



Midpeninsula Regional  
Open Space District

R-21-29  
Meeting 21-06  
February 24, 2021

## AGENDA ITEM 5

### AGENDA ITEM

Amendment to the Purchase and Sale Agreement for the Acquisition of the Tabachnik Trust Property and Amendment to the Preliminary Use and Management Plan as an addition to Tunitas Creek Open Space Preserve in unincorporated San Mateo County (Assessor's Parcel Numbers 066-300-010 (portion) and 066-300-020)

### GENERAL MANAGER'S RECOMMENDATIONS *den*

1. Adopt a Resolution authorizing an amendment of the purchase and sale agreement for the Tabachnik Trust Property.
2. Amend the Preliminary Use and Management Plan for the Tabachnik Trust Property to clarify retention of the agricultural potential of the property.

### SUMMARY

The Board of Directors approved the purchase of the 151-acre Tabachnik Trust Property at a price of \$1,562,000 as an addition to Tunitas Creek Open Space Preserve on January 22, 2020 (R-20-13). The following report provides an update on the status of the purchase and a proposed amendment to the purchase and sale agreement to account for a delay in closing escrow. The report also proposes an amendment to the Preliminary Use and Management plan for this property to clarify the retention of the agricultural potential of the property.

### DISCUSSION

Midpeninsula Regional Open Space District (District) intends to purchase 151-acres of the mostly undeveloped portion of the Tabachnik Trust Property (Property), which consists of two parcels. The larger 211.81-acre Tabachnik parcel (APN: 066-300-010) zoned Planned Agricultural District/Coastal Development (PAD/CD) is to be divided into a 149.27-acre open space property that the District is in the process of purchasing, with Tabachnik retaining a 62.55-acre property that is improved with a single-family home, shop, and several one-room cabins. A second smaller parcel that is also part of the District purchase is an undeveloped 1.85-acre property zoned Resource Management/Coastal Zone (RM/CZ).

### Land Division and Zoning Amendment

The Property purchase is contingent upon approval of a minor land division (lot-split) by the County of San Mateo (County). As discussed above, the larger 211.81-acre parcel is to be divided to create a new 149.27-acre open space parcel and a 62.55-acre residential parcel to be retained by Tabachnik. The lot-split is contingent on approval of a text amendment to the

County's existing zoning and subdivision ordinance that would make the PAD and RM/CZ zoning consistent with an existing exemption to the California Coastal Act and the San Mateo County Local Coastal Program (LCP text amendment) for land divisions in connection with the purchase of lands by a public agency for public recreational use. The LCP text amendment was originally anticipated to occur in the summer of 2020, but the amendment was not fully approved by the California Coastal Commission until January 13, 2021 because of COVID-19 delays. The District submitted the lot-split application to the County in January 2020 and anticipated an earlier approval of the LCP text amendment. However, COVID-19 shutdowns occurred, and review of the lot-split application slowed. At this point in time, the transaction has been extended six months beyond the date it was scheduled to close.

### **Amendment to the Purchase and Sale Agreement**

The purchase and sale agreement approved by the Board of Directors (Board) in January 2020 anticipated a close of escrow to occur on or before August 31, 2020. Since then, the purchase and sale agreement has been amended under the General Manager's authority to extend the close of escrow. Under the current terms of the agreement (as amended), the close of escrow has been extended to February 28, 2021. The seller has already been very accommodating in extending escrow for six months, and closing will likely be postponed for four additional months. Given the delayed closing, the seller has requested certain amendments to the purchase and sale agreement. District staff has negotiated the changes below, outlined in the Terms and Conditions section of this report, which are subject to Board approval as they are beyond the authority that the Board delegated to the General Manager under its initial approval of the purchase in January 2020.

