



Midpeninsula Regional  
Open Space District


## LEGISLATIVE, FUNDING AND PUBLIC AFFAIRS COMMITTEE

R-13-93

October 8, 2013

### AGENDA ITEM 3

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Partnership Guidelines for the Mount Umunhum Radar Tower 

#### GENERAL MANAGER'S RECOMMENDATIONS

To further define the external partnership approach for the Mount Umunhum radar tower, the General Manager recommends the following:

1. Define the minimum partner funding commitment for the long-term repair costs as including escalation costs to the year of construction as shown in Attachment A, including 50% of the construction costs (\$500,000) as a minimum requirement for the Board to consider an MOU.
2. Define the minimum partner funding commitment for maintenance to include a period of forty years, including 50% of the twenty-year maintenance costs (\$125,000) as a minimum requirement for the Board to consider an MOU.
3. Confirm that minor maintenance is to be funded by the District until long-term construction is implemented, at which time all maintenance costs will be funded by a fundraising entity or outside partner (estimated timeframe: three to five years).

#### SUMMARY

Staff is returning to the Legislative, Funding, and Public Affairs Committee (LFPAC) to further refine the approach for partnering with a nonprofit 501(c)(3) organization or similarly qualified fundraising entity to repair the Mount Umunhum radar tower. In October 2012, the Board of Directors (Board) approved the Retain and Seal option for the radar tower to allow interested members of the public to raise funds within a five year timeframe for the long-term repair and maintenance of the structure. Staff has subsequently been working with LFPAC to define the appropriate parameters for this new type of partnership. To date, LFPAC has passed a motion to forward four partnership requirements to the full Board. Staff is returning to LFPAC at this meeting with further refinements to the final three requirements, including the minimum funding commitment needed to address repair and long-term maintenance costs. Staff is also coming to LFPAC with confirmation that minor maintenance will be funded by the District (within a three

to five-year estimated timeframe) until repair work is completed, at which time all maintenance would be funded by a fundraising entity or outside partner.

## Background

At its October 17, 2012 meeting for the Mount Umunhum Environmental Restoration and Public Access Project (Project), the Board approved Interim Action A for the radar tower, allowing for minimum, near-term “Collapse Prevention” repairs (as defined by Santa Clara County) to allow safe public access to the exterior base of the structure for a period of approximately five years following construction (Report R-12-104). This action is an initial step toward implementing any of three permanent radar tower options (Retain and Seal, Open Air, and Restoration), and provides time for radar tower advocates to partner with or form a new nonprofit 501(c)(3) organization or similarly qualified fundraising entity to raise funds for the long-term repair of the radar tower under the Retain and Seal option. The Board would determine and define what constitutes a suitable partnership and any arrangement between the District and an outside entity would be considered a “potential” partnership until all minimum requirements are met.

As this is a new approach for the District, the mechanism for proceeding, consistent with Board direction, was discussed at the March 5, 2013 LFPAC meeting. At this meeting, LFPAC directed staff to return with refined recommendations, and three new approaches for consideration to define the District’s involvement with an external fundraising entity, ranging from no involvement to a deeper interaction via a Memorandum of Understanding (MOU).

These approaches were the subject of discussion at the June 4, 2013 LFPAC meeting at which time the committee passed a motion to forward four actions to the full Board, and directed staff to further refine the final actions. The four LFPAC-approved actions for engaging with a fundraising entity are provided below (deleted language is shown in ~~strikeout~~ and added text is shown in **bold**).

### 1. Parameters for District involvement with a fundraising entity

- *Relationship*

The District would not have any formal relationship with any fundraising entity whose mission is to raise funds to permanently retain the radar tower, until that organization has met the minimum requirements established by the District Board of Directors. These minimum requirements would be defined in advance, and would include raising funds to meet specified funding levels for repairs and maintenance within a specified timeline, and related requirements.

- *Memorandum of Understanding (MOU)*

Once the fundraising entity has obtained the minimum requirements, **which include raising 50% of the required funds for construction (not maintenance)**, the Board would consider directing staff and the General Counsel’s office to work with the organization to establish a Memorandum of Understanding, or MOU, which would provide detail on the work to be done, identify roles and responsibilities for the work, and include a proposed timeline to accomplish the work.

