

# REAL PROPERTY MANAGEMENT TABLE OF CONTENTS

<b>2100</b>	<b>INTRODUCTION</b> .....	<b>1</b>
<b>2101</b>	<b>REAL PROPERTY</b> .....	<b>1</b>
<b>2102</b>	<b>ACQUISITION OF REAL PROPERTY</b> .....	<b>1</b>
2102.1	Legal Authority .....	2
2102.2	Acquisition Planning .....	2
2102.3	Acquisition Guidelines .....	2
2102.4	Acquisition Selection Procedures .....	3
2102.4.1	Summary of Acquisition Identification and Evaluation Phase .....	3
2102.4.2	Detailed Process for Acquisition Selection .....	3
2102.4.2.1	Call for Nominations .....	3
2102.4.2.2	Site Identification and Development of Proposals .....	3
2102.4.2.3	Processing and Distributing Proposals for Review .....	4
2102.4.2.4	DART Evaluation .....	4
<b>2103</b>	<b>ENCUMBRANCES TO REAL PROPERTY</b> .....	<b>5</b>
2103.1	Granting of Easements, Leases, and Use Permits .....	5
2103.2	Permit, Easement, and Lease Policy .....	7
2103.3	Review of Permit, Easement or Lease Requests .....	7
2103.4	Delegated Signing Authority .....	8
<b>2104</b>	<b>BOUNDARY SURVEYS AND PROPERTY IDENTIFICATION</b> .....	<b>9</b>
2104.1	Procedures for Requesting Property Boundary Surveys .....	9
<b>2105</b>	<b>TRESPASS/ENCROACHMENTS</b> .....	<b>10</b>
2105.1	Trespass and Encroachment Policy .....	10
2105.2	Management and Resolution of Trespass and Encroachment .....	10
2105.3	Timber Trespass .....	11
2105.3.1	Tree Appraisal Policy .....	11
<b>2106</b>	<b>DISPOSITION OF PROJECT LANDS</b> .....	<b>11</b>
2106.1	Disposition of Newly Acquired Land Process .....	11
2106.2	Threshold Considerations for Disposition of Project Lands .....	12
<b>2107</b>	<b>SURPLUS LAND PROCESS</b> .....	<b>12</b>
2107.1	Surplus Land Policy .....	13
<b>2108</b>	<b>DIVISION INFORMATION SERVICES</b> .....	<b>13</b>

**2109 GRANT AGREEMENTS FOR CONSERVATION EASEMENTS.....13**

2109.1 Conservation Easement Monitoring Policy ..... 13

2109.1.1 Grant Agreements..... 13

2109.1.2 Retention of Documents..... 13

2109.1.3 Baseline Conditions Report..... 14

2109.1.4 Monitoring Grants and Conservation Easements ..... 14

2109.1.5 Easement Transfers and Extinguishments ..... 15

2109.1.6 Defaults and Remedies..... 15

**2110 CONSERVATION EASEMENTS PURCHASED BY THE DEPARTMENT .....15**

- FIGURES** Acquisition Planning Process – Figure 2102.4.2
- Review of Leases or Easement Requests - Figure 2103.3

# REAL PROPERTY MANAGEMENT

## 2100 INTRODUCTION

The Acquisition and Real Property Services Division (ARPSD) is responsible for the content of this chapter. The ARPSD provides advice, assistance, mapping, records and surveys for land transactions, easements and leases.

Services provided by the ARPSD include:

- Land acquisition planning
- Acquisition of Real Property
- Negotiation and acquisition of land and easements
- Lease of private land for Park purposes
- Preparation of leases and easements on Park property to third parties
- Land exchanges and sales
- Encroachment/trespass assistance
- Title research
- Land survey and ownership mapping
- Land surveys for boundary marking
- Property reports and information
- Land Ownership and Disposal Transactions
- Use Permits Right-of-Entry and Right-of-Way Permits

## 2101 REAL PROPERTY

Real property comes with a “bundle of rights” which include all legal rights of ownership such as right of possession, enjoyment, control of use, right to exclude others, right to dispose, mortgage, cultivate, explore, lease, share, exchange or extract gas or minerals. Generally, real property rights apply to the land from the center of the earth to the air above. Specific property rights can be severed permanently or temporarily through various legal instruments such as leases, easements and deeds, which are discussed below.

## 2102 ACQUISITION OF REAL PROPERTY

The acquisition of real property in fee title and the granting and acquisition of lesser real property interests such as easements and leases are important functions of the ARPSD. Whether for new parks, provision of buffers or the addition of inholdings or adjacent properties to existing units, a professional and knowledgeable staff is necessary for the completion of successful acquisitions to the California State Park System.

**2102.1 Legal Authority**

The legal authority for acquisition of property for California State Parks is described in Public Resources Code (PRC) Section 5006, which states in part:

- (a) The Department, with the consent of the Department of Finance, and subject to Section 15853 of the Government Code, may acquire title to or any interest in real property, including personal property incidental to the purchase of real property and options to purchase property, which the Department deems necessary or proper for the extension, improvement or development of the State Park System. All real and personal property acquired by the Department for the State Park System shall be under the jurisdiction of the department immediately upon transfer of title to the State.

**2102.2 Acquisition Planning**

Acquisition planning on a statewide scale takes place throughout the Department. The Planning Division, Natural Resources Division, Archaeology, History and Museums Division and the Interpretation and the Education Division conduct “gap” analyses, review pertinent government and private resource databases, review initiatives and programs to determine mission-based deficiencies and identify needs and opportunities for their areas of stewardship. These opportunities are recorded into the Department’s Land Acquisition Proposals Database (Database). Park Operations contributes the majority of real estate proposals through the districts with a small number coming from the divisions. Districts work with local landowners and find valuable opportunities to add to the State Park System.

The ARPSD maintains the database and periodically updates real estate proposals that have been submitted by the divisions and the districts. They also review statutory requirements of current funding laws. After proposals are selected, the division matches funding with the proposed acquisitions selected through the planning process, and performs the transactions to complete the acquisitions.

**2102.3 Acquisition Guidelines**

The Department developed Acquisition Guidelines as a tool for evaluating real property acquisition proposals and a procedural guide for reviewing and selecting acquisition proposals to add to the California State Park System.

This cyclic process does not apply to the State Vehicular Recreation Area and Trail System. The Off-Highway Motor Vehicle Recreation Division (OHMVR Division) plans its own property acquisition program based on separate laws and funding sources, and the OHMVR Commission approves its acquisition projects.

