



Midpeninsula Regional
Open Space District

R-17-44
Meeting 17-10
April 26, 2017

AGENDA ITEM 7

AGENDA ITEM

Review and Reaffirmation of the use of Rights of First Offer and Rights of First Refusal to purchase and preserve open space lands, and authorization of General Manager to initiate negotiations on specific properties.

GENERAL MANAGER'S RECOMMENDATION

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Reaffirm interest in outstanding Rights of First Offer and Rights of First Refusal to preserve open space lands, and authorize the General Manager or General Manager's designee to initiate negotiations upon notification of owners' intent to sell certain properties.

SUMMARY

One of the land acquisition tools used by the Midpeninsula Regional Open Space District (District) to purchase desired open space lands is to secure Rights of First Offer and Rights of First Refusal (Rights of Purchase, rights) from a land owner. This report provides a recent history on the use of Rights of Purchase; reviews properties where the District currently holds rights; asks the Board of Directors (Board) to reaffirm District interest in those properties; and authorize the General Manager to initiate negotiations when the District receives a notice of intent to sell.

DISCUSSION

When a property owner grants a Right of Purchase to the District, it provides the District the first chance to buy a property or match an offer received from an interested third party. The District's use of these rights have been an effective tool to secure future opportunities to purchase open space lands as they become available for sale.

A Right of First Offer obligates the property owner to offer a property for sale to the District before putting it on the open market. This right typically has an election-to-purchase timeline of 60 days. This timeline allows for the District and seller to obtain an independent appraisal to determine the fair market value of the property as part of the negotiation process.

A Right of First Refusal allows the District the opportunity to match a purchase offer received from a bona fide third party buyer or decline to purchase. A Right of First Refusal has a shorter election-to-purchase timeline, typically 15 to 30 days. The District can request an extension, but the seller is not obligated to grant the request.

Normally, when any property becomes available for purchase, the District's Real Property Committee (RPC) has opportunity to review or tour the property and evaluate its value to the

District's mission. The RPC then makes a recommendation to the full Board whether to proceed with the purchase. The typical process to seek approval to purchase through RPC and then the Board takes a minimum of 60 days from when an interested seller first contacts the District. In actuality, it may take longer if there is a need to complete an appraisal, conduct due diligence on site conditions, negotiate terms of purchase, and schedule property tours.

The District tries to negotiate and secure both Rights of First Offer and Rights of First Refusal on properties of value to the District when possible and follows a Board approval process to purchase these rights. All of the District's existing Rights of Purchase described below were previously approved by the Board as part of a past land purchase or transaction. When secured, these rights of purchase are usually recorded on title. Many years can elapse between when the District secures Rights of Purchase and when the opportunity to exercise those rights emerges. Securing either Rights of First Offer or Rights of First Refusal does not commit the District to purchase a property. Purchase requires the full Board's approval at the actual time of offering.

Since the District's formation in 1972, the District has negotiated Rights of Purchase on many parcels. These have then led to the purchase of some significant properties or eliminated inholdings in various preserves. Currently, the District holds Rights of Purchase with varying terms on eleven (11) properties within or adjacent to seven (7) Open Space Preserves (OSP).

RIGHTS OF PURCHASE

Recent use of Rights of Purchase

Since 2010, the District has exercised or waived its Rights of Purchase on four important open space properties identified below:

1. In 2010, the District exercised its Rights of First Refusal to purchase the 97.5-acre Silva property as an addition to Russian Ridge OSP (Report R-10-147). The Board concurrently approved an assignment of its purchase rights to Peninsula Open Space Trust (POST), and entered into a Lease and Management Agreement with POST to manage the property while in POST ownership. These actions enabled the District time to secure a \$500,000 Coastal Conservancy Grant, which the District applied to the subsequent purchase of the property from POST in 2011. This property provided for the construction of the Mindego parking area and trailhead, completed in 2014-15.
2. In 2011, the District waived its Rights of First Refusal to the 117.14-acre Hendrys Creek property in Sierra Azul OSP and allowed POST to purchase the property (Report R-11-84). This gave the District time to coordinate a funding partnership with the Santa Clara Valley Water District to purchase the property from POST in 2015.
3. In 2013, the District exercised its Rights of First Offer to purchase the 10.79-acre Lobner Trust property as an addition to Monte Bello OSP (Report R-13-19). This property facilitates completion of the Upper Stevens Creek Trail connection.
4. In 2015, the District exercised its Rights of First Offer to purchase the 38.97-acre Meyer/Connolly property along Mount Umunhum road as an addition to Sierra Azul OSP (Report R-13-132) to secure public rights to a portion of the road.

With the Lobner Trust and Meyer/Connolly properties, the District had very short timelines to exercise Rights of Purchase. The District had 21 days to exercise its Rights of First Offer in the midst of the December holiday season for the Lobner Trust property. The District had 10 days to exercise its Rights of First Refusal for the Meyer/Connolly property. In both cases, the District negotiated timeline extensions with the property owners. However, even with the extensions, there was insufficient time to bring these purchase opportunities first to the RPC.

Reaffirm outstanding Rights of Purchase (see Exhibit 1)

The table below identifies eleven (11) parcels, totaling 585 acres, in which District holds Rights of Purchase. In some instances, more than thirty years have elapsed since the District negotiated these rights. (The oldest rights date back to 1979 and the most recent rights were recorded in 2015.) Each of these properties retain their value to the District but have short election-to-purchase timelines in which the District can respond. Because of these timeline constraints, it is important that the Board review and reaffirm the District's interest in these properties.

Property Owner/Preserve	Acres	Board Report Date & #	Right of 1st Offer Right of 1st Refusal	Election-to-Purchase Timeline
Gallaway, El Corte de Madera Creek OSP	1.7	5/23/2012 R-12-50	Right of 1 st Offer Right of 1 st Refusal	60 days 30 days
Incline Trust (Rapley Ranch), Russian Ridge OSP	14	5/26/2004 R-05-130	Right of 1 st Offer* Right of 1 st Refusal *	30 days 15 days
Struggle Mountain, Foothill OSP	8.53	6/13/1979 R-79-20	Right of 1 st Refusal	21 days
Cummings, Skyline Ridge OSP	16	1/10/2003 R-02-127	Right of 1 st Offer Right of 1 st Refusal	60 days 21 days
Jenkins, Skyline Ridge OSP	53.6	6/10/1984 R-84-24	Right of 1 st Offer Right of 1 st Refusal	60 days 30 days
Lehigh Quarry (2 parcels), Rancho San Antonio OSP	55 210	8/13/2014 R-14-98	Right of 1 st Offer Right of 1 st Refusal	60 days 60 days
Consigny, Picchetti Ranch OSP	9.14	12/2/1980 R-80-23	Right of 1 st Refusal	15 days
Harris, Fremont Older OSP	1.03	R-88-55 7-13-1988	Right of 1 st Refusal	21 days
Stanton, Sierra Azul OSP	120.9	12/12/2008 R-08-134	Right of 1 st Offer Right of 1 st Refusal	60 days 21 days
Balaban Trust, Sierra Azul OSP	95.4	12-28-2011 R-11-117	Right of 1 st Offer	60 days
*Unrecorded held by POST and assignable to the District				

Gallaway Property, El Corte de Madera Creek OSP. In 2012, a family member retained a 1.7-acre parcel and granted Rights of Purchase to the District when the District purchased the 58.2 Gallaway Property as an addition to El Corte de Madera Creek OSP. The parcel is located at the terminus of the upper access road between the Gallaway and the 30.78-acre Sempervirens Fund properties as an inholding to the Preserve (see Exhibit 2).

