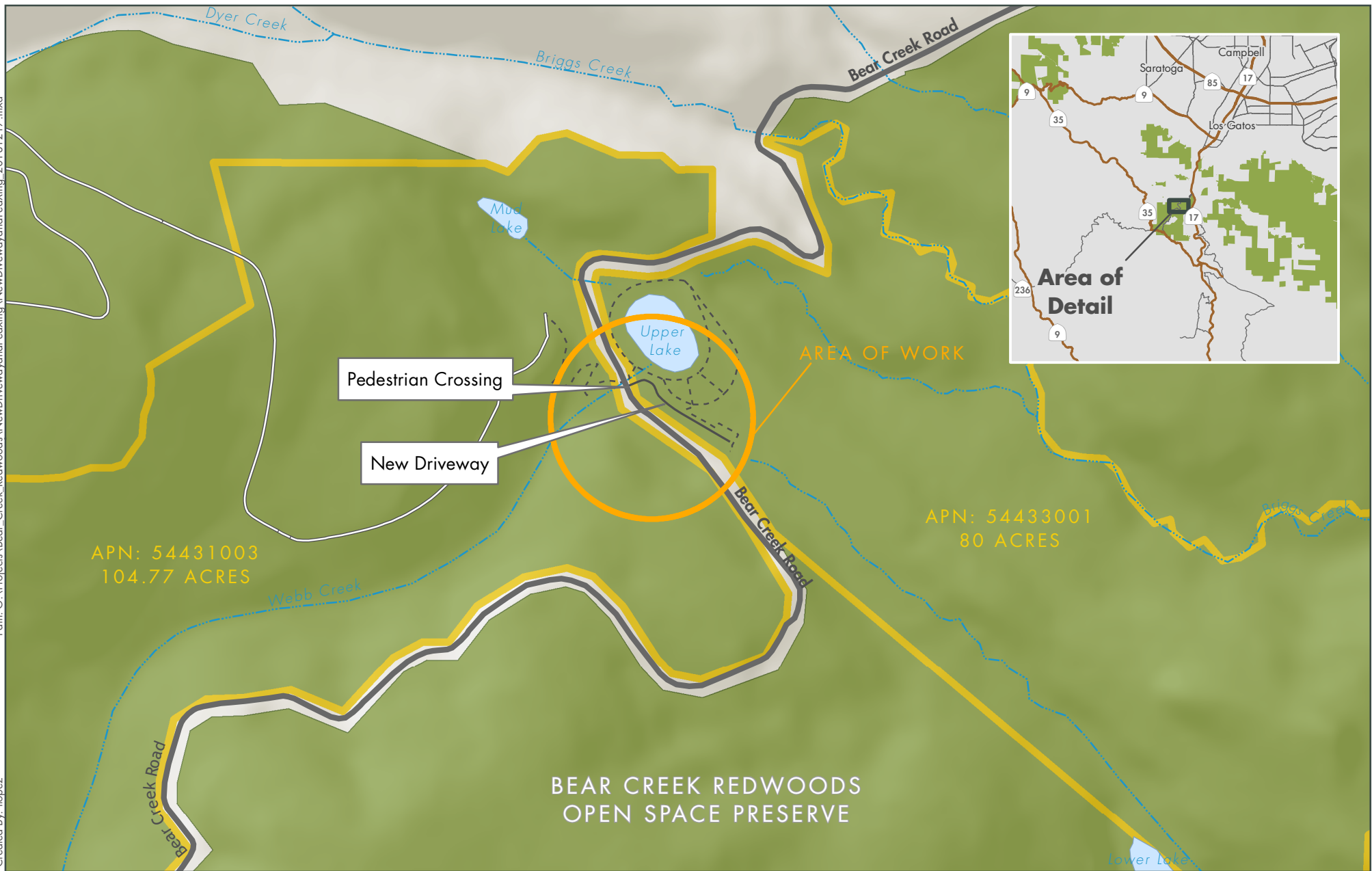





Exhibit B-1

-  MROSD Preserves
-  Private Property
-  Highlighted Parcel

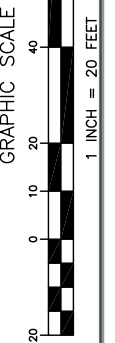
Midpeninsula Regional
Open Space District
(MROSD)
December 2018



