

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

DRAFT

SUBJECT: OPEN SPACE ACQUISITION, RETENTION, MANAGEMENT AND DISPOSITION
POLICY NO.: 600-23
EFFECTIVE DATE: ~~December 11, 1984~~

BACKGROUND:

Preservation of open space has been a major goal of the City for many years. Open Space provides the citizens of San Diego with such benefits as scenic vistas, preservation of natural resources, outdoor recreation opportunities, and other general benefits to the public health and welfare. In May 1968, the City's Planning Department published a report, "Open Space for San Diego," that laid the foundation for open space preservation efforts. Subsequently, in May 1973, the City Council adopted by Resolution R-208180 "A Plan for the Preservation of Natural Parks for San Diego" as the official Open Space Element. That Plan served as a guide for all actions involving open space until February 1979, when the City Council adopted the current Open Space Element of the Progress Guide and General Plan for the City of San Diego (Resolution R-222918).

~~Also,~~In 1978, the citizens expressed their desire to preserve open space by approving Proposition C, which authorized the sale of \$65 million in general obligation bonds to purchase open space properties for the City. Preparatory to the passage of Proposition C, the City Council adopted an ordinance establishing the San Diego Open Space Park Facilities District 1, which has boundaries coterminous with the City limits. This district is empowered to acquire, construct, improve, maintain and operate park facilities.

In March of 1997, the City Council adopted the City's Multiple Species Conservation Program (MSCP) Subarea Plan, a comprehensive citywide plan to permanently preserve a network of habitat and open space in order to protect San Diego's unique environment and enhance the region's quality of life. The plan is designed to preserve native vegetation and meet the habitat needs of multiple species, rather than focusing preservation efforts on one species at a time. The MSCP provides for critical open space habitat while accommodating future growth and development. Core biological resource areas targeted for conservation are identified within a preserve known as the Multi-Habitat Planning Area (MHPA). On April 17, 2000, City Council adopted priorities for MSCP land acquisition.

Land identified as open space in the City of San Diego includes lands that have unique qualities such as distinctive scenic or natural or cultural features that contribute to community character and form or that contain environmentally sensitive resources.

PURPOSE:

The purpose of this policy is to identify how Open Space may be acquired, retained, maintained and managed, and, where appropriate, leased, sold, or exchanged in conjunction with existing policies and laws.

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DEFINITIONS:

1. Open Space

The City of San Diego Progress Guide and General Plan, Open Space Element defines Open Space as: “land or water areas generally free from development or developed with low intensity uses that respect natural environmental characteristics.” There are four categories of Open Space within the City: 1) Dedicated Park Lands; 2) City-Owned Designated Open Space Park Land; 3) Land Use Plan Designated Open Space; and, 4) Private Lands Subject to Open Space Easement Restrictions. These four categories of open space may also be included within the Multi-Habitat Planning Area.

a. Dedicated Park Lands

Dedicated Park Lands include all real property owned in fee by the City that has been formally dedicated in perpetuity pursuant to Section 55 of the City Charter and Council Policy 700-17, Policy on Dedication and Designation of Park Lands, for park, recreation, or cemetery purposes, including open space. Dedication can be by ordinance of the Council or by statute of the State Legislature. As specified by Charter Section 55, lands so dedicated should not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose.

b. City-Owned Designated Open Space Park Lands

City-Owned Designated Open Space Park Lands are lands that have been acquired in fee title by the City for open space purposes and are managed by the Park and Recreation Department, but have not been dedicated under Charter Section 55. Such city-owned designated open space will be reviewed pursuant to Council Policy 700-17 for consideration as Dedicated Open Space. Pursuant to Charter Section 55, designated city-owned park lands - which include open space - that have been “set aside without the formality of an ordinance or statute dedicating such lands for park, recreation, or cemetery purposes may be used for any public purpose deemed necessary by the Council.”