Incline Trust Property, Russian Ridge OSP. In 2004, the seller retained the 14-acre Incline Trust property and granted Rights of Purchase to POST when POST purchased the 151-acre Rapley Ranch property. The District subsequently purchased the Rapley Ranch property from POST in 2006 as an addition to Russian Ridge OSP. POST retained an unrecorded Right of First Offer and Right of First Refusal on the 14-acre property, assignable to the District. The 14-acre parcel is undeveloped. It is located along the entrance road to the former Rapley Ranch property and surrounded by the Preserve on three sides (see Exhibit 3).

Struggle Mountain Property, Foothills OSP. In 1979, the District secured a Right of First Refusal on the 8.53-acre Struggle Mountain property. The property is located on Page Mill Road, adjacent to the Foothills OSP to the east and to the Los Trancos OSP to the south and west, across Page Mill Road. The property is improved with residential structures occupied by the Struggle Mountain community (see Exhibit 4).

Cummings Property, Skyline Ridge OSP. In 2003, the seller retained the 16-acre Cummings property as an inholding in Skyline Ridge OSP and granted Rights of Purchase to the District as part of the District's 768-acre Big Dipper Ranch purchase. The 16-acre inholding contains a residence and out buildings (see Exhibit 5).

Jenkins Property, Skyline Ridge OSP. In 1984, the seller retained the 53.6-acre Jenkins property and granted Rights of Purchase to the District when the District purchased the 54-acre Jenkins addition to Skyline Ridge OSP. The property includes a residence and garage with an apartment. It also contains densely wooded forest (redwoods and Douglas fir) and the confluence of Peters and Lambert Creeks, potential spawning habitat for steelhead trout and coho salmon (see Exhibit 5).

Lehigh Quarry Properties, Rancho San Antonio OSP. The District holds Rights of Purchase on two properties owned by Lehigh Quarry, totaling 265 acres. A 210-acre parcel provides a scenic buffer between the quarry and the PG&E trail in Rancho San Antonio OSP. A 55-acre parcel provides a scenic backdrop to the eastern portion of the PG&E trail, the Preserve, and Rancho San Antonio County Park. In 2014, the District secured Rights of Purchase as part of an agreement to accept two trail easements, two rights of purchase, and a conditional grant deed conveyance in exchange for dismissal of appeal in *Midpeninsula Regional Open Space District v. County of Santa Clara et al*, Court of Appeal Case No. H040839 (Lehigh EIR challenge) (see Exhibit 6).

Consigny Property, Picchetti Ranch OSP. In 1980, the District recorded a Restriction Agreement and a Right of First Refusal covering 50 acres of the Consigny Property, as part of the District's purchase of 97 acres of the total 147-acre Consigny holding. In 1982, the District waived its Right of First Refusal over a portion of the 50 acres so that POST could purchase a 40-acre portion. POST later transferred the 40-acre portion to Santa Clara County Parks. Later, Cal Fire acquired a small portion of the property. The District's Right of First Refusal is still effective on the remaining 9.14-acre Consigny property. The 9.14-acre property is located adjacent to Lower Stevens Creek County Park and improved with a residence. The District's Restriction Agreement also includes development and density limitations, advisory design review, and a public trail easement on the owner's remaining land (see Exhibit 7).

Harris Property, Fremont Older OSP. In 1988, the District secured a Right of First Refusal on the 1.03-acre Harris Property as an inholding to the Preserve when the District purchased an

adjoining vacant 1.22-acre parcel. The Harris property, located at the end of Prospect Road and surrounded by the Preserve, contains a modest single-family residence and garage. Development would may be very visible if the property was improved with a large residence in the future. The property may also be desirable to the District as a future employee residence (see Exhibit 7).

Stanton Property, Sierra Azul OSP. In 2008, the District secured Right of Purchase on 120.9-acres of the Stanton Property as part of an agreement to purchase an undivided half interest in the adjacent 96-acre Stanton property. The 120.9-acre property is located off Reynolds Road and surrounded by the Rancho de Guadalupe area of Sierra Azul OSP on all sides. There are two private improved properties to the west and one improved private property to the north. The property is improved with two trailer residences and several unoccupied structures. The property provides a connection to the “New Hagan” meadow area of the Preserve (see Exhibit 8).

Balaban Property, Sierra Azul OSP. In 2011, the District secured a Right of First Offer on the 95.4-acre Balaban property as part of an agreement to purchase 83 nearby acres from the property owner. The 95.4-acre Balaban property is a large inholding in the Alamitos Creek watershed area of Sierra Azul OSP. The property contains a trailer residence and a recreational pond on a ridgeline visible from Mt. Umunhum Road (see Exhibit 9).

In addition, the District holds Rights of Purchase a remaining Term Interest in two (2) properties sold to private parties.

Term Interest Owner/ Preserve	Acres	Date Board Report	Right of 1st Offer Right of 1st Refusal	Election-to- Purchase Timeline
Guenther, Skyline Ridge OSP	10	12/17/1997 R-97-99 &109	Right of 1 st Refusal	30 days
Thornton-Simone (prior Anderson-Niswander), Long Ridge OSP	13.9	9/27/2000 R-00-120 3/24/2015 R-15-04	Right of 1 st Refusal Right of 1 st Refusal	30 days 60 days

Guenther Term Interest, Skyline Ridge OSP. In 1997, the District sold a 50-year Term Interest in a 10-acre property off Alpine Road to Jake and Tamara Guenther. The property contains a residence, pool and pool house, cabin, and outbuildings. The Term Interest has 30 years remaining. The property is subject to reserved patrol and trail easements, design and review approval of future improvements, and a Right of First Refusal with a 30-day time to respond to any future private party purchase offers. At the end of the remaining Term Interest, fee title to the property reverts to District ownership (see Exhibit 5).

