



Midpeninsula Regional  
Open Space District

R-24-71  
Meeting 24-16  
June 12, 2024

## AGENDA ITEM 4

### AGENDA ITEM

Cooley Landing Land Use Covenant

### GENERAL MANAGER'S RECOMMENDATION

Authorize the General Manager to record a land use covenant restricting use of the Cooley Landing area of Ravenswood Open Space Preserve

### SUMMARY

The Cooley Landing area of Ravenswood Open Space Preserve is a former landfill. It is managed as part of Cooley Landing Park by the City of East Palo Alto (City) under an agreement with the Midpeninsula Regional Open Space District (District). The District assisted with a City project to build Cooley Landing Park on top of the site. One of the main solutions to limit exposure to the landfill is an engineered soil cap placed over the site. The Cooley Landing site is operated by the City under an Operations and Maintenance Plan (O&M Plan) approved by the Regional Water Quality Control Board (RWQCB) which ensures that the engineered soil cap is not compromised over time and is maintained to prevent exposure of the former landfill. A requirement of the site cleanup and use of the site as a park is a deed restriction or land use covenant (LUC) placed on the site that requires operations and maintenance activities follow the established O&M Plan.

### BACKGROUND

In February 2010, the Board authorized a Partnership Agreement with the City of East Palo Alto (City) for the Cooley Landing Area of Ravenswood Open Space Preserve (Preserve) with the goal of developing the site into a bayfront city park ([R-10-29](#), [minutes](#)). Since then, the City completed the majority of Phases I through V of Cooley Landing Park as listed below. To date the District has contributed approximately \$1,284,000 to the development of Cooley Landing Park in addition to staff coordination and assistance on various projects. Cooley Landing is the second most visited park in the City.

**Phase I:** Site remediation, trail access, road improvements, some parking, benches, and a picnic area. *Completed October 2012*

**Phase II:** Installation of utilities, improvements to the access road, and native planting. *Completed in February 2014*

**Phase III:** Completion of the Education Center that serves as a place for community meetings, and as an institution that preserves and enhances the area's cultural heritage, history, and traditions.

*Completed in September 2015*

**Phase IV and V:** Completion of site improvements around the Education Center including an outdoor classroom, restroom, picnic area, extension of main pathways, secondary trails, seating areas, interpretive signs, and lighting. *Completed in early 2019*

## **DISCUSSION**

The O&M Plan provides the technical guidelines to ensure the protection of the soil cap over contaminated soils and allows for safe use of the site. For instance, it provides notification requirements and procedures for any ground disturbing activity and air quality monitoring requirements for the Education Center. The agreement between the City and the District places the responsibility for management and maintenance of the portion of Ravenswood Open Space Preserve that is part of Cooley Landing on the City along with compliance with the O&M Plan (Attachment 1 area A). The District has responsibility to comply with the O&M Plan that covers a portion of District managed land that overlaps with the area covered by the O&M Plan (Attachment 1 area B). Even though the District has a current agreement for the City to manage District owned portions of Ravenswood Open Space Preserve as part of Cooley Landing, the RWQCB requires that the underlying landowner is ultimately responsible for protection of the soil cap and other elements of the O&M Plan. RWQCB was the lead agency for site investigation and remediation and maintains records on Cooley Landing as a regulated site. They also have approval authority for the O&M Plan and any future amendments. To ensure that the current or any potential future owners are responsible for the site, one of the requirements of the RWQCB is for the District as the landowner to agree to a LUC that restricts uses on the site and requires compliance with the O&M Plan.

## **FISCAL IMPACT**

There is no immediate fiscal impact based on the approval of the LUC. There may be unknown future fiscal impacts related to the requirements of the LUC.

## **BOARD AND COMMITTEE REVIEW**

There was no previous committee or Board review of the land use covenant.

## **PUBLIC NOTICE**

Public notice was provided as required by the Brown Act.

## **CEQA COMPLIANCE**

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

## **NEXT STEPS**

If approved the General Manager will sign the LUC and submit to the RWQCB after full execution the covenant will be recorded on the deed to the District owned parcels covered under the covenant.

