



Midpeninsula Regional
Open Space District

R-18-127
Meeting 18-37
November 14, 2018

AGENDA ITEM 6

AGENDA ITEM

Update on Actions of Mutual Interest taken by the Midpeninsula Regional Open Space District and Lehigh Hanson Heidelberg Cement during the Past Year

GENERAL MANAGER'S RECOMMENDATION

Receive a presentation from the President of West Region - Lehigh Hanson Heidelberg Cement. No formal Board action required.

SUMMARY

In August 2014, the Midpeninsula Regional Open Space District (District) agreed to dismiss its judicial appeal challenging Lehigh Southwest Cement Company's (Lehigh) Environmental Impact Report (EIR) in exchange for various public benefits described herein, and based on actions to protect air and water quality, and restore the scenic viewshed (R-14-98, attached).

One of the important conditions of the settlement was an agreement for the District and Lehigh to participate going forward in regular, open public meetings regarding opportunities and issues of mutual concern. Two meetings were held in 2015: on May 27 and October 14. No meetings were held in 2016. The last meeting occurred on May 10, 2017. Mr. Daniel Fritz, President of the West Region - Lehigh Hanson Heidelberg Cement, will provide a presentation and answer questions on recent and upcoming site improvements, as well as ongoing and future planned operations.

DISCUSSION

The Board received presentations from the former President of Lehigh (Mr. Kari Saragusa), on May 27, 2015 (R-15-84), October 14, 2015 (R-15-147), and May 10, 2017 (R-17-55). On November 14, 2018, Mr. Daniel Fritz, will present actions taken by Lehigh over the past year that may be of interest to the District and the community.

The Board approved dismissal of the District's judicial appeal challenging the Lehigh Permanente Quarry Reclamation Plan EIR in August 2014 (R-14-98). This settlement agreement included Lehigh's agreement to the following actions:

- 1) Convey to the District a widened public trail easement to the existing Quarry Trail in Rancho San Antonio Open Space Preserve across Lehigh land. This easement was recorded in January 2015;
- 2) Convey to the District a new public trail easement, connecting Rancho San Antonio and Monte Bello Open Space Preserves. This easement was recorded in January 2015;

- 3) Grant to the District Rights of First Offer and Rights of First Refusal on two properties, totaling 265 acres, in which the District has a long-term protection interest. These documents were recorded in January 2015;
- 4) Grant to the District a Conditional Grant Deed to a 55-acre Lehigh property buffering the PG&E trail (now the Stephen E. Abbors Trail) at Rancho San Antonio Open Space Preserve. The District can record if Lehigh resumes using and raises the height of the East Material Storage Area;
- 5) Waive the right to recover the \$9,404, which is the District's half of the \$18,808 total costs awarded by the lower court. The waiver was implemented; and
- 6) Participate with the District going forward in conducting regular, open public meetings in which Lehigh and the District can discuss opportunities and issues of mutual concern. This is the genesis of this agenda item.

FISCAL IMPACT

There is no fiscal impact associated with this presentation.

BOARD COMMITTEE REVIEW

There was no prior Board Committee review of this item. Regular public meetings with the District and Lehigh are a commitment made as part of the 2014 settlement agreement.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. Additional public notice was provided to Rancho San Antonio and Lehigh Quarry Interested Parties on file with the District.

CEQA COMPLIANCE

This presentation is not a project subject to the California Environmental Quality Act

NEXT STEPS

Initial reconnaissance work for the Quarry Trail realignment within Monte Bello OSP is scheduled to begin by the end of FY2018-19 with consultant assistance. Upon construction of the trail realignment (anticipated in FY2022-23), the District will survey the final trail alignment and record an amended trail easement (related to item 1 above).