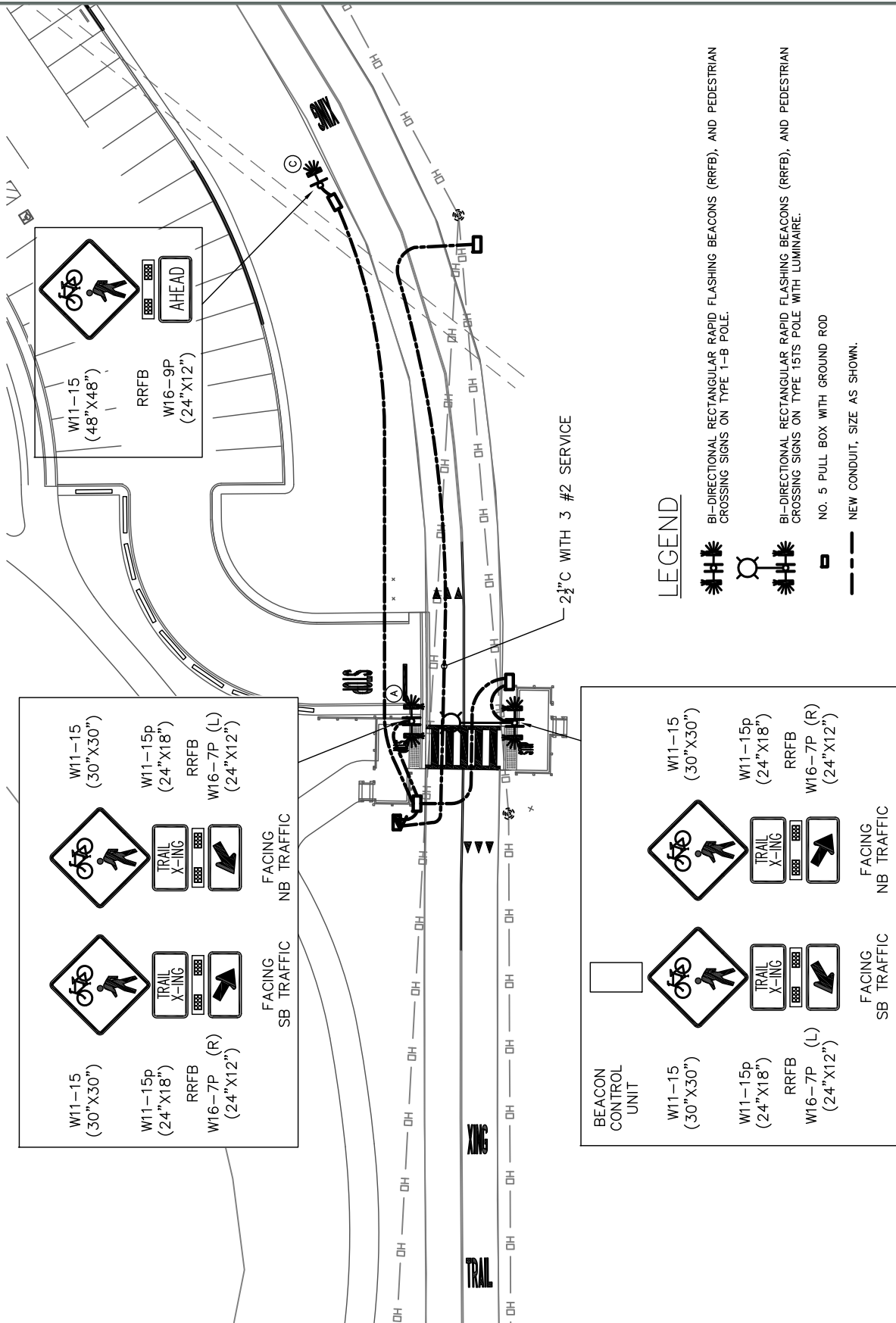
While the District strives to use the best available digital data, these data do not represent a legal survey and are merely a graphic illustration of geographic features.