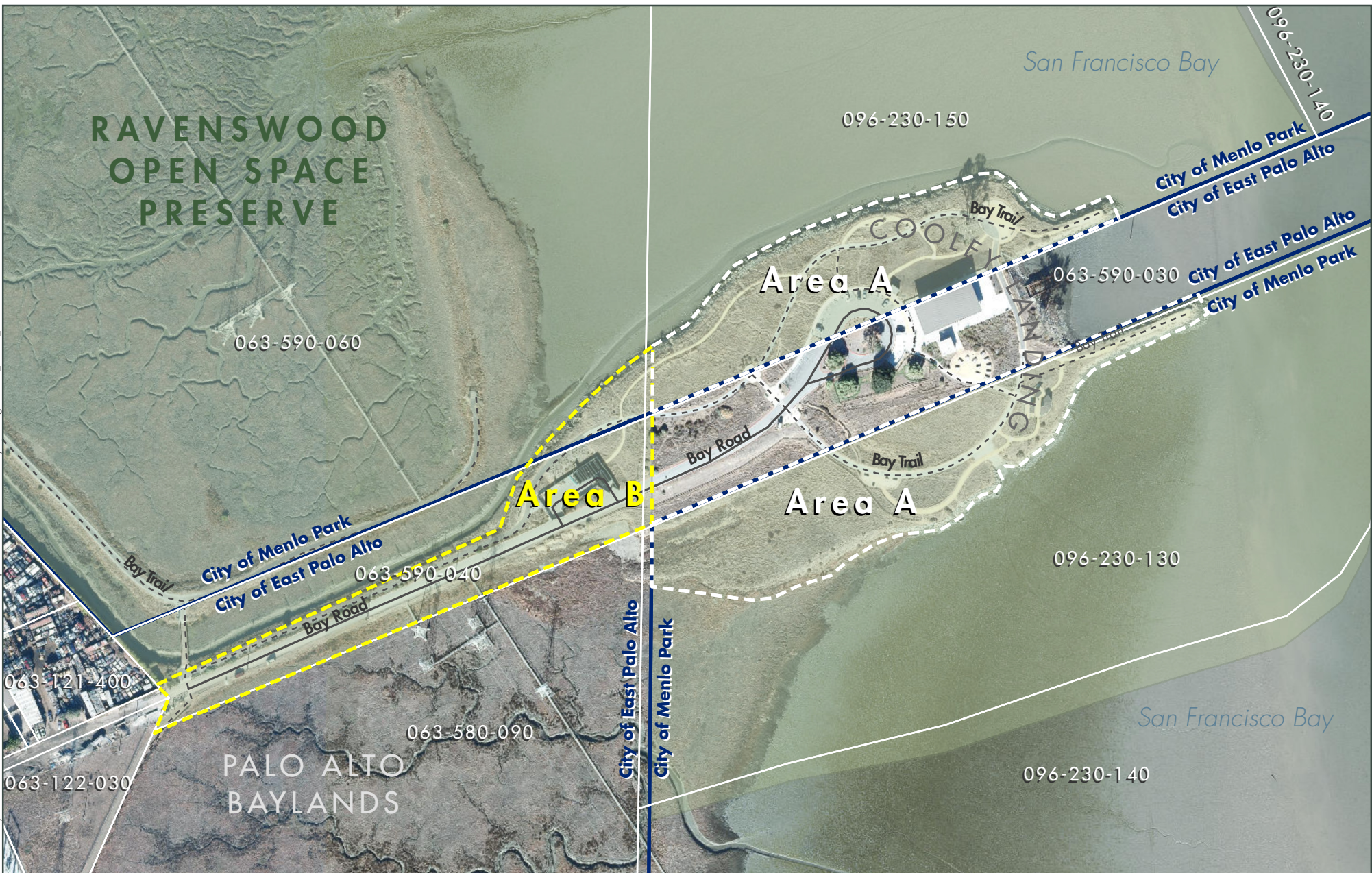
Attachment(s)

1. Attachment 1: Map of Cooley Landing
2. Attachment 2: Proposed Land Use Covenant Cooley Landing

Responsible Department Head:  
Brian Malone, Acting General Manager

Prepared by/Contact person:  
Brian Malone, Assistant General Manager, Office of the General Manager

Path: G:\Projects\Ravenswood\Coolley Landing\AreaA\_AreaB\_20220607.mxd  
Created By: acostanza



### Attachment 1: Cooley Landing Area, Ravenswood Open Space Preserve

- Midpen preserve
- Paved Road
- Trail
- County parcel boundary
- City boundary
- Area B
- Area A

Midpeninsula Regional  
Open Space District  
(Midpen)  
6/7/2022



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.

