



Midpeninsula Regional
Open Space District

R-18-14
Meeting 18-07
February 14, 2018

AGENDA ITEM 3

AGENDA ITEM

Proposed Purchase of the Gupta/Khan Property as an addition to El Sereno Open Space Preserve located off Bohlman Road in unincorporated Santa Clara County, Assessor's Parcel Numbers 517-24-030 (fee) and 517-24-024 (trail easement).

ACTING GENERAL MANAGER'S RECOMMENDATIONS

1. Determine that the recommended actions are categorically exempt under the California Environmental Quality Act (CEQA), as set out in the staff report.
2. Adopt a Resolution authorizing the purchase of the Gupta/Khan property at a cost of \$400,000 with corresponding authorization for a Fiscal Year 2017-18 budget increase of the same amount.
3. Adopt a Preliminary Use and Management Plan for the property, as set out in the staff report.
4. Withhold dedication of the Gupta/Khan property as public open space.

SUMMARY

The General Manager recommends purchasing the 9.37-acre Gupta/Khan property along with a 1.87-acre trail easement (Property) at a purchase price of \$400,000 as an addition to El Sereno Open Space Preserve (Preserve). As part of the purchase approval, a line item budget increase of \$400,000 to the Fiscal Year 2017-18 budget is required to proceed with the acquisition. This report contains a description of the Property, a Preliminary Use and Management Plan, findings of the environmental review, the purchase terms and conditions, and financial considerations.

DISCUSSION

The Property is bordered by the 1,418-acre El Sereno Open Space Preserve and Sanborn County Park. The Property drains into the Los Gatos Creek watershed and is visible from within the Preserve and from Sanborn County Park. This purchase advances Measure AA Portfolio #19 El Sereno Open Space Preserve: "Dog trails, and connection to Skyline/Sanborn County Park and Lexington Reservoir." The purchase of the Property would further the ability to provide for future trail connections between the Preserve and Sanborn County Park along a feasible route.

Property Description and Regional Context (see attached map)

The rectangle shaped 9.37-acre fee property consists of one legal parcel, situated in unincorporated Santa Clara County (Fee Title Property). The 1.87-acre trail easement is over the

lower portion of an adjacent Gupta/Khan parcel (Trail Easement). Access to both properties is from both Bohlman Road and an older road cut from a private road. The Fee Title Property rises to approximately 2,500 feet in elevation and has excellent views of the Preserve, Sanborn County Park, and Lyndon Canyon. The Property is situated in the Los Gatos Creek Watershed and include the upper end of a small tributary that eventually flows into Lexington Reservoir.

The vegetation on the Fee Title Property is mainly comprised of chamise chaparral and mixed broadleaf hardwood forest. Chamise chaparral is a fire dependent vegetation community. The Fee Title Property provides varied habitat for animal species associated with the upper 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.

Land Use and Improvements

The Property is mostly unimproved. A water well, and associated piping, propane tank, electrical utilities and some old road cuts are located on the Fee Title Property. The water well and propane tank serve an adjacent residential property and there are easement rights over the Fee Title Property associated with these improvements. Access to the water well, propane tank, and electrical service is from Bohlman Road.

Water Rights

The Property has limited water rights, as 7/8 interest to all available water existing on the Property is held by others. A prior seller reserved the water rights when the property was originally subdivided in the 1950's. In addition, an adjacent residential property has easement rights for an existing water well, which is the only existing water-related improvement on the Property. If the District purchases the Property, it has no affirmative obligation to maintain or guarantee water to the water rights holders, including the adjacent residential property.

USE AND MANAGEMENT

Planning Considerations

Both the Fee Title Property and Trail Easement are located in unincorporated Santa Clara County and outside the urban service area or sphere of influence of any incorporated municipality. Both the Fee Title Property and Trail Easement have a County General Plan designation of Hillside, classified as a Resource Conservation Area. Both have a County zoning designation of Hillside Scenic Road Combined District (HS-sr). In 1999, the Santa Clara County Planning Department found that all open space acquisitions by the District in unincorporated areas that are classified as a Resource Conservation Area in the County's General Plan comply with the General Plan. Per the County's Zoning Regulations, recreation, open space, and natural preserves are allowable uses in HS-sr zoning designation.

