



● **Board of Directors**  
***Real Property and Asset Management Committee***

8/18/2020 Board Meeting

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9-4

**Subject**

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Encroachment Management Report

**Executive Summary**

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As a large landholder in California, Metropolitan has a continuing and significant responsibility to preserve and protect its property rights and use. Encroachment activity may impair property use, impact property rights, and potentially increase exposure to liability. Encroachments vary in complexities and require various approaches to seek resolution. This report describes current preventive, reporting, and resolution processes and describes plans to adapt to the increasing and different types of encroachment activities.

**Details**

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**Metropolitan Land Holdings**

Metropolitan has rights to approximately 213,000 acres of real property in California, consisting of 176,500 acres in fee and 36,500 acres in easement rights, collectively referred to as Metropolitan's right of way (ROW). In collaboration with Water System Operations (WSO), Engineering Services Group (ESG), Legal and Security, the Real Property Group (RPG) is responsible for managing and protecting Metropolitan's ROW to support the storage, conveyance, treatment, and distribution of water, and to manage and minimize personal injury and other property management risks. There are a few key terms regarding encroachments that are defined below for context:

- Encroachment – Any situation in which a person or entity trespasses upon or uses Metropolitan's fee property without consent, prior rights, or interferes with Metropolitan's ability to use its easements.
- Fee Property ROW – Real Property owned by Metropolitan. The property may be subject to prior title exceptions or prior reservations. An example of an exception or reservation of rights may be another party's retention of air or mineral rights; or the right of another party to construct roads and utilities across the property.
- Easement ROW – Temporary or permanent interest that Metropolitan has acquired on private or public land owned by others. An easement provides restricted rights to use a portion or all the land within a property boundary for specific purposes such as the construction, operations, and maintenance of a pipeline and related facilities. Easements may include surface rights in the case of an underground pipeline with or without above-ground facilities; or may be limited to a sub-surface right in the case of a tunnel easement.
- Property Review Council (PRC) – The PRC convene regularly to analyze and process external requests for secondary uses of Metropolitan's properties. Metropolitan staff are members of the PRC and represent their Group's interests and viewpoints with the goal of preventing impact to Metropolitan's mission. RPG, ESG, WSO, Water Resource Management, Risk Management, External Affairs, Legal Department, and Security are represented in the PRC.

## Encroachment Management

Metropolitan discovers encroachments through routine patrols of ROW. Encroachments are categorized as structural and non-structural. Structural encroachments are installations such as pools, sheds, walls, fences, and driveways. Non-structural encroachments are installations such as landscaping, temporary encampments, parking, off-roading activities, arson, and trash and hazardous material dumping. The resolution process for new or recently installed encroachments includes discussing the encroachment with the property owner and posting a cease and desist order on-site, notifying the encroacher of Metropolitan's underlying rights. Follow-up includes written correspondence to have the encroachment removed and the pursuit of court action if warranted.

Encroachment management involves three key areas: prevention, reporting, and the corrective process.

### Prevention

- Metropolitan typically sends written notifications to property owners to make them aware of facilities located within easements or ROW on their lands.
- Metropolitan has established cooperative relationships with local permitting agencies who generally require an approval letter from Metropolitan as part of their conditions of approval for major development projects. ESG and WSO review and approve development submittals located in and around Metropolitan ROW to ensure that they do not interfere with facilities and property rights.
- Metropolitan's website has a document "Guidelines for Improvements and Construction Projects Proposed in the Area of Metropolitan's Facilities and Rights-of-Way" to assist property owners and developers in understanding requirements when working around Metropolitan facilities and ROW. If improvements are to be installed within fee properties, a secondary use request is processed through the PRC and appropriate rights granted by Metropolitan's Board if applicable, as a condition of project approval. This process helps ensure that Metropolitan's facilities are protected.
- Metropolitan is a member of the Underground Service Alert of Southern California (DigAlert). Metropolitan receives over 35,000 notifications per year from DigAlert about contractors and private owners planning to work near Metropolitan facilities and ROW. State law requires that anyone excavating with power driven equipment or when a permit is required must contact DigAlert two working days prior to the date of the planned excavation. Originally, these notifications were for work within public ROW, but recent changes in the law require compliance by private property owners. Although the change in the process has helped to prevent many potential encroachments on Metropolitan's ROW, it has not eliminated them.
- RPG actively manages over 250 agreements for secondary uses on Metropolitan property. Some of these agreements provide significant revenue to Metropolitan to offset land maintenance costs, while others allow passive uses like public parks and trails, providing a local presence and preventing most encroachments.
- Lastly, Metropolitan continuously reviews ROW to determine if certain properties continue to be required to support the core mission. If a property is considered excess, it is presented to the Board to be considered for surplus determination and disposal.

