



Midpeninsula Regional  
Open Space District

R-24-106  
Meeting 24-23  
August 28, 2024

## AGENDA ITEM 4

### AGENDA ITEM

Proposed Purchase of the 27.63-acre Graf-Scholer Property located in Santa Clara County (APN: 562-23-006) as an addition to Sierra Azul Open Space Preserve

### 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 staff report.
2. Adopt a Resolution authorizing the purchase of the Graf-Scholer Property for \$1,000,000 with a corresponding authorization for a Fiscal Year 2024-25 budget adjustment of the same amount.
3. Adopt a Use and Management Plan for the Property, as set out in the staff report.
4. Authorize the General Manager to enter into a settlement agreement with Santa Clara County Code Enforcement regarding the resolution of the unpermitted structures on the property.
5. Authorize the General Manager to initiate plans for demolition of the structures and to bring a demolition contract award to the Board of Directors as a future item, with the exception of one structure for future staff housing if site improvements to legalize the structure fall under \$500,000.
6. Withhold dedication of the Graf-Scholer Property as public open space at this time.

### SUMMARY

The General Manager recommends purchasing the 27.63-acre Graf-Scholer Property (Property) at a purchase price of \$1,000,000 (\$36,192 per acre) as an addition to Sierra Azul Open Space Preserve (Sierra Azul OSP or Preserve). The following report includes a description of the Property, an amendment to the Use and Management Plan for the Preserve, findings of the environmental review, the purchase terms and conditions, and financial considerations. Currently, there is no budget allocation for this project. If approved, a budget adjustment of \$1,000,000 to the Fiscal Year 2024-25 (FY25) budget would be required to proceed with the acquisition.

### DISCUSSION

The Midpeninsula Regional Open Space District (District) proposes the purchase of the 27.63-acre Property consisting of one legal parcel that is zoned Hillside (HS). The Property is

surrounded by the 19,478-acre Sierra Azul Open Space Preserve on all sides. This purchase would fill an in-holding within the Preserve and allow for the permanent protection of forested lands and wildlife habitat within the Alamitos Creek watershed and further the connection of protected open space and wildlife corridors. This purchase advances Measure AA Portfolio #25, *Loma Prieta Public Access, Regional Trails and Habitat Projects*, as it secures additional property in the Loma Prieta Area of Sierra Azul OSP.

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

The triangle-shaped Property is located on the southern border of the District's sphere of influence just north of Alamitos Road, which is a public County road. The property is just above the confluence of Barret and Alamitos Creeks (commonly referred to as Twin Creeks).

### **Land Use and Improvements**

The Property is improved with four unpermitted single-family houses and one detached garage totaling approximately 6,000 square feet. Of the four houses, staff is investigating whether or not it is possible to retain one of them for legalization and use as staff housing. Due to the age and construction type, the houses do not hold any historical value. Santa Clara County Code Enforcement (Code Enforcement) is aware of the unpermitted structures. The County of Santa Clara and the District would enter into a settlement agreement in order to resolve the enforcement actions regarding the unpermitted structures, including the demolition of unpermitted structures with the potential exception of one house, if cost-effective to do so (i.e., if costs remain under \$500,000) based on the costs to conduct necessary site improvements to legalize the structure.

### **Habitat and Natural Resources Value**

The Property contains a mixture of chaparral, open grasslands, and mature oak woodlands.

### **Water Resources and Rights**

The Property is served by three springs that combined produce an estimated 3-4 gallons a minute.

## **USE AND MANAGEMENT**

### **Planning Considerations**

The Property consists of one parcel located in unincorporated Santa Clara County with a General Plan designation of Hillsides 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 2.20.010, very low-density residential use, low intensity recreation and land in its natural state (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.
- Roads and Trails: Continue to maintain driveways in a serviceable condition in accordance with the District's adopted Resource Management Policies standards and regulatory permits to facilitate access to the site for subsequent demolition and clean-up.
- Patrol: Routinely patrol the Property.
- Structures and Improvements: Board-up and/or secure all structures and test for hazardous materials (lead and asbestos) before demolition can be undertaken. Examine legalizing one of the structures for future staff housing; retain structure if cost-effective to complete necessary site improvements to legalize (i.e., costs do not exceed \$500,000), otherwise demolish the structure.
- Disconnect electrical service prior to demolition.
- Seek bids for demolition of structures, site clean-up and site restoration and bring to the Board for award of contract.
- Resource Management: Conduct plant and animal management activities 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.
- Water Resources and Water Rights: Protect the springs 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 Resource Management Policies.

