

Regional Conservation Authority

**APPROVAL OF POLICIES AND PROCEDURES
FOR PROPERTY ENCUMBERED BY ASSESSMENTS AND
COVENANTS, CONDITIONS AND RESTRICTIONS**

Staff Contact:

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Background:

Recently, Staff has processed several property acquisitions that have been encumbered with property assessments, such as assessments for road maintenance, and Covenants, Conditions and Restrictions (CCRs). The attached policies will provide guidance to staff as we conduct our due diligence of such properties. The policies on assessments for Willing Sellers and HANS/JPR acquisitions indicate that the following should be considered in the order of preference stated below:

- (1) Research if the RCA is exempt from payment of the property assessments.
- (2) Negotiate with the Seller to eliminate encumbrances from title before close of escrow.
- (3) Pursue a buy out of the property assessments prior to close of escrow.
- (4) Defer the buy out of the property assessments until after the close of escrow.
- (5) Pay the annual fee for the property assessments.

The policies for assessments on conveyances made pursuant to a regulatory permit condition, such as a 404 permit issued by the U.S. Army Corp of Engineers, differs slightly in that the majority of the cases, the owner would be obligated to buy out the property assessments prior to close of escrow. Staff believes this is appropriate as the RCA is cooperating with the owner and the conveyance is a condition of a Federal or State regulatory process.

With respect to the policies on CCRs, the draft policies state that staff should identify if the CCRs potentially affect the use or maintenance of the property. This may be important to the RCA should the agency wish to install an interpretive center or caretaker facility on the property. Under the draft policies for the CCRs, staff should consider the following options, when dealing with CCRs in the order of preference stated below:

- (1) Research if the RCA is exempt from the CCRs.
- (2) Pursue a modification of the CCRs prior to close of escrow.
- (3) Defer the modification of the CCRs until after the close of escrow.
- (4) Comply with the terms and obligations of the CCRs.
- (5) If the CCRs provide for an assessment, staff will follow either policy section 1.09 or 1.10, as appropriate.

The draft policies have been approved as to form by Legal Counsel, and staff recommends approval.

Staff Recommendation:

That the Executive Committee:

- 1) Recommend adoption of the attached modification to the Land Acquisition Policies to the Board of Directors; and
- 2) Direct staff to agendize this matter for the May 14, 2007 meeting of the RCA Board of Directors.

Attachments:

- 1) Section 1.09 Policies and Procedures Regarding Properties Encumbered by Property Assessments for Willing Seller, and Full and Partial HANS/JPR Acquisitions
- 2) Section 1.10 Policies and Procedures Regarding Properties Encumbered by Property Assessments for Conveyances made Pursuant to Regulatory Permits such as 404 Permits
- 3) Section 1.11 Policies and Procedures Regarding Property Encumbered By Covenants, Conditions and Restrictions

Section 1.09 Policies and Procedures Regarding Properties Encumbered by Property Assessments for Willing Seller, and Full and Partial HANS/JPR Acquisitions

To assemble the Additional Reserve Lands, the Regional Conservation Authority (RCA) may acquire land that is encumbered by existing property assessments. This includes Property Owner Association fees as well as assessments by community service and facilities districts. These properties may be offered by “willing sellers” or as a HANS/JPR full or partial acquisition. The following policies and procedures are intended to establish basic guidelines for the acquisition of property encumbered by existing property assessments:

- (a) Staff will order a preliminary title report, with Schedule “B” exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.
- (b) Staff will contact the Assessor’s office and obtain a list of all known property assessments that may affect the property
- (c) Staff will identify the purpose and annual cost of any property assessments and estimate the cost to “buy out” the assessments.
- (d) Once staff has estimated the cost to buy out the assessments, staff will contact the legal entity responsible for the collection and administration of the assessments, to inquire as to whether or not the assessments can be bought out.
- (e) The following options should be considered when dealing with property assessments in the order of preference stated below:
 - (1) Research if the RCA is exempt from payment of the property assessments.
 - (2) Negotiate with the Seller to eliminate encumbrances from title before close of escrow.
 - (3) Pursue a buy out of the property assessments by RCA prior to close of escrow.
 - (4) Defer the buy out of the property assessments by RCA until after the close of escrow.
 - (5) RCA to pay the annual fee for the property assessments.
- (f) Staff reports should identify if the property for proposed acquisition is affected by existing property assessments and should list the annual cost and the estimated buy out cost for the Board’s consideration.
- (g) The owner should be responsible for paying the assessments current before transfer of the property to the RCA.

Section 1.10 Policies and Procedures Regarding Properties Encumbered by Property Assessments for Conveyances made Pursuant to Regulatory Permits such as 404 Permits

The Regional Conservation Authority (RCA) may be requested to accept land that is encumbered by existing property assessments. This includes Property Owner Association fees as well as assessments by community service and facilities districts. The request will generally come from a property owner that has been required to convey property to the RCA as part of a regulatory permit condition, such as a 404 permit issued by the U.S. Army Corp of Engineers or a Streambed Alteration Permit issued by the California Department of Fish and Game. The following policies and procedures are intended to establish basic guidelines for the acceptance of property encumbered by property assessments:

- (a) Staff will order a preliminary title report, with Schedule "B" exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.
- (b) Staff will contact the Assessor's office and obtain a list of all known property assessments that may affect the property.
- (c) Staff will identify the purpose and annual cost of any property assessments and estimate the cost to buy out the assessments.
- (d) Once staff has estimated the cost to buy out the assessments, staff will contact the legal entity responsible for the collection and administration of the assessments, to inquire as to whether or not the assessments can be bought out.
- (e) The following options should be considered when dealing with property assessments in the order of preference stated below:
 - (1) Research if the RCA is exempt from payment of the property assessments.
 - (2) RCA staff expects that in the majority of cases, the Donor will be required to buy out the property assessments prior to close of escrow.
 - (3) Although unusual, RCA staff may recommend to the Board that RCA should defer the buy out of the property assessments by RCA until after the close of escrow.
 - (4) Likewise, as a last resort, there may be situations where RCA staff may recommend to the Board that RCA should pay the annual fee for the property assessments.

(f) Staff reports should identify if the property for proposed acquisition is affected by existing property assessments and should list the annual cost and the estimated buy out cost for the Board's consideration.

(g) The owner should be responsible for paying the assessments current before transfer of the property to the RCA.

Section 1.11 Policies and Procedures Regarding Property Encumbered By Covenants, Conditions and Restrictions

The Regional Conservation Authority (RCA) may acquire land that is affected by existing Covenants, Conditions and Restrictions (CCRs). The following policies and procedures are intended to establish basic guidelines for the acquisition of property affected by existing CCRs:

- (a) Staff will order a preliminary title report, with Schedule "B" exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.
- (b) Staff will review the nature of the CCRs.
- (c) Staff will identify if the CCRs potentially affect the use or maintenance of the property.
- (d) If staff has determined that the CCRs may potentially affect the use or maintenance of the property, staff will contact the legal entity responsible for the enforcement of the CCRs, to inquire as to whether or not the CCRs may be modified.
- (e) The following options should be considered when dealing with CCRs in the order of preference stated below:
 - (1) Research if the RCA is exempt from the CCRs.
 - (2) Pursue a modification of the CCRs prior to close of escrow.
 - (3) Defer the modification of the CCRs until after the close of escrow.
 - (4) Comply with the terms and obligations of the CCRs (In many cases the CCR's will apply to property improvements only, and will have a negligible impact on the RCA).
 - (5) If the CCR's provide for an assessment, staff will follow either policy section 1.09 or 1.10, as appropriate.
- (f) Staff reports should identify if the property for proposed acquisition is affected by existing CCRs and if the CCRs affect the use or maintenance of the property.