Thornton-Simone Term Interest, Long Ridge OSP. In 2000, the District sold a 40-year Term Interest in a 13.9-acre property along Portola Heights Road to Tom Anderson and Sherry Niswander. The property contains a residence, in-law unit, and outbuildings. The property is subject to a reserved open space and trail easement as the Long Ridge Trail circles a portion of the property. The property is also subject to design and review of future improvements and a Right of First Refusal. In 2015, Anderson-Niswander sold the remaining 26 years of their Term Interest to Thornton-Simone. The District declined to exercise its Right of First Refusal to allow the sale of the Term Interest. As part of this sale transaction, the District negotiated an amendment to the original agreement, increasing the District’s Right of Refusal election-to-

purchase from 30 to 60 days to allow the District more time to respond to any future private party purchase offers. The Term Interest has 24 years remaining. At the end of the remaining Term Interest, fee title to the property reverts to District ownership (see Exhibit 5).

Authorization of General Manager to Exercise Rights of Purchase

Properties with older rights to purchase typically have election-to-purchase timelines of less than 30 days. Six (6) properties have short election timelines: Incline Trust, Struggle Mountain, Cummings, Consigny, Harris, and Stanton. It is not certain that the District would be able to negotiate extension of election-to-purchase terms, and as explained previously, the established terms may not provide sufficient time to bring these purchase opportunities to the RPC for individual consideration. If the Board reaffirms interest in these properties, the General Manager recommends that the Board authorize the initiation of negotiations directly when the District receives a notice of intent to sell, and inform the Board of negotiations at the earliest possible date (bi-weekly report or FYI at next Board meeting) if election-to-purchase timeline terms cannot be extended by agreement with the landowner. The process to approve [sic] purchase of any one these properties will still require the full Board of Directors to approve the purchase.

FISCAL IMPACT

There is no fiscal impact.

BOARD COMMITTEE REVIEW

The District held a RPC meeting on February 28, 2017 to review interest in the properties in which the District holds Rights of Purchase. The District distributed notice of the meeting to property owners. No property owners or members of the public attended. Two members of the RPC attended. Staff gave a presentation of the subject properties and the terms of the Rights of Purchase. The RPC approved recommending the District's reaffirmed interest in all the subject properties, and future purchase of these properties need not come before the RPC for again review, but may go instead directly to the full Board for consideration of purchase, by a 2-0 vote.

PUBLIC NOTICE

The property owners subject to Right of Purchase by the District were notified of this meeting. Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act (CEQA).

NEXT STEPS

Following approval, the Real Property staff will monitor the status of properties with Rights of Purchase. If the District cannot renegotiate the terms of the election-to-purchase time limits and bring the proposed purchases back to the PRC, the General Manager will notify the Board. The General Manager or his or her designee will initiate negotiations on these properties. The General Manager will bring any proposed purchase to the full Board of Directors for consideration and approval.

Attachments

1. Exhibit 1: Regional Map of Properties with Rights to Purchase
2. Exhibit 2: Gallaway Property, El Corte de Madera OSP
3. Exhibit 3: Incline Trust Property, Russian Ridge OSP
4. Exhibit 4: Struggle Mountain Property, Foothills OSP
5. Exhibit 5: Cummings and Jenkins Properties, Skyline Ridge OSP / Guenther Term Interest, Skyline Ridge OSP / Thornton-Simone Term Interest, Long Ridge OSP
6. Exhibit 6: Lehigh Quarry Properties, Rancho San Antonio OSP
7. Exhibit 7: Consigny Property, Picchetti Ranch OSP / Harris Property, Fremont Older OSP
8. Exhibit 8: Stanton Property, Sierra Azul OSP
9. Exhibit 9: Balaban Property, Sierra Azul OSP

Responsible Department Head:

Michael Williams, Real Property Manager

Prepared by:

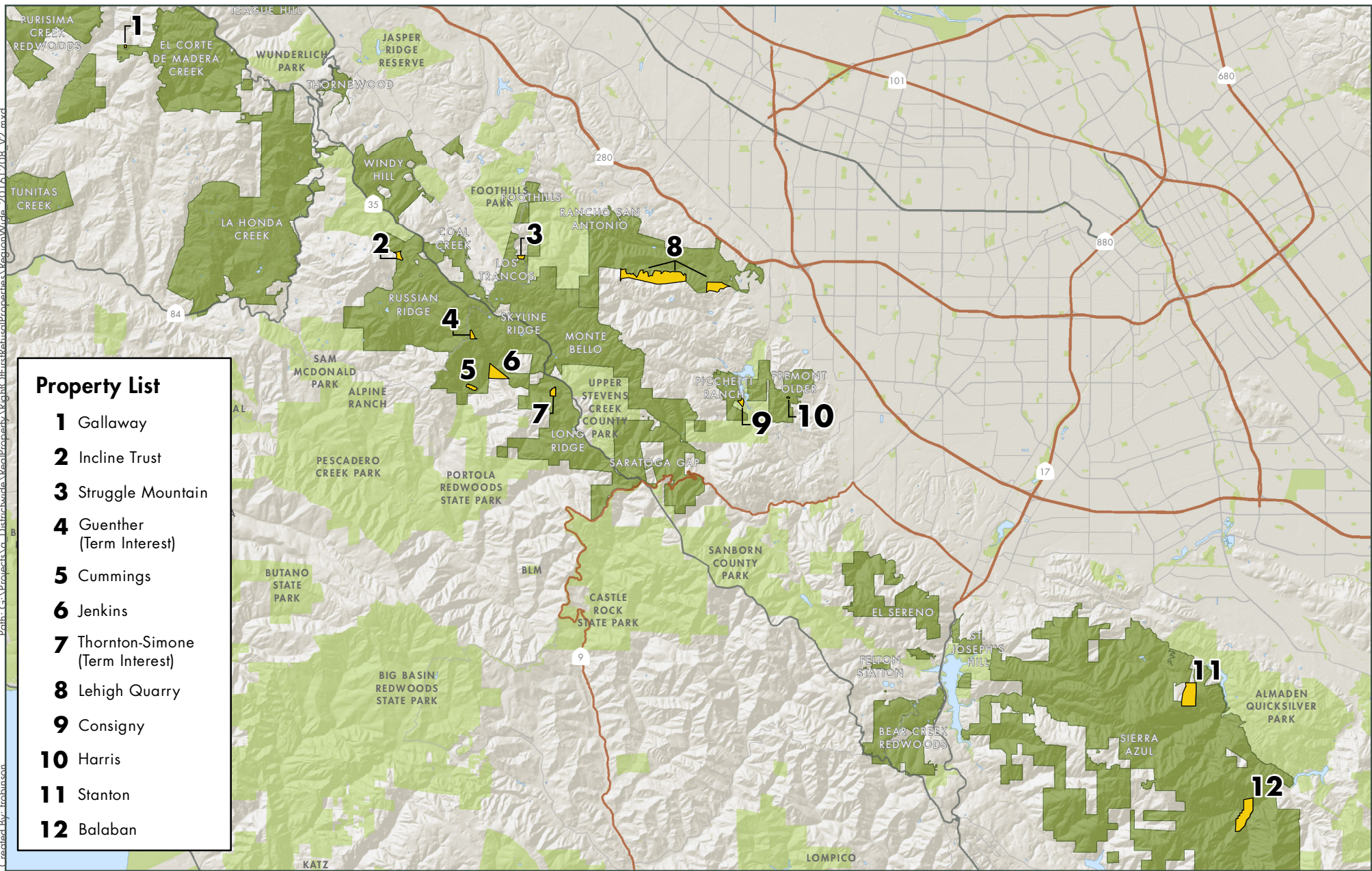
Michael Williams, Real Property Manager

Elish Ryan, Real Property Planner III

Graphics Prepared by:

Torie Robinson, GIS Intern




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Property List

- 1** Gallaway
- 2** Incline Trust
- 3** Struggle Mountain
- 4** Guenther
(Term Interest)
- 5** Cummings
- 6** Jenkins
- 7** Thornton-Simone
(Term Interest)
- 8** Lehigh Quarry
- 9** Consigny
- 10** Harris
- 11** Stanton
- 12** Balaban

Exhibit 1. Properties with District Rights of Purchase

-  MROSD Preserves
-  Other Protected Open Space
or Park Lands
-  Subject Property

Midpeninsula Regional
Open Space District
(MROSD)
March 2017



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

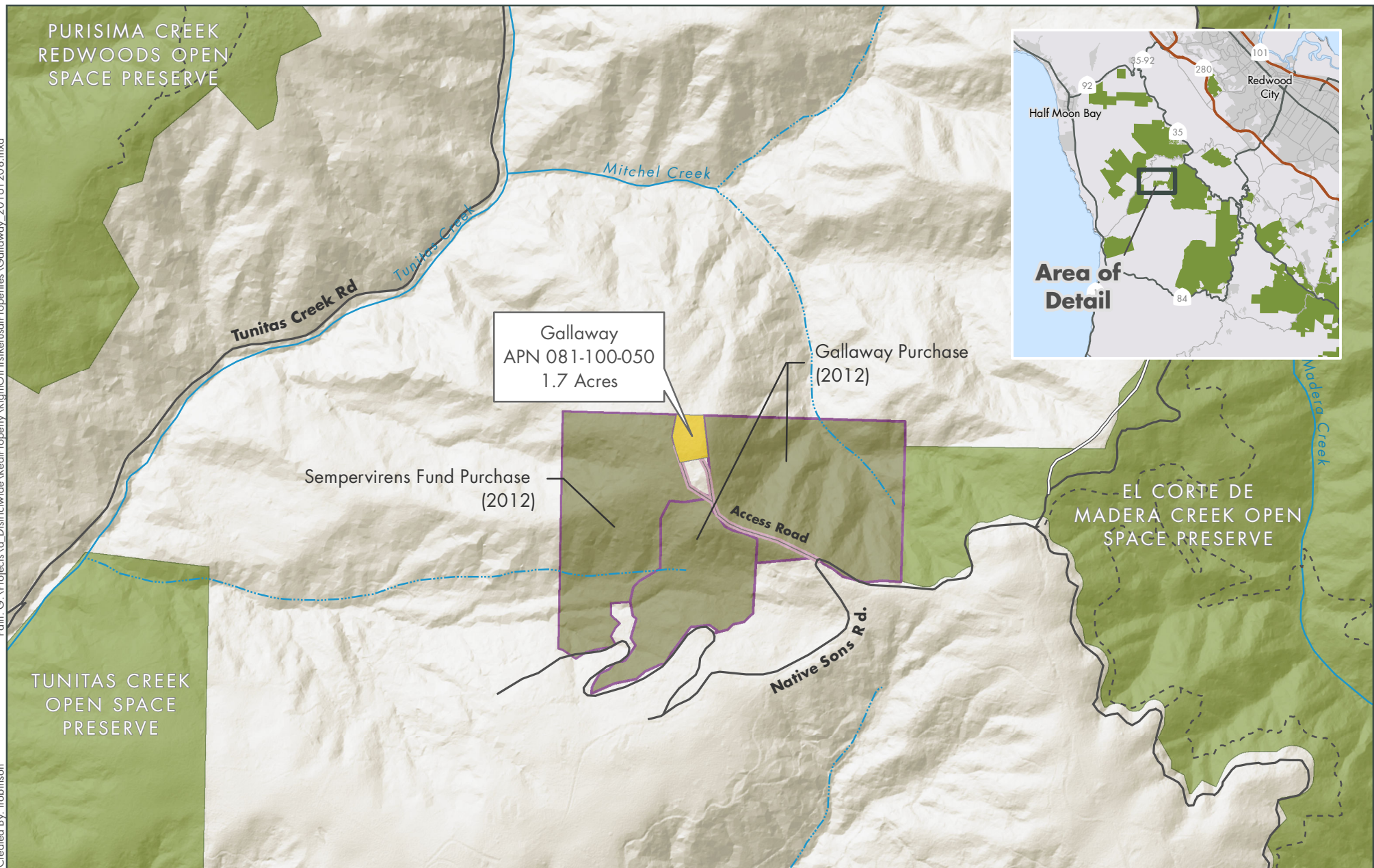








Exhibit 2. Gallaway Property (El Corte de Madera OSP)

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|  MROSD Preserves |  Gallaway Purchase (2012) |
|  Private Property |  Sempervirens Fund Purchase (2012) |
|  Subject Property |  Property Access Road |

