



Midpeninsula Regional
Open Space District

R-13-119
Meeting 13-34
December 11, 2013

AGENDA ITEM 8

AGENDA ITEM

Approval of an Agreement to Exchange Real Property Interests with Santa Clara County (County) Roads & Airports concerning County property located on State Highway 9 and surrounded by Saratoga Gap Open Space Preserve (Santa Clara County Assessor's Parcel Number: 503-37-004) and Midpeninsula Regional Open Space District (District) property located along Stevens Canyon Road at Saratoga Gap and Monte Bello Open Space Preserves (Portions of Santa Clara County Assessor's Parcel Numbers: 351-26-002, -003, 351-16-023 and 351-16-014).

GENERAL MANAGER'S RECOMMENDATIONS

1. Find that the District, acting as a Responsible Agency, has independently considered the Mitigated Negative Declaration approved by County Roads & Airports regarding the Stevens Canyon Road bridge replacement project. Determine that the recommended actions related to the real property exchange are categorically exempt from the California Environmental Quality Act as set out in the staff report.
2. Adopt a Resolution authorizing the Agreement to Exchange Interests in Real Property for roadway and open space purposes between the District and County.
3. Adopt the Preliminary Use and Management Plan for the property granted to the District.

SUMMARY

The proposed exchange agreement between the Midpeninsula Regional Open Space District (District) and Santa Clara County Roads & Airports (County) involves the District providing the County additional right-of-way easements to replace two bridges on Stevens Canyon Road and access to District land for riparian habitat and stream channel restoration work in exchange for a 4.71 acre County in-holding on Highway 9 as an addition to Saratoga Gap Open Space Preserve. The following report presents a brief description of exchange property interests, a recommended Preliminary Use and Management Plan, the environmental review analysis, and terms and conditions for the proposed exchange agreement.

DISCUSSION

The following project elements discussion is summarized in the "Terms and Conditions" below.

County Bridge Replacement Project (see map, Attachment A)**Phase 1**

At the March 26, 2008 regular meeting, the Board of Directors approved a Permit to Enter and Construct with the County for the Phase 1 replacement of two County bridges along Stevens Canyon Road as the bridges required a slight roadway realignment affecting approximately 3,700 square feet of District land (R-08-44). Phase 2 of the project is to replace two additional bridges east of the Phase 1 bridges on Stevens Canyon Road. The County has informed the District that it is at risk of losing its December 2013 Federal Certification date for the project and delaying the project start date from 2014 to 2015 if District approval is not obtained by the end of the calendar year.

The Phase 1 bridges (bridges 37C576 & 37C577) were widened from one to two lanes and now meet current safety and fire engine standards. The Permit to Enter was approved with the understanding that the County would return for the property rights after Phase 1 of the project was completed. The County finished the construction of these new bridges on November 20, 2012, and is ready to permanently secure the property rights. The County is seeking right of way easement rights for 3,780 square feet of District Property and due to the realignment, the County will vacate 4,115 square feet of right-of-way to the District for a net gain to the District of 335 square feet.

As part of the Phase 1 bridge replacement project, the County also requested the ability to utilize 51,634 square feet of District property adjacent to Stevens Creek to meet regulatory agency mitigation requirements. The mitigation work, which was reviewed and monitored by Natural Resources staff, included riparian habitat and stream channel restoration. The original term of the permit was from July 2009 to December 2013. The County is requesting an extension of this permit until December 2022 to allow for continued monitoring of the habitat and restoration work.

Phase 2

The County is currently working to replace two more outdated bridges along Stevens Canyon Road (bridges 37C0574 & 37C0575), and they are in need of a Permit to Enter (hereafter referred to as Right of Entry) to realign the roadway to accommodate the new bridges. The new alignment will affect approximately 12,484 square feet of District property, and the County will secure the needed permanent property rights after construction is complete. Similar to Phase 1, the County will vacate any excess right-of-way (currently estimated at 4,026 square feet) to the District, which would result in a net gain to the County of 8,458 square feet. The District completed a design review of the proposed bridges, and the County has accepted the District's suggestion to add earth tone coloring to the bridge concrete to help the two new bridges better blend into the natural creek surroundings.