- *Public Inquiry*

To date, there is only one known entity that has approached the District as a potential partner, known as the Umunhum Conservancy, Incorporated (UCI). When the District receives public inquiry regarding raising funds for the radar tower, the District would simply redirect public inquiry to the fundraising entity; the District would not maintain a link from its web page to the organization, even if the District and the UCI enter into an MOU, to avoid the false appearance of endorsement. ~~Unless directed by the Board on a case-by-case basis, no site visits or tours to Mount Umunhum, (which require staff involvement) would occur.~~

- *Staff Time (Non-Reimbursed)*

**The District would provide up to 40 hours of combined staff time for preparation, arrangements, and escort for site visits to Mount Umunhum for prospective donors (assuming 4 hours per visit including travel) at no cost to the fundraising entity. Phone calls, committee and Board meetings, and other work associated with this project are not included in the 40 hours of combined staff time.**

2. Work with the General Counsel's Office to define appropriate terms for the District's relationship with any fundraising entity that approaches the District as a potential partner.
3. Prohibit the District from accepting public funds for the radar tower repair at this time. Instead direct public inquiry to known, existing fundraising entities who have contacted the District.
4. Authorize the General Manager to assign a District liaison as a point of contact for public inquiries, and to remain in communication with the fundraising entity. (The person best suited for this role was determined to be the Mount Umunhum Environmental Restoration and Public Access Project Manager who will work together with the Public Affairs Department.)

## Discussion

Continuing with the numbered series above, the three new recommended actions for LFPAC consideration for engaging with a fundraising entity are provided below:

5. **Funding commitment for long term repair cost to include escalation to year of construction, including 50% of the construction costs as a minimum requirement for the Board to consider an MOU.**

As part of the October 1, 2013 meeting, LFPAC is asked to define the minimum partner funding commitment for the Retain and Seal option (or long-term repair) to include escalation costs to the year of construction, as shown in Attachment A and discussed below.

Since it is unknown in what year a fundraising entity will raise the 50% minimum requirement for construction, staff recommends this value be set at \$500,000, which is a general average of escalated construction costs between now and the fundraising deadline.

At its October 17, 2012 meeting when the Board approved consideration of external partnerships, the Board strongly focused on the requirement that any partner would need to commit to providing the total construction cost to the radar tower for long-term “Life Safety” repairs as defined by the County of Santa Clara, and described under the Retain and Seal option. Staff recommends remaining consistent with this requirement.

The District is already committed to funding the minimum, near-term “Collapse Prevention” repairs in the amount of \$415,000 for the radar tower. These funds contribute to the overall cost of long-term repairs and are already factored into the calculation for the total minimum funds required for the Retain and Seal option. Attachment A provides escalated construction costs for the Retain and Seal option, including “Collapse Prevention” repairs.

Typically, any construction project requires a minimum of one year for project design and engineering, a second year for permitting, and a third year for construction. Therefore, the escalated construction costs shown in Attachment A should be interpreted as follows: if potential partners are required to raise 100% of construction funds by the target date of October 2017, a minimum of \$1,052,427 would be needed for construction in the year 2020. This amount would become the minimum amount that a fundraising entity would need to raise by the October 2017 deadline. If any delays are encountered during permitting and construction that are outside the authority of the District, which is not uncommon, this amount could increase; however, if construction bids come in unexpectedly low, this amount could decrease. These occurrences are unpredictable, and therefore, this minimum amount is the best estimate the District has at this time. If the minimum funding for the Retain and Seal option is met prior to the deadline of October 2017, funds would then be transferred to the District for implementation, to be detailed and defined in a future MOU.

**6. Funding commitment for maintenance to include a period of forty years, including 50% of the twenty-year maintenance costs as a minimum requirement for the Board to consider an MOU.**

As part of the October 1, 2013 meeting, LFPAC is asked to define the minimum partner funding commitment for maintenance for a time period of 40 years, including 50% of the twenty-year maintenance costs to address as-needed unanticipated emergency and public safety work. The twenty-year maintenance costs are estimated at \$250,000 (primarily for roof replacement), so a fundraising entity would be required to raise fifty percent of that, or \$125,000, for the Board to consider entering into an MOU. These funds are separate and would need to be added to the 50% minimum requirement for construction previously approved by LFPAC as shown in action number 1 above.

If this is agreeable to LFPAC, then **the total amount a fundraising entity would be required to raise in order for the Board to consider an MOU would be \$625,000 (50% of average construction costs plus 50% of twenty-year maintenance costs).**

Throughout the radar tower evaluation, the Board has expressed concern about how the long-term maintenance of structures like the radar tower does not align with the District’s mission statement. Even if an entity were to successfully fundraise for the permanent repairs, the question of responsibility for maintenance and repair costs still remains.

Staff recommends that the funding responsibility for maintenance and repairs be placed on the fundraising entity for any work that is required beyond what District staff would customarily provide for other District structures. District field staff is limited by safety requirements on what type of maintenance work they can provide for any facility. For the radar tower, District staff can only commit to graffiti removal up to the first floor, or as high as a coating could be applied with an extension roller from the ground. Responsibility for all other repair would fall upon the fundraising entity, including paying for periodic inspection services by a qualified structural engineer.

