



Real Property Acquisition Policy

Authorized:
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Introduction and Overview

Policy summary statement

Oregon Parks and Recreation Department (OPRD) fulfills its mission through strategic, thoughtful real property acquisitions and exchanges to ensure that the property portfolio provides public benefit to the state park system, its visitors, and the citizens of Oregon. The purpose of this policy is to provide the Oregon State Parks and Recreation Commission (OSPRC), OPRD staff, and interested stakeholders with overview of the criteria and process by which real property decisions are made.

Goals

Oregon is fortunate when it comes to outdoor recreation and heritage. We have an abundance of special places that capture our hearts and fire the imagination, like the Oregon Coast, which was protected for the benefit all people through a landmark law more than 50 years ago. We have people who hold our history and pre-history in high regard. Oregonians proved it when they voted twice to dedicate Lottery funding for parks and heritage. We have leaders who choose to protect the public investment in these traditions.

Agency wide, the department pursues its mission through three broad goals:

“To take the long view to protect Oregon's special places and provide the greatest experience while creating stable future funding.”

1. **Protect Oregon's Special Places.** Policymakers and Oregonians take action to protect priceless places in Oregon. OPRD builds on that legacy by maintaining and improving parks and community heritage programs.
2. **Connect People to Meaningful Experiences.** OPRD invests in well-trained people to deliver outdoor recreation and heritage experiences, and by leading others to work cooperatively to meet Oregon's total recreation and heritage needs. Key to success is making sure all people feel equally welcome to tap into these experiences.
3. **Take the Long View.** As we build and maintain parks and protect Oregon heritage, we balance the needs of today with the need for longevity. Not only do we need to conserve resources by using sound methods of construction and maintenance but, we must also find ways of stabilizing revenue and improving agency governance and administration.

Purpose

Acquiring Real Property

It is the policy of the department to acquire and manage property for the development and protection of the outstanding recreation, natural, historic, scenic and cultural resources of Oregon. This is done by carefully evaluating current property holdings and community needs to determine missing or underserved elements, and acquiring property that significantly improves the ability of Oregonians to enjoy and appreciate access to outdoor recreation opportunities of statewide significance.

The ability to acquire property is constrained by agency budgets and limited capacity to manage and maintain property. OPRD staff evaluate real estate transactions and make recommendations to the OSPRC

based on criteria found in statute, administrative rule and the Acquisition Criteria listed within the Policy Provisions below.

This approach will preserve the opportunity for acquisitions balanced carefully with available funds and needed management resources.

Exchanging Real Property

An exchange of real property may occur with either acquisition or disposal of real property; however, the associated considerations and processes differ. OPRD recognizes that while real property exchanges add complexity to a real estate transaction, it is sometimes the best or only tool for accomplishing an acquisition or disposal.

For an exchange that would cause OPRD to acquire real property, the department will use the Acquisition Criteria list in this policy to evaluate the incoming property values.

For an exchange that would cause OPRD to dispose of real property, the department will use the Disposition Criteria listed in PRP #030.000: Property Disposition Policy.

Pursuant to OAR 736.019-0070(4), an exchange initiated by an external party must provide overwhelming benefit to the state park system, as determined by the OSPRC.

Scope

Applicability: This policy applies to all real property acquisitions or exchanges.

Audience: Oregon State Parks and Recreation Commission commissioners, its chief executive, and all OPRD employees involved with real property acquisitions or exchanges on behalf of the department and the commission.

Topics: Real property acquisitions, real property exchanges

Authority

The authority for this policy is established in:

- **ORS 390.121**, which gives OSPRC 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
 - It will contribute to the general welfare, enjoyment and pleasure of the public (ORS 390.121 (1)).
- **OAR 736-019:** While ORS 390.117(5) gives the OSPRC permission to delegate property acquisition responsibilities to the director, the OSPRC chose to retain that power and be the final authority on property acquisitions and exchanges (OAR 736-019- 0100 (l)(f)).

Related laws, policies and procedures

This policy is influenced by the following authority:

- **ORS 390.112**, which directs the department to propose to the OSPRC additional criteria for acquiring and developing new historic sites, parks and recreation areas, including but not limited to:
 - 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.
- **OAR 736-019**, which details real property acquisition purposes, criteria for acquisition and exchanges, funding sources, acquisition practices and provisions for working with other parties.

- **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

OPRD 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 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. The first OPRD acquisition policy was developed in 1991, and the last update was done in 2011.

