



Midpeninsula Regional
Open Space District

R-18-60
Meeting 18-28
July 11, 2018

AGENDA ITEM 5

AGENDA ITEM

Proposed Agreement to Exchange Interests in Real Property between Eben and Carol Haber (Haber) and the Midpeninsula Regional Open Space District to obtain access easements for properties located along Charcoal Road in unincorporated Santa Clara County (APNs: 351-15-033 & 351-15-007), at Saratoga Gap Open Space Preserve requiring a unanimous vote of the Board of Directors.

GENERAL MANAGER'S RECOMMENDATIONS *den*

1. Determine that the recommended actions are categorically exempt from the California Environmental Quality Act (CEQA) as set out in the report.
2. By a unanimous vote of the Board of Directors, adopt a resolution authorizing the Agreement to Exchange Interests in Real Property between the District and Haber.
3. Adopt the Preliminary Use and Management Plan for the Exchange Property.
4. Withhold dedication of the Exchange Property as public open space at this time.

SUMMARY

The General Manager recommends exchanging access rights between the Midpeninsula Regional Open Space District (District), and Eben and Carol Haber (Haber) along certain sections of Charcoal Road to formalize access uses that have existed for over 40 years. The easement exchange would formalize District patrol and maintenance access across Haber property to reach Saratoga Gap Open Space Preserve (Preserve), and Haber access over District property to reach their residence. The following report presents a description of the proposed exchange in real property interests, a Preliminary Use and Management Plan, the District's environmental review, the exchange agreement terms

DISCUSSION

Background

Charcoal Road is a seasonal patrol access road to Upper Stevens Creek County Park and Saratoga Gap Open Space Preserve (Preserve), which runs westerly from Stevens Canyon Road through several private properties. Charcoal Road is the sole means of ingress and egress to these private properties. Charcoal Road has also historically served as the route for County Parks and District staff to access Upper Stevens Creek County Park and the Preserve.

In July of 1976, the District was gifted a 1.04 acre property underlying a portion of Charcoal Road by the Boy Scouts of America as an addition to the Preserve (Report R-76-15). The gift included deeded legal access from Stevens Canyon Road along Charcoal Road to the property. In December of 1976, the District acquired the Gunnetti-Larrus property, located further up Charcoal Road (Report R-76-30). The Gunnetti-Larrus property included an unperfected prescriptive easement along Charcoal Road from Stevens Canyon Road through several private properties (including Haber).

In late 2016, Haber requested that Santa Clara County Parks and the District refrain from crossing his property via Charcoal Road until a formal easement could be agreed upon. Santa Clara County Parks and the District agreed to Haber's request. While researching the easement issues, it was discovered that Haber did not have a formal access easement to cross the District's 1.04-acre property via Charcoal Road. In December of 2016, the District and Santa Clara County Parks began negotiating an agreement for an easement exchange with Haber (Exchange Agreement). As of the date of this Report, Santa Clara County Parks is no longer included in the Exchange Agreement due to issues still needing to be resolved between the County and Haber.

Description of Charcoal Road Easements

Haber to District: Under the Exchange Agreement, Haber would grant the District a road/right of way easement for patrol and maintenance use of the portion of Charcoal Road that crosses the owner's property (Charcoal Road easement). The proposed easement would be 20 feet wide and 1,490 feet long, totaling 0.684 acres.

District to Haber: Under the Exchange Agreement, the District would grant Haber an access easement for the portion of Charcoal Road that crosses District property. The proposed easement is 20 feet wide and 90 feet long, totaling 0.04 acres.

USE AND MANAGEMENT

Planning Considerations

The underlying properties identified in the Exchange Agreement are located in unincorporated Santa Clara County (County) and outside the urban service area and sphere of influence of any incorporated municipality. They both have a Hillside General Plan and zoning designation. The District's property is undeveloped. The Haber property is developed with a residence. Pursuant to the County General Plan and Zoning regulations, recreation, open space, and natural preserves are allowable uses. The Santa Clara County Planning Department made a finding of compliance with the General Plan for all open space acquisitions by the District in 1999.

If acquired, the Charcoal Road easement would be incorporated into the Preserve. Subsequent planning 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 acquisition of the road easement and the completion of a subsequent long-term plan. The PUMP would take effect upon recordation of the easements and remain effective until the PUMP is amended or a Comprehensive Use and Management Plan or Preserve Plan is approved for the Preserve. If changes to land use or the physical environment

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

- Public Access: Designate the Charcoal Road easement as closed to public use.
- Signs and Site Security: Install preserve boundary and closed area signs, as appropriate, on District property adjacent to the easement granted to Haber.
- Roads and Trails: Use the Charcoal Road easement for District patrol and maintenance access, and emergency purposes.