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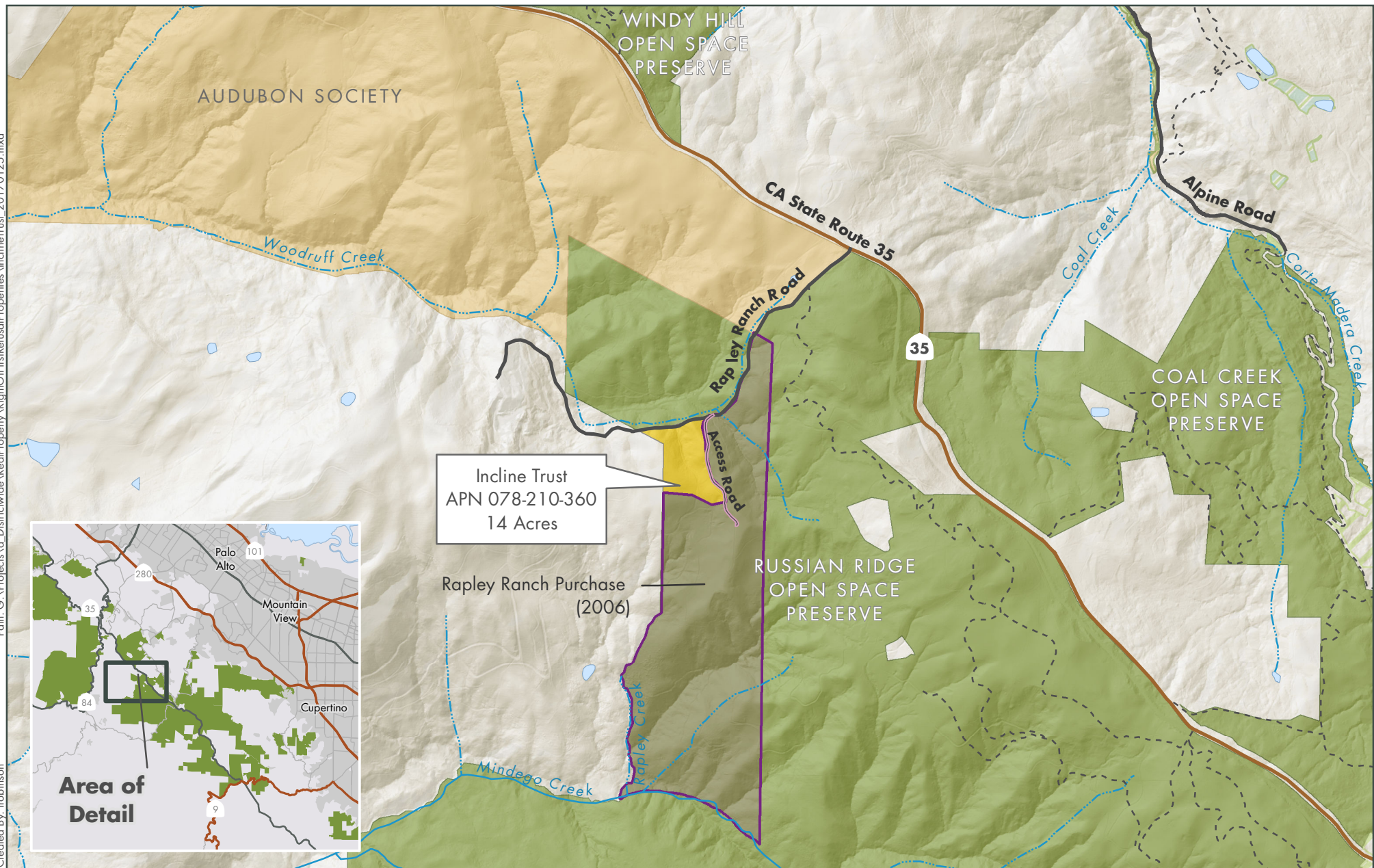






Exhibit 3. Incline Trust Property (Russian Ridge OSP)

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|  MROSD Preserves |  Subject Property |
|  Private Property |  Rapley Ranch Purchase (2006) |
|  Land Trust |  Property Access Road |

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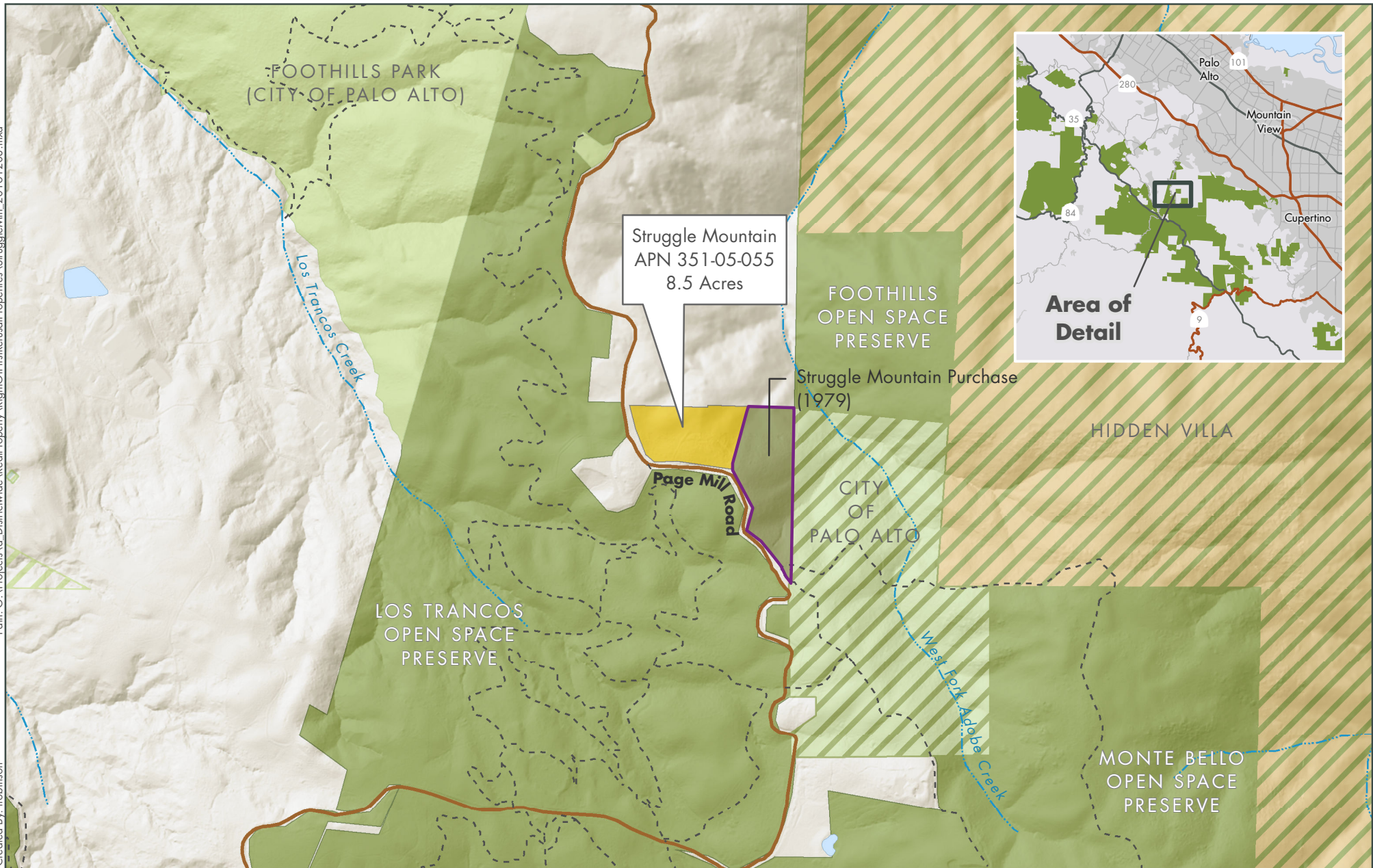










Exhibit 4. Struggle Mountain Property (Los Trancos OSP)

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|  MROSD Preserves |  MROSD Easement over Other Protected Land |  Subject Property |
|  Private Property |  Non-MROSD Easement over Private Land |  Struggle Mountain Purchase (1979) |
|  Other Protected Lands |  MROSD Easement over Land Trust | |