Policy Provisions

Definitions

Acquisition: 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: 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: 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: Any person or entity other than the department or the owner(s) of property that is the subject of an acquisition or exchange.

Overwhelming public benefit: An OSPRC determination in the approval of an externally proposed 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 Guidelines

The department shall:

1. Use due diligence and sound principles of real estate acquisition when acquiring real property.
2. Only make land acquisitions or exchanges with the approval of the OSPRC.
3. Comply with all federal, state and local laws.
4. Promote transparency and accountability by ensuring the fiduciary responsibility in the use of public funds is of foremost importance.
5. Conduct real property transactions in an atmosphere of openness, honesty and integrity with sellers and the public. 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.
6. Balance the need for access to public open space with concern for loss of local tax revenue and private economic opportunity.
7. Seek to purchase from willing sellers as the preferred method of buying land.
8. Exercise the greatest of restraint in using the power of eminent domain, consistent with the spirit and intent of the laws authorizing such power.
9. Request OSPRC approval to acquire or exchange department lands. However, if OSPRC has granted approval for park development, which includes utilities to service only OPRD lands, additional approval to enter into an agreement for these services may not be required.

Acquisition

1. The department will engage in acquisition practices that comport with this Commission policy, serve the department's purpose, and public's interests.
2. The department will follow procedures described in OAR 736-019-0060, Criteria for Acquisition.
3. Criteria for considering property acquisitions are derived by viewing real estate opportunities through the following considerations:
 - a. **Mission Impact:** Areas of outstanding natural, scenic, cultural, historic and recreational significance for present and future generations. Considerations include acquisition that would improve the department portfolio by adding properties with these attributes:
 - i. Properties that have recreational, natural, historic, or cultural attributes not currently represented, or under represented, in the state park system.
 - ii. Properties with stable, like-missioned partners who manage or are capable of managing properties that embody these values.
 - iii. Resource-rich properties that benefit the human experience; rather than by preserving lands and waters by excluding people.
 - b. **Strategic Objective:** Acquisition is consistent with long-range planning, enhances existing areas or strategically leverages replacement lands or funding. Considerations include:
 - i. Property consistent with priorities stated within a Park Master Plan or other plan adopted by the OSPRC (SCORP, statewide trails plan, Park System Plan, etc.)
 - ii. Acquisitions that buffer existing properties, resolve management or legal issues or provide replacement lands anticipating the wholesale loss of parks.
 - iii. Acquisitions that position the department to extend or improve public service in the face of changes wrought by human development, climate change, and epic environmental events like earthquakes, tsunamis, volcanic eruptions, floods, and wildfire.
 - c. **Urgent Opportunity:** Agency is able to remain flexible when a pressing or unique opportunity arises. Considerations include:
 - i. The owners' ability to commit to a sale and allow the department time to secure funds.
 - ii. The likely outcomes if the department is unable to acquire the property. E.g.: Loss of significant potential resource (natural, historic, etc.) or property access.
 - iii. Willing partners available to secure the site if the department is unable to work fast enough to acquire or have the adequate funding. This may include a partner who could hold the property until the department can acquire.
 - d. **Engagement:** Responds to changes in public demand including community impacts. Considerations include:
 - i. Acquisition, subsequent development and operation as state park land is feasible in terms of community support, staffing and anticipated visitation.
 - ii. The department is ready to commit development and management resources to provide tangible public benefits through access or by some other means, once acquired.
 - iii. Evaluation of known or anticipated community impacts, both positive and negative. Long-term public benefit outweighs near-term considerations.
 - iv. The acquisition would create an access or experience for an under-represented population.
4. Properties deemed not suitable for acquisition by the department, will be evaluated for potential referral to partners. While a parcel may not reach a level of statewide significance it may be an outstanding historical, local or regional resource. The department will make connections when possible and encourage proponents to seek other options.

