



Midpeninsula Regional
Open Space District

Memorandum

DATE: February 10, 2021

MEMO TO: Board of Directors

THROUGH: Ana Ruiz, General Manager *AR*

FROM: Allen Ishibashi, Senior Real Property Agent

SUBJECT: Real Property Committee (RPC) Update – Criteria for Determining Which Transactions to Bring Before the RPC for Review

On January 19, 2021, the Real Property Committee (RPC) discussed, amended, and approved the criteria used to determine which real property transactions should be forwarded to the RPC for their review (R-21-10). Although the RPC did not believe that there were any issues with how determinations are made in identifying which transactions are brought to the RPC, they nonetheless appreciated the opportunity to review the process.

The overall goal of the property acquisition process is to balance Committee review with the need to complete the transaction within a reasonable time, so as to not lose the transaction opportunity (timing can often be dictated by the seller). Compared to other government agencies, the District is able to respond quickly when real estate opportunities present themselves, which aids in the District's success in protecting open space of regional significance.

The RPC reviewed and confirmed the following criteria that the General Manager and Real Property Manager use to evaluate and determine which properties should be brought to RPC for their review (RPC made the changes outlined in red) and these criteria are generally set forth in Board Policy 1.04. Under these criteria, it is important to know that a property may trigger RPC review of the transaction if only one criterion is met, and it is also possible that a property would go straight to the full Board of Directors even if multiple criteria are met based on factors that are out of the District's control (timing, urgency, seller's conditions).

Criteria:

1. Properties of regional significance
2. Coastal/**Agricultural** properties of significance
3. Partnership and Grant funded projects
4. Properties with **potential** public/community interest
5. Large, complex or high value/**cost** properties
6. Properties with significant habitable structures
7. Properties with significant resource values
8. Low Board familiarity with proposed transaction
9. Timeliness

Understanding that the evaluation of any criteria is subjective, as an additional measure, the General Manager or Real Property Manager would consult with the RPC Chair for their guidance on whether the RPC should review a particular transaction when the determination is unclear.

Attachment: February 19, 2020 RPC Report (R-21-10)



Midpeninsula Regional
Open Space District

REAL PROPERTY COMMITTEE

R-21-10
January 19, 2021

AGENDA ITEM 2

AGENDA ITEM

Clarification on the Types of Transactions brought to the Real Property Committee

GENERAL MANAGER'S RECOMMENDATIONS

Review and provide guidance on the level and types of real property transactions that should typically come before the Real Property Committee.

SUMMARY

The Real Property Department (Real Property) handles a number of real estate related transactions at the Midpeninsula Regional Open Space District (District), such as: open space land purchases, exchange agreements, property right disputes and litigation, rights to purchase, gifts and low value land, purchase of staff facilities and leases, and on rare occasion property dispositions. The General Manager seeks to better define the process for determining which transactions shall go before the Real Property Committee (RPC) for review.

BACKGROUND:

Summarized below are: (1) previous RPC confirmation on the criteria to conduct a site tour; (2) the types of real estate transactions the District handles; and (3) when these transactions are typically brought to the RPC.

Committee-approved Criteria for Conducting RPC Site Tours

On August 23, 2011, the RPC determined site tours were required for the following:

1. Properties of regional significance
2. Coastal properties
3. Conservation partnership projects
4. Grant funded projects
5. Properties with known strong public interest
6. Large properties
7. Properties with significant habitable structures

Due to COVID-19 impacts in 2020, site tours were not held for projects such as the Gordon Ridge and South Cowell properties. Instead, the RPC reviewed these projects virtually via Zoom meetings.

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Generally, projects with the following characteristics will be presented to the RPC with photographs, instead of a site tour:

1. Remote properties with poor roadway access
2. Properties with existing hazardous or unsafe conditions
3. Properties with owners not willing to have a public tour on their property
4. Small, minor or inholding properties

Types of Real Estate Transactions

The types of real estate transactions that the District takes part in are discussed below.

Land Purchases: Land purchases of unimproved and improved properties that fulfill the first part of the District's mission "to acquire a regional greenbelt of open space land in perpetuity". Open Space land purchases are often opportunity-driven and the ability to respond in a timely manner has been an important element to the District's land conservation success.

Exchange Agreements: Exchange agreements have typically been used for the following situations:

1. To settle property right disputes or potential litigation with a neighboring property owner. Real property issues that are the subject of potential/threatened or existing litigation are typically discussed by the full Board of Directors (Board) in closed session and not brought separately to the Committee.
2. When public agencies, such as Caltrans, County Roads, the San Francisco Public Utility Commission or PG&E, contact the District to acquire property rights to improve or repair public facilities (these discussions often occur under the threat of eminent domain). Minor property interests are typically scheduled for Board consideration. Significant interests are brought to RPC, such as the Ravenswood Bay Trail exchange, before bringing the item to the full Board for their consideration.
3. An agreement between the District and a property owner to exchange real property interests that provide benefits to both parties. Minor property interests are typically scheduled for Board consideration, and significant or complex property interests are brought to RPC, such as the Ridge Vineyards easement and fee exchange, before bringing the item to the full Board for their consideration.