The Acquisition Guidelines currently consist of the following six acquisition strategies:

- Inholding and Adjacent Properties
- Expand Outdoor Recreation Opportunities
- Significant Cultural Resources Properties
- Natural Resources and Sustainable Ecosystems
- Trail Connections and Corridor Acquisitions
- Urban Initiative Acquisitions

These may change from time to time based on California State Parks’ priorities. For a full description refer to the actual Acquisition Guidelines which are distributed each year per DOM 2102.4.

## **2102.4 Acquisition Selection Procedures**

The Department has a cyclic process to continually refine its acquisition priorities. The following sections describe the steps leading to a recommendation being given to the Director.

There are two Department committees that review and approve proposed acquisitions: the Department Acquisition Review Team (DART) and the Planning Policy and Programming Committee (PPPC). See also DOM sections 0203.1 and 0203.2.

The lead for DART is the Planning Division. DART is composed of members from the Planning, Operations and Acquisition divisions. Team members include the division chiefs from ARPSD, Natural Resources Division, Archaeology, History and Museums Division, Interpretation and Education Division, Northern and Southern Field Divisions and the Planning Division.

DART meets quarterly to review proposed acquisitions, update procedures, determine funding amounts and ultimately recommend a list of proposed acquisitions to PPPC for approval.

PPPC is made up of the chiefs from the following units: Planning (chair), Acquisition and Development, Off Highway Motor Vehicle Recreation Division (OHMVR), Natural Resources (NRD), Archaeology, History and Museums (AHMD), Interpretation and Education (IED), Facilities Management, Law Enforcement and Emergency Services, Field Services (Northern and Southern Field divisions), Acquisition and Real Property Services (ARPSD), the Deputy Director of Park Operations, the Chief Deputy Director and Staff Counsel from the Department's Legal Office. In regard to the acquisition program and process, PPPC reviews and comments on the proposed acquisitions for the quarter prior to the list being forwarded to the Director for approval.

### **2102.4.1 Summary of Acquisition Identification and Evaluation Phase**

In the Acquisition Identification and Evaluation Phase the districts and Headquarters divisions are requested to submit their top priority acquisition nominations to the ARPSD. The Planning and Acquisition Divisions work together with Park Operations to evaluate the proposed acquisitions.

### **2102.4.2 Detailed Process for Acquisition Selection**

The specific steps leading to the systemwide selection of acquisition priorities are described below and presented in the flowchart at the end of the chapter (Figure 2102.4.2).

#### **2102.4.2.1 Call for Nominations**

The process begins when the Planning Division prepares a memo for the Deputy Director of Park Operations to distribute to the districts, service centers and select divisions including the Natural Resource, Archaeology, History and Museums, and Interpretation and Education Divisions calling for district's or division's top three ranked proposals of real property for addition to the State Park System.

#### **2102.4.2.2 Site Identification and Development of Proposals**

Development of acquisition proposals and site identification require the following steps:

1. The districts, service centers and divisions identify real property proposals that fit the criteria described in the Acquisition Guidelines. The Acquisition Guidelines are attached to the memo calling for nominations. All acquisition proposals will be evaluated according to their fit within the program areas.
2. Individuals will complete a form DPR 487A & B – REAL ESTATE ASSESSMENT DOCUMENT (READ) for each property they nominate, and send it to the ARPSD by the due date noted in the memo requesting nominations. The READ provides the basis for

comparative evaluation of acquisition proposals. A properly completed READ is the foundation for analysis and evaluation of a proposed acquisition by Department staff unfamiliar with the property. It describes the property in sufficient detail and prioritizes the proposal within the district.

3. The READ must be completely filled out and include definitive maps. Incomplete READs will not be accepted for review by the DART
4. Nominations come to the Department throughout the year. DART meets quarterly. Newly submitted READS will be included in the current DART review cycle. Otherwise, a late proposal will be considered in the next subsequent review cycle.
5. Proposals for acquisitions that would result in the creation of a new state park unit or that are particularly complex should be developed in accord with the guidance of the Acquisition Site Feasibility Handbook.

### **2102.4.2.3 Processing and Distributing Proposals for Review**

Proposals are processed in the following steps:

1. All READs (DPR 487A & B) are routed to the ARPSD. Upon receipt, the ARPSD enters the contents of the READ into the Land Acquisition Proposals Database, assigns it an identification number and creates a paper file for the proposal's correspondence and related documents. Each district will send copies of its DPR 487A's to the appropriate Field Division Chief.
2. If a DPR 487A comes to the ARPSD that was not prepared by district personnel, the ARPSD will send the district a copy of the DPR 487A. The District Superintendent will return the DPR 487A to the ARPSD after adding the district's comments and ranking it among the district's other proposals.
3. As a component of the call for nominations, the ARPSD conveys to each district for review the ARPSD's most current version of the acquisition proposal list for that district. This will communicate to the district the current status of projects contained in the ARPSD Acquisition Planning Database, and it will help the district re-evaluate the order in which it ranked its' last proposals. Each district is asked to focus on their top three acquisition proposals. This allows the districts to focus their limited staff time on fully completing three READs in a timely manner.
4. After the deadline for acquisition proposals has passed, the DART coordinator prepares proposal packages for review and ranking by DART members. The packages will contain the top proposals as determined by the ARPSD through consultation with the districts and others. The DART coordinator conveys the packages simultaneously to the other DART members.

### **2102.4.2.4 DART Evaluation**

The steps followed by DART in its evaluation of READs are described below:

1. DART evaluators review the READs. Divisions evaluate the READs to see if they significantly fulfill one of that division's acquisition strategies. Each division chief selects READs from the proposal package that best meet the division's needs.
2. DART convenes to create a single list of priority acquisition proposals by applying districts' rankings, multi-discipline review rankings, management concerns and factors of statewide significance. DART votes on all priority proposals to create a list of recommended proposals.
3. The ARPSD reviews the recommended proposals and checks back with the districts and the landowners to ensure that each proposal is still ready to go forward. Recommended proposals that are still viable are matched to potential funding sources. ARPSD conveys the final funding allocation plan to the DART coordinator. The DART coordinator prepares supporting documents and delivers the entire package to PPC for review and

approval. After PPPC approval, the Planning Division submits the entire package to the Director for an approval signature.

## 2103 ENCUMBRANCES TO REAL PROPERTY

An encumbrance is an interest or right in real property that may decrease the fee value of the property but does not prevent its conveyance by the owner. Easements and leases are types of encumbrances common to state park property.

An encumbrance can burden and be detrimental to the value of state park property, or it may burden the property of another for the benefit of state park property. For example, a piece of property purchased by the Department is benefitted when it has clear easement routes that give the public the right to access the park property through other property. However, utility and access easements allowing utility companies or other entities to construct and/or maintain power lines or roads across state park property may be detrimental to the quality and value of the property when they offer no benefits to the parks and conflict with the State Parks' mission.

Private parties, public utilities and other government agencies may, for their own purposes, require the use or occupancy of state park lands. Such use may be permanent like an easement or temporary. Right-of-Entry Permits, issued at the District level and reviewed by ARPSD are for a short-duration use of state park property. An example of this would be when a county requires entry onto state park property in order to access and clean out drainage structures they own and maintain.

Right-of-Way Permits may be longer in duration and are issued from the Districts with ARPSD assistance and review. Right-of-Way Permits which are authorized under PRC Section 5003.5 generally allow ingress and egress for property owners when a state park unit separates their property from a road or highway and reasonable access does not exist and can not be economically constructed except across the state park property. These Right-of-Way Permits are governed by statute and are distinguishable from the usual definition of a generic right-of-way, which is typically a permanent easement recorded on the deed or established by prescription.

There are other types of use permits, such as special event permits and permits issued under 14CCR 4309 to remove, treat, disturb or destroy resources. These permits are not issued or reviewed by ARPSD so are not discussed here.

Permission to use park lands for the legitimate needs of other parties is provided by the Department only through the issuance of permits, leases or easements granted in accordance with statutory authority. In addition, proper development of state park lands may require private parties, public utilities or other governmental agencies to install facilities needed to benefit the state park unit.

Some types of uses that have been allowed in the past through lease agreements include: conservation camps, material borrow areas, cell phone towers, harbor or water channel areas, wells, measuring devices, communication facilities and scientific/educational research. Sound judgement and caution must be exercised when considering leases on state park property because the leases must be compatible with the management and conservation of resources of the State Park System unit.

### 2103.1 Granting of Easements, Leases and Use Permits

The Department may grant easements, leases and use permits, including Right-of-Entry and Right-of-Way Permits under terms and conditions consistent with statutory authority. The authority for the Department to enter into such agreements and grants is found in PRC sections 5003, 5003.5, 5003.17, 5012 and 5069 to 5069.4.

PRC §5001.65 prohibits commercial exploitation of resources within the State Park System.

PRC §5003.17 authorizes and provides, among other things, that the Department may lease for a term not exceeding ten years, for any use at fair market value, all or a portion of any parcel of the State Park System if the Director finds that the use would be compatible with the use of the real property as a unit and with the sound management and conservation of resources within the unit.

A lease is a contract that allows the use of State property for a specified period of time under specified terms and conditions in exchange for payment of rent. As related to the Department, a lease agreement allows for use of park property without a direct value to the "park visitor." Landlord/Tenant law applies to these contracts. A lease differs from a concession, which grants the right to conduct business in a state park for the safety and convenience of the general public in the use and enjoyment of, and the enhancement of recreational and educational experiences at units of the State Park System.

Leases are required when cooperating associations have exclusive use of state park property or facilities, a lease is needed to authorize this real property use. The Interpretation and Education Division maintains a lease template for use with cooperating associations (DOM 0908.4.6.4.1).

PRC §5003.5 authorizes, among other things, the granting of Permits for Right-of-Way. The Department is authorized to issue Permits for Right-of-Way across state park property for ingress and egress to a highway or road from ... lands [that are] separated from such highway or road by the state park." Upon receipt of an application from a land-locked landowner, the Department must "determine whether any reasonable access exists outside the boundaries of the park, or could be economically constructed." Access to State Park System lands by way of Permit for Right-of-Way is authorized only when "reasonable access does not exist or cannot be economically constructed outside the boundaries of the park..."

PRC §5012 authorizes, but does not require the Department to grant, among other things, permits and easements to public agencies for utilities and public roads and to grant other utility easements or to perform a public service, upon application by the proper authorities.

PRC §5019.53 provides that "...The purpose of state parks shall be to preserve outstanding natural, scenic and cultural values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples of such ecological regions of California...Improvements that do not directly enhance the public's enjoyment of the natural, scenic, cultural or ecological values of the resource, which are attractions in themselves, or which are otherwise available to the public within a reasonable distance outside the park, shall not be undertaken within state parks...."

PRC §5069 et seq. authorizes and provides, among other things, that the Department may lease for agricultural purposes any portion of any parcel of the State Park System that was farmed or grazed within 24 months immediately preceding acquisition if the Director makes a written finding that the agricultural use would be compatible with the use of the real property as a unit and with the sound management and conservation of resources within the unit (also see DOM chapter 0300 – Uses and Natural Resource Management).

Title to real property owned by the Department is vested in the name of the STATE OF CALIFORNIA. The Director of the Department and specified delegates are the only persons within the Department with the authority to transfer an interest in real property through a lease or an easement to a public agency or for public services. The Department's transfer of real property interests through lease or easement requires the review and approval of the Department of General Services [DGS] per Government Code §11005.2. Any document executed in violation of this statute is void. Other real property transactions such as a sale of property, granting of an easement to a private party not performing a public service, or an acquisition of real property may be carried out by DGS or the Public Works Board on behalf of the Department with the Department's approval, if they meet statutory requirements. The Director of the Department and specified delegates are the only persons within the

Department with authority to approve such real property transactions carried out by DGS or the State Public Works Board.

### **2103.2 Permit, Easement and Lease Policy**

Permits, easements and leases can negatively impact park resources and public use, individually or cumulatively, often in perpetuity, and therefore must be carefully analyzed before being approved by the Director. An encumbrance that will directly support the Department's mission may be appropriate with compensation and proper mitigation.

Encumbrances that do little or nothing to contribute toward the Department's mission are generally inappropriate, unless: (1) the encumbrance serves a critical public need; (2) there are no prudent and feasible offsite alternatives; a prudent and feasible offsite alternative is one that does not present unique problems that would cause costs or community disruption to reach extraordinary levels and which is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors; (3) the encumbrance contains full compensation to the Department; (4) there is mitigation of any impacts to Department resources, and (5) the encumbrance is authorized by law.

Any encumbrance that would cause significant natural, cultural or aesthetic resource damage should not be permitted. In processing a request for an encumbrance, careful consideration must be given to impacts that may occur over the life of the encumbrance, including the burden and effect of ongoing maintenance or other intrusions. Financial compensation is not a primary factor in determining the appropriateness of an encumbrance.

The Department shall not grant encumbrances that burden park lands unless the encumbrance is authorized under the applicable statutes named above and all the requirements of those statutes met. In addition, the Department shall not grant encumbrances that violate any deed restrictions or restrictions defined under the Land and Water Conservation Fund, should they apply to the property.

A Right-of-Entry Permit is a revocable, short term permit. Therefore they are not considered an encumbrance in the same way as an easement or lease.

### **2103.3 Review of Permit, Easement or Lease Requests**

In general, in accordance with PRC Section 5001.65, commercial exploitation of resources in units of the State Park System is prohibited. Nevertheless, the Department may issue permits, easements or leases for other purposes compatible with our mission and objectives.

To carry out the Easement, Lease and Right-of-Entry Permit procedures, the following protocols should be applied:

1. The District Superintendent is responsible for reviewing or delegating review of the initial request for an Encumbrance or Right-of-Entry or Right-of-Way Permit. District consultation should include resource specialists and land agents from the Acquisition and Real Property Services Division. The land agent is responsible for researching land title, property boundaries, deed restrictions and funding source restrictions that may affect the property.
2. For leases and easements or other property management agreements, a negotiations team appointed by the District Superintendent should determine the terms, conditions, compensation and environmental mitigation that may be required in addition to the appraised value of the property. Composition of the negotiation team should be discussed by the District Superintendent with the respective Field Division Chief. The team should be familiar with the terms, conditions, and compensation of similar encumbrances and environmental mitigation measures. All issues related to maintenance and accessibility of the encumbered property should be addressed.

3. Entering into an encumbrance, Right-of-Entry or Right-of-Way Permit or property sale is a discretionary decision and therefore a "project" under the California Environmental Quality Act [CEQA, PRC § 21000 et seq.]. Thus, CEQA compliance shall be completed prior to final approval. The project description required by CEQA shall include the proposed encumbrance and all associated operations, development and maintenance. The District Superintendent should determine the applicant's role in environmental review, e.g., financial responsibility, identification of resources, potential impact to resources, preparation of required CEQA / §5024 documents and mitigation if necessary. These matters should be discussed by the District Superintendent with the negotiation team in advance.
4. The District Superintendent is responsible for seeking upper management approval in proceeding with the issuance of leases and easements. Consultation with a land agent will determine whether an appraisal will be required. Generally, encumbrances that do not benefit the State Park System will require an appraisal to be provided at the expense of the applicant and shall be subject to the review and approval by the Department and/or Department of General Services. The Department must receive compensation at the fair market value of the encumbrance as determined by the real property appraisal when the encumbrance is requested by a third party, so as not to make a gift of public funds. The compensation received per the appraisal process may be looked upon as the purchase price of the property rights conveyed by the encumbrance document [lease or easement].
5. Appraisals may be waived for encumbrances initiated by a request from the Department to serve park development purposes.
6. Consultation with resource specialists such as Environmental Scientists, Archeologists, Historians or Accessibility Specialists should be undertaken to determine whether there will be impacts to natural, cultural, visual or recreational values. Loss of these values are not accounted for in the real property appraisal process and should be compensated for with mitigation projects, monetary payment, gifts of real property or any combination of the above. Mitigation of a project is separate from and in addition to the monetary compensation determined by the appraisal process. These two concepts should be separate and independent considerations.
7. A licensed land surveyor shall determine property boundaries and the legal description for an encumbrance. Legal descriptions and plat maps are required for all easements and are preferable for leases. Legal descriptions and plats must be prepared, signed and wet-stamped by a licensed land surveyor before final approval by the Surveys and Ownership Section of the Acquisition and Real Property Services Division.
8. The District prepares the Project Evaluation Form and appropriate CEQA documentation.
9. The land agent prepares the encumbering documents consistent with Government and Public Resources Codes and circulates documents for review by the District, Headquarters and DGS, as needed. The land agent will consult with the Legal Office as necessary regarding indemnification and other specialized legal issues [see attached Transaction Summary].
10. The land agent is responsible for preparing a summary of the transaction documenting the Department's justification for moving the request forward. The land agent shall have the documents executed by the appropriate parties, recorded with the county as necessary, and originals and copies distributed to Applicant, the Department of General Services' Statewide Property Inventory, Central Records, Ownership Records, the Department Land Ownership Database and District.

#### **2103.4 Delegated Signing Authority**

The Deputy Director for Acquisitions and Development has the signing authority for leases, easements, acquisitions, contracts, interagency agreements, Public Works bids and contracts, and gift deeds. District Superintendents may sign Right-of-Entry Permits.

## 2104

**BOUNDARY SURVEYS AND PROPERTY IDENTIFICATION**

It is the responsibility of the District Superintendent to be familiar with the property boundaries of the units in their district. This is the first measure of defensive planning for a park unit. Before we can defend a park we have to know where the boundaries are located. Unit personnel should inspect unit boundaries annually to insure surrounding uses have not trespassed onto state park property. In addition, the surrounding uses should not have direct negative impacts to the natural or cultural resources within the park unit. An example of this would be sedimentation of a park stream caused by development of a housing tract outside the park unit.

It is best to prevent trespass and/or negative impact to park resources before they happen through defensive planning. Through community involvement, District Superintendents must keep informed about the activities of the land owners adjacent to park properties, both private and public. This includes familiarization with both short term development proposals and long range general plans of adjacent property owners, zoning laws, county general plans, transportation plans and other planning documents.

State Park unit boundaries vary widely in identification and accuracy. Many State Park unit boundaries are not accurately located on the ground along the surveyed property lines. The reasons for this are many. Some boundaries may have been marked using a compass and rough directions from the original deed language. Some property boundaries were not accurately surveyed for verification when the Department acquired the property. In some cases, park staff, unsure of the exact property boundary, and worried that they might actually take private property, may have erred in favor of the adjacent property owner. Finally, it was not uncommon to mistake some road or fence as the property line when in fact the property line was not associated with any prominent feature.

The only way to ensure that a property boundary is accurately reflected on the ground is through a survey by a licensed surveyor. The survey needs to be recorded, mapped and made part of the permanent record for future reference. The permanent record may include a **Land Ownership Record Map** which is a map that graphically depicts our ownership, disposals (parcels that have been granted out), encumbrances held by others on park property, and easements on non-park property which benefit State Parks. These maps are a compilation of information including a Schedule of Acquisition, a Schedule of Appurtenances and a Schedule of Encumbrances, all of which list useful information including grantor names, deed book and page, etc. When available, the maps can be a valuable reference tool for unit, district or headquarters staff.

