



Midpeninsula Regional
Open Space District

R-11-30
Meeting 11-06
March 9, 2011

AGENDA ITEM 4

AGENDA ITEM

Approve Issuing a Right of Entry to the California Department of Transportation for the Construction of Slope Protection Improvements Along Highway 84 (La Honda Road) at La Honda Creek Open Space Preserve (San Mateo County Assessor's Parcel Number 082-170-040) and Determination that the Proposed Action is Categorically Exempt from the California Environmental Quality Act (CEQA)

GENERAL MANAGER'S RECOMMENDATIONS

1. Determine that the recommended action is categorically exempt from CEQA for the reasons set out in this report.
2. Approve the Right of Entry allowing the California Department of Transportation to install erosion control measures along Highway 84 at La Honda Creek Open Space Preserve, and authorize the General Manager to execute the Right of Entry on behalf of the District.

SUMMARY

The California Department of Transportation (Caltrans) needs to perform storm damage repairs along Highway 84 (La Honda Road) to stabilize a road embankment that is eroding from recent rainstorms. Part of the proposed drainage improvements would be installed on District lands. Caltrans is requesting a Right of Entry to install these improvements, and will return to the District following completion of the project seeking a permanent drainage easement for these improvements. In exchange for the drainage easement, the District is proposing that Caltrans grant the District an access easement for public use through an existing underpass that crosses Highway 84 from La Honda Creek Open Space Preserve to the Driscoll Event Center.

DISCUSSION

The project site is located just west of the community of La Honda at the westerly corner of the La Honda Creek Open Space Preserve along Highway 84 (see attached location map). Most of the road embankment where the work will be performed is located within the Caltrans right of way. The top of the embankment is within District ownership, and it is along the top of the embankment that Caltrans wishes to construct a concrete-lined drainage ditch as part of the slope

stability project. The area subject to the proposed right of entry is a 15-foot wide strip of land running along the District's boundary with the Caltrans right of way for approximately 835 feet. A pasture fence runs along the top edge of the embankment at this location, and this portion of the District's preserve is utilized by the District's grazing tenant Driscoll Ranches LLC. The District's conditions for approval of the proposed Right of Entry include requiring Caltrans to ensure that any fencing that is moved or damaged is replaced by Caltrans and to coordinate with District staff to ensure minimal disruption to the grazing tenant's operation.

In addition to being the District's grazing tenant, Driscoll Ranches owns and operates the rodeo event center located on the south side of Highway 84 directly opposite the project site. The event center property experiences recurring flooding problems during heavy rains on the low lying portions of the property from drainage off of the highway. As a precursor to bringing the Right of Entry to the Board for approval, District staff had Caltrans contact Driscoll Ranches to address those drainage concerns and provide some assurance to Driscoll Ranch that the proposed slope stabilization project on the north side of the highway will not contribute to the flooding problems on the other side of the highway.

The proposed Right of Entry requires Caltrans to return to the District upon completion of the project to obtain a grant of a permanent drainage easement for the approximately ¼ acre of land lying under the footprint of the new drainage facilities. In lieu of monetary compensation to the District for the drainage easement, District staff has proposed that Caltrans grant the District an access easement for public ingress and egress through an existing underpass that crosses Highway 84 in the vicinity of the project site. The underpass connects District lands to the north of the highway to the Driscoll rodeo event center on the south side of the highway, and is used by Driscoll Ranches to provide access to event center visitors from an overflow parking area located on District land on the north side of the highway. La Honda Creek Open Space Preserve does not extend across to the south side of the highway at this location. Securing public access rights through this underpass will provide for future potential trail connections on the south side of Highway 84 and formalize the existing public uses associated with the Driscoll rodeo events.

Pursuant to the terms of the proposed Right of Entry, Caltrans will either grant the District the desired public access easement or, if unable to do so despite its best efforts, will negotiate in good faith with the District to agree upon an appropriate monetary compensation (see Terms and Conditions below). Caltrans expects to commence work on the project immediately upon the District's issuance of the proposed right of entry.