If purchased, the Property will 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.

Preliminary Use and Management Plan

The Preliminary Use and Management Plan (PUMP) establishes a status quo land management approach in the interim between the purchase 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 El

Sereno Open Space Preserve. The PUMP includes minor restoration and maintenance of the Property in its natural condition, as described more fully below. If changes to land use or the physical environment were 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 and property boundary as necessary to prevent unauthorized entry and use.
- Ensure that physical access to the water well and associated piping, propane tank, and electrical service on the Fee Title Property, along with easement rights for this use, are not obstructed.
- Roads and Trails: 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 Resources and Water Rights: While a 7/8 interest to all available water existing on the Property is held by others, the District has no obligation to maintain or guarantee water to interest holders. The District also has no affirmative obligation to maintain an existing water well or guarantee water supply to an adjacent residential property that is serviced by this well.
- Patrol: Routinely patrol property using adjacent roads.
- 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 El Sereno Open Space Preserve.
- Dedication: Indicate the District's intention to withhold dedication of the subject property as open space at this time.

TERMS AND CONDITIONS

The 9.37-acre Fee Title Property and 1.87-acre Trail Easement are proposed for purchase at a sale price of \$400,000. The scope of the Trail Easement is designed to grant the District maximum flexibility regarding design and final location of any future trail alignment. Under the terms, the District would have the ability to locate a trail within an area of approximately 1.87 acres and upon construction, reduce the trail easement to 100 feet wide (50 feet from centerline). The property would be purchased as-is on an all-cash basis. Escrow would close by March 10, 2018.

The purchase of the Property would be for future trail connections between the Preserve and Sanborn County Park. As such, the Santa Clara County Parks and Recreation Department has agreed to recommend a contribution of one-half (50%) of the purchase price or \$200,000 to the County Board of Supervisors for approval. The County has previously approved similar funding agreements for the District's purchase of numerous properties in Stevens Canyon. This contribution is subject to County Board of Supervisor approval. In exchange for this contribution, the District would grant the County a conservation easement over the 9.37-acre Fee Title Property. Approval of a funding agreement with the County and the conservation easement would come to the Board as a future agenda item. Since the County has not approved a funding agreement, the Board should make its purchase determination based upon payment of the full purchase price or \$400,000.

FISCAL IMPACT

Land acquisitions brought before the Board for approval include a budget adjustment/increase to the adopted budget. If approved, a budget adjustment/increase of \$400,000 to the FY2017-18 budget is required.

Gupta/Khan Property Amount (includes \$12,000 option deposit)	\$400,000
Total Land purchases approved to date for FY 2017-18	\$591,000
Total Land Purchases (if approved)	\$991,000

The following table outlines the Measure AA Portfolio #19 budget, costs to date, and the fiscal impact related to the Gupta/Khan Property Purchase:

MAA 019 Portfolio Allocation:	\$2,254,000
Life to date Spent, <i>less \$12,000 deposit</i> (as of 01/19/2018):	\$715
Gupta/Khan Property Purchase:	\$400,000
Balance Remaining (Proposed):	\$1,853,285

There are sufficient funds in the FY2017-18 budget to cover additional expenditures up to \$10,000 for title insurance, escrow fees, and other miscellaneous costs related to this transaction.

BOARD COMMITTEE REVIEW

The District's Real Property Committee held a meeting at the District Administrative Office on January 16, 2018 to discuss the proposed property purchase. Notice of the meeting was distributed to property owners of land located adjacent to and surrounding the property. Four neighbors attended the meeting and all four neighbors asked questions or provided comment. Two neighbors were interested in the location of the proposed trail, one neighbor voiced interest for including parking on the Property and one noted their consent with preserve users currently parking on their property. Two members of the Real Property Committee were in attendance. Staff provided a presentation of the property, described how it would be managed as an extension of the adjacent Preserve, and reviewed the proposed purchase terms. The Real Property Committee unanimously recommended forwarding this purchase to the full Board of Directors by a 2-0 vote.

PUBLIC NOTICE

Property owners of land located adjacent to or surrounding the subject property have been mailed a copy of the agenda for this meeting. Accordingly, all notice required by the Brown Act and District policy has been provided.

