



Midpeninsula Regional
Open Space District

R-16-127
Meeting 16-25
October 12, 2016

AGENDA ITEM 6

AGENDA ITEM

Proposed Agreement to Exchange Interests in Real Property between the Bagher and Kefayat Navid Trust (Navid) and the Midpeninsula Regional Open Space District (District) for property located along Hicks Road in unincorporated Santa Clara County (APN: 575-11-021) in exchange for an access easement over Blackberry Hill Road located in Sierra Azul Open Space Preserve (APN: 532-25-051).

GENERAL MANAGER'S RECOMMENDATIONS

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 authorizing the Agreement to Exchange Interests in Real Property between the District and Navid at a cost of \$39,000 with a corresponding authorization for a budget adjustment/increase of the same amount.
3. Adopt the Preliminary Use and Management Plan for the exchange property.
4. Withhold dedication of the Navid exchange property as public open space at this time.

SUMMARY

If approved, under this transaction the District will acquire a 3.42-acre property located adjacent to the Sierra Azul Open Space Preserve (Preserve) through an exchange with Navid. The District will obtain fee ownership of this unimproved private inholding in exchange for granting to Navid a residential access easement over Blackberry Hill Road in the same Preserve. As part of the exchange agreement approval, a line item budget adjustment/increase of \$39,000 to Fiscal Year 2016-17 budget is required, reflecting the difference between the value of the property being acquired and the value of the easement being granted. The following report presents a description of the real property interests being exchanged, a Preliminary Use and Management Plan, the District's environmental review, the exchange agreement terms, and financial considerations.

MEASURE AA

The proposed property acquired under the exchange supports the goals of Measure AA Portfolio #24, *Sierra Azul: Rancho de Guadalupe Family Recreation*, with a portfolio allocation of \$10,078,000. This project will serve to acquire and protect open space lands.

DISCUSSION

Background

Blackberry Hill Road is a private two lane main access road to several single family residences on the ridgeline above the Town of Los Gatos and traverses a section of the Preserve. Nine existing parcels located above the District's property have a recorded right to use Blackberry Hill Road as their primary and sole access. A number of private undeveloped properties also use this road as their sole access.

The District purchased the 45-acre property underlying Blackberry Hill Road in March of 1989 (see report R-89-12) and dedicated it as public open space in December of 1989. Mr. Navid purchased a 5-acre undeveloped property in the vicinity in March of 1990 and has used Blackberry Hill Road as the only access to his property since that time. However, when Mr. Navid submitted an application to the County to construct a single family residence on his property, he learned that his access right would need to be perfected.

In the fall of 2014, Mr. Navid contacted the District to perfect his claim of a prescriptive easement over the District's portion of Blackberry Hill Road to legally access his 5-acre property and construct a new residence. Mr. Navid and his attorney were informed that a prescriptive easement cannot be obtained on property owned by a government agency. Since the District's property is dedicated open space, the District is unable to grant an access easement as requested. Mr. Navid was informed that the only realistic option for the District to grant the requested easement is through an exchange of property rights of equal or of greater value than the access easement (Public Resources Code 5540 and 5540.5). In August of 2016, a suitable exchange scenario was developed with Mr. Navid.

Description of Exchange Property

In exchange for the District granting an access easement to Mr. Navid, the District would secure from Mr. Navid fee ownership to a 3.42-acre property inholding within the Rancho de Guadalupe area of the Preserve.

The unimproved 3.42-acre Navid Exchange Property (Exchange Property) is located off of Hicks Road near Guadalupe Reservoir and surrounded on three sides by the Preserve. It is also just above the 4.13-acre Barth property that the District purchased in June of 2016 (see report R-16-74). The Exchange Property is situated in unincorporated Santa Clara County and across from Guadalupe Reservoir. The Exchange Property rises to an elevation of approximately 1,000 feet with excellent views of the higher elevations within the Preserve, Guadalupe Reservoir, and Almaden Quicksilver County Park. Located within the Guadalupe Creek Watershed, it includes a small tributary that flows into Guadalupe Reservoir.