**Recording Requested By:**

Midpeninsula Regional Open Space District  
Attn: Brian Malone  
5050 El Camino Real  
Los Altos, CA 94022

**When Recorded, Mail To:**

California Regional Water Quality Control Board  
Eileen White, Executive Officer  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
[GeoTracker # T10000001713]

COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY  
COOLEY LANDING, 2100 BAY ROAD, EAST PALO ALTO, CA 94303

APNs IN MENLO PARK **063-590-060, 096-230-130, 096-230-150**

**APN 063-590-040** IN EAST PALO ALTO, CA 94303

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the \_\_\_ day of \_\_\_\_\_, 2024 by the Midpeninsula Regional Open Space District ("Covenantor") who is the Owner of record of that certain property comprised of portions of four parcels situated at 2100 Bay Road, in the cities of Menlo Park and East Palo Alto, County of San Mateo, State of California, which is particularly described in Exhibit A attached hereto and incorporated herein by this reference ((hereinafter referred to as the "Burdened Property")), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Water Board"), with reference to the following facts:

- A. Hazardous Materials. Soil and groundwater at and underlying the Burdened Property contain hazardous materials as defined in Health & Safety Code Section 25260.
- B. Contamination of the Burdened Property. The Burdened Property was used as a solid waste landfill from 1932 until 1957. The landfill operation caused the contamination and the fill material contains residual pollutants, including: metals, pesticides, polychlorinated biphenyls, polynuclear aromatic hydrocarbons, and petroleum compounds which constitute hazardous materials as that term is defined in California Health & Safety Code Section 25260.
- C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater beneath the cover on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via direct contact, inhalation of fugitive dust or ingestion of pollutant impacted soil. The risk of public exposure to

the contaminants has been substantially lessened by the remediation and controls described herein and in the Remedial Action Completion Report and O&M/PC Plan (defined in Article II below).

- D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for a public park adjacent to and within wetlands and San Francisco Bay.
- E. Mitigation and Control Measures. The following measures are ongoing and necessary to control exposure and pollution migration. The April 16, 2012, Remedial Action Completion Report documents the remedial actions that were implemented to reduce the potential environmental issues at the Burdened Property. The remedial action included the installation of an engineered cap that was installed across the Burdened Property in 2011. The cap is comprised of two feet of soil that was imported to the property and covers the entire property to encapsulate the fill material. The design of the engineered cap and ongoing monitoring and maintenance requirements are described in the January 16, 2012, Revised Soil and Groundwater Management Plan. The O&M/PC Plan (defined in Article II below) in its entirety is incorporated herein by this reference, including any amendments or revisions thereto, which have been approved in writing by the Water Board.
- F. Disclosure. Full and voluntary disclosure to the Water Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.
- G. Site Use. Covenantor desires and intends that in order to benefit the Water Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons, property or the environment that may result from hazardous materials that remain on the Burdened Property.

## ARTICLE I GENERAL PROVISIONS

- 1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence of hazardous materials on the Burdened Property. Each and all of the Restrictions shall run with the land and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Water Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land

pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Water Board.

- 1.2 Concurrence of Owners, Occupants, and Lessees Presumed. All Owners, Occupants, purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, lease, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, occupants, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Water Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.
- 1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.
- 1.4 Purpose. It is the purpose of this instrument to convey to the Water Board an agreement to restrict land use pursuant to California Civil Code section 1471, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials consistent with the rights and obligations in this Covenant.