**Exhibit B-2: Bear Creek Redwoods Open Space Preserve
 Bear Creek Road RRFB Pedestrian Crossing
 Signs and Electrical Components**

Midpeninsula Regional
 Open Space District
 (MROSD)
 December 2018



SIGNS AND ELECTRICAL COMPONENTS

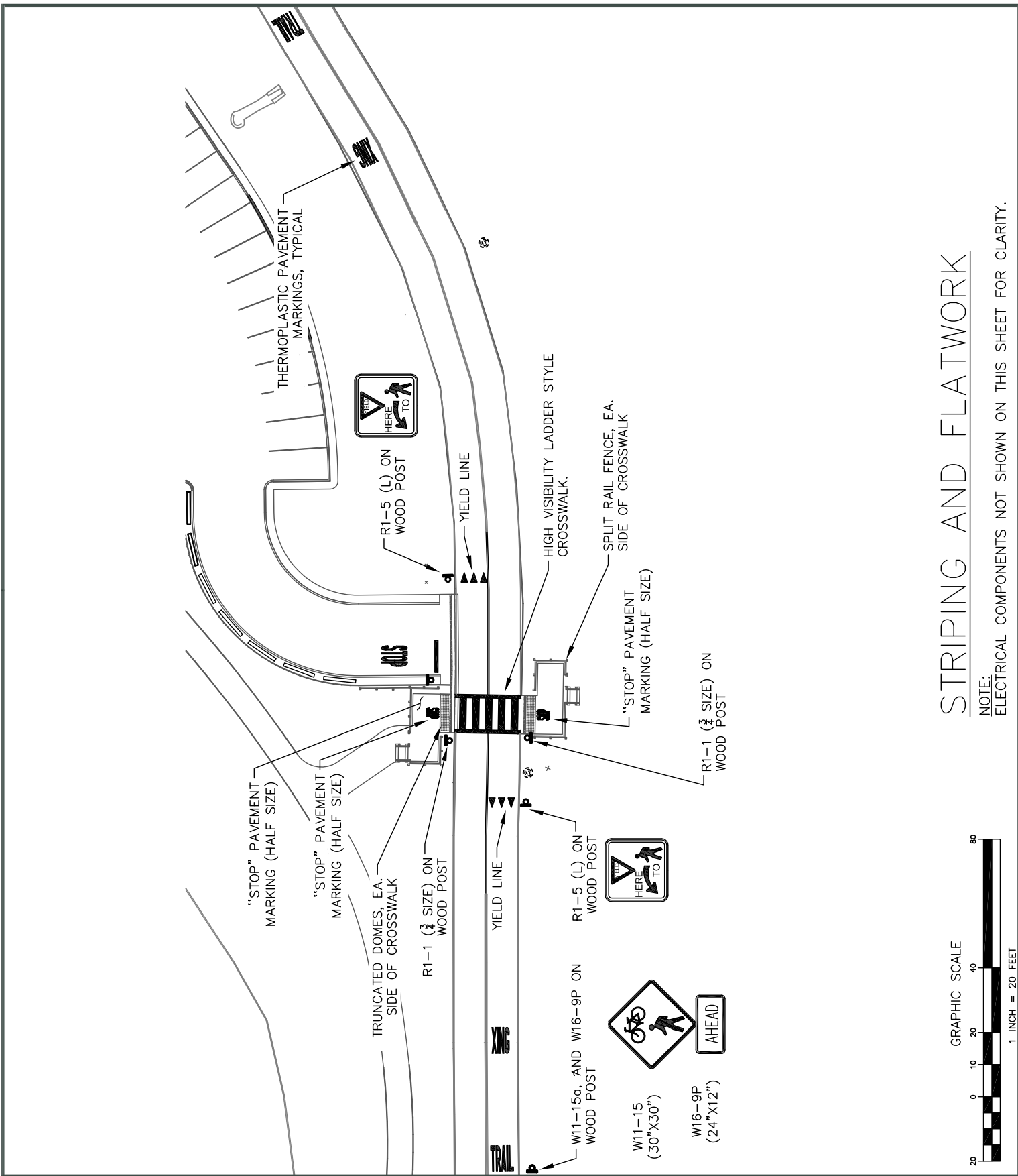


LEGEND

- BI-DIRECTIONAL RECTANGULAR RAPID FLASHING BEACONS (RRFB), AND PEDESTRIAN CROSSING SIGNS ON TYPE 1-B POLE.
- BI-DIRECTIONAL RECTANGULAR RAPID FLASHING BEACONS (RRFB), AND PEDESTRIAN CROSSING SIGNS ON TYPE 15TS POLE WITH LUMINAIRE.
- NO. 5 PULL BOX WITH GROUND ROD
- NEW CONDUIT, SIZE AS SHOWN.

