



Midpeninsula Regional  
Open Space District

R-20-128  
Meeting 20-26  
November 4, 2020

### AGENDA ITEM 3

#### AGENDA ITEM

First Amendment to the Secured Promissory Note between Jacob Guenther and Tamara J. Shimizu (a.k.a. Tamara J. Guenther) and Midpeninsula Regional Open Space District for a Fee Determinable Estate at 5705 Alpine Road, Portola Valley, CA 94028, adjoining Skyline Ridge Open Space Preserve in unincorporated San Mateo County (Assessor's Parcel Number 080-282-080)

#### 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 General Manager to enter into a First Amendment to the Secured Promissory Note held by Midpeninsula Regional Open Space District against Jacob Guenther and Tamara J. Shimizu as described in the staff report.

#### SUMMARY

Due to the economic challenges presented by the COVID-19 pandemic, the General Manager recommends adopting a Resolution (Attachment 1) to enter into a First Amendment to the Secured Promissory Note (Amendment) held by Midpeninsula Regional Open Space District (District) against Jacob Guenther and Tamara J. Shimizu (a.k.a. Tamara J. Guenther) (Guenthers) for a fee determinable estate at 5705 Alpine Road, Portola Valley, CA 94028. The Amendment would extend the Secured Promissory Note by ten years through the fall of 2033 and reduce the monthly payment amount. This action would allow the Guenthers to afford the monthly payments to remain in the residence and result in an additional \$47,354.47 in interest payments (revenue) to the District.

#### DISCUSSION

On July 23, 1997, the District accepted an offer from the Guenthers to purchase a fifty (50) year fee determinable estate for a ten (10) acre parcel adjoining Skyline Ridge Open Space Preserve (R-97-109). On December 10, 1997, the Board of Directors (Board) approved an amendment to the purchase agreement and authorized the District to finance the sale by means of a promissory note secured by a first deed of trust (R-97-167). The sale price was \$361,000, and the terms of the promissory note included a twenty-five (25) year financing in the amount of \$288,000 at an interest rate of ten percent (10%), to be paid in full by December 1, 2022. The monthly payment of principal and interest was \$2,624.00, with each payment due on the first day of each month. The Guenthers made timely payments to the District each month since their purchase of the fee determinable estate on December 17, 1997 until April 30, 2020.

On March 3, 2020, pursuant to Section 8630 of the California Government Code and Chapter 2.46 of the San Mateo County Ordinance Code, the San Mateo County Health Officer (Health Officer) proclaimed a local emergency throughout San Mateo County related to COVID-19, an ongoing global infectious disease caused by severe acute respiratory syndrome coronavirus 2, which was first identified in December 2019. On the following day, March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency in the State of California as a result of the threat of COVID-19. On March 16, 2020, Governor Newsom issued Executive Order N-28-20, granting local jurisdictions broad authority to enact temporary moratoria on residential and commercial evictions based on non-payment of rent caused by the COVID-19 pandemic or the federal, state, and/or local response to the COVID-19 pandemic. On August 31, 2020, Governor Newsom signed statewide COVID-19 protections into law that shield tenants and small landlords from evictions and foreclosures due to the economic impacts of COVID-19 through February 1, 2021.

As a result of the State of Emergency, the issuance of local and state-wide shelter-in-place orders, and the severe impact to business financials due to layoffs, reductions in work hours, and closures of businesses, the Guenthers lost significant income and are now unable to make full payments to the District. In an effort to not fall too far behind in payments, the Guenthers made partial monthly payments of \$800.00 from May 1, 2020, through October 31, 2020. Although the District does not have a legal obligation to refinance the Secured Promissory Note, District staff recommends doing so in light of the hardships caused by COVID-19 thus allowing the Guenthers to remain in the residence while ensuring that the District recoups full payment with additional interest over an extended ten (10) years. As further described below, the Amendment would maintain the Guenthers' tenancy at terms that allow the Guenthers to fully repay the principal due and increase the interest collected by the District.

This item was brought to the Board on September 9, 2020 (R-20-98). The Board postponed the item and directed staff to further evaluate the Amendment's terms and conditions to ensure it would result in a fair balance of both the District's and the Guenthers' interests. Staff has completed this evaluation, the results of which are described below.

