

LAND ACQUISITION POLICIES

Article I. LAND ACQUISITION

Section 1.01 General

- (a) Land acquisition is one of the most important activities of the RCA to reach the reserve goals of the Multiple Species Habitat Conservation Plan (Plan). It is important to maintain policies that are fair and reflect the highest level of integrity.
- (b) Land to be acquired to meet the Plan's goals generally will be secured from willing sellers, through direct donations, donations as a result of development, or by conservation easement. The acquisition process is further described in Section 1.03 below.
- (c) Property proposed for acquisition will be evaluated for conservation value under the tenets of the Plan.
- (d) Each prospective acquisition will be reviewed for its relationship to existing reserve land, and its value to reserve habitat cores and linkages. The acquisition will also be evaluated for possible conflicts with planned infrastructure or land acquisitions which might be required for other public purposes. The RCA will make all reasonable efforts to work with the appropriate agency or special district which could be affected to insure the goals of the Plan can be attained.
- (e) The RCA will establish a Memorandum of Understanding for real property services with a qualified agency, organization, or individual to provide routine land acquisition processing at the direction of the Executive Director.
- (f) Opening of all negotiations and offers or agreements to purchase land will be authorized by the Executive Director.
- (g) All Land acquisition files will be retained and managed by the Executive Director or designated RCA staff.
- (h) The RCA Board will approve all purchases.
- (i) For future acquisitions, the RCA will generally not acquire property that includes residential or commercial structure(s) in the absence of compelling circumstances as determined by the Board of Directors; provided, however that RCA may acquire the property if the structure(s) have been either (1) physically removed, or (2) the property that contains the structure(s) is not part of the acquisition.
- (j) The Authority prefers to accept land in fee title rather than a conservation easement. Conservation easements should not be accepted on parcels from individual land owners, unless requested by the property owner.

Section 1.02 Authority to Sign Documents: Only the Executive Director or Chairman of the RCA Board may sign purchase and conveyance documents. The Vice Chairman of the RCA Board may sign in the absence of the Executive Director or Chairman of the Board.

Section 1.03 Acquisition Process: RCA will comply with the Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (42 U.S.C. § 4600 et seq. and 49 C.F.R. part 24.), as applicable. The following will apply to the acquisition process:

- (a) The RCA will order an independent appraisal of the property under consideration for purchase.
- (b) The RCA will use the appraised value to develop an offer to purchase the property under consideration.
- (c) A seller may provide a separate appraisal, but the seller's appraisal will not be used as a basis for the initial offer.
- (d) When the HANS/JPR review process identifies a property for "100% acquisition," land value differences between a seller's appraisal and the RCA appraisal will be resolved in accordance with Section 6 of the MSHCP.
- (e) An appraisal summary shall be prepared for all appraisals. The summary shall include the following information: the appraised value of the property, the date of value, the zoning and general plan designations of the property, and the comparable sales used by the appraiser in determining the value of the property.
- (f) Release of full appraisal and/or summary to seller:
 - (i) Full appraisals will not be released to the seller.
 - (ii) A copy of the appraisal summary will be provided to the seller for all acquisitions upon request.

Section 1.04 Confidentiality: To ensure integrity throughout the process, it is important to maintain confidentiality when the RCA considers land purchases.

- (a) Any agreement for real property services with agencies, organizations or individuals who may provide real property services will contain the following provisions to insure confidentiality of prospective acquisitions:
 - i) Assigned staff will pursue only those acquisitions authorized by the RCA.
 - ii) Investigations, arrangements and transactions will be conducted by assigned staff only.

- iii) Property information and transactions shall be maintained under the control of the assigned staff.
 - iv) No RCA property information shall be placed in any general electronic or manual data inventory outside of the RCA except as necessary during the acquisition process of a property. All records will be delivered to the RCA at the close of escrow.
 - v) The assigned staff shall sign a confidentiality agreement.
- (b) The Director of Land Acquisition and Management will maintain the working file for all prospective purchases. The file or the information contained in the file will not be released to persons outside the RCA without the authorization of the Executive Director or Deputy Executive Director.