### **TERMS AND CONDITIONS**

The original purchase price of the 151-acre Property and associated rights was \$1,562,000, and it was allocated as follows:

- A. \$1,537,450 for 149.27-acre property (portion of 211.81-acre parcel)
  - B. \$19,109 for 1.85-acre property
  - C. \$1,000 for First Right of Offer
  - D. \$0 for Reciprocal Access Easements
  - E. \$4,441 for Temporary Construction Easement
- \$1,562,000 Total

Per the newly negotiated and proposed amendment, the Temporary Construction Easement (TCE) would be omitted from the terms and conditions, and the purchase price would be reduced by \$4,441 to \$1,557,559. The TCE was originally included for trail construction, but it is not essential to build the future trail. Real Property staff always seeks to maximize the benefits and property rights it receives on behalf of the public, but this right is not required, so its removal will not adversely impact the District.

The District would also increase the option deposit into escrow from \$40,000 to \$65,000, and an additional \$25,000 shall be accessible to Tabachnik during the extended escrow (June 30, 2021) and paid by March 5, ~~2020~~2021. All funds shall be credited towards the purchase price.

Finally, the District would install one additional Powder River style tube gate on the Property boundary of the lower dirt access road within six months of the close of escrow.

The amendments revise the purchase price information as follows:

- A. \$1,537,450 for 149.27-acre property (portion of 211.81-acre parcel)\*
  - B. \$19,109 for 1.85-acre property
  - C. \$1,000 for First Right of Offer
  - D. \$0 for Reciprocal Access Easements
- \$1,557,559 Total

\*Includes \$65,000 option deposit and \$25,000 extended escrow payment.

### **Amendment to the Preliminary Use and Management Plan**

At the January 22, 2020 Board meeting, the San Mateo Farm Bureau commented that despite the fact that the property had not been grazed for over 30 years and the property does not currently have adequate infrastructure (livestock water and fencing), the agricultural potential of the property should be retained. This was ensured in the adopted Preliminary Use and Management Plan (PUMP) that states that the property would be managed in compliance with the District's Coastal Service Plan. Specifically, Permanent Policy PA.1 indicates that the District will "...offer for sale or lease the maximum amount of agricultural land to active farm operations on the terms compatible with the recreation and habitat use..."

At the February 8, 2021 Agricultural Advisory Committee meeting, committee members reiterated their concern that the property retain its agricultural potential. In light of these comments, the General Manager recommends an amendment to the PUMP to provide further clarity that such an opportunity is indeed available. The proposed amendment would add a section on Rangeland Management as shown in underline below:

### **USE AND MANAGEMENT**

The recommended amendment to the PUMP includes updated language to clarify the management of natural resources and opportunities to reestablish an agricultural use in the future. The amended PUMP will remain in effect until any future amendments, or a Comprehensive Use and Management Plan or Preserve Plan is brought to the Board for consideration of approval.

Amendments to the PUMP are shown in tracked changes as follows:

- |                          |   |
|--------------------------|---|
| Public Access:           | Designate the property as closed to public use at this time. Issue hiking permit to the former owner.                         |
| Signs and Site Security: | Install Preserve boundary and closed area signs where appropriate.  |
| Fences and Gates:        | Install gates and fencing as necessary to prevent unauthorized entry.   |
| Roads and Trails:        | Implement maintenance and minor erosion and sediment control measures for access roads in accordance with District standards. |

Patrol:	Routinely patrol property using the access easement granted by the seller and further described in the Terms and Conditions of the proposed purchase.
Resource Management:	Maintain the property in its natural condition. Conduct plant and animal management activities consistent with the District's adopted Resource Management Policies and Integrated Pest Management Policies as needed.
<u>Rangeland Management:</u>	<u>If there is a viable interest by a rancher in grazing the property compatible with the habitat and future recreational use of the property, a grazing lease and a rangeland management plan would be prepared and forwarded to the Board for consideration and approval.</u>
Water Resources:	Protect creeks, springs and seeps on the property as needed (the two springs on the Property were developed to wildlife friendly standards).
Wildfire Fuel Management:	Implement standard District-wide fuel management and defensible space practices.
Coastal Service Plan:	Operate and manage the property in conformity with the District's Service Plan for the Coastal Annexation Area and the mitigation measures adopted pursuant to the Service Plan's Environmental Impact Report.
San Mateo County Local Coastal Program	The Property is within the San Mateo County Coastal Zone. Consult with County Planning on all subsequent actions to ensure compliance with the Local Coastal Plan (LCP) and Coastal Development (CD) permitting requirements.
Name:	Name the property as an addition to Tunitas Creek Open Space Preserve.
Dedication:	Withhold dedication of the subject property as open space at this time.

