

**AMENDED AND RESTATED COOPERATIVE AGREEMENT FOR
WILDLIFE CONNECTIVITY IMPROVEMENT PROJECT OPTIONS
AT ALMA BRIDGE ROAD**

**BETWEEN COUNTY OF SANTA CLARA AND
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT**

(Midpen APNs: 558-35-001, 558-36-011, 558-36-012, 558-27-013;

County APNs: 558-36-009, 558-36-010)

**(Santa Clara Valley Water District APNs operated by Santa Clara County Parks: 537-05-003,
558-35-011, 558-27-002, 558-28-002,
558-41-034, 558-42-008)**

Approved: 1/10/2023

THIS AMENDED AND RESTATED AGREEMENT (“Restated Agreement”) is made and entered into as of the date fully executed by and between Midpeninsula Regional Open Space District, a California independent special district organized pursuant to California Public Resources Code section 5500 *et seq.* (“District”) and the County of Santa Clara, a political subdivision of the State of California, (“County”), collectively referred to herein as the “Parties” and individually, a “Party.”

RECITALS

WHEREAS, the County is the owner of the Right-of-Way known as Alma Bridge Road, a County maintained road, and predominant land manager (under a Master Partnership Agreement with Santa Clara Valley Water District (“Valley Water”) for lands adjacent to Lexington Reservoir and surrounding the road;

WHEREAS, the District is the fee owner of that certain real property commonly known as Sierra Azul Open Space Preserve, located along Alma Bridge Road, Santa Clara County, State of California, APNs 558-35-001, 558-36-011, 558-36-012, 558-27-013 (“Preserve”);

WHEREAS, the existing County of Santa Clara Alma Bridge Road Right-of-Way bisects wildlife passage from the Preserve to and from Lexington Reservoir;

WHEREAS, infrastructure and/or other modifications may be needed within and adjacent to the County’s Alma Bridge Right-of-Way to allow wildlife passage across Alma Bridge Road;

WHEREAS, the District wishes, as part of the management of the Preserve, to provide wildlife connectivity for native species which is consistent with District Resource Management Policies;

WHEREAS, the District and County have a mutual goal to provide safe passage for wildlife across Alma Bridge Road to and from the Preserve and surrounding upland areas to Lexington Reservoir, specifically where surveys have indicated impacts to the *Taricha Torosa* (also known as the California Newt) associated with vehicle traffic on Alma Bridge Road;

WHEREAS, in furtherance of this mutual goal, the Parties entered into an agreement effective February 18, 2022, as amended July 19, 2022 (“Original Agreement”), which addressed the first phase (“Phase I,” defined below) of the Project (also defined below);

WHEREAS, the Parties desire to amend and restate the Original Agreement through this Restated Agreement to address the second phase of work on the Project (“Phase II,” defined below),

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including Environmental Technical Studies; Environmental Clearance; Preliminary Engineering; Utilities Coordination; 65% plans, specifications, and estimates (PS&E); Technical Reports; Regulatory Permit Application Preparation; and, Project Management, as more particularly described below;

WHEREAS, the Parties will negotiate in good faith on subsequent amendments of this Restated Agreement as they deem necessary to include future work, including, without limitation, preparation of final design and construction documents for the selected alternative(s), acquisition of permits, construction administration support, and preparation of as-built drawings;

WHEREAS, California Public Resources Code section 5546 authorizes the District to contribute funding toward the Project and California Public Resource Code section 5541 provides that the District may not interfere with the control of County roads except upon terms that are mutually agreed to by the District's Board of Directors and the County's Board of Supervisors; and,