The optimal situation is to have all State Park units surveyed with recorded boundaries. Boundary surveys should be treated as projects and listed on the Park Infrastructure Database (PID). Current staffing levels dictate that our surveying efforts focus on trespass and legal issues with most general boundary surveys performed under contract with project and earmarked funds. A long term goal of the ARPSD is to have all State Park unit boundaries properly surveyed, recorded and monumented.

## 2104.1

**Procedures for Requesting Property Boundary Surveys**

The general procedure for requesting a property boundary survey is as follows:

1. Park unit staff work through appropriate park unit, sector, and district chain of command to request a survey. Surveys are generally paid for by the requesting unit.
2. A Real Property Services Request Form (found on the Share Drive or request one through the ARPSD) is completed by District staff and routed through the Sector Superintendent to the District Superintendent for signature.
3. The District Superintendent sends the form to the Field Division Chief, who signs it and sends to the ARPS Division Chief.
4. The ARPS Division Chief forwards the request to the survey unit for processing.

5. The supervisor for the survey unit will assess the survey project and current workload and advise the unit whether the survey project will be handled with division staff or outside contract.
6. Once the survey is completed, it is recorded with the County Recorder, and submitted to the division's map delineator to create or update a Land Ownership Record Map.

## **2105 TRESPASS/ENCROACHMENT**

Encroachments and trespasses occur in various forms. An encroachment is a permanent trespass as for example, when an adjacent property owner constructs a building beyond his property boundary, either intentionally or unintentionally. Examples of trespass include cutting of trees or limbing of trees on park land to improve views, property improvements such as driveways and outbuildings that cross the park boundary, landscaping that crosses the park boundary, fencing placed on park land; and grading of park property, utility lines placed on park property without easement rights, livestock escaping onto park property, illegal timber harvest, and oil spills or groundwater contamination spreading onto or under park property.

### **2105.1 Trespass and Encroachment Policy**

It is the policy of the Department to defend and protect park property from all forms of trespass and encroachment.

### **2105.2 Management and Resolution of Trespass and Encroachments**

When an encroachment or trespass is suspected, document the incident by completing the following actions

1. Identify the property boundary. This may require the services of a land surveyor from the ARPSD if the location is unknown. If the property boundary needs to be legally established, complete the form "Request for Real Property Services" located through the Department's Intranet site.
2. Provide all information and facts to the Supervising Ranger or Sector Superintendent responsible for the unit as quickly as possible. The District, coordinating with the ARPSD, will make contact with the property owner and will enlist the services of the Legal Office and/or Attorney General's Office as needed to seek legal remedy. Timely handling of a trespass is important because the right to seek legal remedy may be subject to a time limit.
3. While the incident is fresh, contact the property owner to express the concern of possible encroachment and request cessation of activities. Communication should be in writing. Any verbal exchanges should be documented in a written record. Request verbally and in written form the restoration of park property if the trespass is known to be illegal. However, do not undertake restoration activities until advised to do so by legal counsel.
4. While the incident is fresh, identify damage and collect data: photographs, measurements, vegetation or animal surveys, water quality samples; assess and quantify damage: degree, size, duration of injury to the resources (cultural or natural); When cultural resource damage is involved, work with the Archaeology, History and Museum Division to develop an Archaeological Damage Assessment, incident reporting, etc.
5. Evaluate restoration needs: costs, timeframe for restoration, scope of work;
6. Identify the responsible party if possible;
7. Develop strategies to avoid future damage;
8. Work with the Department's Legal Office, Attorney General, and/or regulatory and permitting agencies and neighboring property owners to develop collaborative approaches for enforcement, restoration and future prevention actions.
9. If warranted, the District Superintendent will work with law enforcement staff to cite the trespasser and take appropriate action in criminal proceedings in cooperation with the District Attorney and/or work through the Legal Office and the Attorney General's office to begin civil proceedings.

10. Most districts have multiple known encroachments. Each District Superintendent should keep a file with all pertinent data of all known encroachments. Encroachments should be prioritized and proactively managed and resolved.

### **2105.3 Timber Trespass**

California Civil Code Section 834 holds that ownership of a tree depends on the location of the tree trunk relative to the property boundary. If a property boundary or boundaries crosses any portion of the cross-section of the tree trunk where the trunk contacts the soil, then the adjacent property owners jointly own the tree as tenants in common. Furthermore, that joint ownership is proportional according to the percentage of the tree trunk cross-section located on each side of the property boundary. A tree whose trunk is not intersected by a property line at the point of contact with the soil is wholly owned by the land owner regardless of whether the above ground portions of the tree hang over a neighbor's property. It is possible for a young, small tree close to the property boundary to be wholly owned by one owner, but later become jointly owned after the trunk widens during growth.

When a boundary tree is owned by tenants in common, neither owner may cut the tree without the consent of the other if such action would injure the common property. If a tree is wholly owned by one property owner but the branches or roots encroach on an adjacent property, the right of the adjacent property owner to trim branches or roots on his side of the boundary will depend on the circumstances and the reasonableness of his actions. Under no circumstances does an adjacent property owner have the right to enter state park property to cut or trim a tree that is wholly owned by the Department, unless the Department has approved and granted a Right-of-Entry Permit for the work.

Timber trespass is covered in three sections of California Law: Civil Code § 3346, Penal Code § 602, and Code of Civil Procedure § 733. These laws authorize collection of double or triple damages under specified circumstances.

#### **2105.3.1 Tree Appraisal Policy**

In most cases any tree on Department-owned or managed lands which is felled, removed or damaged without authorization is appraised using the techniques outlined in the most current edition of the publication Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers. If the Department intends to pursue criminal or civil litigation against the suspected perpetrator of a timber trespass of Department owned or managed trees, a formal appraisal will be prepared by a Department employee or private arborist who is trained in this methodology. Any personnel working on a timber trespass and/or tree appraisal issue should immediately contact the Department Forester in Headquarters for advice and guidance.

### **2106 DISPOSITION OF PROJECT LANDS**

The purpose of this Section is to establish a process and considerations for determining the disposition of project lands that have not been named, classified or merged into an existing park unit of the State Park System.

Public Resources Code § 507.1 provides that the Director shall organize the Department for the purposes of administration, including the identification of staffing to manage existing Parks and new additions to Park Units. The Commission classifies Units of the State Parks System consistent with Public Resources Code designations.

