



- Board of Directors
Real Property and Asset Management Committee

7/12/2011 Board Meeting

9-1

Subject

Draft policy principles for managing Metropolitan's property assets

Description

This letter outlines draft proposed policy principles for managing Metropolitan's real property for Real Property and Asset Management (RP&AM) Committee review. The primary purpose of these policy principles is to achieve fair market value for Metropolitan's real property assets, and only accept less than fair market value when there is a direct benefit to Metropolitan's core mission. **Attachment 1** highlights the draft policy principles, while **Attachment 2** presents the draft Administrative Code language changes. **Attachment 3** shows the proposed final version. Following RP&AM Committee input, staff would be seeking board approval of the draft proposed policy principles at the July 26 RP&AM Committee Meeting and the August 16, 2011 Board Meeting.

Background

Metropolitan has a responsibility to manage its vast real property assets in a way that complies with the letter and the spirit of applicable laws, while providing for the stewardship of publicly owned land necessary to effectively and economically transport and treat high quality water within Southern California.

Concurrent with fulfilling this responsibility, Metropolitan for decades has provided the opportunity for public, for profit and nonprofit organizations to obtain limited property rights for varied uses. These uses primarily are related to public and private utility activities, such as easements for crossing pipelines, roadway improvements, establishing and maintain telecommunications sites, member agency maintenance activities, and shared use of right-of-ways. Additionally, Metropolitan has conveyed real property interests for non-water operating land to third parties for uses that are compatible with Metropolitan's mission related to environmental and economic responsibility.

In recent years, there has been growing interest in the use of Metropolitan real property by third parties. Solar power generation, small businesses, and nonprofit organizations have made requests for the use of properties not directly used for water conveyance or treatment. With this increase in demand for useable real property by outside entities, opportunities arise for Metropolitan to achieve market-rate value for appropriate use, leasing or development of certain properties.

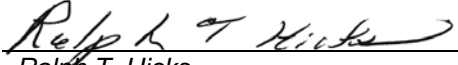
In order to ensure Metropolitan's goals of maintaining paramount property rights, pursuing effective stewardship of public lands, and optimizing third-party use and revenue development, these policy principles, if adopted, will provide guidance and direction not only to Metropolitan staff, but to those seeking varied types of property rights through leases, easements, quit claims, entry permits, and other transactions that convey property interests to others.

Policy

Metropolitan Water District Administrative Code Division VIII, Article 3: Management of Real Property
Metropolitan Water District Administrative Code Division VIII, Article 4: Disposal of Real Property

Fiscal Impact

Policy principles ensure that Metropolitan receives fair market value on its real estate assets.



Ralph T. Hicks
Manager, Real Property Development and
Management

6/21/2011
Date



Jeffrey Kightlinger
General Manager

6/22/2011
Date

Attachment 1 - Draft Policy Principles

Attachment 2 - Draft Real Property Administrative Code (Strikeover version)

Attachment 3 - Draft Real Property Administrative Code (Proposed final version)

