



Midpeninsula Regional
Open Space District

R-17-06
Meeting 17-01
January 11, 2017

AGENDA ITEM 6

AGENDA ITEM

Legislative Items for 2017

GENERAL MANAGER'S RECOMMENDATION

Discuss and consider directing the General Manager to pursue the legislative priorities outlined in the staff report and to provide the Board with updates throughout the year and seek future Board approvals as necessary in accordance with Board Policy 1.11 "Positions on Ballot Measures and Legislative Advocacy."

SUMMARY

The District's Legislative/External Affairs Specialist presented several potential bill and issue ideas that could be pursued by the District during the 2017-18 State Legislative Session to the Legislative, Funding, and Public Affairs Committee (LFPAC) on November 8, 2016. The Committee recommended that all of the items presented be referred to the full Board to consider and recommend for further action with one additional item not previously presented to LFPAC.

MEASURE AA

These potential action items have no direct connection to Measure AA Priority Actions.

DISCUSSION

A number of potential opportunities for legislation have arisen through the 2016 Legislative Session that the District may wish to pursue in the 2017-18 Legislative session.

1. **AB 612 (Gordon) clean-up:** Language inconsistency in Section 5544.2 of the Public Resources Code (see Attachment 7) needs to be resolved to reflect the intent of the original legislation that extended the rate of Midpen's indebtedness to 30 years implemented in Section 5544.2 through the passage of AB 612 (Gordon). This will require standalone legislation.
2. **Board Compensation and Benefits:** A request by a Midpen Board Member to update Section 5536 of the Public Resources Code (see Attachment 1) to modify Board current compensation amounts and criteria that were last adjusted in 1984. This will require additional scheduled Board deliberations to determine the change desired (if any) and the appropriate approach to pursue. Ultimately, this will require standalone legislation.

3. **Definition of Disadvantaged Community update:** Enacted in 2006 with the passage of Prop 84, Section 75005 of the Public Resources Code defines disadvantaged community (DAC) as a census tract whose median income is 80% of the state median income of \$61,818 (ACS 2015), which is \$49,454. A severely disadvantaged community (SDAC) census tract qualifies with a median income of 60% of the state median income (\$37,091). This definition has been used in a variety of more recent funding measures including Prop 1 and Cap and Trade allocations. The recently introduced Parks Bond bills – AB 18 and SB 5 – both utilize the current definition when determining funding allocations. Unfortunately, this definition severely restricts the eligibility opportunities for funding in high-cost areas like San Mateo and Santa Clara Counties, whose median household incomes are \$93,623 and \$96,310 respectively (Attachments 2 and 3). Changing the definition to better acknowledge the cost of living landscape across California by using the county median income as the reference would help level the playing field and expand funding eligibility in high-cost regions like Silicon Valley. Under the proposed change the District would gain an additional six eligible DAC census tracts and eleven SDAC census tracts. This would bring an additional 95,777 District residents into eligibility (Attachment 4).

No definitive strategy has been identified to systematically amend this definition yet, so until such time the intent is to pursue definition updates on a bill by bill basis.

4. **Design Build Authority Eligibility:** In 2014 SB 785 (Wolk) provided cities, counties, and some special districts the ability to engage in certain capital projects in excess of \$1 million utilizing design-build (DB) methodologies, rather than more conventional design-bid-build (DBB) approaches, as a pilot that will last until 2025. The District is currently not eligible to use DB for their projects. Utilizing DB methodologies has several advantages and disadvantages. These are summarized in Attachment 5. Assessing more specifically the advantages and disadvantages of DB is dependent on the specifics of the capital project(s) being considered, so at this time staff cannot articulate definitively whether DB would be recommended over DBB for future projects. However, for some projects DB might be a useful tool to ensure the funds entrusted to the District are used in the timeliest and most cost effective way possible. Potential projects to use DB in the future might include:

- Parking lots
- Bridges – both pedestrian and vehicle crossings
- Residential remodels and repairs on district holdings, including water well improvements
- Large tracts of agricultural fencing
- Pond repairs and habitat restoration
- Unpaved road repairs with drainage infrastructure

Legislative action toward making the District eligible to use DB most likely would take the form of a request to amend SB 785 eligibility criteria to include parks and open space capital projects. An additional amendment would be needed to lower the project cost threshold from \$1 million to approximately \$250,000 to better reflect typical project sizes for the District. Recently, SB 957 (Hueso) was passed that enabled Healthcare Districts in California to use DB for hospital construction. However, a similar bill that would have expanded eligibility to include other health-related facilities, SB 994 (Hill), failed that same session.

- 5. Enhancement of Authority to Pursue Potential Acquisition of Lands in the Guadalupe Watershed.** Item not reviewed by LFPAC due to time constraints. A verbal report will be delivered. The General Manager will be requesting Board approval to allow the District to sponsor legislation that will enable it to acquire and protect important natural resource lands in this critical watershed.

FISCAL IMPACT

There are no immediate fiscal impacts associated with Board recommendations regarding these legislative proposals.

BOARD COMMITTEE REVIEW

This item was previously reviewed by the Legislative, Financial, and Public Affairs Committee on November 8, 2016 and recommended for full Board consideration.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. No additional notice is required.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

If approval to pursue is given by the Board, the District will begin pursuing the included legislative agenda for the 2017-18 state legislative session.

Attachments:

1. California Public Resources Code Section 5536
2. Map of Disadvantaged Community eligible parcels in San Mateo and Santa Clara County with the current definition
3. Map of Disadvantaged Community eligible parcels in San Mateo and Santa Clara County with the proposed definition
4. Analysis of impact of change in DAC
5. Comparison of Design-Bid-Build versus Design-Build methodologies
6. Approved November 8, 2016 LFPAC Minutes
7. California Public Resources Code Section 5544.2

Responsible Department Head:

Kevin Woodhouse, Assistant General Manager

Prepared by:

Joshua Hugg, Legislative/External Affairs Specialist

State of California**PUBLIC RESOURCES CODE****Section 5536**

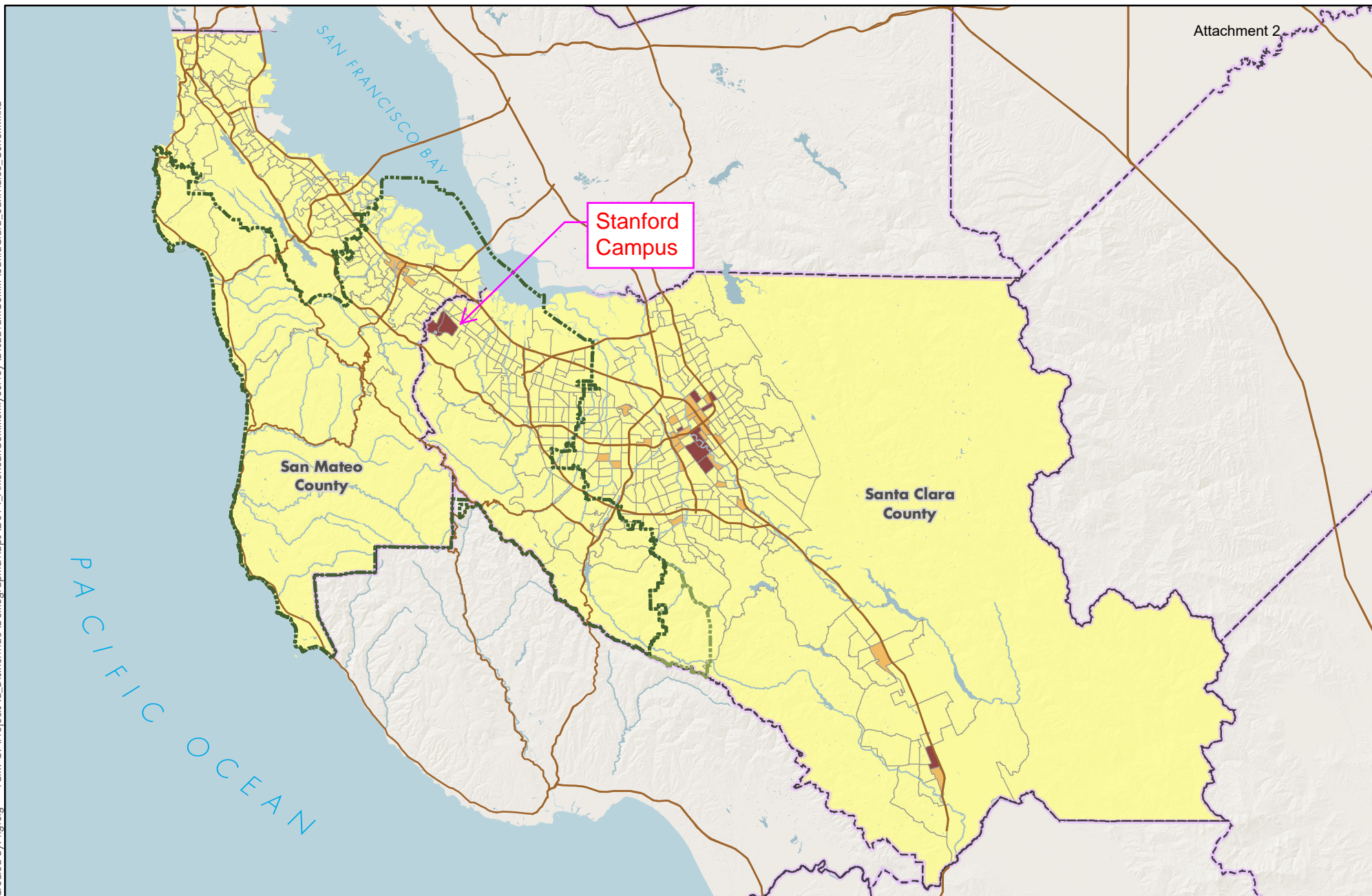
5536. (a) The board shall establish rules for its proceedings.

