



Midpeninsula Regional  
Open Space District

R-23-94  
Meeting 23-22  
August 23, 2023

### AGENDA ITEM 3

#### AGENDA ITEM

Proposed Purchase of the Vielbaum Property located in unincorporated Santa Clara County as an addition to Sierra Azul Open Space Preserve (Assessor's Parcel Number 562-09-021 (portion))

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

1. Determine that the recommended actions are categorically exempt under the California Environmental Quality Act (CEQA), as set out in this report.
2. Adopt a Resolution authorizing the purchase of the Vielbaum Property at a cost of \$163,000 with corresponding authorization for a Fiscal Year 2023-24 budget adjustment of the same amount.
3. Adopt a Preliminary Use and Management Plan for the Property, as set out in this report.
4. Withhold dedication of the Vielbaum Property as public open space at this time.

#### SUMMARY

The General Manager recommends purchasing the 40.83-acre Vielbaum Property (Property) at a purchase price of \$163,000 (\$3,992 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/increase of \$163,000 to the Fiscal Year 2023-24 (FY24) budget would be required to proceed with the acquisition.

#### DISCUSSION

The Midpeninsula Regional Open Space District (District) proposes to purchase the 40.83-acre Property, which is a portion of the Vielbaum land holdings. The full parcel is 113.15 acres and made up of three lots (2, 7 and 8). The District is proposing to purchase lot 8 only (see Attachment 2). The Property is located less than a quarter-mile east of Mount Thayer, less than 1 mile northwest of Mount Umunhum, and is bordered by the 19,437.84-acre Sierra Azul Open Space Preserve to the north, east, and south and private property to the west. Purchase of the Property would permanently protect forested lands and wildlife habitat within the Upper Los Gatos Creek and Upper Guadalupe Creek watersheds and further the connection of protected open space and wildlife corridors. This purchase advances Vision Plan Portfolio #23, *Sierra Azul: Mt. Umunhum Public Access and Interpretation Projects*, as the District secures additional property rights in the Mount Umunhum area.

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

Situated high on the slopes above Soda Spring Canyon and directly south of Mount Thayer, the square-shaped Property is highly visible from District lands and is a natural extension to the Mount Umunhum area of the Preserve. The Property rises to approximately 3,400 feet in elevation and drains into the Upper Los Gatos Creek and Upper Guadalupe Creek watersheds. The Property may potentially be accessed via an old unmaintained road along the ridgeline from Loma Almaden Road to the Woods Trail but is otherwise inaccessible due to dense and steep terrain.

**Land Use and Improvements**

The Property is vacant and unimproved aside from an old unmaintained road along the ridgeline from Loma Almaden Road to the Woods Trail. The Property contains no utilities. The Property falls within Santa Clara County's landslide hazard zone and the State's seismic hazard zone.

**Habitat and Natural Resources Value**

The dominant vegetation communities on the Property are the fire-adaptive California Bay Forest and Serpentine Leather-Oak Chaparral, which cover about 70% of the area. The Property is within the Santa Clara County Wildfire Influence Zone, which contains wildfire susceptible vegetation up to 1.5 miles from a Wildland Urban Interface or Wildland Urban Intermix. There have been multiple observations within 200 feet of the Property of Purple Martins and Santa Cruz Kangaroo Rats, the latter a critically imperiled subspecies. In addition, the Property provides habitat for several large animal species, including deer, coyotes, foxes, bobcats, and mountain lions, and a wide variety of small mammals, including woodrats, birds, and other species. 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 home ranges.

**Water Resources and Rights**

The Property falls within the Upper Los Gatos Creek and Upper Guadalupe Creek watersheds, both of the Guadalupe Creek parent watershed. The headwaters of Soda Springs Creek flows down less than 500 feet from the Property through Soda Spring Canyon and into Lexington Reservoir.

**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 has a County General Plan designation of Hillside. The zoning designation is 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 outdoor recreation and open space preserves are allowable uses in 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 minor restoration and 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.
Patrol:	Routinely patrol the Property.
Resource Management:	Conduct plant and animal management activities to protect natural resources and minor erosion and sediment control measures to protect water resources as needed, consistent with the District's adopted Resource Management Policies, Integrated Pest Management Program Guidance Manual, Open Space Maintenance and Restoration Program, and regulatory permits. Survey the Property for the presence of Santa Cruz Kangaroo rat and implement BMPs to protect habitat and food source plant species.
Wildfire Fuel Management:	Implement standard District-wide fuel management and defensible space practices consistent with the District's adopted Wildland Fire Resiliency Program and Environmental Impact Report.

