



Midpeninsula Regional  
Open Space District

R-20-78  
Meeting 20-16  
July 22, 2020

## AGENDA ITEM 8

### AGENDA ITEM

Proposed Purchase of the San Jose Water Company Property as an addition to El Sereno Open Space Preserve located in unincorporated Santa Clara County, Assessor's Parcel Numbers 510-33-001, -004, -005, -006, 510-35-004 & -005; Assignment of Purchase and Sale Agreement for the San Jose Water Company Property to Peninsula Open Space Trust; Approval of a Lease and Management Agreement.

### GENERAL MANAGER'S RECOMMENDATIONS

A handwritten signature in black ink, appearing to read "dew".

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 San Jose Water Company property at a cost of \$1,075,000 with corresponding authorization for a Fiscal Year 2020-21 budget adjustment of the same amount, and authorizing the General Manager, if necessary, to approve an Assignment of Purchase and Sale Agreement, and a Lease and Management Agreement, entered into with Peninsula Open Space Trust for the San Jose Water Company property.
3. Adopt a Preliminary Use and Management Plan for the property, as set out in the staff report.
4. Withhold dedication of the San Jose Water Company Property as public open space.

### SUMMARY

The General Manager recommends purchasing the 182.15-acre San Jose Water Company Property (Property) at a purchase price of \$1,075,000 as an addition to El Sereno Open Space Preserve (Preserve). The General Manager also seeks authorization, if necessary, to assign its purchase rights for the Property to Peninsula Open Space Trust (POST) in order to secure grant funding and to enter into a Lease and Management Agreement with POST to manage the Property until its future conveyance to the Midpeninsula Regional Open Space District (District). The following report provides a description of the Property, a Preliminary Use and Management Plan, findings of the environmental review, the purchase terms and conditions, and financial considerations. A budget adjustment/increase of \$1,075,000 to the Fiscal Year 2020-21 (FY21) budget would be required to proceed with the acquisition.

### DISCUSSION

The District proposes to purchase the 182.15-acre property consisting of six assessor parcel numbers and four legal parcels that are all zoned Hillside-d1. The Property is surrounded by the 1,433-acre El Sereno Open Space Preserve. The Property drains into both the Los Gatos Creek and Saratoga Creek watersheds and is visible from within the Preserve. A portion of the District's Aquinas Trail crosses the Property and is designated as part of the Bay Area Ridge Trail. This purchase advances Measure AA Portfolio #19 El Sereno Open Space Preserve for Dog trails, and connection to Skyline/Sanborn County Park and Lexington Reservoir. The purchase of the Property would perfect ownership of the current trail connections within the Preserve and fill a large inholding. A patrol and maintenance easement would also be granted to the District to access the northeast corner of the Property.

### **Property Description and Regional Context (see attached map)**

The Property consists of six assessor parcels and four legal parcels. The Property can be accessed from Overlook Road and the Aquinas Trail. The Property rises to approximately 2,400 feet in elevation and has excellent views of the Preserve, Lexington Reservoir, Sierra Azul Open Space Preserve, and the southern Santa Clara Valley. The Property straddles the Los Gatos Creek and Saratoga Creek watersheds with one unnamed tributary flowing into Trout Creek and two unnamed tributaries flowing into San Tomas Aquinas Creek.

### **Land Use and Improvements**

Until the 1970's, San Jose Water Company operated a small water intake on the 5.04-acre parcel identified as APN: 510-35-005. The water intake structure consists of a concrete dam and pipelines in disrepair. In addition to the water intake, the Property is also improved with approximately 0.35 miles of a 10-foot wide dirt road that connects two segments of the District's Aquinas Trail (APN: 510-33-006). While use of this road is unperfected, the property owner has not specifically excluded use for patrol or trail access within the larger preserve. The Aquinas Trail is designated as part of the Bay Area Ridge Trail. The remainder of the Property is unimproved.

### **Habitat and Natural Resources Value**

The vegetation on the Property is mainly comprised of chamise chaparral and mixed broadleaf hardwood forest. Chamise chaparral is a fire dependent vegetation community. The 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.