## **CEQA COMPLIANCE**

### **Project Description**

The project consists of the purchase of the 27.63-acre Property as an addition to the District's open space preserve system, as set forth in the Purchase and Sale Agreement, and the concurrent adoption of a PUMP. The adoption of a PUMP 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 from 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, minor alteration or demolition 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 open space and residential uses. The PUMP includes the potential maintenance, minor alteration, or demolition of the existing residences, accessory structures, associated improvements, and roads 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 for the Property 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 to preserve open space. This acquisition will transfer fee ownership of the Property to the District to ensure that the open space will be preserved and incorporated into Sierra Azul Open Space Preserve.

In addition, none of the exceptions listed in Section 15300.2 apply to this project.

## **TERMS AND CONDITIONS**

The 27.63-acre Graf-Scholer Property is proposed for purchase at a sale price of \$1,000,000 (\$36,192 per acre). The Property would be purchased as-is on an all-cash basis. Escrow would close on or before November 18, 2024. The District would also enter into a settlement agreement with the County of Santa Clara to resolve the outstanding Code Enforcement activities related to

the unpermitted structures, including the demolition of unpermitted structures with the potential exception of one house, if cost-effective to do so (i.e., if costs are less than \$500,000) based on the costs to conduct necessary site improvements to legalize the structure.

For additional context, the total estimated cost to construct a 1,500 square foot, 3-bedroom, 2-bathroom ranch style house on District owned property (including a well, septic, PG&E hook-up, grading, permitting, and all other soft costs) would range between \$800,000 to over \$1,000,000 depending upon site conditions.

## FISCAL IMPACT

Land acquisitions brought before the Board for approval include a budget adjustment to the adopted budget. If the purchase of the Graf-Scholer Property is approved, a budget increase of \$1,000,000 to the FY25 budget is required.

Graf-Scholer Property Purchase Amount (including \$15,000 deposit)	\$1,000,000
Dunham Property Purchase Amount (including \$10,000 deposit) <i>Also on the August 28, 2024 board meeting agenda</i>	\$900,000
Total Land purchases approved to date for FY25	\$0
<b>Total Land Purchases (if approved)</b>	<b>\$1,900,000</b>

The following table outlines the *Measure AA Portfolio 25 Sierra Azul — Loma Prieta Area Public Access, Regional Trails and Habitat Projects* allocation, costs-to-date, projected future project expenditures and projected portfolio balance remaining.

<b>MAA25 Sierra Azul — Loma Prieta Area Public Access, Regional Trails and Habitat Projects Portfolio Allocation:</b>	<b>\$7,986,000</b>
Life-to-Date Spent (as of 07/26/24):	(2,398,668)
Encumbrances:	\$0
Remaining FY25 Project Budgets*:	(1,000,000)
Future MAA25 project costs (projected through FY28):	(\$5,881)
<b>Total Portfolio Expenditures:</b>	<b>(\$3,404,549)</b>
<b>Portfolio Balance Remaining (Proposed):</b>	<b>\$4,581,451</b>

*\*If budget adjustment approved*

The following table outlines the Measure AA Portfolio 25 allocation, projected life of project expenditures and projected portfolio balance remaining.