## **TERMS AND CONDITIONS**

Under the proposed Amendment to the Secured Promissory Note, the total monthly payment of principal and interest would decrease from \$2,624.00 to \$829.84 effective November 1, 2020. The loan would be paid in full by October 1, 2033, an additional ten (10) years and ten (10) months from the current loan end date. There are no prepayment penalties under the original Secured Promissory Note nor are there any prepayment penalties proposed in the Amendment, therefore the Guenthers can accelerate and increase their payments or return payments to prior levels at anytime if and when desired. A late fee of approximately fifteen percent (15%), or \$120.00, would be added to any payments posted after the tenth (10<sup>th</sup>) day of the month for a total monthly payment of \$949.84. The new monthly payment of \$829.84 was determined through District staff negotiations and is based on the limited amount of monthly income the Guenthers are receiving.

## **FISCAL IMPACT**

Two charts outlining the original loan and the new proposed loan are below:

***Original Loan (Monthly Payments of \$2,624.00)***

Payment Period (at 10% Interest)	Total Principal Balance Remaining*	Total Interest Due*	Total Payment Due*
11/1/2020 – 12/1/2022	\$72,295.61	\$9,804.96	\$82,100.57

\* Recalculated amounts to account for partial payments of \$800.00 per month from May 1 through October 31, 2020.

***New Proposed Loan (Monthly Payments of \$829.84)***

Payment Period (at 10% Interest)	Total Principal Balance Remaining	Total Interest Due	Total Payment Due
11/1/2020 – 10/1/2033	\$72,295.61	\$57,159.43	\$129,455.04

With the original monthly loan payment amount of \$2,624.00, annual receipts expected would total \$31,488. With the new proposed loan payment amount of \$829.84, annual receipts expected would total \$9,958.08. The new proposed loan would generate an additional \$47,354.47 in interest payments (revenue) to the District over the life of the New Proposed Loan.

**BOARD COMMITTEE REVIEW**

This item was not previously reviewed by a Board Committee.

**PUBLIC NOTICE**

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**

Upon approval by the Board of Directors, staff would execute the First Amendment to the Secured Promissory Note with the Guenthers per the terms and conditions described in this report.

**Attachments:**

1. Resolution Approving and Authorizing the General Manager to Enter into a First Amendment to the Secured Promissory Note Held by the District Against Jacob Guenther and Tamara J. Shimizu for a Fee Determinable Estate at 5705 Alpine Road, Portola Valley, CA 94028, and Authorizing the General Manager and General Counsel to Execute Any and All Other Documents Necessary or Appropriate to Complete the Transaction
2. Project Location Map

Responsible Department Manager:  
Michael Williams, Real Property Manager

Prepared by:  
Jasmine Leong, Real Property Agent I

Graphics prepared by:  
Francisco Lopez Tapia, GIS Technician

RESOLUTION 20-\_\_

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING AND AUTHORIZING THE GENERAL MANAGER TO ENTER INTO A FIRST AMENDMENT TO THE SECURED PROMISSORY NOTE HELD BY THE DISTRICT AGAINST JACOB GUENTHER AND TAMARA J. SHIMIZU FOR A FEE DETERMINABLE ESTATE AT 5705 ALPINE ROAD, PORTOLA VALLEY, CA 94028, AND AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO COMPLETE THE TRANSACTION.

THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT DOES RESOLVE AS FOLLOWS:

**SECTION ONE.** The General Manager is authorized to enter into a First Amendment to the Secured Promissory Note held by Midpeninsula Regional Open Space District against Jacob Guenther and Tamara J. Shimizu for a Fee Determinable Estate at 5705 Alpine Road, Portola Valley, CA 95028.

**SECTION TWO.** The General Manager and General Counsel are authorized to execute any and all other documents necessary or appropriate to the completion of the transaction approved in this Resolution. The General Manager and General Counsel are further authorized to approve minor or technical revisions to the First Amendment that do not involve any substantial changes to any terms of the agreement, and which are necessary or appropriate to the completion or implementation of this transaction.

