



**OPRD Policy # PSP.010:**

**Land Acquisition & Exchange**

**Authorized:**

**Date:**

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## **INTRODUCTION & OVERVIEW**

### **Summary Policy Statement**

The Oregon Parks and Recreation Department (department) may enter into real property transaction to fulfill its mission. Transactions must meet the criteria established in this policy, support agency goals, conform to applicable rules and regulations, and be properly documented and supported. In addition, transactions must have the approval of the Parks and Recreation Commission (Commission).

### **Purpose**

The purpose of this policy is to establish a process of land acquisition and land exchange that will allow the department to:

- a) Identify and acquire the best representative landscapes and most significant cultural sites in Oregon for the purpose of protecting the State's most valuable natural, scenic, historic and recreational resources and ensuring the general public's access to and enjoyment of these sites;
- b) Ensure the general public's access to and enjoyment of these sites as compatible with OPRD cultural and sustainability policies;
- c) Ensure that the themes of Oregon's natural and human history are woven into the comprehensive plans of new and existing properties; and
- d) Foster appreciation and enjoyment of outdoor recreation resources by conserving, developing and maintaining waterways, scenic roads, highway corridors, trails, natural areas and parks.

### **Goals**

The goal of this policy is to accomplish the following:

- o Provide consistency and transparency for real property transactions;
- o Ensure real property transactions benefit the department and fit its mission;
- o Comply with applicable rules and regulations; and
- o Create a framework for working with outside entities.

We will know we have achieved our goals if the following actions are noted:

- o Transactions are properly researched, evaluated and prioritized;
- o Transaction files contain complete information to defend decisions;
- o Acquisition and exchange criteria are consistently applied and allow the department to demonstrate that transactions support the department mission, goals and strategy, and that transactions are fair and transparent; and
- o Outside entities understand what is expected of them when working on real estate transactions with the department.

## Scope

Applicability: This policy applies to all land acquisition and exchanges initiated by the department, as well as by external parties.

Audience: All department employees and managers who directly or indirectly work on land acquisition and exchanges or answer external parties' questions regarding land acquisition or exchanges.

Topics: acquisition and exchange criteria; funding sources; general acquisition, due diligence and appraisal practices; principles of working with others.

## Authority

- **ORS 390.121**: The authority for this policy is established in ORS 390.121, which give the Oregon Parks and Recreation Commission (Commission) the authority to acquire real property if necessary for operation and development of state parks; if it presents interest due to natural, scenic, cultural, historic or recreational value; and if it will contribute to the general welfare, enjoyment and pleasure of the public (ORS 390.121 (1)). In addition, the Commission has the authority to sell, lease, exchange or otherwise dispose or permit use of real property if in the opinion of the department it is no longer needed, required or useful for department purposes ((ORS 390.121 (3)).
- **OAR 736-019**: While ORS 390.117(5) give the Commission permission to delegate property acquisition responsibilities to the director, the Commission chose to retain that power and be the final authority on property acquisitions and exchanges (OAR 736-019-0100 (1)(f)).

## Related Laws, Policies & Procedures

This policy is influenced by the following authority:

- OAR 736-019, which details real property acquisition purposes, criteria for acquisition and exchanges, funding sources, acquisition practices and provisions for working with others.
- ORS 390.112, which directs the department to propose to the Commission additional criteria for acquiring and developing new historic sites, parks and recreation areas, including but not limited to the following:
  - Addressing opportunities that may be lost to the department if acquisition is delayed;
  - Protecting significant cultural and historic properties; and
  - Satisfying the need for overnight and large group use facilities on the perimeter of urban population centers; and
- OAR 137-045-0030, which directs state agencies before a public contract is binding on the State of Oregon, and before any service may be performed or payment may be made under the contract, the Attorney General must approve for legal sufficiency if the contract provides for payment in excess of \$150,000 (OAR 137-045-0030 (1) (a)).

## **Background**

The Oregon Parks and Recreation Department is a large land owner and is frequently involved in real property transactions as it seeks to fulfill its mission of providing recreation opportunities, preserving culture, natural resources and scenic values, and ensuring public access to all its sites. The department works with many landowners, and each situation is unique. Transactions can carry a large price tag, and by virtue of operating in the public environment, the department's decisions are subject to intense public scrutiny. Therefore, the department decided it was important to provide written guidance and strive for consistency, fairness and transparency in its real property transactions. The first policy on record was developed in 1991. The most current revision comes as a result of Commission changes to OAR 736-019 developed in 2010 and approved at the beginning of 2011. The changes provide more specific criteria for acquisition and exchanges.

## **POLICY PROVISIONS**

### **Definitions**

Acquisition: means obtaining title to real property or any right or interest therein, or an interest in timber or other assets, by purchase, agreement, donation, exchange, gift, devise, or by exercise of eminent domain.