In addition, the County is requesting a separate Right of Entry for the ability to utilize an additional 28,825 square feet of District property adjacent to Stevens Creek to meet mitigation requirements. The mitigation work will include riparian habitat and stream channel restoration work and the term would be 10 years.

County Conveyance Property

At the time the first Right of Entry was approved in 2008, the District identified a 4.71-acre surplus County parcel located off of Highway 9, which would be a logical addition to the District's Saratoga Gap Open Space Preserve as it is surrounded on three sides by District land.

On May 28, 2013, Santa Clara County Roads & Airports secured permission from the County Board of Supervisors to declare this parcel surplus and to negotiate an Agreement to convey the property to the District in consideration for the transactions described above.

USE AND MANAGEMENT

Preliminary Use and Management Plan (Next Steps)

The principal purpose of the Preliminary Use and Management Plan (PUMP) is to establish interim status quo District land management to be in effect between the purchase and the completion of a subsequent long-term plan. The PUMP will remain effective until a comprehensive plan or Master Plan is approved for Saratoga Gap Open Space Preserve. The PUMP includes routine patrol. The property will be maintained in its current condition, with no changes anticipated. If changes to land use or the physical environment are proposed in the future, the plan would be subject to further environmental review and public input.

Public Access: Closed to public use.

Signs and Site Security: Review and install preserve boundary signs where appropriate.

Patrol: Patrol the property utilizing Congress Springs Road (Highway 9).

Site Safety Inspection: There are no known safety hazards on the site.

Name: Name the property as an addition to the Saratoga Gap Open Space Preserve.

CEQA COMPLIANCE

Project Description

As the Lead Agency on this project, the County of Santa Clara adopted a Mitigated Negative Declaration (MND) on February 7, 2012. The project consists of replacing two existing bridges located on Stevens Canyon Road (a County road) and crossing Stevens Creek. The Project involves the phased demolition and reconstruction of the two bridges and related roadway improvements. The MND considered the replacement project and found that, with the incorporation of mitigations, the project would not have a significant effect on the environment.

The action to be taken by the District consists of granting the County right of way easements and Rights of Entry as part of the County's overall Stevens Canyon Bridge Replacement Project in exchange for the County granting a 4.71 acre property to the District as an addition to Saratoga Gap Open Space Preserve. Upon completion of the entire project, the District will grant permanent roadway easements to the County for affected lands, and the County will vacate excess portions of its existing right of way to the District.

CEQA Determination

As a responsible agency under the California Environmental Quality Act (CEQA), the District considered the MND and determines that no substantial changes in the project or in the circumstances under which it will be undertaken have occurred.

The District concludes that the acquisition phase of the project will not have a significant effect on the environment. It is categorically exempt from CEQA under Article 19, Sections 15316, 15317, and 15061 of the CEQA Guidelines as follows:

Section 15316 exempts the acquisition of land in order to create parks if the land is in a natural condition and the management plan proposes to keep the area in a natural condition. The Preliminary Use and Management Plan specifies that the land will not be developed and will remain in a natural condition.

Section 15317 exempts the acceptance of fee interests in order to maintain the open space character of an area. The District will acquire fee interest in order to maintain the open space character of the property.

This purchase qualifies under these two sections. The actions recommended in the Preliminary Use and Management Plan are also exempt under section 15061(b)(3), as there is no possibility the recommended actions will have a significant effect on the environment.

TERMS AND CONDITIONS

The Agreement to Exchange Property Interests in Real Property between the County and District includes the following key terms and conditions:

1. Phase 1 of County Bridge Replacement Project :

- District will grant County right of way easements, including 3,780 square feet for the completed Phase 1 bridge replacements.
- District will issue an extension of the Right of Entry for Phase 1 mitigation area (51,634 square feet) until December 31, 2022 at Monte Bello Open Space Preserve. This will allow for continued monitoring of planted native trees and plants and continued invasive plant removal to ensure a successful restoration.

2. Phase 2 of County Bridge Replacement Project:

- District will issue the County a new Right of Entry until December 31, 2018 for Phase 2 to replace two bridges on Stevens Canyon Road utilizing 12,484 square feet of District land for bridge construction, and an additional 4,687 square feet for temporary construction staging.
- After construction is complete, the District will grant right of way easements to the County for the needed right of way currently estimated at 8,458 square feet.
- District will issue the County a Right of Entry for mitigation work on Monte Bello Open Space Preserve for an area of 28,825 square feet along Stevens Creek that expires December 31, 2025.