TERMS AND CONDITIONS

The proposed Right of Entry includes the following key terms and conditions:

- Caltrans shall incorporate into the project all practicable erosion control and water quality Best Management Practices, and shall use appropriate native seed mixes.
- The District will issue the Right of Entry to accommodate Caltrans' construction schedule. No later than 30 days after completion of the project, Caltrans agrees to apply to the District for a permanent drainage easement.

- The District's subsequent grant of a permanent drainage easement to Caltrans will be in accordance with Public Resources Code 5500 *et seq.*, which provides that the District's conveyance of a permanent interest in real property be consistent with the open space purpose of the District.
- Caltrans agrees to use its best efforts to compensate the District in the form of a grant of an access easement for public ingress and egress across Highway 84 utilizing the existing underpass located at the project site.
- If, despite its best efforts, Caltrans is unable to convey the public access easement to the District by June 30, 2012, both parties agree to negotiate in good faith on an appropriate compensation for the District's grant of the drainage easement to Caltrans.

The grant of a permanent drainage easement to Caltrans will be brought back to the District Board for approval at a future public meeting.

FISCAL IMPACT

The issuance of the Right of Entry to Caltrans will have no fiscal impact to the District's budget.

PUBLIC NOTICE

Written notice of this item has been sent to property owners of land located adjacent to or surrounding the project site, as well as to Coastside public officials, community interest groups, nonprofit land trusts, conservation-oriented organizations, elected officials, government agencies, and government sponsored organizations within the Coastside Protection Area. In addition, the District's grazing tenant at La Honda Creek Open Space Preserve has been mailed a courtesy copy of this report.

CEQA COMPLIANCE

Project Description

As the lead agency on this project under CEQA, Caltrans approved a Categorical Exemption determination on July 20, 2009, for the following described project:

Storm damage repair of a slope failure area along State Route 84, Post Miles 5.1 to 5.9, in San Mateo County. The scope of work consists of removing loose material from the slope and placement of rock slope protections. All work will be within existing State right of way.

An addendum to the Categorical Exemption determination was approved by Caltrans on October 25, 2010 to incorporate District lands into the project, with the project description revised as follows:

Additional Right of Way is indicated by most recent mapping. Acquisition of permanent easement is now part of the project.

Caltrans determined that the project will not have a significant effect on the environment, and is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301 - Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The recommended action to be taken by the District consists of granting permission to Caltrans to enter and disturb approximately ¼ acre of District open space land for the purposes of undertaking the above-described project. Provisions included in the proposed Right of Entry require Caltrans to take appropriate measures to avoid any potentially significant environmental effects, including adhering to erosion control and water quality best management practices.

CEQA Determination

As a “responsible agency” under CEQA, the District has considered the lead agency’s Categorical Exemption determination and has determined that no substantial changes in the project or in the circumstances under which it will be undertaken have occurred. Staff concurs with Caltrans that the project is categorically exempt from CEQA under Section 15301 - Existing Facilities.

NEXT STEPS

Pending Board approval, the Right of Entry will be executed by the General Manager and transmitted to Caltrans for its execution.

Attachments:

- Exhibit A: Project Location Map
- Exhibit B: Right of Entry to Caltrans

Prepared by:

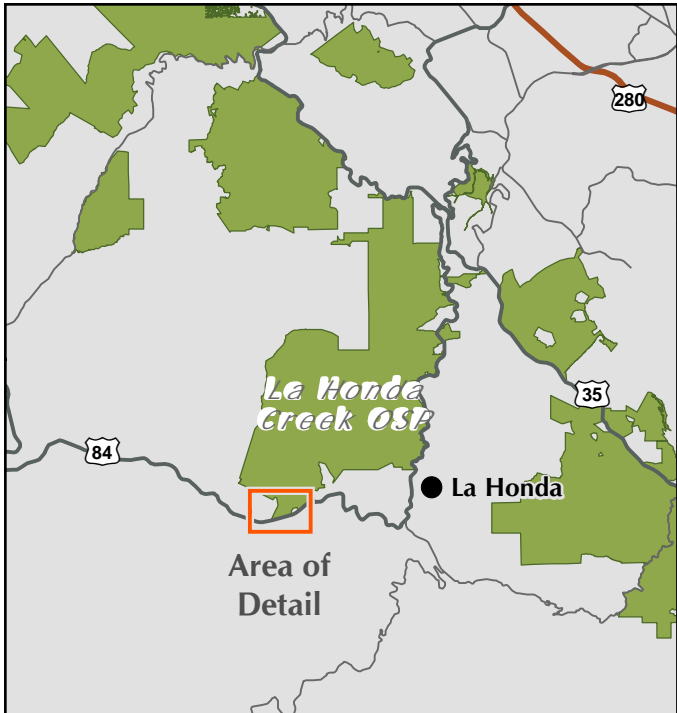
Michael Reeves, Real Property Specialist

