

- **Board of Directors**  
**Asset and Real Property Committee**

November 8, 2005 Board Meeting

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7-3

### **Subject**

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Affirm the Chief Executive Officer's determination that Metropolitan's Diamond Valley Lake North Property is surplus to Metropolitan's needs

### **Description**

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Beginning in 1989, Metropolitan commenced the acquisition of properties at various locations that were under consideration for construction of the Eastside Reservoir project. Upon approval of the project in 1991, Metropolitan's Board selected the Diamond Valley site as the project location and authorized the purchase of all lands that may be necessary for the construction and operation of the reservoir. These acquisitions included the lands necessary to construct an east-west roadway to replace the existing Newport Road that was within the reservoir boundary. During the acquisition process, Metropolitan acquired entire parcels, although only a portion of a parcel may have been required for project purposes (see [Attachment 1](#)).

The Diamond Valley Lake (DVL) North Property consists of ±731 total acres originally acquired for the reservoir. The property is located immediately west of State Street and north of Domenigoni Parkway in the city of Hemet. The general location of the property is shown in [Attachment 2](#), and the individual parcels that make up the property are shown in [Attachment 3](#). The DVL North Property is owned in fee by Metropolitan and is generally unimproved. Portions of these parcels were used for construction of Domenigoni Parkway, which was a replacement for the portion of Newport Road eliminated by the reservoir. These parcels have also been used to construct Salt Creek Channel flood control improvements that divert stormwater runoff that formerly drained through the reservoir site. Portions of the property have been leased for agricultural use since 1994, providing Metropolitan with current revenues of \$15,262 annually.

The largest portion of the North Property, Parcel 144-1-85 shown as Area 'A' on [Attachment 3](#), was purchased in 1992 from Rancon, a real estate development firm. Metropolitan originally offered to purchase only the southern half of this parcel, but acquired the entire parcel to resolve a dispute with Rancon over the purchase price. Rancon had acquired this property from the McSweeney family, which excluded from the sale the parcel on which the family home is located (Area 'G' on [Attachment 3](#)). The McSweeney family retains the ownership of the family home site. The remaining parcels within the DVL North Property consist of portions of larger properties that were acquired in 1993 and 1994 for the Eastside Reservoir project: Parcels 144-1-79 (Area 'C'), -153 (Area 'B'), -159 (Area 'E'), -331 (Area 'D'), and -505 (Area 'F').

In accordance with Metropolitan's Administrative Code Section 8240 ([Attachment 4](#)), staff reviews real property owned by Metropolitan to determine whether any such property is surplus to Metropolitan's needs. The CEO has determined that the subject property lying north of Domenigoni Parkway is no longer required for Metropolitan's needs.

The California Surplus Land Act ([Attachment 5](#)) requires that government agencies offer surplus lands for certain public uses (housing, parks, schools) before marketing the lands for private sale. Upon affirmation by Metropolitan's Board that the DVL North Property is surplus to Metropolitan's needs, notice will be sent to other public agencies inviting offers to purchase or lease the property for these purposes. If no offers are received or agreed to after good faith negotiation, the property will be available for disposal in accordance with Metropolitan's Administrative Code.

An independent appraiser has been retained and is currently appraising the fair market value of the property in its current condition. Metropolitan has also issued Request for Proposals (RFP) No. 760 for development of recreational facilities at Diamond Valley Lake. The RFP invited respondents to submit an alternative in their proposals that could incorporate the use of the DVL North Property in connection with the recreation development. If the property remains available after completion of the Surplus Property Act requirements, staff will recommend that Metropolitan's Board approve a process for disposal of the property either through negotiations with a respondent to RFP No. 760 or through a public sale. See [Attachment 6](#) for the Surplus Property Decision Tree.

## Policy

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Metropolitan Water District Administrative Code Article 4, Section 8240: Disposal of Real Property, Preliminary Requirements

Metropolitan Water District Administrative Code Section 8241: Authority for Chief Executive Officer/General Manager to Sell or Lease Surplus Real Property

California Surplus Property Act, Government Code Section 54220 *et seq.*

## California Environmental Quality Act (CEQA)

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CEQA determination for Option #1:

The proposed actions are not defined as a project under CEQA because they involve continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed actions in question may have a significant effect on the environment, the proposed actions are not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed actions are not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

## Board Options/Fiscal Impacts

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### Option #1

Adopt the CEQA determination and

- a. Affirm the CEO's determination that the DVL North Property, consisting of ±731 acres, is surplus to the needs of Metropolitan; and
- b. Comply with the California Surplus Lands Act by offering the property to other public agencies for use in accordance with the law.

**Fiscal Impact:** Disposal of the surplus property for its fair market value pursuant to the Surplus Lands Act would generate an unknown amount of revenue.

### Option #2

Do not affirm the CEO's determination, and instead continue with the existing ground lease and assess future leasing opportunities.

**Fiscal Impact:** Metropolitan would continue to receive revenue from the agricultural lease, but would forego the revenue generated by disposal of the surplus property.

**Staff Recommendation**

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Option #1

  
\_\_\_\_\_  
Roy L. Wolfe  
Manager, Corporate Resources

10/17/2005  
Date

  
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Dennis B. Underwood  
Chief Executive Officer/General Manager

10/19/2005  
Date

**Attachment 1 – Detailed Report**

**Attachment 2 – General Location Map**

**Attachment 3 – Map of MWD Parcel Nos. 144-1-85, 144-1-153, 144-1-79, 144-1-331, 144-1-159 and 144-1-505 Right-of-Way Exhibit**

**Attachment 4 – Metropolitan Administrative Code - Disposal of Real Property**

**Attachment 5 - California Government Code Sections 54220 to 54227**

**Attachment 6 – Surplus Property Decision Tree**

BLA #3936

## Detailed Report

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The Diamond Valley Lake (DVL) North Property is comprised of portions of six separate properties acquired by Metropolitan for the Eastside Reservoir project, now known as Diamond Valley Lake reservoir. These properties are shown on Attachment 3. The earliest parcel acquired was Parcel 144-1-85 consisting of 767.3 acres (designated on Attachment 3 as Area 'A'). This property was purchased from Rancon Hemet Properties, L.P. Prior to Metropolitan's purchase, the city of Hemet had approved Rancon's specific plan to build approximately 3,500 residential units on the property. Rancon had not acquired the 15-acre in-holding (Area 'G') which was retained by the prior owners as the McSweeny family homesite and residence of Patricia McCauley McSweeny. Metropolitan originally entered a contract with Rancon to purchase only the southerly half of the property with the sale price to be determined by three independent appraisals. However, the appraised values were below Rancon's expectations and it threatened to back out of the sale contract. After extensive negotiations, Metropolitan agreed to acquire the entire property for a price that allowed Rancon to recover its investment.

In August 1993, Metropolitan purchased Parcel No. 144-1-153 (Area 'B') as part of a larger property totaling 262 acres that was being subdivided for a residential development called Ramona Hills. In February 1994, Metropolitan purchased two smaller parcels that were owned by absentee real estate speculators: Parcel No. 144-1-79 (Area 'C') consisting of 40.96 acres, and Parcel 144-1-331 (Area 'D') consisting of 48.13 acres. Parcel No. 144-1-159 (Area 'E') was acquired in June 1994 from FN Development Company, a company involved in residential development. This parcel, consisting of 197.92 acres, was part of a much larger property being developed by the owner. The only improved property, Parcel No. 144-1-505 (Area 'F'), totaled 120 acres and was improved with an operating dairy farm and residence. This property was acquired in May 1994.

Construction of Diamond Valley Lake eliminated Newport Road as a major east-west roadway through the reservoir site. To replace this roadway, Metropolitan constructed Domenigoni Parkway. In addition, Metropolitan constructed flood control improvements to carry stormwater around the reservoir and into Salt Creek Channel. These improvements required the use of portions of each of the parcels that make up the DVL North Property. Domenigoni Parkway divides the remainders of these parcels from the main reservoir project area.

Metropolitan conveyed 65 acres on the northwest corner of Parcel No. 144-1-85 to the city of Hemet and Hemet Unified School District in exchange for other lands located on the northwest end of the reservoir site that were required by Metropolitan. A 99-year lease was granted to Eastern Municipal Water District to occupy a small parcel fronting on State Street for purposes of constructing and operating a booster pump station for the water pipeline serving the area. The balance of the DVL North Property totals approximately 731 acres. However, portions of this property have been, or will be, encumbered.

The encumbrances include easements to the city to allow the widening and landscaping of State Street along its frontage on Parcel No. 144-1-85. This widening project is currently under construction. In connection with this work, the city has constructed flood control facilities across a portion of Parcel 144-1-85 in accordance with the city's master drainage plan. Construction of these flood control facilities was a condition of the city's approval of Rancon's specific plan for development of Parcel No. 144-1-85, but they were not built by Rancon before Metropolitan acquired the property. The city has graded a portion of the channel at its own expense. Metropolitan has granted the city an entry permit to perform this work. Dedication of the right-of-way for the flood control channel was left for future resolution between the city and any future owner of the property. Other encumbrances include a utility easement to Eastern Municipal Water District along the boundary between Parcel Nos. 144-1-85 and 144-1-153 in which Metropolitan is constructing a sewer line to serve its property south of Domenigoni Parkway. The DVL North Property includes sensitive archaeological resources that Metropolitan is required by state law to protect. These areas will be protected by conservation easements in accordance with agreements between Metropolitan, appropriate Native American Tribes, the State Office of Historic Preservation, and the California Native American Heritage Commission.

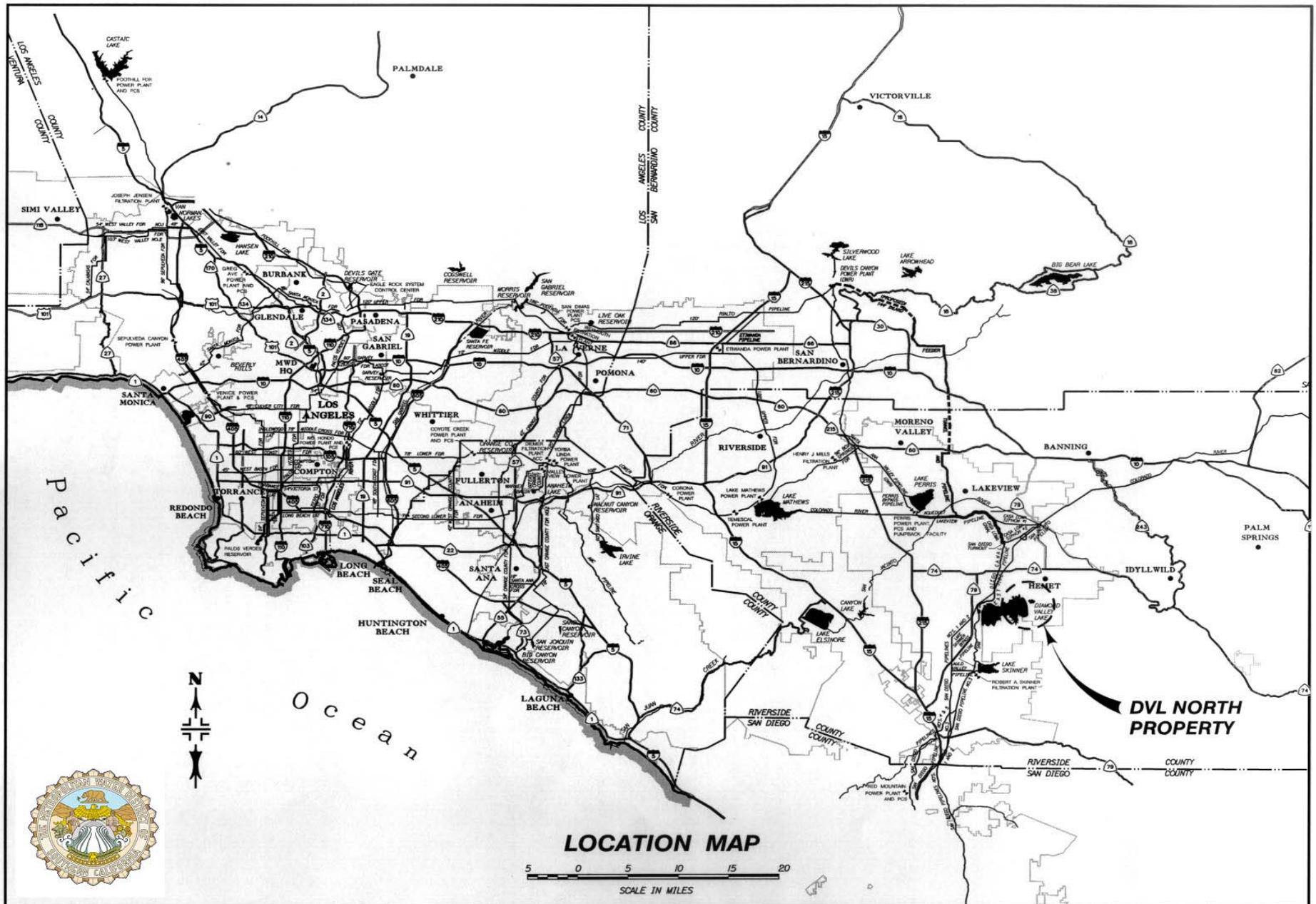
**Surplus Process**

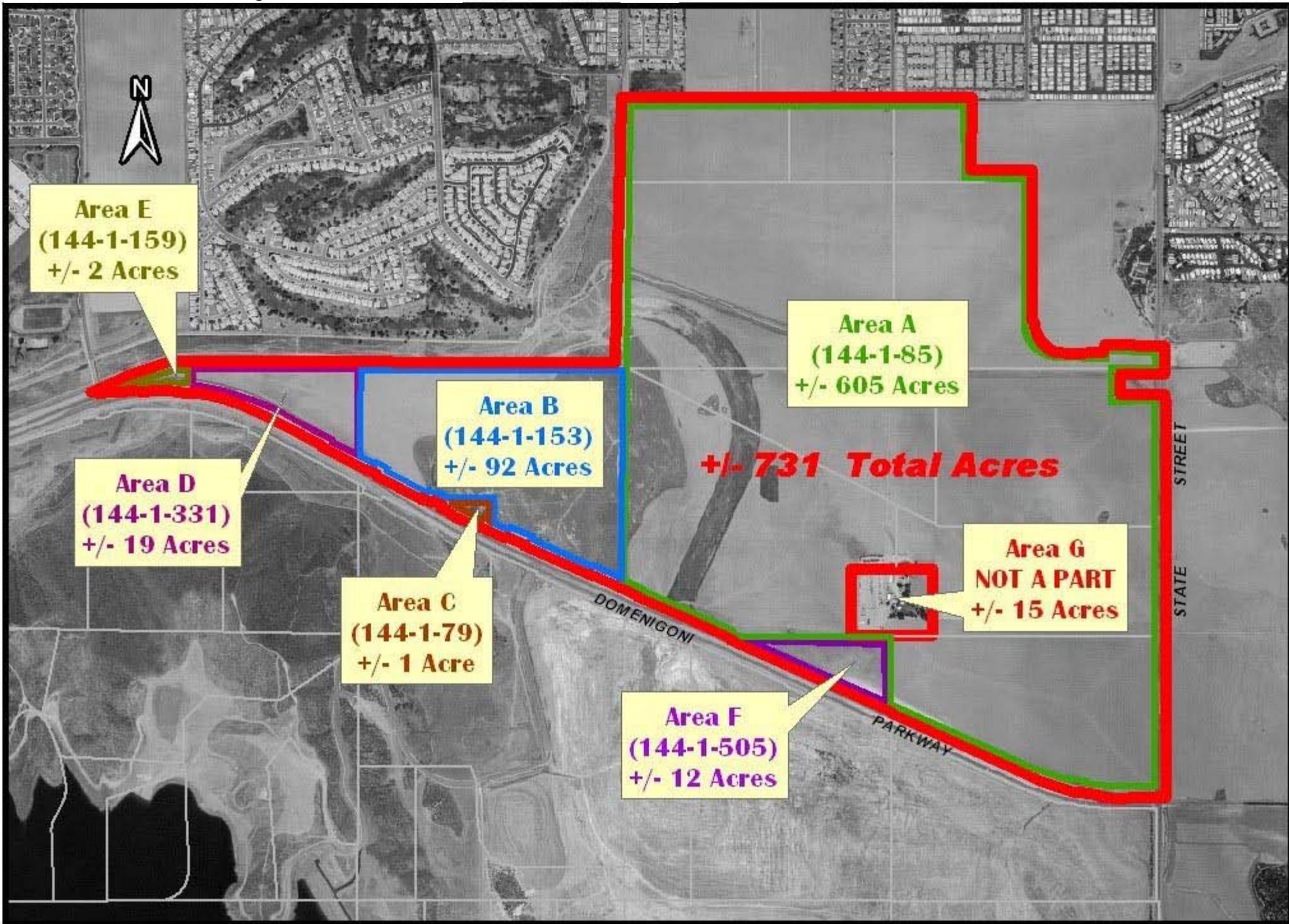
Real property is acquired by Metropolitan for its business and operational needs. A parcel may become surplus when Metropolitan determines that the property is no longer necessary to fulfill those business and operational needs. The Chief Executive Officer has determined, and the Corporate Resources, Water Resources Management, and Water System Operations Groups have concurred, that the DVL North Property as shown on Attachment 2 is surplus to the needs of Metropolitan and can be disposed of without adversely affecting Metropolitan's current or foreseeable business and operational requirements.

Metropolitan's surplus property is subject to the disposition requirement of the Surplus Lands Act contained in Government Code sections 54220-54227. This statute requires a public agency to first offer the property for sale or lease to other government agencies for specified purposes, including low- and moderate-income housing, parks and recreation, and schools. If another agency requests to purchase or lease the property, Metropolitan must negotiate in good faith but is not required to sell or lease its property at less than fair market value. If no agreement is reached after 60 days of negotiations, Metropolitan is free to dispose of the surplus property in a manner consistent with its Administrative Code.

If Metropolitan's Board affirms the determination that the DVL North Property is surplus to Metropolitan's needs, notice will be sent to appropriate public agencies in accordance with the Surplus Lands Act. The final disposition of the property will be subject to approval of the Board.

A decision tree used in illustrating the surplus process is shown on the flowchart included as Attachment 6.





**Article 4****DISPOSAL OF REAL PROPERTY**

Sec.

- 8231. Appraisal of Real Property Interests
- 8240. Preliminary Requirements
- 8241. Authority for Chief Executive Officer to Sell or Lease Surplus Real Property;  
Restriction on District Directors and Employees
- 8242. Quitclaims (Old)
- 8243. Disposal of Unnecessary Improvements
- 8244. Auction by District Staff
- 8245. Open Listing
- 8246. Exclusive Listing
- 8247. Auction by Professional Auctioneers
- 8248. Required Deposit
- 8249. Terms
- 8250. Zoning
- 8251. Policy of Title Insurance
- 8252. Completion of Sale
- 8253. Forfeiture of Deposits
- 8254. Exceptions to Public Sale Requirements
- 8255. Reservation of Oil, Gas and Mineral Rights
- 8256. Retention of Oil and Mineral Rights
- 8257. Quarterly Reports
- 8258. Statement re Encumbering of Property

**§ 8231. Appraisal of Real Property Interests.**

The Chief Executive Officer shall have any real property interests proposed to be granted appraised as follows:

(a) When the value of the property to be granted is less than \$10,000, the value shall be based on the opinion of a qualified appraiser;

(b) When the value of the property to be granted is greater than \$10,000, but less than \$250,000, the fair market value of the property shall have been appraised by a qualified appraiser;

(c) When the value of the property to be granted is greater than \$250,000, the fair market value of the property shall have been appraised by a qualified appraiser who shall be an independent appraiser, and , if deemed appropriate by the Chief Executive Officer, by a second qualifier appraiser.

**§ 8240. Preliminary Requirements.**

The Chief Executive Officer shall establish a procedure for the continuous review of real property owned by the District for the purpose of determining which of such property is surplus to the District's needs. When the Chief Executive Officer determines that property is surplus, the Chief Executive Officer shall notify the Engineering, Operations and Real Property Committee of that determination, unless the estimated value of the property is less than \$75,000.

(a) If the Engineering, Operations and Real Property Committee do not overrule such determination and the estimated value of the property is \$75,000 or more, the Chief Executive Officer shall:

(1) Notify the Engineering, Operations and Real Property Committee of the estimated value of the property and recommend the appropriate marketing procedure authorized by this Article 4;

(2) Cause the property to be appraised by one or more independent appraisers.

(b) If the estimated value of the property is less than \$75,000, the Chief Executive Officer shall cause the property to be appraised by a member of the staff of the Chief Executive Officer or an independent appraiser, and disposed of as authorized by Article 4;

(c) The Chief Executive Officer shall comply with the California Environmental Quality Act and the legal requirements pertaining to the disposition of property in cities or counties, which have a general plan. If upon such compliance, any official body objects to the proposed sale, the Board of Directors shall first expressly uphold or reject the objections. There being no objections, or the objections having been rejected, and the appraisal or appraisals having been completed, the Chief Executive Officer may then sell or lease the surplus property under the provisions of this Article 4.

**§ 8241. Authority for Chief Executive Officer to Sell or Lease Surplus Real Property; Restriction on District Directors and Employees.**

If after offering the property for sale or lease to certain public agencies, as required by law, at the fair market value as determined by the Chief Executive Officer after review of any or all appraisals of the property, no such offer is accepted, the Chief Executive Officer may lease it, or sell it either by public auction or by using the services of real estate brokers or a professional auctioneer; provided, however, that District directors and employees, their spouses and dependent children may not purchase such property or lease it or represent in any manner a prospective lessee or purchaser of such property.

**§ 8242. Quitclaims.**

(a) The Chief Executive Officer is authorized to quitclaim, in form approved by the General Counsel, any temporary easement or lease to which the District is a party and which has expired by its own terms.

(b) The Chief Executive Officer is authorized to quitclaim, in form approved by the General Counsel, any temporary easement or lease prior to its expiration

(1) Upon the recording of a Notice of Completion of the construction contract for which the easement or lease was acquired; or

(2) If no such notice has been recorded, then upon the release of the temporary easement area by the contractor in form approved by the General Counsel; provided, however, that if a Notice of Completion has not been recorded, consideration shall be required in such amount as the Chief Executive Officer deems proper under the circumstances.

(c) The Chief Executive Officer is authorized to quitclaim, in form approved by the General Counsel, any easement for access to a District facility over adjoining lands at such times as the Chief Executive Officer may determine that adequate access thereto from a dedicated public street is available.

(d) Notwithstanding any other provisions of the Article 3, the Chief Executive Officer is authorized to quitclaim to the United States of America, in form approved by the General Counsel, any property acquired by the District under and pursuant to the Act of Congress approved June 18, 1931 (43 Stats. 324), when the Chief Executive Officer determines that the property is no longer required for the District's needs.

**§ 8243. Disposal of Unnecessary Improvements.**

(a) The Chief Executive Officer is authorized to dispose of, in the manner the Chief Executive Officer deems to be in the best interest of the District, any improvements that must be removed to make land acquired for District operations suitable for District use.

(b) The Chief Executive Officer shall report quarterly to the Engineering, Operations and Real Property Committee the details of any transactions during the preceding quarter in which an improvement was disposed of in such a manner as to make the improvement available for subsequent use by a party other than the District.

**§ 8244. Auction by District Staff.**

(a) If the Chief Executive Officer elects to sell the property by public auction, the Chief Executive Officer shall do so at such time and place as the Chief Executive Officer may fix, with or without sealed bids having been first submitted.

(b) Whenever the Chief Executive Officer determines that the sale shall be at public auction without sealed bids having been first submitted, no bid at the auction shall be considered unless the bidder shall, prior to the holding of the auction, deposit with the person designated by the Chief Executive Officer to conduct such sale the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, in cash, cashier's check or check certified by a responsible bank, as a guarantee that the person making the bid will purchase the property under the terms specified in the Notice of Sale. The property shall be sold to the highest responsible bidder and the deposits of all other bidders returned forthwith.

(c) Whenever the Chief Executive Officer determines that the sale shall be by sealed bids, all bids shall be filed in the office of the Right of Way and Land Program Manager, at or before the time specified in the Notice of Sale, shall be on forms approved by the General Counsel, and shall be accompanied by a cash deposit, cashier's check or check certified by a responsible bank in an amount of not less than the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, as a guarantee that the person making the bid will purchase the property upon the terms and conditions specified in the Notice of Sale. The Right of Way and Land Program Manager, shall, at the time and place specified in the Notice of Sale, open the bids. Thereafter, there shall be a public auction at a time and place specified in the Notice of Sale, and any person shall be eligible to bid at the auction; provided, however, that any oral bid shall be ignored unless it exceeds by at least 5 percent the highest sealed bid made by a responsible person. No oral bid at such sale not preceded by a sealed bid from the same party shall be considered unless accompanied by a cash deposit, cashier's check or check certified by a responsible bank in an amount of not less than the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, as a guarantee that the person making the bid will purchase the property upon the terms and conditions specified in the Notice of Sale. If no oral bid is made at the public auction, or if such oral bid is not in accordance with the provisions hereof, the property shall be ordered sold to the highest responsible sealed bidder.

(d) A real estate commission shall be paid in connection with a sale at public auction on the following basis:

(1) The real estate commission shall not exceed the prevailing rate in the area where the property is located and it shall be stated in the bid for which a claim for the payment of a commission is made that it is subject to the same.

(2) The commission shall be distributed in this manner:

(i) When at a public auction, without sealed bids, the highest bid was procured by a licensed real estate broker; the commission shall be paid to the broker.

(ii) When at a public auction following submission of sealed bids, the successful bid is the highest sealed bid, and it was procured by a licensed real estate broker, the commission shall be paid to that broker.

(iii) When at a public auction following the submission of sealed bids, the successful bid was procured by a licensed real estate broker, but the highest sealed bid was not obtained by such a broker, the commission shall be paid to the broker.

(iv) When at a public auction following the submission of sealed bids, the highest sealed bid was procured by a licensed real estate broker, but the successful bid was procured by a different licensed real estate broker, the commission shall be divided equally between the brokers.

(v) When at a public auction following the submission of sealed bids, the highest sealed bid was procured by a licensed real estate broker, but the successful bid was not subject to a commission, one-half of the commission based upon the amount of the successful bid shall be paid to the broker.

(3) In determining which is the highest bid, there shall not be subtracted therefrom the commission, if any, which the bid provides shall be paid to a licensed real estate broker.

(e) The Chief Executive Officer shall cause a Notice of Sale to be posted on the property in at least one conspicuous place. It shall specify the minimum bid, which will be accepted for the property, which shall not be less than 90 percent of the lowest appraisal and shall state the terms of the sale, which shall be in conformity with this Article 4. The Chief Executive Officer shall cause one or more advertisements of the sale to be placed in a newspaper, or newspapers, so as to give reasonable notice of the sale.

#### **§ 8245. Open Listing.**

If the Chief Executive Officer elects to sell the property by using the services of licensed real estate brokers, the Chief Executive Officer shall do so by offering it for sale by advertising in a newspaper or newspapers that the property is being offered for sale with courtesy to brokers, and by notifying real estate boards in the area in which the property is located that the property is being offered for sale with courtesy to licensed brokers. The initial offer for sale shall be for no less than the highest appraised valuation of the property. The Chief Executive Officer is authorized to sell the property for the highest price obtainable; provided, however, that such price shall be no lower than the lowest appraisal without the approval of the Engineering, Operations and Real Property Committee and no lower than 90 percent of the lowest appraisal without the approval of the Board. The Chief Executive Officer is authorized to pay to the broker who procures the accepted offer, a commission not to exceed the prevailing rate in the area in which the property is located.

#### **§ 8246. Exclusive Listing.**

The Chief Executive Officer may with the approval of the Engineering, Operations and Real Property Committee give an exclusive listing to an individual licensed broker; provided, however, that the property shall not be sold for less than the lowest appraisal without the

approval of the Engineering, Operations and Real Property Committee and for no less than 90 percent of the lowest appraisal without the approval of the Board. In such case, the Chief Executive Officer is authorized to pay a commission, upon consummation of the sale, not to exceed the prevailing rate in the area in which the property is located.

**§ 8247. Auction by Professional Auctioneers.**

The Chief Executive Officer may sell the property by using the services of a professional auctioneer and may in connection therewith pay the reasonable expense of advertising the auction, and agree to pay a commission to the auctioneer not in excess of the prevailing rate in the area upon the consummation of the sale. Any such sale shall be subject to the approval of the Board of Directors.

**§ 8248. Required Deposit.**

No bid offer made pursuant to Sections 8244, 8245, and 8246 above shall be considered unless the bidder or offeror shall at the time the bid or offer is made, deposit with the person designated by the Chief Executive Officer the percentage indicated below of the specified amount in cash, cashier's check or check certified by a responsible bank as a guarantee that the bidder or offeror will purchase the property for the bid or offered price.

Specified Amount	Deposit
To \$500	Full amount of bid or offer
\$501 to \$10,000	\$500 + 10% of minimum bid or offer
\$10,001 to \$50,000	\$1,500 + 5% over \$10,000
\$50,001 to \$100,000	\$3,000 + 3% over \$50,000
\$100,001 and above	\$4,500 + 2% over \$100,000

**§ 8249. Terms.**

Any sale shall be for cash or on the following minimum terms:

20 percent down payment with balance amortized over 10 years at an interest rate equal to the prevailing rate charged by financial institutions in the area in which the property is located, and to be secured by a deed of trust on the property sold. No prepayment penalty shall be required.

**§ 8250. Zoning.**

Where the property was appraised on the basis of a different zoning on the property than the existing zoning, the sale may be made contingent upon the bidder or offeror's obtaining a rezoning of the property within a reasonable time to be determined by the Chief Executive Officer.

**§ 8251. Policy of Title Insurance.**

The Chief Executive Officer may furnish the successful bidder or offeror with a policy of title insurance, if possible, and open an escrow to complete the sale, paying the usual seller's charges in connection therewith; provided, however, that if it subsequently develops that the title company is unwilling to issue a policy insuring title to the bidder or offeror in the manner indicated by the Chief Executive Officer prior to the sale, the Chief Executive Officer shall not be required to furnish such a policy and the bidder may cancel the sale; whereupon money previously deposited shall be refunded promptly and there shall be no further obligation on the part of either the bidder or the Chief Executive Officer in connection with the sale; provided, further, that if under such circumstances the bidder or offeror elects not to cancel the transaction, the Chief Executive Officer shall furnish such title insurance as the title company will then issue, and shall be released from liability on any representation relating to title theretofore made and not covered by the title insurance policy.

**§ 8252. Completion of Sale.**

Execution and Delivery of Deed -- The Chief Executive Officer shall apply the deposit made by the successful bidder, or offeror, on the purchase price or down payment if the sale is on terms, and, upon completion of the sale either directly or through an escrow, the Chief Executive Officer is authorized to execute and deliver on behalf of the District a grant deed conveying the property to such bidder or offeror. In the case of a sale for cash (1) without an escrow, the successful bidder or offeror must pay the balance of the purchase price to the Chief Executive Officer within thirty days after the auction or acceptance of the offer or (2) with an escrow, upon the closing thereof; provided, however, that the Chief Executive Officer may give the successful bidder or offeror extensions of time in which to make the payment.

**§ 8253. Forfeiture of Deposits.**

Any deposit made by a successful bidder or offeror shall be retained by the District as liquidated damages if the bidder or offeror shall fail to complete the purchase in accordance with the terms and conditions of the Notice of Sale or offer. If there is such failure, a licensed real estate broker, otherwise entitled to a commission under the provisions of this Article 4 shall be paid as a commission, an amount not to exceed one-half of the deposit so retained after deducting title and escrow expenses, if any; but in no event shall it exceed the commission which the broker would have received in the absence of such failure. If the successful bidder or offeror

does not complete the sale as required by this Article 3 the property may be sold to the next highest bidder or offeror who wishes to buy.

**§ 8254. Exceptions to Public Sale Requirements.**

The requirements of Sections 8241 and 8244 above do not apply in the case of:

(a) A sale of real property or interest therein to the United States, the State, the County or any city, school district, flood control, or other special district within the State; any such sale shall be for the fair market value as determined by the Chief Executive Officer after review of any or all appraisals of the property.

(b) A sale of real property having an estimated value of \$2,500 or less.

(c) A sale to an adjoining property owner when the Chief Executive Officer determines that the particular parcel is probably incapable of being developed independently.

(d) With respect to sales under Sections 8254(b) and 8254(c), the Chief Executive Officer shall make a determination of the reasonable amount for which the property shall be sold.

**§ 8255. Reservation of Oil, Gas and Mineral Rights.**

The right to extract all oil, gas hydrocarbons or other minerals without the right of surface entry for the development thereof, shall be reserved in the sale of any real property under the provisions of this Article 4 provided, however, that there shall be no such extraction within 500 feet of the surface.

**§ 8256. Retention of Oil and Mineral Rights.**

It shall be the general policy that oil and mineral rights shall be retained on all property sold by the District.

**§ 8257. Quarterly Reports.**

The Chief Executive Officer shall report to the Engineering, Operations and Real Property Committee quarterly on the property sold pursuant herewith.

**§ 8258. Statement re Encumbering of Property.**

The Chief Executive Officer shall incorporate in letter of recommendation involving the disposal or the encumbering of property or rights of the District a statement declaring that the property or rights will not be required by the District nor adversely affect its operations.

## CALIFORNIA GOVERNMENT CODE § 54220 through § 54227

**54220.** The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose. The Legislature reaffirms its belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes. This article shall not apply to surplus residential property as defined in Section 54236.

**54221.** (a) As used in this article, the term "local agency" means every city, whether organized under general law or by charter, county, city and county, and district, including school districts of any kind or class, empowered to acquire and hold real property. (b) As used in this article, the term "surplus land" means land owned by any agency of the state, or any local agency, that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange. (c) As used in this article, the term "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources. (d) As used in this article, the term "persons and families of low or moderate income" means the same as provided under Section 50093 of the Health and Safety Code. (e) As used in this article, the term "exempt surplus land" means either of the following: (1) Surplus land which is transferred pursuant to Section 25539.4. (2) Surplus land which is (A) less than 5,000 square feet in area, (B) less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less, or (C) has no record access and is less than 10,000 square feet in area; and is not contiguous to land owned by a state or local agency which is used for park, recreational, open-space, or low- and moderate-income housing purposes and is not located within an enterprise zone pursuant to Section 7073 nor a designated program area as defined in Section 7082. If the surplus land is not sold to an owner of contiguous land, it is not considered exempt surplus land and is subject to the provisions of this article. (f) Notwithstanding subdivision (e), the following properties are not considered exempt surplus land and are subject to the provisions of this article: (1) Lands within the coastal zone. (2) Lands within 1,000 yards of a historical unit of the State Parks System. (3) Lands within 1,000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places. (4) Lands within the Lake Tahoe region as defined in Section 66905.5.

**54222.** Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows: (a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall, upon written request, be sent a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by first-class mail and shall include the location and a description of the

property. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households. (b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent: (1) To any park or recreation department of any city within which the land may be situated. (2) To any park or recreation department of the county within which the land is situated. (3) To any regional park authority having jurisdiction within the area in which the land is situated. (4) To the State Resources Agency or any agency which may succeed to its powers. (c) A written offer to sell or lease land suitable for school facilities construction or use by a school district for open-space purposes shall be sent to any school district in whose jurisdiction the land is located. (d) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone. (e) A written offer to sell or lease any surplus property in a designated program area, as defined in subdivision (i) of Section 7082, shall be sent to the program area agent. (f) The entity or association desiring to purchase or lease the surplus land for low- and moderate-income housing purposes, or for park or recreation purposes, or for open-space purposes, or for public school purposes, or for enterprise zone purposes, shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

Section **54222.3**. Section **54222** shall not apply to the disposal of exempt surplus land as defined in Section **54221** by an agency of the state or any local agency.

**54223**. After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 60 days, the land may be disposed of without further regard to this article.

**54224**. Nothing in this article shall preclude a local agency, housing authority, or redevelopment agency which purchases land from a disposing agency pursuant to this article from reconveying the land to a nonprofit or for-profit housing developer for development of low- and moderate-income housing as authorized under other provisions of law.

**54225**. Any public agency selling surplus land to an entity described in Section **54222** for park or recreation purposes, for open-space purposes, for school purposes, or for low- and moderate-income housing purposes may provide for a payment period of up to 20 years in any contract of sale or sale by trust deed of such land.

**54226**. Nothing in this article shall be interpreted to limit the power of any agency of the state or any local agency to sell or lease surplus land at fair market value or at less than fair market value, and nothing in this article shall be interpreted to empower any agency of the state or any local agency to sell or lease surplus land at less than fair market value. No provision of this article shall be applied when it conflicts with any other provision of statutory law.

**54227**. In the event that the state or any local agency disposing of surplus land receives offers for the purchase or lease of such land from more than one of the entities to which notice and an

opportunity to purchase or lease shall be given pursuant to this article, the state or local agency shall give first priority to the entity which agrees to use the site for housing for persons and families of low or moderate income, except that first priority shall be given to an entity which agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

**DECISION TREE – SURPLUS PROPERTY**

<p><b><u>Internal Determination of Property as Potentially Excess</u></b>                  Water Systems Operations (WSO)                  Water Resource Management (WRM)                  Corporate Resources (CRG)</p>	
<p>Property Appraisal                  Valuation Threshold Test [<b>Per Admin. Code 8240, (a) (1)</b>]</p>	
<p><b>Under \$75,000 Valuation</b>                  Staff appraisal permitted                  Per Admin. Code 8240 (2) (C)                  Comply with CEQA  <b>(30 days)</b></p>	<p><b>\$75,000 Valuation or over</b>                  Requires independent appraisal(s)                  Per Admin. Code 8240 (2) (C)                  Comply with CEQA  <b>(90 to 150 days)</b></p>
<p><b><u>CEO Declares real property surplus and notifies Board Committee(s)</u></b>                  (Per Admin. Code 8240)  <b>(60 to 90 days)</b></p>	
<p><b><u>Board Does Not Concur</u></b>                  Re-inventory</p>	<p><b><u>Board Concurs &amp; Approves</u></b>                  Criteria Per Admin. Code 8258                  Property not required by District, will not adversely affect District operations                  Legally Required to Return to Tax Rolls</p>
<p><b><u>Comply with CEQA and Offer Property to Public Entities</u></b>  <b>Admin. Code 8241 (required Fair Market Value)</b>  <b>Govt. Code 54222-27</b>                  Offer to Sell or Lease to Public Entities at Appraised Fair Market Value for:                  Parks, Open Space, Public Housing, Schools  <b>(60 days)</b></p>	
<p><b><u>Public Offer Accepted</u></b>  <b>At Appraised Fair Market Value</b></p>	<p><b><u>No Public Offers Accepted</u></b>                  Admin. Code 8241                  Information Report to Board</p>
<p>Admin. Code 8240                  CEO has negotiating authority to accept selling price ranging to 10% less than appraised fair market value of approved appraisal. Any sale is for cash or minimum 20% down payment w/ balance amortized up to 10 years at Admin Code designated interest rate and secured by deed of trust.</p>	<p><b>Sale or Lease Decision</b>                     <b>Exception to Public Sale (Admin. Code 8254)</b>                  Direct Sale at Appraised Fair Market Value to:                  U.S., State, County, City, School District, Flood Control, Special District  <b>CEO may sell at 10% less than appraised fair market value of approved appraisal</b>  <b>(60 to 90 days)</b></p>

	Expose to Open Market Dispose By: (a) Public Auction by Staff <b>(90 to 180 days)</b>	
	<u>Without Sealed Bids</u> 8244 (b) Sell to Highest Bidder	<u>With Sealed Bids</u> 8244 (c) Sell to highest bona fide sealed bid; Or Sell to highest oral bidder
	<u>(b) Real Estate Brokerage</u> Admin. Code 8245 & 8246 Open Listing Exclusive Listing	
	<u>(c) Auction by Professional Auctioneer</u> Admin. Code 8247	
<b><u>Public sale or executed lease</u></b>	<u>(d) Sale by other mechanism approved by Board</u>	

<b><u>Quarterly Reports</u></b> Admin. Code 8258 CEO shall report to Board quarterly on status of property sold
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