Ref# rpdm12613055

**Draft Policy Principles for
Managing Metropolitan's Real Property Assets**

- Before granting any third party request to use Metropolitan-owned real property pursuant to MWD Administrative Code Section 8230, the General Manager shall determine that the proposed use shall not damage, delay, hinder or otherwise obstruct in any way, the safe and effective operation and maintenance of Metropolitan's rights-of way; conveyance, distribution, treatment facilities or equipment; or, any other activities associated with the operation and protection of the water system.
- Before granting any third party request to use Metropolitan-owned real property pursuant to MWD Administrative Code Section 8230, the General Manager shall also determine that the proposed use will be compatible with Metropolitan's operations, plans and objectives related to sustainability and stewardship of publicly owned lands, including rights of way and facilities.
- Transfer of all real property interests through licenses, permits, leases, easements, or sale shall be at fair market value, unless the General Manager determines that the transfer will directly benefit or enhance Metropolitan's operations. Direct benefit or enhancement is defined as a benefit to the construction, operations, and maintenance of Metropolitan's water conveyance and distribution systems, treatment plants, energy facilities, environmental mitigation projects, rights-of-way, or other activities that have a nexus to Metropolitan's mission as established by its enabling statute.
- The right to Metropolitan's real property by a nonprofit entity shall be authorized only through licenses, permits, leases, easements, or sale and shall be at fair market value, unless the nonprofit entity provides a mutual benefit to Metropolitan, as determined by the General Manager. Nonprofit organizations can provide a mutual benefit if it was established to promote, educate, research or develop water protection, conservation, renewable energy, or technologies that enhance the water industry. If the nonprofit receives a reduced fair market fee and engages in commercial activities, Metropolitan shall receive market rate percentage rent of all gross proceeds from those commercial activities.
- Fair market value shall be determined utilizing the processes described in Metropolitan's Administrative Code Section 8231.
- Metropolitan reserves the right to establish and charge reasonable fees, including recovery of administrative and operational costs associated with real property-related agreements.
- Nonprofit organizations will be defined as those having tax exempt status with the California State Board of Equalization as specified in Section 23710d of the State Revenue and Taxation Code, as well as tax exempt status from the Internal Revenue Service (26 U.S.C. 501 §(3)).
- Metropolitan will not enter into property use agreements at below market rates to organizations that are engaged in political activities or to religious organizations that would use Metropolitan's property to directly promote sectarian or religious purposes.
- All real estate transactions, including those at or below fair market value, shall continue to be reported to the Real Property and Asset Management Committee in a written quarterly report.

- All transfers of any assets greater than \$250,000 requires the approval of the Real Property and Asset Management Committee. Transfers of less than the cumulative total of \$250,000 may be authorized by the General Manager.
- Temporary permits shall not exceed one year and may not be extended for greater than five years without Real Property and Asset Management Committee and board approval if the fair market value is greater than \$250,000 for any given year.

Chapter 2

DISTRICT PROPERTY

| Article | | Sec. |
|---------|---------------------------------------|------|
| 1 | General Provisions | 8200 |
| 2 | Acquisition of Real Property | 8220 |
| 3 | Management of Real Property | 8230 |
| 4 | Disposal of Real Property | 8240 |
| 5 | Disposal of Surplus Personal Property | 8270 |

...

Article 3

MANAGEMENT OF REAL PROPERTY

| Sec. | |
|------|--|
| 8230 | Grants of Real Property Interests |
| 8231 | Appraisal of Real Property Interests |
| 8232 | Terms and Conditions of Management Documents |
| 8233 | Consent to Subdivision |

§ 8230. Grants of Real Property Interests.

(a) The General Manager is authorized to grant to public entities, public utilities, private persons and private entities, any real property interests in District real property that will not interfere with the District's operations; provided, however, that: (1) any such grant to a public entity or public utility is required for its operations; (2) the consideration for any one such grant (annual payment in the case of any lease, license or permit) to a private person or private entity is less than \$250,000; and (3) if it will be necessary for District facilities to be relocated or protected in order to avoid interference from the use of the real property interest, the General Manager shall obtain approval of a relocation or protection agreement by the Board prior to granting such real property interest, except as to any agreement which the General Manager is authorized to execute pursuant to Section 8122(c).

(b) Prior to granting any authorization to use District real property, the General Manager shall determine that the proposed use shall not damage, delay, hinder, or otherwise obstruct in any way, the safe and effective operation and maintenance of the District's access to and use of

its facilities and equipment, or any other activities associated with the operation and protection of the District's system. The General Manager shall further determine that the proposed use will be compatible with the District's existing and planned operations, District objectives related to sustainability, and stewardship of publicly-owned property, rights-of-way, and facilities.

Section 8240 derived and amended from former Section 8220 and 8222 adopted by M.I. 39982 - December 8, 1992; Section reference 8118(a)(3) amended to read Section 8122(c) by M. I. 46371 – September 15, 2005.

§ 8231. Appraisals of Real Property Interests.

(a) The General Manager shall have any real property interest proposed to be granted appraised as follows:

(ai) 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;

(bii) 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;

(eiii) 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 General Manager, by a second qualified appraiser. The grant of any real property interest exceeding \$250,000 in fair market value shall require approval of the Board.

