



Topic: **Authority Board Agenda Item 9-1**

2019 May 20

Subject: **Real Property & Land Management Policy**

Requested Action:

Consider approval of the Sites Project Authority Real Property & Land Management Policy.

Detailed Description/Background:

The Ad Hoc Site Facilities Work Group, working in collaboration with the Authority Land Management Committee, Authority staff and legal counsel, have developed a draft Sites Project Authority Real Property & Land Management Policy that will provide the administrative framework that the Authority will use as it acquires real property, real property interests, and land management activities as the project advances.

This policy is intended to provide a general framework of how the Authority's real estate program will be managed. As the project advances, the Authority's real estate program will develop a series of procedures and protocols that will further govern the implementation of this policy that will be included in the Authority's Right-of-Way Manual.

Prior Authority Board Action:

None.

Fiscal Impact/Funding Source:

None.

Staff Contact:

Kevin Spesert

Attachments:

Attachment A – Sites Project Authority Real Property & Land Management Policy

Real Property and Real Property Interest Acquisition

Authorization from Sites Project Authority

The Sites Project Authority Board of Directors (Authority) appoints the General Manager as its authorized agent to acquire, manage, and dispose of real property on behalf of the Authority in accordance with the following general policies:

1. The General Manager is authorized to acquire real property and/or real property interests which the Authority determines to be required for the Authority's purposes, subject to the terms of this policy.
2. The General Manager is authorized to implement the Authority's real property policy by developing any procedures he deems necessary and appropriate, provided such procedures are consistent with this Policy.
3. The General Manager is authorized to acquire real property and/or real property interests using funds made available for such purposes as authorized in the Authority's approved budgets and work plans.
4. The General Manager may delegate authority, in whole or in part, as outlined in this policy to appropriate Authority staff and consultants, as necessary.
5. The Sites Project Authority's Real Property Policy is subject to the approved Sites Project Authority Participation Agreement, including any future amendments. In the event of a discrepancy between this Policy and the Agreement, the Agreement shall prevail.

Acquisition of Real Property or Real Property Interest

The General Manager is authorized to acquire any real property and/or real property interests at the direction of the Authority as provided herein:

1. By Waiver Valuation (49 CFR § 24.102)
 - a. The Authority determines that an appraisal is unnecessary because the valuation determination is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.
 - b. When an appraisal is determined to be unnecessary, the Authority shall prepare a waiver valuation.
 - c. The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.
 - d. If federal funding is involved, the federal agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the Authority acquiring the real property offers the property owner the option of having the Authority appraise the property. If the property owner elects to have

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the Authority appraise the property, the General Manager shall obtain an appraisal.

2. Appraisal and Negotiations

- a. If the acquisition price, including any option price paid, or annual payment is \$25,000 or more but less than \$500,000, the real property shall have been appraised by a single qualified appraiser prior to acquisition.
- b. If the acquisition price for any real property is \$500,000 or more, the real property shall have been appraised prior to acquisition by a qualified appraiser and if deemed appropriate by the Authority, by a second qualified appraiser.
- c. The initial offer to acquire any real property and/or real property interest(s) by the Authority shall be at the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by the higher of the two appraisals if two appraisals are obtained. The Authority Board of Directors, at its discretion, may determine that there exist other considerations to the appraised value that the Authority deems appropriate to compensate the owner for in addition to the Appraised value.
- d. In addition, if an action has been filed by the Authority to acquire the property by eminent domain, then either the General Manager, by contract to purchase the property upon payment of the acquisition price as provided above, or the General Counsel, by stipulated judgment in an action to acquire the property upon such payment, may pay an amount equal to the amount that would be required to be paid if the property were otherwise acquired by judgment in condemnation under the California Eminent Domain Law.

3. By Eminent Domain Law (California Code of Civil Procedure section 1230.010, et seq.).

- a. The General Manager shall give the notice, and the Authority Board of Directors shall hold the hearing required by California Code of Civil Procedure Section 1245.235(c) for a Resolution of Necessity, and the hearing shall be attended by not less than a two-thirds majority of the Board.
- b. If the General Manager recommends adoption by the Board of a resolution of necessity to acquire real property by eminent domain, the General Manager shall first have made the offer required by law to purchase the real property and shall have negotiated in good faith for a reasonable period of time. Such offer to purchase shall be made for a price not less than the highest appraised value established by appraisal(s) prepared for, and approved by, the General Manager. (Code of Civil Procedure Section 1245.235(c))



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- c. In any action in eminent domain filed by the Authority, or any inverse condemnation action filed against the Authority alleging a taking of real property, the General Counsel is authorized to acquire the property by stipulated judgment providing for payment of not more than the appraised value established by the Authority's appraiser together with interest thereon as provided in paragraph 2(d) unless otherwise authorized by the Board.
4. The General Manager, and the General Counsel in the event of litigation, are authorized to acquire any remainder, or portion of a remainder, in connection with acquisition of real property for Authority purposes whenever any appraisal obtained by the Authority of the required property establishes that the remainder or portion thereof will be left in such size, shape or condition as to be of little market value. The acquisition price of the real property, including the remainder, shall not exceed the limit set forth in paragraph 2(d) without prior approval by the Authority.
5. The General Manager shall be authorized pursuant to Government Code Section 27281 to accept deeds or grants of any real property acquired and cause the same to be recorded on behalf of the Authority, upon resolution adopted by the Authority, as set forth in Government Code Section 27281.

