



Midpeninsula Regional
Open Space District

R-15-03
Meeting 15-01
January 14, 2015

AGENDA ITEM 4

AGENDA ITEM

Approval of First Amendment to Grant Deed of Fee Estate Subject to a Power of Termination, a Declaration of Covenants, Conditions and Restrictions, Reservation of a Right of First Refusal, an Easement for Conservation, Open Space and Public Trails at Long Ridge Open Space Preserve (San Mateo County Assessor's Parcel Number 080-410-270), and a Determination that the Recommended Actions are Categorically Exempt from the California Environmental Quality Act.

GENERAL MANAGER'S RECOMMENDATIONS

A handwritten signature in black ink, appearing to be "S. G. G.", written over the printed text of the section header.

1. Determine that the recommended actions are categorically exempt from the California Environmental Quality Act (CEQA), as set out in the staff report.
2. Adopt a Resolution approving First Amendment to Grant Deed of Fee Estate Subject to a Power of Termination, a Declaration of Covenants, Conditions and Restrictions, Reservation of a Right of First Refusal, an Easement for Conservation, Open Space and Public Trails between Thomas L. Anderson/Sharon L. Niswander and Midpeninsula Regional Open Space District.

SUMMARY

The Midpeninsula Regional Open Space District (District) has an opportunity to improve the terms of a 40 year fee estate sale agreement entered into with Thomas L. Anderson/Sharon L. Niswander (Anderson-Niswander) in 2000 for a 13.9 acre property that is improved with a single-family residence at Long Ridge Open Space Preserve. The First Amendment to Grant Deed of Fee Estate Subject to a Power of Termination, a Declaration of Covenants, Conditions and Restrictions, Reservation of a Right of First Refusal, an Easement for Conservation, Open Space and Public Trails (Amendment) will improve and update the terms of the original agreement prior to finalizing a pending sale of the remaining 26 year fee estate term to a private buyer. To this end, the General Manager recommends the approval of the Amendment. These actions would have no fiscal impact to the District's budget.

DISCUSSION

Background

In 1981, the District purchased the 13.9-acre Bean Property as an addition to Long Ridge Open Space Preserve (R-81-31). At the time of purchase, the property was improved with a new, four-bedroom, two-bath house. From the date of purchase until 2000, the District leased out the

house under its residential rental program. In October of 2000, through a Request for Proposal process, the District sold a 40-year fee simple defeasible interest (Term Interest) to Thomas Anderson and Sharon Niswander for \$450,000 (R-00-120) via a Grant Deed of Fee Estate Subject to a Power of Termination, a Declaration of Covenants, Conditions and Restrictions, Reservation of a Right of First Refusal, and an Easement for Conservation, Open Space and Public Trails (Agreement). Anderson-Niswander used the property as a personal residence until July of 2014, at which time they retired and moved to the state of Washington to care for a family member.

Per the Declaration of Covenants, Conditions and Restrictions (CC&R's) and the Easement for Conservation, Open Space and Public Trails, the building envelope on the 13.9-acre Anderson-Niswander Term Interest was restricted to 3/4 of an acre. The remaining 13.15 acres was protected as Open Space. The improvements contained within the building envelope are a house, shop, water tank, and a small shed. The CC&R's also prohibited Anderson-Niswander from renting out the house under any circumstances. This restrictive prohibition limited the flexibility available to Anderson-Niswander in the event of unforeseen life events. Finally, under the Easement for Conservation, Open Space and Public Trails, a portion of the District's Long Ridge Trail circles a portion of the Anderson-Niswander property.

In early 2014, the District was approached by Anderson-Niswander to discuss the possible sale of their remaining 26 year Term Interest to either the District or a private party, as the District possesses a Right of First Refusal. Over the ensuing months, District staff examined the pros and cons of purchasing the Term Interest and worked to determine the fair market value of the Term Interest. Anderson-Niswander listed the Term Interest for sale in October 2014 and they had several parties that were interested in the property. On November 18, 2014, Anderson-Niswander received a \$612,000 offer to purchase from a viable buyer. Per the District's Right of First Refusal, the District had 30 days to match or decline this offer. The District declined to exercise its Right of First Refusal under the General Manager's authority for the Anderson-Niswander Term Interest on November 21, 2014. The Term Interest is now in contract with a private party and the anticipated close date is late January 2015.

First Amendment

As the Term Interest is in contract and will change owners, District staff and Anderson-Niswander wanted to take advantage of this opportunity to improve certain terms within the current Agreement. The following provisions have been amended or added to the Agreement per the First Amendment:

CC&R's

1. Anderson-Niswander or future owners shall have the ability to rent out the property with prior District written authorization. This amendment will grant the owner greater flexibility in dealing with any unforeseen life events that may occur over the remaining 26 years. This should help maintain the financial viability of the arrangement through the life of the term by allowing for adaptation to changing conditions over time.
2. The insurance provision has been amended to increase the liability insurance to \$2,000,000.
3. A new section entitled "Loans" was added to cap the loan to value ratio of First Deeds of Trust to 80% and to prohibit second deeds of trust, equity lines of credit, or any other type

of loan or lien. This addition is to prohibit over-encumbering the property with future debt as the value of the Term Interest is decreasing over time.

