
LCRA BOARD POLICY

401 – LAND RESOURCES

Oct. 17, 2018

401.10 PURPOSE

This policy establishes guidelines for the acquisition, disposition, use and management of all LCRA land rights.

401.20 DEFINITIONS

Land Rights – Interests in real property including, but not limited to, easements, leases, and fee simple ownership and aerial, subsurface, land and water surface rights.

Non-Utility Lands – All LCRA-owned lands other than utility-related lands and government administrative lands. These lands include, without limitation, lands acquired and/or managed for the public's benefit and/or use, such as land used for parks, campgrounds, lodging, food services, boat launching, water access or other public recreational use; land managed in its natural state for purposes of conservation, preservation or natural science programming; land surrounding and under the Highland Lakes; and land having significant archaeological, scenic or historical features managed for preservation.

Utility-Related Lands – Lands that are acquired and/or used for utility-related functions of LCRA. These lands include, for example, land used for locating electric facilities and water storage and distribution facilities, including irrigation canals and other irrigation-related facilities.

Government Administrative Lands – Lands that are developed, leased, or managed for LCRA's government offices or administrative or maintenance activities.

401.30 POLICY

LCRA will acquire, develop, use, manage, operate and dispose of its land resources to fulfill its essential purposes and responsibilities prescribed by state law and the Board's policies. LCRA may dispose of land that has been declared by the LCRA Board of Directors to be "nonessential" (not necessary or convenient or of beneficial use to the business of LCRA).

401.40 PROCEDURES

401.401 Land Acquisition. LCRA will acquire sufficient non-utility, utility-related, and government administrative land rights to complete approved projects and programs. In

selecting land, LCRA will consider, as appropriate, the effects on environmental integrity, community values, parks and recreation areas, historical and aesthetic values, and the cost of the project or program.

LCRA may acquire land rights in excess of that required for projects or programs in those instances when the property owner and LCRA both agree to such conditions, or when it is in LCRA's best economic interest to do so. Mineral rights may be acquired for the protection of the improvements to be constructed or to prevent interference with the surface use.

In acquiring land rights, LCRA will attempt to minimize adverse effects upon property owners and will use due diligence to adequately compensate property owners.

Property owners contacted by representatives of LCRA will be treated courteously and dealt with in a forthright manner. Contacts and negotiations will be initiated in a timely fashion to allow the property owner to consult with legal, tax and other advisors as may be necessary.

- A. Board Authorization: Board approval of the business plan, capital plan and/or a capital improvement project will constitute authorization for the acquisition of land rights as necessary and will authorize the GM/CEO or his or her designee to acquire the land rights necessary to complete the approved projects or programs, subject to the following conditions:
 - 1. Acquisitions of land rights that may be purchased or leased for \$600,000 or less per parcel, where the purchase or lease price for the term is within the amount budgeted for the project or program, may be finalized by the GM/CEO or his or her designee without further Board action. Acquisitions of land rights that have a purchase price or lease price exceeding \$600,000 per parcel require the Board's specific prior approval.
 - 2. Board authorization is not required for the acquisition of land rights when the land rights are acquired at no cost to LCRA.
- B. Method of Acquisition: Staff will determine whether acquisition of particular land rights is in the best interest of LCRA, its customers and the public.

In determining the method of land acquisition, staff will consider (a) the purpose, type and life of the facilities to be located on the land; (b) how the surface of the land will be used; (c) the significance of mineral rights to the integrity of the facility; and (d) the present or future use of the land by the property owner.

Consideration paid by LCRA to secure a purchase or lease option may not exceed \$60,000 per parcel, tract or interest, nor may the term of the option exceed two years, unless specifically approved by the Board. Such payment must be applied toward the purchase or lease price if the purchase or lease is consummated.

An environmental due diligence assessment will be prepared on all land considered for acquisition. For the acquisition of leases and property in fee simple, an assessment for the potential presence of environmental contamination will be performed in accordance with U.S. Environmental Protection Agency (EPA) "all appropriate inquiries" regulations (40 C.F.R. Part 312) and related Society for Testing and Materials International (ASTM) standards unless a variance is granted by LCRA's general counsel. For the acquisition of easements, the assessment may follow less stringent standards and practices provided the standards and practices followed are consistent with industry practice and are documented, except that in the case of easement acquisitions where prior or future land use may present risks that, in the opinion of the environmental professional, warrant a full assessment, the more stringent "all appropriate inquiries" regulations will be followed.

