



Midpeninsula Regional
Open Space District

R-18-35
Meeting 18-14
April 11, 2018

AGENDA ITEM 6

AGENDA ITEM

Proposed purchase of the 23760 Alamitos Road, LLC Property as an addition to Sierra Azul Open Space Preserve located at 23760 Alamitos Road, San Jose in unincorporated Santa Clara County, Assessor's Parcel Numbers 562-23-007.

ACTING GENERAL MANAGER'S RECOMMENDATIONS *let*

1. Determine that the recommended actions are categorically exempt under the California Environmental Quality Act, as set out in the staff report.
2. Adopt a Resolution authorizing the purchase of the 23760 Alamitos Road, LLC property at a cost of \$2,800,000 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 23760 Alamitos Road, LLC property as public open space.
5. Authorize the Acting General Manager to enter into a grant agreement with the Gordon and Betty Moore Foundation to receive \$750,000 for property acquisition costs.

SUMMARY

The Midpeninsula Regional Open Space District (District) has an opportunity to purchase the 153.59-acre 23760 Alamitos Road, LLC property (Property) at a price of \$2,800,000 as an addition to Sierra Azul Open Space Preserve (Preserve). The property offers high natural resource, wildlife connectivity, and trail connectivity value and the potential to recover sensitive riparian habitat through creek restoration work. Time is of the essence and avoidance of a foreclosure sale is why this item is coming to the Board of Directors at this time to allow the District to enter into a purchase agreement. To proceed with the recommended purchase, a line item budget increase of \$2,800,000 to the Fiscal Year 2017-18 budget is required, which is expected to be partially offset with \$750,000 in funding from the Gordon and Betty Moore Foundation (GMBF). 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 19,030-acre Sierra Azul Open Space Preserve (Preserve) bounds the Property on two sides. The Property is situated at the confluence of Alamitos and Barret Creeks, and drains into

Almaden Reservoir. The Property is visible from the Preserve and Almaden Quicksilver County Park. This purchase advances Measure AA Portfolio #23 Sierra Azul Open Space Preserve: “Mt. Umunhum Public Access and Interpretation Projects,” which includes the preservation of additional open space and completion of wildlife corridors. The purchase of the Property would preserve and improve water quality and riparian habitat along two perennial creeks, protect forested uplands within the Alamitos Creek watershed, and further the connection of protected open space and wildlife corridors between District and Santa Clara Valley Open Space Authority (Authority) lands. The purchase also facilitates future trail connections between the District Preserve and the Authority’s Rancho Canada del Oro Open Space Preserve.

Property Description and Regional Context (see attached map)

The rectangle shaped 153.59-acre property consists of one legal parcel, situated in unincorporated Santa Clara County. Access to the Property is via Alamitos Road, which is a public County owned and maintained road. The Property rises to approximately 1,500 feet in elevation and has views of the Preserve and Almaden Quicksilver County Park. The Property contains approximately 2,458 linear feet of Alamitos Creek and 2,089 linear feet of Barret Creek, which is why the Property is commonly referred to as “Twin Creeks.” Alamitos and Barret Creeks converge on the Property before flowing into Almaden Reservoir.

Vegetation comprises a mix of hardwood forest (California bay-coast live oak), grassland, riparian vegetation, and chaparral, which is a fire-dependent vegetation. The parcel hosts several uncommon native communities, including manzanita, serpentine and riparian woodlands with areas of sensitive white alder. The riparian vegetation buffering Alamitos and Barret Creeks is considered sensitive and biologically significant, offering an aquatic linkage to other larger streams. The nearby Almaden Reservoir is home to western pond turtle, a California species of special concern. This property is also located within a terrestrial linkage for a large number of animal species between the Santa Cruz Mountains and the Diablo and Gabilan ranges.

Land Use and Improvements

The Property contains a number of dwellings in poor condition. There are approximately 42 structures, consisting of 37 dwellings and accessory buildings. Most are located in very close proximity to Alamitos and Barret Creeks, with some cantilevering over the perennial creeks. Only three dwellings are located outside a 100-foot creek setback. A single water well, associated piping, individual propane tanks, and overhead electrical utilities serve the improvements. Wastewater from the dwellings is dispersed to individual septic systems or holding tanks, many located within 100 feet of a creek. There is also a large community swimming pool and separate kids pool on the site. Originally developed in the 1930’s as a summer resort with rental cabins, the structures were extensively modified to serve as year-round residences in the 1960’s and 1970’s, and the property was held for rental income. In recent years, the County has ordered the demolition of at least two structures.

