

JAVA



**Acquisition
Regulations
JAVA
Administrative
Regulation
1-15-02**

Administrative Regulation

Joint Antelope Valley Authority

Subject: Purchase, Dedication, Donation or Sale of Real Property

Effective Date January 15, 2002.

A. PURPOSE

The purpose of this administrative regulation is to establish a standard due diligence and administrative procedure for: the acquisition of real property; and donations of real property; and the sale of surplus real property.

B. METHODS OF ACQUISITION

JAVA acquires property by several methods: direct purchase; eminent domain; and donations. Direct purchases and properties condemned generally are acquired for projects specifically approved in each annual Capital Improvements Program. Problems occasionally occur when the specific locations for such acquisitions have not been designated in the Capital Improvements Program. In such instances it may be necessary that the proposed acquisitions be approved through the Lincoln Lancaster County Planning Department. Authority to acquire property is customarily included with the correlated project budget approvals. Without such approval, the board will need to specifically authorize property acquisition.

C. REQUESTS FOR ACQUISITION

JAVA may request the services of the City Real Estate Division by transmitting the following information:

1. A complete description of the property to be acquired, including a street address and Legal description. The Real Estate Division in cooperation with JAVA may

request survey information or obtain a professional survey of the property where appropriate.

2. An appraisal of the property if one has been secured, or a request that the Real Estate Division at its discretion either hire a fee appraiser or furnish a staff appraisal. The decision as to the use of staff or fee appraisers should be left to the Real Estate Division's discretion considering its workloads and priorities. The Real Estate Division will notify JAVA desiring the acquisition as to its choice of staff or fee appraisers, if desired.
3. A phase 1 environmental site assessment if one has been secured, or a request that the Real Estate Division hire a qualified professional to complete a phase 1 environmental site assessment.
4. A statement as to the amount of money budgeted for Land Acquisition and the proper fund and account number from which monies are to be drawn. If not budgeted specifically, approval of redesignation of funds for land purchases is required. Additionally, specific approval by the Planning Commission may first be required.
5. The proposed target date for completion of acquisition. The development of the proposed target dates should have been previously coordinated through the Real Estate Division in order to provide reasonable assurance that the dates can be met.
6. Complete plats of the acquisition including both horizontal and vertical geometry depicting any improvements located upon the property (in addition to Legal descriptions heretofore mentioned) should be shown on the plats or tract maps so as to enable the appraisers to give full and proper considerations to the proposed acquisition and its impact. Sufficient proposed construction details are an absolute necessity.

7. A statement and a copy of the authorization for the project and acquisition, including authority for eminent domain proceedings, if necessary. Generally this is in the form of an ordinance for specific acquisitions. For Capital Improvements projects included in JAVA's annual budget, the authority for condemnation is customarily included in the same resolution. In certain cases, specific board authorization may be required to institute eminent domain proceedings.

D. ACQUISITION PROCESS

1. Internally, the projects generally are processed as follows: Request for acquisitions, whatever the type, are received in the Real Estate Division Office; if not accompanied by copies of the authorization, information regarding the financing (including fund sources and account numbers) the data is requested and the project set aside until the data is received.
2. Following receipt of all data and confirmation the project has been properly authorized and funded, title research as to the properties affected is initiated either by staff or title companies, depending upon the staff work load. Title commitments prepared by private title companies are preferred for any acquisition over \$25,000. The Real Estate Division Staff will use the title information to identify and determine the number of tracts or parcels involved and the respective owner/s. The Real Estate Division will prepare individual tract files including the authorization and funding information and individual parcel maps with the title certificates or commitments. The proposed contracts, deeds, easements, etc. are also prepared and placed in the file. The Real Estate Division prepares and sends a notice of intent to acquire the property rights to each record property owner. This information includes required information for relocation assistance and condemnation procedures where applicable.
3. For fee appraisers and ESA professionals, the Real Estate Division shall determine a mutually agreeable fee utilizing approved form agreements for execution by the

Chair providing for the specifications of each appraisal or assessment and the respective responsibilities of each party. These fees are considered part of the property acquisition and are to be reimbursed by JAVA. The contract must provide for a completion date determined by the target dates for the project and the scope of the project. When the appraisals and ESA reports are completed, they are staff reviewed to insure that they fulfill contract requirements. Additional site investigation based on the reports may be necessary including a Phase 2 ESA where appropriate.