Contact person:

Same as above.

Graphics prepared by:

Alex Roa, GIS Intern/Technician



Path: G:\Projects\La_Honda_Creek\CaltransEmergencyPermitToEnter.mxd

Exhibit A: Location of Proposed Caltrans Permit to Enter, La Honda Creek OSP

- District Lands
- Other Protected Open Space or Park Lands
- Conservation or Agricultural Easement
- Underpass
- Numbered Gate
- Non-numbered Gate

Midpeninsula Regional
Open Space District

February 2011

0 0.05 0.1 0.2 Miles

RIGHT OF ENTRY

Date: _____

District: 4
County: San Mateo
Route: 84
Post Mile: 5.4
Parcel No.: 62354-1
Exp Auth: 0400001210(4S1309)

State of California
Department of Transportation
Mr. Bijan Sartipi
District Director
District 4
111 Grand Avenue
Oakland, CA 94612

Dear Mr. Sartipi:

The Midpeninsula Regional Open Space District (“District”) hereby grants this Right of Entry to the State of California Department of Transportation (“Department”) to enter upon District lands located in San Mateo County on State Route 84, Post Mile 5.4 (the “Premises”) to repair side slopes damaged by rain storms by installing permanent erosion control features including a concrete lined drainage ditch, rock slope protection at specific locations, and a concrete apron around the existing drainage inlet (the “Project”).

The Premises is comprised of a portion of San Mateo County Assessor’s Parcel Number 082-170-040, as more particularly described and shown on the Right of Way Appraisal Map attached as Exhibit A hereto and incorporated herein by this reference.

As a condition of this Right of Entry, Department shall add the following specifications to the construction contract let by Department for this Project:

- (1) The Project includes diverting stormwater flows through a new concrete-lined V-ditch to be constructed on the Premises, and conducting those flows through an existing culvert maintained by the Department and identified in the field by a marker labeled “SM84 5.50”. As part of the Project, Department shall ensure that this existing culvert is cleaned out and any obstructions removed from within the culvert or at the culvert outfall. The Department shall use plastic pipe for the 12” X 68’ pipe connecting the V-ditch with the drainage inlet of this culvert.
- (2) The seed mix to be used in the hydroseeding applied on the Premises as part of the Project erosion control measures shall conform to the seed selection specified in Exhibit B attached hereto and incorporated by this reference.
- (3) The Premises is part of a working cattle ranch. If any of the existing pasture fencing located on the Premises is removed or damaged during Project construction, such fencing shall be repaired or replaced as necessary with fencing of like construction. Temporary fencing shall be installed by the Department as deemed necessary by the Department and/or District to ensure cattle are safely contained within the pasture and away from the edge of the embankment at the Project site. The Department and the contractor shall immediately notify District of any such fencing work to ensure coordination with District and District’s grazing tenant.
- (4) The contractor shall incorporate into the project all practicable erosion control and water quality Best Management Practices.

All work done under this Right of Entry shall conform to all applicable building, fire, environmental and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures,

improvements or other facilities, when removed and relocated, or reconstructed by Department, shall be left in as good condition as found.

It is understood by the parties that this Right of Entry does not itself constitute the grant of a Right of Way or temporary or permanent easement. No later than 30 days after completion of the Project, Department will apply to District for the legal right to maintain, repair, and install the above-described Project on District land on a permanent basis in the form of a permanent drainage easement (the "Drainage Easement") as shown on Exhibit A. The Drainage Easement will be granted in accordance with Section 5500 *et. seq.* of the California Public Resources Code.

