



Midpeninsula Regional  
Open Space District

R-19-110  
Meeting 19-22  
August 28, 2019

## AGENDA ITEM 4

### AGENDA ITEM

Proposed Agreement to exchange interests in real property between Frederick Holley and Maud Gleason (Holley-Gleason) and Midpeninsula Regional Open Space District (District). District to receive a public trail easement along a portion of Kennedy Trail in Sierra Azul Open Space Preserve (portion of Santa Clara APN 537-15-028) in exchange for a solar panel easement conveyed to Holley-Gleason at Sierra Azul Open Space Preserve (portion of Santa Clara APN 537-15-027). Pursuant to Public Resources Code section 5540.5, a unanimous vote of all seven Board members is required.

### 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 report.
2. By a unanimous vote of the Board of Directors, adopt a resolution authorizing the agreement to exchange interest in real property between the District and Holley-Gleason.
3. Amend the Use and Management Plan to include the exchanged interest in real property.
4. Withhold dedication of the Exchange Property as public open space at this time.

### SUMMARY

The General Manager recommends entering into an Exchange Agreement with Holley-Gleason for an exchange of easement rights that provides net benefits to both parties. The exchange will perfect public access on Kennedy Trail in Sierra Azul Open Space Preserve (Preserve) as the trail currently crosses the Holley-Gleason property without a formal easement. Concurrently, Holley-Gleason will secure property rights necessary to install a solar panel array on the Preserve (Attachment 2). This exchange of easement rights will be at no cost to the District. The following report presents a description of the proposed exchange in real property interests, an amendment to the Use and Management Plan, the environmental review findings, and terms.

### DISCUSSION

#### *Background*

Holley-Gleason own two contiguous properties that are both adjacent to the Preserve and both improved with residences. Holley-Gleason purchased the first property located at 15298

Kennedy Road, Los Gatos in the spring of 1988 (15298 Kennedy Road) and the second property located at 15300 Kennedy Road, Los Gatos in the winter of 1996 (15300 Kennedy Road).

In 2005, a nearby property owner installed a chain link fence across the portion of Kennedy Trail that crosses their property. This fence caused access issues for Preserve users, District staff, and emergency agencies. Although the trail has been somewhat re-routed, this fence is still an issue today. This easement exchange would prevent a similar situation from occurring in the future along the Kennedy Trail. California Public Resources Code section 5540.5 (“Section 5540.5”) empowers the Board, by unanimous vote of all seven members, to approve an exchange of dedicated open space property when the Board determines the exchange to be of equal or greater value and necessary for park or open-space purposes. Such exchanges are limited to 40 acres per calendar year. This transaction is such an exchange, as the value of securing and protecting the current public access over Kennedy Trail is significant. The easement to be conveyed to the District by Holley-Gleason will be used for park purposes.

The District purchased the 21.3-acre property that is now adjacent to Holley-Gleason in 1982 (R-82-19) to provide public access to other District property via the existing unpaved road (now Kennedy Trail). The District dedicated this property as public open space in January 1986 (R-86-10). Upon dedication as public open space, the property effectively becomes permanently protected, and the District restricts its ability to sell or otherwise convey the dedicated properties. Public access via this portion of Kennedy Trail has been open to the public since 1982. Recent research has determined that a 250 (+/-) linear foot section of the existing Kennedy Trail crosses over a portion of the 15300 Kennedy Road property. There is no recorded public trail easement for this short portion of Kennedy Trail that crosses this property.

In early 2019, Holley-Gleason were examining the viability of installing solar power for their residences and it was determined that their properties were too shaded for solar power to be viable. However, there is an open area of the Preserve that is adjacent to 15298 Kennedy Road that would be ideal for a solar panel array. This area of the Preserve is not visible from Kennedy Trail.

In April 2019, Holley-Gleason contacted the District and proposed an easement exchange as they were aware that Kennedy Trail crossed their 15300 Kennedy Road property without an easement and they were interested in finding a way to make solar power viable for their properties. The proposed solar easement would be appurtenant to the 15298 Kennedy Road property and it is being designed and sized to offset all of the power for both the 15298 Kennedy Road and 15300 Kennedy Road properties. The proposed size of the solar panel array is approximately 40 kilowatts or around 100 panels.

### *Descriptions of Exchange Properties*

Holley-Gleason to District: Under the Agreement, Holley-Gleason would convey a public trail easement to the District over the portion of the 15300 Kennedy Road property that the existing Kennedy Trail crosses (approximately 250 linear feet and 6,788 square feet).