3. County grant to District:

- County will grant a 4.71-acre property to the District as an addition to the Saratoga Gap Open Space Preserve.
- County will vacate the excess right of way for Stevens Canyon Road after bridge construction is complete, which is estimated at 11,921 square feet.

4. Escrow for these property conveyances would close on or before December 31, 2018. Title and escrow costs will be split 50/50 between the County and District.

The District has determined that the exchange of interest in real property is of equal or greater value to the public, and the exchange has been determined to be in accordance with the District's enabling legislation set out in Section 5500 *et seq.* of the California Public Resources Code. Because the District land needed for the bridge replacements is dedicated land, a unanimous vote of the seven Board members is required to approve this property exchange.

FISCAL IMPACT

The District will be responsible for splitting any escrow fees and closing costs with the County 50/50. These minor costs will be covered from the Real Property Budget.

BOARD COMMITTEE RECOMMENDATIONS

The full Board previously reviewed this project in March 2008. Therefore, additional Board Committee review is not required for this agenda item.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. Adjoining property owners have been mailed a copy of the agenda for this public meeting.

NEXT STEPS

Upon approval by the Board of Directors, staff will work to execute the easement agreements, execute the grant deed, deliver the executed Right of Entry Agreements, and oversee the construction phase of the project as it impacts District property. The conveyance of the right of way easements to the County and the 4.71 acre property to the District will close escrow on or before October 31, 2015.

Attachments:

1. Draft Resolution
2. Location Map

Responsible Department Manager:
Michael Williams, Real Property Manager

Prepared by:
Allen Ishibashi, Real Property Specialist

Graphics prepared by:
Michele Childs, GIS Technician
Jon Montgomery, GIS Intern

RESOLUTION 13-_____

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING AND AUTHORIZING ACCEPTANCE OF AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY; AUTHORIZING THE PRESIDENT OF THE BOARD, GENERAL MANAGER OR OTHER OFFICER TO EXECUTE EASEMENT DEEDS WITH SANTA CLARA COUNTY, CERTIFICATES OF ACCEPTANCE FOR THE GRANT DEED, AND QUITCLAIM DEEDS TO THE DISTRICT; AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO THE CLOSING OF THE TRANSACTION (MONTE BELLO & SARATOGA GAP OPEN SPACE PRESERVE-LANDS OF SANTA CLARA COUNTY)

The Board of Directors of the Midpeninsula Regional Open Space District does resolve as follows:

SECTION ONE. Accepts the Agreement to Exchange Interests in Real Property between Santa Clara County and the Midpeninsula Regional Open Space District and authorizes the President of the Board, General Manager or appropriate officer to execute the Agreement on behalf of the District.

SECTION TWO. Authorizes the General Manager, President of the Board or other appropriate officer to execute right of way easement deeds to Santa Clara County and the certificates of acceptance for the Santa Clara County conveyances to the District (grant deed and quitclaim deeds).

