



Midpeninsula Regional
Open Space District

R-15-168
Meeting 15-31
December 9, 2015

AGENDA ITEM 7

AGENDA ITEM

Consideration of approving a Resolution of the Board of Directors of the Midpeninsula Regional Open Space District declaring the acquisition of certain real property rights necessary for the Sierra Azul Open Space Preserve and the Mount Umunhum Environmental Restoration and Public Access Project (“Project”), and authorizing the acquisition thereof and the transfer of funds therefor (Portion of Santa Clara County Assessor Parcel Number: 562-22-017, owned by Michael and Leonard Rossetta).

GENERAL MANAGER’S RECOMMENDATIONS

The General Manager recommends that the Board of Directors approve a Resolution of Need and Necessity for the following acquisitions from Michael and Leonard Rossetta:

1. A 60-foot wide general public access and drainage easement containing a total of 42,871.80 square feet on that certain property identified as Santa Clara County Assessor Parcel Number 562-22-017, as a critical public access route to the summit of Mount Umunhum in the Sierra Azul Open Space Preserve.
2. A fee interest to a 19-acre (approximate) property boundary overlap over a portion of property identified as Santa Clara County Assessor Parcel Number 562-22-017 from Michael Rossetta and Leonard Rossetta, to resolve a boundary line controversy and to ensure critical public access within the Sierra Azul Open Space Preserve.
3. The General Manager further recommends that the appropriate amount of funds be transferred and that funds for immediate possession be allocated.

A two-thirds majority vote of the entire Board of Directors is required to adopt a Resolution of Need and Necessity.

SUMMARY

In order for the District to fully implement its plan to allow the public to access the summit of Mount Umunhum via vehicular access over Mt. Umunhum Road, expanded easement rights are required. In addition, it is necessary to resolve a long-standing boundary controversy to the 19-acre overlap parcel, in order to preserve existing public open space and ensure critical public access within the Sierra Azul Open Space Preserve. According to the District’s fair market value appraisal of the required property rights, the acquisition cost will be \$452,225.

DISCUSSION

Background

The District acquired the former Almaden Air Force Station from the United States of America on April 24, 1986 (R-86-20). With this purchase, the District also secured an easement for road purposes over the entirety of Mt. Umunhum Road from Hicks Road to the Summit of Mount Umhunhum (5.4 miles). Although this easement allowed approximately 120 people (military members and their families and visitors) and numerous supply trucks to utilize Mt. Umunhum Road to access the Air Force Station, the scope of this easement may not allow the District to invite the public over the road. It is the property owners' position that the current easement does not allow the public to drive Mt. Umunhum Road at it crosses their private property. Once a year, the property owners physically block Mt. Umunhum Road as it traverses their property, in an apparent attempt to prevent the vesting of public prescriptive rights. Over the years, the District has purchased a number of properties that Mt. Umunhum Road crosses, and the District currently owns approximately 70% of the road. There are three private properties that Mt. Umunhum Road currently crosses, one of which is the subject property owned by Michael Rossetta and Leonard Rossetta. The proposed acquisition is intended to perfect those rights held by the District to support the planned use and maintenance of District property.

Since 2010 the District has taken various actions to prepare the summit for public access. Below is a summary of some of these items:

- In the summer of 2010, the District commenced a number of public and stakeholder meetings to evaluate opening the summit of Mount Umunhum to the public.
- On October 17, 2012, the District's Board of Directors approved the project elements of the Mount Umunhum environmental restoration and public access project (R-12-124).
- The demolition of the improvements from the former Almaden Air Force Station (excepting the radar tower) was completed in February of 2014.
- The new 5-mile Mt. Umunhum Trail is currently under construction.
- On July 8, 2015, the Board approved a \$308,000 contract with Pavement Engineering Inc., (R-15-103) to design the roadway improvements to accommodate future public vehicular access to the summit of Mount Umunhum. (Note that the contract for construction of these improvements will not be let unless or until the proposed Resolution of Need and Necessity is approved by the Board.)
- On August 26, 2015, the Board approved the final design development options for the Mount Umunhum Summit Project (R-15-126).
- The Mount Umunhum Summit, Mt. Umunhum Road and the new Mt. Umunhum Trail are projected to be open to the public in the fall of 2016.

The 19-acre (approximate) property overlap issue relates to the District's purchase of the Jamison (R-86-125) and Tobar (R-89-54) properties in 1986 and 1989, respectively. In the early 1990s it was discovered that the eastern boundaries of the above properties may overlap with the western boundary of the Rossetta's property. A portion of the District's Woods Trail (part of the

Bay Area Ridge Trail) is located within this disputed area. Over the years, the District and the property owner have discussed the disputed overlapping area, but a mutually-agreeable resolution has not been reached. The property owner blocks the District's Woods Trail once a year, apparently in an attempt to prevent a public prescriptive easement from vesting. The overlapping 19-acre area and the ongoing controversy are due to the fact that the property survey stake that is the point of beginning for the property owner's property cannot be located in the area where it is supposed to be, as the description of this point is based on the 1938 location of what was known as "Woods Road." The identity of what was known as Woods Road in 1938 also is debatable. In summary, this possible overlap area is a complicated property boundary situation with no easy solution other than the District purchasing the possible overlap to resolve the matter with certainty once and for all.

Over the last three years, the District has offered, negotiated, discussed and revised a number of proposals with Michael Rossetta and Leonard Rossetta for public access and property boundary resolution related for the Project. Despite these efforts, little progress has been made toward securing these rights. Most recently, on September 28, 2015, District Staff made a written offer of just compensation to the property owners based upon an appraisal of the fair market value of the property rights being sought. Again, despite numerous communications with the property owner's attorney, no agreement was reached.