\* \* \* \* \*

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on \_\_\_\_\_, 2020, at a Regular Meeting thereof, by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Jed Cyr, Secretary  
Board of Directors

\_\_\_\_\_  
Karen Holman, President  
Board of Directors

**APPROVED AS TO FORM:**

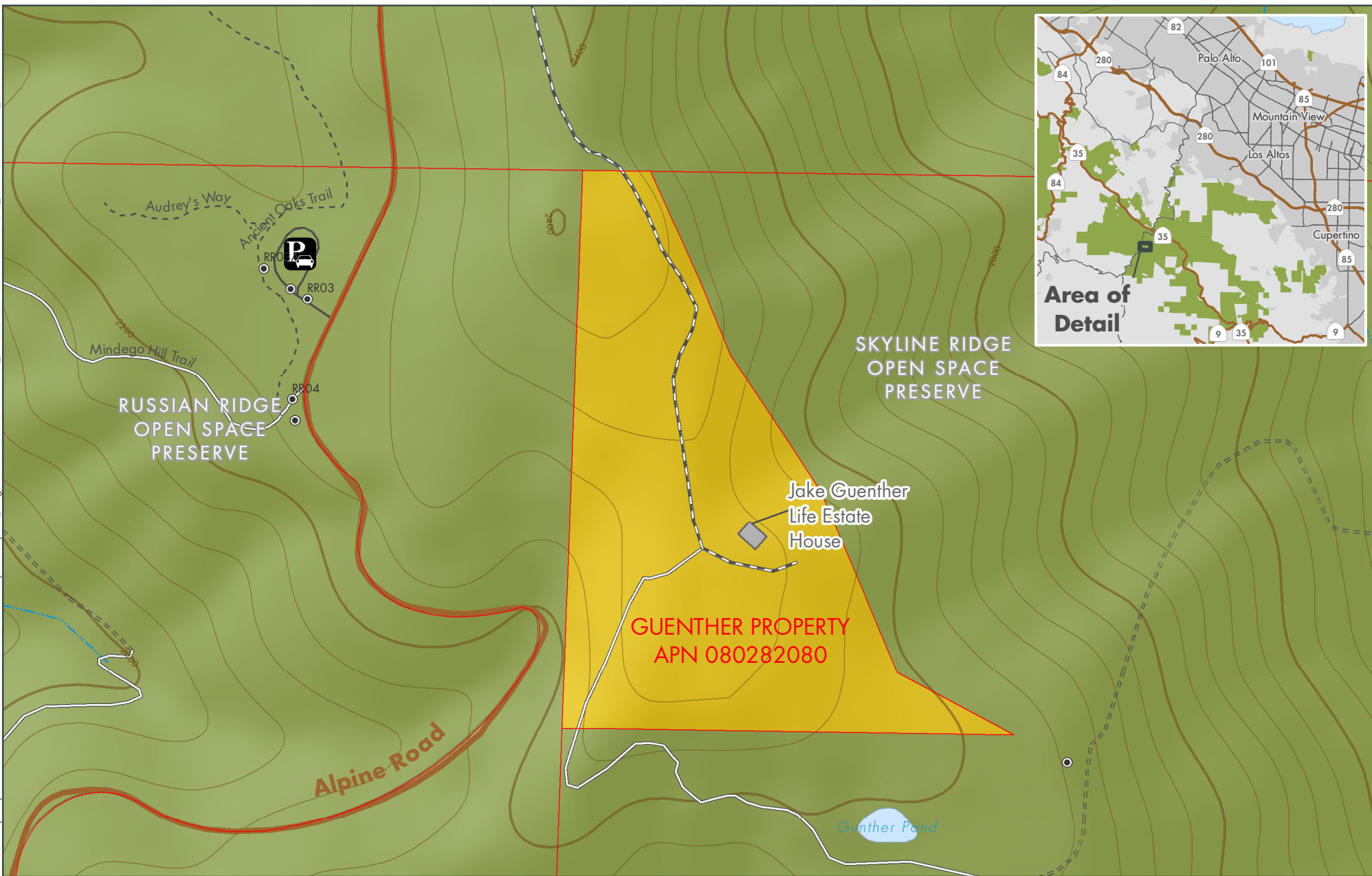
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Hilary Stevenson, General Counsel

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.

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Jennifer Woodworth, District Clerk



### Guenther Fee Determinable Estate

- |                                                                                                      |                                                                                                             |
|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
|  MROSD Preserves   |  Unpaved All-Season Road |
|  Guenther Property |  Minor Unpaved Road      |
|  Parcel            |  Unmaintained Road Width |
|                                                                                                      |  Trail                   |

Midpeninsula Regional  
Open Space District  
(Midpen)  
7/6/2020



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.