WHEREAS, County and District have determined that any studies or potential work within the Alma Bridge Road Right-of-Way shall be reviewed and approved by the County as the road owner and operator in its sole and absolute discretion.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation. The above Recitals are hereby incorporated herein and made a part hereof.
2. Project Description. For purposes of this Restated Agreement, the Project is the investigation, analysis, and design of viable options to reduce newt mortality across Alma Bridge Road (as depicted on the attached Exhibit A and Exhibit B, attached hereto and incorporated by reference) ("Project").
 - (a) Phase I of the Project, which commenced under the Original Agreement and shall continue under this Restated Agreement, involves the solicitation, selection, and management of a consultant (or consultants) to assist the Parties in completing the following scope of work: preparation of an Alternatives Analysis; Preliminary Designs; Cost Estimates; and, a viable California Environmental Quality Act ("CEQA") compliance strategy to reduce newt mortality across the roadway. The scope of work includes all studies and fieldwork needed within the Alma Bridge Road Right-of-Way. The Parties anticipate completing Phase I by December 31, 2023.
 - (b) Phase II of the Project involves the ongoing use of the Phase I consultant(s) to assist the Parties in completing the following scope of work: Environmental Technical Studies; preparation of and completion of CEQA clearance; Preliminary Engineering; Utilities Coordination; 65% plans, specifications, and estimates (PS&E); Technical Reports; Regulatory Permit Application Preparation; and, Project Management for the foregoing items. The Phase II scope shall address no more than two project alternatives.
 - (c) Subject to review and approval by County of all deliverables contemplated under this Restated Agreement, County will be CEQA lead agency.

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3. Consultant Oversight; Approval of Deliverables. Under the Original Agreement the consultant invoiced District directly. Under this Restated Agreement consultant will continue to invoice District directly for the costs incurred to perform the Phase II work, and District will continue to oversee the consultant's work for Phase II. District will conduct initial reviews of consultant's deliverables; provided, however, County, as owner of the Alma Bridge Road Right-of-Way, shall have authority to review and approve, in its sole and absolute discretion, any final studies, applications, reports and similar deliverables to be provided under this Restated Agreement. County agrees to continue to support the Project with County staff time as necessary to timely complete the Phase II work.
4. Funding and Project Contributions.
 - (a) **District Contributions.** District has provided \$364,733 in funding toward Phase I work. For the Phase II work there is a funding gap of \$764,000. District agrees to pay 50% of the cost of Phase II work in an amount not to exceed \$382,000, unless additional grant funding is obtained by District or County.
 - (b) **County Contributions.** County has provided \$28,228 in funding toward Phase I work. County agrees to pay 50% of the cost of Phase II work in an amount not to exceed \$382,000, unless additional grant funding is obtained by District or County. County funds shall be provided as one or more lump sum payments in FY24-25, but in no event later than December 31, 2024. If District at any time pays more than its 50% share of the Phase II costs, County will reimburse District for that excess amount in the next lump sum payment, up to County's 50% share in an amount not to exceed \$382,000.
 - (c) **Grant Funding Contributions.** District, with support from County, has applied for \$2,120,000 in Wildlife Conservation Board funding to support the Project ("WCB Grant"). If the WCB Grant is received by District, District shall use these grant funds to pay for the Phase II work.
 - (d) **Project Funding Shortfalls.** The current estimated Phase II cost is \$2,884,000. To the extent that existing District, County, and WCB Grant fund contributions are insufficient to complete the Phase II work, the Parties will negotiate in good faith to amend this Restated Agreement to provide such additional funds as are necessary to complete the Phase II work, including, without limitation, applying for and assisting one another with securing additional grant funds and/or increasing District and County contributions. The Parties hereby agree that assistance securing additional grant funds includes taking actions reasonably necessary or expedient to securing such funds.
5. Permits. County shall provide all permits at no cost to complete studies and fieldwork within the Alma Bridge Road Right-of-Way and any adjacent County owned lands. County's Parks and Recreation Department agrees to work with Valley Water for any entry, scientific collection, or encroachment permits for lands owned by Valley Water adjacent to the Alma Bridge Road Right-of-Way that are operated by the County under a master partnership agreement. District shall provide all permits at no cost for work and/or access required on District property adjacent to the Alma Bridge Road Right-of-Way.

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- 6. Term. This Restated Agreement is effective upon the date that all parties hereto have executed the agreement. It shall remain effective until December 31, 2026.
- 7. No Property Interest. District shall not acquire any interest or estate in County’s property under this Restated Agreement.
- 8. Notices. Any notice required to be given hereunder, or which either Party may desire to give to the other, shall be in writing. Notice may be personally delivered, sent via overnight delivery, transmitted via electronic mail if receipt is confirmed, or given by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

To County:

Director
County of Santa Clara
Roads and Airports Department
101 Skyport Drive
San José, CA 95110
Ph. No: (408) 573-2400
Fax No: (408) 441-0276
harry.freitas@rda.sccgov.org