It is further understood by the parties that this Right of Entry is not a waiver in any way of the right of compensation for the Drainage Easement or of any remedy authorized by law to secure payment therefor. District acknowledges it has been advised of its right to receive immediate compensation and has waived that right, agreeing to be compensated at a later date. Department acknowledges that District desires to pursue the exchange of the Drainage Easement for rights of access through the existing underpass across State Route 84 located at Post Mile 5.5 for District public recreational access purposes (the "Access Easement").

This Right of Entry is granted in consideration of the construction of the Project, which is understood by the parties to be required by Department, with the understanding that Department will hereafter without unnecessary delay, negotiate in good faith with the undersigned, and any other person, if any, having any right, title or interest in the Premises, to agree upon terms of compensation for the Drainage Easement. Department agrees that it will use its best efforts and take any required action, including seeking approval by the California Transportation Commission if necessary, to compensate the District in the form of the Access Easement described above. If, by June 30, 2012, such Access Easement cannot be granted despite the best efforts of Department, then Department and District will thereupon negotiate in good faith in order to agree upon an appropriate amount of compensation and the nature of the compensation for granting the Drainage Easement, whether in money, property interests, on- or off-site mitigation, or any combination thereof. If such an agreement cannot be reached, Department will promptly commence eminent domain proceedings, including a deposit of funds to support an Order for Possession, to have such compensation determined.

Section 1245.235 of the Code of Civil Procedure requires Department to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the California Transportation Commission and be heard on the matters referred to in Section 1240.030 of the Code of Civil Procedure, which provides:

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (1) The public interest and necessity require the project.
- (2) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (3) The property sought to be acquired is necessary for the project.
- (4) The offer required by Section 7267.2 of the Government Code has been made to the owner or others of record. (If an offer has not been made, an appraisal will be prepared as soon as practicable and an offer made of the full amount of such appraisal).

By granting this Right of Entry of the Premises to Department, District agrees to the following: (1) District specifically waives the notice required by Code of Civil Procedure Section 1245.235 of the hearing of the matter referred to in Code of Civil Procedure Section 1240.030 and the adoption of the resolution of necessity by the California Transportation Commission authorizing the taking of the property described in Exhibit A; (2) District shall not object to the filing of an eminent domain proceeding to acquire the property described in Exhibit A; and (3) in any eminent domain action filed by Department to acquire the property described in Exhibit A, District shall not challenge Department's right to take such property, and the only issue shall be the amount of just compensation for the property.

It is understood that Department will pay interest from the date of the full execution of this Right of Entry on the just compensation paid by Department. The rate of interest will be the rate of earnings of the Surplus Money Investment Fund and

computation will be in accordance with Section 1268.350 of the Code of Civil Procedure. Interest will be computed to and including the date of deposit of compensation.

Department agrees to indemnify and holds harmless District from any liability arising out of Department's operations under this agreement. Department further agrees to assume responsibility for any damages proximately caused by reason of Department's operations under this Right of Entry and Department will, at its option, either repair or pay for such damage.

Department and its contractors shall have sole responsibility for the safeguard of their equipment, property, and personnel from any and all injury, death, or damage, and Department shall, at its option, either repair or pay for such damages.

Department's right of possession and use of the Premises under this Right of Entry shall commence on February 24, 2011. It is agreed and confirmed by the parties hereto that the rights and obligations under this Right of Entry shall terminate upon the recordation of the Drainage Easement and payment of the compensation for the Drainage Easement as set out herein.