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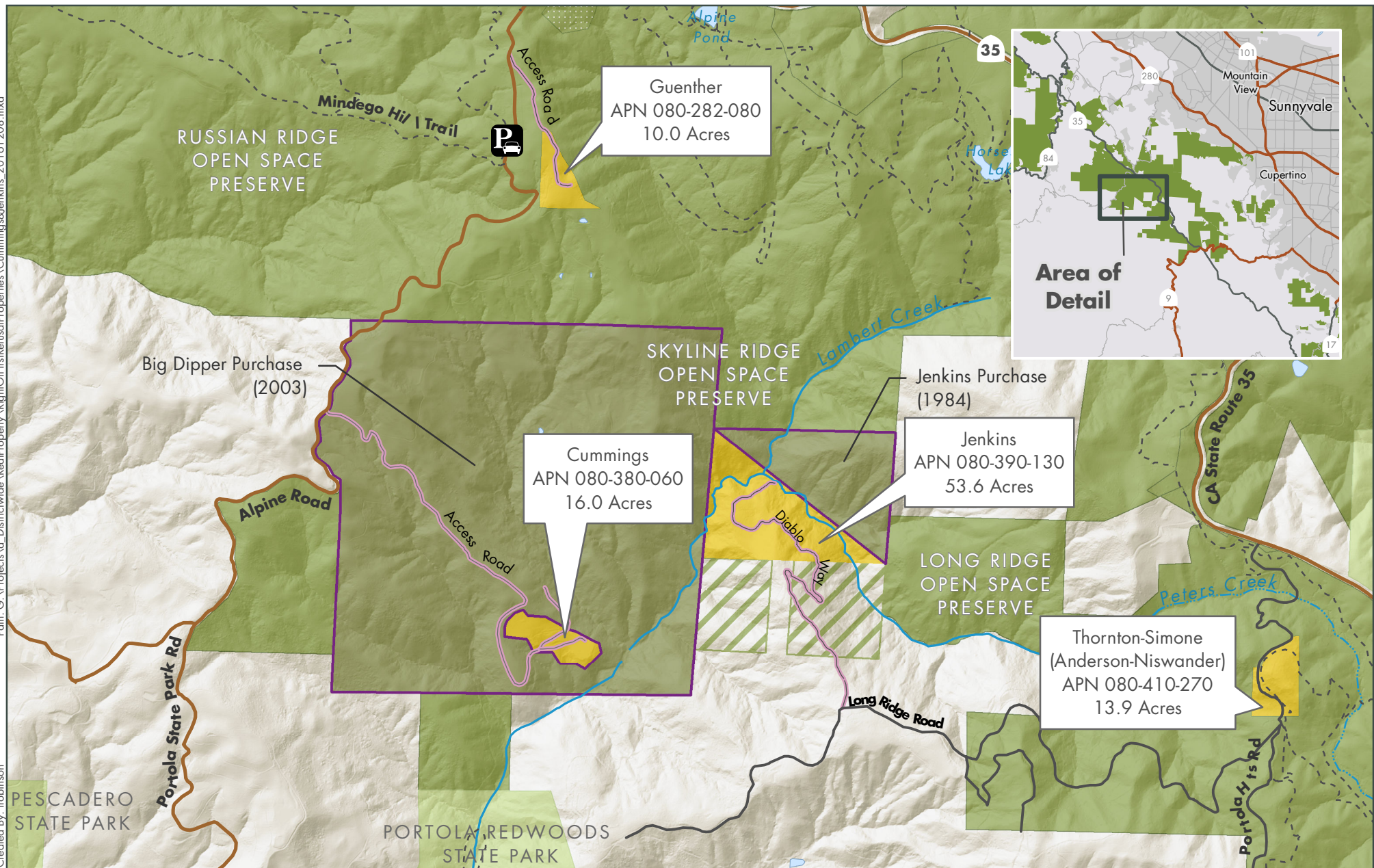


Exhibit 5. Cummings, Jenkins, Guenther, Thornton-Simone Properties (Skyline Ridge & Long Ridge OSP)

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|-----------------------|--|----------------------------|
| MROSD Preserves | MROSD Conservation or Agriculture Easement | Subject Property |
| Other Protected Lands | MROSD Easement over Land Trust | Big Dipper Purchase (2003) |
| Private Property | Partial MROSD Ownership | Jenkins Purchase (1984) |
| | | Property Access Road |

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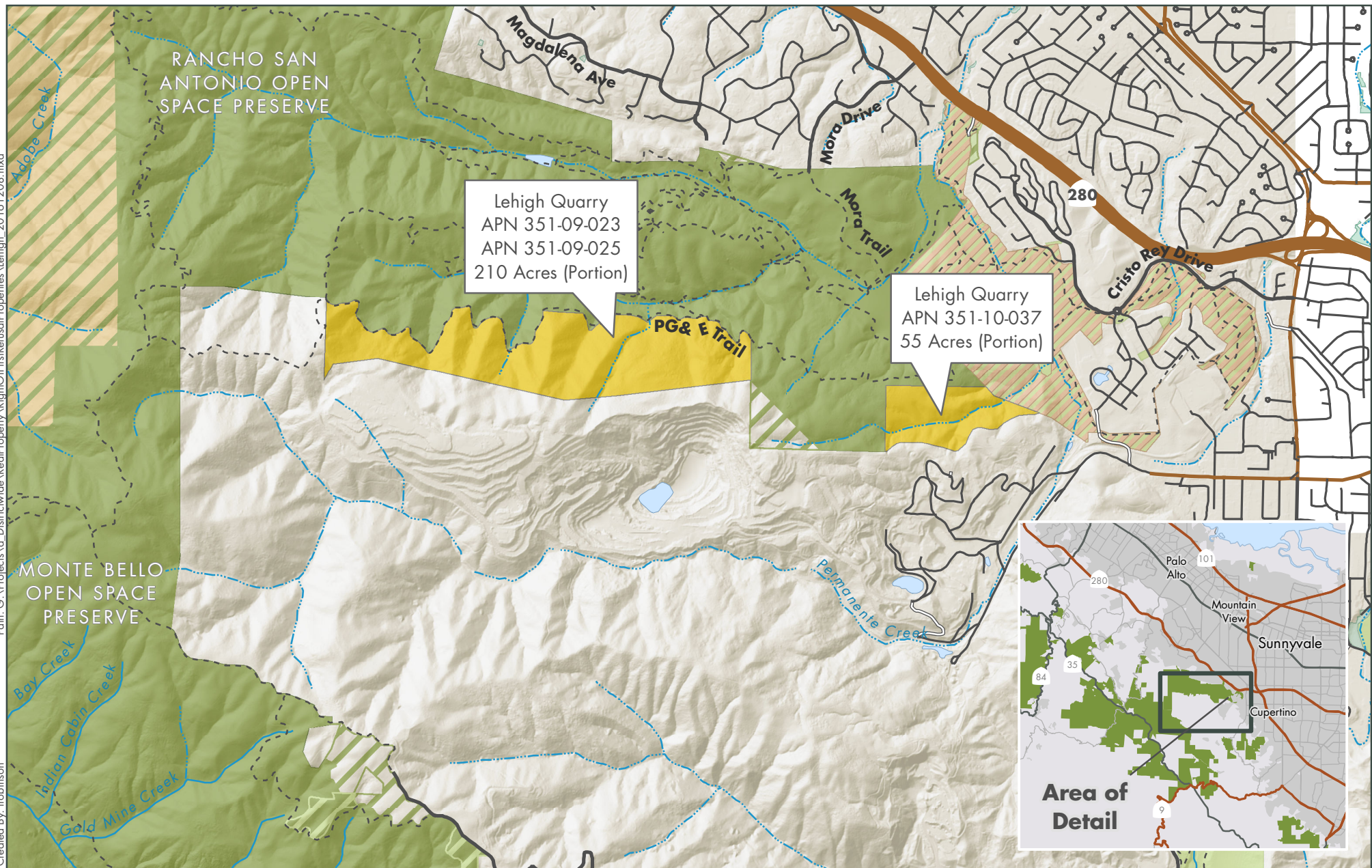