Exchange: means the simultaneous, mutual transfer between willing parties of one or more interests in land, timber, other assets of equal value, or any combination thereof.

Other assets: means cash or forms of consideration other than land or an interest in timber, including but not limited to access rights, mineral rights, and water rights.

Third party: means any person other than the department or the owner(s) of property that is the subject of an acquisition or exchange.

Overwhelming public benefit: means an Oregon Parks and Recreation Commission determination in the approval of a property exchange that accounts for the natural, scenic, cultural, historic, recreational, and operational benefits of a proposal that are likely to be above and beyond the monetary value of the exchange.

### **Policy Statements**

#### **General**

- 1) It is OPRD's policy to use sound principles of real estate acquisition when acquiring or exchanging real property, comply with all federal and state laws pertaining to real property acquisition, and ensure in its real property transactions the prudent use of public monies.

- 2) In order to promote transparency and accountability, the department will apply the following guiding principles to its land transactions:
  - a) Ensure that our fiduciary responsibility in the use of public funds is of foremost importance;
  - b) Seek to preserve the public's trust in our business practices and stewardship of real estate assets;
  - c) Conduct real estate transactions in an atmosphere of openness, honesty and integrity with sellers and the public, and exercise confidentiality of such transactions when it serves the public interest or to avoid harm to private citizens' interests, and is within our expressed statutory authority to do so; and
  - d) Balance the need for public open space with concern for loss of local tax revenue and private economic opportunity.
- 3) The department shall only make land acquisition, sales or exchanges with the approval of the Commission.

### Criteria for Acquisition

- 4) The department will engage in acquisitions that serve the department's purpose and public's interests by advancing one or more of the following objectives:
  - a) Protect areas of outstanding natural, scenic, cultural, historic and recreational significance for the enjoyment and education of present and future generations;
  - b) Consolidate state park parcels, trail systems or greenways to facilitate efficient management and administration of the state park system;
  - c) Provide a buffer from private development that may diminish the recreation or conservation values of a state park parcel; or
  - d) Provide access to state parks parcels, or improves management or protection of state park parcels.
- 5) The department will specifically do the following:
  - a. Only acquire real property that is consistent with the department's purpose and its long-range planning goals.
  - b. Look favorably at opportunities for acquisitions that enhance the overall management of existing park lands.
  - c. Focus acquisition efforts on properties identified within the *Acquisition Priorities Report of 2006*.
  - d. The department may also acquire other properties that contribute to its goals but were not previously included on a list of properties of interest or identified in a department plan.
    - i. The department may require additional evaluation for needs in natural, scenic, cultural, historic/prehistoric and recreational land when acquiring properties outside the *Acquisition Priorities Report of 2006* and provide the Commission justification and need for such properties.
  - e. Acquire properties as specifically directed by acts of the Oregon Legislature.
  - f. Rank and prioritize acquisitions by completing the "Park Acquisition Evaluation" for each property to determine its feasibility and suitability as a state park.

## Criteria for Exchange

- 6) The department shall apply all elements of the “Criteria for Acquisition” to any exchange or sale of department land.
- 7) In addition, for exchanges initiated by the department, the following provisions also apply:
  - a. The department must identify for the Commission the reasoning and justification for an exchange based on the department’s mission, strategies, objectives and work plan.
  - b. Undertake exchanges only if there is a significant benefit to the department; e.g. adding adjoining properties, improving access, resolving in-holdings, adjusting property lines to facilitate operations or management, and acquiring identified property needs.
- 8) For exchanges initiated by other parties, the following provisions also apply:
  - a. The department shall determine for the Commission whether the exchange provides the following:
    - i. aligns with the department’s mission, strategies, objectives, and work plan;
    - ii. will accommodate public use and access, and be in the best interest of the department; and
    - iii. has support from the local county and local communities;
  - b. The department may require the proponent provide a written environmental review for all lands the department is to receive in the exchange. The department may determine that an environmental report provides information that further requires that the proponent to provide additional environmental assessment.
  - c. The department shall require that all proposals made to the department be in writing with adequate detail to evaluate the transaction for the following elements:
    - i. Natural Resource assessment, impacts and protection;
    - ii. Cultural assessment, impacts and preservation; and
    - iii. Overwhelming public benefit to the park system.
  - d. The Commission may approve an exchange that a party other than the department initiates if the Commission determines that the proposed exchange provides an *overwhelming public benefit* to the park system, its visitors, and the citizens of Oregon. The Commission has sole discretion to determine whether a proposal provides an overwhelming public benefit to the parks system, its visitors, and citizens, which is resounding, clear and obvious. An overwhelming public benefit to the Oregon State Park system, may include, but is not limited to, an exchange in which the department receives the following:
    - i. One or more properties already identified in department acquisition priority documents;

- ii. An endowment for long-term stewardship that provides significant and meaningful stewardship resources to the department; or
- iii. Other contributions to the park system, beyond the property to be received, which the Commission determines when combined with the property to be received by the department, and when weighed against the property to be transferred out of the park system, along with all of the department's transaction costs, will result in an overwhelming public benefit to the park system.

