



Midpeninsula Regional
Open Space District

R-22-128
Meeting 22-26
November 9, 2022

AGENDA ITEM 6

AGENDA ITEM

Proposed Purchase of a 102.3-acre San Jose Water Company Property, located in unincorporated Santa Clara County (Assessor's Parcel Numbers 562-08-001 and 562-04-011), as an addition to Sierra Azul Open Space Preserve

GENERAL MANAGER'S RECOMMENDATIONS *deur*

1. Determine that the recommended actions are categorically exempt under the California Environmental Quality Act (CEQA), as set out in the staff report.
2. Adopt a Resolution authorizing the purchase of the San Jose Water Company Property for \$720,000 with a corresponding authorization for a Fiscal Year 2022-23 budget adjustment of the same amount.
3. Adopt a Preliminary Use and Management Plan for the Property, as set out in the staff report.
4. Withhold dedication of the San Jose Water Company Property as public open space at this time.

SUMMARY

The General Manager recommends purchasing the 102.3-acre San Jose Water Company Property (Property) at a purchase price of \$720,000 (\$7,038 per acre) as an addition to Sierra Azul Open Space Preserve (Preserve). The following report provides a description of the Property, a Preliminary Use and Management Plan, findings of the environmental review, the purchase terms and conditions, and financial considerations. A budget adjustment of \$720,000 to the Fiscal Year 2022-23 (FY23) budget would be required to proceed with the acquisition.

DISCUSSION

The Midpeninsula Regional Open Space District (District) proposes to purchase the 102.3-acre Property consisting of two legal parcels that are zoned Hillside (HS) as an addition to the adjacent 19,336-acre Sierra Azul Open Space Preserve near Mt. Umunhum and Mt. Thayer. Purchase of the Property would fill an inholding, allow for the permanent protection of forested lands and wildlife habitat within the Upper Los Gatos Creek watershed, and further the connection of protected open space and wildlife corridors. This purchase advances Measure AA Portfolio #22, *Sierra Azul: Cathedral Oaks Public Access and Conservation Projects*, as it secures additional property that would provide future opportunities for public access to the Cathedral Oaks portion of Sierra Azul. This purchase was anticipated when the California

legislature adopted Senate Bill 492 (Beall) on September 28, 2017, which amended the District's enabling legislation to facilitate property transaction(s) with San Jose Water Company.

Property Description and Regional Context (see Attachment 2 – Location Map)

The rectangular-shaped Property is located west of Mt. Umunhum (0.5 miles) and southeast of Mt. Thayer (0.7 miles) on the western side of the ridgeline and is adjacent to the Cathedral Oaks Area of Sierra Azul. The lowest elevation is on the south side of the Property at approximately 2,400 feet in elevation, with the high point on the northern side of the Property at approximately 3,200 feet in elevation. A dirt road from the former Almaden Air Force Base crosses over the property from Mt. Umunhum Road. The Property has excellent views of Sierra Azul Open Space Preserve, the Upper Los Gatos Creek watershed, and the Pacific Ocean. The Property drains into the Upper Los Gatos Creek watershed.

Senate Bill 492

On September 28, 2017, Senate Bill 492 (SB 492), "Midpeninsula Regional Open Space District: Purchase of Property: San Jose Water Company," authored by Senator Jim Beall, was signed into law. SB 492 made temporary modifications to the California Public Resources Code to facilitate District purchase(s) of California Public Utilities Commission (CPUC)-regulated utility lands owned by San Jose Water Company. Under SB 492, District purchases of San Jose Water Company lands prior to January 1, 2023, are permitted without approval from the CPUC, and San Jose Water Company is required to invest all net proceeds from the transaction(s) into water system infrastructure that serves the public.

Land Use and Improvements

The Property is unimproved except for a dirt access road. The property has been utilized by San Jose Water Company as watershed lands.

Habitat and Natural Resources Value

The Property contains a mixture of chaparral, pine woodland, mature oak, and mixed evergreen forest plant communities, as well as native vegetation types such as the fire-dependent mixed manzanita and canyon live oak. Also present are stands of Douglas fir and foothill pine woodland. The properties are generally southerly facing in aspect. A small area of the northwestern corner of the Property is within the Wildfire Influence Zone, which is the zone of susceptible vegetation within 1.5 miles of Wildland Urban Interface or Wildland Urban Intermix zones. The property is within the Very High Fire Hazard Severity Zone.