5. The department shall apply all elements of the practices of acquisition to any exchange or disposition of department land. See PRP #030.000: Property Disposition Policy for additional details.
6. **For exchanges initiated by the department**, the following provisions also apply as described in OAR 736-019-0070(2). The department shall:
 - a. Identify for OSPRC consideration the reasoning and justification for an exchange based on the department's mission, strategies, objectives and work plan;
 - b. Consult with Tribes, local governments and communities; and
 - c. Initiate 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.)
7. **For exchanges initiated by other parties**, the following provisions also apply, as described in OAR 736-019-0070(3). The department shall:
 - a. Determine for OSPRC deliberation whether the exchange:
 - 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 involved consultation with Tribes, local governments and communities.
 - b. Require the proponent to 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 the proponent to provide additional environmental assessment;
 - c. 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. Affirm the OSPRC may approve an exchange that a party other than the department initiates if OSPRC determines that the proposed exchange provides an *overwhelming public benefit* to the park system, its visitors and the citizens of Oregon. A public benefit to the Oregon State Park system may include, but is not limited to, an exchange in which the department receives:
 - i. One or more properties already identified in department acquisition priority documents;
 - ii. The ability to exchange out of one or more properties already identified as a priority as non-essential;
 - iii. An endowment for long-term stewardship that provides significant and meaningful stewardship resources to the department; or
 - iv. Other contributions to the park system, beyond the property to be received, which the OSPRC determines will—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—result in an overwhelming public benefit to the park system.

Funding Practices

8. As outlined in OAR 736-019-080, 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.
9. Per OAR 736-019-0100(1)(g), 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 OSPRC.

Collaboration and Partnership

10. As described in OAR 736-019-0120, the department may collaborate on land acquisitions, transfers, and exchanges with Tribes, county governments, state and federal agencies, non-profits, private corporations and landowners of every type. 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.
11. It is important OPRD employees ensure parties looking to collaborate with the department 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 OSPRC;
 - b. **Local support:** Compelling projects are those supported by the Tribes, county, local community, interested state and federal agencies, and that accommodate public use and access;
 - c. **OSPRC approval:** Discussions with department staff are always subject to a final commitment that can only be attained by a vote of OSPRC;
 - d. **Complex legal 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 offered 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. Successful partners must dedicate time and commitment to communicating with the department throughout the process and ensuring an agreement is in place before moving forward. They must have respect for the mission, awareness of the multiple responsibilities of the department and role of the OSPRC as the decision-making authority.
 - e. **Early and 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 transaction. 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.

12. Robust engagement is important when establishing a new park site, doing a master plan, or making substantial changes to existing site; however, the department will not reengage with the public on specific property transactions in a private owner's sale or donation. For this type of transaction, the opportunity for public input will be through outreach to county and tribal government and via informational briefing and action items at OSPRC meetings.

Implementation

13. In order to allow the department to make an informed decision regarding a real property purchase or exchange, procedures to support implementation of this policy will be developed and may be updated regularly. Those procedures may include but are not limited to:
 - a. Procedures captured in statute and rule;
 - b. Consultation with local government taxing entities when a land purchase has potential to cause a significant loss of property tax revenue;
 - c. Consultation with Tribal interests who have Treaty rights or historical interests in potential acquisition areas; and
 - d. Recordkeeping to ensure all relevant documents are maintained. Attorney General review for legal sufficiency of all purchase and sale agreements over \$150,000, as required under OAR 137-045-0030.

Exceptions

Only the OSPRC can authorize an exception or deviation from the policy, and only if the exception is consistent with ORS and OAR.

Roles and responsibilities

Oregon State Parks and Recreation Commission: Approve acquisitions of real property rights and authorize any exceptions to this policy.

Deputy Director of Statewide Operations or equivalent position: Reviews and provides feedback on this policy and future revisions. Consult with other deputies and division administrators on the implications of this policy and its revisions to their areas. Obtain final approval from director. Ensure policy is monitored and reviewed.

Policy Lead: Educate users on the provisions of this policy; evaluate the effectiveness of this policy, review the policy according to the schedule and recommend modifications as needed.

Real Estate Services Staff: Educate users on the provisions of this policy; negotiate and conduct real estate transactions; complete appropriate paperwork and finalize transactions approved by OSPRC.

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

Supporting Documents

Procedures

- PRP.010.000.PR Property Acquisition Procedure
- PRP.010.030.PR Property Appraisal Practices Procedure

Administration

Responsibility

Policy Lead: Deputy Director of Statewide Operations

Responsible Executive Team member: Deputy Director of Statewide Operations

Questions: Procurement and Real Estate Services Manager

Dates

First approval date: 11/13/1991

Effective date: XX/XX/2023

Revision schedule: Every five years

Next revision date: XX/XX/2028

*This policy supersedes policies *PSP.010 Land Acquisition and Exchange Policy* all preceding versions of those policies, and any other previous policy or procedure pertaining to real property acquisition and disposal, and related topics addressed herein.*

Feedback

We value your feedback. Email us at policy.feedback@opr.oregon.gov to comment on this or any policy.

Please list the policy number and name in your e-mail's subject line. We will review your feedback during the policy revision process and your comments may result in policy improvements.