Property Rights Disputes and Litigation: Property rights disputes with neighboring property owners that are the subject of potential, threatened or existing litigation are typically discussed by the full Board of Directors (Board) in closed session.

Rights to Purchase: On February 28, 2017, the RPC reviewed and reaffirmed the District's rights of purchase (rights of first refusal and first offer) for various properties, which the full Board reaffirmed on April 26, 2017 (R-17-44). The District currently holds rights of purchase on nine (9) properties and six (6) of these older purchase rights have short election timelines.

Gifts and Low Value Properties: Low-value land purchases and gifts approved under the General Manager's authority (with values of no more than \$50,000) are administered internally and shared with the full Board as an informational item.

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Staff Facilities & Leases: Staff facility purchases and commercial office leases are typically reviewed by the Board in closed session during the course of negotiation. In closed session, the General Manager and the Real Property Department receives authorization to negotiate the price and terms before presenting the purchase to the Board in open session for approval.

Property Dispositions: The disposition or sale of surplus land is rare. Since its formation in 1972, the District has only transferred a handful of properties and they are usually part of a property exchange. Most recently, at the Board meeting on October 28, 2020, the Board approved the surplus sale of the 330 Distel Circle administrative office, which is currently in escrow.

Discussion: Over last five years, Real Property has completed between 8 to 18 real estate transactions per year. Of those transactions, approximately 30% have been reviewed by the RPC. The Real Property Manager and General Manager's Office weigh the following factors to guide whether a particular transaction should be brought before the RPC before forwarding the item to the full Board:

1. Properties of regional significance
2. Coastal properties of significance
3. Partnership and Grant funded projects
4. Properties with known strong public/community interest
5. Large, complex, or high value properties
6. Properties with significant habitable structures
7. Properties with significant resource values
8. Low Board familiarity with proposed transaction
9. Timeliness

Below is a representative list of recent transactions that have gone before the RPC and a representative list of transactions that have gone to the full Board in closed session or a regular Board meeting:

Transactions Reviewed by RPC:

1. South Cowell: The RPC reviewed and recommended approval of this transaction on September 8, 2020. This transaction consists of purchasing a 54% interest in a 600-acre property for \$4,750,000 with a subsequent land division in which the District would ultimately own a 371-acre upland property. This project was brought before the RPC because of regional trail significance (Purisima-to-the-Sea), public interest, partnership with Peninsula Open Space Trust (POST), coastal project of significance, high transaction value, and a large property size.
2. POST-Gordon Ridge: The RPC reviewed and recommended approval of this transaction on April 7, 2020. This transaction consisted of the purchase of a 540.34-acre property for \$9,165,000. This project was brought before the RPC because of the complexity, partnership with POST, coastal project of significance, grant funding, a high transaction value, large acreage, and onsite habitable structure.
3. Tabachnik: The RPC reviewed and approved this transaction on November 12, 2019. This transaction consisted of the purchase of 151-acres at a price of \$1,562,000 and requires a lot-split before the close of escrow. This project was brought before the RPC because the transaction was complex (included a right of first refusal to purchase a

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retained 62.55-acre home site), regional significance (connection to Purisima and Tunitas Creek preserves, coastal property of significance, high transaction value, and large acreage.

4. Giusti Purisima Upland: The RPC reviewed and recommended this transaction on October 3, 2017. This transaction consisted of the transfer of the 240-acre Giusti Purisima Upland property. This project was brought before the RPC because of its regional trail significance, public interest, partnership with POST, coastal property of significance, large acreage, and site cleanup and restoration of abandoned oil facilities.
5. Woodruff Redwoods: The RPC reviewed and recommended this transaction on April 30, 2019. This transaction consisted of the purchase of a 190-acres at a price of \$2,150,000. This project was brought before the RPC because the transaction has significant old growth and second growth redwoods and creek habitat, its large acreage, high purchase price, and is a coastal property of significance.
6. Gupta-Kahn: The RPC reviewed and recommended this transaction on January 16, 2018. This transaction consisted of the purchase of a key 9.37-acre property and a 1.87-acre floating trail easement at a price of \$400,000. This project was brought before the RPC because of its regional trail connectivity between El Sereno Preserve and Sanborn County Park, complex transaction, partnership with Santa Clara County Parks, and the timing worked.
7. Lobitos Creek Conservation Easement: The RPC reviewed and recommended this transaction on November 21, 2017. This transaction consisted of the purchase of a 45-acre conservation easement for \$150,000. This project was brought before the RPC because of its notable watershed and steelhead habitat, coastal location, and the timing worked.
8. Conley Property: The RPC reviewed and recommended this transaction on February 28, 2017. This transaction consisted of the purchase of 191-acres for a bargain sale price of \$500,000 (\$450,000 gift component). This project was brought before the RPC because the transaction was a partnership with POST, large acreage, protection of second growth redwoods and salmonoid creek habitat, and the timing worked.
9. Ravenswood Bay Trail: The RPC reviewed and recommended approval of the Ravenswood Bay Trail exchange agreement with the City and County of San Francisco on February 16, 2016. This project was brought to RPC because of the complexity, its regional trail significance, partnership with City of East Palo Alto and SF Bay Trail, community and public interest, and grant funding.