## ARTICLE II DEFINITIONS

- 2.1 Water Board. "Water Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.
- 2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Burdened Property.
- 2.3 Occupants. "Occupant" or "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

- 2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.
- 2.5 Operation and Maintenance/Post-Closure Plan. The "Operation and Maintenance/Post-Closure Plan" ("O&M/PC Plan") shall mean the July 13, 2012, Operations and Maintenance Plan, the July 12, 2013 Operations and Maintenance Plan Addendum, December 12, 2014 Operations and Maintenance Plan Addendum II, and August 26, 2015 Operations and Maintenance Plan Addendum III, prepared by Ninyo and Moore. It shall also include any amendments or revisions thereto, which have been approved in writing by the Water Board.
- 2.6 Soil and Groundwater Management Plan. The "Soil and Groundwater Management Plan" ("SGMP") shall mean the Revised Soil and Groundwater Management Plan prepared by Ninyo and Moore. It shall also include any amendments or revisions thereto, which have been approved in writing by the Water Board.
- 2.7 Cap. The "Cap" shall mean that as described and defined in the O&M/PC Plan referenced above, including any amendments or revisions thereto which have been approved in writing by the Board.

### ARTICLE III

#### DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

- 3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:
- a) The development and use of the Burdened Property shall be limited to a public park and open space only. Park-related facilities, such as the existing education center, are permitted, provided they comply with all development and use restrictions of this deed restriction.
  - b) All uses, maintenance and development of the Burdened Property shall be consistent with any applicable Water Board Order and the O&M/PC Plan, including its SGMP, which is incorporated herein by reference, including future amendments or revisions thereto which have been approved in writing by the Water Board. All uses, maintenance and development shall preserve the integrity of the engineered cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Water Board, unless otherwise expressly permitted in writing by the Water Board. No Owners or Occupants, or any of their agents, shall conduct any excavation work on the Burdened Property, unless expressly permitted in writing by the Water



Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or their agent in accordance with the SGMP and O&M/PCM Plan and all applicable provisions of local, state and federal law.

- c) No Owners or Occupants of the Property or any of their agents, shall drill bore or use any well on the Burdened Property for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses unless expressly permitted in writing by the Board.
- d) The Owner or Occupant shall notify the Water Board of each of the following: (1) The type, cause, location and date of any disturbance to the engineered cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Water Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Water Board shall be made in a manner consistent with Section 5.2 within ten (10) working days of both the discovery of such disturbance and the completion of repairs.
- e) The Covenantor agrees that the Water Board, and/or any persons acting pursuant to Water Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
- f) No Owner or Occupant of the Burdened Property, or any of their agents, shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Water Board, by reason of this Covenant, to have the authority to require that the Owner or Occupant modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Water Board to file civil actions against the Owner as provided by law. Prior to any such lawsuit, the Water Board will provide Owner or Occupant with notice in a manner prescribed by Section 5.2 and a reasonable opportunity to cure.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners

and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in subsurface soil and groundwater under the property, and is subject to an environmental deed restriction dated as of \_\_\_\_\_, 2024 and recorded on \_\_\_\_\_, 2024, in the Official Records of San Mateo County, California, as Document No. \_\_\_\_\_ which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. Incorporated into the deed restriction by reference is the Operation and Management/Post-Closure Plan which describe remedial measures taken and set forth requirements and procedures for long-term use of the property. It is the responsibility of all owners and occupants to comply with the Operation and Management Plan at all times. This statement is not a declaration that a hazard exists.

#### ARTICLE IV VARIANCE AND TERMINATION

- 4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any-portion thereof may apply to the Water Board for a written variance from the provisions of this Covenant.
- 4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Water Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.
- 4.3 Term. Unless terminated in accordance with paragraph 4.2 above, or otherwise by law, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

- 5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.
- 5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official

of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested (with a courtesy electronic copy via email, as noted below)::

To: "Covenantor"  
Attn. General Manager  
Midpeninsula Regional Open Space District  
5050 El Camino Real  
Los Altos, CA 94022  
Email: clerk@openspace.org

To: " Water Board"  
Executive Officer  
Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612  
Reference GeoTracker # T10000001713

- 5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.
- 5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.
- 5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Water Board. This instrument shall be recorded by the Covenantor in the County of San Mateo within ten (10) days of the date of execution.
- 5.6 References. All references to Code sections include successor provisions.
- 5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Agency: State of California, San Francisco Bay Regional Water Quality Control Board

By: \_\_\_\_\_

Title: Executive Officer

Date: \_\_\_\_\_

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ (*insert date*), before me, \_\_\_\_\_ (*insert name and title of the officer*), personally appeared \_\_\_\_\_ [Covenantor], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ (*insert date*), before me, \_\_\_\_\_ (*insert name and title of the officer*), personally appeared \_\_\_\_\_ [Executive Officer], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY