



Midpeninsula Regional
Open Space District

R-16-34
Meeting 16-07
March 23, 2016

AGENDA ITEM 3

AGENDA ITEM

Revisions to Board Policy 4.02 Titled “Improvements on District Lands”

GENERAL MANAGER’S RECOMMENDATION

Adopt a Resolution Amending Board Policy 4.0, “Improvements on District Lands”.

SUMMARY

The proposed revisions to Board Policy 4.02 “Improvements on District Lands” would:

1. Increase the authority of the General Manager to approve leases and licenses in real property from the current amount of \$25,000 to a revised amount of \$50,000, consistent with AB 495;
2. Increase the authority of the General Manager to approve the acceptance of in-kind services in exchange for rents from \$10,000 to \$25,000; and
3. Expand the authority of the General Manager to initiate Unlawful Detainer proceedings to include instances when prompt action is required to both regain possession of District property and stay consistent with state legal procedural requirements.
4. Make other miscellaneous updates to reflect new organizational structure, planning process, and types of properties managed.

MEASURE AA

This is not a Measure AA project.

DISCUSSION

In 2015, state legislation AB 495 was passed amending Public Resources Code section 5549(b) to increase the amount of contracting authority that the Board of Directors is permitted to delegate to its General Manager from \$25,000 to \$50,000. Previous revisions to Board Policy have been adopted to implement this increased delegation in general contracting, but the \$25,000 limit remains in Policy 4.02, “Improvements on District Lands”, requiring Board approval for any leases or licenses in real property that result in more than \$25,000 in annual payments. The proposed amendments would conform that delegation to the new \$50,000 limit.

Policy 4.02 also presently limits the amount of in-kind services that the General Manager can approve for acceptance in lieu of rent to \$10,000 or less annually. The proposed amendments would increase that annual amount to \$25,000, to reflect both the increased costs and rent environment, as well as the increased delegation authority discussed above.

Policy 4.02 also presently requires that the General Manager obtain advance approval by the Board of Directors before commencing proceedings in an Unlawful Detainer to recover possession of real property, with the one current exception for an “imminent threat to health, safety or welfare.” The proposed amendments would add an exception for circumstances where a more rapid response to a tenancy problem is necessary, and advance approval would make it difficult to responsibly manage District property while still staying compliant with applicable procedures and timelines set out in state landlord-tenant laws. Under both the current policy and the proposed amendments, the General Manager would continue to be required to report the filing to the Board of Directors at the earliest possible time and obtain the Board’s prior approval and direction as to the action.

The proposed revisions also address a few outdated departmental structure and planning processes referenced in the Policy and minor technical corrections. For example, references to use and management plans are added to supplement the previous reference to specific site plans, and references to the Real Property Department are updated to reflect the new structure of the Property Management Program in Land and Facilities Department.

Additional, more substantive issues will need to be considered for revision after further staff and Board committee review and discussion, such as perhaps revisiting the idea of Youth Hostels, taking a more methodic approach to potentially historic properties, and looking at the Board’s policy objectives within the scope and function of residential housing on District property. The instant revisions are intended to mainly just address the need to streamline the Unlawful Detainer process, to make it more functional within the constraints of California landlord-tenant law and procedure.

FISCAL IMPACT

There is no anticipated fiscal impact, except potentially though unquantifiable increases in rent revenues that would be realized through more efficient property management.

BOARD COMMITTEE REVIEW

This item was not presented to a Board Committee, but was introduced in concept before the entire Board by General Counsel at the March 2, 2016 meeting of the full Board of Directors.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Revised Policy 4.02 would be incorporated by the District Clerk into the Board’s Policy Manual, and distributed to the affected departments. The Revised Policy would take effect March 24, 2016.

Attachments

1. Resolution Amending Policy 4.02 “Improvements on District Lands”

Responsible Department Head:

Sheryl Schaffner, General Counsel

Prepared by:

Sheryl Schaffner, General Counsel

RESOLUTION NO. 16-

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
AMENDING POLICY 4.02 “POLICIES REGARDING
IMPROVEMENTS ON DISTRICT LANDS”**

WHEREAS, the Board of Directors passed and adopted Policy 4.02 “Policies Regarding Improvements on District Lands” on January 11, 1978, with subsequent amendments adopted February 22, 1978, March 23, 1983, October 10, 1984, July 25, 2007, and November 11, 2013; and