The District remains committed to continue negotiations in an effort to obtain a voluntary acquisition, but the matter is currently at an impasse. Based on the District's desired schedule to open the summit of Mount Umunhum to the public in the fall of 2016, the General Manager recommends that the Board of Directors approve the adoption of this resolution to acquire the property rights by eminent domain. Below are the details for each property right:

General Public Access Easement:

This is a 60-foot wide, non-exclusive easement (30 feet on each side of the center line of the road) for general public access, drainage, operation, patrol, maintenance, repair, replacement, emergency access and other related uses. The current driving width of Mt. Umunhum Road would not be significantly expanded beyond its existing width (18-22 feet wide) as part of the District's Project. This easement is required for the District to perfect title by resolving the scope of permitted uses and the width of the easement necessary to support those uses, improving the condition and safety of Mt. Umunhum Road to allow the public to reach the summit of Mount Umunhum via vehicular access. Pursuant to the terms of the easement, the District will take on responsibility for the current road improvements as well as future repair and maintenance to the road (Mt. Umunhum Road serves as the access route to the property owners' property).

19-acre (approximate) Fee Property:

This is 19-acre (approximate) acquisition is required to perfect title and resolve a long-standing, overlapping property line controversy with the property owner and it would secure the District's full and undisputed ownership to the portion of Woods Trail that crosses this disputed property area.

FISCAL IMPACT

FY2015–2016 Budget for New Land Purchases:

New Land Purchases Budget	\$11,000,000.00
Land approved for purchase this year	(\$8,840,000.00)
Rossetta Property	(\$452,225.00)
New Land Purchase Budget Remaining	\$1,707,775.00

The District Controller was consulted on this purchase and has indicated that, considering cash flow and account balances, funds are available for this property purchase.

BOARD COMMITTEE REVIEW

This item was not previously reviewed by a Board Committee.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act and the District's Land Acquisition Public Notification Policy as applied to condemnation activities. Additionally, the property owners were notified of the District's intent to consider the adoption of a Resolution of Necessity to acquire property rights by eminent domain at least 15 days before the public hearing pursuant to California Code of Civil Procedure Section 1245.235

PUBLIC HEARING PROCESS

Pursuant to Section 1245.235 of the Code of Civil Procedure, notice was given to all persons whose names and addresses appear on the last equalized County Assessment Roll and any other persons known to have an interest in the property that a hearing is scheduled for Wednesday December 9, 2015 at 7:00 pm and thereafter in the Board Room of the Midpeninsula Regional Open Space District, 330 Distel Circle Los Altos, CA 94022, at which time they may appear to be heard on the matters referred to in the notice. A list of those persons notified follows:

Michael Rossetta and Leonard Rossetta
217 Gregg Drive
Los Gatos, CA 95032

In order to initiate an action in eminent domain, the Board of Directors must, at this public hearing, find and determine the following:

- A. That public interest and necessity require the property.

Significant sums of taxpayer dollars, both local and federal, have been invested in acquiring and improving the Mount Umunhum property for public benefit. Allowing the public access to this publicly owned asset is in the public interest.

The public has expressed great interest in gaining vehicular and trail access to the summit of Mount Umunhum since the District acquired the summit area in 1986. In the last five years the public has expressed strong interest in access to the summit at numerous public workshops, Board meetings, through the vision planning process, and the passage of the voter-approved Measure AA in June of 2014.

The Public Resources Code allows the District to exercise the power of eminent domain to acquire property for public parks, public trails, natural areas, and ecological and open space preserves (Public Resources Code sections 5540, 5541 and 5542). The proposed acquisitions are consistent with that authority. Acquisition of the property rights will allow for public access to one of the great mountain tops in the Bay Area as well as resolve an outstanding boundary controversy that affects a portion of the District's Woods Trail (portion of the Bay Area Ridge Trail).

- B. That the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

Acquisition of the easement rights over the existing roadway will allow the District to improve the condition and safety of the road while opening it to the public in order to give the public access to a spectacular Bay Area mountain top that is owned and managed for the public's benefit. Acquisition of the fee property overlap is over a portion of property that is vacant and unimproved with the exception of the District's Woods Trail. To the District's knowledge, there are no permanent residential structures currently on the property. The District's acquisition will have no adverse impact on any existing use or foreseeable future development by the Property Owner. The easement acquisition will actually improve the owners' current access, as the District will upgrade the road and take over responsibility for future maintenance and repair work.

The property owner has expressed concerns about the improvements to Mt. Umunhum Road adversely affecting the driveways to their property. The District Road Engineer is aware of this concern and has taken this into account in their improvement design.

- C. That the property sought to be acquired is necessary for the project.

Mt. Umunhum Road is the best and preferred access route to allow public vehicular access to the summit area of Mount Umunhum to ensure that these public lands are accessible to all members of the public, regardless of their physical ability. Without acquisition of these property rights as proposed, only hikers and equestrians would be able to access the summit (via the trail on District property). This road was originally designed and improved to provide access and supplies for the 120 occupants and their guests and invitees of the former Almaden Air Force Base. A portion of the District's Woods Trail is affected by a property line dispute. The Woods Trail is an 11 mile portion of the Bay Area Ridge Trail, which currently connects Almaden Quicksilver County Park to Lexington Reservoir. As part of the Project, Woods Trail will provide trail connections to the new Mt. Umunhum Trail when it is complete and the Mount Umunhum summit is made open to the public.

- D. That the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record or has not been made because the owner cannot be located with reasonable diligence (CCP Section 1245.230).

In a letter dated September 28, 2015, staff made a formal written offer of just compensation to the owners based on the appraised fair market value (\$452,225) of the property rights. The offer included a full copy of the appraisal. To date the owners have not sought to negotiate the purchase price with the District.

Upon completion and closing of the hearing, staff recommends that the Board of Directors make the findings and determinations listed under A, B and C above, make an additional finding that the offer of just compensation required by Section 7267.2 of the Government Code has been made to the owners of record, and adopt a Resolution of Necessity to acquire the required property rights by eminent domain.

All questions raised at this public hearing must be with regard to items (A) through (D) listed above.

CEQA COMPLIANCE

The District Board of Directors certified the Final Environmental Impact Report for the Mount Umunhum Summit Project at its public meeting of June 12, 2012. An Addendum to the Final Environmental Impact Report has been prepared and will also be considered for approval by the Board at the December 9 meeting.

