



Midpeninsula Regional  
Open Space District

R-16-74  
Meeting 16-13  
June 8, 2016

## **AGENDA ITEM 4**

### **AGENDA ITEM**

Proposed Purchase of the Fox Creek Fund, LLC (Barth) property as an addition to Sierra Azul Open Space Preserve located off of Hicks Road in unincorporated Santa Clara County (Assessor's Parcel Number 575-11-020)

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

1. Determine that the recommended actions are categorically exempt from the California Environmental Quality Act (CEQA), as set out in the staff report.
2. Adopt a Resolution authorizing the purchase of the Barth property at a cost of \$295,000.
3. Adopt a Preliminary Use and Management Plan for the property, as set out in the staff report.
4. Indicate the intention to withhold dedication of the Barth property as public open space.

### **SUMMARY**

The Midpeninsula Regional Open Space District (District) is proposing to purchase the 4.13-acre Barth property (Property) at a purchase price of \$295,000 as an addition to Sierra Azul Open Space Preserve (Preserve). The following report presents a description of the Property, a Preliminary Use and Management Plan, the District's environmental review, the purchase terms and conditions, and financial considerations. The proposed purchase is identified as part of Measure AA Project # 24. The Fiscal Year (FY) 2015-16 Budget contains sufficient funds to cover the cost of this purchase.

### **MEASURE AA**

The proposed property purchase supports the goals of Measure AA Portfolio #24, Sierra Azul: Rancho de Guadalupe Family Recreation, as it serves to acquire lands in order to protect natural resources.

### **DISCUSSION**

The Property is bounded on one side by the 18,934-acre Sierra Azul Open Space Preserve and drains into the Guadalupe Creek watershed. The property is visible from within the Preserve and from Almaden Quicksilver County Park. The reasons for this purchase includes advancement of Measure AA Portfolio #24 to protect natural resources, including view shed protection, habitat protection, and protection of the Guadalupe Creek Watershed, as well as control of an important access point to adjacent District lands.

**Property Description and Regional Context (see attached map)**

The irregularly shaped 4.13-acre Property consists of one legal parcel, situated in unincorporated Santa Clara County. Access to the property is via a dirt road from Hicks Road. The property is situated across from Guadalupe Reservoir. Rising to approximately 840 feet in elevation, the property has an excellent view of the higher elevations within the Preserve, Guadalupe Reservoir, and Almaden Quicksilver County Park. The property is situated in the Guadalupe Creek Watershed and includes a small tributary that flows into Guadalupe Reservoir.

More than 50% of the parcel is dominated by the Blue Oak/California Grasslands association. This native vegetation type is biologically highly significant due to its fire adaptations, and is locally unique in the Santa Cruz Mountains. The remainder of the parcel is a mix of oak woodland and other plants associated with mixed chaparral. The property provides varied habitat for animal species associated with the lower elevations of the Sierra Azul Open Space Preserve, including larger mammals such as deer, coyotes, bobcats, and mountain lions. A wide variety of bird species occupy and migrate through the general area.

**Land Use and Improvements**

The property is vacant, with a graded dirt road that provides direct access from Hicks Road to the interior of the property. The main access road is contained within an easement that also serves a separate, small, undeveloped parcel to the south and continues onto the former Guadalupe Land Company property addition to the Preserve (see reports R-04-134 and R-12-92). While the parcel is fenced, it is not currently gated, and there is evidence of trespassing on the property by 4-wheel drive vehicles. Control of the access road at Hicks Road will improve the District's ability to manage unauthorized uses on the Preserve. There are currently no utilities on the property, but power is available along Hicks Road at the property line. The District commissioned a Phase 1 environmental report for the property, which did not identify any issues.

**USE AND MANAGEMENT****Planning Considerations**

The Property is comprised of one legal parcel, located in unincorporated Santa Clara County and outside the urban service area or sphere of influence of any incorporated municipality. The 4.13-acre parcel has a General Plan designation of Hillside with a zoning designation of Hillside-Scenic Road Combined District (HS-SR) over the property. Per the Santa Clara County General Plan and zoning regulations, recreation, open space, and natural preserves are allowable uses in HS-SR Districts. A finding of compliance with the General Plan for all open space acquisitions by the District in Santa Clara County was made by the Santa Clara County Planning Department in 1999.