IN WITNESS WHEREOF, the parties have executed this Right of Entry the day and year first above written.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT**

ACCEPTED:

ACCEPTED:

By _____
R. A. MACPHERSON
Deputy District Director
Right of Way

By _____
STEPHEN E. ABBORS
General Manager

RECOMMENDED FOR APPROVAL:

ATTEST:

By _____
SHIRLEY DILLARD
Right of Way Agent
Acquisition Services

By _____
MICHELLE RADCLIFFE
District Clerk

APPROVED AS TO FORM :

By _____
JASPREET SINGH
District Branch Chief
Acquisition Services

By _____
Susan M. Schectman
General Counsel

By _____
NANDINI SHRIDAR
Project Manager
Project Management - South

RECOMMENDED FOR APPROVAL:

By _____
Michael Reeves
Real Property Specialist

DISTANCE SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3, CA-HFEN, EPOCH 1991.35. MULTIPLY DISTANCES SHOWN BY 1.000049 TO OBTAIN GROUND LEVEL DISTANCES.

DIST.	COUNTY	ROUTE	TOTAL MAPPING AREA	
			POST MILE	KILOMETER POST
04	SM	84	5.1/5.9	8.21/9.49

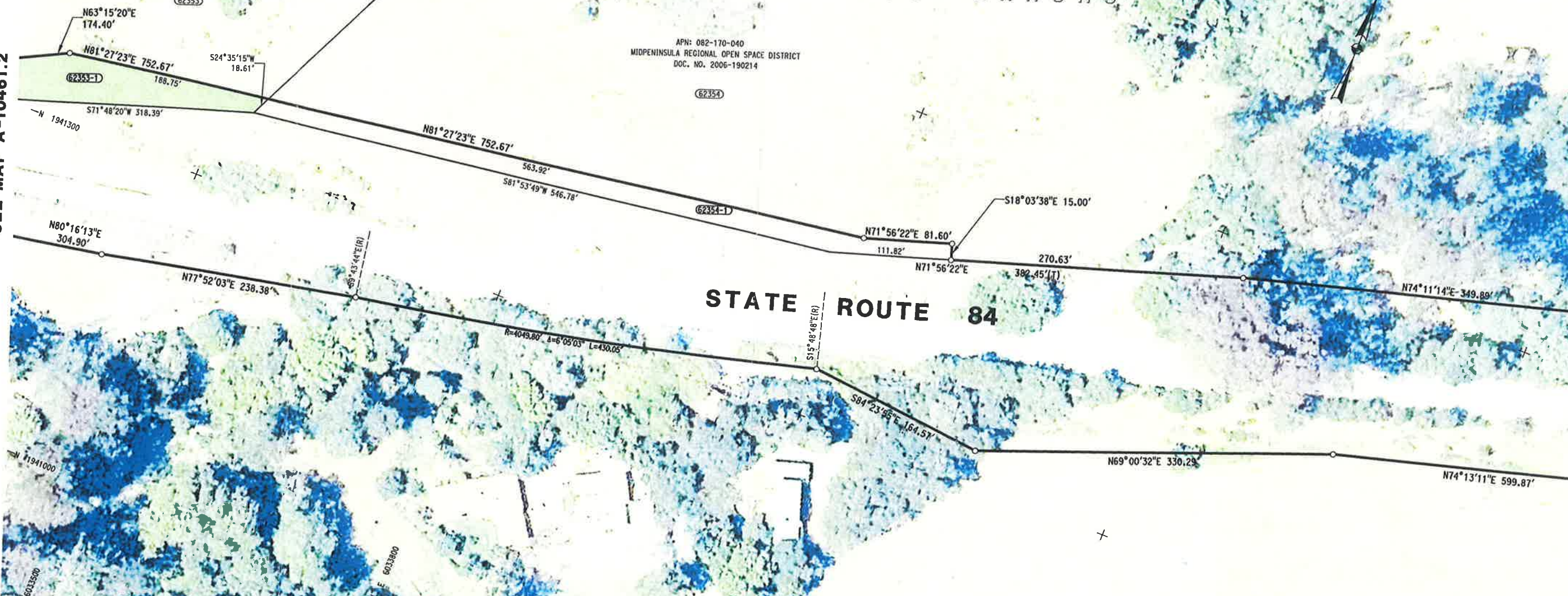
SAN MATEO COUNTY

T 7 S R 4 W EXHIBIT "A"
 SAN GREGORIO RANCHO

APN: 082-130-190
 LAMBERT, ALAN G. II
 DOC. NO. 1990-168313

APN: 082-170-040
 MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
 DOC. NO. 2006-190214