### **CEQA COMPLIANCE**

#### **Project Description**

The project consists of the purchase of the 40.83-acre Property as an addition to the District's Sierra Azul Open Space Preserve and concurrent adoption of a PUMP, including minor erosion control and sediment control measures that may be conducted if necessary to prevent erosion. 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 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 operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, or topographical features, involving negligible or no expansion of use beyond the existing uses. The PUMP will maintain the Property as status quo with no expansion or changes to its existing uses. The PUMP includes minor erosion control work as necessary, wildland fuel management, and minor natural resource management activities, covered under the District’s adopted Resource Management Policies, Integrated Pest Management Program Guidance Manual, Wildland Fire Resiliency Program, the mitigation measures adopted pursuant to Final Environmental Impact Reports of the cited plans and policies, and the District’s Open Space Maintenance and Restoration Program and Mitigated Negative Declaration, and regulatory permits as applicable.

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 40.83-acre Vielbaum Property is proposed for purchase at a sale price of \$163,000 (\$3,992 per acre). The Property would be purchased as-is on an all-cash basis. Escrow would close on or before September 8, 2023. The District will submit a record of survey with the County of Santa Clara to formalize the division of the District’s open space parcel from the residential parcel owned by Vielbaum. The survey work is estimated to cost \$35,000 due to the rough, dense and steep terrain and needing to survey multiple sections, which have not been surveyed since 1871.

**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 \$163,000 to the FY24 budget is required.

Vielbaum Property Purchase Amount <i>(including \$10,000 option deposit)</i>	\$163,000
Total Land Purchases approved to date for FY24	\$0
Total FY24 Land Purchases (if approved)	\$163,000

Although this acquisition satisfies the criteria for Measure AA (MAA) Portfolio #23 Priority Actions, the recommended action is not funded by MAA. On June 14, 2023, the Board amended the MAA Expenditure Plan by closing the completed Portfolio MAA #23 and reallocating the

remaining funds to Portfolio MAA #03 ([R-23-67](#)). The acquisition will be accounted for in Vision Plan Portfolio 23 and paid through general funds.

### **BOARD COMMITTEE REVIEW**

Due to the simple nature and low value of this potential purchase, this item 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 September 8, 2023, record a Record of Survey with Santa Clara County delineating the new, separate parcels, 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 2023-24 General Fund Capital Budget, 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 Vielbaum)
2. Vielbaum Property Location Map

#### **Responsible Department Manager:**

Michael Williams, Real Property Manager, Real Property Department

#### **Prepared by:**

Jasmine Leong, Real Property Agent I, Real Property Department

#### **Graphics prepared by:**

Francisco Tapia Lopez, Data Analyst I, IST Department

**RESOLUTION 23-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING ACCEPTANCE OF THE PURCHASE AND SALE AGREEMENT, AMENDING THE FISCAL YEAR 2023-24 GENERAL FUND CAPITAL BUDGET, AUTHORIZING GENERAL MANAGER OR OTHER APPROPRIATE OFFICER TO EXECUTE CERTIFICATE OF ACCEPTANCE AND GRANT TO DISTRICT, 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 VIELBAUM)**

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 Norma E. Vielbaum 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 Vielbaum Property”).

**SECTION TWO.** The Board authorizes the expenditure of \$163,000.00 covering the purchase of the Vielbaum Property, including an option deposit of \$10,000.00.

**SECTION THREE.** The Board approves an amendment to the Budget and Action Plan for Fiscal Year 2023-24 by increasing the General Fund Capital budget in the amount of \$163,000.00. Except as herein modified, the FY 2023-24 Budget and Action Plan, Resolution No. 23-10 as amended, shall remain in full force and effect.