Information obtained during the due diligence and on-site assessments will be evaluated prior to final acquisition.

- C. Appraisals: LCRA will base all negotiations on a reasonable opinion of market value on all land right acquisitions. Staff will have the discretion to either prepare an opinion based on available market data or employ an independent appraiser, based on the size and complexity of the transaction; however staff will be required to employ an independent appraiser if (i) the area of the land rights being acquired is larger than 100 acres; (ii) staff has reason to believe the value of the such land rights exceeds \$600,000; or (iii) employing an independent appraiser is necessary to avoid the appearance of a conflict of interest.

Any independent appraiser engaged by LCRA must hold a valid license from the state of Texas.

- D. Eminent Domain Proceedings: LCRA may use its power of eminent domain to acquire land rights (i) if a landowner has been unable to agree with LCRA on the fair market value of the land rights being acquired by LCRA and further negotiations for settlement have become futile; (ii) if the title cannot be conveyed without a court judgment; or (iii) if there is a conflict of interest of the owner(s). LCRA may initiate eminent domain proceedings only after an official written offer to purchase the land rights has been sent to the landowner. In any event, LCRA Board authorization is required prior to initiation of eminent domain proceedings for the acquisition of land rights.

401.402 Land Use, Development, Conservation and Management. LCRA will maintain an inventory of all its land rights, including its non-utility related lands, utility-related lands, and government administrative lands. Such inventory will be periodically reviewed and updated, as needed.

A. Agreements: LCRA may enter into permits, leases, easements, development agreements or other legally binding land use agreements with public, private or nonprofit entities.

1. Land use agreements will conform to the following criteria:

- a. Monetary consideration for the following uses will be market rental value: agriculture/grazing, commercial (recreation or non-recreation) and private uses.
- b. LCRA's leases will be managed to conserve, protect and maintain LCRA's land resources.
- c. Land use agreements may be granted for non-monetary consideration to governmental entities or nonprofit organizations when the use of the property furthers LCRA's ability to meet its statutory responsibilities or is deemed to be in LCRA's best interest.
- d. Land use agreements require the user to undertake full financial responsibility for proper maintenance and use of the land and/or facility, as may be appropriate under the circumstances. Such financial responsibility may include liability insurance coverage protecting LCRA.
- e. Land use agreements will include provisions allowing periodic adjustments of monetary consideration.
- f. The term of any land use agreement will be commensurate with the use of the land, the purposes of the agreement, the amount of capital to be invested by LCRA and/or the user, the anticipated capital payback period, and the projected revenue to LCRA.
- g. Land use agreements will contain, as appropriate and necessary, provisions for environmental protection and compliance with applicable laws and regulations, including LCRA ordinances and policies for water quality, nonpoint-source pollution prevention, and other environmental quality considerations, such as impacts to cultural resources, wetlands, and threatened or endangered species and their habitats.
- h. Every lease of LCRA property will include a provision obligating the lessee to pay all property taxes that may become due as a result of the lease or the lessee's use of the property.

2. The following types of land use agreements may be executed by the GM/CEO or his or her designee without LCRA Board approval; all other land use agreements must be specifically approved by the LCRA Board.

- a. Leases, temporary use permits, licenses and construction permits with terms of 15 years or less.
 - b. Agreements for the temporary location of marinas during low lake levels.
 - c. Agreements for private, noncommercial boat piers, ramps or docks, swim platforms, and fishing piers or docks on or over LCRA-owned land.
 - i. The person requesting the agreement must own or control the real property abutting the LCRA-owned land and must be able to exercise direct control over land access to LCRA-owned land and any dock or pier on such land.
 - ii. There must be no apparent conflict with other adjacent or nearby real property owners. LCRA may require the person requesting the agreement to furnish written evidence of non-objection from real property owners identified by LCRA to be affected by the agreement.
 - d. Agreements for the co-location of electric, gas, water, wastewater, communication or other utility facilities on LCRA land, easements or leases.
- B. Easements: LCRA may grant easements across land it owns, may permit easements to occupy the same easement corridor it has acquired, and may release its easement rights or portions of land from easements when the best interests of LCRA, its customers and the public are served.
- 1. Requests for easements across LCRA land will conform to the following criteria and must be specifically approved by the LCRA Board:
 - a. Monetary consideration for easements that serve a private or commercial use will be the market value as determined pursuant to this policy.
 - b. Consideration for easements that serve a public or nonprofit use may be non-monetary at the discretion of the LCRA Board.
 - c. The monetary consideration, if any, will be a one-time payment.
 - d. Easements will contain, as appropriate and necessary, provisions for environmental protection and compliance with existing laws, regulations and LCRA ordinances and policies for water quality, nonpoint-source pollution prevention and other environmental quality considerations, such as impacts to cultural resources, wetlands, and threatened or endangered species and their habitats.