#### **2106.1 Disposition of Newly Acquired Land Process**

The Acquisition and Real Property Services Division has primary responsibility to manage the process below. The process shall begin during the first year of DPR acquiring title to the project lands.

1. Many projects represent small and obvious additions to an existing Park Unit. Determinations of such disposition shall be made by the Acquisition Chief, and reported to the Planning, Policy and Programming Committee (PPPC), who may accept the determination or request a more expanded review (*refer DOM 0203.2 – Park Operations Functions and Responsibility*). The addition shall be approved by the Director.
2. For projects whose disposition is not clear or obvious the Acquisition and Real Property Services Division Chief shall request the appropriate District prepare a recommended disposition based upon the “threshold considerations for disposition of project lands” in Section 2106.2 entitled, “Threshold Considerations for Disposition of Project Lands” below. PPPC shall review the District analysis and forward its recommendation to the Director, through the Deputy Director of Park Operations.
3. Any PPPC recommendation shall include one of the following actions:
  - The project can be merged with an existing Park Unit, needing only the Director’s approval.
  - Should the project have considerable public interest, the project can be merged with an existing Park Unit after a public review process is completed before forwarding to the Director for approval. The public review process may include involvement of the California State Parks and Recreation Commission.
  - The project can be merged with an existing Park Unit, but should include renaming or reclassification by the Commission, most likely reflecting the values of the project.
  - The project should not be merged with an existing Park Unit and should be named and classified separately by the Commission.

## **2106.2 Threshold Considerations for Disposition of Project Lands**

The following considerations should be evaluated in determining the future disposition of a project:

1. Was the project purchased with opportunity purchase funds? Was a primary purpose of the project to result in the addition to the Park Unit?
2. Is the project acreage less than that of the Park Unit?
3. Is the project within relative close proximity to the Park Unit, e.g. less than five miles?
4. Does the project possess natural or cultural values, and interpretative opportunities, similar to those of the Park Unit? Do potential recreational opportunities of the project conflict with the Park Unit or its classification?
5. Is the project subservient to the Park Unit in public recognition or relative resource significance?
6. Is there any statutory language establishing the project that has a bearing on its disposition?

## **2107 SURPLUS LAND PROCESS**

The Department does not have legislated authority to dispose nor exchange real property. That authority is granted to the Department of General Services through California Government Code Section 14664 and Section 11011, which establishes a process for all State agencies, including the Department of Parks and Recreation, to dispose of surplus properties.

California Government Code Section 11011 requires State agencies to review their land holdings annually to determine if they own lands that are in excess of their foreseeable needs and identify in writing to DGS those lands, including:

- Land not currently being utilized, or currently being underutilized, by the State agency for any existing or ongoing state program.

- Land for which the State agency has not identified any specific utilization relative to future programmatic needs.
- Land not identified by the State agency within its master plans for facility development.

### **2107.1 Surplusing Land Policy**

In order to comply with this program the ARPSD, in coordination with Park Operations, shall coordinate an annual request to the districts to review their properties and identify any that would qualify for the Surplus Land Process.

Any parcels nominated as surplus should be reviewed by ARPSD for any restrictions which prevent the parcel from being surplus. These restrictions may include the federal Land and Water Conservation Fund Program restrictions or other deed restrictions.

## **2108 DIVISION INFORMATION SERVICES**

The ARPSD maintains two programs critical to property management in the Department; the Ownership Map collection and Land Ownership Status (LOS) database. The Ownership Map collection is an ongoing effort to have all State Park System properties mapped with accurate maps showing boundaries, the year the parcels were acquired, encumbrances/easements, and other valuable data useful to field and headquarters staff.

The official Department Land Ownership maps are maintained by the Senior Land Surveyor in the ARPSD. Acquisition and Development also maintain the Map Room, a repository of maps, architectural drawings and plans.

In addition, ARPSD maintains a large Land Ownership Status database (LOS) listing every unit, its acreage, acquisition/disposal history, grantor(s) names, funding sources, expenditure and gift amounts. The LOS database provides valuable information to the Department regarding land ownership and acquisition history. The database information is used to comply with Government Code Section 11011.15, requiring each Department to maintain an accurate database of all properties held by that Department.

## **2109 GRANT AGREEMENTS FOR CONSERVATION EASEMENTS**

PRC Code Section 5011.7 allows for the issuance of grants by the Department to local government agencies and non-profit organizations for the purchase of conservation easements for the protection of California State Parks. The Department has established the following policy and procedures to follow for the monitoring of the conservation easements.

### **2109.1 Conservation Easement Monitoring Policy**

It is the policy of the Department to establish and annually review procedures to ensure public confidence and accountability in grant agreements for conservation easements purchased with funds granted by the Department.

#### **2109.1.1 Grant Agreements**

Grant agreements shall be consistent with the policies established by the Department and clearly state the purposes of the conservation effort. The defined purposes must, at a minimum, articulate and be consistent with the purposes and requirements of the funding source(s) used to pay for the conservation effort and identify the resources and conservation values to be protected.

#### **2109.1.2 Retention of Documents**

Grant agreements for conservation easements should require the grantee to retain all associated documents related to the grant. These may include the grant agreement, approved appraisals, conformed copies of recorded conveyance documents, title reports and title

policies, and the Baseline Conditions Reports. Copies of all documents shall be provided to the Department and retained in the Department offices unless an original is specified then an original will be submitted.

### **2109.1.3 Baseline Conditions Report**

Prior to the close of escrow for the acquisition of a conservation easement purchased with funds approved by the Department, the Department shall require the grantee to provide approved documentation providing detailed information on the condition of the property to be protected. The documentation (Baseline Conditions Report) shall be tailored to the purposes of the specific conservation values to be protected by the conservation easement. Descriptions of the condition of the property and conservation values should be sufficiently detailed to allow for meaningful future comparisons and easement enforcement.

The Baseline Conditions Report must be completed, signed, and certified by the landowner(s) and the grantee by the close of escrow. The certification must confirm that the Baseline Conditions Report is a current and accurate description and representation of the property, the health of its resources, and conservation values at the time of the close of escrow. The Department may verify the accuracy of the Baseline Condition Report by conducting a site inspection.

The Baseline Conditions Report must provide descriptions that are clearly defined and sufficiently detailed to allow for meaningful comparisons and must: (a) describe and document the features and characteristics of the property in relation to the purposes, conservation values, and terms of the conservation easement at the time the conservation easement is granted; (b) describe and document the conservation values and resources to be protected by the conservation easement; (c) contain all necessary information for the grantee to administer, monitor and enforce the conservation easement; and (d) include a copy of the recorded conservation easement. The grant agreement shall include minimum requirements for the content of a Baseline Conditions Report.