4. All fee appraisals are staff reviewed to insure that they include all elements of compensation to which the property owner is entitled; that they exclude all compensations not covered by applicable laws; and that they are defensible in court. The reviewer may differ in his final conclusion of value; the review conclusion is the basis for negotiations with the property owner.
5. In the event the project requires the relocation of persons or businesses the Real Estate Division staff undertakes a relocation survey to determine the required services and/or payments. That study also confirms that the displaced persons or businesses can, in fact, be relocated. Otherwise, the project may not proceed. The offers for relocation assistance and payments are made by the negotiator or by a relocation agent at the same time the initial offer for purchase for real estate is made. In most instances, JAVA must give any person or businesses to be displaced a minimum of ninety (90) days notice to relocate. Expected completion dates for any project should take the 90 day notice period into account. The notice to relocate can be delayed significantly in the event condemnation is required.
6. When all appraisal, ESA and relocation reviews are complete, a staff or fee negotiator is assigned to the project to begin negotiations. The Chair may select a negotiating team where appropriate. Each fee negotiator is required to sign a certificate containing a number of assurances, primary of which is that they have no direct or indirect interest in the property for which negotiations are being commenced and no coercion is attempted. All negotiations should be noted for the

file in the Real Estate Division in a brief log of the essence of conversations with the property owner/s, both for future use and for the possibility of condemnation proceedings. Copies of correspondence and other documents pertinent to negotiations need to be filed in the Real Estate Division.

7. In the event the negotiations are successful, the negotiator will secure the appropriate signatures on the Real Estate Agreements and deeds. Executive orders are prepared by the Real Estate Division and attached to each real estate contract and routed for execution by the Chair's Office. In general, the executive orders include provision for signatures by JAVA requesting the acquisition and by Legal Counsel. Each executive order will be initiated by the Real Estate Division and will bear the signature of the supervisor.
8. Concurrently, the Real Estate Division requests JAVA warrants in payment to the prospective grantors in exact conformance with the real estate agreements or contracts. Usually, warranty deeds are carried by the negotiator during his negotiations. If possible, he will secure the signature of the prospective grantors on the deed as well as on the contract. Then when the contract is finally approved and the deed form is approved by Legal Counsel, it enables the Real Estate Division to tender payment either through the mail or by delivery and eliminates the possibility of the owners electing to refuse to sign the deed, even though they may have signed the contract.
9. Several weeks time is required for all forms to be returned to the Real Estate Division, including the warrants. The partial taking contractual forms contain a statement that payment will be tendered within twenty (20.) days. Where the title research indicates the property is mortgaged or otherwise encumbered, the negotiator usually requests a release of such encumbrance. In the event the negotiator does not, the Real Estate Division Office will make such request. Frequently, to obtain such releases, it is necessary to make the payment jointly to the grantor and to the person giving the release of encumbrance.

10. When all deeds, mortgage releases, releases of mechanics liens, etc., have been obtained and the various instruments approved by Legal Counsel, the Real Estate Division tenders payment. The deeds are then sent to the office of the Lancaster County Register of Deeds for permanent recording. Copies of each deed are sent to the Public Works Department in order that sectional plats may be updated. The Public Works Department then forwards these same copies to the County Engineer's Office in order that his records may be updated. Once the original deeds are recorded, they are returned to JAVA where they are indexed and then filed in JAVA's permanent records.
11. When negotiations fail and condemnation is authorized, the Real Estate Division sends a final letter to the property owner/s along with a written explanation of the eminent domain proceedings including relocation assistance information where applicable. Also included is another copy of the proposed contract and deed. The entire Real Estate Division file is then copied, the copy retained in the Real Estate Division Office, and the original sent to Legal Counsel with a written request to begin condemnation proceedings. This file includes all correspondence, title certificates, appraisals, documents, and recommendations. A reference is generally made in a transmittal memorandum as to the authority of the project and the necessity, if any, of an executive order authorizing the eminent domain proceedings. Along with the file a sufficient number of plats and descriptions are sent to enable Legal Counsel to prepare required documents, file the petitions, the various notices to landowners, and other such documents.
12. Legal Counsel determines the personnel required to be present at the condemnation hearing. This may include the negotiator, the appraiser, engineers, etc. When the condemnation award is determined, Legal Counsel will initiate a claim for payment of that award and costs and notify the Real Estate Division of the same. When the condemnation award is determined, a certificate, or Return of Appraisers, is executed by each of the three persons comprising the board of

Appraisers and the County Judge forwards this Report of Appraisers to the Register of Deeds for recording. It is generally held that title to the property is vested in JAVA when the condemnation award is paid to the County Court, regardless of any appeals. In order for title to vest completely in JAVA, the property must actually be put to the public use for which it was condemned. Depending on the results of the Report of Appraisers, the City or the owner has a 30 day time period to determine if an appeal should be taken from that award to District Court. Legal Counsel may request that the Real Estate Division obtain additional appraisals for use as evidence and for the purpose of utilizing the appraisers as expert witnesses in any appeal.

E. FEDERAL POLICY REQUIREMENTS

Real property acquisition and relocation payments undertaken on projects financed in whole or in part by HUD, DOT or any other Federal agency require at a minimum:

- 1) Official determination to acquire
- 2) Notice of intent to property owner and tenants to acquire the property
- 3) Notice of land acquisition procedures
- 4) Invitation to owner to accompany appraiser
- 5) Appraisal reports, including reviewer's report
- 6) Determination of just compensation
- 7) Statement of the basis of determination of just Compensation
- 8) Written purchase offer
- 9) Notice to tenant of the date of initiation of negotiations
- 10) The purchase agreement, deeds, declaration of taking, or tenant waiver -
- 11) Disclosure statement of settlement costs
- 12) 90 days notice to surrender possession of premises

The steps and records concerning relocations of families, individuals, or

businesses are at a minimum:

- 1) Site occupant record
- 2) Information statement
- 3) Referrals: housing or business
- 4) Referrals for social services or other assistance
- 5) Claims for relocation payment
- 6) Housing or business inspection report
- 7) Interim rental agreement
- 8) 90 days notice to surrender possession of premises
- 9) Grievances

Additionally, Federal agencies require the development and maintenance of policy statements for land acquisition, relocation assistance and property management.