District to Holley-Gleason: Under the Agreement, the District would convey solar panel easement to Holley-Gleason that would be large enough to offset the full power needs for their two properties. The solar easement contains approximately 7,303 square feet of area and is not

visible from the Kennedy Trail. Per the easement, Holley-Gleason are required to secure permits from the Town of Los Gatos and are limited to an eight foot height limit for all improvements.

## USE AND MANAGEMENT

***Amended Use and Management Plan*** In January 1986, the Board of Directors (Board) dedicated the underlying property (R-86-10) and subsequently adopted a Revised Use and Management Plan for the Kennedy-Limekiln Area of the Sierra Azul Open Space Preserve on April 5, 1990. Exchange of easements with Holley-Gleason represents a further addition. Amendment of the Use and Management Plan to incorporate the easement exchange with Holley-Gleason would take effect at the close of the transaction and remain effective until further amended. The amendment to the Use and Management Plan includes the following elements:

Name:	Designate the trail easement acquired as an addition to Sierra Azul Open Space Preserve.
Public Access:	Public uses allowed on Kennedy-Limekiln trail within the trail easement will continue. No public access is allowed in the easement area granted to Holley-Gleason.
Signs and Site Security:	Install trail signs and District boundary signs as needed.
Easement Monitoring:	Conduct regular inspections of the easement area to ensure compliance with the terms of the exchange.
Dedication:	Withhold Board dedication of the public trail easement at this time.

## CEQA COMPLIANCE

### **Project Description**

The project consists of an Agreement to exchange interests in real property between Holley-Gleason and District as permitted under Section 5540.5. Per the terms and conditions of the Agreement, the District will convey a permanent solar easement totaling approximately 7,303 square feet at Sierra Azul Open Space Preserve to Holley-Gleason. In exchange, Holley-Gleason will convey to the District trail access rights over Kennedy Trail totaling approximately 6,788 square feet over a portion of property at 15300 Kennedy Road, Los Gatos. The easement to be conveyed to the District is of equal or greater value and will be used for park purposes.

### **CEQA Determination**

The District concludes that the project will not have a significant impact on the environment. The project is categorically exempt from the California Environmental Quality Act (CEQA) under Article 19, Section 15325 (f): acquisition, sale, or other transfer to preserve open space or lands for park purposes. The easement exchange is a transfer that serves park purposes and preserves existing trail use and is not anticipated to result in an impact on the environment.

**TERMS AND CONDITIONS**

As part of the proposed Agreement, the District and Holley-Gleason agree to convey the easements to each other at no cost to either party. The easement exchange is of equal or greater value to the District and the public it serves as it perfects and secures the current public trail access over Kennedy Trail in the Preserve. Therefore, the exchange is determined to be in accordance with the District’s enabling legislation set out in Section 5540.5, pending unanimous vote by the Board.

**FISCAL IMPACT**

This reciprocal no-cost exchange of easements has no immediate fiscal impact.

**BOARD COMMITTEE REVIEW**

This item was not previously reviewed by a Board Committee.

**PUBLIC NOTICE**

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

**NEXT STEPS**

Upon approval by the Board of Directors, the General Manager will direct staff to execute the terms of Agreement and take the next steps identified in the Use and Management Plan. The District’s Foothills Field Office will continue to patrol and manage the Kennedy Trail.

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 Solar Easement, Authorizing General Manager or General Manager’s designee to Execute any and all Other Documents Necessary or Appropriate to Closing of the Transaction (Sierra Azul Open Space Preserve)
2. Overall Project Location Map

Responsible Department Manager:  
Michael Williams, Real Property Manager

Prepared by:  
Allen Ishibashi, Sr. Real Property Agent

Graphics prepared by:  
Nathan Greig, Data Analyst I

**RESOLUTION NO. 19-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF EASEMENT EXCHANGE AGREEMENT, AUTHORIZING GENERAL MANAGER OR OTHER OFFICER TO EXECUTE EASEMENT DEEDS, AUTHORIZING GENERAL MANAGER OR OTHER OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE OF GRANT TO DISTRICT, AND AUTHORIZING GENERAL MANAGER AND GENERAL COUNSEL TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (SIERRA AZUL OPEN SPACE PRESERVE).**

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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 the Midpeninsula Regional Open Space District (District) does hereby accept the offer contained in that certain Easement Exchange Agreement (Agreement) between Frederick O. Holley and Maud W. Gleason (Holley-Gleason) and the District, a copy of which 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 and exchange the real property described therein.

**SECTION TWO.** The General Manager, President of the Board of Directors, or other appropriate officer is authorized to execute the easement deeds to the District and Holley-Gleason.