The acquisition of the 19-acre overlap area is categorically exempt from the California Environmental Quality Act (CEQA) under Article 19, Sections 15301, 15316, 15317, and 15325 of the CEQA Guidelines as follows:

Section 15301 exempts the repair, maintenance, or minor alteration of existing public or private structures, facilities, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

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.

Section 15317 exempts the acceptance of fee interests in order to maintain the open space character of an area.

Section 15325 exempts transfers of ownership of interests in land in order to preserve open space.

NEXT STEPS

If the Resolution is approved by the Board, Price, Postel & Parma LLP., will file formal action in court to secure the property rights. Notwithstanding this process, District staff will continue to work with and negotiate with the Property Owners to determine if a settlement is possible.

Attachment(s)

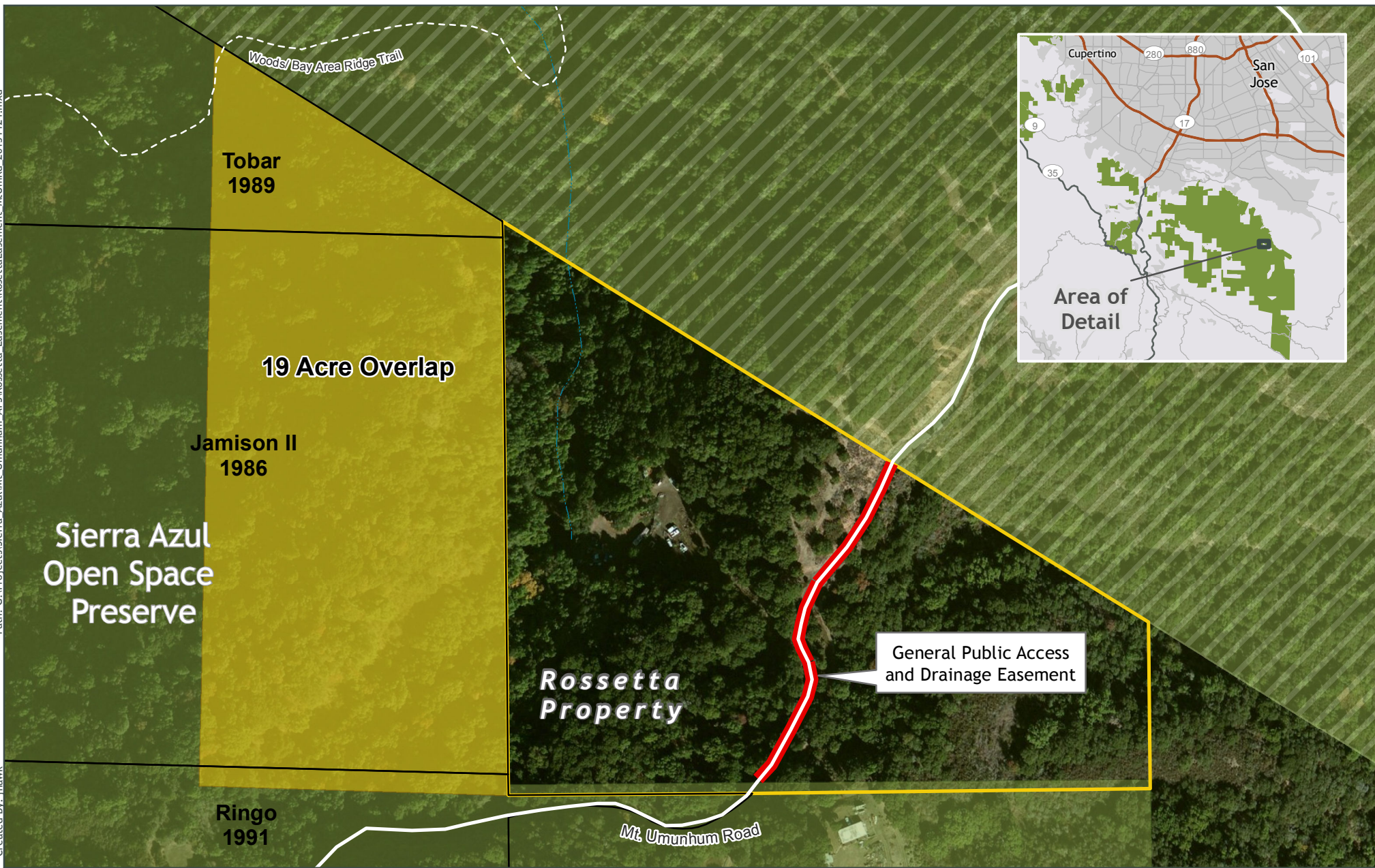
1. Map
2. Resolution of Need and Necessity

Responsible Department Head:
Michael Williams, Real Property Manager


Prepared by:
Allen Ishibashi, Senior Real Property Agent, Real Property

Contact person:
Allen Ishibashi, Senior Real Property Agent, Real Property

Path: G:\Projects\Sierra_Azul\Mt_Umunhum_AFS\Rossetta_Easement\RosettaEasement_MtUmRd_20151124.mxd
Created By: jhawik



Public Access and Drainage Easement

-  Dispute Area
-  MROSD Preserves
-  Easement Over MROSD
-  General Public Access and Drainage Easement

Midpeninsula Regional
Open Space District
(MROSD)



Attachment 1



November, 2015

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.

RESOLUTION 15-__

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT DECLARING THE ACQUISITION OF CERTAIN REAL PROPERTY RIGHTS NECESSARY FOR SIERRA AZUL OPEN SPACE PRESERVE AND AUTHORIZING THE ACQUISITION THEREOF AND THE TRANSFER OF FUNDS THEREFOR AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (ROSSETTA: PORTION OF APN 562-22-017) AT SIERRA AZUL OPEN SPACE PRESERVE

The Board of Directors of the Midpeninsula Regional Open Space District (“District”) does hereby desire to acquire certain real property rights described herein below for District use by the exercise of the power of eminent domain.