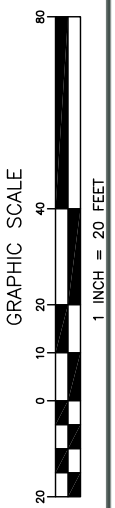
W11-15 (30"X30")		W11-15 (30"X30")	
W11-15p (24"X18")		W11-15p (24"X18")	
RRFB		RRFB	
W16-7P (R) (24"X12")		W16-7P (L) (24"X12")	
FACING SB TRAFFIC		FACING NB TRAFFIC	

BEACON CONTROL UNIT		W11-15 (30"X30")	
W11-15p (24"X18")		W11-15p (24"X18")	
RRFB		RRFB	
W16-7P (L) (24"X12")		W16-7P (R) (24"X12")	
FACING SB TRAFFIC		FACING NB TRAFFIC	



STRIPING AND FLATWORK

NOTE:
ELECTRICAL COMPONENTS NOT SHOWN ON THIS SHEET FOR CLARITY.



**Exhibit B-2: Bear Creek Redwoods Open Space Preserve
Bear Creek Road RRFB Pedestrian Crossing
Striping and Flatwork**

Midpeninsula Regional
Open Space District
(MROSD)
December 2018



**EXHIBIT C -INSURANCE REQUIREMENT
FOR MAINTENANCE AND INDEMNIFICATION AGREEMENT**

Insurance

Without limiting the Applicant's indemnification of the County, the Applicant shall provide and maintain at its own expense, during the term of the Agreement, a commercial general liability insurance for bodily injury (including death) and property damage with a combined limit of \$500,000 per occurrence and \$500,000 annual aggregate. The general liability coverage shall include an additional insured endorsement which shall read:

"County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds."

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents and employees shall be excess only and not contributing with insurance provided under this policy.

The Applicant shall certify that the required coverages have been obtained by providing to the County Roads and Airports Department certificates of insurance and endorsements executed by the insurance carrier. In addition, certified copies of the insurance policies shall be provided by the Applicant upon request.

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent, except for non-payment of premium in which case 10 days' notice will be given.

Exhibit D

Division B28 - INTEGRATED PEST MANAGEMENT AND PESTICIDE USE

CHAPTER I. - GENERAL PROVISIONS

Sec. B28-1. - Intent and purpose.

The County, in carrying out its operations, finds it necessary from time to time to use pesticides on County property. The intent of this division is to protect the health and safety of County employees and the general public, the environment, and water quality, as well as to provide sustainable solutions for pest control on County property. The Board of Supervisors hereby finds and declares that it shall be the policy of the County of Santa Clara to eliminate or reduce pesticide applications on County property to the maximum extent feasible. Preference shall be given to available non-pesticide alternatives, where feasible, before considering the use of pesticides on County property.

This division concerns the application of pesticides to property owned by the County of Santa Clara only, and does not concern the application of pesticides to property that is not owned by the County of Santa Clara.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-2. - Definitions.

Whenever used in this division, the following terms shall have the meanings set forth below:

- (a) *Antimicrobial pesticides* are pesticides, such as disinfectants and sanitizers, that are intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or protect inanimate objects (for example floors and walls), industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.
- (b) *Approved list* is the list of pesticides authorized by the County IPM Coordinator for use on County property developed in accordance with Section B28-5.
- (c) *Carbamates* means esters on N-methyl carbamic acid, which inhibit cholinesterase.
- (d) *Contract* is a binding written agreement, including but not limited to a contract, permit, license or lease between a person, firm, corporation or other entity, including a governmental entity, and the County of Santa Clara which grants a right to use or occupy property of the County or which provides pest management services.
- (e) *County Executive* is the County Executive or his or her designee of the County of Santa Clara.
- (f) *Demonstration site* is a specific area or site designated by a department to evaluate the use of a pest management strategy.
- (g) *Department* is any agency or department of the County of Santa Clara. Department does not include the vector control district or any other local, state, or federal agency.
- (h) *Departmental IPM coordinator* is someone designated by a department head to coordinate the department's IPM program.
- (i) *County IPM Coordinator* is the person designated by the County Executive to implement and oversee the County of Santa Clara's IPM program.
- (j) *Feasible* means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.
- (k) *Integrated pest management (IPM)* is a decision-making process for managing pests using monitoring to determine pest-caused injury levels and combining biological control, cultural practices, mechanical and physical tools, and chemicals to minimize pesticide usage. The method uses extensive knowledge about pests, such as infestation thresholds, life histories, environmental requirements, and natural enemies to complement and facilitate biological and

Exhibit D

other natural control of pests. The method uses the least hazardous pesticides only as a last resort for controlling pests.

- (l) *IPM technical advisory group (IPM TAG)* is the technical advisory group to the County for the IPM program and is further described in Section B28-9.
- (m) *Organophosphates* means organophosphorus esters, which inhibit cholinesterase.
- (n) *Pest* is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except certain insects, viruses, bacteria, or other microorganism on or in living man or living animals).
- (o) *Pesticide* is any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment. Pesticide for purposes of this division does not include antimicrobial agents.
- (p) *Posting* is to place signs as identified in Section B28-7 to inform employees and the public of pesticide use at a given site.
- (q) *Signal words* are the words used on a pesticide label—Danger, Warning, Caution—to indicate level of toxicity.
- (r) *Toxicity Category I pesticide product* is any pesticide product that meets United States Environmental Protection Agency criteria for Toxicity Category I under Section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations.
- (s) *Toxicity Category II pesticide product* is any pesticide product that meets United States Environmental Protection Agency criteria for Toxicity Category II under Section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-3. - General exemptions.

- (a) This division shall not apply to the use of any pesticide for the purpose of improving or maintaining water quality at any County owned or operated drinking water treatment plants, wastewater treatment plants, reservoirs, and related collection, distribution, and treatment facilities.
- (b) This division shall not apply to any use of pesticides on County property by any department when performing pest management or pesticide activities authorized by state or federal laws or regulations.
- (c) This division shall not apply to the use of pesticides by the vector control district.
- (d) This division shall not apply to antimicrobial pesticides or pesticides used to control pests in or on living humans or animals.
- (e) This division shall not apply to existing contracts except as provided in Section B28-10.
- (f) This division shall not apply to contracts under negotiation at the time this division becomes effective for a period of five years.

(Ord. No. NS-517.70, 5-21-02)

CHAPTER II. - PESTICIDE MANAGEMENT

Sec. B28-4. - County integrated pest management (IPM) program.

- (a) The County IPM Coordinator shall oversee and coordinate implementation of the IPM program.
- (b) The IPM program shall include, but not be limited to, the following:

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- (1) Identify staff member(s) responsible for program implementation;
 - (2) Acquaint County workers with the IPM approach and new pest management strategies, as they become known;
 - (3) Inform the public of the County's effort to reduce pesticide use;
 - (4) Respond to questions about the County's pest management program and practices;
 - (5) Conduct ongoing educational programs, where appropriate;
 - (6) Maintain records and evaluate program effectiveness;
 - (7) Develop and maintain the approved list of pesticides.
- (c) Departments shall implement the IPM program consistent with the IPM practices outlined below. Where feasible, departments shall consider a range of potential treatments for the pest problem and employ non-pesticide management tactics first, consider the use of chemicals only as a last resort, and select and use chemicals in accordance with the provisions of this division. The IPM practices shall include ways to:
- (1) Monitor pests to determine pest population size, occurrence, and natural enemy population, if present. Identify decisions and practices that could affect pest populations. Keep records of monitoring results;
 - (2) Set treatment levels for each pest at each site based on how much biological, aesthetic or economic damage the site can tolerate;
 - (3) Determine the most effective treatment time, based on pest biology and other variables, such as weather, seasonal changes in wildlife use and local conditions;
 - (4) Design construction and building remodels to reduce or eliminate pest habitats and improve efficiency in facility and landscape maintenance and sanitation;
 - (5) Reduce pest incidences by modifying management practices such as watering, mulching, fertilizer use, and pruning;
 - (6) Modify pest ecosystems, including waste management and food storage, to reduce pest food, living space, and access;
 - (7) Use physical controls such as hand-weeding, traps and barriers, heat and cold;
 - (8) Use biological controls such as introducing or enhancing pests' natural enemies;
 - (9) When indoors, use baits or least toxic methods of pest control rather than sprays;
 - (10) Monitor treatment to evaluate effectiveness;
 - (11) Maintain records as set forth in Section B28-8.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-5. - Pesticide use.