If purchased, the Property would be incorporated into the Sierra Azul Open Space Preserve. Subsequent planning for the property 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 purchase and the completion of a subsequent long-term plan. The PUMP would take effect at the close of escrow and remain effective until the PUMP is amended or a Comprehensive Use and Management Plan or Preserve Plan is approved for Sierra

Azul Open Space Preserve. The PUMP includes minor restoration and maintenance of the Property in its natural condition, as described more fully below. 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 Property as closed to public use at this time.                                                                                                                                                                                             |
| Signs and Site Security:          | Install preserve boundary and closed area signs.                                                                                                                                                                                                         |
| Fences and Gates:                 | Install gates and fencing on the access road to prevent unauthorized entry and use, and work with the private property owner to the south to provide access to his small parcel.                                                                         |
| Roads and Trails:                 | Maintain the access route on the site in a serviceable condition. Implement maintenance and minor erosion and sediment control measures in accordance with District standards. Access road used for District patrol, maintenance and emergency purposes. |
| Water Rights and Water Resources: | A small tributary bisects the property and flows into Guadalupe Reservoir. There are no wells or springs on the property.                                                                                                                                |
| Patrol:                           | Routinely patrol property using existing access road.                                                                                                                                                                                                    |
| Resource Management:              | Conduct invasive plant and animal management activities consistent with the District's Resource Management Policies.                                                                                                                                     |
| Wildfire Fuel Management:         | Implement standard District-wide fuel management and defensible space practices consistent with the District's Resource Management Policies.                                                                                                             |
| Name:                             | Name the property as an addition to Sierra Azul Open Space Preserve.                                                                                                                                                                                     |
| Dedication:                       | Indicate the District's intention to withhold dedication of the subject property as open space at this time.                                                                                                                                             |

## CEQA COMPLIANCE

### Project Description

The project consists of the purchase of the 4.13-acre Barth Property as an addition to the District's Sierra Azul Open Space Preserve and concurrent adoption of a Preliminary Use and Management Plan (PUMP), including minor erosion control and sediment control measures that may be conducted along existing driveways and roads to prevent erosion and water quality degradation. Minor resource management activities may be conducted to control invasive plants. The land would be permanently preserved as open space and maintained in a natural condition.

### CEQA Determination

The District concludes that this project will not have a significant effect on the environment. It is categorically exempt from the California Environmental Quality Act (CEQA) under Article 19, Sections 15301, 15316, 15317, 15325 and 15061 of the CEQA Guidelines as follows:

Section 15301 exempts the repair, maintenance, or minor alteration of existing public or private structures, facilities, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The PUMP specifies no alteration or expansion of use at this time beyond activities associated with the maintenance of the existing access road, replacement of the entrance gate, and minor activities to implement maintenance and minor erosion and sediment control measures in accordance with District standards.

Section 15316 exempts the acquisition of land in order to create parks if the land is in a natural condition and the management plan proposes to keep the area in a natural condition. The PUMP specifies that the land will not be developed, will remain in a natural condition, and will be designated as an addition to the District's Sierra Azul Open Space Preserve.

Section 15317 exempts the acceptance of fee interests in order to maintain the open space character of an area. The District will acquire fee interest in the property in order to maintain the open space character of the site.

Section 15325 exempts transfers of ownership of interests in land in order to preserve open space. This acquisition will transfer fee ownership of the property to the District and ensure that the open space will be preserved. The PUMP ensures that the property is preserved as open space by incorporating it into the Sierra Azul Open Space Preserve.

Section 15061(b)(3) exempts actions recommended in the PUMP as it has been determined that there is no possibility the recommended actions will have a significant effect on the environment.