Attachment

1. Board Report R-14-98, dated August 13, 2014, including 2 maps

Responsible Department Head:

Julie Andersen, Acting Natural Resources Manager

Prepared by:

Matt Baldzikowski, Senior Resource Management Specialist, Natural Resources Department



Midpeninsula Regional
Open Space District

R-14-98
Meeting 14-21
August 13, 2014

AGENDA ITEM 6

AGENDA ITEM

Accept Two Trail Easements, Two Rights of First Offer and Rights of First Refusal, and a Conditional Grant Deed conveyance, to properties adjacent to Monte Bello and Rancho San Antonio Open Space Preserves, located in the City of Palo Alto and unincorporated Santa Clara County (Portions of Santa Clara County Assessor's Parcel Numbers 351-09-003, 351-09-023, 351-09-025, 351-10-037 & 351-12-067); and Bi-annual public meetings with Lehigh; all in Exchange for Dismissal of Appeal in *Midpeninsula Regional Open Space District v. County of Santa Clara et al*, Court of Appeal Case No. H040839 (Lehigh EIR challenge); Adoption of Related Preliminary Use and Management Plan; and Approval of a Categorical Exemption in accordance with the California Environmental Quality Act.

GENERAL MANAGER'S RECOMMENDATIONS

1. Adopt a Resolution authorizing acceptance of the following property rights conveyances from Lehigh:
 - A. Amend Grant of Trail Easement to widen existing Quarry Trail from 20 to 200 feet;
 - B. New Public Trail Easement to Monte Bello Open Space Preserve;
 - C. Rights of First Offer and Rights of First Refusal to two properties adjacent to Rancho San Antonio Open Space Preserve totaling 265 acres;
 - D. Conditional Grant Deed to one property adjacent to San Antonio Open Space Preserve.
2. Adopt a Preliminary Use and Management Plan for the property as contained in the staff report.
3. Indicate the Board's intention to dedicate the Quarry Trail, and defer dedication of the new trail easement until it is complete.
4. Approve settlement and dismissal of the pending litigation on the terms outlined in the staff report.
5. Determine that the recommended actions are categorically exempt from the California Environmental Quality Act (CEQA) as set out in the staff report.

SUMMARY

Staff proposes to dismiss the Midpeninsula Regional Open Space District's (District) judicial appeal challenging Lehigh Southwest Cement Company's (Lehigh) Environmental Impact Report (EIR), in exchange for various public benefits described herein, and based on recent

progress noted in work necessary to protect air, and water quality, and extensive work already performed on the restoration of the scenic viewshed. As noted in more detail below, in response to the District's concerns and as a demonstration of good faith, Lehigh has taken significant actions in lowering of the East Material Storage Area (EMSA), restoring a key scenic viewshed and providing associated water and air quality benefits. Lehigh is also well under way toward installing new smoke stacks and water treatment facilities at their Quarry and kiln facilities, which are air and water quality protection measures that the EIR had failed to address.

In addition, if the Board approves the dismissal of the pending litigation, Lehigh has agreed as follows:

- 1) To convey rights to widen an existing public trail easement on their land;
- 2) Convey a new public trail easement, serving Rancho San Antonio and Monte Bello Open Space Preserves;
- 3) Grant to the District Rights of First Offer and Rights of First Refusal on two properties, totaling 265 acres, in which the District has a long-term protection interest;
- 4) Grant to the District a Conditional Grant Deed to a 55 acre Lehigh property buffering the PG&E trail at Rancho San Antonio Open Space Preserve;
- 5) To waive the right to recover the \$9,404 which is the District's half of the \$18,808 total costs awarded by the lower court; and
- 6) To participate with the District going forward in conducting regular, open, public meetings in which Lehigh and the District can discuss opportunities and issues of mutual concern.

This report also includes a Preliminary Use and Management Plan, the District's environmental review, the conveyance terms and conditions, and financial considerations.

DISCUSSION

Litigation

In the fall of 2012, the District challenged the EIR approved by Santa Clara County for the Lehigh Southwest Cement Company's reclamation plan amendment. The challenge arose from the District's strong concerns about inadequately identified, analyzed and mitigated impacts to air quality, water quality, and the viewshed. These concerns were raised by the District and numerous other neighbors and public agency commenters in the County's administrative appeal process, but were left unaddressed at the conclusion of the County's process. The District entered into extensive negotiations at that time with the County and Lehigh, in an attempt to avoid the need for litigation, but that effort was unsuccessful, and the pending lawsuit ensued. Based on similar concerns, a citizen's group "BACE" filed a separate suit, challenging the EIR on bases similar to those raised by the District. In the fall of 2013, the lower court ruled against both the District and BACE in their respective cases, upholding the EIR in its entirety. The District and BACE both filed appeals in the California Court of Appeal, Sixth Appellate District, where the cases are presently set for a late summer briefing schedule.

