



Midpeninsula Regional
Open Space District

R-12-92
Meeting 12-32
September 26, 2012

GLC AGENDA ITEM 1

AGENDA ITEM

Meeting of and Report to Sole Shareholder of Guadalupe Land Company as Owner of Property Adjacent to the Mount Umunhum Area of Sierra Azul Open Space Preserve (Santa Clara County Assessor's Parcel Numbers 575-11-004, 575-12-001 and 575-12-013) to Consider Dissolution of the Corporation and Payment of Tax attributable to the dissolution

BOARD CHAIRMAN'S RECOMMENDATION

A handwritten signature in black ink, appearing to be "SAA".

1. Adopt the Written Shareholder Consent Authorizing Dissolution of the Guadalupe Land Company, a private corporation.

SUMMARY

The Midpeninsula Regional Open Space District (District) is the sole shareholder of Guadalupe Land Company, a private corporation (Company), with a sole asset of a 286.61-acre property. The Company was purchased by the Midpeninsula Regional Open Space District (District) in January 2005. It is recommended that the District, acting in its capacity as the sole Shareholder of the Company, authorize the dissolution of the Company and payment of tax attributable to the dissolution estimated at \$275,379. This will increase District administrative capacity currently being taken up by management of the private corporation and will bring all future dealings with this property into the normal operations of the District, which is a public agency.

DISCUSSION (See attached map)

At its December 15, 2004 meeting, the District's Board of Directors approved the purchase of the Company, which included as its sole asset, a 286.61-acre property, as an addition to Sierra Azul Open Space Preserve (see Report R-04-134). Through this transaction, the District became the sole shareholder of the Company (acting through the District's Board of Directors).

Since acquiring the Company and in its capacity as sole shareholder, the District has met annually and taken all required corporate maintenance actions, including appointment of Directors and Officers, filing and payment of annual corporate taxes, and payment of annual management fee to patrol and maintain the property. The current Directors are: Stephen E. Abbors, Chairman of the Board; Michael L. Foster; and Michelle Radcliffe. The current Officers are: Stephen E. Abbors, President; Michael L. Foster, Chief Financial Officer; and Michelle Radcliffe, Secretary.

In July 2008, the Shareholder authorized the conveyance of an open space easement to Peninsula Open Space Trust which was recorded in September 2008 (see report R-08-92). Because the open space easement protects the property as public open space and prohibits residential development, the current value of the property was reduced significantly compared to the unencumbered value of the property before the open space easement was granted to POST. The Officers and Directors have engaged corporate tax counsel and Member Appraisal Institute (MAI) appraiser to assess the advantages and disadvantages of dissolving the corporation and to determine the corresponding capital gain tax liability associated with unwinding the corporation.

Tax Attributable to the Dissolution

Corporate tax attributable to the dissolution are assessed at approximately 40% (consisting of a Federal rate of about 34% and a State rate of about 6%) of the appreciated value of the property. The approximate 40% rate is applied to the difference between the current value of the property and the property's tax basis when corporation was formed. The original tax basis of the property is \$227,000. The appraised fair market value of the unencumbered fee title of the 286.61 acre property in 2008 prior to the conveyance of the open space easement was \$3,389,000.

In 2008, the value of the property subject to the open space easement was valued at \$419,182 which represents approximately 12% of the fee value ($\$419,182/\$3,389,000= 12.37\%$). This percentage is applied to original tax basis of the property of \$227,000 to arrive at the adjusted basis of value of the property subject to the open space easement granted to POST in September 2008. The adjusted basis is calculated at \$28,077 ($\$227,000 \times 12.37\% = \$28,077$).

The Company obtained a current fair market appraisal of the property encumbered by the open space easement valued at \$716,525 with a value date of July 18, 2012. The current potential tax attributable to the dissolution liability is calculated at \$275,379 as follows:

$$\begin{array}{r} \$716,525 - \$28,077 = \$688,448 \\ \quad \quad \quad \underline{\quad \quad \quad \times 40\%} \\ \quad \quad \quad \mathbf{\$275,379} \end{array}$$

Corporate Dissolution Process

The dissolution of the Company must be initiated by an election to dissolve, which may be made by the vote or written consent of at least fifty percent of the Company's outstanding shares (the sole shareholder is the District). The corporate dissolution will need to be filed with the Internal Revenue Service and the Franchise Tax Board. Following this election and winding up of the Company, the Company must file a final franchise tax return with the Franchise Tax Board and a Certificate of Dissolution with the Secretary of State.

Fiscal Analysis

The estimated tax of \$275,379 attributable to the dissolution will need to be budgeted and deposited into the Company bank account. It is recommended that this amount be rounded up to \$290,000 to cover any additional IRS and State Franchise Tax Board filing fees and associated costs necessary to initiate and complete the dissolution process. Upon the successful dissolution,

the annual management fees, corporate tax and filings totaling \$5,025 will no longer be incurred by the District acting as the Shareholder.

USE AND MANAGEMENT

The Preliminary Use and Management Plan adopted at the meeting of December 15, 2004, still remains in effect and unchanged. The Plan states the property will be closed to public use and will be routinely patrolled.

PUBLIC NOTICE

Notice was provided pursuant to the Brown Act. No additional notice is necessary.

CEQA COMPLIANCE

No compliance is required as this action is not a project under CEQA.

NEXT STEPS

The Company officers and directors shall prepare and file for the dissolution of the corporation and pay the associated tax attributable to the dissolution not to exceed ~~\$290,000~~\$280,000. Upon the completion of the dissolution of the Company, the remaining Corporation bank balance will be disbursed to the District's General Fund. These items will be reported back the District's Board of Directors at a future meeting.

Attachments:

1. Guadalupe Land Co. Written Consent of Shareholders
2. Map

Prepared by:

Michael C. Williams, Real Property Manager

Contact Person:

Same as above

GUADALUPE LAND CO.
a California Corporation

ACTION BY WRITTEN CONSENT OF THE SOLE SHAREHOLDER

September 26, 2012

Pursuant to Section 603(a) of the General Corporation Law of the State of California, the undersigned, being the sole stockholder of Guadalupe Land Co., a California corporation (the “Company”), hereby takes the following actions and adopts the following resolutions by written consent, effective as of the date first written above:

Approval of Dissolution of Corporation

RESOLVED: Authorize the Directors and Officers to pursue the dissolution of the Guadalupe Land Company, a California Corporation and the resulting transfer of the Property, which is the sole asset of the Company, to the Midpeninsula Regional Open Space District. The Property is adjacent to the Mt. Umunhum Area of Sierra Azul Open Space Preserve, attached as Exhibit A.

Omnibus Resolutions

RESOLVED: That the proper officers of the Company be, and each individually is, hereby authorized and directed to do and perform any and all such acts, including the execution, delivery and filing of all Federal and State Dissolution Filing Requirements, pay the taxes attributable to the dissolution not to exceed \$290,000 and transfer of the all property and remaining assets to the Midpeninsula Regional Open Space District and any and all other instruments, documents and certificates, as such officers deem necessary or advisable, to carry out and perform the purposes and intent of the foregoing resolutions.
RESOLVED FURTHER: That any actions taken by such officers prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby are hereby ratified, confirmed and approved as the acts and deeds of the Company.

IN WITNESS WHEREOF, the undersigned shareholder is giving written consent with respect to all shares of the Company’s capital stock held by such shareholder in favor of the above resolutions. Any copy, facsimile or other reliable reproduction of this action may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction be a complete reproduction of the entire original writing.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: _____
Name: Curt Riffle
Title: President, Board of Directors

Dated: September 26, 2012