4. A new section entitled “Road Maintenance Assessment” was added to memorialize the understanding that Anderson-Niswander or future owners would be responsible for 6% of the District’s annual road maintenance assessments from the Portola Park Heights Homeowners Association for Portola Heights Road.

FIRST RIGHT OF REFUSAL

The 30-day notice requirement in the current Agreement shall be changed to 60 days per the First Amendment. This change will give the District more time to consider matching any future offers to purchase that may be received.

BOARD COMMITTEE REVIEW

There was no Committee review for this agenda item. This item came to the full Board in closed session.

FISCAL IMPACT

Approval of the Amendment would have no fiscal impact to the District’s budget.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. Adjacent property owners were also mailed a copy of the meeting agenda.

CEQA COMPLIANCE

Project Description

The project consists of amending a Grant Deed of Fee Estate Subject to a Power of Termination, a Declaration of Covenants, Conditions and Restrictions, Reservation of a Right of First Refusal, and an Easement for Conservation, Open Space and Public Trails.

CEQA Determination

The District concludes that this project will not have a significant effect on the environment. The project is categorically exempt from CEQA under Article 19, Sections 15301 of the CEQA Guidelines as follows:

Section 15301 exempts operation, repair, restoration, 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 approval and execution of the Amendment does not and will not expand the use on the property.

The project is also exempt under 15061(b)(3), as there is no possibility the actions can have a significant effect on the environment.

NEXT STEPS

Pending Board approval, the Amendment would be executed and delivered for recording. At the end of the remaining 26 year Fee Estate interest, the subject property will revert to District fee ownership at no cost to the District.

Attachments

1. Resolution approving and authorizing the President of the Board, General Manager, or other appropriate officer to approve and execute a First Amendment to Grant Deed of Fee Estate subject to a Power of Termination, a Declaration of Covenants, Conditions and Restrictions, Reservation of a Right of First Refusal, and of an Easement for Conservation, Open Space and Public Trails with Thomas Leroy Anderson and Sharon Louise Niswander, Trustees of the Thomas Leroy Anderson and Sharon Louise Niswander Revocable Trust, and authorizing the General Manager and General Counsel to execute any and all other documents necessary or appropriate to complete the Amendment (Long Ridge Open Space Preserve – Thomas Leroy Anderson and Sharon Louise Niswander, Trustees of the Thomas Leroy Anderson and Sharon Louise Niswander Revocable Trust)
2. Location Maps (Regional and Site)

Responsible Department Head:

Michael Williams, Real Property Manager, Real Property Department

Prepared by:

Allen L. Ishibashi, Real Property Specialist, Real Property Department

Graphics prepared by:

Jon Montgomery, Planning Technician

RESOLUTION NO. 15-__

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT (DISTRICT) APPROVING AND AUTHORIZING THE PRESIDENT OF THE BOARD, GENERAL MANAGER, OR OTHER APPROPRIATE OFFICER TO APPROVE AND EXECUTE A FIRST AMENDMENT TO GRANT DEED OF FEE ESTATE SUBJECT TO A POWER OF TERMINATION, A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RESERVATION OF A RIGHT OF FIRST REFUSAL, AND OF AN EASEMENT FOR CONSERVATION, OPEN SPACE AND PUBLIC TRAILS WITH THOMAS LEROY ANDERSON AND SHARON LOUISE NISWANDER, TRUSTEES OF THE THOMAS LEROY ANDERSON AND SHARON LOUISE NISWANDER REVOCABLE TRUST, AND AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO COMPLETE THE AMENDMENT (LONG RIDGE OPEN SPACE PRESERVE – THOMAS LEROY ANDERSON AND SHARON LOUISE NISWANDER, TRUSTEES OF THE THOMAS LEROY ANDERSON AND SHARON LOUISE NISWANDER REVOCABLE TRUST)

THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT DOES RESOLVE AS FOLLOWS:

SECTION ONE. The General Manager, President of the Board or other appropriate officer is authorized to execute the First Amendment to Grant Deed of Fee Estate Subject to a Power of Termination, A Declaration of Covenants, Conditions and Restrictions, Reservation of a Right of First Refusal, and of an Easement for Conservation, Open Space and Public Trails with Thomas Leroy Anderson and Sharon Louise Niswander, Trustees of the Thomas Leroy Anderson and Sharon Louise Niswander Revocable Trust.