1. A 60-foot wide general public access and drainage easement containing a total of 42,871.80 square feet on that certain property identified as Santa Clara County Assessor Parcel Number 562-22-017, as a critical public access route to the summit of Mount Umunhum in the Sierra Azul Open Space Preserve, as more particularly described in Exhibit 1 attached hereto and made a part hereof.
2. A fee interest to a 19-acre (approximate) property boundary overlap over a portion of property identified as Santa Clara County Assessor Parcel Number 562-22-017, to resolve an overlapping boundary controversy and for critical public access within the Sierra Azul Open Space Preserve, as more particularly described in Exhibit 2 attached hereto and made a part hereof.
3. The acquisition of such rights is required to allow for public access to the summit of Mount Umunhum, in connection with the Mount Umunhum Summit Project. In addition, the acquisition will resolve a longstanding controversy over a property boundary overlap, which will resolve access issues over the portion of Woods Trail within the disputed overlap area. All activities referred to in this paragraph will collectively be referred to as the “Project.”
4. Pursuant to Chapter 4, Title 7, Part 3 of the Code of Civil Procedure, written notice of the intent to consider the adoption of this resolution of necessity was sent on November 20, 2015 to the record owners of the above-referenced property.
5. Due consideration of all oral and documentary evidence introduced has been given.

Now, therefore, by vote of 2/3 or more of its members, the Board of Directors of the District does find and resolve as follows

1. The findings and declarations contained in this resolution are based upon the record before the Board of Directors of the District at its public meeting of December 9, 2015, and its public meetings of June 12, 2012, July 18, 2012, September 19, 2012, October 17, 2012 and August 26, 2015 concerning the Mount Umunhum Summit Project, and the

testimony, records and documents produced at all said meetings, all of which are incorporated by this reference;

2. The Board of Directors of the District certified a Final Environmental Report for the Mt. Umunhum Summit Project at its meeting of June 12, 2012. In addition, the Board of Directors of the District adopted an Addendum to the Final Environmental Impact Report for the Mount Umunhum Summit Project at its meeting of December 9, 2015. As to the acquisition of the above-referenced 19-acre overlap, such acquisition is exempt from CEQA under Article 19, Sections 15301, 15316, 15317, and 15325 of the CEQA Guidelines as follows:

Section 15301 exempts the repair, maintenance, or minor alteration of existing public or private structures, facilities, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

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.

Section 15317 exempts the acceptance of fee interests in order to maintain the open space character of an area.

Section 15325 exempts transfers of ownership of interests in land in order to preserve open space.

3. The real property rights to be acquired are more specifically described as portions of APN: 562-22-017;
4. The said real property rights are to be acquired for public access, District access, and for preservation of open space, habitat and natural conditions, pursuant to the authority granted in California Constitution, Article 1, Section 19; California Public Resources Code Sections 5540, 5541 and 5542; Title 7, Part 3 of the Code of Civil Procedure; and other provisions of law;
5. The public interest and necessity require the Project;
6. The Project is planned and located in the manner which will be the most compatible with the greatest public good and the least private injury;
7. The real property rights described herein are necessary for the Project; and
8. The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record;
9. Special counsel, Price Postel & Parma LLP are hereby **AUTHORIZED AND EMPOWERED:**

To acquire in the District's name, by condemnation, the said real property rights in accordance with the provisions of the eminent domain law, the Code of Civil Procedure and the Constitution of California; and

To prepare and prosecute in the District’s name such proceedings in the proper court as are necessary for such acquisition; and

To deposit the probable amount of compensation, based on an appraisal, and to apply to said court for an order permitting the District to take immediate possession of said property and to use said property for said District uses and purposes.

This Resolution supersedes any prior Board resolutions, if any, concerning the subject property.

BE IT FURTHER RESOLVED that the General Manager is hereby authorized and directed, on behalf of the District and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

* * * * *

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

EXHIBIT 1

PUBLIC ACCESS, CONSTRUCTION, DRAINAGE, PATROL AND MAINTENANCE EASEMENT

ROSSETTA

(Mt Umunhum Road)

A Public Access, Construction, Drainage, Patrol and Maintenance Easement on the terms described below:

RECITALS

A. Michael Rossetta and Leonard Rossetta (“Owners”) are the Owners of certain real property situated in the County of Santa Clara, State of California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference, Assessor’s Parcel Number 562-22-017 (the “Owners’ Parcel”).

B. Midpeninsula Regional Open Space District (“District”) is the owner of certain real property situated in Santa Clara County, which is immediately adjacent to the Owners’ Parcel and is commonly known as the Sierra Azul Open Space Preserve, as it currently exists or may be expanded in the future, as generally depicted in Exhibit B attached hereto and incorporated herein by this reference (the “District Preserve”).

C. District seeks to acquire from Owners a perpetual, non-exclusive easement in, over, along, and through a portion of Owners’ Parcel for District purposes including general public access, drainage, operation, patrol, maintenance, repair, replacement and emergency access, as more particularly described in this document (“Roadway Easement”).

D. District also seeks to acquire from Owners a perpetual, non-exclusive easement in, over, along, and through a portion of Owners’ Parcel for District purposes including storm water drainage, maintenance, repair and replacement of drainage structures (“Drainage Easement”).

1. Terms of Public Access, Drainage, Construction, Patrol and Maintenance Easement.

(a) Roadway Easement Scope and Description. A perpetual, non-exclusive easement over a roadway commonly known as Mt. Umunhum Road (“Roadway Easement”) as set forth in this Section 1 as appurtenant to the District Preserve as it currently exists or may be expanded in the future for general public access (vehicular driving, hiking, bicycling and equestrian use), drainage, operation, patrol, maintenance, repair, replacement, emergency access, and other related uses in, on, over, along, and through a portion of Owners’ Parcel. A legal description and plat map of the Roadway Easement is included in Exhibit C attached hereto and incorporated by this reference.