Section 1.05 Indemnification:

- (a) It is the policy of the RCA to secure the appropriate indemnification from future liability resulting from pre-existing conditions on an acquired property. However, the RCA recognizes that circumstances for each acquisition vary, and the indemnification provision may be modified to reflect the level of risk, the ownership history of the property, the result of the environmental hazards assessment, along with any subsequent testing or other factors.
- (b) A Phase 1 Environmental Hazards Assessment (EHA), in compliance with general real estate practices, will be conducted on each prospective land acquisition or land donation not more than three (3) months prior to the opening of escrow or not more than six (6) months prior to the close of escrow. At the discretion of the Executive Director a Phase I EHA may be required prior to acceptance of a conservation easement.
- (c) In the event that a Phase I EHA or visual inspection by the RCA of a prospective property indicates any potential hazard(s) the Executive Director may require a Phase II Environmental Hazard Assessment or additional information relating to the property history of use.
- (d) No conservation easement will be accepted unless the underlying fee title holder fully indemnifies the RCA.

Section 1.06 Land Acquisition Services

The RCA recognizes that in some instances land conservation organizations and real estate professionals can facilitate the acquisition of selected properties or the completion of a specific transaction. The following policies will apply to the hiring of such individuals and organizations:

- (a) All organizations and persons proposing or solicited to provide acquisition services shall submit a statement of qualifications.
- (b) Organizations and individuals shall provide a proposal for specific services.
- (c) Selected organizations or individuals will sign a confidentiality agreement.
- (d) The Executive Director will issue a work order for the property (ies) of interest.
- (e) The RCA may provide compensation on a time and materials basis or offer a fixed percentage of the sale price or both.

Section 1.07 Policies and Procedures for Execution of IRS Form 8283 for Bargain Sales and Donations

The Regional Conservation Authority (RCA) recognizes that it is appropriate to execute an IRS Form 8283 where the property owner has offered to either provide a bargain sale or to donate land to the RCA. The following policies and procedures are intended to establish basic guidelines for the execution and processing of a Form 8283.

- (a) The MSHCP provides that the RCA shall not pay more than fair market value for any property that it purchases.
- (b) Fair market value shall be determined by negotiation between RCA and the property owner provided that such fair market value is supported by one or more appraisals that are in compliance with the MSHCP and approved by the RCA. The appraisal may be prepared by an appraiser contracted by either the RCA or the property owner.
- (c) A Bargain Sale shall be defined to be the sale of property to the RCA for less than the appraisal that has been reviewed and approved by the RCA or an independent, qualified appraiser contracted by the RCA.
- (d) If a property owner elects to accept less than the RCA approved appraisal price, the transaction shall be eligible to be considered a Bargain Sale. The Bargain Sale and the execution of the Form 8283 must be documented in the Purchase and Sale Agreement and shall be subject to approval by the Board of Directors, prior to execution of the form.
- (e) If a property owner elects to donate land to the RCA, the execution of the Form 8283 must be documented in the donation agreement, prior to execution of the form.
- (f) All requests for execution of a Form 8283 shall be reviewed and approved by Legal Counsel prior to execution and may be submitted for either a Bargain Sale as defined in Section (c) above or for a donation of land.
- (g) Only the Chairman of the Board of Directors or the Executive Director or designee shall be authorized to execute a Form 8283, provided that the form has been processed consistent with these policies and procedures.
- (h) Staff should notify the property owner of this policy, in writing, at the time of presenting an offer to the property owner, and request a written acknowledgement from the property owner that they have been notified of the policy.

Section 1.08 Policies and Procedures for Negotiation of HANS Acquisitions

The purpose of these policies and procedures is to establish general guidelines for the negotiation of HANS acquisitions, consistent with Section 6.1.1(B)(2)(b) of the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”). This Policy incorporates by reference the Clerical Changes made to page 6-6 of the MSHCP approved by the RCA Board on May 14, 2007. The following policy shall apply to properties where the County/City and the RCA have concurred with including all or a portion of the property into the MSHCP Conservation Area.

