



Midpeninsula Regional  
Open Space District

R-12-31  
Meeting 12-09  
March 14, 2012

## **AGENDA ITEM 6**

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Authorization to Enter into Retainer Agreement for Legal Services with Shute, Mihaly and Weinberger, LLP, and Authorization to Enter into Reimbursement Agreement with Ridge Vineyards, Inc.

### **GENERAL MANAGER'S RECOMMENDATIONS**

1. Authorize the General Manager to enter into a retainer agreement with Shute, Mihaly and Weinberger, LLP for legal services necessary for the proposed land exchange at Monte Bello Open Space Preserve, for \$67,100 plus a eleven (11) percent contingency of \$7,900, for an amount not to exceed \$75,000.
2. Authorize the General Manager to enter into agreement with Ridge Vineyards, Inc. to reimburse the Midpeninsula Regional Open Space District for legal services costs necessary for the proposed land exchange at Monte Bello Open Space Preserve.

### **SUMMARY**

A qualified law firm is needed to draft the formal exchange agreement, conservation easement, agricultural easement, and other transactional documents that form the basis for the proposed exchange of property interests between the Midpeninsula Regional Open Space District (District) and Ridge Vineyards, Inc. (Ridge) at Monte Bello Open Space Preserve (Preserve). Legal service tasks may also include CEQA review, negotiation and tasks necessary to closing the transaction. The General Manager, with the concurrence of the General Counsel, recommends retaining Tamara Galanter with the law firm of Shute, Mihaly and Weinberger, LLP to perform this work. Ridge Vineyards, Inc. has verbally agreed to reimburse the District for the costs incurred. The recommended action also includes authorizing the General Manager to enter into a formal reimbursement agreement with Ridge for this purpose. No legal services would be provided to the District until a reimbursement agreement is signed by Ridge Vineyards, Inc.

### **DISCUSSION**

A land and easement exchange between the District and Ridge along the southeastern edge of Monte Bello Open Space Preserve has been contemplated for many years to remedy the approximately two-acre winery encroachment at the Preserve that existed when the District purchased the property in 1974, to protect the scenic rural and undeveloped landscape along

Monte Bello Ridge from future development, and to support compatible agriculture within the District's boundaries. The potential District exchange land above Water Wheel Creek Trail was historically used for vineyards but is now in a mostly natural condition with remnants of old rootstock vines detectable in some areas. The potential Ridge exchange property includes the balance of its production winery building, land already under vineyard cultivation, and land in a natural condition, all situated along the top of Monte Bello Ridge in full view of thousands of acres of public land at Monte Bello, Skyline Ridge and Long Ridge Open Space Preserves, as well as Upper Stevens Creek County Park. If developed, these lands could resemble other nearby hilltop estates with large, visible residences.

Since Santa Clara County has no ordinances that regulate viticultural development on Monte Bello Ridge, any exchange transaction needs to include appropriate measures to protect natural resource and recreational values in the Preserve. Consequently, the potential fee and easement exchange is highly complex, with the exchange transaction documents and environmental review components needing to be internally consistent throughout. Although shown on Real Property Department Action Plans for several years, work on the project was deferred due to staffing constraints associated with higher priority projects. The proposed Ridge land exchange is shown as a key project for the Real Property Department for Fiscal Year 2012-13.

In light of staff's current workload and the retirement of the General Counsel, staff is proposing to retain an outside legal firm to draft the formal exchange agreement, conservation easement, agricultural easement, and other transactional documents that form the basis for the proposed exchange of property interests between the District and Ridge at the Preserve. The attorney will also undertake other tasks necessary to bring the proposed project through to closing including responding to and resolving any issues raised by Ridge's legal counsel pertaining to the terms of the exchange documents.

The General Counsel carefully evaluated attorneys with the specialized legal expertise necessary to perform this work. Referrals were sought from contacts at sister agencies, and hourly rates were considered. Tamara Galanter of Shute, Mihaly and Weinberger was identified as the most-qualified attorney available to assist the District on this complex transaction.

Ms. Galanter, a partner at Shute, Mihaly and Weinberger, specializes in public sector and public interest land use and environmental law. She counsels and litigates on behalf of public entities, non-profits, community groups and environmental organizations concerning environmental and land use matters, including the California Environmental Quality Act (CEQA), real estate transactions, conservation easements, development agreements, general plan law, and public agency administration. She has drafted and negotiated real estate purchase agreements, option agreements, and conservation easements to protect agricultural and viticultural land in her role as counsel to the Tri-Valley Conservancy and the City of Livermore.

Staff has worked with Ms. Galanter to tailor the scope of work and budget so that legal services are used in the most effective and efficient manner. The retainer agreement with Shute, Mihaly and Weinberger will specify that invoices shall not exceed \$67,100 without prior written authorization. However once the draft transactional documents are prepared, it is not possible now to know exactly how much time will be needed to negotiate and respond to comments from Ridge and Ridge's attorney. A basic budget for drafting, negotiation and response has been included in the above amount, and the purpose of the 11 percent contingency is to allow for additional negotiation/response time if necessary to come to agreement with Ridge Vineyards, Inc.

Ridge has reviewed Ms. Galanter's qualifications and concurs with the recommended attorney selection. To expedite the project, Ridge has agreed to reimburse the District for the cost of retaining Ms. Galanter. The parties have agreed that the reimbursement agreement will specify that Ridge Vineyards, Inc. will reimburse the District for legal services costs related to the proposed land exchange, up to an amount of \$75,000. No work under the retainer agreement with Ms. Galanter will occur until the reimbursement agreement is signed.

### **FISCAL IMPACT**

With Ridge's proposed reimbursement of District legal costs as described herein, no fiscal impact to the District will occur. Although not anticipated, in the event that legal costs need to exceed the amount specified in the reimbursement agreement and are likely not to be fully reimbursed, staff would return to the Board of Directors for direction. Any additional legal services needed to complete the contemplated exchange agreement with Ridge Vineyards, Inc. could be funded under the proposed Fiscal Year 2012-13 Real Property Department's Land Protection budget, if necessary.

### **PUBLIC NOTICE**

Public notice was provided as required by the Brown Act. No additional notice is required. Once the transactional documents have been completed, a report describing the proposed project, along with any required environmental review, will be released for Board and public review.

### **CEQA COMPLIANCE**

The proposed retainer agreement and reimbursement agreement do not constitute a project under CEQA. Implementation of the future land exchange which is the subject of the transactional documents, should it occur, will be subject to full environmental review under CEQA.

### **NEXT STEPS**

Upon Board approval, the General Manager will enter into the retainer agreement and reimbursement agreement as discussed above.

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