c. Land Use Plan Designated Open Space

Land Use Plan Designated Open Space includes private or publicly-owned lands that have been designated by the City Council for open space uses through the adoption of a land use plan such as the Open Space or Conservation Element of the Progress Guide and General Plan, Community Plans, Sub-Area plans, etc. This designation is for planning purposes only and indicates where the City desires to retain or acquire open space. Thus, this Council Policy does not apply to private lands unless they have been conserved as open space through the development entitlement process.

d. Private Lands Subject to Open Space Easement Restrictions

This type of open space consists of privately owned land subject to an open space easement in favor of the City of San Diego. These easements are conveyed through the

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subdivision mapping process (open space lot) or the entitlement process (mitigation or permit condition).

1. ~~Open Space Designated~~

~~Designated Open Space consists of a system of canyons and canyon oriented lands in the natural state that have utility for park and recreation purposes. The Designated Open Space system is identified in the Progress Guide and General Plan, in adopted Community Plans and/or in adopted Specific Plans. This system forms the basis of the City's Open Space preservation efforts.~~

2. ~~Open Space Non-Designated~~

~~Non-Designated Open Space as herein defined consists of areas adjacent to Designated Open Space that may provide visual or physical access to the Designated Open Space system or otherwise serve to enhance that system. Non-Designated Open Space may consist of natural, disturbed, or manufactured slopes.~~

3. ~~Sensitive Lands~~

~~Sensitive lands as herein defined consist of areas of land or water in the natural state which because of their unique characteristics or location have significant value for preservation for environmental or historic reasons. Sensitive lands are identified as such in adopted Community Plans and/or in adopted Specific Plans and are more fully defined in the Progress Guide and General Plan.~~

4. ~~Open Space Retention List (Staff acquiring and reviewing list to determine relevance)~~

~~Following the passage of Proposition C in 1978, the Open Space Retention list was created and adopted by the Council. The purpose of the retention list is to assist the Council in making acquisition decisions. An updated revision to this list was approved by the City Council on November 21, 1983 (Document No. RR 259663). This list, which currently includes 141 Open Space systems within the City, is a score and category ranking of each system on the basis of 13 evaluation criteria which were approved by Council. System on the list include all those areas identified in Community Plans as open space as of the time of the lists' preparation. This list also provides a "recommended method of retention" for each area, in that funds available are not adequate for the purchase of all systems listed. When development plans are received which include any of these areas, attempts will be made to retain as much as possible of the Designated Open Space.~~

~~It is the Council's policy that this Retention List is for planning purposes only and may be amended by Council from time to time. Persons owning property identified on the Open Space Retention List may utilize their property in conformance with Zoning and other legal requirements.~~

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POLICY:

It is the policy of the City to pursue the acquisition, retention and management of ~~preserve~~ open space that meets the criteria set forth herein. This may be accomplished by: (1) Retention of city-owned lands and easements granted to the City; (2) Acquisition of land in fee title and; (3) Acquisition of easements.

1. Retention of City-Owned Lands and Easements Granted to the City

~~City-owned properties identified as Designated Open Space shall be retained in City ownership for Open Space purposes.~~

~~City-owned properties identified as Sensitive Lands or that satisfy the definition of Non-Designated Open Space should also be retained in City ownership for Open Space purposes, but if sold, they should be encumbered by an Open Space easement.~~

a. Dedicated Park Lands

All Dedicated Park Land which is open space should be retained as Open Space.

b. Designated Open Space

City-Owned Open Space Park Lands and Land Use Plan Designated Open Space should be retained if any of the following criteria are met:

1. Lands that are within the Multi-Habitat Planning Area (MHPA), unless a Boundary Line Adjustment has been approved in writing by the California Department of Fish and Game and/or the U.S. Fish and Wildlife Service prior to the first public hearing.
2. Lands that support vernal pools or narrow endemic species, as defined by the City of San Diego's Multiple Species Conservation Program.
3. Lands that are necessary to ensure implementation of the open space goals, objectives, and recommendations of the Progress Guide, General Plan, applicable Community Plans and other land use plans adopted by the City Council.
4. Lands that are necessary to protect the following for the public good: environmentally sensitive lands pursuant to Chapter 13, Article 3, Division 1 of the Municipal Code, including but not limited to *steep hillsides, sensitive biological resources, coastal beaches, sensitive coastal bluffs, or Special Flood Hazard Areas*; as well as scenic and visual quality; significant paleontological, historical, or archaeological resources; floodplains and watersheds; unique scenic community character features or entryways; passive outdoor recreation uses; public safety.
5. Lands that meet criteria for Dedication pursuant to Council Policy 700-17.

2. Acquisition of Land in Fee Title

Acquisition of open space may be accomplished through (a) Purchase; (b) Assessment District; (c) the development process; (d) Donation; (e) Property exchange.

a. Purchase

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The City may ~~from time to time~~ acquire ~~Designated Open Space areas~~ property through the use of ~~Proposition C funds or other~~ various private, local, state, and federal funding sources to be preserved as Open Space. ~~that may be available in accordance with the Open Space Retention List.~~

b. Assessment District

Special Assessment Districts may be formed under provisions of State Law or under provisions of the City's own procedural ordinance for the purpose of acquiring ~~Designated Open Spaces~~ properties as Open Space. Assessment districts for open space acquisition may be initiated by either the City Council or by a petition from a community desiring acquisition. The City's policy on acquisition of Open Space by assessment district is found in Council Policy 600-31.

c. Development Process

The City may obtain fee title to ~~Designated~~ property for Open Space purposes through the development process as a condition of subdivision approval, through negotiation of a Development Agreement, or as an environmental mitigation measure. ~~in addition, it may occasionally be in the City's interest to acquire fee title to Non-Designated Open Space or Sensitive Lands through the development process. In these cases, staff may recommend that Council accept the property because of its value to the City's Open Space preservation goals.~~

d. Donation

~~Occasionally,~~ Property owners may donate land to the City for preservation as Open Space. The City's policy governing the acceptances of such donations is explained in Council Policy 600-31.

e. Property Exchange

The City may ~~occasionally,~~ acquire Open Space by means of property exchange. City policy governing property exchange is covered by Council Policy 700-10 and Municipal Code Section 22.0902.2

3. Acquisition of Easements

In lieu of fee title, easements may be acquired. ~~it is the policy of the City to preserve Non-Designated Open Space and Sensitive Lands through the application of easements.~~ Easements for Open Space should be distinguished by ~~two~~ three categories dependent primarily on the desirability of public access, ~~and~~ the designation of maintenance responsibilities and protection of environmentally sensitive resources: (a) Positive Easements; (b) Negative Easements; (c) Conservation Easements.

a. Positive Easements

Where public access is deemed desirable, a "Positive Easement" should be obtained which provides for public use. A "Positive Easement" may also allow for such public improvements as landscaping, multi-use trails, and other compatible recreational facilities. In such cases, the open

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space area should be identified as a separate parcel.

b. Negative Easements

Where public access is not deemed desirable, the City may preserve the Open Space through the acceptance of a "Negative Easement" which serves to restrict improvements on, or changes to, the character of the area. Where Open Space is to be preserved in this way, the property should be legally defined in such a manner as to remain a part of the contiguous legal lot.

c. Conservation Easement

Where conservation of biological resources is deemed desirable, a Conservation Easement may be required so that the property can be retained in perpetuity in a natural condition and prevent any use or development that may impact the sensitive biological resources of the property. The easement is intended to prohibit any activity or use of the property that is inconsistent with the preservation of habitat and species protected under the City's Multiple Species Conservation Program Subarea Plan. The conservation easement may allow public access and passive uses which would be compatible with the conservation easement. The Conservation Easement should be recorded against the title of the property with the County of San Diego and should be executed in favor of the City of San Diego.