Transactions Not Reviewed by RPC:

1. Sale of 330 Distel Circle: This project went to the full Board in closed session and was approved by the Board on October 28, 2020. The transaction consisted of selling the District's administrative office building to the County of Santa Clara for \$10,400,000 (currently in escrow). This project was complex and had a high purchase price, however, it was not brought before the RPC because of timing and the need for the full Board to provide negotiation authority in closed session.
2. Cordilleras Easement Exchange: This project went to the Board in closed session and was approved by the full Board on October 28, 2020. The transaction consisted of an easement exchange with San Mateo County in which the District received a parking easement and the County received an easement for an existing outfall and subsurface

drainpipe as a part of the County's remodel of their mental health facility. This project was not brought before the RPC because it had a very short timeline, was not complex and was at no cost. However, staff acknowledges that other items related to the project, including review of the project scope and Environmental Impact Report (EIR) should have received close District review with updates to the Board. This issue has been addressed for future similar occurrences both internally and with the County and other local agencies to ensure public notifications for external projects of interest are received and distributed for internal staff review in a timely fashion.

3. San Jose Water 182-acres: This project went to the Board in closed session and was approved by the full Board on July 22, 2020. The transaction consisted of 182-acres of land owned by San Jose Water Company for \$1,075,000. This project was not brought before the RPC because of the short timeline and high Board familiarity with the property.
4. Chet Gallaway Purchase: This property purchase was approved by the full Board on November 13, 2019. This purchase consisted of 1.7-acres for \$55,000. This project was not brought before the RPC because of the small property size, low value, inholding to El Corte de Madero Preserve, and District's existing right to purchase.
5. Holley Easement Exchange: This project was approved by the full Board on September 11, 2019. The transaction consisted of the exchange of easement rights with the District receiving a trail easement in exchange for a solar easement. This project was not brought before the RPC because it perfected title in a section of the existing Kennedy Trail at Sierra Azul, was not complex, and was at no cost.
6. HWY 84 Easement Exchange (Caltrans): This project was approved by the full Board on September 26, 2018. The transaction consisted of the exchange of easement rights with the District receiving a trail easement for the Ravenswood Bay Trail in exchange for a drainage easement to Caltrans along Highway 84. This project was not brought before the RPC because it was not complex, not large, and was at no cost.
7. Haber Easement Exchange: This project was approved by the full Board on July 11, 2018. The transaction consisted of the exchange of easement rights with the District receiving a deeded patrol easement in exchange for an access easement. This project was not brought before the RPC because it was not complex, not large, and was at no cost.
8. 5050 El Camino Real: This project went to the Board in closed session and was approved by the full Board on July 12, 2017. The transaction consisted of purchasing a 39,000 square foot office property to serve as the District's new administrative office building at a price of \$31,550,000. Although this project was complex, and had a very high purchase price, it was not brought before the RPC because of timing, high Board familiarity, and prior negotiation authority given by the full Board in closed session.
9. 240 Cristich Lane: This project went to the Board in closed session and was approved by the full Board on March 22, 2017. The transaction consisted of purchasing an industrial property to serve as the District's South Area Office at a price of \$3,150,000. Although this project was complex, and had a high purchase price, it was not brought before the RPC because of timing, high Board familiarity, and prior negotiation authority given by the full Board in closed session.
10. AO2-AO4 Leases: These three leases went to the Board in closed session and were approved by the Board on February 13, 2013, January 14, 2015 and October 28, 2015 for a total of almost 8,000 square feet of space at a current annual cost of approximately

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\$437,000. Although these transactions resulted in high lease costs, they were not brought before the RPC because of timing and the need for the full Board to provide negotiation authority in closed session within short order to avoid losing the lease opportunity.

The goal of the Real Property Department is to balance the public review period and review by the RPC with the need to complete the transaction within a reasonable time so as to not lose the transaction opportunity (timing can often be dictated by the seller) while efficiently utilizing RPC and staff time. Compared to other government agencies, the District can respond quickly when real estate opportunities present themselves, which aids in the District's success to protect open space of regional significance.

Regarding which future transactions are brought before the RPC, staff would like the RPC to evaluate and discuss the current criteria/factors used as listed below, and reach consensus on the typical types of properties that should be brought to RPC for their review.

1. Properties of regional significance
2. Coastal properties of significance
3. Partnership and Grant funded projects
4. Properties with known strong public/community interest
5. Large, complex or high value properties
6. Properties with significant habitable structures
7. Properties with significant resource values
8. Low Board familiarity with proposed transaction
9. Timeliness

The evaluation of any criteria is subjective; therefore, as an additional measure, the General Manager or Real Property Manager can consult with the RPC Chair for their guidance on whether the transaction should be reviewed by the RPC.

CEQA COMPLIANCE

This is not a project.

FISCAL IMPACT

The review and consideration on the types of real property transactions that come before the RPC has no fiscal impact.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

NEXT STEPS

The General Manager and Real Property will follow RPC's direction for future transactions.

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