### **Water Resources and Rights**

The Property contains three unnamed tributaries. One tributary flows into Trout Creek, which then flows into Los Gatos Creek, and two tributaries flow into San Tomas Aquinas Creek, which then flows into Saratoga Creek. All water rights associated with the Property would be owned by the District upon the close of escrow. There is an abandoned water diversion on the larger unnamed tributary that flows into San Tomas Aquino Creek that does not prevent the flow of the tributary in any significant way.

## 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. The zoning designation is Hillside with design review required (HS-d1). 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-d1 zoning designation.

If purchased, the Property will be incorporated into the Preserve, and use of the existing road to connect both segments of the Aquinas Trail will continue. 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 preservation 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.

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.

Public Access: Continue public access via the District's Aquinas Trail.

Signs and Site Security: Install preserve boundary signs and trail signs as needed.

Fences and gates: Install and maintain fences and gates as needed. Install a District lock on existing gate to water intake improvements.

Roads and Trails: Continue to maintain the road that forms a portion of the Aquinas Trail that crosses through the property and maintain as needed the lower access road.

Implement maintenance and minor erosion and sediment control measures in accordance with the District's adopted Resource Management Policies standards and regulatory permits.

Patrol: Routinely patrol property.

Resource Management: Conduct plant and animal management activities consistent with the District's adopted Resource Management Policies, Integrated Pest Management Program Guidance Manual, Best Management Practices and regulatory permits issued to the District as needed.

Water Resources and Water Rights: Protect creeks and springs on the Property consistent with the District's adopted Resource Management Policies, Integrated Pest Management Program Guidance Manual, Best Management Practices and regulatory permits issued to the District as needed.

Investigate and determine if the former water diversion improvements should be removed from the Property. If considered appropriate, any action to remove the water division will be undertaken as a separate project at a future date.

Wildfire Fuel Management: Implement standard District-wide fuel management and defensible space practices consistent with the District's Resource Management Policies.

## CEQA COMPLIANCE

### Project Description

The project consists of the purchase of the 182.15-acre Property as an addition to the District's El Sereno Open Space Preserve and concurrent adoption of a PUMP, including minor erosion control and sediment control measures that may be conducted to prevent erosion. 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 roads and Aquinas Trail, 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.

## TERMS AND CONDITIONS

The Property is proposed for purchase at a sale price of \$1,075,000 (\$5,901 per acre). The Property would be purchased as-is on an all-cash basis. Escrow would close on or before September 30, 2020. This Property is considered a non-utility property by the California Public Utilities Commission (CPUC), and their approval is not required for the sale.

The District may be able to secure grant funds to complete this purchase through the California Wildlife Conservation Board (WCB), as funds were reapportioned until 2025 in the California State Budget for the acquisition of San Jose Water Company watershed lands. WCB does not allow for the reimbursement of grant funds after a property is purchased. The availability of these funds is now uncertain because of the impact of the COVID-19 pandemic on the State's budget. If the funds are available, the WCB approval process takes approximately 9 months to complete. Therefore, an assignment provision has been added to the Purchase and Sale Agreement. If the grant funds remain available, the purchase would be assigned to POST in order to maintain a close of escrow by September 30, 2020, while the District works to secure the grant funds. Once the grant funds are secured, the District would then purchase the Property from POST at the original purchase price using the grant funds.

If POST becomes the interim owner of the Property, the District will assume all management responsibilities under the terms of a Lease and Management Agreement with POST and will manage the Property according to the requirements of the PUMP.

## FISCAL IMPACT

Land acquisitions brought before the Board for approval include a budget adjustment/increase to the adopted budget. If approved, an increase of \$1,075,000 to the FY21 budget is required.

San Jose Water Company Property Purchase Amount (including \$50,000 option deposit)	\$1,075,000
Total Land Purchases approved to date for FY21	\$0
Total FY21 Land Purchases (if approved)	\$1,075,000

The following table outlines the Measure AA Portfolio 19 (El Sereno Dog Trails and Connections) allocation, costs-to-date, projected future project expenditures and projected ending balance at the portfolio level for the *El Sereno Trails, Wildlife Corridors and Land Conservation (San Jose Water Company)* project.