OTHER METHODS OF PRESERVATION:

~~Occasionally, through the development process, the City and the developer may agree to other methods for the preservation of Non-Designated Open Space or Sensitive Land areas. This may include density transfer or a rezoning to floodway or floodplain, as appropriate, Hillside Review, agriculture, or large lot residential land division. It is not the intent of the City however to unilaterally apply such methods solely for the purposes of preserving open space.~~

4. Open Space Management

The City Manager should keep an up-to-date inventory of all city-owned open space and open space easements (Negative, Positive and Conservation). The inventory should be made available electronically to the public and identify the entity responsible for maintenance. One purpose of this inventory is to guide the City's open space maintenance and management program.

5. Open Space Maintenance

The City should assume responsibility for the maintenance of city-owned Open Space and the enforcement of any open space easement restrictions and conditions on private property. In the case of city-owned Open Space where the community desires a higher level of maintenance, an Assessment District may be established for that purpose.

All City-Owned Open Space areas should be maintained annually, including:

a) Abatement of unauthorized dumped materials

b) Brush management, in compliance with City brush management and environmental policies and regulations

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- c) Control of unauthorized access and off-road activity, including vehicles and homeless encampments
- d) Repair of trails and access roads
- e) Installation and repair of interpretive and regulatory signage
- f) Management of sensitive resources, including MHPA lands

The provisions of the above paragraph, as well as all other provisions of this Council Policy, should have the sole effect of providing guidance to the City Manager. Nothing contained in this policy should serve to create any legal obligation, which is not otherwise imposed by law on the City. By establishing this Policy, it is not the intent that the City be legally obligated to provide the above-specified services. All the above services may or may not be completed and are subject to budgeting and the availability of funds.

6. Sale, Lease or Exchange of Open Space Owned By the City or Vacation of Open Space Easements Granted To the City

Any proposal to sell, lease or exchange Open Space owned by the City or to vacate an Open Space easement granted to the City should be consistent with the criteria outlined under this Policy. Based on this, the City Manager should provide a recommendation to the City Council for approval or denial of any proposed sale, lease, exchange or easement vacation. The proposal should also be routed to the recognized planning group and, as appropriate, the Park and Recreation Department advisory body for a recommendation to the Park and Recreation Board, Planning Commission and the City Council.

Designated Open Space owned by the City should only be sold, leased, exchanged, or Open Space easements vacated, when all of the following criteria can be met:

- a) The land does not meet the criteria for retention outlined in this Policy.
- b) All sales, leases, or exchanges, or vacations of easements for lands in which the City holds a real property interest as open space should result in an overriding public benefit.
- c) Any proposed construction of infrastructure needed to utilize the land proposed for sale, lease or exchange, or vacation of easements, should not adversely impact adjacent open space or other land uses.
- d) Any environmentally sensitive lands lost as a result of development of the open space land should be replaced through mitigation. This mitigation should contribute to an equal or greater environmental value in the community where the loss has occurred, or, if no suitable land is available in the impacted community, then mitigation should occur in reasonable proximity to the impacted area.
- e) Any proceeds of the sale, lease, or exchange, or vacation of easement for lands in which the City holds a real property interest as open space should be placed into an open space fund to be used for the purchase of other open space properties within or in close proximity to the community where the loss has occurred, to the extent reasonably possible.

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All sale, lease or exchange of city-owned property should be consistent with Council Policy 700-10 (Disposition of City-Owned Real Property) and all other applicable City policies and regulations.

CROSS REFERENCE:

Council Policy 700-10
Council Policy 700-17
Council Policy 600-31
City Charter Sec. 55

HISTORY:

Adopted by Resolution R-216010 05/19/76
Amended by Resolution R-254869 08/24/81
Amended by Resolution R-262130 12/11/84

Revised draft 10-19-05