### **Funding Sources for Land Acquisitions**

- 9) The department will engage in the following purchasing activities:
  - a. Purchase lands with appropriations granted by the legislature;
  - b. Use proceeds from land sales to purchase other lands as directed in applicable Oregon Revised Statutes;
  - c. Accept donated private funds and donated lands;
  - d. Seek state, federal and private grants for land purchases when appropriate; and
  - e. Employ land exchanges when the land traded away is less suitable for open space and recreation than the land received.

### **Acquisition Practices**

- 10) The department will engage in the following acquisition practices:
  - a. Seek to purchase from willing sellers as the preferred method of buying land.
  - b. Exercise the greatest of restraint in using the power of eminent domain<sup>1</sup> consistent with the spirit and intent of the laws authorizing such power.
  - c. Request Commission approval to acquire, exchange, or sell fee or easement rights in Department lands. However, Commission approval is not required for easements or agreements with utilities which benefit the department for development.
- 11) Prior to requesting Commission approval for land transactions, the department shall do the following:
  - a. Utilize sound business principles in securing appraisals, according to the Appraisal Review section below, and conducting negotiations; complete due diligence actions according to the *Due Diligence Practices* section below for all real property acquisitions and exchanges, including the request for and review of title searches, hazardous material assessments, and any other documents that will

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<sup>1</sup> Eminent domain: the power of the state to take private property for public use with payment of compensation to the owner.

allow the department to make an informed decision regarding a land purchase or exchange.

- b. Consult with local government taxing entities when a land purchase has potential to cause a significant loss of property tax revenue.
  - c. Create an acquisition file and ensure that it contains all relevant documentation to be referenced throughout the acquisition process.
    - i. **Ownership Information Sheet:** Ask property owners interested in selling property to the department to complete the *Ownership Information Sheet* and include the information in the acquisition file.
    - ii. **Acquisition Checklist:** Begin using the *Acquisition Checklist* as early as feasible in the process and make it available in the acquisition file.
  - d. Have the Attorney General review all purchase and sale agreement over \$150,000 for legal sufficiency as required under OAR 137-045-0030.
  - e. Submit an *Agency Surplus Real Property Notification* to the Department of Administrative Services and request the notification of adjacent cities, appropriate counties and all state agencies for the sale, transfer, or exchange of any real property right from Department ownership.
  - f. Complete the *Acquisition Checklist* for each transaction.
- 12) The director may pay up to \$10,000.00 for an option or earnest money agreement if there is a high degree of certainty, without committing a future Legislature that the funds to complete the subject purchase will be forthcoming. Option payments in excess of \$10,000.00 shall only be made if approved by the Commission.

### Due Diligence Practices

- 13) The department shall consider and perform the following actions for each property acquisition and exchange when they apply:
- a. **Timber Cruises:** The department will conduct or contract for a timber cruise where marketable timber is present on the site, as revealed by staff inspection. Cruises will follow normal standards with copies of the report provided to the Forestry section and appropriate databases for future management.
  - b. **Environmental Reports:** The department will visually inspect the property and check records for historical uses.
    - i. Environmental Assessment Level One will be required where historical records or visual inspection reveals any uses that may have negative environmental impacts.
    - ii. Environmental Assessment Level Two for soil and ground water testing will be required on properties when recommended by a Level One assessment.

- c. **Environmental Reviews:** If a Level One or Two assessment is required, a department team comprised on the Safety and Risk Management Manager, Engineering Manager, and the appropriate Region Manager will review the environmental assessments that make recommendations, lists spills, or contamination. The team will provide a recommendation whether to purchase as well as next steps for the development, use and further environmental study

### Appraisal Practices

- 14) A staff report using appraisal methodology will support and justify the determination of the purchase price of properties valued at \$25,000 or less.
- 15) **Appraisal requirement:** For properties valued at more than \$25,000, the department shall require an appraisal. There are several ways to obtain an appraisal:
  - a. A department staff may complete an appraisal.
  - b. The department will contract with an appraiser in good standing with the Appraisal and Licensure Board and properly licensed to appraise the assigned property.
  - c. The seller or other party may provide appraisals. If such appraisals meet the standards included in this policy, the department may utilize them to support the purchase price.
    - i. Appraisal review: The Department will require an independent review when the appraised value exceeds \$250,000 to assure the fairness and accuracy of appraisals.
- 16) **Appraisal standards and expectations:**
  - a. All external appraisals shall meet “Uniform Standards of Professional Appraisal Practice” (USPAP).
  - b. Appraisal where purchase or development may include federal funding or properties of significant value may require compliance with the “Uniform Appraisal Standards for Federal Land Acquisition” (yellow book).
  - c. The department will require the appraiser to consider the new, anticipated, or intended use, income, or zone, if the grantee proposing an exchange or sale intends, or is likely to pursue, a different highest and best use than the department’s current use or zone.
- 17) **Appraisal timing:** Appraisals upon which offers are made shall be dated as close in time to the expected closing as possible, and not be older than one year.