## CEQA COMPLIANCE

The purchase and PUMP was found to be categorically exempt from the California Environmental Quality Act (CEQA) under Article 19, Sections 15301, 15316, and 15325 of the CEQA Guidelines at the January 22, 2020 Board Meeting, and the proposed amendment to the Terms and Conditions of the purchase and the PUMP does not affect this determination.

## FISCAL IMPACT

The purchase price of \$1,562,000 was adopted in the Fiscal Year 2020-21 Budget and Action Plan. The omission of the TCE from the terms and conditions would result in a net decrease of \$4,441 to the purchase price. Funding for the Powder River style tube gate will be requested as part of the annual Budget and Action Plan Process.

## BOARD COMMITTEE RECOMMENDATIONS

The District's Real Property Committee held an onsite meeting on November 12, 2019 to review information about the Property and receive public input on the proposed purchase. The District

distributed a notice of the Real Property Committee meeting on November 6, 2019 to property owners located adjacent to or surrounding the subject property. Staff provided a presentation of the Property, reviewed the purchase terms, and described how the Property would remain closed and managed as an extension of the surrounding Preserve. Two members of the Real Property Committee attended the meeting. One member was absent. No members of the public attended. The Real Property Committee recommended forwarding the proposed purchase to the District Board of Directors in a vote of 2-0.

**PUBLIC NOTICE**

Public notice was provided as required by the Brown Act, and a copy of this agenda was mailed to property owners of land located adjacent to or surrounding the Property, as well as the Coastside Protection Area mailing list.

**NEXT STEPS**

Upon approval, staff will work to fully execute an amendment to the Purchase and Sale Agreement. Upon approval of the lot-split, the General Manager will direct staff to proceed with the close of escrow for the purchase of the Property and implement the PUMP. The District's Skyline Field Office will manage the Property as an addition to Tunitas Creek Open Space Preserve.

**Attachments:**

1. Resolution Authorizing the General Manager to amend the Purchase and Sale Agreement (Tunitas Creek Open Space Preserve - Lands of Tabachnik Trust)
2. Tabachnik Trust Property Location Map

Responsible Department Head:  
Michael Williams, Real Property Manager

Prepared by:  
Allen Ishibashi, Sr. Real Property Agent  
Elish Ryan, Real Property Planner III

Contact Person:  
Allen Ishibashi, Sr. Real Property Agent

Graphics prepared by:  
Nathan Greig, Data Analyst II

**RESOLUTION 21-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING THE GENERAL MANAGER TO AMEND THE PURCHASE AND SALE AGREEMENT, AND TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (TUNITAS CREEK OPEN SPACE PRESERVE - LANDS OF TABACHNIK TRUST)**

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 approve the Amendment to the Purchase and Sale Agreement between Mateo Tabachnik and Alessandra Centrone Tabachnik Living Trust, U/A dated September 15, 2011, and the Midpeninsula Regional Open Space District, a copy of which is attached hereto and by reference made a part hereof, and authorizes the General Manager to execute the Agreement and all related transactional documents on behalf of the District to acquire the real property described therein (“the Tabachnik Trust Property”).

**SECTION TWO.** The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute a Certificate of Acceptance and the Easement Deeds on behalf of the District.

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

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

\* \* \* \* \*

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on \_\_\_\_\_, 2021, at a regular meeting thereof, by the following vote:

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

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Larry Hassett , Secretary  
Board of Directors