<b>MAA25 Sierra Azul — Loma Prieta Area Public Access, Regional Trails and Habitat Projects Portfolio Allocation:</b>	<b>\$7,986,000</b>
Projected Project Expenditures (life of project):	
25-001 Burton Land Acquisition	(\$410,150)
25-002 Billingsley Property Acquisition and Site Cleanup	(\$1,936,220)
25-003 Burton Property Site Cleanup	(\$52,298)
25-004 Umunhum-to-the-Sea Trail	(\$5,881)
25-005 Graf-Scholer Property Acquisition*	(\$1,000,000)
<b>Total Portfolio Expenditures:</b>	<b>(\$3,404,549)</b>

<b>Portfolio Balance Remaining (Proposed):</b>	<b>\$4,581,451</b>
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*\*If budget adjustment approved*

## **PRIOR BOARD AND COMMITTEE REVIEW**

The Real Property Committee did not review the purchase due to the compressed timeline of this acquisition.

## **PUBLIC NOTICE**

Public notice was provided as required by the Brown Act, and a copy of this agenda was mailed to property owners of land located adjacent to or surrounding the Property.

## **NEXT STEPS**

Upon approval by the Board, staff would proceed with the close of escrow for the purchase of the Property by November 18, 2024, and take the next steps identified in the PUMP as contained in this report. The District's Foothills 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 2024-25 General Fund Capital Budget, Authorizing the General Manager or Other 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 Graf-Scholer)
2. Graf-Scholer Property Location Map

Responsible Department Head:  
Allen Ishibashi, Real Property Manager

Prepared by/Contact person:  
Allen Ishibashi, Real Property Manager

Graphics prepared by:  
Lilian Amaral, GIS Intern

**RESOLUTION 24-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING EXECUTION OF PURCHASE AND SALE AGREEMENT, AMENDING THE FISCAL YEAR 2024-25 GENERAL FUND CAPITAL BUDGET, AUTHORIZING GENERAL MANAGER OR OTHER APPROPRIATE OFFICER TO EXECUTE PURCHASE AND SALE AGREEMENT, CERTIFICATE OF ACCEPTANCE AND 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 GRAF-SCHOLER, APN 562-23-006)**

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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 Midpeninsula Regional Open Space District (District) does hereby accept the offer contained in that certain Purchase and Sale Agreement (Agreement) between Bernd Graf a married man as to an undivided ½ interest and Mary Scholer, Trustee of the Scholer Family Revocable Trust dated June 20, 2007, and the Midpeninsula Regional Open Space 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 the real property described therein, Assessor’s Parcel Number 562-23-006 (Graf-Scholer Property).

**SECTION TWO.** The Board of Directors of Midpeninsula Regional Open Space District authorizes the expenditure of \$1,000,000.00 covering the purchase of the Graf-Scholer Property, including a deposit of \$15,000.00.

**SECTION THREE.** The Board of Directors of Midpeninsula Regional Open Space District does hereby amend the Budget and Action Plan for the Midpeninsula Regional Open Space District for Fiscal Year 2024-25 by increasing the Measure AA Fund Capital budget in the amount of \$1,000,000.00. Except as herein modified, the FY 2024-25 Budget and Action Plan, Resolution No. 24-18 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, Purchase and Sale Agreement and the Grant Deed on behalf of the District.

**SECTION FIVE.** The General Manager or the General Manager’s designee (Real Property Manager) is authorized to provide notice of acceptance to the seller, execute all escrow docs, and to extend escrow if necessary.

**SECTION SIX.** The General Manager or the General Manager’s designee (Real Property Manager) is authorized to expend up to \$10,000.00 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 authorized to negotiate and execute an Agreement with the County of Santa Clara to resolve Code

Enforcement issues related to the Graf-Scholer Property. 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 August 28, 2024, at a regular meeting thereof, by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

**ATTEST:**

**APPROVED:**

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Curt Riffle, Secretary  
Board of Directors