F. DONATIONS

Real property is also acquired through donations. The conveyance documents for such donations should be forwarded to the Real Estate Division along with a recitation of any provisions or requirements of the donation. Legal Counsel approval is required for all donation conveyance documents. While real property donations to JAVA are often tax deductible, the Donor is responsible for the tax liability. JAVA will customarily agree to provide relevant IRS information [e.g. Form 8283] but cannot guarantee that a particular property donation is, in fact, tax deductible. The Chair may accept donations generally through an executive order, which when approved, is returned to the Real Estate Division. The deed is filed with Lancaster County Register of Deeds for permanent record and the returned to the City Clerk.

Other donations to JAVA take place in the form of subdivisions (including administrative) and Community Unit Plans. For administrative subdivision permits, the Planning

Department makes requests of the Real Estate Division to prepare specific conveyance instruments, providing a Legal Counsel description for that purpose. The Real Estate Division will verify title and existence of mortgages, deeds of trust or other encumbrances. If necessary, the Real Estate Division may recommend additional releases or other documents be executed to properly convey the needed interests. Once the Real Estate Division completes the requested the deed or easement and, assuming there is no challenge to the requested dedication, the instruments are executed along with the permit and forwarded to the Real Estate Division for recording. The deeds or easements are sent to the Register of Deeds for recording and ultimate repository with the City Clerk; copies of the deeds are sent to the Public Works Department to update the sectional plats and to forward to the Lancaster County Engineer for his information. Recording fees for deeds secured in conjunction with administrative subdivision permits are paid from Miscellaneous Street Construction Fund. Occasionally there are conditions or stipulations accompanying the dedication or donation of real estate to JAVA. When the Real Estate Division is notified of these stipulations and provisions, it takes such steps as are necessary to assure that all conditions, stipulations or provisions are satisfied before any instruments are accepted and recorded.

G. SALE OF SURPLUS PROPERTY

2. Surplus property that is not subject to the vacation process. Requests to purchase should be forwarded to the Real Estate Division. Once a request is received, the Real Estate Division will verify JAVA's ownership of the parcel, and contact Public Works, Planning and any operating department utilizing the real estate to verify its surplus status. Public works will recommend appropriate reservations for easements of specified uses. All reports are returned to the Real Estate Division. Upon approval by the Chair, the Real Estate Division refers the request, recommendations, and all other reports to the Planning Department to obtain approval of the sale as in conformance with the comprehensive plan (see City Charter Art. 9B § 6). Upon approval, the Planning Department will forward the report of approval to the City Council, and request Legal Counsel to prepare appropriate

board legislation for the sale of the property and also request the Real Estate Division to prepare an appropriate valuation of the property. The Real Estate Division uses the same process to develop an estimate of the value of the property as in the case of vacated streets and alleys. Once all reports and the ordinance have been received, the matter is placed on the Board's agenda for consideration. Upon approval by the Board, Legal Counsel prepares conveyance documents upon the terms set by the Board. Those documents are furnished to the Chair for execution. The Real Estate Division in cooperation with Legal Counsel shall determine whether a formal closing or closing through deposit with the City Clerk's office is appropriate. Proceeds of the sale are delivered to the Finance Department for deposit in the appropriate. The Proceeds may be reserved for the future land acquisitions of JAVA. The Real Estate Division may use form agreements or prepare draft agreements in some cases. All documents are approved by Legal Counsel prior to submittal to the Administrative Board or Chair. The Real Estate Division shall retain on file copies of appraisals, deeds, etc. for Surplus Property proposed for sale.

3. Subdivision Requirements. Lincoln Municipal Code § 26.11.010 (b) authorizes the conveyance of portions of abandoned railroad right of way by the railroad or a subsequent owner to an abutting landowner without complying with subdivision requirements; provided it is not separately sold thereafter. Lincoln Municipal Code § 26.11.010 (c) authorizes the conveyance of property declared surplus to be sold without complying with subdivision requirements; provided it is not separately sold thereafter. All other property conveyances must comply with the Subdivision regulations of Lincoln Municipal Code chapter 26 and Neb. Rev. Stat. 15-106 and 15-901.

H. VALUATION CONSIDERATIONS OF SURPLUS PROPERTY

The valuation of all surplus property will consider any appropriate assembly value as well as open market sales of comparable property. Value recommendations will also include a

recommendation on the method of disposal which may include a contracted sale to one person making the original request, or disposal by auction or disposal by sealed bid, to assure receiving the best price for the City based on the valuation results.