- (a) *Approved list.* The County IPM Coordinator shall develop the approved list using a set of criteria that will be developed with the review and input of the IPM TAG. The criteria will take into account environmental and human health hazards, principles of the IPM approach, and technically based methods, conditions, and specifications for pesticide use. The County IPM Coordinator shall maintain the list of approved pesticides that may be used on County property. The approved list shall be reviewed and updated at least annually. The IPM Coordinator may amend this list as needed at any time as long as the products are consistent with the established criteria. These amendments shall be communicated to the IPM TAG in writing at the quarterly meetings.
- (b) *Specific exemptions.* An exemption may be obtained from the County IPM Coordinator for use of a product not on the approved list as follows:

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- (1) One-year exemptions. The County IPM Coordinator may grant a specific exemption, with limited conditions for use, for a one-year period upon a written request showing that a department has:
 - a. Identified the need for use;
 - b. Made a good-faith effort to find alternatives to the pesticide;
 - c. Identified or demonstrated that effective economic alternatives to the pesticide do not exist for that particular use; and
 - d. Developed a reasonable plan for investigating alternatives to the pesticide during the exemption period.
 - (2) An exemption may be continued beyond the one-year period by filing a new request for exemption as required in Subsection (b)(i) above.
 - (3) The County Executive shall have the discretion to revoke any exemption.
- (c) *Emergency use of pesticides.*
- (1) A department responsible for maintenance of a site or facility may apply to the County IPM Coordinator for an emergency pesticide use exemption in the event that a pest outbreak poses an immediate threat to public health or may cause significant economic damage.
 - (2) If the County IPM Coordinator cannot respond to the application in a timely manner, the departmental IPM coordinator submitting the application may authorize the one-time emergency use of the required pesticide and provide notice of the emergency application to the County IPM Coordinator in writing within 48 hours.
 - (3) Posting of emergency use of pesticides shall be at the time of pesticide application and comply with all other posting requirements.
 - (4) Reporting of the exemption and pesticide use will comply with all other reporting requirements as stated in Section B28-8.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-6. - Restriction on the use of pesticides.

Except for the use of pesticides exempted pursuant to Section B28-3, pesticides granted an exemption pursuant to Section B28-5(b) or 5(c) or pesticides on the approved list per Section B28-5(a), no department shall use any of the following types of pesticides. A list of the pesticides and pesticide products identified in (b) through (g) below shall be on file with the County IPM Coordinator.

- (a) Toxicity Category I or II pesticide products.
- (b) Any pesticide containing a chemical identified by the State of California as a chemical known to the State to cause cancer or reproductive or developmental toxicity pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986.
- (c) Pesticides identified by the State of California on the Groundwater Protection List (Food and Agricultural Code § 13145(d)).
- (d) Pesticides classified by active ingredient as organophosphate type pesticides as identified by the United States Environmental Protection Agency (Office of Pesticide Programs, Document 735-F-99-14, May 1999), or California Environmental Protection Agency, Department of Pesticide Regulation, Chemical Inquiries Database.
- (e) Pesticides containing carbamate-type chemicals (California Environmental Protection Agency, Department of Pesticide Regulation, Chemical Inquiries Database).
- (f) Any pesticide classified as a human carcinogen, probable human carcinogen or possible human carcinogen by the United States Environmental Protection Agency, under procedures

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established in "Proposed Guidelines for Carcinogen Risk Assessment," EPA/600/P-92/003C, April 1996, or equivalent documents.