CEQA COMPLIANCE

Project Description

The project consists of the purchase of the 9.37-acre Fee Title Property and 1.87-acre Trail Easement as an addition to the District's El Sereno Open Space Preserve and concurrent adoption of a Preliminary Use and Management Plan (PUMP), including minor erosion control and sediment control measures that may be conducted to prevent erosion and water quality degradation. Minor resource management activities may be conducted to control invasive plants. The land would be permanently preserved as open space and maintained in a natural condition.

CEQA Determination

The District concludes that this project will not have a significant effect on the environment. It is categorically exempt under the California Environmental Quality Act (CEQA) under Article 19, Sections 15301, 15316, 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. The PUMP specifies no alteration or expansion of use at this time beyond activities associated with the maintenance of the existing access road, installation of boundary gates and fencing, and minor activities to implement maintenance and minor erosion and sediment control measures in accordance with District standards.

Section 15316 exempts the acquisition of land in order to create parks if the land is in a natural condition and the management plan proposes to keep the area in a natural condition. The PUMP specifies that the land will not be developed, will remain in a natural condition, and will be designated as an addition to the District's El Sereno Open Space Preserve.

Section 15325 exempts transfers of ownership of interests in land in order to preserve open space. This acquisition will transfer fee ownership of the property to the District and ensure that the open space will be preserved. The PUMP ensures that the property is preserved as open space by incorporating it into the El Sereno Open Space Preserve.

NEXT STEPS

Upon approval by the Board of Directors, staff would proceed with the close of escrow for the purchase of the property by March 10, 2018, and take the next steps identified in the PUMP as contained in this report. The District's South Area Outpost Field Office would manage the property as an addition to the El Sereno Open Space Preserve. In addition, staff would work with County staff to support their process in forwarding a funding contribution recommendation to the County Board of Supervisors. If approved, staff would bring the funding agreement and associated conservation easement to the Board for their approval.

Attachments:

1. Resolution Authorizing Acceptance of Purchase and Sale Agreement, Authorizing General Manager or Other Officer to Execute Certificate of Acceptance of Grant to District, and Authorizing General Manager to Execute any and all Other Documents Necessary or Appropriate to Closing of the Transaction (El Sereno Open Space Preserve - Lands of Gupta/Khan)
2. Location Map

Responsible Department Manager:

Michael Williams, Real Property Manager

Prepared by:

Allen Ishibashi, Senior Real Property Agent, Real Property Department

Graphics prepared by:

Nathan Greig, GIS Technician

RESOLUTION 18-__

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF PURCHASE AND SALE AGREEMENT, AUTHORIZING GENERAL MANAGER OR OTHER OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT TO DISTRICT, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (EL SERENO OPEN SPACE PRESERVE - LANDS OF GUPTA/KHAN)

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 Purchase and Sale Agreement between Nitin K. Gupta and Gazala Gupta, trustees of the Gupta Family Trust, dated June 7, 2012, as to an undivided 50% interest, and Arshad Khan, an unmarried man as to an undivided 50% interest, as tenants in common (Gupta/Khan), and the Midpeninsula Regional Open Space District, a copy of which purchase 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 Gupta-Khan Property”).

SECTION TWO. The Board of Directors of Midpeninsula Regional Open Space District authorizes the expenditure of \$400,000.00 covering the purchase price funds for the Gupta/Khan Property, which includes an option deposit of \$12,000.

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 2017-18 by increasing the Measure AA Capital budget in the amount of \$400,000.00. Except as herein modified, the FY 2017-18 Budget and Action Plan, Resolution No. 17-14 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, sign all 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 \$10,000.00 to cover the cost of title insurance, escrow fees, and other miscellaneous costs related to this transaction.