(b) The board may provide, by ordinance or resolution, that each of its members may receive an amount not to exceed one hundred dollars (\$100) per day for each attendance at a meeting of the board. For purposes of this section, a meeting of the board includes, but is not limited to, closed sessions of the board, board field trips, district public hearings, or meetings of a committee of the board. The maximum compensation allowable to a board member on any given day shall be one hundred dollars (\$100). Board members shall not receive any other compensation for meetings, and no board member shall receive more than five hundred dollars (\$500) compensation under this section in any one calendar month, except that board members of the East Bay Regional Park District may receive compensation for not more than 10 days in any one calendar month. A board member may elect to waive the per diem. In addition, the board may provide, by ordinance or resolution, that each of its members not otherwise eligible for an employer-paid or partially employer-paid group medical or group dental plan, or both, may participate in any of those plans available to permanent employees of the district on the same terms available to those district employees or on terms and conditions as the board may determine. A board member who elects to participate in any plan may also elect to have the premium for the plan charged against his or her per diem and may further elect to waive the balance of the per diem.

(c) All vacancies on the board shall be filled in accordance with the requirements of Section 1780 of the Government Code, except that, in the case of vacancies caused by the creation of new wards or subdistricts, the directors shall, prior to the vacancies being filled, determine by lot, for the purpose of fixing the terms of the first directors to be elected to the wards or subdistricts, which ward or subdistrict shall have a four-year term and which ward or subdistrict shall have a two-year term. The persons who fill the vacancies caused by the establishment of new wards or subdistricts shall hold office until the next general election and until their successors are elected and qualified for the terms previously determined by lot.

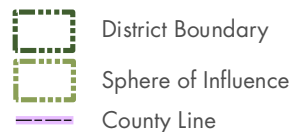
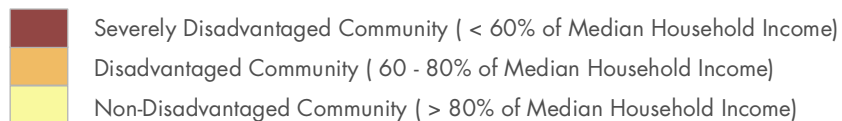
(d) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

(Amended by Stats. 2005, Ch. 700, Sec. 18. Effective January 1, 2006.)