- (g) Any pesticide group officially designated by the California Environmental Protection Agency Department of Pesticide Regulation or by the United States Environmental Protection Agency as posing significant hazard to human health or the environment.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-7. - Posting of pesticide use.

- (a) Except as provided for in Section B28-5(c) and Section B28-7(b), any department that uses or authorizes the use of a pesticide shall comply with the following posting procedures:
 - (1) Signs shall be posted at least three days before application of the pesticide and remain posted at least four days after application, except for baits and emergency use of pesticides, which are posted at the time of treatment in accordance with Section B28-5(c)(3) above and Subsection (b)(3) below;
 - (2) For buildings and/or landscaped areas adjacent to buildings, signs shall be posted at main entry points where the pesticide is applied;
 - (3) For open areas, signs shall be posted in highly visible locations around the perimeter of the area where the pesticide is applied;
 - (4) For vehicles used primarily by County staff, signs shall be posted at areas where vehicles are obtained or posting information shall be given to the primary drivers.
 - (5) Signs shall contain the:
 - a. Trade name and active ingredient of the pesticide product;
 - b. Target pest;
 - c. Date of posting;
 - d. Date(s) of anticipated pesticide use; the date(s) of actual pesticide use will be posted at the main entrance, park office, or designated site;
 - e. Signal word indicating the toxicity category of the pesticide product;
 - f. Date for re-entry of staff and the public to the area treated if applicable;
 - g. Name and contact number for the department responsible for the application.
 - (6) Signs shall have a standard design that is easily recognizable by the public and workers;
- (b) Exemptions to posting.
 - (1) Departments shall not be required to post signs in accordance with Section B28-7(a) in right-of-way locations and other areas that the general public does not use for recreational purposes.
 - a. Each department that uses pesticides in such locations shall provide a public access telephone number for information about pesticide applications. The public access telephone number shall be posted in a prominent location at the department's main office building. Information provided shall include all the items in Subsection (a)(5) above.
 - (2) Any pesticide granted an emergency exemption by the County IPM Coordinator shall not be required to be posted prior to treatment. However, all other requirements for posting as set forth in Section B28-7(a) shall be followed.
 - (3) Any pesticide bait placed in a container or trap, or applied as a gel or paste in a crack or crevice shall not be required to post signs prior to treatment. Baits, used indoors, shall be posted in the vicinity of application. Baits, used outdoors, shall be posted in the main office, park

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office, or a designated site. Signs shall be posted according to the requirements as set forth in Section B28-7(a).

- (4) The County IPM Coordinator may in his or her discretion grant necessary exemptions to the posting requirements.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-8. - Record keeping and reporting.

- (a) Each department that uses pesticides shall keep records of pest management activities, including information about demonstration sites and exemptions. A copy of this information shall be placed in a centralized record keeping area in each department. Where feasible, this information shall be kept in a notebook or electronic equivalent maintained in each occupied building. Each pest management activity such as pesticide application, trapping or inspection shall be recorded and, when applicable, include at least the following information:
 - (1) Target pest and extent of problem;
 - (2) Product name, active ingredients, EPA registration number, formulation, and quantity of pesticide used;
 - (3) Site of the pesticide application;
 - (4) Date of pesticide application;
 - (5) Name of person conducting pest management activity;
 - (6) Application equipment number, if applicable;
 - (7) Prevention and other non-chemical methods of control recommended or used, and;
 - (8) Evaluation of effectiveness.
- (b) The departmental IPM coordinator shall keep the following:
 - (1) Records of pesticide use;
 - (2) A copy of the label of all pesticides used; and,
 - (3) The material safety data sheet for each pesticide used.
- (c) Each department that uses pesticides shall submit a summary of pest management records required in Section B28-8(a) and (b) to the County IPM Coordinator at least quarterly.
- (d) Pest management records, including pesticide use records, are all public records.
- (e) Pesticide use records shall be kept indefinitely until an electronic database tracking system has been established.

(Ord. No. NS-517.70, 5-21-02)

CHAPTER III. - IPM IMPLEMENTATION

Sec. B28-9. - Implementation of County Integrated Pest Management Ordinance.