\_\_\_\_\_  
Curt Riffle, President  
Board of Directors

**APPROVED AS TO FORM:**

---

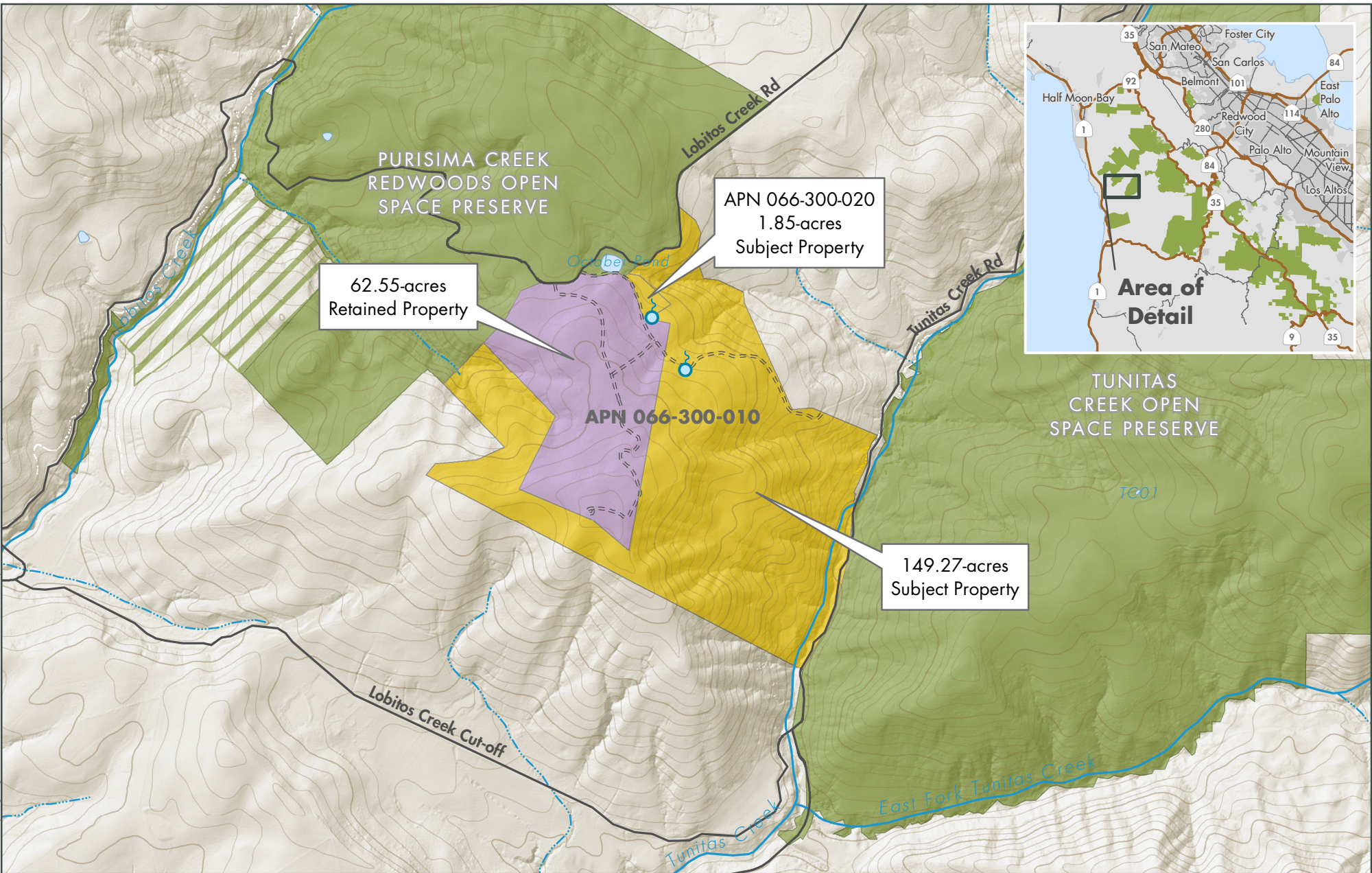
Hilary Stevenson, General Counsel

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.

---

Jennifer Woodworth, District Clerk

Path: G:\Projects\Tunitas\_Creek\Tabachnik BoardReport\_20191204.VC\_Tabachnik BoardReport\_20191204.mxd  
Created By: ngreig



### Tabachnik Trust Property

- MROSD Preserves
- Private Property
- Internal Road
- Spring
- Tabachnik Subject Property
- Tabachnik Retained Property

Midpeninsula Regional  
Open Space District  
(Midpen)  
12/4/2019



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.