



Midpeninsula Regional
Open Space District

R-24-24
Meeting 24-05
February 28, 2024

AGENDA ITEM 6

AGENDA ITEM

Approve a Successor Agreement Between La Honda-Pescadero Unified School District and Midpeninsula Regional Open Space District in connection with the Coastside Protection Program

GENERAL MANAGER'S RECOMMENDATIONS

1. Approve a Successor Agreement between La Honda-Pescadero Unified School District and Midpeninsula Regional Open Space District for a fifteen-year term whereby Midpeninsula Regional Open Space District will continue to pay a tax compensatory fee to the school district that increases 2% annually.
2. Authorize the General Manager and General Counsel to approve any minor or technical changes to the Successor Agreement.

SUMMARY

The General Manager recommends entering into a Successor Agreement with La Honda-Pescadero Unified School District in connection with the Coastside Protection Program for a new fifteen-year term. This Report provides a description of the Successor Agreement terms, conditions and financial considerations.

DISCUSSION

The Coastside Protection Program, approved by the Midpeninsula Regional Open Space District (District) Board of Directors (Board) on June 5, 2003 (see report [R-03-54](#)), included expansion of the District's boundaries to include coastal San Mateo County, including territory within the jurisdictional boundaries of the La Honda-Pescadero Unified School District (LHPUSD). LHPUSD had adopted a policy opposing any annexation or acquisition of land by any [tax-exempt] public agency of territory within their jurisdictional boundaries unless satisfactory financial or other arrangements existed to compensate for any lost tax revenues and any other significant foreseeable negative impacts on LHPUSD.

Prior to the District's annexation of the Coastside Protection Area, LHPUSD and the District negotiated an agreement whereby LHPUSD implemented a Coastside environmental education program, and, in consideration for that program, the District provides compensation for property acquisitions within the Coastside Protection Area that fall within LHPUSD's jurisdictional boundaries (see report [R-04-35](#)) to prevent a loss of property tax revenue to LHPUSD. The original agreement was approved by LHPUSD's Board of Trustees on March 4, 2004, and by the

District's Board on March 8, 2004, with a term of twenty (20) years. The current agreement will expire on March 8, 2024.

LHPUSD and MROSD staff have met and negotiated a new Successor Agreement with a new fifteen-year term, with all other relevant terms from the prior agreement remaining the same. Under the new recommended Successor Agreement, the District will continue to pay a tax compensatory fee to LHPUSD twice annually, in January and July. The fee increases 2% annually and is calculated as the District acquires additional property in the Coastside Protection Area that fall within the LHPUSD's jurisdictional boundaries. The District will continue to pay the Tax Compensatory Fee in consideration for LHPUSD providing environmental educational services, of which examples may include science instruction pertinent to the natural resources of the Coastside Protection Area, field trips to local fish habitats, and local studies of erosion control methods.

FISCAL IMPACT

The fiscal impact associated with the Successor Agreement remains as projected, increasing at a 2% rate per year. Funds will continue to be budgeted for annually. During the original 20-year term of the Agreement, the District paid a total of \$380,891 to LHPUSD in tax compensatory fees. The annual fees for the current fiscal year (Fiscal Year 2023-24) were \$84,969.

PRIOR BOARD AND COMMITTEE REVIEW

This item is coming to the full Board given Board interest in the collaborative relationship between LHPUSD and the District.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act and the Coastside Service Plan.

CEQA COMPLIANCE

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

NEXT STEPS

Upon Board approval, the Successor Agreement will be executed for a fifteen-year term.

Attachment

1. Successor Agreement Between La Honda-Pescadero Unified School District and Midpeninsula Regional Open Space District

Responsible Department Head / Contact person:
Allen Ishibashi, Real Property Manager

Prepared by:
Jasmine Leong, Real Property Specialist I

SUCCESSOR AGREEMENT
BETWEEN LA HONDA-PESCADERO UNIFIED SCHOOL DISTRICT AND MIDPENINSULA
REGIONAL OPEN SPACE DISTRICT

WHEREAS, the Midpeninsula Regional Open Space District (“MROSD”) and La Honda-Pescadero Unified School District (“LHPUSD”) entered into an Agreement effective March 8, 2004 (“2004 Agreement”), which agreement was for a twenty-year term expiring on March 8, 2024; and

WHEREAS, the 2004 Agreement set forth an arrangement between MROSD and LHPUSD that avoids adverse fiscal impacts to LHPUSD, and the parties desire to continue working cooperatively to maintain a jointly beneficial agreement that will further the mission of both agencies for the public benefit; and