Several bridges cross Alamitos and Barret Creeks to provide access to the dwellings and adjacent properties in Barret Canyon to the east. A firebreak on the ridgeline of the property was reopened by Cal Fire during the 2016 Loma Fire. Alamitos Road serves and crosses the Property. In addition, a private dirt road known as “Canyon Road” follows Barret Creek and crosses the Property.

Code Violations, Nuisance Issues, and Lack of Habitability

On or about June 2015, Santa Clara County (County) became aware of numerous code violations on the Property, including but not limited to the following: (a) substandard housing conditions due to the lack of adequate sanitation and potable water; (b) unpermitted demolition work; (c) unpermitted electrical and plumbing work; (d) fire code violations, and (e) unpermitted septic systems. Due to these violations and habitability problems, the County recorded numerous building code violations against the property in June of 2016. As these issues were not remedied, the County filed a “Notice and Order to Vacate Substandard Buildings” on January 19, 2017, and posted “Do Not Occupy Notices” at each occupied dwelling on February 21, 2017, and all units were vacated by March 20, 2017. All units have remained vacant since.

In order to gain compliance and to protect public health, the County filed a code enforcement complaint for nuisance and abatement against the property owner on March 8, 2017, and in May 2017 the court ordered the property owner to take certain actions to bring the dwellings into compliance with County health and safety standards. As of the date of this Board Report, the seller has not completed all the required actions and the County is still pursuing its civil action. District staff is working with County staff to understand the nature of these violations and identify the measures necessary to address and remove these conditions.

The County deems the dwellings as uninhabitable structures. Given the lack of habitation for over a year, the County has the authority under the zoning code to eliminate the possibility of reusing the units as residential structures in the future.

With the number of structures in poor condition, proximity of the structures and septic systems to the creek, and inadequate wastewater facilities on the Property, the use of the property for human habitation has threatened water quality in the Alamos Creek Watershed. Santa Clara Valley Water District’s monitoring of the bacterial levels in Barret Creek and Alamos Creek reveals that bacteria in the watershed is likely originating from this Property. Based on the condition of the structures, poor maintenance practices, and health concerns associated with the proximity of multiple septic systems to the creeks, the Acting General Manager and District staff recommend that all remaining structures be removed from the property. County staff supports the removal of the structures due to the habitability, and public health and safety issues. The cost estimate for demolition and site cleanup is \$1,000,000.

Water Resources and Rights

The Property has a single well, drilled to 395’ below ground surface, with a rated capacity of 1,800 gallons per day. In July 2017, water quality tests on the well showed that the levels for all constituents except iron are below the State Drinking Water limits.

USE AND MANAGEMENT

Planning Considerations

The Property is located in unincorporated Santa Clara County and outside the urban service area or sphere of influence of any incorporated municipality. The Property has a County General Plan designation of Hillside and a County zoning designation of Hillside (HS). In 1999, the Santa Clara County Planning Department found that all open space acquisitions by the District in unincorporated areas comply with the General Plan. Per the County’s Zoning Regulations, recreation, open space, and natural preserves are allowable uses in HS 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 Sierra Azul Open Space Preserve. The PUMP includes securing the site, posting signs, and conducting resource management activities as described more fully below. The Acting General Manager anticipates returning to the Board later this year with a recommended demolition and site cleanup contract to remove all the structures. Other changes to the physical environment, such as future creek and riparian habitat restoration of the property, would also be subject to further environmental review.

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|-----------------------------------|--|
| Public Access: | Designate the Property as closed to public use at this time. |
| Signs and Site Security: | Install preserve boundary and closed area signs. Work with the two neighboring property owners along Canyon Road to the east to maintain site security. If necessary, hire outside site security services for added surveillance and monitoring until the structures are demolished. |
| Structures and Improvements: | Board up and/or secure all structures until demolition is undertaken.

