



- Board of Directors
Real Property and Asset Management Committee

8/16/2011 Board Meeting

Revised 8-1

Subject

Adopt policy principles for managing Metropolitan's real property assets and amend Administrative Code

Description

At its July 26, 2011 meeting, the Real Property and Asset Management (RP&AM) Committee voted to recommend that the Board adopt the proposed policy principle for managing Metropolitan's real property assets, with one change related to nonprofit entities. 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 revised draft policy principles, with the proposed final version shown in **Attachment 2**. **Attachment 3** presents the revised draft Administrative Code language changes, while **Attachment 4** shows the proposed final version. Staff is now seeking board approval of the draft proposed policy principles at the August 16, 2011 Board Meeting.

Background

Metropolitan has a responsibility to manage its 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 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 maintaining telecommunications sites, member agency maintenance activities, and shared use of rights-of-way. 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 policies, if adopted, will provide guidance and direction not only to Metropolitan staff, but to those seeking varied types of property rights through leases, easements, entry permits, and other transactions that convey property interests to others.

At the RP&AM Committee meeting, staff was asked how many Metropolitan Headquarters leases were below fair market value. **Attachment 5** presents information on all Metropolitan Headquarters leases, while **Attachment 6** highlights those that are currently below fair market value.

Policy

Metropolitan Water District Administrative Code Section 8231: Appraisals of Real Property Interests

Metropolitan Water District Administrative Code Section 8240: Preliminary Requirements

Metropolitan Water District Administrative Code Section 8241: Authority for General Manager to Sell or Lease Surplus Real Property; Restriction on District Directors and Employees

California State Government Code Sections 54220 through 54232

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves 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 action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of 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

Option #1

Adopt the CEQA determination and

- a. Adopt the proposed policy principles; and
- b. Approve the proposed changes to the Administrative Code.

Fiscal Impact: Estimated \$100,000 to \$200,000 in additional revenue annually

Business Analysis: Requires Metropolitan to obtain fair market value on its properties unless there is a direct benefit to Metropolitan

Option #2

Do not adopt the proposed policies.

Fiscal Impact: None

Business Analysis: Metropolitan may continue to collect less than fair market value for real property.

**Revised 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 use, operation or maintenance of Metropolitan's rights-of way; conveyance, distribution, treatment or other facilities or equipment; or any 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, and easements, shall be at fair market value, unless the General Manager determines that the transfer will directly benefit or enhance Metropolitan's interests or 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.
- A nonprofit entity's ability to use Metropolitan's real property shall be authorized only through licenses, permits, leases, or easements and shall be at fair market value, unless the nonprofit entity provides a mutual benefit to Metropolitan. Nonprofit organizations can provide a mutual benefit where the entity promotes, educates, researches or develops water protection, water conservation, environmental conservation, or other similar purpose. If the nonprofit receives a reduced fair market fee and engages in commercial activities on Metropolitan's real property, Metropolitan shall receive market rate percentage rent of all gross proceeds from those commercial activities, [unless a mutual benefit as described above is to be received](#).
- 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 from either the California State Board of Equalization or the the Internal Revenue Service.
- 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 real property interests through licenses, permits, leases, or easements greater than \$250,000 shall require Board approval. All leases of more than five years and all sale of real property shall be brought to the Board for approval.

**Revised 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 use, operation or maintenance of Metropolitan's rights-of way; conveyance, distribution, treatment or other facilities or equipment; or any 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, and easements, shall be at fair market value, unless the General Manager determines that the transfer will directly benefit or enhance Metropolitan's interests or 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.
- A nonprofit entity's ability to use Metropolitan's real property shall be authorized only through licenses, permits, leases, or easements and shall be at fair market value, unless the nonprofit entity provides a mutual benefit to Metropolitan. Nonprofit organizations can provide a mutual benefit where the entity promotes, educates, researches or develops water protection, water conservation, environmental conservation, or other similar purpose. If the nonprofit receives a reduced fair market fee and engages in commercial activities on Metropolitan's real property, Metropolitan shall receive market rate percentage rent of all gross proceeds from those commercial activities, unless a mutual benefit as described above is to be received.
- 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 from either the California State Board of Equalization or the the Internal Revenue Service.
- 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 real property interests through licenses, permits, leases, or easements greater than \$250,000 shall require Board approval. All leases of more than five years and all sale of real property shall be brought to the Board for approval.

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, the safe and effective use, operation or maintenance of the District's rights of way, conveyance, distribution, treatment or other facilities and equipment;, or any 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, and District objectives related to sustainability, and stewardship of publicly-owned property, rights-of-way, and facilities.

(c) All grants of any interest in real property for greater than five years and all sales of real property shall require Board approval.

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 interests, operations, facilities, or property. Direct benefit or enhancement is defined as 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 nonprofit entity, a direct benefit may be shown if the purposes for which the entity promotes, educates, researches, or develops water protection water conservation, environmental conservation, or other similar purpose. Notwithstanding the foregoing, unless a mutual benefit can be determined, if such nonprofit 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 to Metropolitan of additional consideration based on the proposed use and profitability of the activity to take place on the property.

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.

(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, the safe and effective use, operation or maintenance of the District's rights of way, conveyance, distribution, treatment or other facilities and equipment;, or any 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, and District objectives related to sustainability, and stewardship of publicly-owned property, rights-of-way, and facilities.

(c) All grants of any interest in real property for greater than five years and all sale of real property shall require Board approval.

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 interests, operations, facilities, or property. Direct benefit or enhancement is defined as 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 nonprofit entity, a direct benefit may be shown if the purposes for which the entity promotes, educates, researches, or develops water protection water conservation, environmental conservation, or other similar purpose. Notwithstanding the foregoing, unless a mutual benefit can be determined, if such nonprofit 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 to Metropolitan of additional consideration based on the proposed use and profitability of the activity to take place on the property.

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.

(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.

Metropolitan Headquarters Leases

Number of leases at Headquarters	10
sq ft leased at Headquarters	59,914
Total sq ft @ FMV	52,115
Total sq ft below FMV	7,799

Metropolitan Headquarters Leases below Fair Market Value

Tenant	Sq Ft	Exp Date
California State Parks and Recreation	792	Month to month
MWD Federal Credit Union	2,177	5/31/13
LA Infrastructure Academy	1,288	Month to month
Los Angeles San Gabriel River Watershed Council	2,427	5/31/12
AFSCME	1,115	MOU