Maintain the road easement as needed for District purposes. Implement minor erosion and sediment control measures in accordance with District standards as needed.
- Patrol: Routinely patrol the road easement using the existing access road.
- Name: Name the Charcoal Road easement Property as an addition to Saratoga Gap Open Space Preserve.
- Dedication: Indicate the District’s intention to withhold dedication of the Charcoal Road Easement as open space at this time.

TERMS AND CONDITIONS

As part of the proposed Exchange Agreement, District and Haber agree to the following:

- District and Haber will grant the easements to each other at no cost to either party.

The exchange of interest in real property is of equal or greater value to the District and the public it serves. Therefore, the exchange is determined to be in accordance with the District’s enabling legislation set out in Section 5540.5 of the California Public Resources Code. In accordance with Section 5540.5, the Board must approve such exchange by unanimous vote.

FISCAL IMPACT

This reciprocal no-cost exchange of easements will have no fiscal impact on the District.

BOARD COMMITTEE REVIEW

This item was not previously reviewed by a Board Committee.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. Adjoining property owners have also been mailed a copy of the agenda for this public meeting.

CEQA COMPLIANCE

Project Description

The project consists of the conveyance of an easement along Charcoal Road (an existing private, dirt and gravel one-lane road), as an addition to the Preserve, and concurrent adoption of a PUMP, including minor erosion and sediment control measures to prevent erosion and water quality degradation. Minor resource management activities may be conducted to control invasive plants. The easement is for patrol and maintenance ingress and egress and would be maintained in accordance with District rural roadway maintenance standards appropriate to the District's occasional use. In exchange, the District will grant a 20-foot wide residential access easement over Charcoal Road to an adjoining private residential property (Haber) as it crosses a portion of District property.

Under the terms of the easement, the District would have minimal and proportional responsibility for road repair or maintenance within the easement and provides no assurances that further California Environmental Quality Act (CEQA) analysis for future repairs or improvements has been met. Any future roadway improvements within the easements would be subject to the County's zoning restrictions, land development policies, and utility service requirements.

CEQA Determination

The District concludes that this project will not have a significant effect on the environment. The project is categorically exempt from CEQA under Article 19, Sections 15301 and 15325, of the CEQA Guidelines as follows:

Section 15301 exempts the conveyance of an access easement over an existing private road already in use by other private residents for the sole purpose of providing defined, deeded and legal access to a private parcel currently benefiting from a prescriptive rights claim as this constitutes a minor alteration of use of an existing facility involving a negligible expansion of use and having no significant impact to the environment.

Section 15325(f) exempts transfers of ownership of interests in land to preserve open space. The District will acquire access rights across the adjoining private property (Haber) for the District to preserve, patrol, and maintain open space.

NEXT STEPS

Upon approval by the Board of Directors, staff will work to execute the terms of the Exchange Agreement and take the next steps identified in the PUMP. The District's Skyline Field Office would manage the Charcoal Road easement as an addition to the Preserve.

Attachments:

1. Resolution Authorizing Acceptance of Exchange Agreement Authorizing General Manager or Other Officer to Execute Certificate of Acceptance of Grant to District, District Grant of Access Easement, Authorizing General Manager or General Manager's designee to Execute any and all Other Documents Necessary or Appropriate to Closing of the Transaction (Saratoga Gap Open Space Preserve - Lands of Haber).
2. Exhibit A: Location Map

Responsible Department Manager:
Michael Williams, Real Property Manager

Prepared by:
Iain Reilly, Real Property Agent II
Elish Ryan, Real Property Planner III

Contact person:
Iain Reilly, Real Property Agent II

RESOLUTION 18-__

RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF EXCHANGE AGREEMENT, AUTHORIZING OFFICER TO EXECUTE ACCESS EASEMENT FOR THE DISTRICT'S REAL PROPERTY INTEREST BEING EXCHANGED, AUTHORIZING OFFICER TO EXECUTE ROAD/RIGHT OF WAY EASEMENT BEING GRANTED TO DISTRICT, AUTHORIZING OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT TO DISTRICT, AUTHORIZING GENERAL MANAGER AND GENERAL COUNSEL TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (SARATOGA GAP OPEN SPACE PRESERVE - LANDS OF HABER).

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 Exchange Agreement between Eben Merriam Haber, a married man as his sole and separate property, and Carol Avery Haber, a widowed woman, and the Midpeninsula Regional Open Space District, a copy of which exchange 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 (“the Haber Exchange Property”).

SECTION TWO. The General Manager or President of the Board of Directors and/or other appropriate officer is authorized to execute the Road/Right of Way Easement for the real property interests being conveyed to the District, and the Access Easement for the real property interests being conveyed to Haber.

SECTION THREE. The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute a Certificate of Acceptance for the Easement Deed on behalf of the District.