\_\_\_\_\_  
Margaret MacNiven, President  
Board of Directors

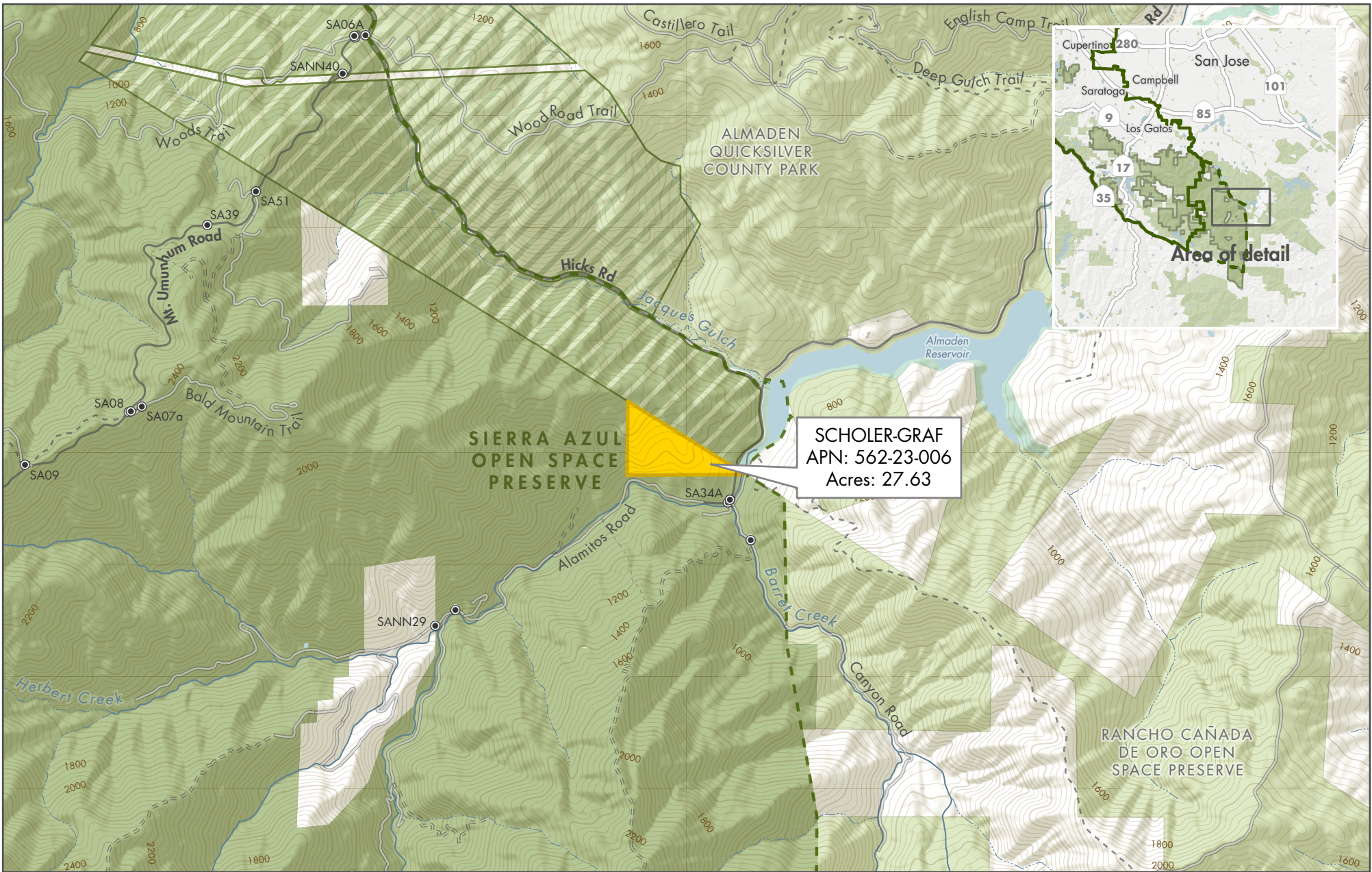
**APPROVED AS TO FORM:**

\_\_\_\_\_  
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.

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Maria Soria, District Clerk





### Scholer-Graf

- |                       |                     |                     |                       |
|-----------------------|---------------------|---------------------|-----------------------|
| Scholer-Graf property | Easement over MROSD | MROSD Boundary      | Paved road            |
| Midpen preserve       | MROSD easement      | Sphere of influence | Unpaved seasonal road |
| Other protected lands | Watershed land      | Private property    | Trail                 |

Midpeninsula Regional  
Open Space District  
(Midpen)  
7/22/2024



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.