WHEREAS, the Board of Directors wishes to make the management of its properties more efficient by allowing the General Manager, in conjunction with the General Counsel, to approve the initiation of Unlawful Detainer proceedings without the advance approval of the Board of Directors where necessary to protect the District’s needs and stay within the timelines imposed by state law relating to same; and

WHEREAS, the District’s enabling legislation at Public Resources Code section 5549 was recently amended by Assembly Bill 495 to increase the amount of contracting authority that the Board of Directors may delegate to the General Manager from \$25,000 to \$50,000 and the Board of Directors wishes to do so in all areas of operations in which the contracting authority pertains; and

WHEREAS, the Board of Directors believes it also appropriate to concurrently amend the amount of in-kind services that the General Manager can accept as rent payment from \$10,000 to \$25,000;

WHEREAS, miscellaneous updates are required to make Policy 4.02 reflect new organizational structure, and other minor revisions being appropriate;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Midpeninsula Regional Open Space District, as follows:

1. Board Policy No. 4.02 “Improvements on District Lands” is amended as set out in Exhibit A hereto;
2. Revised Policy No. 4.02 as set out in Exhibit A are effective March 24, 2016.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on ____, 2016, at a regular meeting thereof, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Secretary
Board of Directors

President
Board of Directors

APPROVED AS TO FORM:

General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

District Clerk

Board Policy Manual

Improvements on District Lands	Policy 4.02 Chapter 4 – Acquisition & Maintenance of District Lands
Effective Date: 1/11/78 <u>3/24/16</u>	Revised Date: 11/13/13 <u>3/23/16</u>
Prior Versions: 2/22/78, 3/23/83, 10/10/84, 7/25/07, <u>11/13/13</u>	

Introduction: In the process of fulfilling its primary function of acquiring open space, the District also becomes the owner of structures and other improvements of varying condition, usefulness and value. Some of these improvements are appropriate to the open space around them, and others are not. Frequently structures have some degree of historical value. As use of District lands increases, there will be additional pressure on the District to construct new facilities such as recreational buildings and parking lots. Since there are many costs involved with the maintenance, patrol and liability of structures, it is important that the District establish a policy for the use, construction and/or removal of structures on District lands. Information on specific structures and their use, potential uses and final disposition will be found in the specific site plans and use and management plans (site plans). The following policy statements are intended as a guide for the staff in the preparation of such ~~specific~~ site plans to be approved by the Board.

A. Definitions.

For the purpose of these policies, improvements will include all constructions such as buildings, recreation and sanitary facilities, utility structures, dams, fences and gates, roads, trails and parking lots.

B. Policy Statement.

All structures and other improvements existing on District lands at the time of acquisition are potential resources and as such will be considered for retention and will be addressed in the site plan. In other than emergency situations, public notice will be given to the degree specified in the Open Space Use and Management Planning Process and the Public Notification Policy before any decision is made ~~by~~ the Board to remove a major structure. The District will retain and maintain or build a structure or other improvement only if it is complementary to the objectives of the District outlined in the Basic Policy. Important considerations in the decision to retain an improvement will be its compatibility with the open space character of the site, its potential financial burden to the District in terms of liability and management, historic value, and its proposed use. Existing structures which have identified potential uses may be retained for a specified period as stated in the use and management plan for the site. Other improvements will be removed from the site as soon as practicable. it is economically feasible within the constraints of the land management budget. The time scale for the removal will be determined on the basis of both the cost of removal and the degree of negative impact on the site. The site plan will consider the cost and practicality of salvaging materials being removed.

C. Discussion.

(1) Improvements Used for Site Protection, Management, and Stewardship:
(e.g., Field Office, Ranger, Employee, and Caretaker Residences, Equipment and Water Storage Facilities, Outbuildings, Corrals, Fences and Gates)

If it is deemed necessary or desirable to have a field office or ranger (caretaker) residence in order to properly care for the site, or other employee residence in order to accomplish the District's land management, resource management and stewardship goals, the decision to use an existing structure or to build a new structure should be made on the basis of cost effectiveness and site compatibility. When a structure is used as an employee, ranger or caretaker residence, rental will be at fair market value minus the value of services rendered to the District. Allowances may be made for the fact that available facilities may exceed the actual need of the occupant.

Some improvements such as outbuildings, corrals, fences, gates, equipment and water storage facilities may be required for the proper maintenance and protection of a site. Such improvements will be constructed and/or maintained as required.