### TERMS AND CONDITIONS

The 4.13-acre Barth Property is proposed for purchase at a bargain sale price of \$295,000 as the fair market value for the property is estimated at over \$500,000. The property would be purchased as-is on an all-cash basis. Escrow would close on this transaction by June 24, 2016.

### FISCAL IMPACT

#### FY2015–2016 Budget for New Land Purchases:

|                                               |                    |
|-----------------------------------------------|--------------------|
| New Land Purchases Budget (Adjusted Mid-Year) | \$17,800,000       |
| Land approved for purchase this year          | (\$13,302,225)     |
| <b>Barth Property</b>                         | <b>(\$295,000)</b> |
| New Land Purchase Budget Remaining            | \$4,202,775        |

The Chief Financial Officer was consulted on this proposed purchase and has indicated that, considering cash flow and account balances, funds are available for this property purchase.

**BOARD COMMITTEE REVIEW**

The District's Real Property Committee held a meeting at the District Administrative Office on May 3, 2016 to discuss the proposed property purchase. Notice of the meeting was distributed to property owners of land located adjacent to and surrounding the property. No neighbors or members of the public attended the meeting. Three members of the Real Property Committee were in attendance. Staff provided a presentation of the property, described how it would be managed as an extension of the adjacent Preserve, and reviewed the proposed PUMP and the purchase terms. The Real Property Committee approved recommending this purchase to the full Board of Directors by a 3-0 vote.

**PUBLIC NOTICE**

Property owners of land located adjacent to or surrounding the subject property have been mailed a copy of the agenda for this meeting. Accordingly, all notice required by the Brown Act has been provided.

**NEXT STEPS**

Upon approval by the Board of Directors, staff would proceed with the close of escrow for the purchase of the property by June 24, 2016, and take the next steps identified in the PUMP as contained in this report. The District's South Area Outpost Field Office would manage the property as an addition to Sierra Azul Open Space Preserve.

**Attachments:**

1. Resolution Authorizing Acceptance of Purchase and Sale Agreement, Authorizing General Manager or Other Officer to Execute Certificate of Acceptance of Grant to District, and Authorizing General Manager to Execute any and all Other Documents Necessary or Appropriate to Closing of the Transaction (Sierra Azul Open Space Preserve - Lands of Barth)
2. Location Map

Responsible Department Manager:  
Michael Williams, Real Property Manager

Prepared by:  
Allen Ishibashi, Senior Real Property Agent

**RESOLUTION 16-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF PURCHASE AND SALE AGREEMENT, AUTHORIZING GENERAL MANAGER OR OTHER OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT TO DISTRICT, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (SIERRA AZUL OPEN SPACE PRESERVE - LANDS OF BARTH)**

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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 Purchase and Sale Agreement between Fox Creek Fund, LLC (Barth), and the Midpeninsula Regional Open Space District, a copy of which purchase 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 Barth Property”).

**SECTION TWO.** The Board of Directors of Midpeninsula Regional Open Space District authorizes the expenditure of \$295,000.00 covering the purchase price funds for the Barth Property including an option deposit of \$10,000.

**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 Grant 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 and to extend escrow if necessary.

**SECTION FIVE.** The General Manager or the General Manager’s designee is authorized to expend up to \$10,000.00 to cover the cost of title insurance, escrow fees, and other miscellaneous costs related to this transaction.

**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 \_\_\_\_\_, 2016, at a regular meeting thereof, by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**ATTEST:**

**APPROVED:**

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Secretary  
Board of Directors

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President  
Board of Directors