(b) The grant of any real property interest by the General Manager shall be at fair market value, as determined by the appraisal, unless the General Manager determines that the grant will directly benefit or enhance the District's operations, facilities, or property. Direct benefit or enhancement means a benefit that increases the value of, or reduces the cost to maintain or operate, the District's real property, water storage, conveyance, and distribution systems, the District's transmission and electrical systems, the District's environmental reserves and mitigation properties, or other interests or activities related to the purposes and authority of the District.

(c) In the event that the grant of any real property interest by the General Manager is to a non-profit entity, a direct benefit may be shown if the purposes for which the entity was established include promoting, educating, researching, or developing water protection or water conservation, renewable energy, or similar technologies that enhance the public water supply. Notwithstanding the foregoing, if such non-profit entity engages in commercial activities on the District's real property under a lease, license, permit or other authorization, the grant shall be conditioned upon payment of consideration for the use of the property based on a market rate percentage of gross proceeds from the commercial activity. This paragraph applies only to non-profit organizations having tax-exempt status pursuant to California Revenue and Taxation Code section 23710d and U. S. Internal Revenue Code section 501(c)(3).

(d) The General Manager is not authorized to grant any interest in real property for less than fair market value, as determined by the appraisal, to any entity engaged in political activities or to any sectarian or religious organization.

Section 8241 derived and amended from former Section 8226 adopted by M.I. 39982 - December 8, 1992.

§ 8232. Terms and Conditions of Management Documents.

Documents conveying real property interests which the General Manager is authorized to grant by this Article 3, shall contain such terms and conditions, as the General Manager deems to be reasonable and proper, but shall include, as a minimum, the following:

(a) Any lease, permit or license to use District real property, other than a lease to a public entity or a public utility or for telecommunication purposes, shall be subject to cancellation upon order of either the Board or the General Manager upon no more than one year's written notice to the lessee, permittee or licensee, except where such lease, permit, or license uses are not incompatible with Metropolitan's current operations or long-term requirements. No authorization for the use of District real property shall be renewed or continued for a period longer than five years without prior approval of the Board.

(b) Any lease, permit or license to use District real property shall contain insurance and indemnification, defense, and hold harmless provisions protecting the District against liability arising from use of such property thereunder.

(c) The District may charge reasonable fees, including recovery of administrative and operational costs associated with the processing of documents conveying real property interests.

Section 8242 replaced former Sections 8223, 8224, and 8225, adopted by M.I. 39982 - December 8, 1992; paragraph (a) amended by M.I. 42407 - May, 13, 1997; Paragraph (a) amended by M.I. 43006 - June 9, 1998.

§ 8233. Consent to Subdivision.

The General Manager is authorized to consent on behalf of the District to the subdivision of real property owned by a subdivider, subject to any easement owned by the District, and to consent to recordation of the subdivision map provided that the certification expressing such consent shall reserve to the District any such easement in the property so subdivided.

Section 8243 derived and amended from former Section 8221 adopted by M.I. 39982 - December 8, 1992.

Chapter 2

DISTRICT PROPERTY

| Article | | Sec. |
|---------|---------------------------------------|------|
| 1 | General Provisions | 8200 |
| 2 | Acquisition of Real Property | 8220 |
| 3 | Management of Real Property | 8230 |
| 4 | Disposal of Real Property | 8240 |
| 5 | Disposal of Surplus Personal Property | 8270 |

...

Article 3

MANAGEMENT OF REAL PROPERTY

| Sec. | |
|------|--|
| 8230 | Grants of Real Property Interests |
| 8231 | Appraisal of Real Property Interests |
| 8232 | Terms and Conditions of Management Documents |
| 8233 | Consent to Subdivision |

§ 8230. Grants of Real Property Interests.

(a) The General Manager is authorized to grant to public entities, public utilities, private persons and private entities, any real property interests in District real property that will not interfere with the District's operations; provided, however, that: (1) any such grant to a public entity or public utility is required for its operations; (2) the consideration for any one such grant (annual payment in the case of any lease, license or permit) to a private person or private entity is less than \$250,000; and (3) if it will be necessary for District facilities to be relocated or protected in order to avoid interference from the use of the real property interest, the General Manager shall obtain approval of a relocation or protection agreement by the Board prior to granting such real property interest, except as to any agreement which the General Manager is authorized to execute pursuant to Section 8122(c).

