



Midpeninsula Regional
Open Space District

R-11-111
Meeting 11-33
December 14, 2011

AGENDA ITEM 7

AGENDA ITEM

Annual Meeting of and Report to Shareholders of Guadalupe Land Company as Owners of Property Adjacent to the Mount Umunhum Area of Sierra Azul Open Space Preserve (Santa Clara County Assessor's Parcel Numbers 575-11-004, 575-12-001 and 575-12-013); Accept the Annual Report and the Chief Financial Officer's Report to Shareholders of Guadalupe Land Company; and Appoint the Directors of the Guadalupe Land Company

BOARD CHAIRMAN'S RECOMMENDATIONS

1. Accept the Annual Report and the Chief Financial Officer's Report to Shareholders of Guadalupe Land Company
2. Appoint the Directors of the Guadalupe Land Company as set out in this Report.

SUMMARY

The Midpeninsula Regional Open Space District (District) is the sole shareholder of Guadalupe Land Company, a private corporation, with a sole asset of a 286.61-acre property. The following annual report provides a history of the District's ownership of the corporation and a financial report covering the operation of the corporation for fiscal years 2011 and 2012.

DISCUSSION (See attached map)

At its December 15, 2004 meeting, the District's Board of Directors approved the purchase of the Guadalupe Land Company (GLC), a private corporation, which included its sole asset, a 286.61-acre property, as an addition to Sierra Azul Open Space Preserve (see Report R-04-134). Through this transaction, the District became the sole shareholder of GLC (acting through the District's Board of Directors).

The Bylaws of GLC require an annual meeting of the shareholders and an annual report to the shareholders. The purpose of this agenda item is to satisfy these requirements and to obtain approval of the recommended actions by the GLC acting through the District's Board of Directors.

In 2004, the following initial corporate actions were approved by the Board, on behalf of the District as sole shareholder, and implemented:

- A. Amended and Restated Articles of Incorporation of GLC were filed with the California Secretary of State.
- B. Amended and Restated Bylaws of GLC were adopted.
- C. Directors and Officers of GLC were appointed as follows:
 - i. President and Chairman of the Board: District General Manager L. Craig Britton
 - ii. Secretary: District Assistant General Manager Sally Thielfoldt
 - iii. Chief Financial Officer: District Controller Mike Foster
- D. Frank Rimerman was appointed to serve as GLC accountant for preparation of corporate tax returns and filings.
- E. Commercial General Liability Insurance and Directors and Officers Insurance were obtained through the District's CalJPIA coverage.
- F. Sally Thielfoldt was appointed as the Agent for Service of Process.

Since those initial corporate actions, the GLC has met annually and taken all required corporate maintenance actions, including appointment of Directors and Officers. The current Directors are: Stephen E. Abbors, Chairman of the Board; Michael L. Foster; and Michelle Radcliffe. The current Officers are: Stephen E. Abbors, President; Michael L. Foster, Chief Financial Officer; and Michelle Radcliffe, Secretary.

Fiscal Analysis

As part of the District's 2005/2006 Budget, \$64,625 was approved as a separate category for opening a GLC bank account for the operation of the Corporation. The bank account was opened with an initial deposit of \$44,156, approximately \$20,000 less than budgeted because staff was able to secure the necessary insurance through the District's California Joint Powers Insurance Authority (CalJPIA). The Tax Collector's Office of the County of Santa Clara cancelled property taxes on the property effective January 5, 2005, the date of the District's purchase of GLC, providing an additional substantial savings of approximately \$35,000 annually.

At the meeting of December 8, 2010, it was estimated that anticipated expenses for 2011 would be \$23,025.00 (see Report R-10-130). These expenses were to hire an appraiser and corporate tax attorney to determine the corporate capital gains taxes which would be incurred if the shareholders of the Guadalupe Land Company decide to dissolve the corporate ownership in 2012 or 2013. An appraiser certified as a Member, Appraisal Institute (MAI) is under contract to prepare a fair market value of the 286.61-acre property. In addition, the Officers and Directors have engaged corporate tax counsel to assess the advantages and disadvantages of dissolving the corporation and to determine the corresponding capital gain tax liability should the District determine to dissolve the GLC. Corporate capital gains taxes are generally calculated by applying a 40% tax rate to the difference between the current value of the property and the property's basis. The basis of the property is \$227,000. The GLC property is subject to an open space easement conveyed to Peninsula Open Space Trust in September 2008 (see report R-08-92). Because the open space easement protects the property as public open space and prohibits residential development, the current value of the property is reduced significantly compared to

the value of the property if it was not subject to the open space easement. The effect of the open space easement is anticipated to result in a potential reduction of capital gains tax liability in the event the corporation was dissolved and the property asset was distributed.

The actual expenses for 2011 were \$5,025 leaving an ending bank balance of \$19,152.01 (see Attachment A). Appraisal and corporate tax counsel fees are anticipated not to exceed \$16,000 in 2012. The annual management fee, corporate tax and filing fees remain the same as in past years totaling \$5,025 with a miscellaneous fund of \$2,000 for any unanticipated expenses. In 2012, it is estimated that the budget will have a negative balance of approximately \$3,847.99 (see Attachment B). Therefore, an additional \$4,000 in funds will need to be budgeted as part of the District's FY2012-13 Budget to cover the expenditures discussed above and continue to operate the Corporation through the end of 2012 and complete the assessment of the capital gains tax liability if the Corporation were to be dissolved.