The Exchange Property is vacant, with a graded dirt road that provides direct access from Hicks Road to the interior of the property. The main access road is contained within an easement that runs through the former Barth property where it connects with Hicks Road. The access road also continues onto the former Guadalupe Land Company property addition to the Preserve (see reports R-04-134 and R-12-92). With the acquisition of the Exchange Property, the District will have full control of all access rights over the road and improve the District's ability to manage unauthorized uses on the Preserve.

More than 50% of the Exchange Property is dominated by the Blue Oak/California Grasslands Association. This native vegetation type is biologically highly significant due to its fire adaptations, and is locally unique to the Santa Cruz Mountains. The remainder of the parcel is a mix of oak woodland and other plants associated with mixed chaparral. The Exchange Property provides varied habitat for animal species associated with lower elevations of the Preserve, including larger mammals such as deer, coyotes, bobcats, and mountain lions. A wide variety of bird species occupy and migrate through the general area.

Description of Access Easement to be Granted

As part of the exchange, the District would grant a 40-foot-wide residential access easement over the District's existing portion of Blackberry Hill Road (APN 537-08-004). Under the terms of the easement, the District would have no responsibility for repair or maintenance of the existing two-lane paved road within the easement. Blackberry Hill Road is the most practical and sole access route to the Navid Property.

USE AND MANAGEMENT

Planning Considerations

The Exchange Property is comprised of one legal nonconforming parcel, located in unincorporated Santa Clara County (County) and outside the urban service area or sphere of influence of any incorporated municipality. The 3.42-acre parcel has a General Plan designation of Hillside with a zoning designation of HS-d1: Hillside District - Design Review Combining District (Santa Clara Valley Viewshed). Per the County General Plan and Zoning regulations, recreation, open space, and natural preserves are allowable uses. A finding of compliance with the General Plan for all open space acquisitions by the District in the County was made by the County Planning Department in 1999.

If acquired, the Exchange Property would be incorporated into the Preserve. Subsequent planning for the property would be coordinated with the District's planning efforts for the Preserve and include consultation with appropriate agencies and organizations.

The easement to be granted on the District-owned segment of Blackberry Hill Road is to provide legal access to one legal parcel located in the unincorporated County (APN 537-08-004) with a General Plan designation of Hillside and a zoning designation of HS-d1. Any site development application on this parcel will be subject to zoning restrictions administered by the County's Planning and Development Department "intended to conserve the scenic attributes of hillside lands most immediately visible from the valley floor." Zoning restrictions are also "intended to minimize the visual impacts of structures and grading on the natural topography and landscape, using a combination of supplemental development standards, design guidelines, design review, and use of process incentives for smaller and less visible projects."

Preliminary Use and Management Plan

The Preliminary Use and Management Plan (PUMP) establishes a status quo land management approach in the interim between the acquisition of the Exchange Property and the completion of a subsequent long-term plan. The PUMP would take effect at the close of escrow and remain effective until the PUMP is amended or a Comprehensive Use and Management Plan or Preserve Plan is approved for the Preserve. The PUMP includes minor restoration and maintenance of the Exchange Property in its natural condition, as described more fully below. 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:	Designate the Property as closed to public use at this time.
Signs and Site Security:	Install preserve boundary and closed area signs.
Fences and Gates:	Install gates and fencing on the access road to prevent unauthorized entry and use.
Roads and Trails:	Maintain the access route on the site in a serviceable condition. Implement maintenance and minor erosion and sediment control measures in accordance with District standards. Access road to be used for District patrol, maintenance and emergency purposes.
Water Rights and Water Resources:	No wells, springs, or tributaries are on the property.
Patrol:	Patrol property using existing access road.
Resource Management:	Conduct invasive plant and animal management activities consistent with the District's Resource Management Policies.
Wildfire Fuel Management:	Implement standard District-wide fuel management and defensible space practices consistent with the District's Resource Management Policies.
Name:	Name the property as an addition to Sierra Azul Open Space Preserve.
Dedication:	Withhold dedication of the subject property as open space at this time.