### Reporting

- Internal reporting process – WSO staff routinely patrols conveyance and distribution ROW and reports any unusual observations, or new unfamiliar or unrecognized land use activities. Security staff, likewise, patrols facilities and critical infrastructure areas and reports any property breach or security-related abnormalities. RPG staff performs annual inspections to ensure adherence to secondary use agreements. Staff also identifies areas that may require additional fencing or barriers to prevent future encroachments.
- External reporting process – The general public, adjacent property owners, local public agencies, park rangers, and law enforcement report activities within our ROW and, in some instances, assist with the removal of the encroachment.

## **Correction Process**

RPG, WSO, and ESG work collaboratively to ensure our records are complete and correct, property boundaries are confirmed, and other preemptive actions are taken to reduce or eliminate the impact of encroachments to Metropolitan. These actions are tailored for each specific instance and require the use of various resolution options and sequences. Below are some of the most frequently used corrective actions.

- When Metropolitan discovers an unpermitted encroachment on a ROW, the encroaching party is issued a written notice ordering it to cease its encroachment activity. The encroaching party will be required to restore the ROW to its previous condition or seek approval from Metropolitan for activities that may be permissible.
- If the encroachment remains after the initial cease order has been issued, a letter detailing Metropolitan's rights in the area, the unacceptability of the encroachment, and the possibility of future legal action if not resolved in a timely manner. These letters are reviewed by Metropolitan's Legal department, should legal proceedings be required in the future. If the encroachments are not removed by the date indicated, a second notice is issued, and as a last resort, appropriate legal action is initiated.
- In the case of a trespass, Metropolitan may enlist the aid of local law enforcement to assist in the removal of the trespasser and to secure the property. An additional response may include the installation of barriers and more frequent patrolling. Alternatively, Metropolitan may file nuisance, quiet title, or other civil actions to recover damages and remove encroachers.
- In parallel with the efforts outlined above, Metropolitan will also often seek the assistance of local permitting agencies that may have issued permits for the work but were unaware of the location of Metropolitan's ROW. Collaboratively, local agencies have revoked permits or conditioned certificates of occupancy for the removal or correction of encroaching structures.
- If an encroachment on a non-exclusive Metropolitan easement ROW is compatible with Metropolitan's use of the land, a letter of approval is sent to the encroacher to document the scope of allowable activities in the easement area. If the encroachment is located on Metropolitan's fee property, a determination is made if it is an acceptable secondary use. Appropriate rights may be granted to the encroaching party, subject to a license agreement with acceptable terms and conditions that may require Board approval per the Administrative Code.

## **Encroachment Planning**

In addition to the preventive and corrective measures, RPG actively identifies and maps historic encroachments using Geographic Information System mapping software. This information will be incorporated into the newly acquired property management software to record and track encroachments and related documents on Metropolitan's ROWs.

A ranking system is being developed to consistently prioritize how encroachments are managed. The ranking system will account for current and future land use, operations, property rights, and liability risks. RPG will manage and document the encroachment resolution process and will archive the records in the property management software. None of these encroachments pose an immediate risk to the operation and maintenance of critical infrastructure.

## **Policy**

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Metropolitan Water District Administrative Code Section 8230: Grants of Real Property Interests

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

**Fiscal Impact**

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Currently, under the O&M budget, RPG staff has budgeted \$250,000 to resolve encroachment issues for the upcoming fiscal year.

 Lilly Shraibati Group Manager Real Property	8/4/2020 Date
 Jeffrey Nightlinger General Manager	8/5/2020 Date

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