Disadvantaged Communities: San Mateo & Santa Clara Counties

Current Definition: State Median Household Income



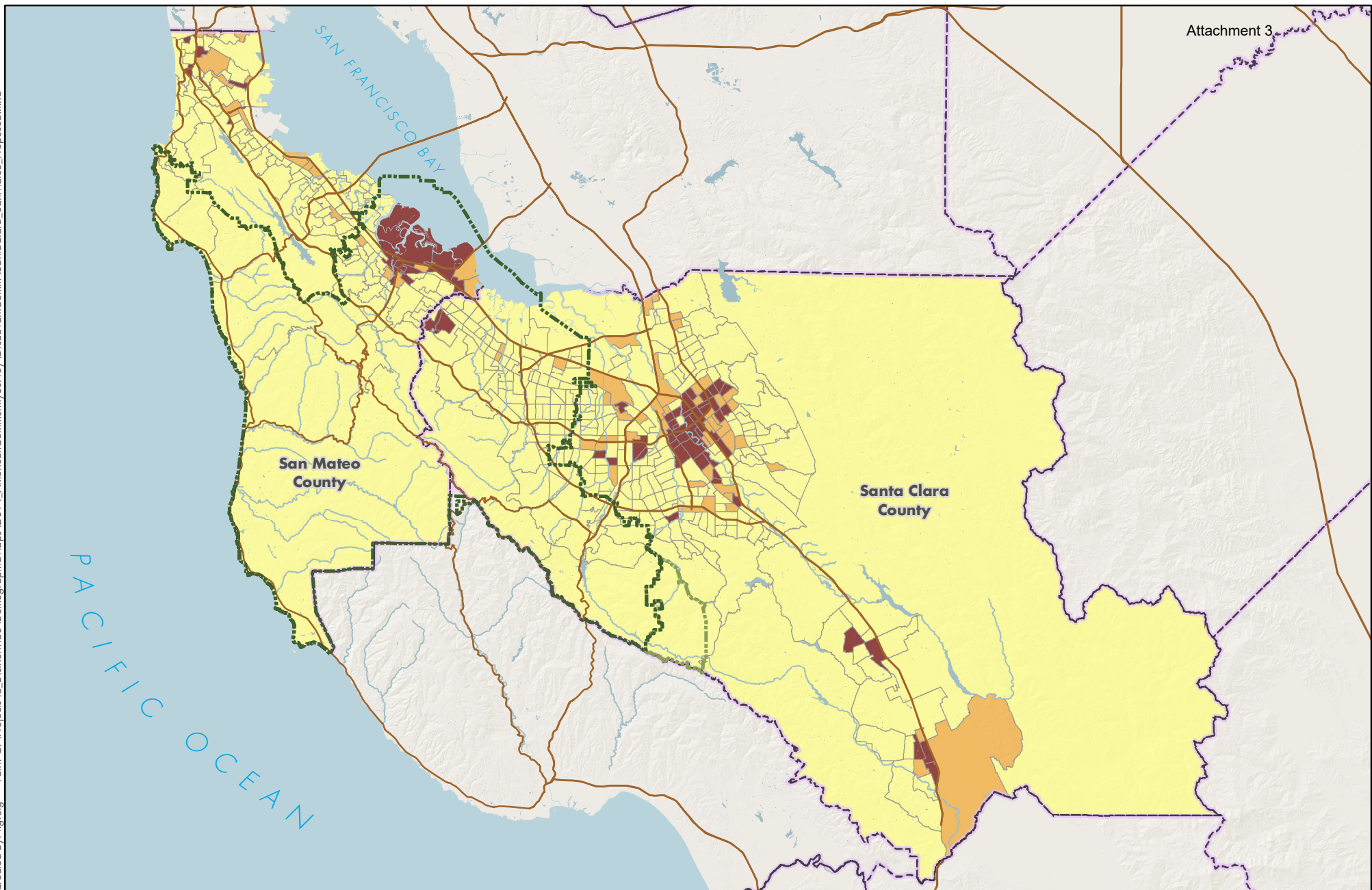
Midpeninsula Regional
Open Space District
(MROSD)

