

ADMINISTRATIVE PROCEDURES



Procedure Number: 54-2

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C. DeLuca
County Administrator

SUBJECT: **ACQUISITION OF REAL PROPERTY**

DEPARTMENT RESPONSIBLE: **Public Works Administration, Real Property Services**

I. STATEMENT

This procedure for acquisition of real property has been adopted to ensure a consistent approach to the negotiation and acquisition of real property by Pima County. This procedure will apply to all acquisition of an interest in vacant or improved real property, whether in fee or in easement.

II. PROCEDURE

A. Application to Types of Interest in Real Property

This policy shall apply to all acquisitions of real property by Pima County Flood Control District, or any improvement district, ("County"), which require the payment of public monies to the property owner and/or tenant, whether the interest be in fee simple, permanent easement, temporary easement, right of entry, leasehold interest or any other form of interest in real property and whether the property be vacant or improved.

B. Authorization to Acquire

1. County initiated acquisitions. Staff shall initiate negotiations for acquisition of real property only upon authorization from the Board of Supervisors through the County Administrator when a funding source has been identified by the requesting department. Board authorization to acquire may be given by:
 - a. a special instruction to staff,
 - b. the approval of a project within the Capital Improvement Program (CIP), or
 - c. by means of Board approval of a special program or project requiring land acquisition.

References in this policy to the "Board of Supervisors" or to the "Board" shall mean the Board of Supervisors sitting as the Pima County Board of Directors of any Improvement District, or the Board of Supervisors sitting in any other capacity authorized by law.

2. Property owner initiated acquisitions. If a property owner requests the County acquire property not subject to a prior authorization as set forth in Paragraph II. B. 1., before initiating negotiations, the request shall be routed to the appropriate department for identification of a funding source and an acquisition recommendation.
3. Acquisitions to meet public property and right of way needs for private offsite development requirements may be conducted by the County on behalf of private developers on a fee basis.

C. Appraisals and Just Compensation

The value of real property or interest to be acquired and any severance damages shall be determined by application of appropriate appraisal valuation methods by staff appraisers, or by independent fee appraisers, certified by the State Appraisal Board, or both. In lieu of an appraisal, just compensation for parcels with a nominal value of \$7,500 or less may be set by the Real Property Services Manager, based on review of available data.

D. Negotiation Guidelines

It is in the best interest of the County to establish general guidelines for the negotiation of interest in real property to encourage acquisition by agreement rather than by eminent domain actions. The Board recognizes that the negotiation process requires the ability of the staff to recommend or offer terms to the property owner which may exceed the value set forth in the County's appraisal of the subject property.

1. Negotiation based on appraisal. County staff shall negotiate for the acquisition of the interest in the real property at or near the value of the property established by appraisal. If the property owner agrees to dedicate the property after disclosure of the owner's right to just compensation, an appraisal does not need to be completed.
2. Special notice to Board. If any contract is negotiated with a purchase price which:
 - a. exceeds the County appraisal by more than 25 percent and
 - b. such excess amount is greater than \$25,000, the negotiated settlement in excess of the appraised value shall be specifically noted as such in any recommendation submitted to the Board or the Procurement Director at the time approval for the contract is

requested from the Board or the Procurement Director.

3. Term payments. If property is acquired on terms, the agreement shall specifically state the term, not to exceed five years (as required by ARS § 11-251(45), and shall specify an interest rate not in excess of the market rate for similar financing.
4. Board authorization to acquire does not constitute approval of an acquisition. Negotiation guidelines are not intended to, and do not, constitute prior approval by the Board of Supervisors of any particular agreement recommended to it for approval after negotiation with a property owner. All contracts for acquisition shall be subject to specific approval by the Board or Procurement Director as set forth in this policy.

E. Approval of Acquisition Contracts

Each contract for the acquisition of an interest in real property shall be reviewed and approved by the individual conducting the negotiations, the Manager of the Real Property Services or designee and Deputy County Administrator for Public Works, and be submitted for Board approval, if greater than \$100,000 or the Procurement Director if \$100,000 or less. Contracts for \$5,000 or more shall be approved as to form by a Civil Deputy County Attorney.

F. Title Insurance and Title Matters

A title report shall be obtained and reviewed for all permanent property interests to be acquired except nominal value purchases. The agreement to acquire shall clearly set forth that any fee interest in the property to be acquired should be free and clear of all monetary liens; any easement over the property shall require the consent of lien holders not releasing their liens. The agreement shall also require that the property be conveyed free and clear of all restrictions, easements or reservations which adversely affect the proposed use of the property by the County. If the Board specifically authorizes acceptance of a property subject to an existing lien, the amount of such lien shall be a deduction from the purchase price.

An escrow shall be opened at a title insurance company and a title insurance policy obtained for acquisitions of permanent property interest having a value in excess of \$7,500. The title insurance policy shall be in an amount not less than the purchase price. The title insurance policy shall list, in addition to the standard preprinted exclusions and exceptions, only those title exceptions approved by the Board in the purchase agreement.

G. Real Estate Brokers and Brokerage Commissions

The County shall not pay a commission to a broker in connection with the acquisition of real property unless such broker has been retained as required by County policies and ordinances. Any brokerage commission due to a broker

representing the owner from whom the property is acquired shall be the responsibility of that owner. No person on behalf of the County shall request a real estate broker to represent the County in the acquisition of a particular parcel of real property except upon the approval of the Board.

H. Relocation Benefits

Relocation benefits shall comply with applicable federal regulations (49CFR 24) and the requirements of ARS § 11-974 (A) and (B). The Board may, in its discretion, utilize other provisions of State relocation statutes by taking separate action thereon from time to time.