The Proposed Settlement Terms

1. Actions taken at EMSA

As part of its stated intent to demonstrate a good faith willingness to address the numerous concerns the District has about the EMSA, over the past several months, Lehigh voluntarily changed its operational practices to cease dumping quarry overburden at the EMSA, lowered the EMSA contours, and largely restored the viewshed from the PG&E Trail and Preserve entrance. (See “Before” and “After” photos attached as Attachment 2.) In so doing, Lehigh has reduced the volume of overburden going to the EMSA to approximately one-fifth of the 4.8 million cubic yards approved for disposal under the Reclamation Plan EIR. Lehigh has committed to maintaining this reduction in the EMSA profile as it proceeds to reclamation.

Lehigh has recently undertaken grading, with the stated goal of preparing the existing EMSA for reclamation. This reduced the visibility of the EMSA from important view points within Rancho San Antonio Open Space Preserve. Together, these actions have substantially decreased the visual impacts associated with the EMSA, addressing aesthetic impacts which were determined to be “significant and unavoidable”, with no feasible mitigations, per the EIR.

District staff is concerned that, while the exceptional good faith efforts to date to keep the EMSA profile down have been greatly appreciated, that the ongoing right under the Reclamation Plan could result in a future return to dumping on the EMSA. Lehigh has been steadfast, however, in its unwillingness to amend its reclamation plan to provide those assurances in that way, due to the fact that a reopening of the reclamation plan would create huge uncertainties such as are inherent in any permitting process. As a compromise and to provide some assurance that dumping on the EMSA will not resume, Lehigh has offered a conditional grant deed to the 55 acre property north of the EMSA, and described below (in addition to the Right of First Refusal), which would be recordable to transfer ownership to the District should dumping at the EMSA ever resume.

2. Air & Water Quality

The reduction in EMSA volume has also significantly reduced the potential for ground and surface water impacts at that location.

The substantial reduction in EMSA volume also has similar reductions to air quality impacts, deemed “significant” in the EIR. Significant air quality impacts identified in the EIR were primarily associated with moving the full 4.8 million cubic yards of overburden to the EMSA (dust, and diesel emissions). At present, this equates to a roughly 80% reduction of air quality impacts associated with the EMSA.

Additional substantial water quality benefits have also been achieved by others during the EIR litigation time period, which have addressed impacts to biological resources, and water quality, that were determined to be “significant and unavoidable” per the EIR. The Sierra Club settlement with Lehigh for alleged violations of the Clean Water Act requires full water treatment of discharges to comply with water quality requirements. The San Francisco Bay Regional Water Quality Control Board has also reviewed and issued the appropriate discharge permit for the Lehigh facility, adopting the Sierra Club’s water treatment settlement provision as a permit condition, and requiring improved water quality treatment, monitoring and reporting. The combined efforts -- of the District, the neighbors, the regulatory agencies and Lehigh itself -- have thus led to significant progress in addressing our concerns. In this setting, the acceptance of

the terms of settlement outlined in this report is the more likely productive outcome even when compared to the low probability of winning an appeal on the EIR challenge. Winning a challenge to an EIR is always a difficult task, especially in the face of an adverse lower court ruling. Prevailing in the appellate court would only result in the reopening of the EIR, with no guarantees of the County requiring any operational changes to address the District's concerns. It is against this backdrop that staff recommends acceptance of the following public benefits in exchange for dismissal of the District's appeal.

Real Property Conveyances (see attached map Attachment 3)

Public Trail Easements

Lehigh proposes to convey two public trail easements to the District which will improve connections between Rancho San Antonio and Monte Bello Open Space Preserves.