July 2016



Miles 0 5 10





Disadvantaged Communities: San Mateo & Santa Clara Counties

Proposed Definition: County Median Household Income

- Severely Disadvantaged Community (< 60% of Median Household Income)
- Disadvantaged Community (60 - 80% of Median Household Income)
- Non-Disadvantaged Community (> 80% of Median Household Income)

- District Boundary
- Sphere of Influence
- County Line

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July 2016



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Analysis of Disadvantaged Community Definition
(as defined by CA Public Resource Code 75005)

Within MROSD Boundary		<u>Current</u>		<u>Proposed</u>	
		Census Tract Count	Population	Census Tract Count	Population
	Disadvantaged	4	14,897	10	47,947
	Severely Disadvantaged	2	11,062	13	73,789
	Total	6	25,959	23	121,736
Bay Area 10 Counties		<u>Current</u>		<u>Proposed</u>	
		Census Tract Count	Population	Census Tract Count	Population
		134	619,538	255	1,215,065
	Disadvantaged	134	619,538	255	1,215,065
	Severely Disadvantaged	87	357,549	202	934,161
	Total	221	977,087	457	2,149,226
State of California		<u>Current</u>		<u>Proposed</u>	
		Census Tract Count	Population	Census Tract Count	Population
		1371	6,577,894	1584	7,675,945
	Disadvantaged	1371	6,577,894	1584	7,675,945
	Severely Disadvantaged	1330	5,853,396	1514	6,806,866
	Total	2701	12,431,290	3098	14,482,811

Source: 2011-2015 American Community Survey

Current Definition:

PRC 75005 (g) "Disadvantaged community" means a community with a median household income less than 80% of the statewide average. "Severely disadvantaged community" means a community with a median household income less than 60% of the statewide average.

Proposed Definition:

"Disadvantaged community" means a community with a median household income less than 80% of the statewide average. "Severely disadvantaged community" means a community with a median household income less than 60% of the statewide average. ***If a county has a median income above the state median, then the county median shall be used for the determination.***

Design-Bid-Build vs. Design-Build

Design-Bid-Build Approach

Advantages:

- Maximum owner control over project variables
- By contracting with designer, owner defines and details requirements to specification
- Owner, engineers, governmental and funding agencies can ensure the project is acceptable to all parties
- Potential savings through increased contractor competition
- Greatest funding flexibility: design and construction contracts can be set according to the owner's cash flow

Disadvantages:

- Time: Linear approach to design and construction
- Changes by the owner during construction can impact the project cost and schedule resulting in claims
- Unforeseeable and uncontrollable risks are owner's responsibility
- Greater owner management role requires a larger staff to maintain proper project control
- Multiple interfaces between the designer, CM and contractors requires careful coordination by the owner
- Adversarial relationship between owner, designer, and contractor

Design-Build Approach

Advantages:

- High quality based selection of contractors, not simply price
- Time savings – Construction can begin as sections of plans and specs are completed resulting in shorter delivery time
- Faster and improved communications between the designer and Contractor
- Responsibility and risk are delegated to a single source for design and construction – Result is fewer change orders and disputes
- Contractor's increased control of design and early involvement of key subcontractors may result in lower costs by collaborative efforts to identify innovative methods and systems to make design more efficient

Disadvantages:

- Owner loses the ability to select architect since this role is typically selected by the contractor
- Potential for claims and schedule delays due to differences in interpretation of design criteria or preliminary design
- Owner may pay a premium if there are changes to project as the design-builder completes design
- Owner's input on detailed design is limited because contractor is responsible for completing the design
- Designers hired by the contractor have no obligation to inform owner about deficiencies in contractor's work
- Owners must rely on the contractor to deliver a completed project without benefit of typical owner oversight



Midpeninsula Regional
Open Space District

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
LEGISLATIVE, FUNDING, AND PUBLIC AFFAIRS COMMITTEE

Administrative Office
330 Distel Circle
Los Altos, CA 94022

Tuesday, November 8, 2016

APPROVED MINUTES*

CALL TO ORDER

Director Cyr called the meeting of the Legislative, Funding and Public Affairs Committee to order at 2:00 p.m.