No relocation benefits will be provided to owners who voluntarily request the County acquire their property unless such property would be subject to acquisition by eminent domain pursuant to a program or project undertaken and currently being pursued by the County as authorized by the Board under Paragraph II. B.1. of this procedure.

I. Salvage Rights

The property owner selling the property to the County shall have no salvage rights to any portion of the building improvements, vegetation or fixtures located on the property to be acquired unless approved by County. An estimate of the reasonable value of such salvage rights to the County shall be included in the acquisition agreement and shall be a deduction from the purchase price of the property. Salvage rights may be granted to the property owner only in situations in which the County intends to demolish the structures acquired within the immediate future or the items removed have little or no value for the County. Salvage rights shall not be granted for any portion of a property which the County reasonably believes may contain asbestos containing materials or other hazardous materials. The seller shall, as a condition of any salvage rights, be required to secure the property during and after completion of such work to insure that the remaining structure is safe.

J. Environmental Assessments

Staff shall conduct such environmental investigations and testings as reasonably appear necessary based upon the historical uses of the property, the proximity of the property to known environmentally contaminated sites, and visual inspection of the property.

1. Acquisition of Contaminated Property. Property which has been identified to be environmentally contaminated requiring remediation shall not be acquired unless:
 - a. remediation occurs prior to transfer of title to the County or;

- b. the estimated cost of the remediation has been identified and an appropriate reduction in the purchase price has been made commensurate with the remediation costs.
2. Third Party Responsibility for Contamination. When environmental contamination is the responsibility of a third party, not the owner of the property being acquired, acquisition of the property shall not occur until the party responsible for the contamination has been identified, there is reasonable possibility of financial recovery from such person and demand has been made to that person to commence remediation.
3. Condemnation of Contaminated Property. When acquisition of environmentally contaminated property can not be avoided in the completion of a construction project and the property can not be acquired with satisfactory terms as set forth in the preceding paragraphs, the property should be acquired by condemnation to limit the risk of environmental liability. Any remediation taken should be performed in a manner to permit an action for recovery of costs from responsible parties.

K. Interim Use of Property and Demolition of Structures

If property acquired contains residential or commercial structures located within the 100-year floodplain, the structures shall be demolished or removed from the floodplain as soon as reasonably practicable after acquisition unless a specific exception is granted by the Chief Engineer of the Flood Control District. Any interim use of such structures shall be primarily for the protection and safety of the public by preventing the structures from being vandalized and partially salvaged.

For habitable structures not located within the 100-year floodplain, and for structures within such floodplain during a period of permitted interim use, the following guidelines shall apply:

1. Any occupant who remains in possession for more than 90 days following transfer of title to the County shall do so only under the terms of a continuing occupancy agreement, which shall provide for the payment of a fair market rent value, except that such payment shall not exceed 30 percent of the occupant's monthly gross income if the property was occupant's principal residence.
2. Unoccupied improved property acquired in an appropriate condition for use may be rented pursuant to the requirements of ARS Sections § 11-251(9), 11-256, 11256.01 or other statute authorizing the rental of County property. No tenant may be a County employee.
3. Caretakers may temporarily be placed on property to protect against vandalism and damage to the property when the property would otherwise be vacant pending an auction to lease the property, pending

demolition scheduled in the near future, following an unsuccessful auction to lease the property, or pending an auction to sell the excess portion of the property. Caretakers shall be required to pay a reasonable value for use of the structures giving due consideration to the short term arrangement, the negative effect of the construction activity which will occur adjacent to the structure during occupancy, and the agreement by the caretaker to pay utilities and perform general repair and maintenance on the structure. Caretaker agreements for terms not in excess of 12 months may be approved by the Director of the Department having control of the property. No caretaker may be a County employee.

L. Exchange of County Property

When property owned by Pima County is to be exchanged as all or a portion of the compensation for other property being acquired for the County, staff shall comply with the provisions ARS § 11-251(44) (relating to acquisitions by exchange) or ARS § 28-7203 (relating to exchange of roadways) as appropriate. Property exchanged as compensation for an acquisition under ARS § 11-251(44) shall be exchanged for property and boot having a value not less than 90 percent of the value of the land being conveyed by the County as required by ARS § 11-251(9).

M. Sale of County Property

When County property has been identified as available for sale, staff shall request authorization from the funding department for sale of the property. After such authorization has been given, the property shall be appraised and a value set as required by ARS § 11-251(9). Except for sales specifically exempt by statute by statute (such as sales to other governmental agencies, non-profit corporations, etc.), all sales shall not be conveyed until payment of the bid amount has been made. Payment of the bid amount shall be made in cash or certified check following Board approval of the high bid unless other payment terms have been specifically approved by the Board.

N. Condemnation Actions

When an interest in real property is necessary for a program or project undertaken by the County and when:

- a. the owner is unwilling to enter into an agreement for acquisition of the property acceptable to the Board after negotiation with staff, or
- b. acquisition cannot be negotiated with the owner.

Condemnation proceedings shall be instituted pursuant to the resolution authorizing such action for the particular program or project. Staff shall assist the County Attorney with the proceedings, including arranging for appropriate

title reports and appraisal information, as requested by the County Attorney. The County Attorney and staff shall coordinate efforts to reach reasonable settlements of such matters. The County Attorney shall be responsible for recommending action by the Board on any such litigation matter.

M. Rights of Entry

The Manager of Real Property Services is authorized to grant rights of entry over County owned property.