The Property also provides habitat for several large animal species, including deer, coyotes, foxes, bobcats, and mountain lions. A wide variety of small mammals, including woodrats, birds, and other species occupy or migrate through the general area. The endemic Santa Cruz kangaroo rat, a Critically Imperiled subspecies that is currently waitlisted to be included as a California species of special concern, has been documented in nearby habitat. In addition, the Property is part of a landscape level terrestrial linkage between the Santa Cruz Mountains and the Diablo and Gabilan ranges. These linkages are critical for maintaining genetic diversity, facilitating migration and dispersion, and supporting large wildlife home ranges.

Water Resources and Rights

The Property falls within the Guadalupe Creek parent watershed. There are two intermittent streams that run through the southern portion of the Property. These streams are the headwaters

of Austrian Gulch, which empties into Lake Elsmar about 1.4 miles downstream. Austrian Gulch is part of the larger Upper Los Gatos Creek Watershed.

USE AND MANAGEMENT

Planning Considerations

The Property is located in unincorporated Santa Clara County and outside the urban service area or sphere of influence of any incorporated municipality. The Property consists of two legal parcels and has a County General Plan designation and a zoning designation of Hillside (HS). In 1999, the Santa Clara County Planning Department found that all open space acquisitions by the District in unincorporated areas that are classified as a Resource Conservation Area in the County's General Plan comply with the General Plan. Per the County's Zoning Ordinance Section 1.20.070, low-intensity recreation and open space preserves are allowable uses in an HS zoning designation and shall be exempt from the Zoning Ordinance.

If purchased, the Property will be incorporated into 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 preservation of the Property in its natural condition, as described more fully below. If changes to land use or the physical environment were proposed in the future, the plan would be subject to further environmental review and public input.

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.
Public Access:	Designate the Property as closed to public use at this time.
Signs and Site Security:	Install preserve boundary signs as needed.
Fences and Gates:	Install and maintain fences and gates as needed.
Roads and Trails:	Continue to maintain existing dirt roads in a serviceable condition in accordance with the District's adopted Resource Management Policies standards and Open Space Maintenance and Restoration Program.
Patrol:	Routinely patrol the Property.

Resource Management:	Conduct plant and animal management activities consistent with the District's adopted Open Space Maintenance and Restoration Program, Resource Management Policies, Integrated Pest Management Program Guidance Manual, Wildland Fire Resiliency Program, Best Management Practices, and regulatory permits as needed.
Water Resources and Water Rights:	Protect the creeks on the Property consistent with the District's adopted Resource Management Policies, Integrated Pest Management Program Guidance Manual, Best Management Practices and regulatory permits issued to the District as needed.
Wildfire Fuel Management:	Implement standard District-wide fuel management and defensible space practices consistent with the District's adopted Wildland Fire Resiliency Program.

CEQA COMPLIANCE

Project Description

The project consists of the purchase of the 102.3-acre Property as an addition to the District's Sierra Azul Open Space Preserve. The project includes the adoption of a PUMP that establishes a status quo land management approach, with no expansion or changes to the Property's existing use as open space, and maintains it in a natural condition. As directed in the proposed PUMP, maintenance and minor resource management activities will be conducted in accordance with adopted District policies and programs and their associated CEQA documents.

CEQA Determination

The District concludes that this project will not have a significant effect on the environment. It is categorically exempt under the California Environmental Quality Act (CEQA) under Article 19, Sections 15301, 15316, and 15325 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 will maintain the Property as status quo with no expansion to its existing use as open space. The PUMP includes maintenance of the existing dirt access road as necessary, as well as maintenance of or minor alterations to the property for wildland fuel management and other natural resource management activities in accordance with the District's adopted policies and programs and their associated CEQA documents.

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 remain in a natural condition and will be designated as an addition to the District's Sierra Azul Open Space Preserve.

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 to be preserved as open space and incorporate it into the Sierra Azul Open Space Preserve.

TERMS AND CONDITIONS

The Property is proposed for purchase at a sale price of \$720,000 (\$7,038 per acre). The Property would be purchased as-is on an all-cash basis. Escrow would close on or before December 31, 2022.

FISCAL IMPACT

Land acquisitions brought before the Board of Directors (Board) for approval include a budget adjustment/increase to the adopted budget. If approved, an increase of \$720,000 to the FY23 budget is required.

San Jose Water Company Property Purchase Amount (including \$25,000 option deposit)	\$720,000
Total Land Purchases approved to date for FY23	\$0
Total FY23 Land Purchases (if approved)	\$720,000

The following table outlines the Measure AA Portfolio 22 Sierra Azul - Cathedral Oaks Public Access and Conservation Projects allocation, costs-to-date, projected future project expenditures and projected portfolio balance remaining.