SECTION TWO. The General Manager and General Counsel are authorized to execute any and all other documents necessary or appropriate to the closing of the transactions approved in this Resolution. The General Manager and General Counsel are further authorized to approve minor or technical revisions to the Amendment that do not involve any substantial changes to any terms of the Agreement, and which are necessary or appropriate to the closing or implementation of these transactions.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2015, at a Regular Meeting thereof, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Secretary
Board of Directors

President
Board of Directors

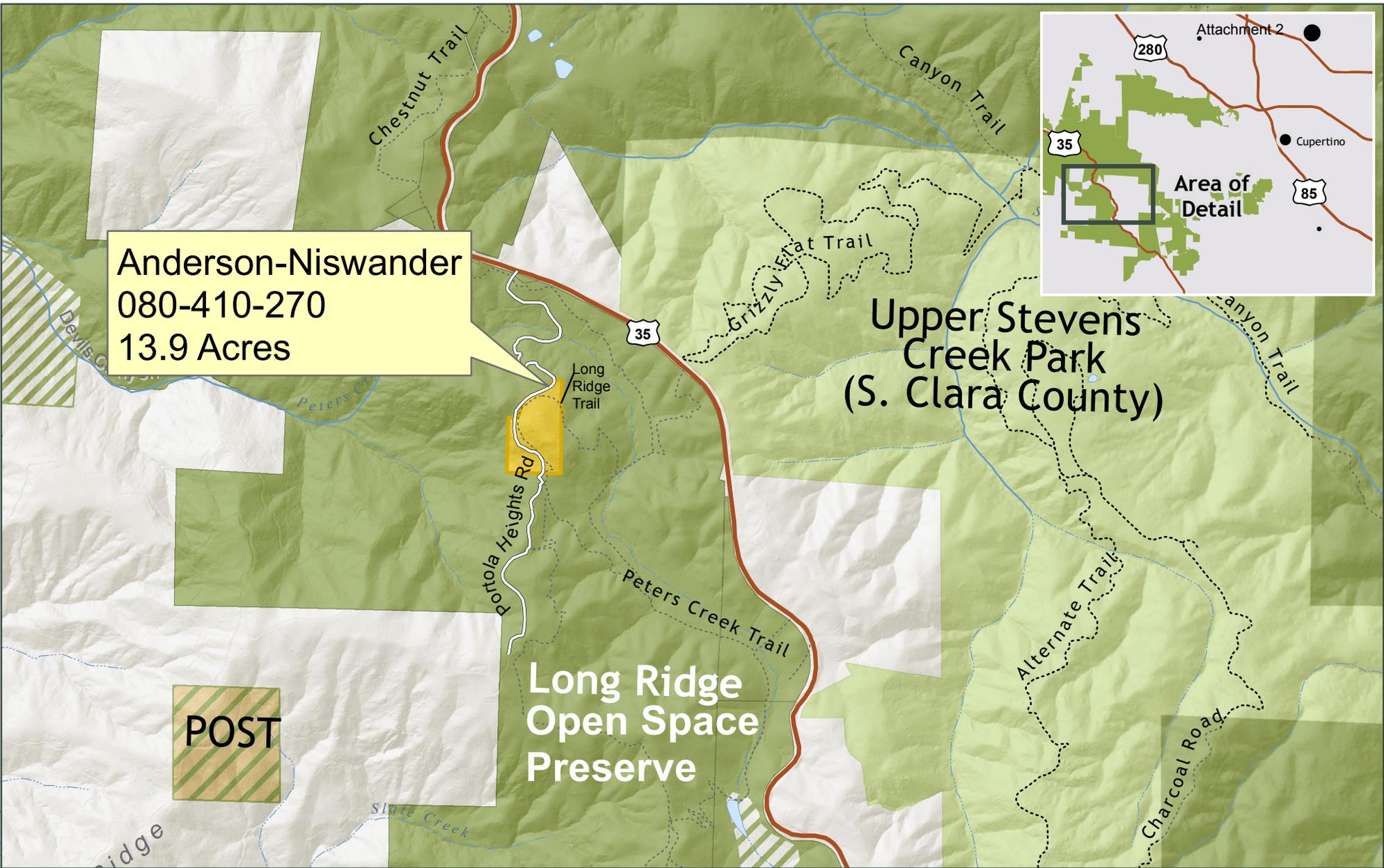
APPROVED AS TO FORM:

General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

District Clerk

Created By: jmontgomery Path: G:\Projects\Long_Ridge\AndersonNiswanderSite\RegionalMap.mxd



Anderson-Niswander

-  Anderson-Niswander
-  MROSD Preserves
-  Other Protected Open Space or Park Lands
-  Private Property
-  Land Trust
-  MROSD Conservation Easement

Midpeninsula Regional Open Space District (MROSD)



Miles 0 0.2 0.4
December, 2014

While the District strives to use the best available digital data, this data does not represent a legal survey and is merely a graphic illustration of geographic features.



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Anderson-Niswander Site Map

-  Anderson-Niswander parcel
-  Existing Structures
-  Water Well
-  Building Envelope

Midpeninsula Regional
Open Space District
(MROSD)



December, 2014
Miles 0 0.025 0.05

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