ROLL CALL

Members present Jed Cyr, Nonette Hanco, and Curt Riffle

Members absent: None

Staff present: General Manager Steve Abbors, Assistant General Counsel Hilary
Stevenson, Legislative/External Affairs Specialist Josh Hugg, and District
Clerk Jennifer Woodworth

ORAL COMMUNICATIONS

No speakers present.

ADOPTION OF AGENDA

Motion: Director Hanco moved and Director Riffle seconded to adopt the agenda.

VOTE: 3-0-0

COMMITTEE BUSINESS

**1. Approve Legislative, Funding, & Public Affairs Committee Meeting Minutes:
August 30, 2016**

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Motion: Director Riffle moved, and Director Hanko seconded the motion to approve the August 30, 2016 Legislative, Funding, and Public Affairs committee meeting minutes.

VOTE: 3-0-0

2. Legislative Briefing (R-16-150)

Legislative/External Affairs Specialist Josh Hugg discussed legislation for the Committee and Board of Directors to consider for possible action for the upcoming 2017 Legislative Session.

These include:

- Correction of a typo in Public Resources Code Section 5544

The Committee by consensus directed staff to pursue legislation to correct the typo.

- Possible increase of Board compensation

Director Hanko requested additional information regarding Board stipends for districts also formed by Public Resources Code Section 5500, under which the District was formed.

Director Riffle suggested bringing the item forward to the full Board of Directors for consideration, including multiple options, such as the amount of compensation per meeting, the number of meetings per month compensated, and whether multiple meetings held on the same day may be compensated.

The Committee discussed the need to notify and work with other open space districts to determine whether they are interested in pursuing a Board compensation increase.

Assistant General Counsel Hilary Stevenson explained Public Resources Code only sets a ceiling for Board members compensation, and individual districts may set their own Board compensation.

The Committee by consensus directed staff to research options for a possible Board compensation increase, and bring the item forward to the Board for consideration.

- Pursuit of a parks bond similar to AB2244 related to the definition used to identify disadvantaged communities. Due to the high cost of living in the Bay Area, many communities have a higher median income, but are disadvantaged or severely disadvantaged as compared to neighboring communities. The suggestion is to use a formula based on county median income as opposed to the state's median income.

The Committee by consensus directed staff to continue researching the issue and return to the Committee with more information.

- Pursuit of Design-Build Authority for the District related to some of the District's capital projects.

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The Committee by consensus directed staff to continue researching the issue and return to the Committee with more information.

Director Riffle suggested staff research and follow any legislation related to marijuana tax if approved under Proposition 64, including whether the District is eligible for any funds from this tax for District activities such as habitat restoration, enforcement activities, etc. Additionally, staff should follow any progress related to any park bonds that arise and move forward as part of the upcoming Legislative Session and any legislation related to farm labor housing.

3. Filling the Volunteer Ombudsperson Position with Pool of Qualified Volunteers (R-16-149)

General Manager Steve Abbors provided the staff report describing the creation of the ombudsperson role following the 2004 Coastal Area Annexation. Mr. Abbors explained in the most recent recruitment three applications were received, and all applicants demonstrate a willingness and capability to serve as the District's ombudsperson. The involvement of the ombudsperson has diminished over the past couple of year as fewer problems have arisen.

Public comment opened at 2:53 p.m.

No speakers.

Public comment closed at 2:53 p.m.

Motion: Director Hanco moved, and Director Riffle seconded the motion to accept the applications of Lisa Zadek of Half Moon Bay, Kristen Yawitz of Belmont, and Bob Rosenberg of San Jose to serve as a pool of volunteer ombudspersons and forward a recommendation for approval to the Board of Directors.

VOTE: 3-0-0

INFORMATIONAL REPORTS

Director Riffle requested additional information regarding the District's contract with Public Policy Associates (PPA).