- (a) This division shall be phased-in over one to two years in order to provide adequate time for developing the approved list, documenting current IPM practices and/or reductions, and identifying and implementing alternate pest management measures. The County IPM Coordinator shall develop a timetable and format for departments to each submit a plan for implementing this division.
- (b) A technical advisory group (TAG) shall be formed and shall meet at least four times per year to review the County's IPM program and provide comments to the County Executive. The following representatives will be invited to participate on the TAG: two from Pesticide Alternatives of Santa Clara County; one from the Santa Clara Valley Water District; one from the County Agricultural

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Commissioner; one from the Santa Clara County Pollution Prevention Committee; one County employee representing a labor organization; and one representative from each of the following Santa Clara County agencies and departments: Roads and Airports, Parks and Recreation, the General Services Agency, Valley Health and Hospital System, and Occupational Safety and Environmental Compliance. The Board of Supervisors may at their discretion make changes to the composition of the group as deemed necessary.

- (c) The IPM Coordinator shall provide a quarterly report to one or more Board-designated committees on the status of the IPM program including information about pest problems, pesticide use, list of exemptions, goals and progress, staff training and public education, and anticipated changes that may affect pesticide use.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-10. - County contracts and easements.

- (a) Except as provided in (i) below, when a department enters into a new contract (see Section B28-2(d)) or amends an existing contract to extend the term of the contract for more than six months beyond the current term and any optional extension periods, the contract shall require compliance with the provisions of this division including those relating to pesticide restrictions, record keeping, and reporting.
 - (1) The County Executive may grant an exemption for up to five years from contract compliance with all or part of the provisions of this division in the event compliance would negatively impact County revenues, prevent the highest and best use of an asset as determined by the County Executive, or where it is demonstrated that full compliance cannot be achieved. Notice of any exemption granted pursuant to this Subsection (1) shall be given to the applicant and to the IPM TAG. The notice shall state that any person dissatisfied with the decision of the County Executive may file an appeal with the Clerk of the Board within 15 calendar days of the date of the notice. The appeal will first be heard before the County's Housing, Land Use, Environment, and Transportation Committee, which Committee shall make a recommendation to the Board of Supervisors. The decision of the Board of Supervisors shall be final.
- (b) A contractor, or department on behalf of a contractor, may apply for exemptions authorized under Section B28-5(b) and (c), and this Section B28-10.
- (c) When a department enters into a new lease in which the County is occupying or using property not owned by the County (and thus not within the definition of contract in Section B28-2(d)), the County shall use reasonable efforts to negotiate the use of IPM practices as part of that lease.
- (d) In current leases in which the County is occupying or using property not owned by the County, the County shall encourage the use of IPM practices whenever practical.
- (e) When the County is granted an easement, the maintenance of the easement shall be in compliance with this division if consistent with the terms of the easement.
- (f) A process, which incorporates a request for qualifications, shall be used in the selection of all contractors for pest management services and shall be in compliance with County contracting policies and state law. The County IPM Coordinator and the TAG may participate in the process. All contractors applying for pest management services shall submit a pest management plan, which outlines how they will comply with the IPM Ordinance. The plan shall give preference to prevention and other non-pesticide or least toxic methods of pest control.

(Ord. No. NS-517.70, 5-21-02)

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Sec. B28-11. - Pesticide purchases.

All pesticide products and pest control services that include pesticide applications shall comply with this division and be purchased through the County Procurement Department, not using the petty cash or direct pay methods.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-12. - Policy and guidelines.

The County Executive may recommend policy for Board approval and issue guidelines to implement this division.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-13. - No criminal penalties or sanctions.

The provisions of Section A1-28 of the Santa Clara County Ordinance Code shall not apply to this division; nor shall any person, or government official, board, commission, or agency be responsible for any criminal penalties for any violation of the division.

(Ord. No. NS-517.70, 5-21-02)

Sec. B28-14. - No civil liability for violations of this chapter.

This division and the provisions are directory, and are intended to set forth goals and program elements for management of pests and pesticide use. This chapter is not intended to create a standard of civil liability for the acts or failure to act of the County and its employees and contractors. No person, government official, board, commission, or agency shall be liable in any civil action or proceeding for damages for violation of any of the provisions of this division.

(Ord. No. NS-517.70, 5-21-02)