To District:

General Manager
Midpeninsula Regional Open Space District
5050 El Camino Real
Los Altos, CA 94022
Phone: (650) 691-1200
Fax: (650) 691-0485
aruiz@openspace.org

- 9. Counterparts; Electronic Signature/Delivery. This Restated Agreement may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided that all Parties have executed the Restated Agreement. Unless prohibited by law or County policy, the Parties agree that an electronic copy of this Restated Agreement, or an electronically signed agreement, has the same force and legal effect as the agreement executed with an original ink signature. The term “electronic copy of this agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed agreement in a portable document format. The term “electronically signed agreement” means the agreement that is executed by applying an electronic signature using technology approved by County.
- 10. Governing Law and Venue. This Restated Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in Santa Clara County. The Parties agree that subject matter and personal jurisdiction are proper in state court in the Santa Clara County, and waive all venue objections.
- 11. Miscellaneous. This Restated Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party. This Restated Agreement may be modified or amended only by a writing duly executed by both Parties. The invalidity or unenforceability of any provision of this Restated Agreement or the applicability or inapplicability to either Party, as determined by a court of competent jurisdiction, shall in no way affect the validity or enforceability of any of the remaining provisions hereof or their applicability to the other Party.

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12. Indemnification and Hold Harmless.

(a) In lieu of and notwithstanding the pro-rata risk allocation which might otherwise be imposed between District and County pursuant to Government Code section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro-rata, but instead pursuant to Government Code section 895.4, each Party shall fully indemnify, defend, and hold the other Party, its officers, Board members, employees, and agents harmless from any claim, expense, cost, damage, or liability occurring by reason of the negligent acts or omissions, or willful misconduct of the indemnifying party, its officers, board members, employees, or agents, under or in connection with, or arising out of any obligation, right, work, authority, or jurisdiction of such Party under this Restated Agreement.

(b) No Party, nor any officer, Board member, employee, or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent or wrongful acts or omissions or willful misconduct of the other party hereto, their officers, board members, employees, or agents, under or in connection with, or arising out of any obligation, right, work authority, or jurisdiction of such other Party under this Restated Agreement. If liability arises due to the concurrent negligence of both Parties, each Party shall contribute costs of any such suits, defense, damages, costs, and liability in proportion to its fault as determined under the principles of comparative negligence.

13. Signing Authority. By signing below, each signatory warrants and represents that they executed this Restated Agreement in their authorized capacity, that they have the authority to bind the entity or person for whom they sign to contractual obligations and that, by their signature, the entity or person on behalf of which they acted executed this Restated Agreement.

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IN WITNESS WHEREOF, the Parties have entered into this Restated Agreement and it is effective on the date executed by all Parties.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

DocuSigned by:
Ana Ruiz
By: _____ 10/19/2023
Ana Ruiz _____
General Manager Date

DocuSigned by:
Maria Soria
Attest: _____
Maria Soria
District Clerk

APPROVED AS TO FORM:

DocuSigned by:
Hilary W. Stevenson
By: _____ 10/19/2023
Hilary Stevenson _____
General Counsel Date

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COUNTY OF SANTA CLARA

By:  NOV 07 2023
Susan Ellenberg, President
Board of Supervisors

Signed and Certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:

By:  NOV 07 2023
Tiffany Lennear
Clerk of the Board of Supervisors

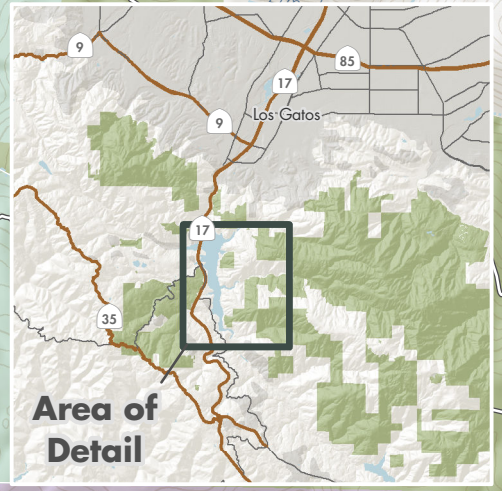
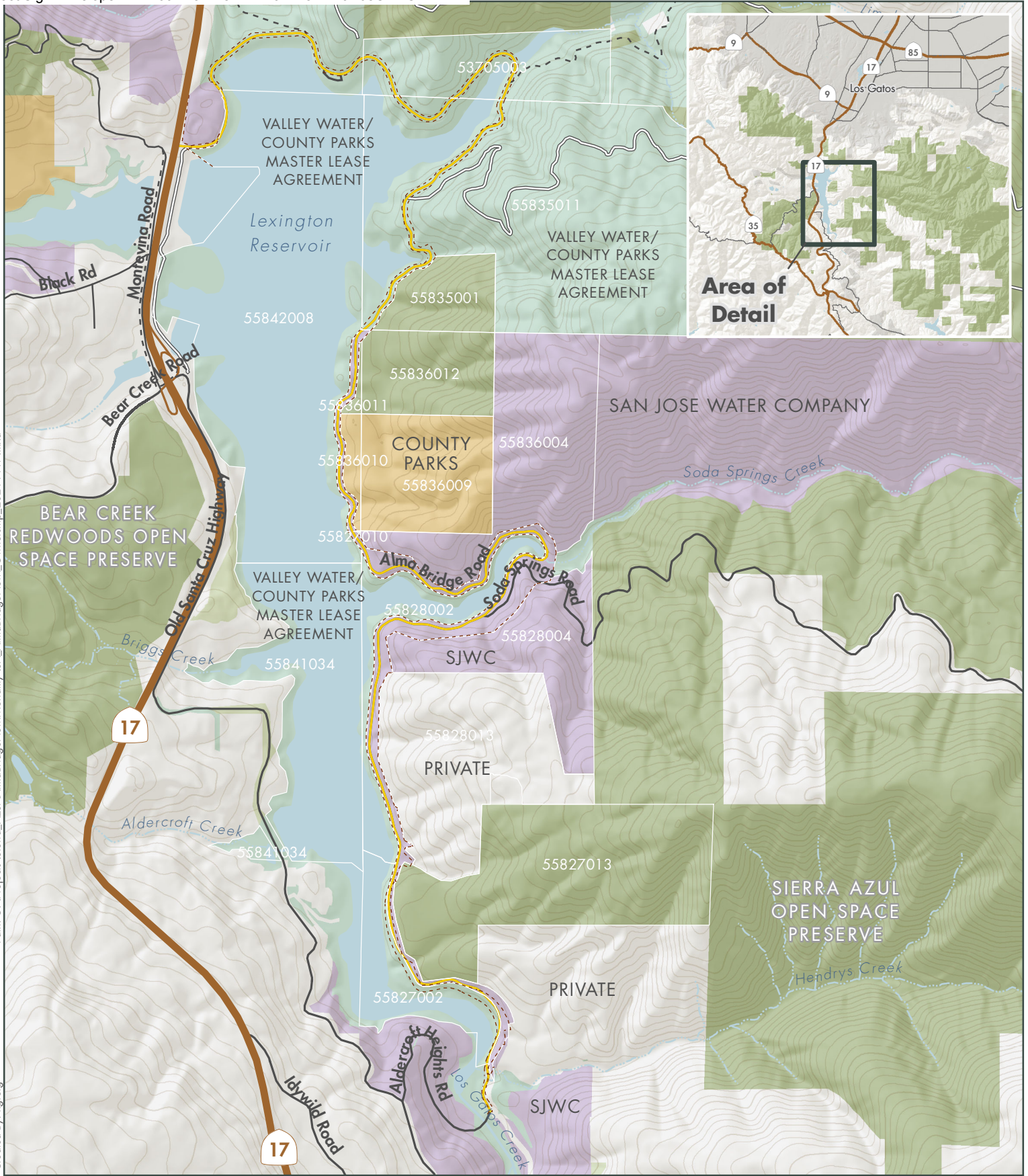
APPROVED AS TO FORM AND LEGALITY:

By:  10/19/2023
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John A. Castro
Deputy County Counsel