1. Widened Quarry Trail Easement

The first trail conveyance will amend the existing Quarry Trail which originates at the western most end of the PG&E trail and extends to the Black Mountain trail which was acquired as part of an exchange agreement with Hanson Permanente Cement (Hanson) in 2006 (see report R-06-84). (Lehigh purchased Hanson including their quarry operation in 2008.) The amendment will widen the existing trail easement corridor width from 20 to 200 feet to provide for future trail realignment. The current steep grade is constrained by the existing 20 foot easement and does not comply with District trail standards.

2. New Floating Easement

The second public trail easement will be a new one, extending the Quarry Trail located south of the existing section of the Quarry Trail. This trail will run east and parallel to the Black Mountain Trail and Monte Bello Road Trail. On Lehigh's property, this trail would be laid out and built along the ridge line at approximately the 2,400 foot contour. The exact alignment has yet to be determined, but will "float" within a 600-foot-wide corridor to be defined by the District later. The area where the trail will be built is densely covered with brush, buckeyes, oaks, madrone, bay laurel and poison oak. This trail will provide the flexibility to separate mountain bicycle use along the Black Mountain and Monte Bello Road trails from hiking and equestrian trail use. The new trail will provide panoramic views of the surrounding open space lands, the peninsula and south bay and the Quarry operation.

Right of First Offer and Right of First Refusal on Two Parcels

Lehigh will also convey two Right of First Offer and Right of First Refusal on properties which run along the southerly boundary of the PG&E trail and at Rancho San Antonio Open Space Preserve. A right of first refusal is a recorded document providing the District the first opportunity to purchase these properties or match any third party offer to purchase these properties.

1. 210-acre parcel

The first right of first refusal parcel is approximately 210 acres, and runs along the southerly boundary of the irregularly shaped 61 acre parcel which was also transferred to the District as part of the 2006 exchange agreement with Hanson. The northerly boundary of the 210 acre right of first refusal parcel will run north of the buffer area and undisturbed area identified in Lehigh's reclamation plan as shown on Attachment 2. This parcel provides a natural scenic backdrop to

the Preserve as seen from the PG&E trail with a thick vegetative canopy consisting of oak, madrone, buckeye, bay laurel and brush, and partially obscures the West Material Storage Area.

2. 55-acre parcel

The second right of first refusal parcel is approximately 55 acres, and is located north of the recently lowered East Material Storage Area providing a scenic backdrop to the eastern portion of the PG&E trail, the Preserve and Rancho San Antonio County Park. The 55 acre parcel also includes a seasonal tributary which flows into Permanente Creek on the County Park property.

Conditional Grant Deed

The 55 acre parcel is also proposed to be subject to a conditional grant deed delivered to the District. In the future, if Lehigh raises the elevation of the East Material Storage Area for waste materials storage, the District can record the conditional grant deed and take fee ownership to this 55 acre parcel. The conditional grant deed, trail easements and right of first refusal parcels are discussed in further detail in the terms and conditions section later in this report.

USE AND MANAGEMENT

Planning Considerations

The property where the existing Quarry Trail and new segment of the Quarry Trail will be built are within the City of Palo Alto and are zoned OS (Open Space), requiring a 10-acre minimum lot size. The Palo Alto property is not included in the existing Lehigh Quarry Reclamation Plan, and the City of Palo Alto does not have a mining ordinance; therefore, it is unlikely the City of Palo Alto would allow expansion of the quarry operation. In addition, the steepness and constrained access of the Palo Alto property makes future development of this property unlikely.

The 210 acre and 55 acre right of first refusal parcels are located within unincorporated Santa Clara County and are zoned HS (Hillside).

During the District's Vision Plan, the conservation values of land were analyzed within the District boundary. The two trail easement areas contain land that has medium to high conservation value containing California Buckeye plant community which is a designated sensitive plant community by the California Department of Fish and Wildlife. The right of first refusal parcels scored low to medium in terms of conservation value. However, these parcels are very important as the scenic backdrop to the Rancho San Antonio Open Space Preserve, Rancho San Antonio County Park and the cities and towns located to the north. The trail easement and right of first refusal properties are both identified as part of an intact habitat area (2 to 10 square miles in size) that is adjacent to critical linkage for wildlife and habitat.