**SECTION FOUR.** The General Manager, President of the Board of Directors, 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 the General Manager’s 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 the General Manager’s designee is authorized to expend up to \$45,000.00 to cover the cost of title insurance, escrow fees, survey 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 \_\_\_\_\_, 2023, at a regular meeting thereof, by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Craig Gleason, Secretary  
Board of Directors

\_\_\_\_\_  
Yoriko Kishimoto, President  
Board of Directors

**APPROVED AS TO FORM:**

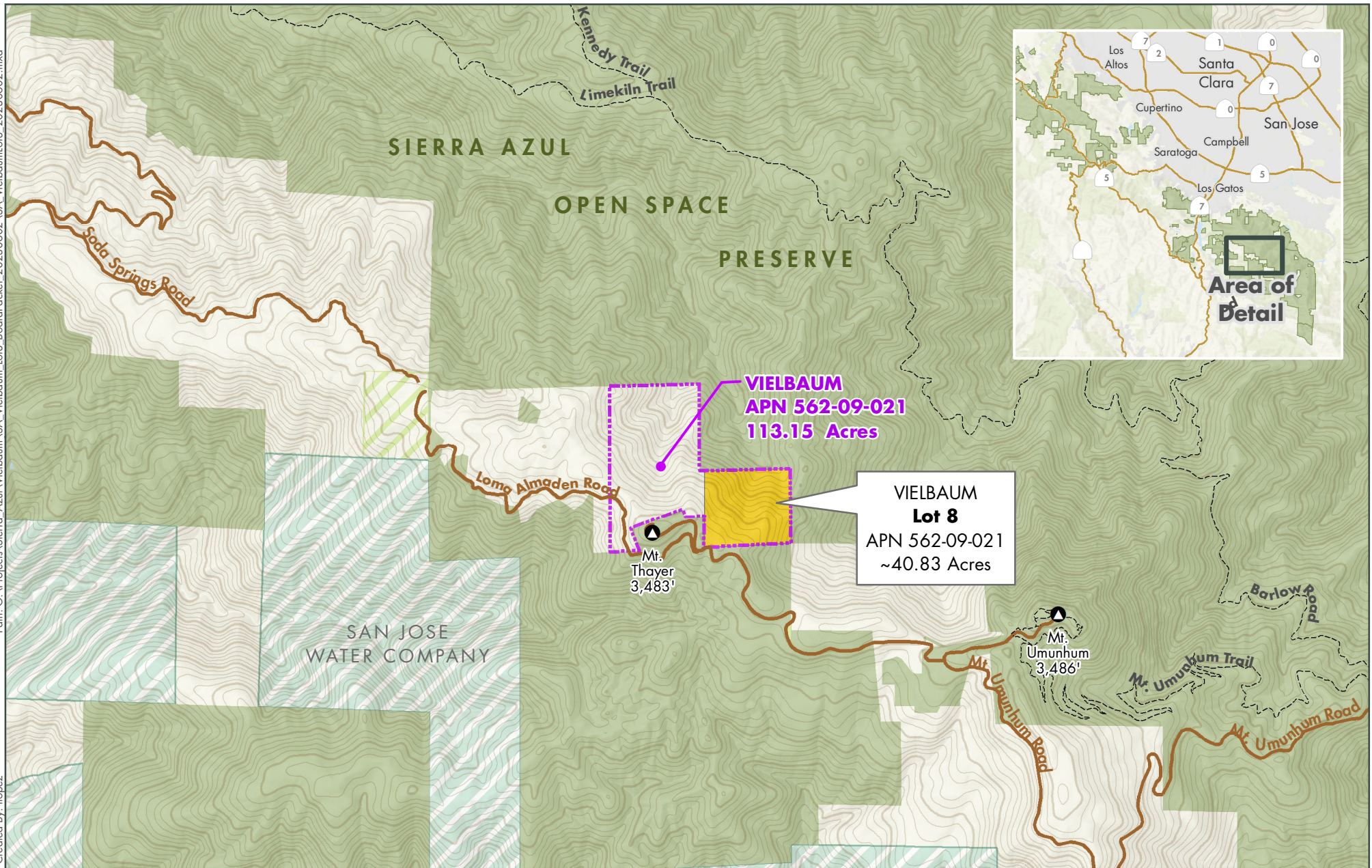
\_\_\_\_\_  
Hilary Stevenson, General Counsel

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.

\_\_\_\_\_  
Maria Soria, District Clerk



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 Created By: fopez



**Vielbaum Lot 8**

- MROSD Preserves
- Entire Vielbaum property
- Private Watershed Land
- Lot 8, Property of interest
- Private Property

Midpeninsula Regional  
 Open Space District  
 (Midpen)  
 6/13/2023



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.