Exhibit 6. Lehigh Quarry Properties (Rancho San Antonio OSP)

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|  MROSD Preserves |  MROSD Easement over Land Trust |  Subject Property |
|  Private Property |  MROSD Mgt. Agreement over Other Protected Land | |
|  Other Protected Lands |  MROSD Easement over Private Land | |

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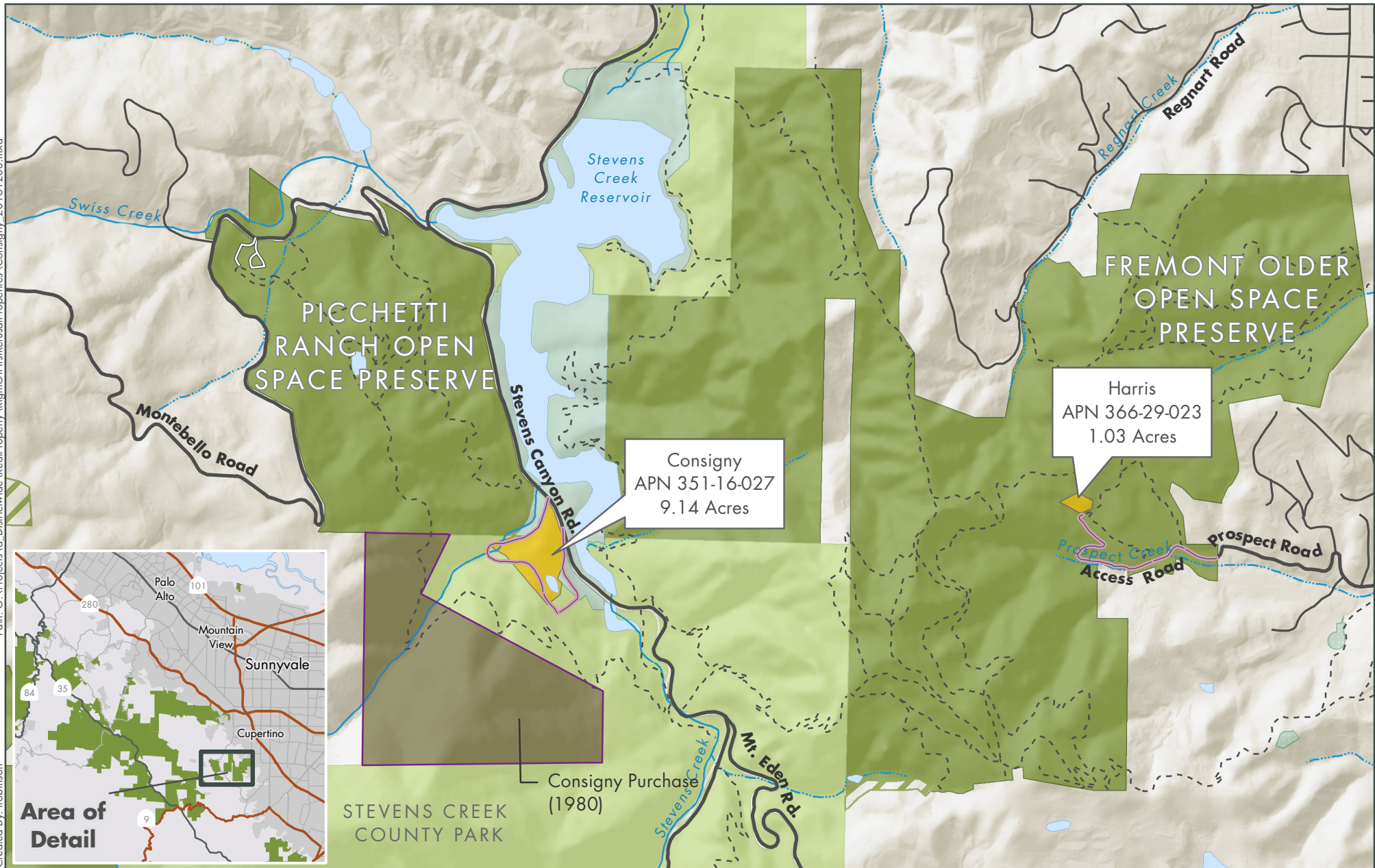


Exhibit 7. Consigny Property (Picchetti Ranch OSP) and Harris Property (Fremont Older OSP)

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| MROSD Preserves | Non-MROSD Easement over MROSD Preserve | Subject Property |
| Private Property | MROSD Easement over Private Land | Consigny Purchase (1980) |
| Other Protected Lands | Watershed Land | Property Access Road |