### **2109.1.4 Monitoring Grants and Conservation Easements**

Grant agreements shall require the grantee to monitor the landowner's compliance with the conservation easement agreement and note any changes to the property as compared to the Baseline Conditions Report and the prior monitoring report.

Prior to the close of escrow for a conservation easement purchased with funds approved by the Department, the Department shall have approved an individualized monitoring protocol by the grantee for the property to be protected. Using the Baseline Conditions Report as a benchmark, the monitoring protocol should be adaptive and address the purposes, frequency, timing and methods of monitoring the property to be carried out by the grant recipient (grantee). The monitoring protocol is the framework that will guide the preparation for and implementation of the grantee's monitoring of the conservation easement.

The monitoring protocol must be tailored to address the purposes, terms and conditions of the conservation easement and the purposes of the grant. The grant agreement shall include minimum requirements for a monitoring protocol and describe a process for amending the protocol as necessary over time.

All grant agreements shall require the grantee to monitor land protected with a conservation easement purchased with funds allocated by the Department at least annually to assess compliance with the terms and conditions of the conservation easement, as well as whether the purposes of the conservation easement and grant agreement are being met. The grant agreement shall require the grantee to provide a written report of its monitoring activities and the results of such monitoring to the Department in accordance with the approved monitoring protocol. The monitoring report shall document and describe the monitoring activities in a manner that demonstrates the monitoring was conducted in accordance with the monitoring protocol approved by the Department.

The grant agreement shall provide that upon the request of the Department, once every three years or more often as agreed to by the parties, the grantee shall arrange for the Department to access the protected property to assess compliance with the terms, covenants and conditions of the grant agreement. To the extent possible, such visits will be scheduled at the time of the grantee's annual monitoring visit.

#### **2109.1.5 Easement Transfers and Extinguishment**

The grant agreement shall contain language that requires the Department to approve the transfer or extinguishment of the conservation easement.

#### **2109.1.6 Defaults and Remedies**

Grant agreements are to include remedies that the Department may exercise if any essential term or condition of the agreement is violated. Remedies must include, but are not to be limited to, the right to seek specific performance of the grant agreement and the right to require the Grantee to transfer its interest in the conservation easement to the State or a qualified third party, as the Department may elect.

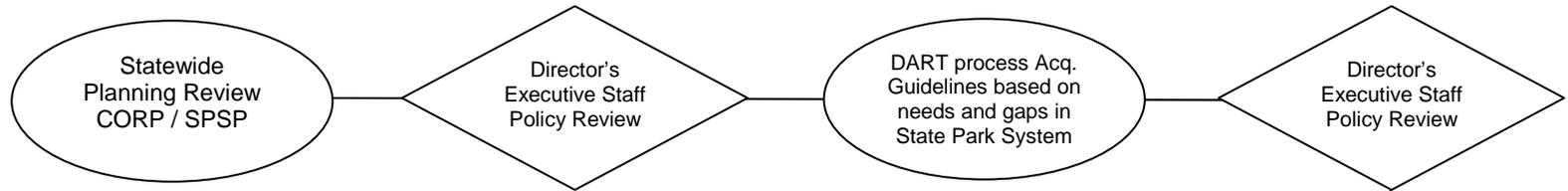
### **2110 CONSERVATION EASEMENTS PURCHASED BY THE DEPARTMENT**

The Department is authorized under PRC Section 5006 to "acquire title to or any interest in real property". This includes the acquisition of various types of easements including conservation easements pursuant to PRC Section 5011.7. In general the Department has rarely purchased or acquired easements (other than ingress/egress easements) to meet management objectives. Conservation easements acquired by the Department should, to the extent practicable, follow the monitoring protocol described above, or at a minimum, be field checked annually to insure the conditions of the easement are still in effect.