Contract for hazardous materials abatement as needed, demolition of structures, clean up, and site restoration for future consideration by the Board. |
| Fences and Gates: | Install gates at the two bridge crossings of Alamitos Creek and fencing as necessary to prevent unauthorized entry and use. |
| Roads and Trails: | Maintain existing private roads, driveways, and bridges in a serviceable condition in order to access the site and facilitate subsequent demolition and removal of all structures and improvements. Implement maintenance and minor erosion and sediment control measures in accordance with District standards. |
| Water Resources and Water Rights: | Maintain existing well and associated improvements. |
| Patrol: | Routinely patrol property using existing private and public roads. |

Resource Management:	Conduct invasive plant and animal management activities consistent with the District's Resource Management Policies.
	Develop plans to remove artificial improvements from the creek channels and to restore the riparian areas for future consideration by the Board.
Wildfire Fuel Management:	Implement standard District-wide fuel management and defensible space practices consistent with the District's Resource Management Policies.
Name:	Name the property as an addition to Sierra Azul Open Space Preserve.
Dedication:	Indicate the District's intention to withhold dedication of the subject property as open space at this time.

CEQA COMPLIANCE

Project Description

The project consists of the purchase of the 153.59-acre Twin Creeks Property as an addition to the District's Sierra Azul Open Space Preserve and concurrent adoption of a PUMP, including fencing, minor erosion and sediment control measures, and minor resource management activities. On behalf of the Board and with Board approval, the Acting General Manager may enter into a grant agreement with the GBMF to receive funding to assist with property acquisition costs. When acquired, the land would be permanently preserved as open space and maintained in a natural condition. Demolition of structures and channel restoration will be undertaken as separate projects and subject to separate environmental determination under CEQA.

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, 15317, 15325, 15330, and Article 20, Section 15378 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. No alteration or expansion of use at this time beyond activities associated with maintenance of the existing private roads, 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 15317 exempts the acceptance of fee interests in order to maintain the open space character of an area. The District will acquire fee interest in order to maintain the open space character of the property.

Section 15325 (a) and (f) exempts transfers of ownership of interests in land in order to preserve habitat and open space. This acquisition will transfer fee ownership of the property to the District. The property will be preserved as habitat and open space and will be incorporated into the Sierra Azul Open Space Preserve.

Section 15330 exempts minor clean up actions taken to prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of a hazardous waste or substance associated with the former residential use of the site.

Sections 15378 (b) (4) exempts the recommended action to enter into a grant agreement because the creation of government funding mechanisms or other governmental fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment is not considered a project

TERMS AND CONDITIONS

The Twin Creeks property is proposed for purchase at a sale price of \$2,800,000 (\$18,230 per acre). The property would be purchased as-is on an all-cash basis.

The seller purchased the property for \$5,000,000 in 2013 (\$2,500,000 was financed). Due to non-payment on the loan (from lack of tenants, lack of rental income, and the existing lawsuit) the property is now in foreclosure. The Notice of Default was recorded on January 2, 2018, which means that the lender could take action to sell the property as of April 2, 2018 in order to recover its funds. The lender initiated the foreclosure process on April 2, 2018, which allows a minimum of 30 days (May 2, 2018) before foreclosure sale would occur. The lender has indicated a willingness to delay the foreclosure upon the seller and District entering into a purchase and sale agreement. The District's purchase would be canceled in the event that the lender proceeds with a foreclosure sale.

When considering this purchase, the demolition and restoration of the Property needs to be accounted. The initial estimates for demolition and complete creek restoration is approximately \$3,000,000 (\$1,000,000 for demolition and \$2,000,000 for creek restoration). It is anticipated that the demolition work will occur in the summer or fall of 2018 and the creek restoration will occur in 2021 and/or 2022. Grant funding would be sought for the creek restoration. Given the public safety and nuisance concerns regarding the structures, the Action Plan and Budget for Fiscal Year 2018-19, which is currently under refinement, would be updated to replace other planned demolition projects with the demolition of structures on this property.

The all-in cost for this purchase, including the restoration is estimated to be approximately \$5,800,000. The Gordon and Betty Moore Foundation has recently invited a \$750,000 proposal, which, if successful, would contribute to 27% of the acquisition costs. The proposal is currently being reviewed by GBMF staff and the District will know whether the proposal is approved by the close of escrow. Approval and receipt of the GBMF grant funds will be reported to the Board at a future Board meeting. Since a funding agreement has not been approved by GBMF, the Board is asked to make its purchase determination upon payment of the full purchase price.