MAA22 Sierra Azul - Cathedral Oaks Public Access and Conservation Projects Portfolio Allocation:	\$6,714,000
Grant Income (through FY26):	\$486,133
Total Portfolio Allocation:	\$7,200,133
Life-to-Date Spent (as of 10/06/22):	(\$1,276,232)
Encumbrances:	\$0
San Jose Water Company Lands Property Purchase (includes \$25,000 option deposit):	(\$720,000)
MAA22-006 title insurance, escrow fees, and miscellaneous costs related to this transaction:	(\$10,000)
Remaining FY23 Project Budgets:	\$640
Future MAA22 project costs (projected through FY26):	(\$567,496)
Total Portfolio Expenditures:	(\$2,573,088)
Portfolio Balance Remaining (Proposed):	\$4,627,045

The following table outlines the Measure AA Portfolio 22 allocation, projected life of project expenditures and projected portfolio balance remaining.

MAA22 Sierra Azul—Cathedral Oaks Public Access and Conservation Projects Portfolio Allocation:	\$6,714,000
Grant Income (through FY26):	\$486,133
Total Portfolio Allocation:	\$7,200,133
Projected Project Expenditures (life of project):	
22-001 Hendrys Creek Property Land Restoration	(\$528,025)
22-003 Freudenburg Land Purchase	(\$540,587)
22-004 Beatty Parking Area and Trail Connections	(\$173,807)
22-005 Beatty House Site Security Improvements	(\$100,669)
22-006 San Jose Water Company Property Purchase	(\$730,000)
22-XXX Reserved for Land Acquisition	(\$500,000)

Total Portfolio Expenditures:	(\$2,573,088)
Portfolio Balance Remaining (Proposed):	\$4,627,045

BOARD COMMITTEE REVIEW

Due to the purchase timeline, this property was not presented to the Real Property Committee.

PUBLIC NOTICE

Property owners and occupants of land located adjacent to or surrounding the subject Property as well as the Sierra Azul interested parties list have been mailed or emailed 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, staff would proceed with the close of escrow for the purchase of the Property by December 31, 2022, and take the next steps identified in the PUMP as contained in this report. The District's South Area Field Office would manage the property as an addition to the Sierra Azul Open Space Preserve.

Attachments:

1. Resolution Authorizing Acceptance of Purchase and Sale Agreement, Amending the Fiscal Year 2022-23 General Fund Capital Budget, Authorizing the General Manager or Other Appropriate Officer to Execute Certificate of Acceptance of Grant to District, and Authorizing the General Manager to Execute any and all Other Documents Necessary or Appropriate to Closing of the Transaction (Sierra Azul Open Space Preserve - Lands of San Jose Water Company)
2. San Jose Water Company Property Location Map

Responsible Department Manager:
Michael Williams, Real Property Manager

Prepared by:
Allen Ishibashi, Sr. Real Property Agent, Real Property Department

Graphics prepared by:
Anna Costanza, GIS Technician

RESOLUTION 22-__

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF THE PURCHASE AND SALE AGREEMENT, AMENDING THE FISCAL YEAR 2022-23 GENERAL FUND CAPITAL BUDGET, AUTHORIZING THE GENERAL MANAGER OR OTHER APPROPRIATE OFFICER TO EXECUTE A CERTIFICATE OF ACCEPTANCE AND GRANT TO DISTRICT, AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF THE TRANSACTION (SIERRA AZUL OPEN SPACE PRESERVE - LANDS OF SAN JOSE WATER COMPANY)

The Board of Directors of the Midpeninsula Regional Open Space District does hereby resolve as follows:

SECTION ONE. The Board of Directors (Board) of the Midpeninsula Regional Open Space District (District) does hereby accept the offer contained in that certain Purchase and Sale Agreement between San Jose Water Company and the District, a copy of which purchase agreement is attached hereto and by reference made a part hereof, and authorizes the President of the Board, 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 San Jose Water Company Property”).

SECTION TWO. The Board authorizes the expenditure of \$720,000.00 covering the purchase of the San Jose Water Company Property, including an option deposit of \$25,000.00.

SECTION THREE. The Board approves an amendment to the Budget and Action Plan for Fiscal Year 2022-23 (FY23) by increasing the Measure AA Fund Capital budget in the amount of \$720,000.00. Except as herein modified, the FY23 Budget and Action Plan, Resolution No. 22-21 as amended, shall remain in full force and effect.

SECTION FOUR. The General Manager, President of the Board, or other appropriate officer is authorized to execute a Certificate of Acceptance and the Grant Deed on behalf of the District.