Terms and Conditions of Acquisition Documents

The documents by which any real property is acquired for Authority purposes shall contain such terms and conditions as the Authority deems to be reasonable and proper.

Payment of Expenses for Acquisitions

The General Manager is authorized to pay the following expenses, where applicable or as directed by the Authority:

- a. Preliminary Title Report Fees and related documents and records research
- b. Land Survey Fees
- c. Appraisal Fees both original and owner
- d. Escrow fees
- e. Reconveyance Fees
- f. Title Insurance Policy Fees
- g. Litigation Guarantee Fees
- h. Documentary Tax Fees
- i. Recordation Fees
- j. Property Owners Attorney Fees
- k. Any other expenses required to eliminate or minimize potential risks or liabilities to the Authority

Authority to Procure Options

The General Manager is authorized to procure options for the purchase of any real property which the Authority determines to be required for project purposes at a price not more than the lesser of \$25,000 or 5% of the appraised market value determined by a qualified appraiser.

Relocation Assistance Programs

The General Manager is authorized to implement a relocation assistance program including a relocation assistance appeals procedure where required, in connection with the acquisition of real property. - Government Code Section 7260 et seq., and California Code of Regulations, Title 25, Article 1, Section 6000, et seq., and Article 5, Section 6150, et seq.

Recordation of Acquisition Documents

The General Manager is authorized to cause to be recorded in the Office of the County Recorder of the County in which the real property is located those document(s) which convey rights to or from the Authority.

Real Property Management

Grants of Real Property Interests

The Authority is authorized to grant to public entities, public utilities, private persons and private entities, any real property interests in the Authority's real property that will not interfere with the Authority's operations as follows;

1. Prior to granting any authorization to use the Authority's real property, the General Manager shall determine that the proposed use will not damage, delay, hinder, interfere, or otherwise obstruct, the safe and effective use, operation or maintenance of the Authority's current rights of way, facilities or system.
2. The General Manager shall further determine that the proposed use will be compatible with the Authority's existing and planned operations, and the Authority's objectives related to sustainability, and stewardship of publicly-owned property, rights-of-way, and facilities.
3. The following real property transactions shall require Authority approval:
 - a) purchase or sale;
 - b) grant of any interest or partial interest having a duration greater than 5 years;
 - c) all term extensions having a duration greater than 5 years.

Appraisals of Real Property Interests

The General Manager shall have any real property interest proposed to be granted to the Authority appraised as follows:

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1. When the value of the property to be granted is less than \$25,000, a wavier valuation may be utilized in accordance with Real Property Acquisition policy paragraph 1
2. When the value of the property to be granted is greater than \$25,000, but less than \$250,000, the fair market value of the property shall have been appraised by a single qualified appraiser;
3. 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 and if deemed appropriate by the Authority, 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.
4. The grant of any real property interest by the Authority 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 Authority'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 Authority's real property, water storage, conveyance, and distribution systems, the Authority's transmission and electrical systems, the Authority's environmental reserves and mitigation properties, or other interests or activities related to the purposes of the Authority.

Terms and Conditions of Management Documents

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

1. Any lease, permit or license to use Authority 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 Authority Board upon no more than one year's written notice to the lessee, permittee or licensee.
2. Any lease, permit or license to use Authority real property shall contain insurance and indemnification, defense, and hold harmless provisions protecting the Authority against liability arising from use of such property thereunder.
3. Any lease, permit or license to use Authority real property shall contain specifications as to responsibility for property maintenance requirements such as weed abatement, removal of unlawful dumping materials, trash collection and disposal, and other specifications as determined by the Authority.

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4. The Authority may charge reasonable fees, including recovery of administrative and operational costs associated with the processing of documents conveying real property interests

Consent to Subdivision

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

Authority for the Sites Project Authority to Sell or Lease Surplus Real Property

The General Manager shall establish a procedure for the continuous review of real property owned by the Authority for the purpose of determining which, if any, of such property, is surplus to the Authority's needs.

1. When the General Manager determines that property is surplus, the General Manager shall notify the Authority Board of that determination and;
 - a. Cause the property to be appraised by one or more qualified appraisers based on the above established values.
 - b. Determine if the subject property is subject to a Right of First Refusal from the original Grantor
 - i. If so, then the General Manager is to determine the desire of the Grantor to exercise said right,
 - ii. If the Grantor desires to exercise said right, then the General Manager is to offer the surplus property to the Grantor at fair market value of said property as determined by the appraisal
 - iii. If Grantor chooses not to exercise said right, then the General Manager shall recommend an appropriate marketing procedure and may then sell the surplus property upon approval of the Authority.

Quitclaims

The General Manager is authorized to quitclaim, in form approved by the Project's General Counsel, any temporary easement or lease to which the Authority is a party and which has expired by its own terms.

The General Manager 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

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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.

The General Manager is authorized to quitclaim, in form approved by the General Counsel, any easement for access to an Authority facility over adjoining lands at such times as the General Manager may determine that adequate access there to from a dedicated public street or other available easement for access is available.

Disposal of Unnecessary Improvements

The General Manager is authorized to dispose of, in the manner the Authority deems to be in the best interest of the Authority any improvements that must be removed to make land acquired for Authority operations suitable for Authority use.

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