



Midpeninsula Regional
Open Space District

R-13-118
Meeting 13-34
December 11, 2013

AGENDA ITEM 3

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Authorization to Amend a Reimbursement Agreement with Ridge Vineyards, Inc., and
Authorization to Amend a Retainer Agreement for Legal Services with Shute, Mihaly and
Weinberger, LLP

GENERAL MANAGER'S RECOMMENDATIONS

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1. Authorize the General Manager to amend an agreement with Ridge Vineyards, Inc., to reimburse the Midpeninsula Regional Open Space District for the cost of professional services to complete a proposed land exchange at Monte Bello Open Space Preserve up to a maximum of \$125,000.
2. Authorize the General Manager to amend a retainer agreement with Shute, Mihaly and Weinberger, LLP., for legal services to complete a proposed land exchange at Monte Bello Open Space Preserve, for an additional \$37,000, for a total amount not-to-exceed \$112,000.

SUMMARY

In 2012, the Midpeninsula Regional Open Space District (District) hired Shute, Mihaly, and Weinberger, LLC., to provide legal services for a proposed District / Ridge Vineyards property exchange, the cost of which Ridge Vineyards, Inc. (Ridge) agreed to reimburse. Since that time, additional professional services have been requested by Ridge and the District. The environmental documents are being recirculated to fully address neighbor concerns that were brought to the District's attention at the end of the current CEQA review. To properly address payment for these additional legal services and an additional hydrogeological study associated with the extended environmental review for this project, the Board is asked to authorize the General Manager to amend the District's reimbursement agreement with Ridge, and to amend a retainer agreement with Shute, Mihaly and Weinberger, LLP. The District is in the process of retaining a qualified hydrogeologist, and if the cost of this study exceeds the General Manager's contracting authority, will return to the Board for contract approval at a later date.

DISCUSSION

In March 2012, the District Board of Directors (Board) authorized retaining Tamara Galanter with the law firm of Shute, Mihaly and Weinberger, LLP., to draft the transactional documents, assist with CEQA review, and perform needed tasks to complete a proposed exchange of property interests between the District and Ridge at Monte Bello Open Space Preserve

(Preserve), up to a maximum of \$75,000. The Board also approved entering into an agreement with Ridge to reimburse the District for legal services costs incurred up to a maximum of \$75,000 (R-12-31).

The Ridge fee and easement exchange has been a highly complex transaction that requires all transactional documents to be internally consistent. Ms. Galanter has been responsible for drafting and revising the formal exchange agreement, conservation easement, agricultural easement, and four other transactional documents that form the basis for the proposed exchange of property interests. Because Ridge's own attorney was unexpectedly unavailable, Ms. Galanter was also asked by Ridge to take the lead on preparing additional documents to bring the proposed project to closure, most of which Ridge had originally intended to produce. These documents include negotiating and making extensive revisions to an existing agreement between Ridge and the owner of a private inholding that pertain to the terms of the District / Ridge exchange transaction – a task not originally included in Ms. Galanter's scope of work.

In addition, recently a number of Monte Bello Ridge property owners have raised new concerns about the proposed exchange. As a result, the General Manager has determined that environmental review of the project should be expanded to include more detailed information about baseline groundwater hydrology conditions, and further assess the groundwater impacts associated with the proposed project. After completion of this study, the District will recirculate the environmental document for public comment to allow the Board, public, and neighbors time to review this new information as well as additional time to review other portions of the environmental review document, starting in January 2014. Ridge has agreed to reimburse the District for the cost of this study, up to the amount specified below. Staff is in the process of retaining a qualified hydrogeologist and, if the cost of this study exceeds the General Manager's contracting authority, will return to the Board for contract approval at a later date.

At this time, the Board is being asked to authorize the following items:

Reimbursement Agreement with Ridge

Ridge has agreed to increase their reimbursement to the District from \$75,000 up to \$125,000. The additional \$50,000 will cover the following services:

1. \$25,000 for the additional drafting and negotiating legal services for the Ridge transactional documents.
2. \$25,000 for a hydrogeology study to supplement the environmental review for the proposed Ridge fee and easement exchange.

Retainer Agreement with Shute Mihaly and Weinberger, LLC.

The Retainer Agreement will be increased by \$37,000 from \$75,000 up to \$112,000 which includes the following legal services:

1. \$25,000 for the additional drafting and negotiation legal services for the Ridge transactional documents, (to be reimbursed by Ridge, see item 1 of Reimbursement Agreement above).
2. \$12,000 for legal review of the Mitigated Negative Declaration including the hydrogeology study. This supplemental work is not intended to be reimbursed by Ridge. This work will facilitate the District's environmental review of the project (see item 2 of Reimbursement Agreement above).

FISCAL IMPACT

With Ridge's proposed reimbursement of all but \$12,000 of the legal costs as described herein, only a minimal fiscal impact to the District will occur. These costs will be funded under the existing Fiscal Year 2013-14 Real Property Department's Land Protection budget.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. All persons who have previously requested notice of Board items relating to the proposed Ridge Vineyards Exchange have been notified. No additional notice is required.

CEQA COMPLIANCE

The proposed retainer agreement and reimbursement agreement do not constitute a project under CEQA.

NEXT STEPS

Upon Board approval, the General Manager would amend the retainer agreement and reimbursement agreement as discussed above.

Prepared by:
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