(b) Prior to granting any authorization to use District real property, the General Manager shall determine that the proposed use shall not damage, delay, hinder, or otherwise obstruct in any way, the safe and effective operation and maintenance of the District's access to and use of

its facilities and equipment, or any other activities associated with the operation and protection of the District's system. The General Manager shall further determine that the proposed use will be compatible with the District's existing and planned operations, District objectives related to sustainability, and stewardship of publicly-owned property, rights-of-way, and facilities.

Section 8240 derived and amended from former Section 8220 and 8222 adopted by M.I. 39982 - December 8, 1992; Section reference 8118(a)(3) amended to read Section 8122(c) by M. I. 46371 - September 15, 2005.

§ 8231. Appraisals of Real Property Interests.

(a) The General Manager shall have any real property interest proposed to be granted appraised as follows:

(i) 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;

(ii) 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;

(iii) 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 General Manager, by a second qualified appraiser. The grant of any real property interest exceeding \$250,000 in fair market value shall require approval of the Board.

(b) The grant of any real property interest by the General Manager shall be at fair market value, as determined by the appraisal, unless the General Manager determines that the grant will directly benefit or enhance the District's operations, facilities, or property. Direct benefit or enhancement means a benefit that increases the value of, or reduces the cost to maintain or operate, the District's real property, water storage, conveyance, and distribution systems, the District's transmission and electrical systems, the District's environmental reserves and mitigation properties, or other interests or activities related to the purposes and authority of the District.

(c) In the event that the grant of any real property interest by the General Manager is to a non-profit entity, a direct benefit may be shown if the purposes for which the entity was established include promoting, educating, researching, or developing water protection or water conservation, renewable energy, or similar technologies that enhance the public water supply. Notwithstanding the foregoing, if such non-profit entity engages in commercial activities on the District's real property under a lease, license, permit or other authorization, the grant shall be conditioned upon payment of consideration for the use of the property based on a market rate percentage of gross proceeds from the commercial activity. This paragraph applies only to non-profit organizations having tax-exempt status pursuant to California Revenue and Taxation Code section 23710d and U. S. Internal Revenue Code section 501(c)(3).

(d) The General Manager is not authorized to grant any interest in real property for less than fair market value, as determined by the appraisal, to any entity engaged in political activities or to any sectarian or religious organization.

Section 8241 derived and amended from former Section 8226 adopted by M.I. 39982 - December 8, 1992.

§ 8232. Terms and Conditions of Management Documents.

Documents conveying real property interests which the General Manager is authorized to grant by this Article 3, shall contain such terms and conditions, as the General Manager deems to be reasonable and proper, but shall include, as a minimum, the following:

(a) Any lease, permit or license to use District real property, other than a lease to a public entity or a public utility or for telecommunication purposes, shall be subject to cancellation upon order of either the Board or the General Manager upon no more than one year's written notice to the lessee, permittee or licensee, except where such lease, permit, or license uses are not incompatible with Metropolitan's current operations or long-term requirements. No authorization for the use of District real property shall be renewed or continued for a period longer than five years without prior approval of the Board.

(b) Any lease, permit or license to use District real property shall contain insurance and indemnification, defense, and hold harmless provisions protecting the District against liability arising from use of such property thereunder.

(c) The District may charge reasonable fees, including recovery of administrative and operational costs associated with the processing of documents conveying real property interests.

Section 8242 replaced former Sections 8223, 8224, and 8225, adopted by M.I. 39982 - December 8, 1992; paragraph (a) amended by M.I. 42407 - May, 13, 1997; Paragraph (a) amended by M.I. 43006 - June 9, 1998.

§ 8233. Consent to Subdivision.

The General Manager is authorized to consent on behalf of the District to the subdivision of real property owned by a subdivider, subject to any easement owned by the District, and to consent to recordation of the subdivision map provided that the certification expressing such consent shall reserve to the District any such easement in the property so subdivided.

Section 8243 derived and amended from former Section 8221 adopted by M.I. 39982 - December 8, 1992.