(2) Improvements for Public Utilization of the Site:
(e.g., Education and Recreation Facilities, Youth Hostels, Restrooms, Drinking Water, Trails, Roads, Bridges and parking Lots)

Because the District's principal role is that of providing low intensity recreational uses of its lands, improvements such as trails and parking lots will be considered as part of each site plan. Improvements which have potential for more intensive recreational, environmental, historic, or educational use will also be considered for retention or construction; however, the willingness of other agencies to bear any major costs of construction and/or management will be an important consideration.

Facilities required for the health and safety of the public will be constructed and maintained only as required. In emergency cases, the staff will have discretion for immediate mitigation of hazards.

(3) Improvements which Contribute to the Character of the Site:
(e.g., Buildings with Unique Historical or Architectural merit, Barns, Sheds and Fences)

In order for the Board to determine the historical, cultural or architectural significance of a structure, the District will notify and consult such agencies as specified in the land Use and Management Planning Process Document.

As an aid to this determination, the District will conduct and maintain a survey of significant structures within the planning area. When the District considers acquisition of a site which includes a structure or structures which are listed on the National Register for Historic Places or are clearly eligible for inclusion on that register, the District has a special responsibility to seek some means to protect these structures. An important consideration in the decision to retain

such structures will be the availability of special funding programs or resources from other public agencies, private organizations or individuals for the costs of their restoration, maintenance and operation. In extraordinary situations involving structures of exceptional historical or architectural merit, when other resources are not available, the District will either exclude the structures from its acquisition or accept the responsibility to protect and preserve them for an indefinite period while seeking other means for continued preservation and/or restoration as identified in the historical resources inventory.

Some structures associated with agriculture or other former uses of the site can contribute significantly to the site without detracting from its open space character. When economically feasible within the constraints of the land management budget, examples of these structures will be retained, maintained, and whenever possible put to use.

(4) Improvements as Income Sources:

Structures will not be maintained or constructed solely for the purpose of producing revenue. Rentals may be employed to maintain a structure which is being retained for another potential use or on a temporary basis in order to help defray the cost of removal of an undesirable structure. The overall time for interim rental will be determined through the use and management planning process. When a structure is temporarily retained for the purpose of revenue production, it should be rented for the fair market value consistent with possible special restrictions due to its location on open space lands, and its availability will be advertised in accordance with Property Management approved by the General Manager.

In some cases land will be purchased under the condition that the site or a portion thereof will be leased on a long term basis, sold, or sold with retention of necessary trail or other land rights. Timelines for making final decisions on rights to be retained will be established at the outset and during the regular planning process.

Generally the decision to lease an improvement will be made to optimize special factors related to properly managing District lands.

The Board of Directors will review and approve leases or licenses which are long term (over one year) and/or involve an anticipated annual income in excess of \$2550,000, excluding month-to-month leases or licenses. The General Manager or his/her designee may enter into lease or license agreements on behalf of the District without specific Board approval if they are:

- (a) In amounts not exceeding \$2550,000 anticipated annual income to the District (including in-kind services), and
- (b) No more than one year in duration, or month-to month, and
- (c) Pursuant to a Board adopted use and management plan, and

(d) Do not create commitments which go beyond the scope of the Board adopted use and management plan (e.g., extensive tenant improvements which could imply a longer term commitment by the District).

~~Staff~~ The General Manager will have the discretion to enter into leases specifying either cash or in-kind services or a combination of the two as payment. If in-kind services are being accepted, they will in no circumstance exceed one year's full cash value of the lease or \$~~2510~~,000, whichever is less, without Board approval, to preclude the expectation of a continuing relationship.

(5) If an Unlawful Detainer action is required for the District to regain possession of rental premises, initial action and any required pre-litigation procedures will be initiated by the ~~Real Property~~ Property Management Program in the Land and Facilities Department in consultation with the General Manager, and in conjunction with and under the guidance of District ~~Legal~~ General Counsel. The Board of Directors will approve the filing of a required Unlawful Detainer lawsuit. If necessary to regain possession of District property in a timely manner under the procedures set out in State law, or in the event of an imminent threat to health, safety or welfare, the General Manager, with approval of the District's General Counsel, may approve the initial filing of an Unlawful Detainer action and report the filing to the Board at the earliest possible time to obtain the Board's approval and direction as to the action.

(6) Improvements for Agriculture and Other Special Uses:
Agricultural use which is consistent with the open space use of a site is encouraged by the District. Improvements for agriculture or other special uses will be retained or constructed as approved by the Board and stated in the ~~site plan~~ use and management plan (preliminary included). In the Coastside Protection Area, leases, use and improvements shall be consistent with the District's Service Plan Policies.