WHEREAS, the 2004 Agreement provides that MROSD and LHPUSD will meet and negotiate in good faith regarding a Successor Agreement; and

WHEREAS, MROSD and LHPUSD have conferred and negotiated regarding a Successor Agreement and desire to enter into this Successor Agreement to allow LHPUSD to receive adequate compensation for any potential reduction in property tax revenue as a result of the acquisition of lands within the jurisdictional boundaries of LHPUSD “Coastside Protection Area” by MROSD; and

WHEREAS, more specifically, the mission of the MROSD is: "To acquire and preserve a regional greenbelt of open space land in perpetuity; protect and restore the natural environment; and provide opportunities for ecologically sensitive public enjoyment and education," which includes a strong commitment to further and support environmental education, and MROSD desires to support such education within LHPUSD.

NOW, THEREFORE, the parties mutually agree as follows:

- 1. Tax Compensatory Fee.** When MROSD acquires land within the "Coastside Protection Area," which acquisition results in a loss of property tax revenue to LHPUSD, MROSD will compensate LHPUSD (hereafter "the Tax Compensatory Fee"), in consideration for LHPUSD's educational services as set out in this Agreement.
- 2. Scope.**
 - a. MROSD acquisitions that shall be subject to the provisions of this Agreement shall include any lands acquired by MROSD in fee title after the Effective Date of this Agreement that are within the geographic jurisdictional boundaries of LHPUSD as they exist on the Effective Date of this Agreement as shown on Exhibit A (a copy of which is attached hereto and incorporated by this reference) and that also lie within the boundaries of the proposed MROSD "Coastside Protection Area" as approved by LAFCo. Such acquisitions are hereafter referred to as "Eligible Acquisitions."
 - b. Lands acquired by MROSD from another government agency shall be exempt from

this Agreement if title to the land was held by the transferring government agency prior to the Effective Date of this Agreement and LHPUSD received no share of the property tax levied upon such lands on the date it was acquired by MROSD.

3. Reports.

- a. Within thirty (30) days of close of escrow, MROSD will report to LHPUSD on any MROSD Eligible Acquisitions.
- b. By July 1 of each year, MROSD will report to LHPUSD, by assessor's parcel number (APN), the current MROSD acquisitions and leases within LHPUSD and the Coastside Protection Area.
- c. By August 1 of each year, LHPUSD shall report to MROSD the nature, scope and costs of the environmental education services LHPUSD has provided during its prior fiscal year as set out in Section 6 herein.
- d. No more than once a year, upon reasonable written notice from LHPUSD's auditors, MROSD will provide a summary of payments made under this Agreement.

4. Payment Schedule. The Tax Compensatory Fee from MROSD shall be forwarded to LHPUSD in two installments semiannually on January 1st and July 1st of each calendar year.

5. Calculation. The Tax Compensatory Fee shall be calculated based on the following formula:

- a. MROSD will pay LHPUSD for each Eligible Acquisition, on the next semi-annual payment date after such acquisition, a Tax Compensatory Fee equal to the greater of either:
 - i. the property tax that LHPUSD would otherwise have received, had it not been acquired by MROSD, based upon the actual property taxes levied upon the Eligible Acquisition on the date it was acquired by MROSD; or
 - ii. the property tax that LHPUSD would have received from the Eligible Acquisition, assuming that the assessed value per acre of the Eligible Acquisition on the date it was acquired by MROSD was equal to the current average assessed valuation per acre of undeveloped vacant lands in the Coastal Protection Area. The current average assessed valuation per acre will be calculated based on the Fiscal Impact Analysis dated June 6, 2003 prepared by Economics Research Associates and submitted to LAFCo in connection with the Coastside Protection Program.

Such payment shall be referred to as "the LHPUSD Tax Share."

- b. In the case of Eligible Acquisitions from non-governmental tax-exempt entities, such as non profit land trusts, MROSD will pay a Tax Compensatory Fee equal to the property tax that LHPUSD would otherwise have received, had it not been acquired by such tax-exempt entity, based upon the actual property taxes levied upon the Eligible Acquisition on the date it was acquired by that tax-exempt entity.
- c. **Annual Increase.** For the purpose of calculating each payment for which a Tax Compensatory Fee is to be paid to LHPUSD after the initial payment, as described in a. and b. above, the amount of such Fee shall be based upon the property taxes that would have been levied on a full property tax year basis. Such fee shall be increased

at an annual rate of 2% effective June 30 of each year. In the event the 2% limit on annual increases to real property tax assessments set out in Proposition 13 (Cal. Const. Art. XIII A, §2) is either repealed or amended to permit annual real property tax increases exceeding 2%, then effective upon the next succeeding June 30th, the Tax Compensatory Fee shall thereafter be increased annually by the lesser of:

- i. the amount specified by the State Constitution, as amended; or
- ii. the most recently available Consumer Price Index (All Urban Consumers - San Francisco - Oakland - San Jose Area); or
- iii. 5%.