Appointment of Directors and Chairman

The day-to-day business of GLC is administered by three Directors. Directors of the GLC should be appointed at the annual meeting of the shareholders. The current directors are Stephen E. Abbors, Chairman of the Board of Directors; Michael L. Foster; and Michelle Radcliffe.

It is recommended that the shareholders appoint the same Directors for Calendar Year 2012:

Stephen E. Abbors, Chairman of the Board of Directors
Michael L. Foster, Director
Michelle Radcliffe, Director

The GLC Bylaws authorize the Directors to appoint the GLC Officers. At the last meeting of the GLC, the Directors approved the appointment the following Officers:

President and Chairman of the Board: Stephen E. Abbors
Chief Financial Officer: Michael L. Foster
Secretary and Agent for Service of Process: Michelle Radcliffe

License and Management Agreement

As part of the original transaction, the Midpeninsula Regional Open Space District entered into a License and Management Agreement with GLC to manage the property as part of Sierra Azul Open Space Preserve, and to enforce the District's rules and regulations. The License Agreement also enabled the District to obtain the necessary corporate insurance through the District's CalJPIA coverage. At the meeting of December 12, 2007, the License Agreement was renewed for five additional years, expiring in January 5, 2013. The License Agreement requires GLC to pay an annual management fee of \$4,200 for patrol and management of the property. Staff regularly patrols the 286.61-acre property from its deeded access easement through adjacent private property at the end of Reynolds Road.

USE AND MANAGEMENT

The Preliminary Use and Management Plan adopted at the meeting of December 15, 2004, still remain in effect and unchanged. The Plan states the property will be closed to public use and will be routinely patrolled.

FISCAL IMPACT

See Fiscal Analysis discussion on page 2 of this report.

PUBLIC NOTICE

Notice was provided pursuant to the Brown Act. No additional notice is necessary.

CEQA COMPLIANCE

No compliance is required as this action is not a project under CEQA.

NEXT STEPS

The corporate expenses and budgeting for the continued operation of the Corporation for 2012 as proposed in this report will be included in the District's FY2012-13 budget. The assessment of potentially dissolving the corporation and the resulting corporate capital gains tax impact will be presented to the District's Board of Directors a future meeting of the Shareholders. The next annual Shareholders meeting will be scheduled for December 2012.

Attachments:

1. 2011 Expenses to Date
2. 2012 Anticipated Expenses
3. Map

Prepared by:

Michael C. Williams, Real Property Manager

Contact Person:

Same as above

Graphics by:

Zachary Alexander, Planning Technician

Guadalupe Land Co. - 2011 Expenses to Date

Attachment A

January Beginning Bank Balance	17,377.01
---------------------------------------	------------------

Date	Check No.	Expenses	Deposits	Description	Bank Balance
5/19/2011	1028	25.00		State of CA - Secretary of State Filing Fee	17,352.01
5/16/2011	1029	4,200.00		2010 MROSD Management Fees	13,152.01
8/8/2011	1030	800.00		July 2011 to June 2012 Estimated Corp. taxes	12,352.01
9/16/2011			6,000.00	Deposit from MROSD	18,352.01
9/16/2011			800.00	Refund Estimated Corp Taxes	19,152.01

Total Expenses to date: 5,025.00

Ending Bank Balance 11/15/2011	19,152.01
---------------------------------------	------------------

The Guadalupe Land Co. has no liabilities, and its assets are the cash account listed above and the real property in unincorporated Santa Clara County commonly known as the Guadalupe Land Co. property.

I certify that this financial statement was prepared from the books and records of the Corporation.



Michael L. Foster, Chief Financial Officer

Date: 11/15/11

Attachment B

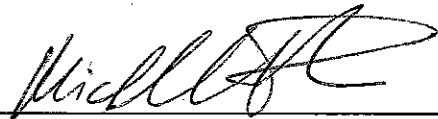
Guadalupe Land Company - 2012 Anticipated Expenses

2012

Est. January 1, 2012 Beginning Bank Balance **19,152.01**

Est. Expenses	Description	Bank Balances
4200.00	Management Fees	14,952.01
800.00	Corporate Taxes	14,152.01
25.00	CA Filing Fee	14,927.01
10000.00	Appraisal Fee	4,152.01
6000.00	Legal Services	-1,847.99
2000.00	Misc	-3,847.99
23,025.00		

Ending Bank Balance 12/31/2012 **-3,847.99**



Michael L. Foster, Chief Financial Officer

Date: 11/15/11



Guadalupe Land Company
 "Newhagen Meadows"
 286.61 Acres

Access Easement

Sierra Azul OSP
 (Kennedy-Limekiln Area)

Almaden
 Quicksilver
 County Park

Guadalupe
 Reservoir

Attachment C: Guadalupe Land Company Property

-  MROSD
-  Other Protected Open Space or Park Lands
-  Watershed Land
-  Conservation or Agricultural Easement

Midpeninsula Regional
 Open Space District

November 2011