It is not possible to exactly predict the future maintenance requirements; however, order-of-magnitude estimated costs were developed and presented to the Board as part of the Conceptual Cost Estimate by TDB Consultants and Restoration Design Group in July 2012 (see Report R-12-75). According to that report, in addition to construction costs, maintenance costs for the Retain and Seal option add an additional \$250,000 by year 20 and an additional \$500,000 by year 40, for a total estimated 40-year cost of maintenance of \$750,000. Forty-year maintenance costs include the following:

- Roof replacement at 20 and 40 years
- Repainting with scaffolding
- Minor exterior crack repairs approximately every 15 years
- Anti-vandal repairs
- Insurance

There are many ways to approach the requirement of raising funds for structure maintenance, the terms of which would be defined within the context of an MOU; however, the \$125,000 held for maintenance could essentially become a reserve to address unanticipated emergency work (e.g. earthquake damage) to protect the public from potential hazards until repair work can occur. This fund would allow for the quick installation of perimeter fencing and other safety measures to the structure to provide for public safety while still allowing the summit to remain open to the public.

**7. Minor maintenance costs are to be funded by the District until long-term construction is implemented, at which time maintenance costs are to be transferred to a fundraising entity or outside partner.**

“Collapse prevention” repairs to allow safe public access to the exterior base of the structure for a period of five years are anticipated to occur in late 2014 or early 2015. Public access to the summit is anticipated to occur in 2017, which is also the deadline for fundraising. It is anticipated that a fundraising entity would require the full time period to raise funds, placing construction at the year 2020. Staff recommends the District provide minimal maintenance for the time period between public opening until the long-term construction is implemented, at which time maintenance of the entire structure would become the sole responsibility of the fundraising entity. Staff assumes that any fundraising entity would require the full time period until 2017 to raise funds, and construction would commence three years from that date, or 2020; therefore, minor maintenance would occur for a period of approximately three to five years, primarily including cleaning and vandal repair.

It is not possible to predict future major earthquake activity or related damage. However, the minimum, near-term “Collapse Prevention” repairs to allow public access to the exterior base will include repairs of damage resulting from the prior Loma Prieta quake of 1989. In the event of a major earthquake or other event that results in new damage to the radar tower, staff would return to this committee for further guidance on next steps to proceed. .

**FISCAL IMPACT**

There are no immediate fiscal impacts to the District associated with this item. If the Board approves the recommendations as set forth in this report, the District may need to budget funds for minimal maintenance of the radar tower, as the need arises, for a period of approximately three to five years.

**PUBLIC NOTICE**

Public notice was provided as required by the Brown Act.

**NEXT STEPS**

Upon Committee review and refinement of the partnership guidelines, this item will be brought forward to the full Board for consideration at a future Board meeting.

Attachment(s)

- A. Retain and Seal Option & Interim Action A Budget Analysis

Responsible Department Head:

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Prepared by:

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**Attachment A (Page 1 of 2)**  
**Mount Umunhum Radar Tower**  
**Retain and Seal Option & Interim Action A Budget Analysis**  
**Construction Costs - 2012 Dollars**

Project Cost - 2012 Dollars

Retain and Seal - TOTAL CURRENT ESTIMATED COST	\$1,105,876
Retain and Seal - PHASED PROJECT COST	
PHASE 1 - Interim Action A (District Funded)	-\$414,855
Balance cost of Retain and Seal option	\$691,021
PHASE 2 - Cost for remaining Retain and Seal scope	
Additional soft costs (15%) of balance Design / engineering, permitting, project management	\$103,653
Additional hard costs (10%) of balance Contractor mobilization, insurance, overhead, profit	\$69,102
<b>Total Construction Cost in 2012</b>	<b>\$863,776</b>

**PHASE 1 SCOPE - NEAR-TERM INTERIM ACTION A:**

Interim Action A actions: seal first floor openings with concrete, and all floors above with sheet metal; repair all cracks on first floor and install graffiti coating on first floor; secure interior doors; implement safety upgrades to interior stairs; install new roof guardrails and roof hatch; and make repairs to roof drains.

**PHASE 2 SCOPE -REMAINING LONG-TERM RETAIN and SEAL SCOPE:**

Completed after Interim Action A, this work includes: repair of all cracks on radar tower; installation of new roof; new graffiti-resistant coating to entire exterior; and sealing all openings with concrete.

**BUDGET ASSUMPTIONS:**

1. Budget calculated at **concept** level. Factors such as regulatory changes could influence costs beyond a standard 2.5 percent per year escalation rate.
2. Concept Budget is based on strict alignment with scope outlined for Retain and Seal; any deviation could impact budget. Concept budget reflects minimum commitment required.

**Attachment A (Page 2 of 2)**  
**Retain and Seal Option following Interim Action A**  
**Escalated Construction Costs for Radar Tower**  
**for Five Years following Fundraising Deadline**

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
One-time construction costs including three-year escalation (\$)	863,776	953,447	977,283	1,001,715	1,026,758	1,052,427	1,078,738	1,105,706	1,133,349	1,161,683	1,190,725