(b) Drainage Easement Scope and Description. A perpetual, non-exclusive easement in, over, across and through that certain real property described in Exhibit D attached hereto and made a part hereof, for drainage of storm water and construction, operation and maintenance of drainage facilities, including but not limited to culverts, water energy disbursement features and drainage pipelines (“Drainage Easement”). The Roadway Easement and the Drainage Easement will collectively hereinafter be referred to as “the Easements”.

(c) Term. The term of the Easements shall be perpetual as long as the District Preserve is used for public open space and park purposes in accordance with Public Resources Code section 5500 et seq.

(d) Construction. District shall perform and be financially responsible for all construction and upgrade work to Mt. Umunhum Road within the Easements. Such construction and upgrade work shall include, but not be limited to road resurfacing, slope stability, drainage improvements, and safety improvements (“Roadway and Drainage Improvements”).

During construction of the Roadway and Drainage Improvements, Owners shall provide District and/or its contractor with reasonable access to the portions of Owners’ Parcel immediately adjacent to the Easements, as are reasonably necessary to allow construction of the Roadway and Drainage Improvements, without further consideration paid. Any damage occurring to Owners’ Parcel as a result of such entry shall be repaired by District and/or its contractor.

For future construction, repair or maintenance of Mt. Umunhum Road within the Easements, Owners shall provide District and/or its contractor with reasonable access to the portions of Owners’ Parcel immediately adjacent to the Easements, as are reasonably necessary to allow the District to repair and maintain the Roadway and Drainage Improvements within the Easements, without further consideration paid.

(e) Installation/Relocation of Gates. District shall have the right to install new gates within the Roadway Easement, and to remove or relocate any gates existing in the Roadway Easement as of December 9, 2015, with the caveat that District shall take into consideration, and make reasonable efforts to accommodate, any access or security concerns raised by Owners.

(f) Road Repair and Maintenance. District shall be responsible for repairing and maintaining Mt. Umunhum Road including the Roadway and Drainage Improvements, within the Easements along with all other District installed improvements within the Easements, such as gates, fencing, slope, drainage and safety improvements. Any damage occurring to Mt. Umunhum Road caused by Owners or Owners’ contractors, agents or invitees’ use of said road, however, shall be repaired by Owners.

(g) Posting Signs. District shall post a sign at driveway intersections within the Roadway Easement, notifying the public that entry onto Owners’ private lands off the Easements is strictly forbidden. District will consult with Owners regarding the design and contents of such sign(s), but final approval of the design, content and placement of the sign(s) is subject to the District’s approval.

(h) Non-Exclusive Use. The Easements shall be non-exclusive, and Owners may make use of the area within the Roadway Easement for vehicular ingress and egress as long as such use does not unreasonably interfere with the Easements or their intended purposes.

(i) Non-Permitted Uses.

(1) Owners shall have no right to install or maintain any video, lighting or audio surveillance equipment within the Easements.

(2) Owners shall not have the right to install any gates, signage or fencing within the Easements without the District's written consent.

(3) The general public shall not be permitted to park any motor vehicles within the Easements (unless under an emergency situation).

2. Requirements of Law. District shall comply with all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, and executive orders (collectively, "Laws") of all governmental authorities now existing or hereafter created affecting the Easements granted herein, or uses thereof.

3. As-Is Conveyance. District agrees and acknowledges that Owners have made no representations or warranties as to the condition of the area contained in the Easements or their suitability for District's purposes. Neither Owners nor anyone acting for or on behalf of Owners have made any representation, statement, warranty or promise to District concerning the physical aspects or condition of the Easements including, without limitation, conditions of the soil, land use restrictions, existence or non-existence of "Hazardous Materials" or suitability for the purpose for which District plans on using the Easements. District specifically acknowledges that it is acquiring the Easements in their "As-Is" physical condition and "As-Is" state of repair of the Easements. For purposes of this document, "Hazardous Materials" includes, without limitation, any flammable materials, explosive, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Section 9601, *et seq.*), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. Sections 9601, *et seq.*), and in the regulations promulgated pursuant thereto, or any other similar federal, state or local government law, ordinance, rule or regulation. However, Owners shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or third party claim or demand, relating to potential or actual Hazardous Materials contamination on, in, or under the Easements, including all costs of remediation and clean up, except when such contamination was caused solely by District.

4. Liability and Indemnification.

(a) District will indemnify, defend and hold harmless Owners, and their heirs, successors and assigns, from and against any and all third party claims, demands, damages, actions and causes of action (hereinafter, "Claims"), asserted by any and all third parties, persons

or entities including, without limitation those asserted by employees, agents, invitees of District (including members of the general public using Mt. Umunhum Road within the Roadway Easement) or guests of District and its contractors, subcontractors and/or consultants, including without limitation claims for personal injuries, wrongful death, mental or emotional distress, loss of consortium, damage to real, personal and/or intangible property, and financial, monetary or pecuniary loss or expenses of any kind or character whatsoever, that are or may be caused or contributed to by the construction, reconstruction, maintenance, or use of the Easements by District's contractors, guests or invitees. Excluded from this indemnification are any harms arising from any conduct, physical hazards or dangerous conditions created or actively contributed to by Owners or their, agents, guests or other of their invitees.

(b) Owners will protect, indemnify, defend, and hold District, its officers, directors, employees, volunteers, or agents, harmless from and against any and all loss, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and all costs, disbursements and expense of legal counsel) imposed upon or incurred by or asserted against District caused by or arising from Owners' use of the Roadway Easement.

5. Notice. All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as "notice") that any Party hereto gives to any other Party shall be in writing and shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by overnight courier, postage prepaid, in each case addressed to the applicable recipient as follows:

If to Owners: Michael Rossetta and Leonard Rossetta
 217 Gregg Drive
 Los Gatos, CA 95032-4043
 Telephone: (408) 335-8296

With a copy to: Matteoni, O'Laughlin & Hechtman
 Attn: Norman E. Matteoni
 848 The Alameda
 San Jose, CA 95126

If to District: Midpeninsula Regional Open Space District
 330 Distel Circle
 Los Altos, CA 94022-1404
 Attn: Real Property Manager
 Telephone: (650) 691-1200
 Facsimile: (650) 691-0485

6. Miscellaneous

(a) Dispute Resolution. The Parties, on behalf of themselves and their respective officers, directors, employees, agents, successors and assigns, agree that if they cannot resolve any dispute or claim between themselves, before resorting to judicial remedy, they will in good faith attempt to resolve any such dispute or claim through non-binding mediation. Mediation shall be initiated by presentation of a statement of dispute, with reasons therefore, to the other party in writing, with a request for mediation. Within 14 days of receipt of the request, the party receiving the request shall respond to the request and propose a list of experienced and appropriately qualified mediators from which to choose, and a proposed schedule for conducting the mediation promptly to attempt to address the concerns raised.