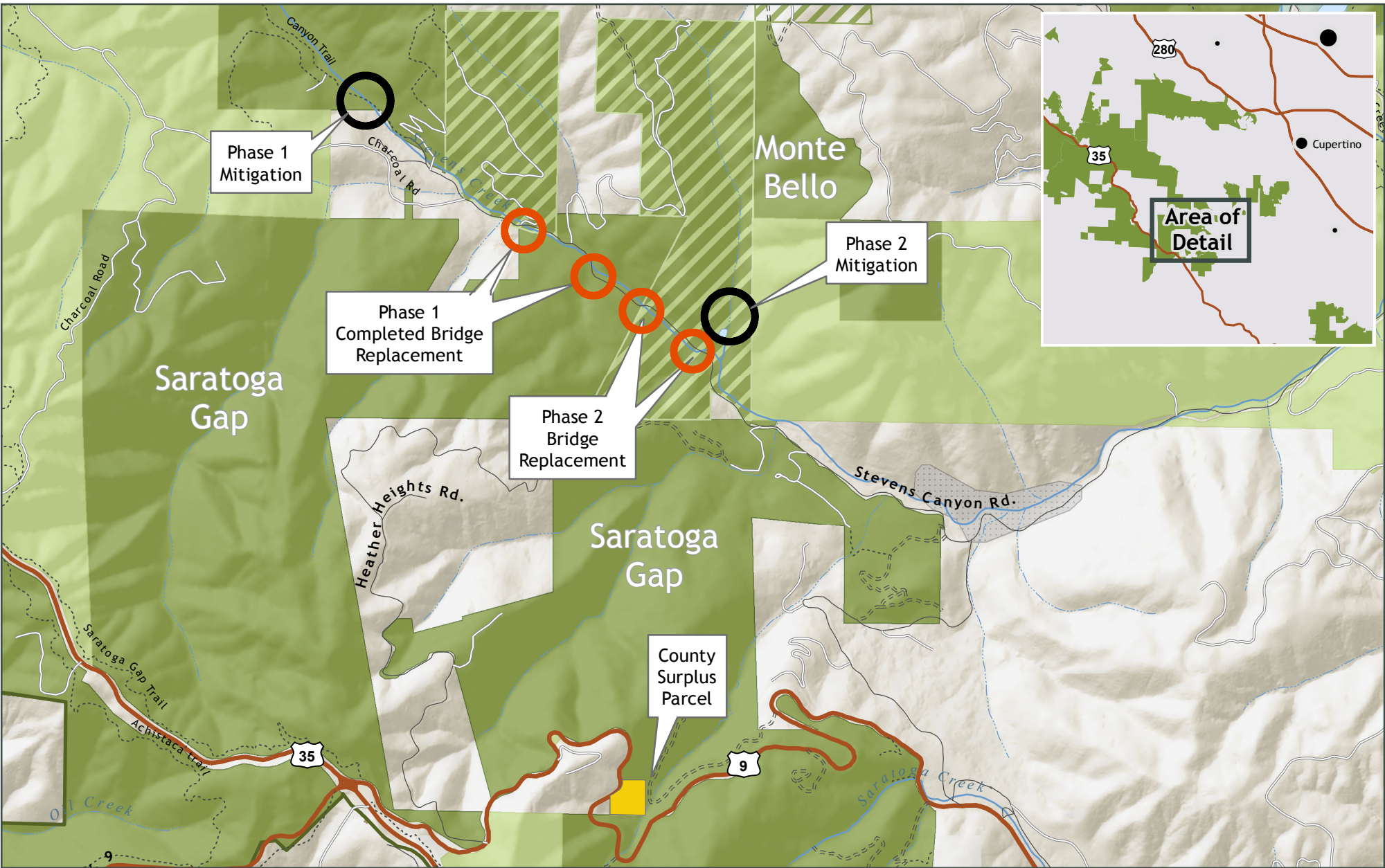
SECTION THREE. Authorizes the General Manager and General Counsel to execute any and all other documents necessary or appropriate to the closing of the transaction approved in this Resolution. Authorizes the General Manager and General Counsel to also approve minor, or technical revisions to the Agreement and Easement Deeds that do not involve any substantial change to any terms of the Agreement and Easement Deeds, and which are necessary or appropriate to the closing or implementation of this transaction.

SECTION FOUR. Directs the General Manager or the General Manager’s designee to give appropriate notice of acceptance to the County and to extend escrow if necessary.

SECTION FIVE. Authorizes the General Manager or the General Manager’s designee to expend up to \$2,500.00 to cover the cost of title insurance, escrow fees, and other miscellaneous costs related to this transaction.

SECTION SIX. Finds and determines that, pursuant to § 5540.5 of the Public Resources Code of the State of California, the granting and acceptance of these fee and easement property interests are consistent with Public Resources Code §5540.5, that the real properties being acquired by the District are of equal or greater value than the real property interests being conveyed to Santa Clara County, and are necessary to be acquired for open space purposes.

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Attachment A: Stevens Creek Bridges

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| | Bridge Replacement | | MROSD Preserves | | Developed Land |
| | Mitigation | | Other Protected Open Space or Park Lands | | Non MROSD Conservation or Agricultural Easement |
| | County Surplus Parcel | | Private Property | | MROSD Conservation or Agricultural Easement |

Midpeninsula Regional
Open Space District
(MROSD)

December, 2013