PRELIMINARY USE AND MANAGEMENT PLAN

The Preliminary Use and Management Plan will take effect at the close of escrow of each property interest and remain effective until the plan is amended or a Comprehensive or Master Use and Management Plan is prepared. The existing Quarry trail easement will remain open for continuation of existing public trail users. Once the new segment of the Quarry Trail is identified, the proposed trail construction will be subject to further environmental review and public input. If the District purchases right of first refusal parcels in the future, these properties will be maintained in a natural condition and no changes to land use are anticipated. If changes

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to land use are proposed in the future, the plan would be subject to further environmental review and public input.

Public Access: The existing Quarry trail to remain open for public use.

Trail Use Designation: When the new segment of the Quarry trail is identified and built, the trail will be designated for hiking and equestrian use.

Patrol: Routine patrol of the property.

Signs: Preserve boundary signs and regulations to be installed where appropriate.

Name: When the new segment of the Quarry trail easement is built and recorded, the trail will be named as an addition to the Monte Bello Open Space Preserve.

Dedication: Indicate your intention to rededicate the amended Quarry trail easement as public open space. Indicate your intention to defer dedication of the new segment of the Quarry trail until it is completed.

Site Safety Inspection: Preliminary site safety inspection has been conducted and there are no known safety hazards on the properties.

CEQA COMPLIANCE

Project Description

The District will receive a widened trail easement for the existing Quarry Trail which will continue to be open for public trail use and maintained in a natural condition. This widened easement will allow for future improvements to the trail to reduce over-steep portions, and address other aspects of the trail as it exists that do not meet District trail standards. The net effect is anticipated to result in water quality improvements, since the existing trail width is too narrow to allow room to meet our fish-friendly (and hiker-friendly) trail construction standards.

The District will also receive a new trail easement, which will be “floating” until the right alignment for proper trail construction is determined on the ground. When that new segment of the Quarry Trail is identified, an impact evaluation will be done at that time. Any bridges required for the new trail would be clear span and not affect waters of the United States. Pre-construction surveys would be conducted for cultural and biological resources. Trails would be routed to avoid impacts to any identified sensitive resources.

If or when the District exercises its rights of first refusal on the 210 acre and 55 acre parcels in the future, or if Lehigh activity on the EMSA ever triggers the right to record title to the 55 acre parcel under the conditional deed, each of these properties would be maintained in a natural open space condition.

CEQA Determination

The District concludes that this project will not have a significant effect on the environment. It is categorically exempt from CEQA under Sections 15301, 15316, 15317, and 15325 of the CEQA Guidelines as follows:

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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, including the construction of a new trail and realignment of an existing trail. The project may include performing minor erosion control work along the trails.

Section 15316 exempts the acquisition of land in order to create parks if the site is in a natural condition and the management plan proposes to keep the area in a natural condition. The Use and Management Plan specifies that the properties being transferred to the District will not be developed and will remain in a natural condition.

Section 15317 exempts the acceptance of fee interests in order to maintain the open space character of an area. Through the District's right of first refusal, the District may receive fee interest in two non-contiguous, undeveloped parcels of land and will maintain their open space character. No new development is proposed as part of this project.

Section 15325 exempts transfers of ownership of interests in land in order to preserve open space. This project provides for the future transfer to the District fee interest in two non-contiguous open space parcels and two trail easements. The public trail easements will preserve an open space corridor for future public recreational access. The District will ensure that the fee and easement interests will be preserved for public open space purposes by incorporating the lands and easement into Rancho San Antonio and Monte Bello Open Space Preserves.

This acquisition qualifies under all four sections.

The actions recommended in the Preliminary Use and Management Plan are also exempt under section 15061(b)(3), as there is no possibility the recommended actions will have a significant effect on the environment.

BUDGET CONSIDERATIONS

Savings/value of benefits

Staff estimates the value of the existing trail easement widening the new trail easement, the two Grants of Rights of First Offer and First Refusal, and the Conditional Deed are \$250,000.