The property would be purchased on an "As-Is" basis. Staff has been conducting significant due diligence investigations on the property to reduce any unanticipated issues. The due diligence has included the following: meetings with Santa Clara County representatives, including Planning, Building, Environmental Health, Code Enforcement staff and County Counsel's office; reviewing the status of the code enforcement actions and Santa Clara Valley Water District records related to the Property; analyzing title exceptions; and conducting numerous onsite Property inspections/tours. A Phase 1 environmental investigation is currently underway. If remaining due diligence investigations and conditions are not met satisfactory to the District, the

District may withdraw from the purchase agreement, and the purchase deposit will be returned to the District. If this occurs, the Acting General Manager would promptly notify the Board of this action.

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 \$2,800,000 to the FY2017-18 budget is required.

Total Twin Creeks Property purchase (<i>including \$50,000 option deposit</i>)	\$2,800,000
Total Land purchases approved to date for FY 2017-18	\$991,000
Total Land Purchases (<i>if approved</i>)	\$3,791,000

The following table outlines the Measure AA Portfolio #23 budget, costs to date, and the fiscal impact related to the Twin Creeks Property Purchase:

MAA 023 - Sierra Azul: Mount Umunhum Public Access and Interpretive Project Portfolio Allocation:	\$27,972,000
<i>Life-to-date Spent (as of 03/19/2018):</i>	\$18,879,517
<i>Encumbrances:</i>	\$398,944
<i>Twin Creeks Property Purchase (including \$50,000 deposit):</i>	\$2,800,000
<i>Future demolition, site cleanup (FY2018-19):</i>	\$1,000,000
Balance Remaining (Proposed):	\$4,893,539

There are sufficient funds in the FY2017-18 budget to cover additional expenditures up to \$50,000 for site security fencing and gates, boarding up of structures, and miscellaneous costs related to this transaction.

Demolition and site cleanup costs of \$1,000,000 will use Measure AA Portfolio #23 funds and be budgeted in FY 2018-19, and creek restoration costs (\$2,000,000) will use general funds and grants and be budgeted in FY 2020-21.

BOARD COMMITTEE REVIEW

Due to the potential foreclosure sale and short timeframe related to this potential purchase opportunity, this item was not presented to the Real Property Committee.

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.

NEXT STEPS

Upon approval by the Board of Directors, staff would finish the due diligence, prepare to close escrow by April 30, 2018, and take the next steps identified in the PUMP as contained in this report.

1. If the GBMF proposal is successful, District staff will work with GBMF to finalize the grant agreement in early May (GBMF staff has approved using the funds after the proposal is approved, but before the grant agreement is finalized).
2. The District's South Area Outpost Field Office will manage the property as an addition to the Sierra Azul Open Space Preserve.
3. Land and Facilities will install gates at the two bridge crossings of Alamitos Creek, and install temporary fencing as needed along Alamitos Road to provide site security until the demolition work begins.
4. Engineering and Construction will oversee the demolition and site cleanup of the property during the summer/fall of 2018.

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 (Sierra Azul Open Space Preserve - Lands of 23760 Alamitos Road, LLC)
2. Location Map

Responsible Department Manager:

Michael Williams, Real Property Manager

Prepared by:

Allen Ishibashi, Senior Real Property Agent

Elish Ryan, Real Property Planner III

Graphics prepared by:

Nathan Greig, GIS Technician

Anna Costanza, GIS Intern

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 (SIERRA AZUL OPEN SPACE PRESERVE - LANDS OF 23760 ALAMITOS ROAD, LLC)

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 23760 Alamitos Road, LLC, 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 (“Property”).

SECTION TWO. The Board of Directors of Midpeninsula Regional Open Space District authorizes the expenditure of \$2,800,000.00 covering the purchase price funds for the Property, which includes a deposit of \$50,000.

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 \$2,800,000.00. Except as herein modified, the Fiscal Year 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 \$50,000.00 to cover the cost of site security, title insurance, escrow fees, and other miscellaneous costs related to this transaction.

SECTION SEVEN. The General Manager or the General Manager’s designee is authorized to make management decisions for the Property after the close of escrow such as retaining site security services and other management actions necessary to prepare the Property for demolition and restoration.