### Working with Others

- 18) The department may collaborate on land acquisitions with county governments, state and federal agencies, non-profits, private corporations, landowners of every type, as well as numerous private land trusts. It is the policy of the department to seek out and engage in

these collaborations when they are of mutual benefit and further the attainment of shared values and goals.

19) In addition, it is important for parties looking to collaborate with the department to understand that a successful collaboration will occur when the following elements are present:

- a. **Strategic alignment:** Projects must align with the department goals, strategies, and priorities for land acquisition established by the Commission;
- b. **Local support:** Compelling projects are those supported by the county, local community, interested state and federal agencies, and that accommodate public use and access;
- c. **Commission approval:** Discussions with department staff are always subject to a final commitment that can only be attained by a vote of the Commission;
- d. **Complex environment:** The department operates in a complex legal and political environment that influences all real estate transactions. More specifically, the following apply:
  - i. The department is subject to specific and extensive state statutes, rules, and public accountability that may be seen as constraints, but help explain why the organization operates the way that it does;
  - ii. Department real estate transactions must be transparent and involve willing sellers who are paid fair market value only after due diligence has been done, and risks adequately addressed; and
  - iii. In addition, while there are great benefits to working with the department, it is not for every organization. It takes time and effort to be a successful partner with the department including contact at every step of the way; discussion, agreement, and commitment before moving forward; respect for the mission and multiple responsibilities of the department; and no changes outside of what the Commission decides.
- e. **Early & frequent communication:** Successful projects are those where partners engage department staff early in the process, and frequently throughout, including full disclosure and transparency on all of the details of a deal. In turn, the department commits to treat partners in the same way, both for projects brought to it, and where the department seeks out a collaborator;
- f. **True partnership:** Part of the respect that the department requests from partners is that they do not look at it solely as a pass-through funding source to meet partner goals. Where partner goals and those of the department coincide, there is room to work together. Likewise, the department commits to treat other parties as partners, not merely fund sources. There is important work to accomplish, and this can be achieved by each showing this mutual regard; and
- g. **Publicity:** The department is very willing to give attention and publicity to projects and the accomplishments of partners and believe its participation in a deal can add to that.

### **Exceptions**

There are no exceptions to this policy.

## **Roles and Responsibilities**

Assistant Director for Operation: Reviews and provide feedback on this policy & its revisions. Consult with other Assistant Directors on the implications of this policy and its revisions to their areas. Obtain final approval from Director. Ensure policy is monitored and reviewed.

Policy Owner: Educate users on the provisions of this policy; provide assistance to field real estate transaction projects, complete appropriate paperwork and finalize deals approved by the Commission. Evaluate the effectiveness of this policy, review the policy according to the schedule and modify as needed.

Department Employees: Follow this policy when involved in or approached by external parties regarding real estate transactions.

**Evaluation**: Suggested elements for evaluating this policy's effectiveness include but are not limited to the following:

- The Policy Owner will periodically review transaction files to ensure documentation is complete and accurate. In addition, the Policy Owner may ask the department Quality Assurance Coordinator to conduct a formal program review.
- The Policy Owner may survey, formally or informally, individuals who worked with the department on real property transactions.
- The Policy Owner will be able to assess the effectiveness of some aspects of this policy based on interactions with the Commission as part of the real property transaction approval process. In addition, the Policy Owner may ask Commission members for more specific feedback if necessary; and
- The Policy Owner will review any policy feedback received from department employees.

## **Failure to Comply**

Failure to comply with this policy may be cause for disciplinary action up to an including dismissal.

## **PROCEDURES and FORMS**

- A. Ownership Information Sheet
- B. Park Acquisition Evaluation form
- C. Acquisition Checklist
- D. Agency Surplus Real Property Notification form

## ADMINISTRATION

**Owner:** Operations Directorate

Approval: Assistant Director for Operations

Contact for questions: Property Manager

**Dates:**

First approval date: 11/13/1991

Effective date: 4/11/2011

Revision schedule: 3 years

Next revision date: 4/11/2014

**Feedback:**

Your comments are extremely important to improving the effectiveness of this policy. If you would like to comment on the provisions of this policy, you may do so by e-mailing [policy.feedback@state.or.us](mailto:policy.feedback@state.or.us). To ensure your comments are received without delay, *please list the policy number and name in your e-mail's subject*. Your comments will be reviewed during the policy revisions process and may result in changes to the policy.