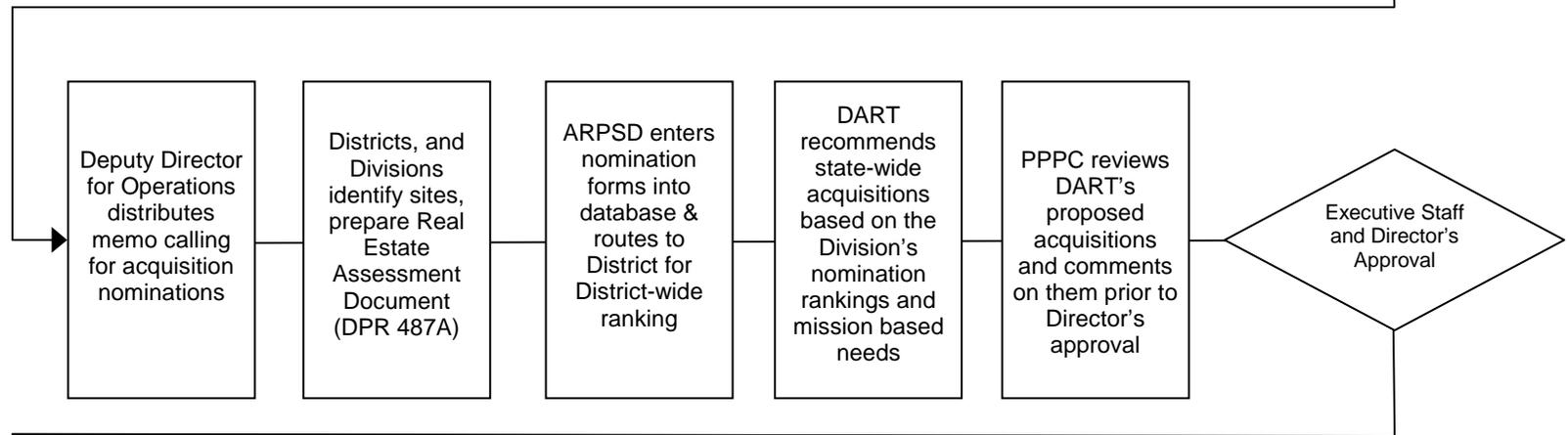
# ACQUISITION PLANNING PROCESS

## Evaluation System Development

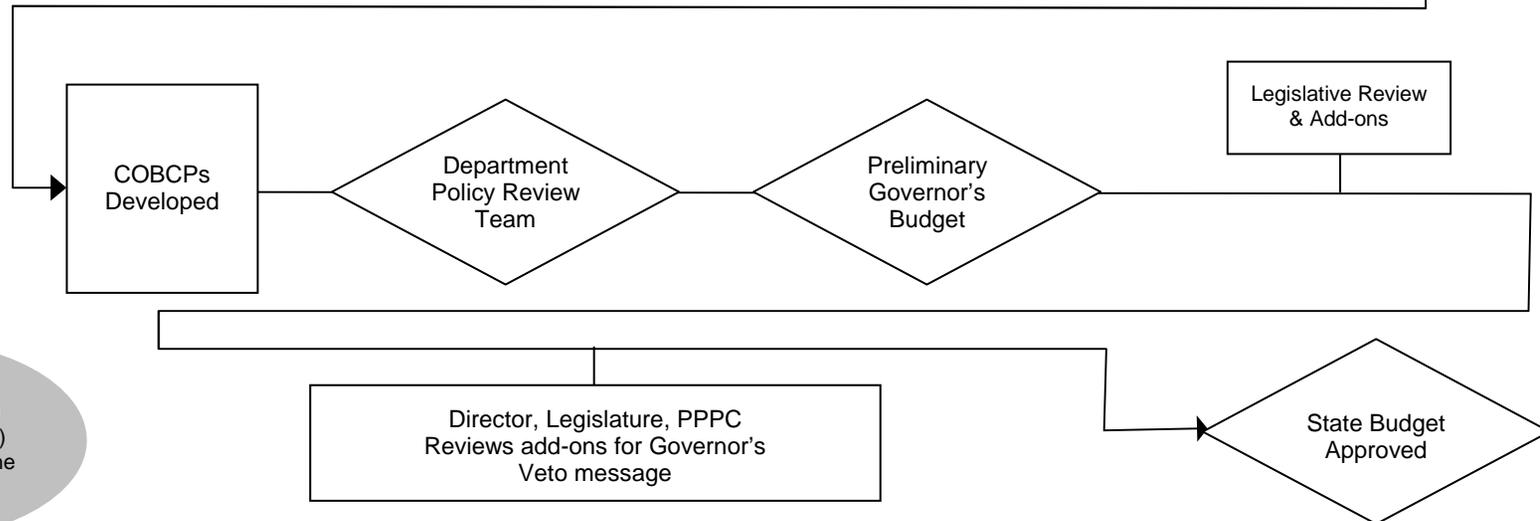
### Planning & Policy Phase



### Project Identification Assessment & Ranking Phase



### Budget & Policy Review Phases



External proposals (conservancies, local gov't., individuals etc.) may be submitted to the process at any time

Figure 2102.4.2

# REVIEW OF LEASES OR EASEMENT

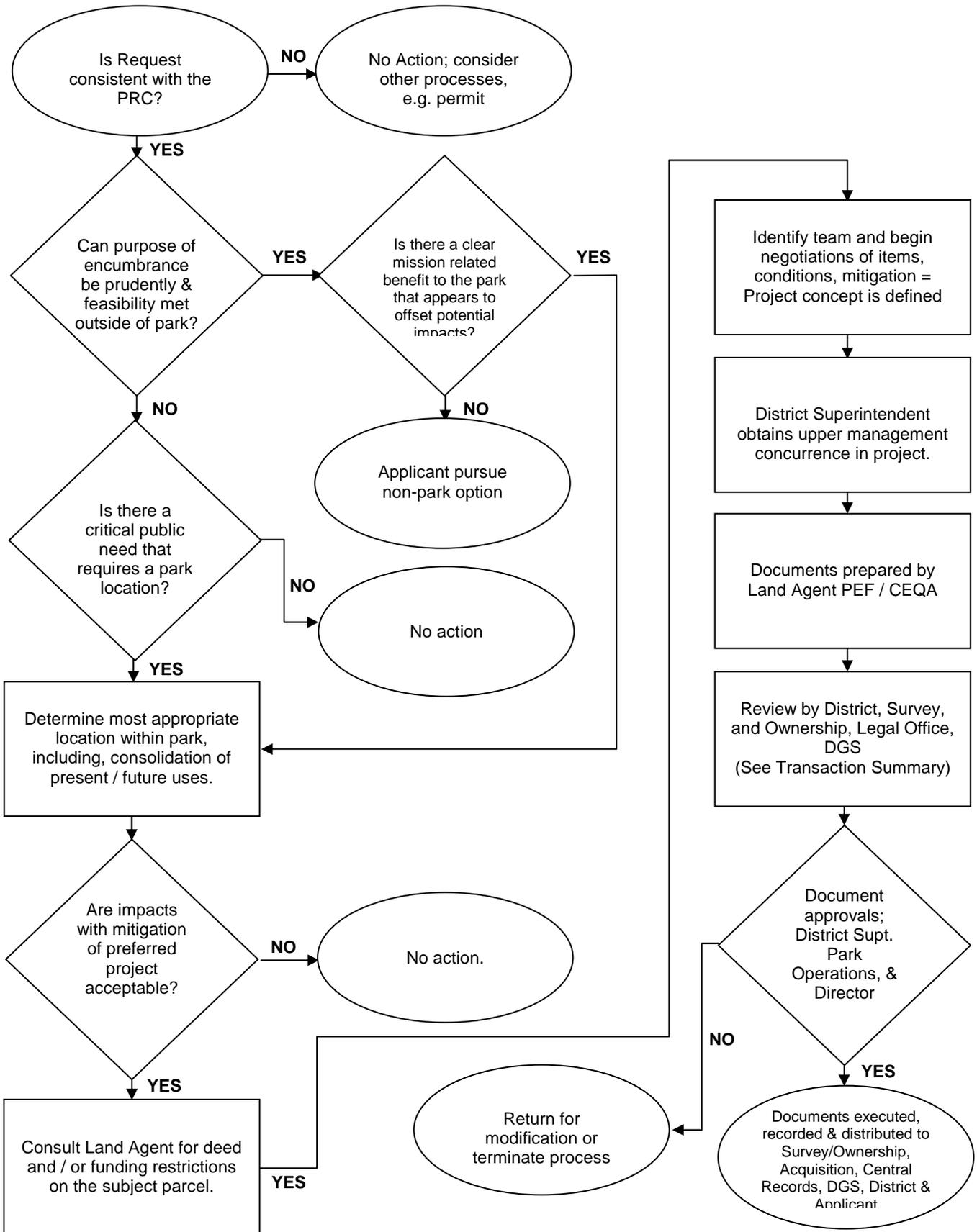


Figure 2103.3