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

SECTION FIVE. The Board of Directors finds and determines that, pursuant to Section 5540.5 of the Public Resources Code of the State of California, the granting and acceptance of these easement property interests are consistent with Public Resources Code 5540.5, and that the real properties being acquired by the District are of equal or greater value than the real property being transferred to Haber, and are necessary to be acquired for open space purposes.

SECTION SIX. 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 _____, 2018, at a regular meeting thereof, by the following vote:

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

ATTEST:

APPROVED:

Secretary
Board of Directors

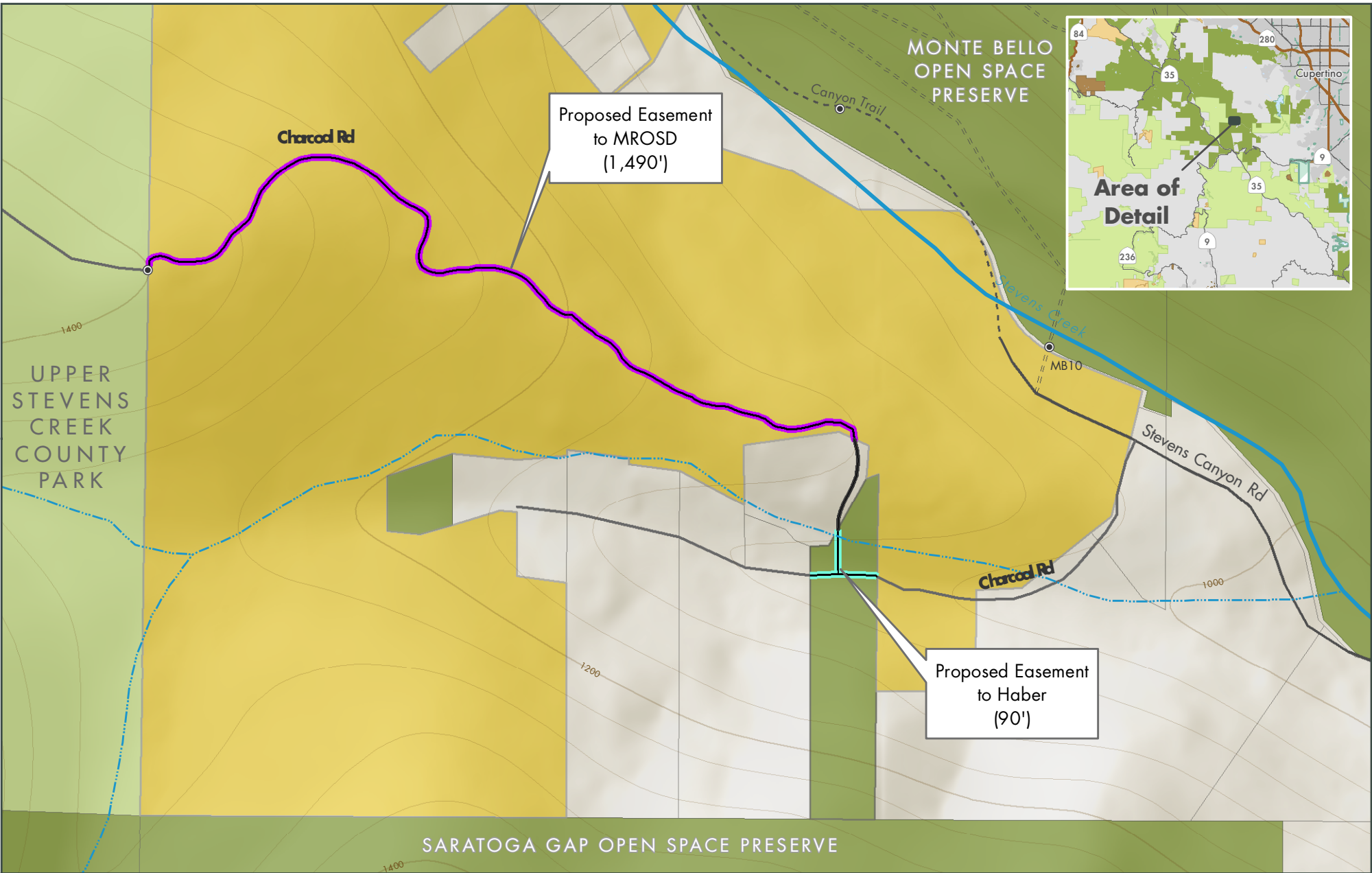
President
Board of Directors

APPROVED AS TO FORM:







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.

District Clerk



Proposed Easement Exchange: Haber - MROSD

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|-----------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
|  MROSD Preserves |  Haber Property |
|  Other Protected Lands |  Proposed Easement Haber to MROSD |
|  Private Property |  Proposed Easement MROSD To Haber |

Midpeninsula Regional
Open Space District
(MROSD)
June 2018