**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 to the District.

**SECTION FOUR.** The General Manager or the General Manager’s designee is authorized to provide notice of acceptance to Holley-Gleason, 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 California Public Resources Code, the granting and acceptance of the easement 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 Holley-Gleason, 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 \_\_\_\_\_, 2019, 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

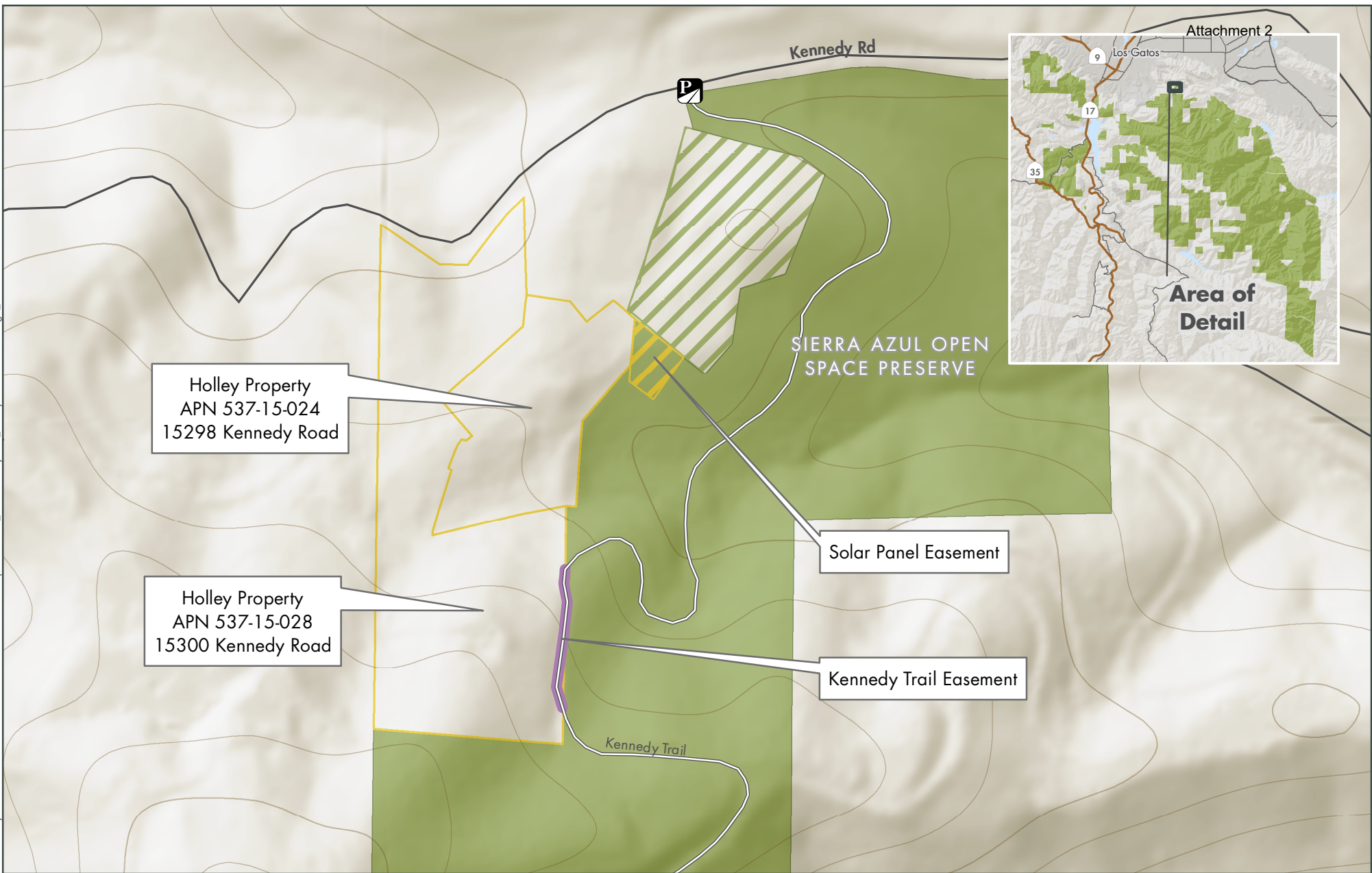
I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

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District Clerk

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### Holley Easement Exchange

-  Sierra Azul Open Space Preserve
-  Solar Panel Easement
-  Midpen Easement
-  Kennedy Trail Easement
-  Private Property

Midpeninsula Regional  
Open Space District  
(Midpen)  
7/10/2019



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.