



Midpeninsula Regional
Open Space District

R-12-25
Meeting 12-08
February 29, 2012

AGENDA ITEM 6

AGENDA ITEM

Appointment of Sheryl L. Schaffner as General Counsel and Approval of General Counsel's Employment Agreement

BOARD APPOINTEE EVALUATION COMMITTEE RECOMMENDATION

1. As a result of the Board's evaluation of applicants for employment as the District's General Counsel, appoint Sheryl L. Schaffner as the District's General Counsel, effective March 19, 2012.
2. Adopt the attached resolution approving the General Counsel's Employment Agreement.

SUMMARY

As a result of the announcement that the District's current General Counsel would retire at the end of 2011, the Board undertook an extensive recruitment process to conduct a successful search for a highly qualified successor for this position. The Board tasked the Board Appointee Committee to work with the Board's selected executive recruitment firm to develop a recruitment plan and timeline and work with the recruiter to screen and identify the most highly qualified applicants. With this information, the Board interviewed the most highly qualified candidates. The Board is delighted to have selected Sheryl Schaffner as the District's new General Counsel effective March 19, 2012.

DISCUSSION

As a result of Susan Schectman's announcement that she intended to retire as the District's General Counsel at the end of 2011, the Board tasked the Board Appointee Evaluation Committee (Committee) to undertake steps in the recruitment process and provide recommendations back to the full Board.

The first Committee tasks were to prepare a Request for Proposals for experienced executive recruitment firms and to recommend a recruiter, candidate profile, process and timeline for

approval by the Board in order to conduct a successful and orderly search for a new General Counsel (See Reports Nos. R-11-99 and R-11-107).

The Committee (composed initially of Directors Hanko, Riffle and Hassett and later Director Cyr in place of Director Hanko) recommended, and the Board selected, Peckham and McKenney as the District's executive recruiter. Peckham conducted an extensive and widely publicized executive search for the most qualified candidate.

The Committee worked with Peckham to review the many applications received and recommended a group of qualified applicants for further consideration by the Board. The Board reviewed the applicant group's qualifications and, after further evaluation, selected finalist candidates to interview. On January 13th and January 20th, the Board interviewed the finalists.

Based on the Board's review, it is the Committee's recommendation to proceed to appoint Sheryl Schaffner as the District's new General Counsel, effective March 19, 2012.

From the Committee's perspective, this is "a natural fit." While the District had a tremendous pool of talent to choose from, Ms. Schaffner's background in environmental and administrative law, hands-on experience in open space protection, working with land trusts, and her deep background in working with public agencies and regulatory agencies will all be an immediate benefit to the District. She also comes in with a strong understanding of the District's mission and challenges.

Ms. Schaffner is currently the City Attorney of San Ramon. She has 19 years of experience practicing law for public agencies. She began her career as an attorney in one of the state's premier law firms specializing in the California Environmental Quality Act. She then became staff counsel to the California Department of Conservation, working on environmental issues such as agricultural land preservation through the Williamson Act. Later in her career, she became Senior Staff Counsel to the State Water Resources Control Board and functioned as lead attorney for the San Francisco Bay and North Coast Regional Water Quality Control Boards. During that time, she also served a term as a City Councilwoman for the City of Davis, giving her a unique perspective on the role of an elected official as compared to the role of its attorney. It was during her Water Board work that she was invited to apply for the position of City Attorney of Eureka, as she had been working actively in that area in timber protection in her role as counsel to the Water Board. She served as City Attorney until she accepted the position as City Attorney of San Ramon.

Ms. Schaffner has said that this job opportunity "speaks to the core of my original motivations for going to law school 22 years ago, and that is natural resource, species and open space protection."

Having thoroughly considered all qualified applicants, it is the Committee's recommendation to appoint Sheryl Schaffner as the District's new General Counsel.

FISCAL IMPACT

The proposed compensation and benefit package in the employment agreement will have no additional fiscal impact. The proposed annual salary is the same salary established for the current General Counsel.

PUBLIC NOTICE

Public notice of this Agenda item was provided pursuant to the Brown Act. No additional notice is required.

CEQA COMPLIANCE

This proposed action is not a project under the California Environmental Quality Act (CEQA) and no environmental review is required.

NEXT STEPS

If the Board approves the Committee's recommendations, the Board President will execute the attached Employment Agreement and Sheryl L. Schaffner will begin her District service on March 19, 2012.

Submitted by:
Board Appointee Evaluation Committee
(President Riffle, Directors Cyr and Harris)

Contact person:
Curt Riffle, Board President

Attachment:

1. Resolution Approving Employment Agreement with the General Counsel

RESOLUTION NO. 12-XX

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE MIDPENINSULA REGIONAL OPEN SPACE
DISTRICT APPROVING GENERAL COUNSEL
EMPLOYMENT AGREEMENT**

WHEREAS, the Board of Directors of the Midpeninsula Regional Open Space District desires to enter into a District General Counsel Employment Agreement (“Agreement”) with Sheryl L. Shaffner, employing her as the District’s General Counsel, effective March 19th, 2012.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Midpeninsula Regional Open Space District does hereby authorize the President of the Board of Directors or other appropriate officer to execute the attached District General Counsel Employment Agreement on behalf of the Midpeninsula Regional Open Space District to appoint and employ Sheryl L. Schaffner s as the District’s General Counsel effective March 19, 2012.

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DISTRICT GENERAL COUNSEL EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is entered into this 29th day of February 2012, by and between Midpeninsula Regional Open Space District, a California public agency (“District”), and Sheryl L. Schaffner (“General Counsel”).

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. ***Designation of District General Counsel***

Effective March 19, 2012, SHERYL L. SCHAFFNER is appointed and employed as legal counsel for the District. The designation of the position is General Counsel.

2. ***Essential Duties***

The General Counsel shall perform her duties consistent with due diligence, according to the highest and most professional standards, and in compliance with all federal, state and local laws, ordinances, rules and regulations which are applicable to or associated with the performance of such duties.

A. ***Administrative Duties***

- 1) The General Counsel shall attend all regular and special meetings of the District Board of Directors as needed. The General Counsel’s duties in this connection shall be to render advice and opinions with respect to legal matters which may arise during such meetings, except legal matters which may pertain to proceedings wherein specialized legal services are to be provided by special counsel or which do not fall within the General Counsel’s scope of duties.
- 2) The General Counsel shall also attend meetings of committees and staff of the District when requested to do so by the District Board of Directors or the District General Manager and when necessary to render legal advice to committees and project teams.
- 3) When requested to do so by the District Board of Directors, District General Manager, or Department Managers, the General Counsel shall prepare and review resolutions, notices, contracts, leases, ordinances and other legal documents and papers in matters pertaining to the District, and shall also examine for legal sufficiency all documents submitted to her by the District.
- 4) The General Counsel shall perform legal research as required to attend to the legal needs of the District and shall review legislation and court decisions to determine their effect upon District affairs.
- 5) The General Counsel shall cooperate with and assist the District, its officers, directors, agents and employees on all general legal matters

pertaining to the District, including the enforcement of District laws, ordinances and codes.

- 6) The General Counsel shall also perform such other related and appropriate legal services for the District as may be requested by the District Board of Directors or the District General Manager.
- 7) The General Counsel shall properly supervise, evaluate and manage those District employees that report to her.
- 8) The General Counsel shall be responsible for the District's risk management program in coordination with the California Joint Powers Insurance Authority for all matters except the Worker's Compensation Program.

B. *Litigation Duties*

When requested to do so by the District Board of Directors, the General Counsel shall represent the District in legal and administrative proceedings to which the District may be a party.

3. *Acting General Counsel*

The General Counsel shall select another qualified person or persons to act as General Counsel to the District in cases where the General Counsel is unable to act due to illness, vacation or other reason. The selection of Acting General Counsel shall be subject to the approval of the District Board of Directors where the appointment exceeds three weeks.

4. *Limitation on Duties*

- A. The General Counsel's position shall be full time and her regular work hours shall be generally 40 hours of service per week, including attendance at Board or Board Committee meetings.
- B. It is recognized that the District normally contracts with special counsel in certain matters pertaining to the District, such as labor relations, worker's compensation, general liability and bond issues. In the event legal services are provided by special counsel, the General Counsel will be responsible for general oversight in such cases to ensure the District is effectively represented in a cost-effective manner and for providing general legal assistance and support to the special counsel as needed.

5. *Compensation and Benefits*

- A. As compensation for the services to be performed hereunder, the General Counsel shall receive an annual salary at the rate of \$173,064.83 effective March 19, 2012 which shall be General Counsel's first day of District employment.

- B. Annual Salary Adjustment and Performance Review: The Board shall annually review the General Counsel's performance pursuant to the Board's labor policy "Board Appointee Employment Class: Annual Evaluation System and Form". At that time, the parties may propose to modify or amend this Agreement and the Board may consider an annual salary adjustment for the General Counsel. Any such annual salary adjustment shall be effective on April 1st.
- C. Meritorious Pay: The District may grant the General Counsel meritorious pay, ranging from 0% to 5% over and above the General Counsel's annual salary. Such meritorious pay shall be based on the Board's annual review of the General Counsel's performance and pursuant to the Board's labor policy "Board Appointee Employment Class: Annual Evaluation System and Form" which sets out the conditions and eligibility for such merit pay. Meritorious pay shall not be a salary adjustment, but rather recognition for performance during the previous year of service.
- D. Benefits: The General Counsel shall receive the benefits available to regular full time employees of the District including those set out in the District's "Personnel Policies and Procedures Manual" on the same terms available to these employees. The General Counsel may participate in any District optional benefit plan at her own cost.
- E. Retirement Plan: The District contracts with the California Public Employees' Retirement System ("PERS") to provide its employees the Local Miscellaneous 2.5% at 55 retirement plan ("the Plan"). Pursuant to the District's labor policy for the Board Appointee Group, The District shall pay the same percentage of the General Counsel's required employee contribution to PERS as it pays for other District employees, if any, resulting in an Employer Paid Member Contribution ("EPMC") and will pay the District's employer contribution in accordance with the District's Plan. The District currently pays all but 2% of the General Counsel's required 8% employee contribution. This payment may change from time to time as may the employer contribution.
- F. Leave: The General Counsel shall earn leave as set forth in the District's "Personnel Policies and Procedures Manual" and "Administrative Leave Program for Managers", except that the General Counsel will have 15 days of Vacation Leave credited to her leave bank on her first day of employment.
- G. Mileage Allowance: The General Counsel will be eligible to receive mileage reimbursement at the applicable District rate for use of her personal vehicle on District business.
- H. Special Compensation. The District shall report the value, if any, of EPMC to PERS as special compensation. In the event that for any reason PERS disallows any of General Counsel's salary or compensation to be included in the calculation

of the value of the General Counsel's retirement benefit, the General Counsel shall have no claim or recourse of any kind against the District.

- I. Relocation Expenses. The District shall pay the General Counsel relocation expenses not to exceed \$10,000 to reimburse her for the costs of relocating to a residence in closer proximity to the District's Administrative Office. This shall include costs for packing, temporary storage, and moving company fees. Any sum reimbursed shall be based upon documented invoices from the relocation service providers. Any such reimbursement shall be paid back to the District if the General Counsel leaves District employment within two (2) years from the first day of employment.
6. **Termination and Severance Pay** The General Counsel may terminate this Agreement upon forty-five (45) days' written notice to District. District may terminate this Agreement by written notice to the General Counsel at any time. The General Counsel serves at the pleasure of the District Board of Directors and may be discharged without cause. In the event that the District terminates the General Counsel's employment for reasons other than cause, the Board shall compensate the General Counsel in an amount equal to six (6) months' salary as of the date of termination except that no severance will be due if the General Counsel's termination is for cause. "Cause" shall mean that the General Counsel has committed an act involving moral turpitude, dishonesty, fraud, violation of District policy of a serious nature, current drug abuse, corruption or similar act of gross misconduct, whether the act is committed in the course of her employment or otherwise. Termination for cause shall also include an agreement by the District that the General Counsel may resign in lieu of termination for cause.
 7. **Entire Agreement** This instrument contains the entire agreement of the parties and may be changed only by an agreement in writing signed by the parties hereto.
 8. **Effect of Waiver** No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or subsequent breach of the same or of any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.
 9. **Supersedes Prior Agreement** This Agreement supersedes any and all previous employment agreements and amendments thereto entered into by and between the District and the General Counsel.
 10. **Amendment** No amendment, alteration, or variation in the terms of this Agreement is valid unless made in writing and signed by both parties.
 11. **Notices:** Any notices to be given by either party to the other shall be made in writing by either personal delivery or by mail, registered or certified, postage prepaid, with return receipt requested. Notices delivered personally shall be deemed received as of actual receipt; mailed

notices shall be deemed received as of five days after the date postmarked. Mailed notices shall be addressed to the respective parties as follows:

To the District: Midpeninsula Regional Open Space District
Attention: President, Board of Directors
330 Distel Circle
Los Altos, CA 94022

To the General Counsel: Sheryl L. Schaffner, General Counsel
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement effective this 29th day of February, 2012, at Los Altos, California.

MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT:

GENERAL COUNSEL:

By: _____
Curt Riffle, President

Sheryl L. Schaffner

Date: _____

Date: _____

ATTEST: _____
Michelle Radcliffe, District Clerk