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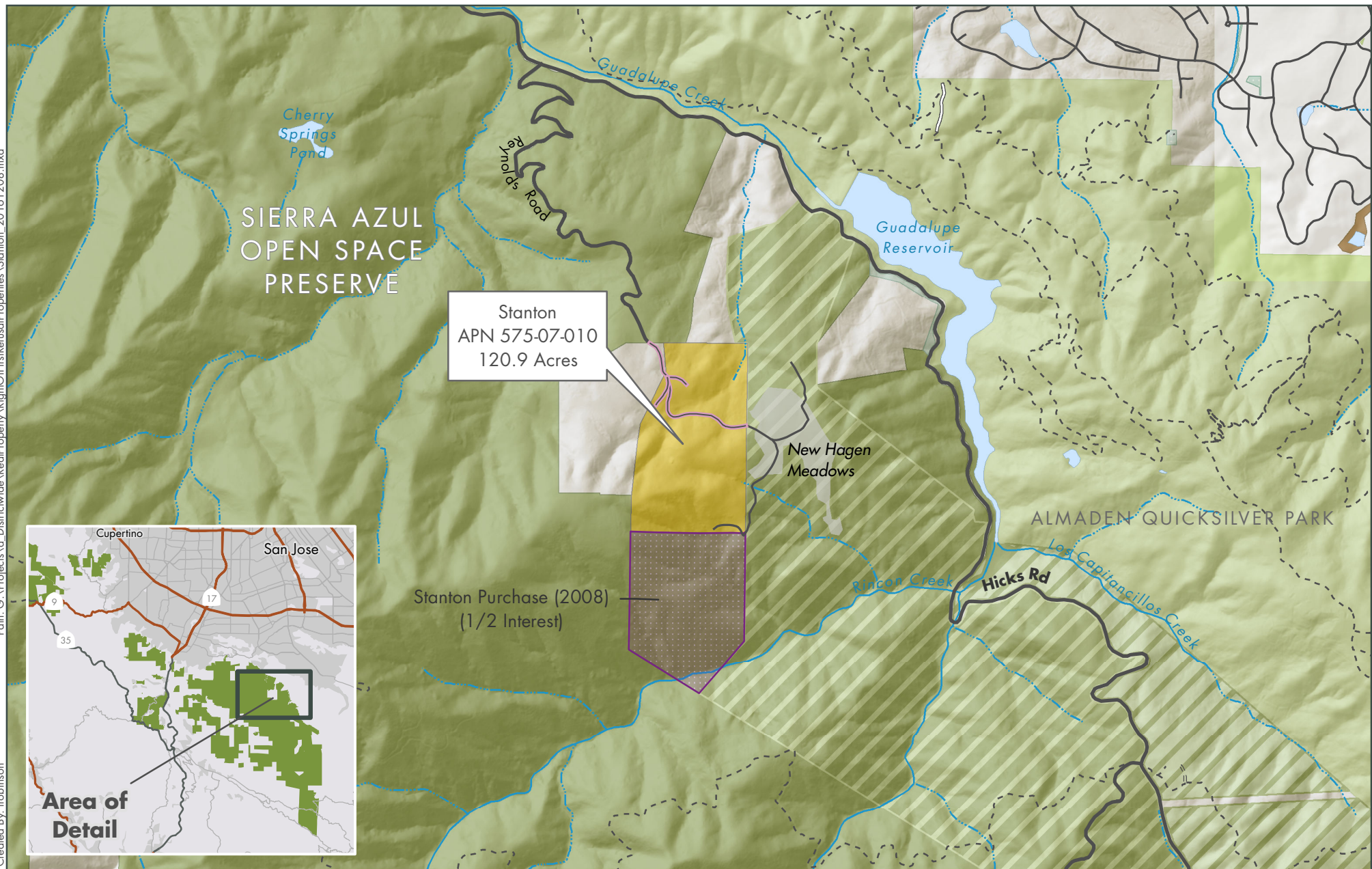











Exhibit 8. Stanton Property (Sierra Azul OSP)

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|  MROSD Preserves |  MROSD Easement over Other Protected Land |  Subject Property |
|  Private Property |  Non-MROSD Easment over MROSD |  Stanton Purchase (2008) (1/2 Interest) |
|  Other Protected Lands |  Partial MROSD ownership |  Property Access Road |

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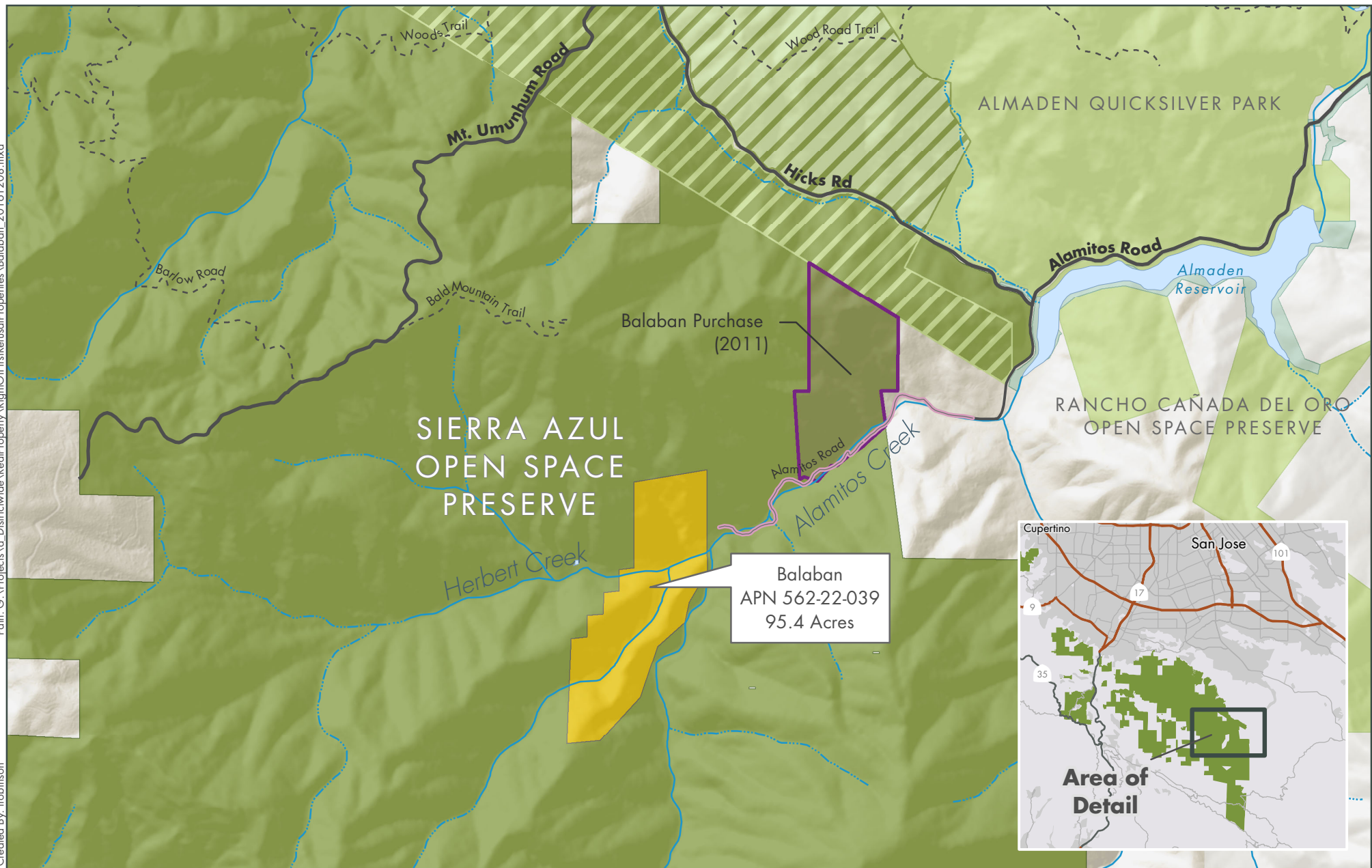










Exhibit 9. Balaban Property (Sierra Azul OSP)

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|---|--|---|
|  MROSD Preserves |  MROSD Easement over Other Protected Land |  Balaban Purchase (2011) |
|  Private Property |  Non-MROSD Easement over MROSD Preserve |  Property Access Road |
|  Other Protected Lands |  Subject Property | |

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