- (a) Initiation of the 120-Day Negotiation Period. The 120-day negotiation period provided under Section 6.1.1(B)(2) of the MSHCP shall commence:
 - i) Upon completion of the HANS/JPR process, and
 - ii) Concurrence by the RCA that all or a portion of the property is needed for inclusion within the MSHCP Conservation Area.

- (b) During the 120-Day Negotiation Period.
 - i) RCA will conduct an appraisal of the property.
 - ii) RCA and Property Owner, or its designee, will negotiate a purchase and sale agreement.
 - iii) Access to the property for appraisal purposes will be extended to the RCA through the HANS application, or other equivalent application.
 - iv) During this period, appraisal instructions shall be jointly prepared and agreed upon by the RCA and the Property Owner, or its designee. If such joint appraisal instructions are not agreed to by the parties within the first 20 days of the 120-day period, RCA may proceed to have an appraisal conducted in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” and the “Uniform Standards of Professional Appraisal Practice” pursuant to 6.1.1 of the MSHCP.
 - v) The Property Owner, or its designee, may suspend the negotiating time period, provided that they have submitted a letter to the RCA and the County/city requesting that the negotiations be suspended. In such event, the negotiating time period will only resume upon receipt of a letter to the RCA and the County/city from the Property Owner, or its designee, requesting that the negotiations resume.

- (c) After the 120-Day Negotiation Period. If at the end of this 120-day period, agreement between the parties is not achieved, each party shall submit in writing the party’s proposed resolution of terms. Further, the Property Owner, or its designee, along with the RCA and County/city, may agree to extend negotiations for an appropriate period of time if necessary. If either the Property Owner, or its designee, or the RCA and the County/city do not agree to extend negotiations, the Property Owner, or its designee, may (a) elect to

withdraw selling the property to the RCA, or (b) commence the Conflict Resolution Process as described in Section 6.1.1 of the MSHCP.

CLERICAL CHANGES TO THE MSHCP

Pursuant to Section 20.1 of the MSHCP Implementing Agreement, RCA hereby makes the following clerical change to the first full paragraph of Page 6-6 of the MSHCP:

b. Full Inclusion of Property - In those instances where all of the property is needed for inclusion in the MSHCP Conservation Area, negotiations will focus on the acquisition of the property including establishing a purchase price and the application of other non-monetary incentives which may compensate the property owner and assist with the acquisition. In no event shall the purchase price exceed the fair market value of the property. Unless otherwise agreed to by the parties, the fair market value for the property shall be determined by an appraisal ordered by the County or the Cities and conducted in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” and the “Uniform Standards of Professional Appraisal Practice.” In the event of any conflict between these standards, the “Uniform Appraisal Standards for Federal Land Acquisitions” will control. Fee title of property to be conveyed may not be required. The type of ownership to be conveyed will be taken into consideration when conducting the appraisal. Appraisal instructions shall be jointly prepared and agreed upon by the *RCA, on behalf of the* County or Cities, and the property owner, *or if joint appraisal instructions are not agreed upon within the first 20 days of the 120 day negotiation period, RCA shall proceed to order an appraisal.* Appraisal instructions will direct appraisers not to consider the MSHCP Criteria Area as relevant to the appraisal.

SUPPORTING DOCUMENTATION: The proposed modification clarifies two aspects of the HANS process:

The existing text indicates that the County and Cities are responsible for preparing joint appraisal instructions. As indicated in the joint exercise of powers agreement, the RCA was created to assume the responsibilities of acquiring property on behalf of the County and Cities, where as here, all of the property is needed for inclusion in the MSHCP Conservation Area. This clerical modification simply confirms that action for purposes of this section.

RCA, Local Permittees or other stakeholder groups never intended to delay the 120-day negotiation process due to lack of agreement on joint appraisal instructions. Therefore, this clarifying instruction allows RCA to proceed to conduct its own appraisal should RCA and the property owner, or its designee, fail to achieve agreement on joint appraisal instructions.

Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP including corrections of typographical, grammatical, and similar editing errors that do not

change the intended meaning of the MSHCP. The Board of Directors finds RCA finds this editing revision does not change the intended meaning of the MSHCP.

Further, RCA hereby makes the following clerical change to the first full paragraph on Page 6-10 of the MSHCP:

Should a party opt to commence the Conflict Resolution Process as a result of the parties' inability to resolve differences concerning the valuation of property, a second appraisal shall be conducted, at the expense of the ~~property owner~~ **opting party**, in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee ownership of property to be conveyed may not be required. The type of ownership to be conveyed shall be taken into consideration when conducting the second appraisal.

SUPPORTING DOCUMENTATION: In most cases, a property owner will probably be the opting party who seeks to commence the Conflict Resolution Process. In a situation where the RCA opts to commence the Conflict Resolution Process, however, the intent of the MSHCP is to have the RCA pay for the second appraisal. Accordingly, this revision to the plan requires the opting party, whether the property owner or the RCA, to pay for the expense of a second appraisal.

Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP including corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning of the MSHCP. The Board of Directors for the RCA finds this editing revision does not change the intended meaning of the MSHCP.

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:
 - i) Research if the RCA is exempt from payment of the property assessments.
 - ii) Negotiate with the Seller to eliminate encumbrances from title before close of escrow.
 - iii) Pursue a buy out of the property assessments by RCA prior to close of escrow.
 - (iv) Defer the buy out of the property assessments by RCA until after the close of escrow.
 - (v) 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:
 - i) Research if the RCA is exempt from payment of the property assessments.
 - ii) 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.
 - iii) 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.
 - iv) 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:
 - i) Research if the RCA is exempt from the CCRs.
 - ii) Pursue a modification of the CCRs prior to close of escrow.
 - iii) Defer the modification of the CCRs until after the close of escrow.
 - iv) 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).
 - v) 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.

Section 1.12 Policy Regarding Non-MSHCP Land Donations:

The RCA may agree to accept land donations outside of the Conservation Area or Criteria Area provided that:

- (a) Acceptance does not commit the RCA to a management or monitoring program that is different from that embodied in the MSHCP; and
- (b) An endowment is provided that fully covers the costs of long-term management and monitoring of the land and habitat.

Section 1.13 Policy for Acquisitions of Property for Which a Development Application is Not Intended to be Filed:

Funding for the acquisition of properties on the priority list will be provided through a separate designated fund. The funding level from Multiple Species Habitat Conservation Plan Local Development Mitigation Fees shall be reviewed annually and established by the RCA Board of Directors.

Closing Statement:

The Land Acquisition Policies set forth herein are for guidance only, and deviations there from by the RCA shall not provide a Seller, Property Owner, or its designee, with any damage rights or remedies against the RCA. If there is a conflict between the Land Acquisition Policies set forth herein and State or federal law, the conflicting State or federal law will control.

LAND ACQUISITION POLICY SECTION REVISIONS

1. 03-06-06 Sections 1.01 through 1.06 approved; Agenda Item 8.2.*
2. 12-04-06 Section 1.07 added; Agenda Item 8.2.
3. 05-14-07 Section 1.08 added; Agenda Item 9.2.
4. 05-14-07 Sections 1.09, 1.10 and 1.11 added; Agenda Item 9.1.
5. 09-10-07 Section 1.12 added; Agenda Item 8.3.
6. 10-01-07 Section 1.03 modified; Agenda Item 8.1.
7. 12-10-08 Section 1.07 modified; Agenda Item 7.1.
8. 11-01-10 Policy Clarification – Sections 1.01, 1.03, 1.08 modified, 1.13 added; Agenda Item 7.2.
9. 02-06-12 Section 1.01 modified; Agenda Item 11.
10. 04-02-12 Replaced Section 1.13; Former Section 1.13 becomes new closing statement; Agenda Item 9.
11. 03-11-13 Section 1.13 modified; Agenda Item 9.
12. 12-02-13 Section 1.01 modified; Agenda Item 11.

*RCA Board excluded endowments from approval.