CEQA COMPLIANCE

Project Description

The project consists of the acquisition of the 3.42-acre Exchange Property as an addition to the Preserve and concurrent adoption of a PUMP, including minor erosion and sediment control measures along the existing access road to prevent erosion and water quality degradation. Minor resource management activities may be conducted to control invasive plants. The land would be preserved as open space and maintained in a natural condition.

In exchange, the District would grant a 40-foot wide residential access easement to Mr. Navid over an existing private, paved, two-lane road (Blackberry Hill Road) as it crosses a portion of District property, for the purpose of providing legal access to a landlocked private parcel.

Under the terms of the easement, the District would have no responsibility for road repair or maintenance within the easement and provides no assurances that further CEQA analysis for future repairs or improvements has been met. Any future roadway improvements within the easement or development of the private parcel to be served by the easement would be subject to the County's zoning restrictions, land development policies, and utility service requirements.

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, 15316, 15317, and 15325, of the CEQA Guidelines as follows:

Section 15301 exempts operation, repair, restoration, maintenance, or minor alteration of existing public or private structures, facilities, or topographical features as outlined in the PUMP for the exchange property, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Section 15301 also exempts the conveyance of an access easement over an existing private road already in use by other private residents for the sole purpose of providing access to one additional residence as this constitutes a minor alteration of use of an existing facility involving a negligible expansion of use and having no significant impact to the environment.

Section 15316 exempts the acquisition of land 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 Exchange Property will remain in a natural condition, and will be designated as an addition to the Preserve.

Section 15316 Class 16 (b) exempts the transfer of land to expand a park when such conveyance will have no significant impact to the existing natural condition of the surrounding parkland, and the management plan (PUMP) of the Exchange Property will keep the land in a natural condition.

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

Section 15325(f) exempts transfers of ownership of interests in land to preserve open space. This acquisition will transfer fee ownership of the Exchange Property to the District to preserve open space.

TERMS AND CONDITIONS

As part of the proposed Exchange Agreement, District and Navid would agree to the following:

1. Navid to grant fee ownership of the 3.42-acre Exchange Property to the District.
2. District compensate Navid for an amount not to exceed \$39,000 (half of Navid's purchase price of \$75,000 and associated closing costs).
3. District to grant Navid a 40-foot wide residential access easement over the portion of Blackberry Hill Road that crosses District property. Navid is responsible for maintenance and repair of the access easement.
4. Navid is responsible for all costs associated with the exchange, including but not limited to survey costs, escrow fees and all other third party costs related to this transaction. The exchange of easements will be handled through escrow.

The exchange of interest in real property is of equal or greater value to the District and the public it serves, and therefore the exchange is determined to be in accordance with the District's enabling legislation set out in Section 5540.5 of the Public Resources code of the State of California.

FISCAL IMPACT

Beginning in FY2016-17, the District amended its approach on budgeting for land acquisitions. For FY2016-17, the District only budgeted for costs associated with appraisals, property purchase research, and early negotiations. Land acquisitions brought before the Board for approval would include a budget adjustment/increase to the adopted budget.

If approved, a budget adjustment/increase of \$39,000 to the FY2016-17 budget is required.

Navid Property Exchange Amount	\$ 39,000
Total Land purchases approved to date for FY 2017	\$2,350,000
Total Land Purchases (if approved)	\$2,389,000

The following table is provided to outline the Measure AA Portfolio fiscal implications related to the Navid Property Exchange:

MAA 024 Portfolio Allocation:	\$10,078,000
Spent to Date:	\$1,001,406
Navid Property Exchange:	\$39,000
Balance Remaining (Proposed):	\$9,037,594

BOARD COMMITTEE REVIEW

This item was not reviewed by a Board Committee.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. Adjoining property owners and interested parties have also 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 terms of the Exchange Agreement and take the next steps identified in the PUMP. The District's South Area Outpost Field Office would manage the Exchange Property as an addition to the Preserve.