<b>MAA19 El Sereno Dog Trails and Connections Portfolio Allocation:</b>	<b>\$2,254,000</b>
Life-to-Date Spent (as of 6/18/2020):	(\$480,241)
Encumbrances:	\$0
San Jose Water Company Property Purchase:	(\$1,075,000)
Remaining FY21 Project Budgets:	\$0
MAA19-004 Title Insurance, Escrow Fees, and Other Miscellaneous Project Costs:	(\$10,000)
<b>Total Portfolio Expenditures:</b>	<b>(\$1,565,241)</b>
<b>Portfolio Balance Remaining (Proposed):</b>	<b>\$688,759</b>

The following table outlines the Measure AA Portfolio 19 (El Sereno Dog Trails and Connections) allocation, costs to date, and the fiscal impact related to the Property purchase.

<b>MAA19 El Sereno Dog Trails and Connections Portfolio Allocation:</b>	<b>\$2,254,000</b>
Projected Project Expenditures (life of project):	
MAA19-001 Gupta/Khan Property Purchase	(\$407,267)
MAA19-002 Dunham-Bohlman Easement	(\$19,997)
MAA19-003 Haight-Perry Low Value Land Acquisition	(\$52,977)
MAA19-004 San Jose Water Company Property Purchase	(\$1,085,000)
<b>Total Portfolio Expenditures:</b>	<b>(\$1,565,241)</b>
<b>Portfolio Balance Remaining (Proposed):</b>	<b>\$688,759</b>

## BOARD COMMITTEE REVIEW

The Real Property Committee did not review the purchase because of the compressed timeline of this acquisition.

## 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, staff would continue to monitor the availability of the grant funds, and if they are available, would proceed with the purchase assignment, but if they are unavailable, staff would proceed with the close of escrow for the purchase of the Property by September 30, 2020, and take the next steps identified in the PUMP as contained in this report. The District's South Area Field Office would manage the property as an addition to the El Sereno Open Space Preserve.

### 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 Assignment of Purchase & Sale Agreement and Lease and Management Agreement any and all Other Documents Necessary or Appropriate to Closing of the Transaction (El Sereno Open Space Preserve - Lands of San Jose Water Company)
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, Data Analyst II  
Francisco Tapia, GIS Technician

**RESOLUTION 20-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT ACCEPTING THE PURCHASE AND SALE AGREEMENT, AMENDING THE FISCAL YEAR 2020-21 GENERAL FUND CAPITAL BUDGET, AUTHORIZING GENERAL MANAGER OR OTHER APPROPRIATE OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE AND GRANT TO DISTRICT, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ASSIGNMENT OF PURCHASE AND SALE AGREEMENT AND LEASE AND MANAGEMENT AGREEMENT, AND TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (EI SERENO OPEN SPACE PRESERVE - LANDS OF SAN JOSE WATER COMPANY)**

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 San Jose Water Company 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 (“San Jose Water Property”).

**SECTION TWO.** The Board authorizes the expenditure of \$1,075,000.00 covering the purchase of the San Jose Water Property, including an option deposit of \$50,000.00.

**SECTION THREE.** The Board approves an amendment to the Budget and Action Plan for Fiscal Year 2020-21 by increasing the Measure AA Fund Capital budget in the amount of \$1,075,000.00. Except as herein modified, the FY 2020-21 Budget and Action Plan, Resolution No. 20-18 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 and the Grant Deed on behalf of the District.

**SECTION FIVE.** The General Manager is authorized to close the transaction with Peninsula Open Space Trust if the assignment of the purchase is completed, regardless of whether ~~but~~ the grant funds become unavailable, ~~or~~ the application is denied, or the funds are awarded.

**SECTION SIX.** The General Manager is authorized (if necessary) to approve an assignment of the Purchase and Sale Agreement to the Peninsula Open Space Trust (POST) and enter into a Lease and Management Agreement with POST.

**SECTION SEVEN.** The General Manager or the General Manager’s designee is authorized to provide notice of acceptance to the seller, execute all escrow documents and to extend escrow if necessary.

**SECTION EIGHT.** 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, survey and miscellaneous costs related to this transaction.