Date

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Created By: ngreig



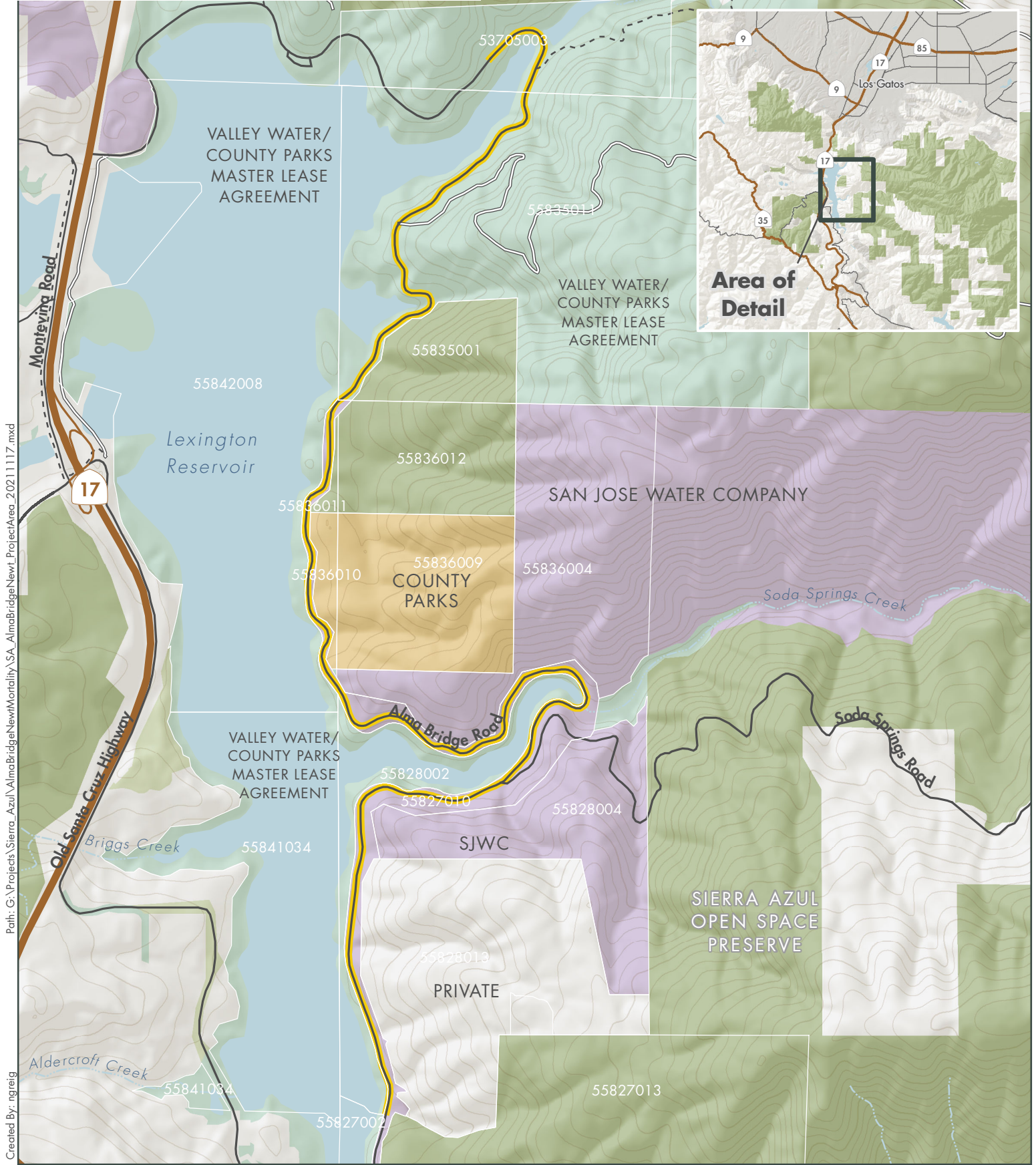
Landownership in Project Area

- Midpen preserve
- Valley Water property
- County Parks property
- SJWC property
- Other protected land
- Other private property
- Alma Bridge Road
- County Boundary Right of Way

Midpeninsula Regional
Open Space District
(Midpen)
11/18/2021



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.



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Created By: ngreig

Alma Bridge Road Newt Mortality Interagency Project Area

- Midpen preserve
- Valley Water property
- County Parks property
- SJWC property
- Other protected land
- Other private property
- Project Area

Midpeninsula Regional
Open Space District
(Midpen)
11/18/2021



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