Attachments:

1. Resolution Authorizing Acceptance of Exchange Agreement Authorizing General Manager or Other Officer to Execute Certificate of Acceptance of Grant to District, District Grant of Access Easement, Amending the Budget for Fiscal Year 2016-17, Authorizing General Manager or General Manager's designee to Execute any and all Other Documents Necessary or Appropriate to Closing of the Transaction (Sierra Azul Open Space Preserve - Lands of Navid).
2. Exhibit A: Location Map

Responsible Department Manager:
Michael Williams, Real Property Manager

Prepared by:
Allen Ishibashi, Sr. Real Property Agent
Elish Ryan, Real Property Planner III

RESOLUTION 16-__

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF EXCHANGE AGREEMENT, AMENDING THE FISCAL YEAR 2016-17 GENERAL FUND CAPITAL BUDGET, AUTHORIZING GENERAL MANAGER OR OTHER APPROPRIATE OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT TO DISTRICT, AUTHORIZING GENERAL MANAGER OR GENERAL MANAGER'S DESIGNEE TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (SIERRA AZUL OPEN SPACE PRESERVE - LANDS OF NAVID), AND AMEND THE BUDGET FOR FISCAL YEAR 2016-17.

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

SECTION ONE. The Board of Directors of Midpeninsula Regional Open Space District (District) does hereby accept the offer contained in that certain Exchange Agreement between the Bagher And Kefayat Navid Trust, dated August 12, 1996 and the Midpeninsula Regional Open Space District, a copy of which exchange agreement is attached hereto and by reference made a part hereof, and authorizes the President of the Board of Directors, General Manager, or other appropriate officer to execute the Agreement and all related transactional documents on behalf of the District to acquire the real property described therein ("the Navid Exchange Property").

SECTION TWO. The Board of Directors of Midpeninsula Regional Open Space District authorizes the expenditure of \$39,000.00 covering the Navid Exchange Property.

SECTION THREE. The Board of Directors of Midpeninsula Regional Open Space District authorizes amending the Budget and Action Plan for the Midpeninsula Regional Open Space District for Fiscal Year 2016-17 by increasing the General Fund Capital budget in the amount of \$39,000.00. Except as herein modified, the Fiscal Year 2016-17 Budget and Action Plan, Resolution No. 16-25 as amended, shall remain in full force and effect.

SECTION FOUR. The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute a Certificate of Acceptance for the Grant Deed on behalf of the District.

SECTION FIVE. The General Manager or the General Manager's designee is authorized to provide notice of acceptance to the seller, execute all title and escrow documents and to extend escrow if necessary.

SECTION SIX. The General Manager or the General Manager's designee is authorized to expend up to \$5,000.00 to cover the cost of title insurance, escrow fees, and other closing costs related to this transaction.

SECTION SEVEN. The Board of Directors finds and determines that, pursuant to Section 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, and that the real properties being acquired by the District are of equal or greater

value than the real property being transferred to Navid and are necessary to be acquired for open space purposes.

SECTION EIGHT. The General Manager and General Counsel are further authorized to approve any technical revisions to the attached Agreement and documents, which do not involve any material change to any term of the Agreement or documents, which are necessary or appropriate to the closing or implementation of this transaction.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2016, at a regular meeting thereof, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