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

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2018, at a regular meeting thereof, by the following vote:

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

ATTEST:

APPROVED:

Secretary
Board of Directors

President
Board of Directors

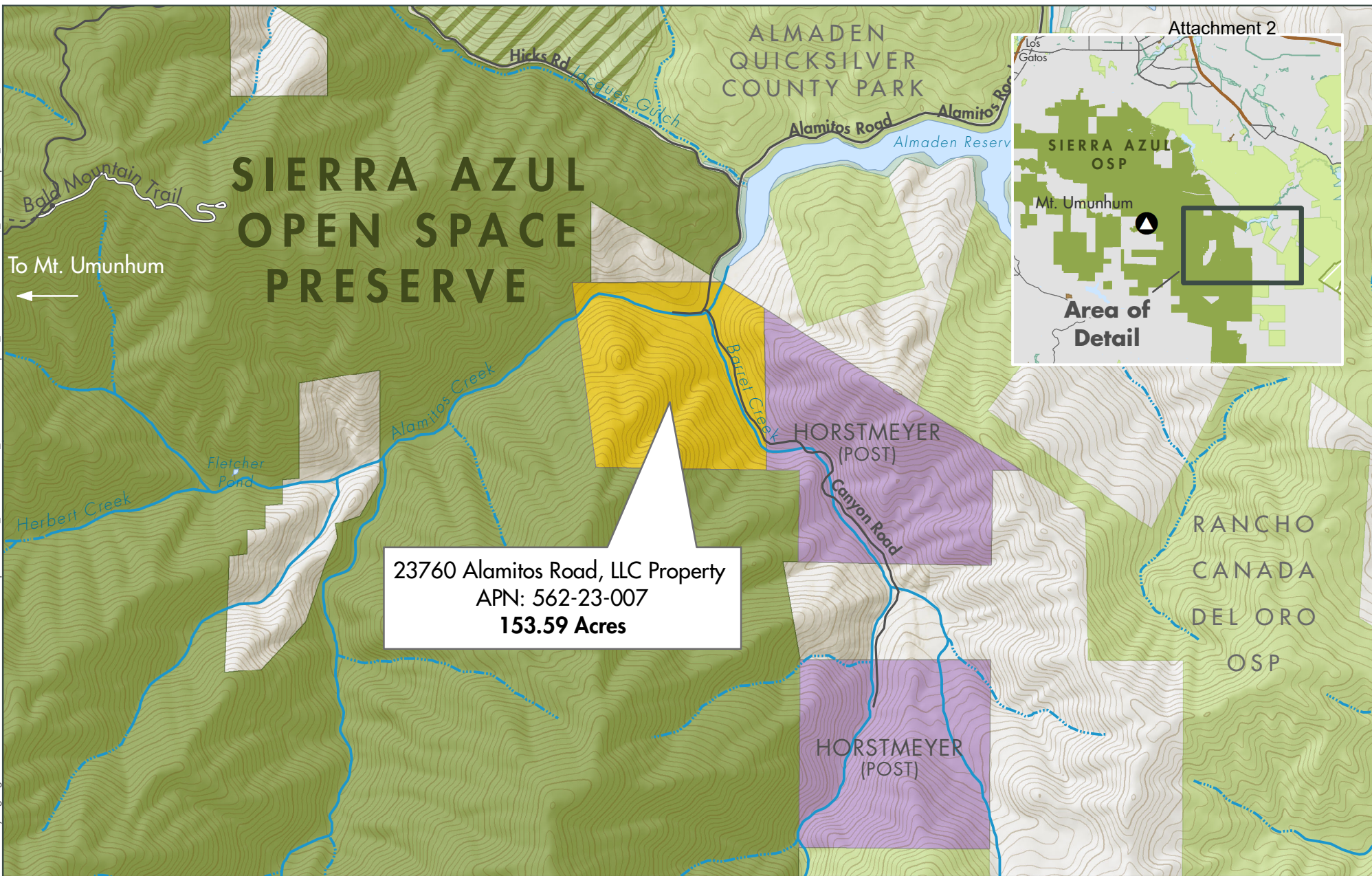
APPROVED AS TO FORM:

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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23760 Alamitos Road, LLC Property

- | | | |
|---|--|---|
|  MROSD Preserves |  MROSD Conservation or Agriculture Easement |  23760 Alamitos Road, LLC Property |
|  Other Protected Lands |  Private Property |  Horstmeier (POST) |

Midpeninsula Regional
Open Space District
(MROSD)
March 2018



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.