2. Requests to occupy a portion of an LCRA easement across lands that are not owned by LCRA may be approved by the GM/CEO or his or her designee if they meet the following criteria:
 - a. The requesting entity first will obtain the written statement of LCRA's non-objection to the proposed easement/use. Such statement of non-objection only will be granted if the proposed joint use of the easement corridor will not interfere with LCRA's superior easement rights, safety and efficient operations within the easement area.
 - b. The requesting entity may be required to obtain the easement rights, subordinate to LCRA's superior easement rights, from the landowner(s).
 3. LCRA's easements on private lands that are not necessary to the operation of LCRA may be released by the GM/CEO or his or her designee subject to the following:
 - a. Staff will determine that LCRA has no further or anticipated need for easement rights in the area to be released.
 - b. Any processing costs, including the cost of a survey, if required, will be at the expense of the property owner or party requesting the release.
 - c. Easement rights that are considered unnecessary due to an abandonment of a line or facility by LCRA may be released to the current landowner(s).
- C. Encroachment: Public or private use of (including aerial use above or over) LCRA land, except where expressly authorized by LCRA, will be considered an encroachment. Those encroaching on or over LCRA lands will be required to either purchase the land from LCRA on terms approved by the Board, remove the encroachment, or secure rights to use the land by entering into an acceptable land use agreement with LCRA. The GM/CEO or his or her designee may institute appropriate legal action to remove any nonconforming encroachments.
- D. Mitigation: Any use of land for mitigation purposes under the Endangered Species Act and associated regulations must be specifically approved by the Board. Staff will notify the Board upon receipt of any request for use of LCRA land for mitigation purposes or any proposal to donate land to LCRA for mitigation purposes.

401.403 Land Disposition. LCRA may dispose of land that has been declared by the Board to be nonessential (not necessary or convenient or of beneficial use to the business of LCRA). The proceeds from the sale of nonessential lands may be used to support LCRA activities. The Board's declaration of land as nonessential and the terms of any resulting sale or exchange will require the affirmative vote of three-fourths of the statutory membership of the Board.

Appraisals: LCRA will base all negotiations on a reasonable opinion of market value on all land right dispositions. Staff will have the discretion to either prepare an opinion based on available market data or employ an independent appraiser, based on the size and complexity of the transaction; however staff will be required to employ an independent appraiser if (i) the area of the land rights being sold, leased or exchanged is larger than 100 acres; (ii) staff has reason to believe that the value of the such land rights exceeds \$600,000; or (iii) employing an independent appraiser is necessary to avoid the appearance of a conflict of interest.

An environmental due diligence assessment will be prepared on all land considered for disposition. For the disposition of leases, easements and property in fee simple, the assessment may follow standards and practices less stringent than “all appropriate inquiries” described in 401.401.B above, provided the standards and practices used are consistent with industry practice and are documented. However, for disposition of leases, easements and property in fee simple, when prior or future land use may present risks that, in the opinion of the environmental professional, warrant a full assessment, the more stringent “all appropriate inquiries” regulations will be followed.

Information obtained during the due diligence and on-site assessments will be evaluated prior to final disposition.

401.50 AUTHORITY

LCRA enabling legislation, Chapter 8503, Texas Special District Local Laws Code
Texas Local Government Code, Chapter 272
Texas Constitution, Article XVI, Section 59 and Article I, Section 17
U.S. Constitution, Art. V

EFFECTIVE: January 1985. Amended April 23, 1987; June 24, 1987; Sept. 24, 1987; Feb. 22, 1990; June 20, 1990; Aug. 23, 1990; Oct. 18, 1990; May 21, 1992; Jan. 18, 1996; April 24, 1997; Feb. 18, 1998; Nov. 19, 2003; Nov. 17, 2004; Sept. 17, 2008; Sept. 21, 2016; and Oct. 17, 2018.