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

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

SECTION SEVEN. 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 _____, 2022, at a regular meeting thereof, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Karen Holman, Secretary
Board of Directors

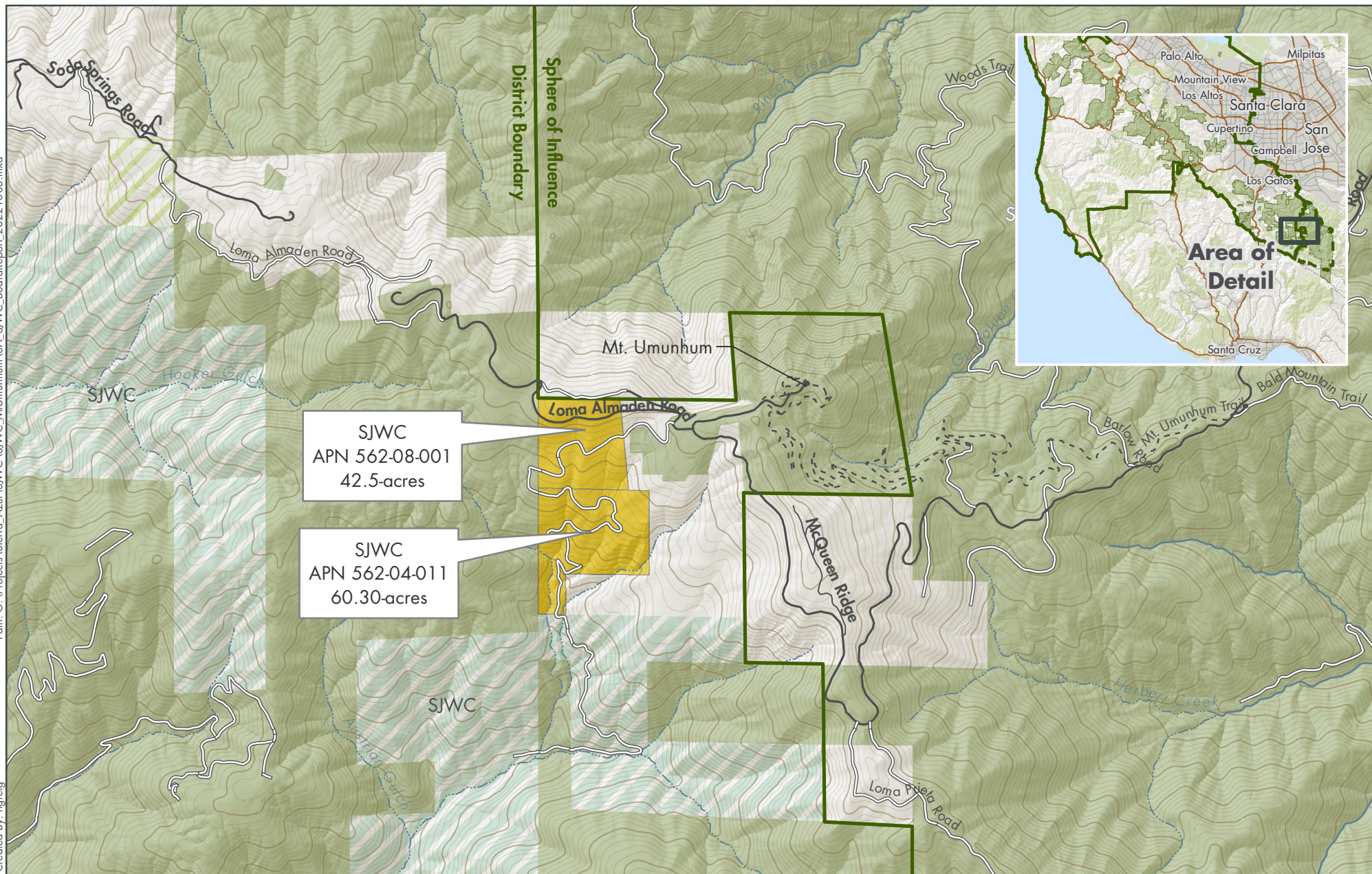
Zoe Kersteen-Tucker, President
Board of Directors

APPROVED AS TO FORM:





Hilary Stevenson, General Counsel

I, the Deputy 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.

Maria Soria, Deputy District Clerk



San Jose Water Company

-  Sierra Azul Preserve
-  SJWC property
-  Other protected lands
-  Other SJWC property

Midpeninsula Regional
Open Space District
(Midpen)
10/5/2022



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