However, in no event shall the annual increase be less than 2%. Such Annual Increase shall apply to each Eligible Acquisition from the date of its conveyance to MROSD.

- d. In the event MROSD conveys all of its interests in an Eligible Acquisition to a private tax-paying third party, MROSD shall be relieved of its obligation for payment of a Tax Compensatory Fee to LHPUSD for such Eligible Acquisition and such Acquisition shall thereafter be exempt from this Agreement. In the event that, after conveyance, MROSD retains or reacquires a partial or complete fee interest or easement interest in such Eligible Acquisition, LHPUSD will continue to receive a pro rata share of the property tax generated by such Eligible Acquisition. In the event that the pro rata share of such property tax received by LHPUSD is less than the LHPUSD Tax Share, the Tax Compensatory Fee shall equal the difference in the two amounts so that LHPUSD shall receive the full LHPUSD Tax Share. In the event the pro rata share of such property tax received by LHPUSD is greater than the LHPUSD Tax Share, LHPUSD may retain such excess share, and MROSD shall not owe LHPUSD any further Fee. MROSD may not offset or receive credit for such excess share towards the Tax Compensatory Fee otherwise due to LHPUSD under this Agreement.
- e. In the event an Eligible Acquisition is conveyed by MROSD to another public agency or tax-exempt non-profit agency, then at the time of the next semiannual payment, MROSD shall pay to LHPUSD the "present value" of the Tax Compensatory Fee income stream for that Eligible Acquisition for the remaining term of this Agreement. The "present value" shall be calculated based upon the most current tax exempt bond interest rate available to MROSD.
- f. The parties acknowledge that it is anticipated that certain Eligible Acquisitions will be leased for private agricultural, residential, or other private uses. Such Acquisitions may be subject to a Possessory Interest Tax or other real property tax and will generate property taxes ("Alternative Tax"). In such cases, LHPUSD will continue to receive a pro rata share of such Alternative Tax generated by such Eligible Acquisition. In the event that the pro rata share of such Alternative Tax received by LHPUSD is less than the LHPUSD Tax Share, the Tax Compensatory Fee shall equal the difference in the two amounts so that LHPUSD shall receive the full LHPUSD Tax Share. In the event the pro rata share of such Alternative Tax received by LHPUSD is greater than the LHPUSD Tax Share, LHPUSD may retain such excess share and MROSD shall not owe LHPUSD any further Fee. MROSD may not offset or receive credit for such excess share towards the Tax

Compensatory Fee otherwise due to LHPUSD under this Agreement.

6. **Environmental Education Services.** MROSD will pay LHPUSD the Tax Compensatory Fee in consideration for LHPUSD providing educational services promoting and conducting environmental education in furtherance of MROSD's and LHPUSD's missions. Such services shall include, but not be limited to, providing science instruction pertinent to the natural resources of the "Coastside Protection Area" and MROSD lands in the "Coastside Protection Area," environmental education pertinent to MROSD lands in the "Coastside Protection Area," and such other environmental education programs as LHPUSD and MROSD agree are appropriate to further their mutual goals of promoting environmental education. Some examples of educational activities anticipated include, but are not limited to, a field trip to local fish habitats, or a study of erosion control methods conducted on a site within the "Coastside Protection Area."
7. **Meetings.** MROSD and LHPUSD will meet at the request of either agency to coordinate and review LHPUSD and MROSD activities under this Agreement and to determine if other mutually desirable partnership opportunities are available.
8. **Other Collaborative Projects.** In the event MROSD's "Coastside Protection Program" is approved by LAFCo, MROSD and LHPUSD may seek other partnering opportunities such as grants and joint projects to further environmental education, supporting the development of scientific knowledge about natural and cultural resources and management techniques applicable to MROSD lands, and potentially engaging in joint resource management projects on MROSD lands.
9. **Term.** The initial term of this Agreement shall be 15 years; provided however, for the purpose of maintaining and addressing a long term relationship between the agencies and the fiscal impacts therefrom, the parties desire that, after 14 years from its Effective Date, MROSD and LHPUSD shall review this Agreement and hereby agree to meet and to negotiate in good faith to agree upon a Successor Agreement. Such negotiations shall include discussion of, among other things, the term of a Successor Agreement, and whether amendments to the provisions herein are necessary or appropriate to accomplish the purpose and goals of the Agreement. Such negotiations shall be based on the principles set out in this Agreement, taking into consideration the past experience of both agencies in carrying out the provisions of this Agreement, the services provided by LHPUSD, the anticipated needs of LHPUSD and MROSD in order to be able to continue to participate in this Agreement and related collaborative projects, and other factors directly and reasonably related to the purposes and goals of this Agreement.