(b) Captions. The captions of this document are inserted only as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of this document and they shall not affect the interpretation hereof.

(c) Exhibits. Each of the Exhibits referenced in this document is attached hereto and incorporated herein.

(d) Amendment. This document may be amended only by an instrument in writing executed by the Parties hereto or their successors and assigns.

(e) Written Consent Required. Whenever a Party is requested to consent or to approve of any matter with respect to which its consent or approval is required by this document, such consent or approval shall be given in writing.

(f) Further Assurances. The Parties shall execute such further documents and instruments as may reasonably be required from time to time by the other Party to effectuate and carry out the provisions hereof and to take such further actions as may reasonably be required to give the terms hereof full force and effect for the benefit of the Parties.

(g) Attorney's Fees. In the event that either Party shall institute any action or proceeding against any other Party hereto to enforce, interpret or seek damages for breach of any of the terms, provisions or conditions of this document, then the prevailing Party in any such action or proceeding shall be entitled to recover from the other Party the reasonable attorney's fees and costs incurred by the prevailing Party in the prosecution or defense of any such action or proceeding.

(h) Terms Run with the Land. The Easements, terms, covenants and conditions herein contained shall run with the land and be binding upon and inure to the benefit of the successors and assigns of the Parties hereto pursuant to California Civil Code Section 1468.

(i) Severability. If any provision of this document shall to any extent be invalid or unenforceable, the remainder of this document (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this document, unless specifically conditioned

upon such invalid or unenforceable provision shall be valid and unenforceable to the fullest extent permitted by law.

(j) Governing Law. The terms of this document shall be construed and governed in accordance with the laws of the State of California.

EXHIBIT A

The land referred to is situated in the unincorporated area of the County of Santa Clara, State of California, and is described as follows:

Parcel I

Beginning at a point in the Southwestern boundary of the Pueblo land of the City of San Jose, marked by a 1-1/2-inch pipe set 3 feet in the ground, and being in said Pueblo line North 58° 24' West, 37 feet from a one-inch pipe set in the Northerly side of what is known as the "Woodroad", where said road crosses said Pueblo line in Section 9, Township 9 South, Range 1 East, M.D.B. & M.; thence West 15 links; thence South to a point West of a 3/4-inch pipe, which 3/4 inch pipe is set in a hillside South 01° 31' 56" East, 721.17 feet from a 2" pipe set within a 3" pipe in said Pueblo line where it crosses the ridge between the Guadalupe and Almaden watersheds; thence East to West line of Lot 2 of said Section; thence North along the West line of said Lot 2 to the said Pueblo line; thence Northwesterly along said Pueblo line to the point of beginning and containing 27.98 acres, more or less, and being sometimes referred to as Lot 1 of said section.

Parcel II

A right of way for a telephone line without poles or towers along the alignment of the existing road to the property granted herein and for a telephone line without or towers and underground utility lines on and along the way of the private Peckham Road to Bald Mountain, as construction in 1956, as it now exists or may be re-aligned, together with the right of access to install, repair, maintain and replace the same without damage to any water source, water delivery system, or structure, across the lands in Santa Clara County California, described as follows:

Beginning at a point in the Southwestern boundary of the Pueblo land of the City of San Jose, marked by a 1-1/2-inch pipe set 3 feet in the ground and being in said Pueblo line North 58° 24' West, 37 feet from a one-inch pipe set in the Northerly side of which is known as the "Woodroad" where said road crosses said Pueblo line in Section 9, Township 9 South, Range 1 East, M.D.M.; thence West 15 links; thence South to a point 40 chains North of the South line of said section; thence East to the Southwest corner of Lot 3 of said section; thence North along the West line of Lots 3 and 2 of said section to the said Pueblo line; thence Northwesterly along said Pueblo line to the point of beginning, and containing 67.98 acres, more or less.

NOTE: Parcel II herein described is only being included so as to avoid the Company being the cause of excluding it from deeds or encumbrances, but NO INSURANCE is to be provided as to said parcel.