SEE MAP A-10461.2



NOTE: ALL THE TOTAL OWNERSHIP AREA FIGURES ARE OBTAINED FROM A REVISION

PARCEL #S	ACD. CODE	GRANTOR	AREAS (Square feet; AC=Acres)				REMARKS	RECORDATION		EA	PROJECT ID
			TOTAL	R/W	REM	EXCESS		INST	DATE		
62353-1	F	LAMBERT, ALAN G. II	*785,387	11,372	774,015				451301	0400001210	
62354-1	F	MIDPENINSULA REGIONAL OPEN SPACE DIST	*23,639,576	11,314	23,628,262				451301	0400001210	

LEGEND

- DIMENSION POINT
- APN: ACCESSOR'S PARCEL NUMBER
- DOC. NO. DOCUMENT NUMBER
- PM PARCEL MAP
- (R) RADIAL BEARING
- SO.FT. SQUARE FEET
- (T) TOTAL

STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING
 AGENCY DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
 APPRAISAL MAP
 A-1046.2**
 SCALE 1"=50'



E.A. 451301
 R/W MAL/J.ZHONG
 P.S.

HARD COPY M A P R E F E R E N C E S

R-177.23 & .24

RECORD

DRAWING DATE	COUNTY	ROUTE	POST MILE	KILOMETER POST	SHEET
09/14/2010	SM	84	5.4	8.69	3 of 3

DATE	REVISIONS	BY	DATE	REVISIONS	BY	DATE	REVISIONS	BY	DATE	REVISIONS	BY

HANGING FILE 177

EXHIBIT B

Recommendations for CalTrans roadside slope stabilization project along Hwy 84 adjacent to La Honda Creek Open Space Preserve

Native Seed Grass Mixes

The District recommends using native grass seed mixes derived from the local geographic region (Santa Cruz Mountains). Several vendors in the area collect and propagate native grasses from the Santa Cruz Mountains and sell seed commercially. One vendor we have obtained such seed from is Pacific Coast Seed (533 Hawthorne Place, Livermore, CA 94550, (925) 373-4417).

Some of the widely used non-native grass mixes should be avoided. These contain aggressive spreading species, such as those found in the “Santa Cruz Erosion Mix”. Some of these species will move into adjacent District lands and require expensive removal efforts by the District.

Suggested Seed Mix for Site (Sunny & Dry Conditions)

Common Name	Latin Name	Life Form	Lbs. / Acre	Percent of Total
California Brome	Bromus carinatus	Grass	10	25%
Big Squirrel Tail	Elymus multisetus	Grass	3	8%
Blue Wild Rye	Elymus glaucus	Grass	10	25%
Purple Needle Grass	Nassella pulchra	Grass	10	25%
California Poppy	Eschsholzia californica	Forb	2	5%
Blue-eyed Grass	Sisyrinchium bellum	Forb	3	8%
Totals	-	-	40	100%

*If some suggested species are unavailable, prioritize the grass species listed.

Seeding Methods

Spread the native grass seed mix after all grading and before spreading straw or mulch on the site. Remove all weeds and miscellaneous plant material from surface of soil to be planted. Seed mix should be spread at a rate of 40 lbs/acre. Seed should be lightly raked into soil and covered with straw (see below).

Straw Selection

One of two types of straw should be used: native grass straw or noxious weed-free straw. Native grass straw is simply straw that is harvested from cultivated native grass fields. It may be difficult to find quality Noxious Weed-free Straw because the State of California does not have a certification program for such straw. Some companies provide straw that has been certified by the States of Washington or Oregon, and these may be more reliable. After grading work is completed, spread straw so that it is at least 2 inches thick above soil. Both types of straw can be purchased from vendors such as Hedgerow Farms (21740 County Road 88, Winters, CA 95694, (530) 662-6847).

Erosion Control Fabrics

Erosion control netting or blankets composed of natural fibers should be used. Plastic netting is known to trap and kill small animals such as lizards and snakes. Plastic netting also becomes refuse as it breaks down over time, whereas natural fibers biodegrade.