**APPROVED AS TO FORM:**

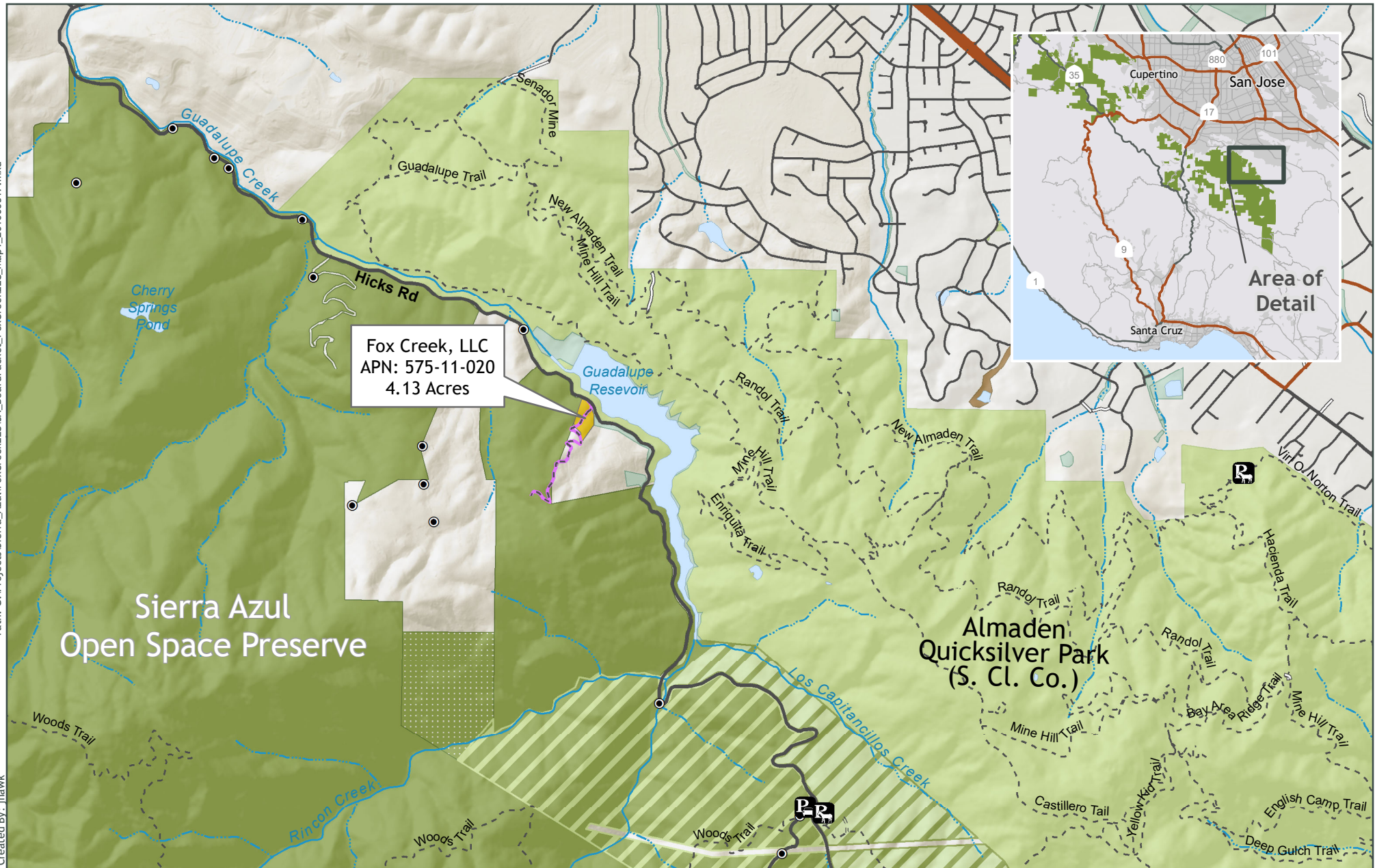
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General Counsel










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.

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District Clerk



## Fox Creek, LLC Property and Surrounding Area

- |                                                                                     |                                          |                                                                                     |                                                 |                                                                                     |                         |
|-------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------|
|  | MROSD Preserves                          |  | MROSD Conservation or Agriculture Easement      |  | Private Property        |
|  | Other Protected Open Space or Park Lands |  | Non MROSD Conservation or Agricultural Easement |  | Fox Creek, LLC Property |
|  | Watershed Land                           |  | Partial MROSD Ownership                         |  | Private Road            |

Midpeninsula Regional  
Open Space District  
(MROSD)



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May 2016