**SECTION NINE.** 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 \_\_\_\_\_, 2020, at a regular meeting thereof, by the following vote:

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

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Jed Cyr, Secretary  
Board of Directors

\_\_\_\_\_  
Karen Holman, President  
Board of Directors

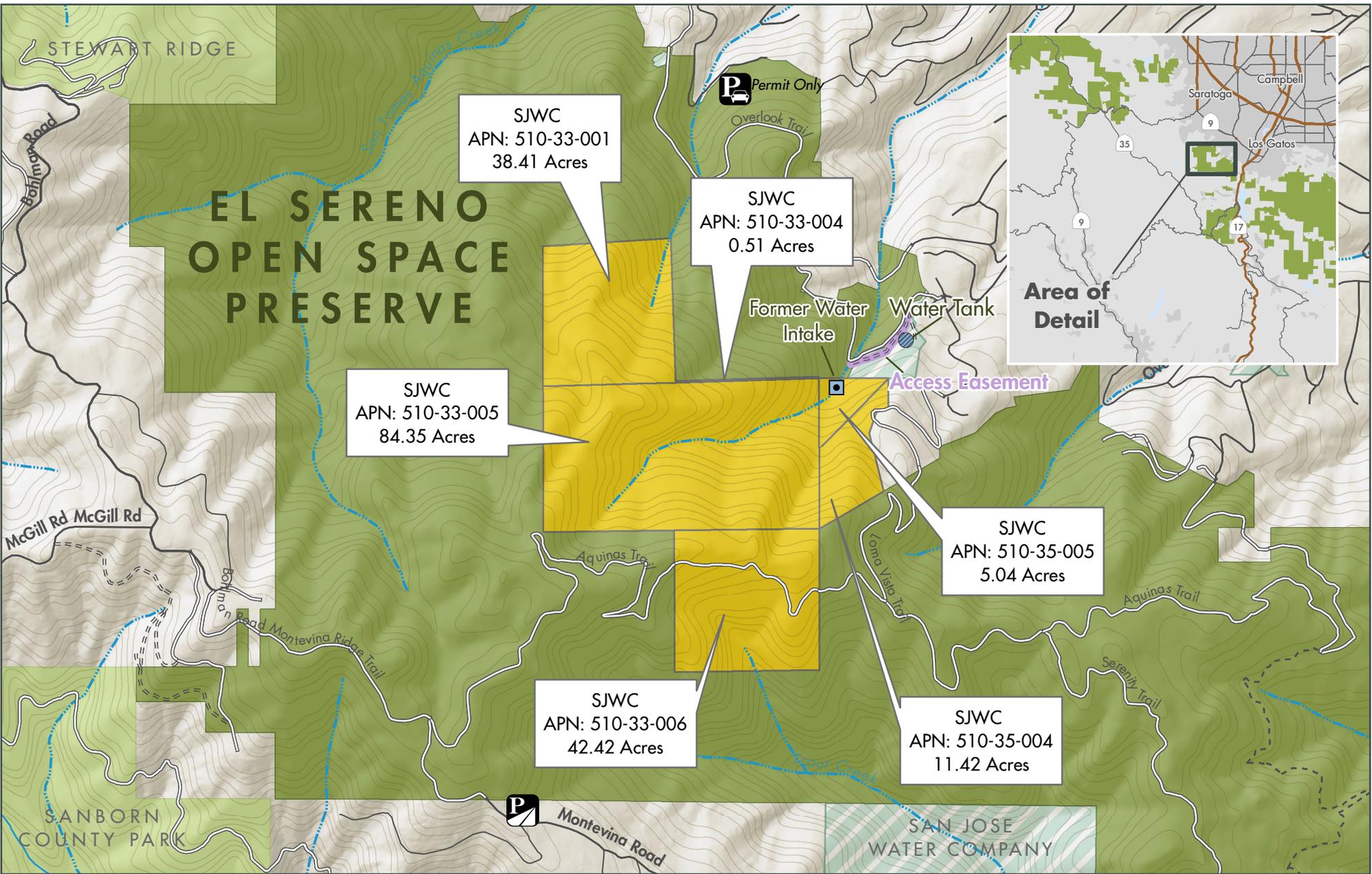
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Hilary Stevenson, 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.

\_\_\_\_\_  
Jennifer Woodworth, District Clerk

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### San Jose Water Company Property

- |   |   |  |
|---|---|--|
|  MROSD Preserves         |  Paved Road            |  San Jose Water Company Parcels of Interest |
|  Other Protected Lands   |  Unpaved Road          | Total Acreage: 182.15  |
|  Private Property        |  Unmaintained Road Cut |  Proposed Access Easement                   |
|  Private Watershed Lands |  Trail                 |  |

Midpeninsula Regional  
Open Space District  
(MROSD)  
January 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.