In addition, the District's one-half share of the costs awarded by the trial court, waived as part of this settlement, is approximately \$9,404. The value of the restored viewshed and related air and water quality benefits from the reduced EMSA is impossible to estimate, but potential impacts to these values have currently been reduced by approximately 80%.

Settlement of the case as proposed would also avoid approximately \$70,000 in estimated litigation costs in pursuing the appeal, as well as an additional presently unknown amount of litigation costs if we were to win the appeal, as that would involve a remand back to the local courts for correction of the adverse lower court ruling.

Costs/potential costs

The cost of the survey to amend the existing Quarry Trail is \$1,250, and will be covered in this year's Real Property budget. The cost of recording and obtaining title insurance for the two trail easements and two right of first refusal agreements are estimated at \$5,000 will also be covered by the Real Property budget. The cost to survey the new segment of the Quarry Trail is currently

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estimated at \$12,000 and will be budgeted when the trail alignment is identified and built which is projected for Fiscal Year 2016-17.

If at some point in the future the District exercises its right of first refusal, the acquisition costs would be based on fair market value at that time. The survey and subdivision costs would be shared equally (50/50) by the District and Lehigh. Current cost estimates for surveying and processing parcel divisions are estimated at between \$50,000 and \$75,000 or between \$25,000 and \$37,500 for the District's portion of these costs. Any such future acquisition would, of course, be brought to the Board for its consideration and direction.

BOARD COMMITTEE REVIEW

This litigation has been discussed by the full Board in closed session. It is not a project requiring committee review.

PUBLIC NOTICE

The property owners of land located adjacent to or surrounding the subject property and Santa Clara County Parks have been notified of this Agenda Item. The agenda and this report have also been made available on the District's website. Accordingly, all notice required by the Brown Act has been provided.

NEXT STEPS

Upon approval by the Board of Directors, staff would proceed with recording the close of escrow for the trail easements and two right of first refusal agreements; and take the next steps identified in the Preliminary Use and Management Plan as contained in this report.