Secretary
Board of Directors

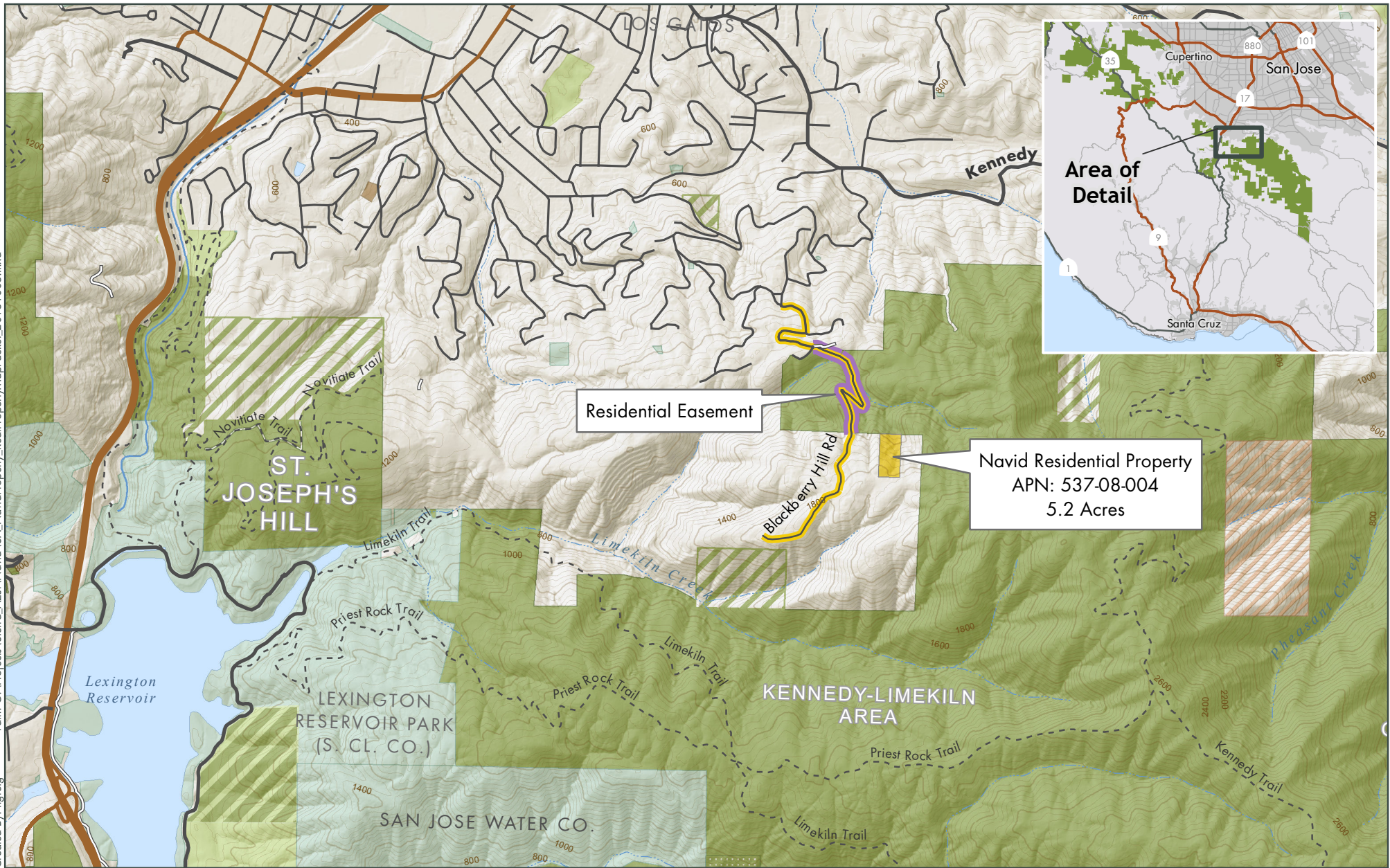
President
Board of Directors

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



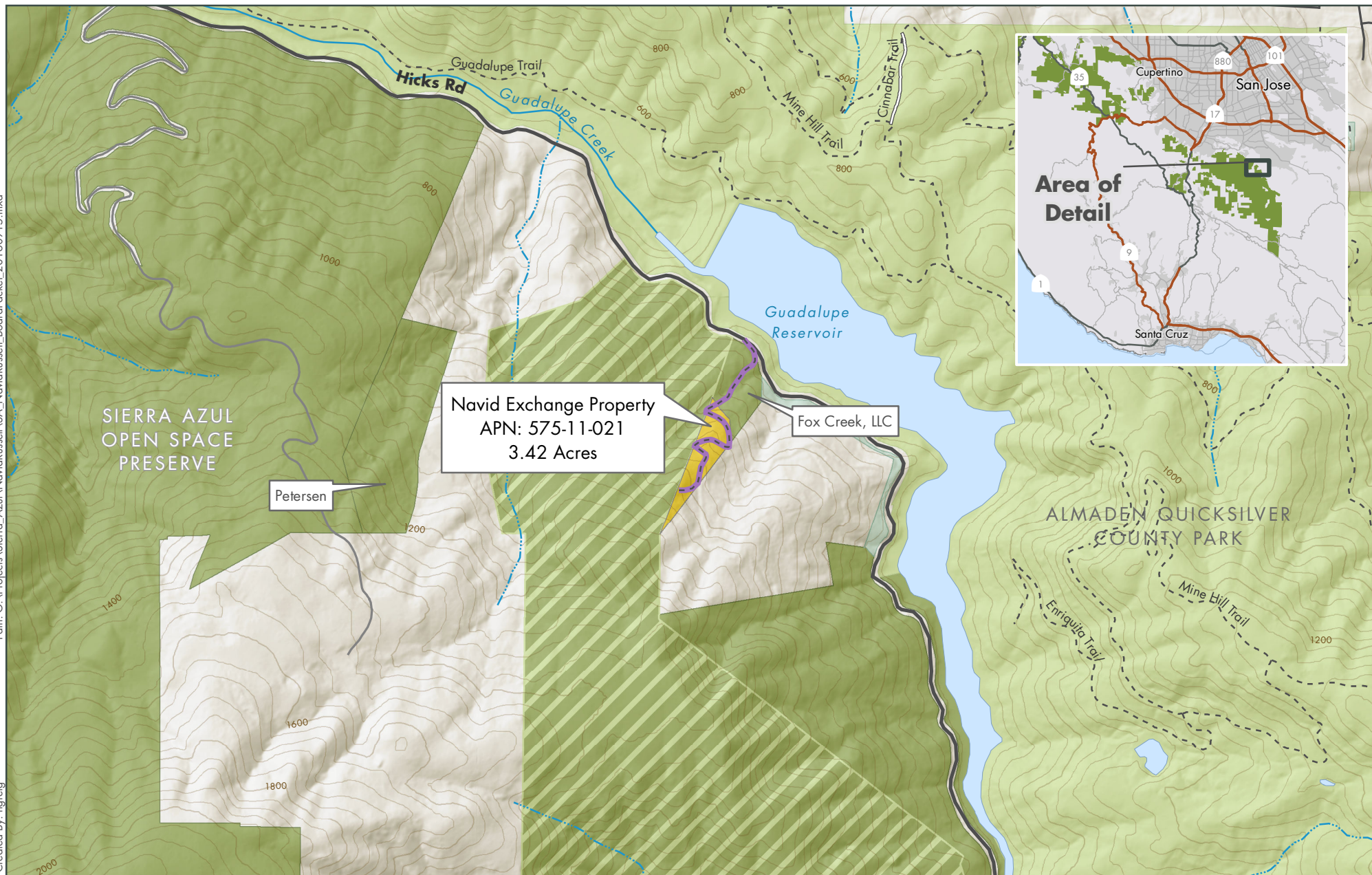
Navid Residential Property

- | | | | |
|--|---|----------------------------|----------------------|
| MROSD Preserves | MROSD Conservation or Agriculture Easement | Navid Residential Property | Blackberry Hill Rd |
| Other Protected Open Space or Park Lands | Non MROSD Conservation or Agricultural Easement | Other Public Agency | Residential Easement |
| Watershed Land | Management Agreement | Private Property | |








Midpeninsula Regional
Open Space District
(MROSD)
October 2016



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Navid Exchange Property

- | | | |
|---|--|---|
|  MROSD Preserves |  Watershed Land |  Navid Exchange Property |
|  Other Protected Lands |  Non MROSD Easement Over MROSD Preserve |  Private Road |
|  Private Property | | |

Midpeninsula Regional
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(MROSD)
September 2016



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