If, despite such good faith efforts, the parties are unable to agree upon a Successor Agreement, including the Term thereof, the matter shall be resolved by binding arbitration. The arbitrator shall have only the authority to determine an appropriate Term for a Successor Agreement, taking into account the matters set out in Section 9. Unless the parties mutually agree to amend other provisions of this Agreement, any Successor Agreement shall have the same terms, conditions, and provisions, except that the length of the Term of the Successor Agreement may be set by the arbitrator. The

arbitrator may not impose a Term that is contrary to law. The parties shall jointly select one qualified arbitrator who shall be a retired or former judge of the Superior Court of California. The arbitration shall be conducted in accordance with the rules set out in California Code of Civil Procedure Section 1280 et seq. If the parties are unable to agree upon a particular retired or former judge, then they will refer the matter to a qualified commercial arbitration service mutually acceptable to the parties, which shall conduct the arbitration according to its rules. If arbitration is required, it shall be in all cases final and binding.

10. Effective Date. This Agreement shall become effective on the date it is fully executed by both MROSD and LHPUSD.

11. Insurance.

- a. During the term of this Agreement, MROSD and LHPUSD shall continue to carry the amount of general liability insurance, or self-insurance, covering its risks of operation in an amount and scope of coverage substantially similar as exist on the Effective Date of this Agreement. Each agency shall furnish the other agency with Certificates of Insurance evidencing such insurance coverage upon request.
- b. Each agency shall be responsible for providing Workers' Compensation coverage as required by law for its own employees, volunteers and agents performing any acts under this Agreement.

12. Indemnification. The parties will allocate between themselves any potential liability arising from this Agreement as set out in Government Code Section 895.6.

13. Applicable Laws. This Agreement shall be construed and enforced pursuant to the laws of the State of California.

14. Notices.

- a. Any notice required to be given to MROSD shall be deemed to be duly and properly given if mailed to MROSD, postage prepaid, addressed to:

Midpeninsula Regional Open Space District
5050 El Camino Real
Los Altos, CA 94022
Attn: General Manager

or personally delivered to MROSD at such address or at such other addresses as MROSD may designate in writing to LHPUSD.

- b. Any notice required to be given to LHPUSD shall be deemed to be duly and properly given if mailed to LHPUSD, postage prepaid, addressed to:

La Honda-Pescadero Unified School District

360 Butano Cutoff
Pescadero, CA 94060
Attn: Superintendent

or personally delivered to LHPUSD at such address or at such other addresses as LHPUSD may designate in writing to MROSD.

- 15. Waiver.** The failure of any party to insist upon a strict performance of any of the terms, conditions and covenants contained herein shall not be deemed a waiver of any rights or remedies that LHPUSD or MROSD may have and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions and covenants contained herein.
- 16. Severability.** If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.
- 17. Captions.** The captions in the articles of this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.
- 18. Assignment.** This Agreement may not be assigned, assumed, transferred, or conveyed by either party without the prior written consent of the other party. Any such transfer or assignment without such prior written consent shall be void.
- 19. Amendments.** No provision of this Agreement may be amended except by an agreement in writing signed by both parties.
- 20. Prior Agreements.** This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.
- 21. Costs of Litigation.** In the event that a dispute should arise relating to this Agreement which results in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs of litigation including reasonable attorney's fees.
- 22. Termination.** If at any time after the Effective Date of this Agreement the Board of Trustees of LHPUSD determines that this Agreement are not in the best interests of their educational mission, LHPUSD may terminate this Agreement upon thirty (30) days written notice to MROSD.