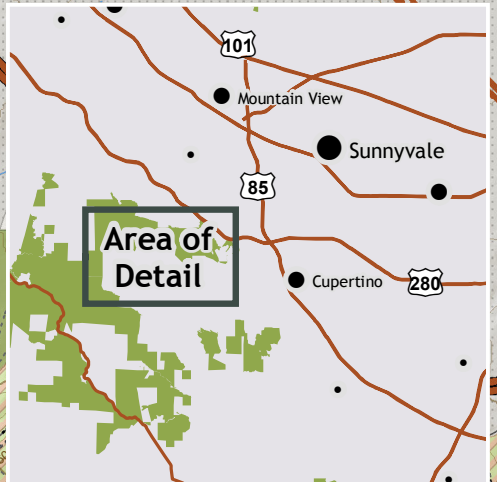
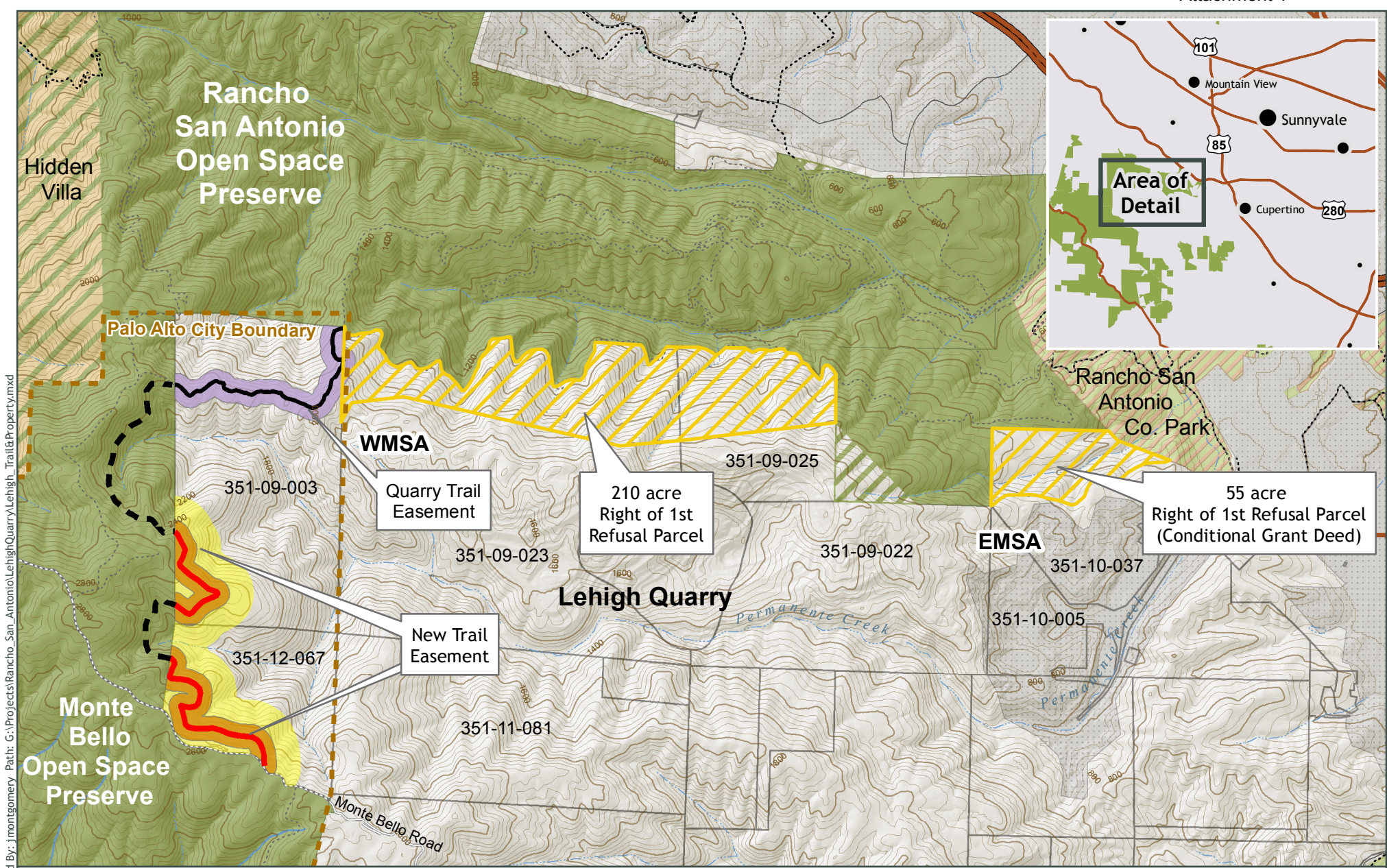
Attachments:

1. Resolution – Authorizing Acceptance of Real Property Rights
2. EMSA Before & After Photos
3. Location Map
4. Trail Easement Map
5. Summary of Terms and Conditions

Responsible Department Manager:
Michael Williams, Real Property Manager

Prepared by:
Michael Williams, Real Property Manager
Sheryl Schaffner, General Counsel

Graphics prepared by:
Jon Montgomery, GIS Intern



Lehigh Trail Easement & Property Interests

- | | | |
|---|--|--|
| MROSD Preserves | Existing Quarry Trail | Existing Quarry Trail Easement |
| Management Agreement | 2500' Contour Interval (Centerline of Proposed Easement) | 200' Trail Easement |
| MROSD Conservation or Agricultural Easement | Potential Trail on MROSD Property | 600' area within which 200' easement will be located as topographical needs indicate |
| | Palo Alto City Boundary | |