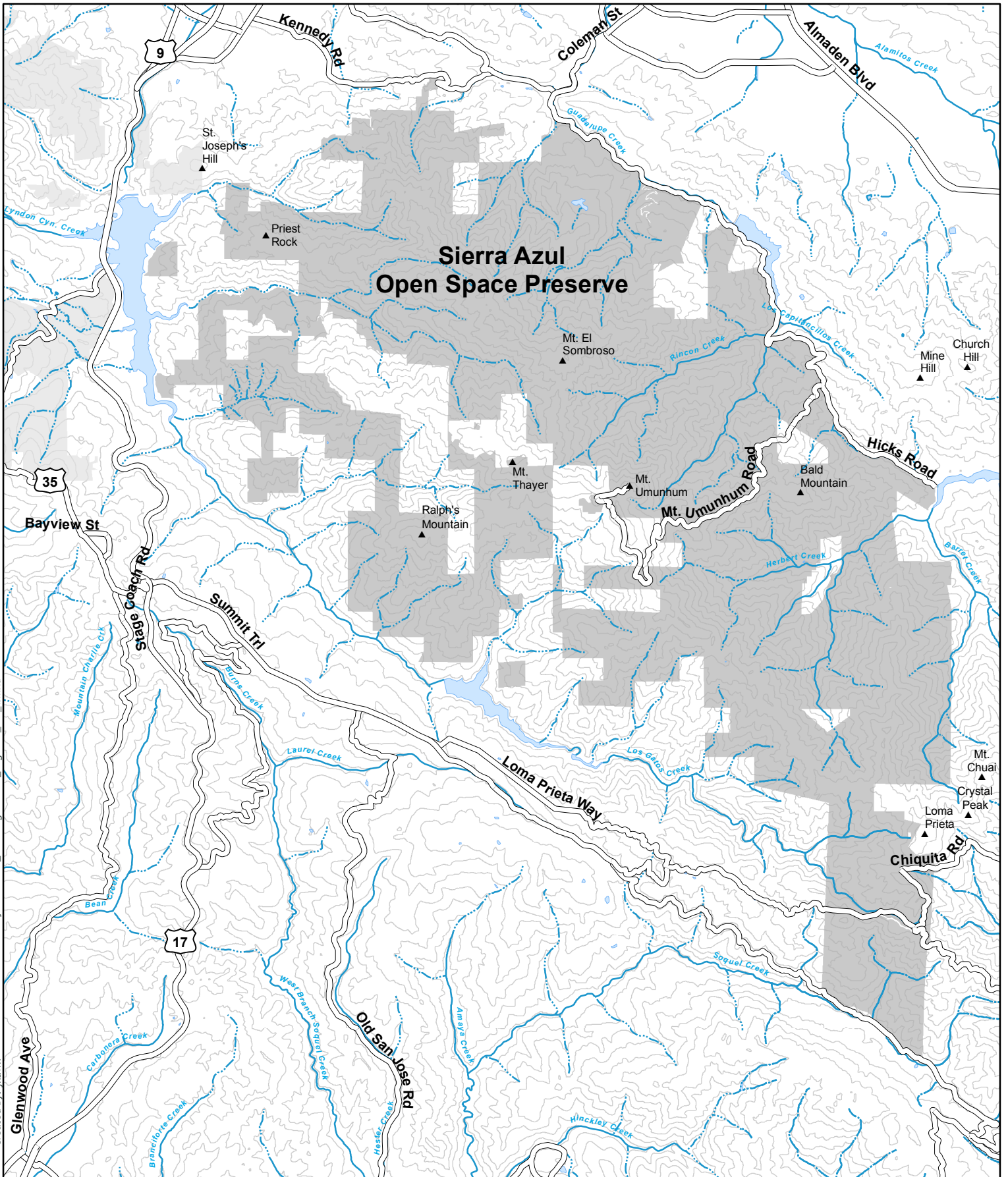
Anything to the contrary in the policy or endorsements thereto notwithstanding, said parcel is NOT INSURED even though it may be included as part of the description of the land described or referred to in the policy.

The Company requires that the insured(s) acknowledge in writing that they understand this.

Should a request, however, be made for insurance in this regard, it must be referred to the Title Department for an appropriate response.

APN: 562-22-017

ARB: 562-22-x11



Path: G:\Projects\Sierra_Azul\Regional\SA_Regional_BW_v.mxd
Created By: jhawk

Sierra Azul EXHIBIT B

- Sierra Azul Open Space Preserve
- Other MROSD Preserves
- Highways and Major Roads

EXHIBIT B

Midpeninsula Regional
Open Space District
(MROSD)

September, 2015



EXHIBIT C

Mount Umunhum Road

The following Easement for Right of Way is situated in the unincorporated area of the County of Santa Clara, State of California, over and across the following described real property:

Beginning at a point in the Southwestern boundary of the Pueblo land of the City of San Jose, marked by a 1-1/2-inch pipe set 3 feet in the ground, and being in said Pueblo line North 58° 24' West, 37 feet from a one-inch pipe set in the Northerly side of what is known as the "Woodroad", where said road crosses said Pueblo line in Section 9, Township 9 South, Range 1 East, M.D.B. & M.; thence West 15 links; thence South to a point West of a 3/4-inch pipe, which 3/4 inch pipe is set in a hillside South 01° 31' 56" East, 721.17 feet from a 2" pipe set within a 3" pipe in said Pueblo line where it crosses the ridge between the Guadalupe and Almaden watersheds; thence East to West line of Lot 2 of said Section; thence North along the West line of said Lot 2 to the said Pueblo line; thence Northwesterly along said Pueblo line to the point of beginning and containing 27.98 acres, more or less, and being sometimes referred to as Lot 1 of said section.

EASEMENT for RIGHT OF WAY PURPOSES

A strip of land **60.00 feet in width**, lying 30.00 on each side of the following described Centerline:

Commencing at a point in the Southwestern boundary of the Pueblo land of the City of San Jose, marked by a 1-1/2-inch pipe set 3 feet in the ground, and being in said Pueblo line North 58° 24' West, 37 feet from a one-inch pipe set in the Northerly side of what is known as the "Woodroad", where said road crosses said Pueblo line in Section 9, Township 9 South, Range 1 East, M.D.B. & M.; thence West 15 links; thence South 2°11'08" West a distance of 1195.03 feet to a 3/4" Iron Pipe with a brass disk stamped NW 1/16 S9 RCE11051; thence North 86°39'57" East a distance of 649.57 feet to a point in the center line of a road known as the "Loma-Almaden Road" and **the Point of Beginning**,

From the **Point of Beginning** on a curve concave *northwesterly* having a radius of 233.90 feet to which a radial line bears South 57°51'21" East;

Thence, **(1)** *northeasterly* along said curve through a central angle of 2°38'28" an arc length of 10.78 feet;

Thence, **(2)** North 29°19'58" East a distance of 114.08 feet to the beginning of a curve concave *westerly* having a radius of 133.70 feet;

Thence, **(3)** *northerly* along said curve through a central angle of 34°45'53" an arc length of 81.12 feet;

Thence, **(4)** North 5°25'55" West a distance of 97.62 feet to the beginning of a curve concave easterly having a radius of 167.56 feet;

Thence, **(5)** northerly along said curve through a central angle of 51°08'09" an arc length of 149.55 feet to the beginning of a reverse curve concave northwesterly having a radius of 452.99 feet;

Thence, **(6)** northeasterly along said curve through a central angle of 25°04'32" an arc length of 198.25 feet;

Thence, **(7)** North 20°37'42" East a distance of 19.92 feet to the beginning of a curve concave southeasterly having a radius of 161.41 feet;

Thence, **(8)** northeasterly along said curve through a central angle of 7°57'05" an arc length of 22.40 feet to the said Pueblo line.