Mr. Hugg reported staff is still determining how his role will work with the District's lobbyist moving forward.

Mr. Abbors stated the District will most likely pursue a request for proposals process in the coming years when Ralph Heim, the District's lobbyist at PPA, retires.

The Committee members discussed the need for the District to identify legislators to work closely with the District in the future.

Director Riffle requested an update on the District's grant program at a future Committee meeting.

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ADJOURNMENT

Director Cyr adjourned the meeting of the Legislative, Funding and Public Affairs Committee at 3:04 p.m.

Jennifer Woodworth, MMC
District Clerk

Public Resources Code section 5544.2

(a) A district may acquire all necessary and proper lands and facilities, or any portion thereof, by means of a plan to borrow money or by purchase on contract.

(b) The amount of indebtedness to be incurred shall not exceed an amount equal to the anticipated property tax revenue allocations for the period of the repayment of the debt, but not less than the next five-year period derived pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code or the anticipated tax income derived pursuant to Section 50077 of the Government Code, or both. The time period to repay the indebtedness shall not exceed the applicable time period provided in subdivision (c) or (d).

(c) All indebtedness that is incurred on or after July 1, 1982, pursuant to this section shall be repaid during a period not to exceed 20 years from the date on which it is incurred and shall bear interest at the rate allowed pursuant to Section 53531 of the Government Code, payable annually or semiannually or in part annually and in part semiannually. Notwithstanding any other provision of this section, with respect to the East Bay Regional Park District only, all indebtedness incurred pursuant to this section for acquisition of lands and facilities designated in the district's master plan, including the Chabot Ridgeland, shall be repaid during a period not to exceed 30 years and at a rate not exceeding the rate allowed in this section for other districts. All other acquisitions of land and facilities by the East Bay Regional Park District not designated in the master plan are subject to the 20-year repayment period limitation of this section.

(d) Notwithstanding subdivision (c), all indebtedness that is incurred by the Midpeninsula Regional Open Space District, on or after January 1, 2012, pursuant to this section, shall be repaid during a period not to exceed 30 years from the date on which it is incurred and shall bear interest at the rate allowed pursuant to Section 53531 of the Government Code, payable annually or semiannually or in part annually and in part semiannually.

(e) Each indebtedness shall be authorized by a resolution adopted by the affirmative votes of at least two-thirds of the members of the district board, shall be evidenced by a promissory note or contract signed by the president of the board and attested by the secretary or treasurer, and shall be sold at not less than 95 percent of the principal amount in the manner determined by the board at a discount that equals the underwriter's spread. The board shall determine that the discount reflects an underwriter's spread that is both reasonable and customary under the prevailing market conditions. One of the two signatures may be by facsimile reproduction. At the time of making the general tax levy after incurring each indebtedness and annually thereafter until the indebtedness is paid or until there is a sum in the treasury set apart for that purpose sufficient to meet all payments of principal and interest on the indebtedness as they become due, a portion of the taxes levied and collected pursuant to Section 50077 of the Government Code, if any, shall be levied and collected and set aside sufficient to pay the interest on the indebtedness and the part of the principal that will become due before the proceeds of a tax levied at the next general tax levy will be available.

(f) For indebtedness incurred pursuant to subdivision (d), the resolution by the district board required pursuant to subdivision (e) shall specify the revenue pledged by the district to repay the indebtedness. The resolution shall recite in substance that the principal of, and interest on, the indebtedness are payable solely from the revenue pledged to repay the indebtedness and that the district is not obligated to pay the principal or interest except from the pledged revenue, and may provide for the same pledge to all other indebtedness incurred pursuant to this section, including indebtedness incurred prior to January 1, 2012, in order to maintain a parity relationship among all outstanding indebtedness incurred by the district pursuant to this section.

(g) The indebtedness authorized to be incurred by this section shall be in addition to, and this section shall not apply to, any bonded indebtedness authorized by vote of the electors.

(Amended by Stats. 2011, Ch. 104, Sec. 1. Effective January 1, 2012.)