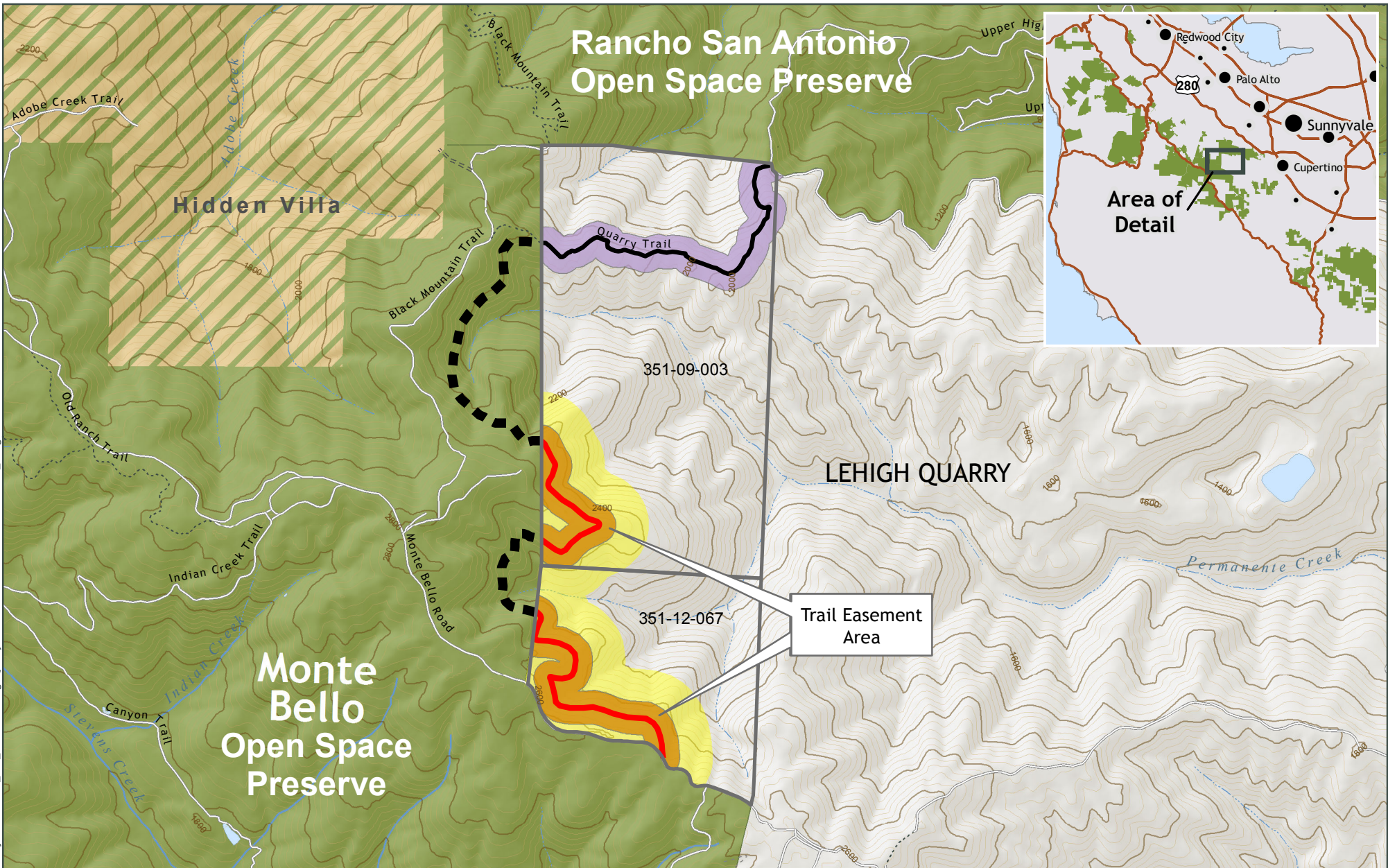
Midpeninsula Regional Open Space District (MROSD)












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.

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Lehigh Trail Easements

- | | | | | | |
|--|---|---|--|---|--|
|  | Existing Quarry Trail |  | Existing Quarry Trail Easement |  | MROSD Preserves |
|  | 2500' Contour Interval
(Centerline of Proposed Easement) |  | 200' Trail Easement |  | MROSD Conservation
or Agricultural Easement |
|  | Potential Trail on MROSD Property |  | 600' area within which 200' easement
will be located as topographical
needs indicate |  | Private Property |

Midpeninsula Regional
Open Space District

(MROSD)

July, 2014



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