

Midpeninsula Regional Open Space District

Board Policy Manual

Eminent Domain	Policy 4.03 Chapter 4 – Acquisition & Maintenance of District Lands
Effective Date: 4/23/86	Revised Date: 11/13/13
Prior Versions:	

It is the desire of the Midpeninsula Regional Open Space District to acquire open space from willing sellers. Eminent domain may be used only within the planning areas designated in the District’s Master Plan in those instances where all reasonable attempts at voluntary negotiations fail and the property in question is necessary to the open space program of the District, and where there are no feasible current or prospective alternate acquisitions that would achieve the District’s objectives.

Properties within the District’s sphere of influence outside the District’s boundaries shall be treated as being in the planning areas designated in the District’s Master Plan. This provision shall remain in effect until the District’s Master Plan has been amended to include or exclude such properties from such planning areas.

In negotiations or discussions with landowners, the District staff shall not threaten eminent domain but will explain relevant law and District policy. The Board of Directors of the District shall approve a brochure which shall explain this policy, include information on the use of arbitration, open space easements and contracts, and life estates, for example, and will encourage private open space preservation.

In establishing routes for trails, the District shall plan in consultation with and respect the privacy of developed communities.

USE OF EMINENT DOMAIN

1. Improved property, not subdividable
Eminent domain shall not be used to acquire all or any part of an improved property that is not susceptible to further subdivision, except as provided in Section 5 (Trails) below.
2. Unimproved property, not subdividable
Eminent domain shall not be used to acquire all or any part of an unimproved property that is not susceptible to further subdivision if the property is in a clearly defined developed community, except as provided in Section 5 (Trails) below. Further, until such time as the District has completed a revision of its Master Plan and established a standard or standards which identify such properties or categories of property that will not be subject to eminent domain, all other unimproved property not susceptible to further subdivision shall be subject to eminent domain only when the Board has

determined at a public hearing that the property is clearly threatened by development or degradation of natural resources, except as provided in Section 5 (Trails) below.

3. Improved, subdividable property

Except as provided in Section 5 (Trails) below, eminent domain may be used to acquire all or any part of an improved property which is susceptible to further subdivision only when the Board has determined at a public hearing that the property is clearly threatened by development or degradation of natural resources, or in more than 50% of the fee interest of the property is held by institutional or commercial entities. However

- a. If 50% or less of the fee interest of the property is held by institutional or commercial entities, the improvements and appurtenant structures, and surrounding lands of no less than minimum lot size under the existing zoning district, shall be exempt, and
- b. The owner shall be entitled to retain such easements as are needed for reasonable access and use of the property.

4. Unimproved, subdividable property

Except as provided in Section 5 (Trails) below, eminent domain may be used to acquire all or any part of an unimproved property which is susceptible to further subdivision only when the Board has determined at a public hearing that the property is clearly threatened by development or degradation of natural resources, or in more than 50% of the fee interest of the property is held by institutional or commercial entities.

5. Trails

If a portion of a property is required to connect two or more publicly owned park or open space parcels, eminent domain may be used, subject to legal requirements and the following conditions:

- a. The Board finds it necessary to provide a trail connection between the parcels, and
- b. The District has been unable by voluntary means to acquire land to connect the parcels with a safe and useful trail, including significantly longer and less convenient trail routes, and
- c. The land for the connecting trail shall not exceed 50 feet in width, and shall be as far from any existing structure and as close to the property line as practicable, and
- d. The owner shall have the opportunity to designate any additional portions of his/her land which may be included by the District in the acquisition, and
- e. The owner shall be entitled to retain an easement over the land acquired by the District, where necessary, for access to the land retained by the owner

6. Perfection of District Rights

Notwithstanding any other provision of this policy, the District may consider the use of eminent domain to perfect rights in an existing road for use for patrol purposes, and to perfect title to any District property or District's interest therein.

7. Consent of owners

Notwithstanding any other provisions of this policy, the District may consider use of eminent domain when the owners of more than 50% of the fee interest in the property requires or consent to such use.

8. Publicity

Policies and proposed changes pursuant to restraint or eminent domain shall be adopted by ordinance following a public hearing, legally noticed and freely publicized (at least ten (10) day prior to any public hearing and after any changes) in a manner designed to reach the attention of property owners within the District's planning areas. Publicity shall include at a minimum giving notice to members of the public who have asked to be notified, to owners of properties within the District's planning areas which are greater than twenty (20) acres, to known homeowners' associations within the District's planning areas, to cities and counties within the District's sphere of influence, to other organizations having a continuing interest in the District, to the District's newsletter mailing list, and via an appropriate press release.

9. Definitions

- a. Improvement – legal residences, excluding trailers and temporary structures, meeting the applicable Uniform Housing Code. To qualify, a mobile home must have a permit as a permanent resident.
- b. Improved – containing at least one improvement.
- c. Property – one or more contiguous assessor's parcels under one ownership.
- d. Susceptible to further subdivision – divided or dividable into two or more legal building sites under applicable zoning regulations (including pre-existing legal but non-conforming building sites)
- e. Institutional or commercial ownership – including, but not limited to, private or public agencies or schools (except public schools), churches, investment partnerships and corporations, excepting individual or immediate family ownership through a family trust, partnership or corporation whose purposes are not primarily dedicated to land speculation and/or development investment
- f. Clearly threatened by development – activities which may be considered by the Board in making its determination may include, but not be limited to , filing of a subdivision application, preliminary concept plan or other document relating to subdivision of property, or filing a division of ownership, or filing an application for zoning change for increased density.
- g. Clearly threatened by degradation of natural resources – activities which have or could cause significant degradation of natural resources, excluding such activities required for public health and safety

10. Decisions by the Board

These policies are intended solely for the guidance of the Board in the exercise of its discretion and are not intended to give rise to private rights or causes of action in individuals or other persons. The Board shall be the final arbiter as to any question of interpretation of these policies, and upon the adoption of a resolution of necessity (Code of

Civil Procedure Section 1245.220) it shall be conclusively presumed that the Board has found such action to be consistent with these policies.