This Agreement is executed on the date shown with each signature and is effective on the date it is fully executed by both LHPUSD and MROSD.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

LA HONDA-PESCADERO UNIFIED SCHOOL DISTRICT

By: _____
Margaret MacNiven, President
Board of Directors

By: _____
Lisa Mateja, President
Board of Trustees

Date: _____

Date: _____

Recommended for Approval:

Recommended for Approval:

By: _____
Ana M. Ruiz, General Manager

By: _____
Amy Wooliever, Superintendent

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

By: _____
Hilary Stevenson, General Counsel

By: _____
Rebecca M. Archer, Chief Deputy County
Attorney

Date: _____

Date: _____

Attest:

Attest:

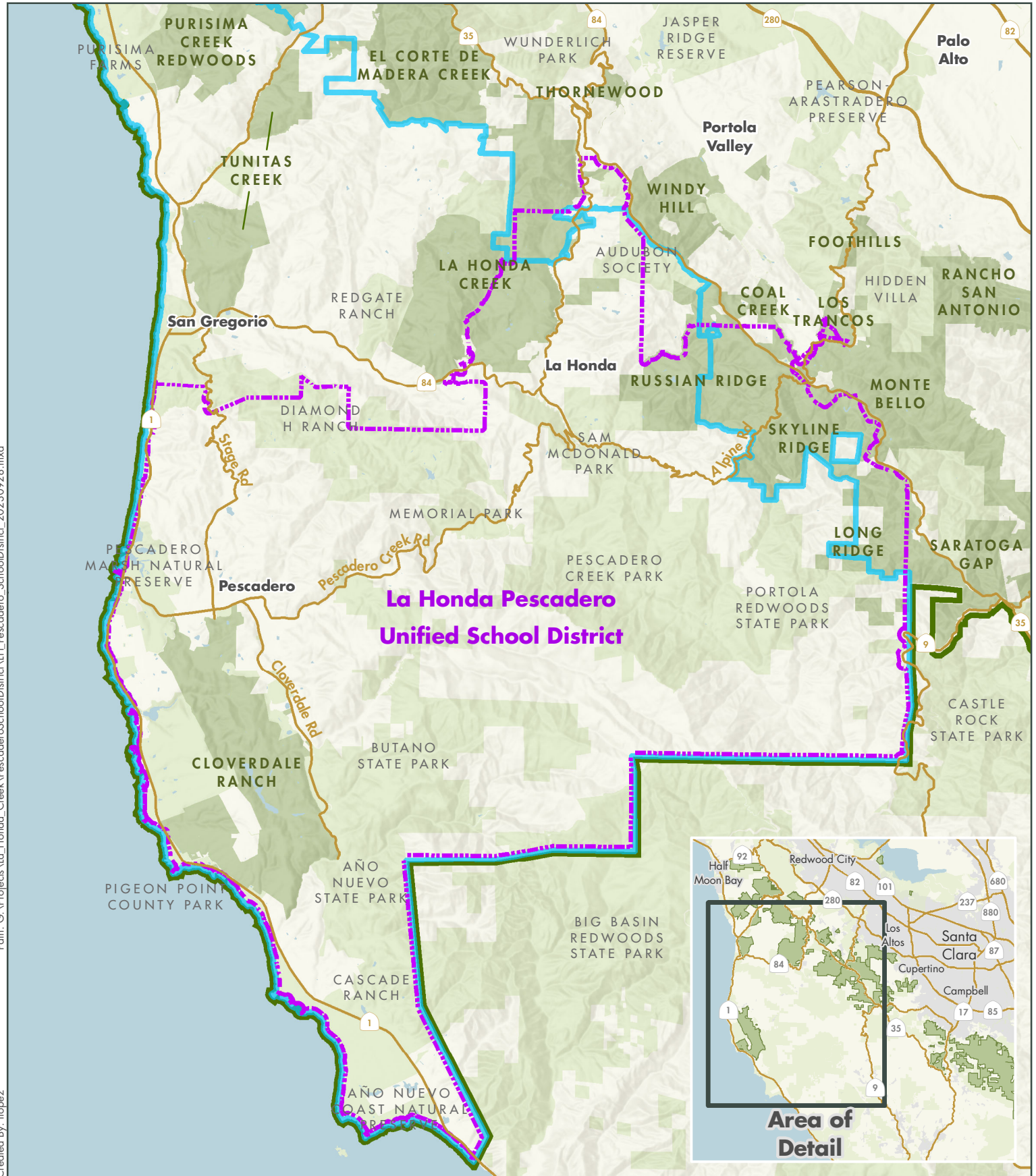
By: _____
Maria Soria, District Clerk

By: _____
Renee Erridge, LHPUSD Clerk

Date: _____

Date: _____

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La Honda-Pescadero Unified School District Boundaries

- Midpen preserves
- Other protected lands
- Midpen District boundary
- La Honda-Pescadero Unified School District
- Coastside Protection Area

EXHIBIT A

Miles

Midpeninsula Regional
Open Space District
(Midpen)
9/29/2023



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.