SECTION SEVEN. 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 _____, 2018, at a regular meeting thereof, by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

ATTEST:

APPROVED:

Secretary
Board of Directors

President
Board of Directors

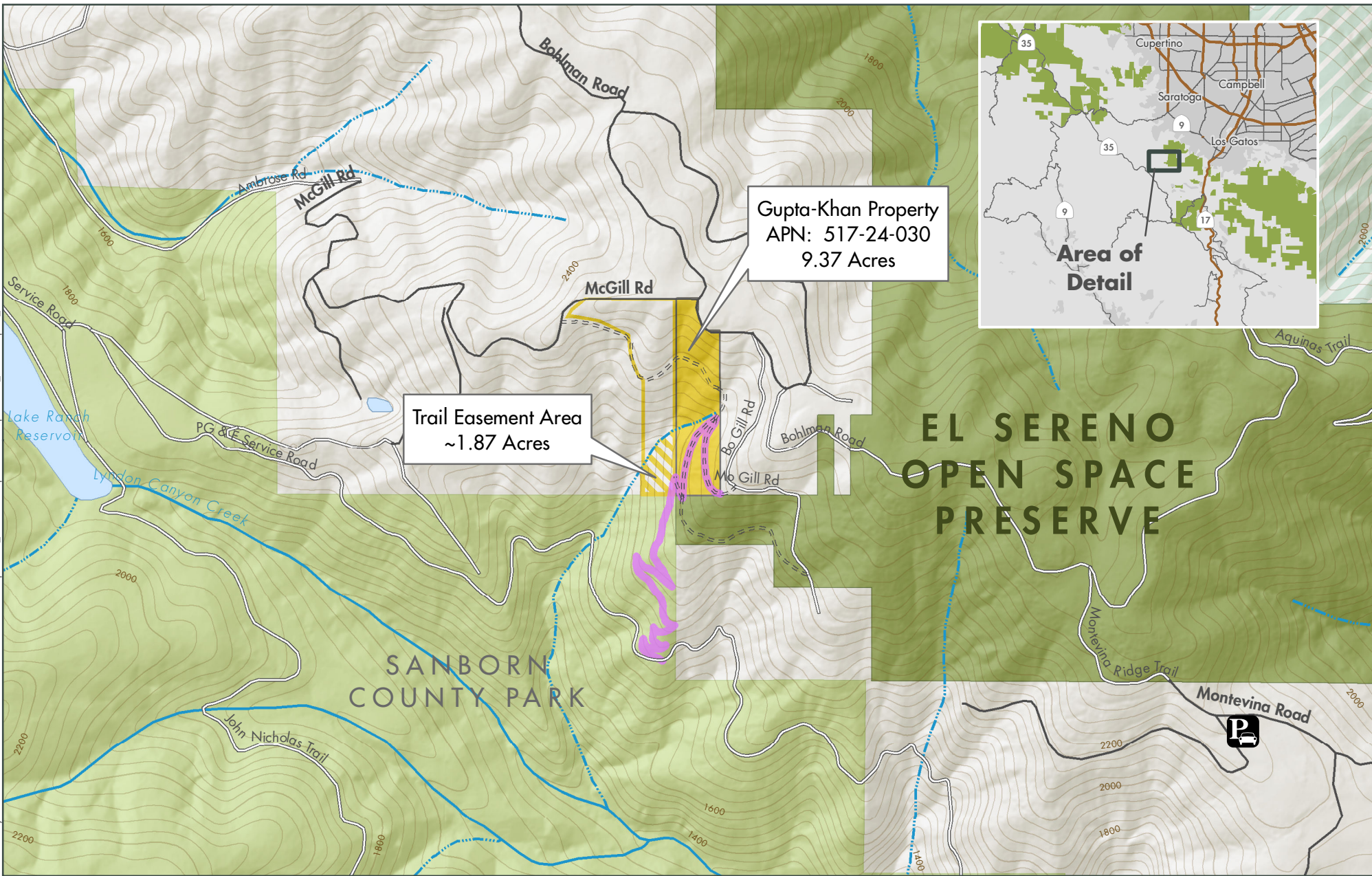
APPROVED AS TO FORM:

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




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Gupta-Khan Property

-  MROSD Preserves
-  Other Protected Lands
-  Private Property
-  Private Watershed Land

-  Existing Paved Road
-  Existing Unpaved Road
-  Existing Unmaintained Road Cut

-  Gupta-Khan Properties
-  Trail Easement Area
-  Proposed Trail Connection

Midpeninsula Regional
Open Space District
(MROSD)
December 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.