The sidelines of said strip shall be prolonged or shortened so as to begin and terminate at the easterly and southerly lines of said property.

(Containing 41,623.80 Square Feet – 0.96 Acres)

END OF DESCRIPTION

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature Barak J. Miles

Date September 15, 2015



EXHIBIT C cont.

Mount Umunhum Road

PUEBLO LANDS OF SAN JOSE
TRACT NO. 3



S89°08'36"E
9.82'

1195.03
S02°11'08"W

LAND OF MROSD
562-22-037

LAND OF ROSSETTA
562-22-017

DRAINAGE
EASEMENT
1,248 SF

ROAD EASEMENT
(41,623.80 Square Feet - 0.96 Acres)

60' WIDE

N86°39'36"E
649.57

P.O.B.

MT. UMUNHUM ROAD

LAND OF MEYER
562-22-041



GEO-WEST
Land Surveys

PO BOX 1383, San Luis Obispo, CA 93406
www.geo-west.com 805.461.5560



EXHIBIT D

Drainage Easment

The following Easement is situated in the unincorporated area of the County of Santa Clara, State of California, over and across the following described real property:

Beginning at a point in the Southwestern boundary of the Pueblo land of the City of San Jose, marked by a 1-1/2-inch pipe set 3 feet in the ground, and being in said Pueblo line North 58° 24' West, 37 feet from a one-inch pipe set in the Northerly side of what is known as the "Woodroad", where said road crosses said Pueblo line in Section 9, Township 9 South, Range 1 East, M.D.B. & M.; thence West 15 links; thence South to a point West of a 3/4-inch pipe, which 3/4 inch pipe is set in a hillside South 01° 31' 56" East, 721.17 feet from a 2" pipe set within a 3" pipe in said Pueblo line where it crosses the ridge between the Guadalupe and Almaden watersheds; thence East to West line of Lot 2 of said Section; thence North along the West line of said Lot 2 to the said Pueblo line; thence Northwesterly along said Pueblo line to the point of beginning and containing 27.98 acres, more or less, and being sometimes referred to as Lot 1 of said section.

DRAINAGE EASEMENT

The Centerline of a **30 FEET wide easement for Drainage** purposes described as follows:

Commencing at a point in the Southwestern boundary of the Pueblo land of the City of San Jose, marked by a 1-1/2-inch pipe set 3 feet in the ground, and being in said Pueblo line North 58° 24' West, 37 feet from a one-inch pipe set in the Northerly side of what is known as the "Woodroad", where said road crosses said Pueblo line in Section 9, Township 9 South, Range 1 East, M.D.B. & M.; thence West 15 links; thence South 2°11'08" West a distance of 1195.03 feet to a 3/4" Iron Pipe with a brass disk stamped NW 1/16 S9 RCE11051; thence North 86°39'57" East a distance of 649.57 feet to a point in the center line of a road known as the "Loma-Almaden Road,"

Thence, North 27°36'44" East a distance of 635.11 feet to the **Point of Beginning**;

EXHIBIT D

Thence, **(1)** North 69°47'35" West a distance of 41.57 feet to the Sideline a 60 feet wide road easement granted to Midpeninsula Regional Open Space District and sidelines of said strip shall be prolonged or shortened so as to terminate at the sideline of said 60 feet wide road easement.

(Containing 1,248 Square Feet)

END OF DESCRIPTION

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature Barak J. Miles

Date September 15, 2015

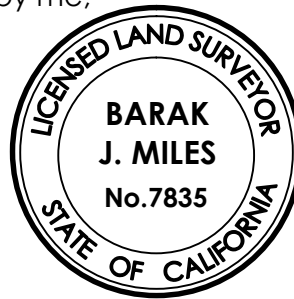


EXHIBIT D cont.

Mount Umunhum Road

PUEBLO LANDS OF SAN JOSE
TRACT NO. 3



S89°08'36"E
9.82'

1195.03
S02°11'08"W

LAND OF MROSD
562-22-037

LAND OF ROSSETTA
562-22-017

DRAINAGE
EASEMENT
1,248 SF

ROAD EASEMENT
(41,623.80 Square Feet - 0.96 Acres)

60' WIDE

N86°39'36"E
649.57

P.O.B.

MT. UMUNHUM ROAD

LAND OF MEYER
562-22-041



GEO-WEST
Land Surveys

PO BOX 1383, San Luis Obispo, CA 93406
www.geo-west.com 805.461.5560



EXHIBIT 2

LEGAL DESCRIPTION – ROSSETTA TO MROSD (apparent deed overlap)

SITUATE in Section 9, T. 9 S., R. 1 E., M.D.M., County of Santa Clara, State of California.

BEING all that portion of that certain deed filed for record in the Office of the County Recorder of Santa Clara, State of California, in Book J501 of Official Records, Page 321-322, recorded October 29, 1985, as Document No. 8573460, lying Northerly and Westerly of the following described line:

BEGINNING at a point in the Southwestern Boundary of the Pueblo Land of the City of San Jose marked by a 1 1/2 inch pipe set 3 feet in the ground and being in said Pueblo Line N.58°24' W. 37 feet from a one-inch pipe; thence West 15 links; thence South along the Westerly line of Lot 1 of said Section.

BEING the same line as shown on the Record of Survey Map of the lands of Midpeninsula Regional Open Space District, filed for record in the Office of the County Recorder of Santa Clara, State of California, in Book 653 of Maps, Page 27, recorded January 18th, 1994, as File No. 12317010, and designated thereon as West 9.82 feet; and South 01°19'44" West, respectively.

END OF DESCRIPTION



Prepared by: Ifland Survey

August 19, 2015

Revised: Revised December 1, 2015

Job No. G13029