

**POLICIES – MANAGEMENT OF
PROPERTY**

BOARD MEETING NUMBER: CC-166

RESOLUTION NUMBER: 500

DATE: April 1, 2010

**CANAL REAL PROPERTY
MANAGEMENT POLICY**

I. INTRODUCTION

The New York State Canal Corporation (Corporation) is responsible for the maintenance, operation, construction, reconstruction, improvement, development, financing and promotion of the Canal System and for implementation of the New York State Canal Recreationway Plan (CRP). In accordance with the provisions of the Canal Law, the Corporation has the authority to acquire, hold and dispose of real property to advance the purposes of the Corporation and thus, the interest of the State.

The purpose of this Policy is to: detail the Corporation's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the Disposal of real property, the Acquisition of real property and the issuance of Permits associated with the Canal System; and authorize the development of Standard Operating Procedures (SOPs) for the purpose of implementing this Policy.

II. DEFINITIONS

A. Transactions

For purposes of this Policy, Transactions shall include, but not be limited to, Acquisitions, Disposals, the issuance of Permits, and Transfers of Jurisdiction.

B. Disposals

Disposals shall include, but not be limited to, the sale of real property, the transfer of any beneficial interest in real property such as leases or easements, and the exchange of real property of at least equal value, in the public interest, and necessary for Canal purposes. Disposals shall not include the transfer of real property secured by a loan or other financial obligation of another party. Disposals shall not include Permits or Transfers of Jurisdiction.

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C. Acquisitions

Acquisitions are Transactions whereby the Corporation acquires and holds in the name of the State by purchase or appropriation, real property or rights or easements therein. Acquisitions shall also include permits and contracts entered into by the Corporation to use real property not under the jurisdiction of the Corporation.

D. Permits Issued by the Corporation

Permits issued by the Corporation are agreements granting temporary occupancy or use of lands or structures of the Canal System and for the diversion of canal waters for sanitary, farm or industrial purposes. Corporation permits are revocable instruments granting certain limited privileges that can only be issued when the same can be done without detriment to canal navigation or damage to the banks or other structures thereof.

Permits do not transfer a beneficial interest in real property. Permits are revocable in part to assure availability of the real property for Corporation or public purposes. Permits include Occupancy and Work Permits.

1. Occupancy Permit

An Occupancy Permit is a revocable instrument that authorizes the temporary, restricted use of real property under the jurisdiction of the Corporation, including, temporary use of canal lands or structures, and for the diversion of canal waters for sanitary, farm purposes or industrial purposes.

2. Work Permit

A Work Permit is a revocable instrument that authorizes construction, maintenance, inspection, survey, or other type of work or short term activity on real property under the jurisdiction of the Corporation.

E. Transfers of Jurisdiction

Transfers of Jurisdiction are transactions between the Corporation and other State governmental entities where jurisdiction over the real property is transferred and reassigned on such terms and conditions as the Corporation deems proper, but the title to the real property remains in the name of the people of the State of New York.

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III. GENERAL LEGAL REQUIREMENTS

All Transactions shall comply fully with applicable State, federal, and local laws, rules and regulations, including but not limited to: Title 9 of Article 2 of the Public Authorities Law, the Canal Law, Title 5-A of Article 9 of the Public Authorities Law, the Lobbying Procurement Act, and other applicable laws, rules, regulations, policies, procedures and executive orders.

IV. GENERAL PRINCIPLES

- A. The Corporation shall maintain adequate inventory controls and accountability systems for all real property under its control.
- B. The Board shall approve all Transactions under the Corporation's jurisdiction, except as otherwise delegated (see Section VI. Responsibilities and Authorizations).
- C. Transactions involving real property shall be consummated as promptly as possible. Unless otherwise provided by the Board, Board authorization for a Transaction shall be deemed expired one year following the date of such authorization unless the parties have executed a contract acceptable to the Corporation for such Transaction within such one-year period. Expiration of Board authorization for a Transaction shall mean that the Transaction may no longer be consummated pursuant to such expired authorization absent further action of the Board. The Executive Director shall provide periodic report to the Board regarding the expired transactions.
- D. The Corporation may dispose of any real property for its corporate purposes. The Corporation may cause to be abandoned such Canal lands as are no longer necessary or useful as part of the Canal System or as an aid to navigation thereon.
- E. A Transaction must be resubmitted to the Board during the one-year period of authorization provided in Section IV.C. if any of the following circumstances occur and the Executive Director determines that the Transaction should be progressed:
 - 1. If, in the Executive Director's determination, the circumstances change following Board action, and as a result, the material Board approved terms and conditions cannot be followed.
 - 2. If, in the Executive Director's determination, the background information about the Transaction presented to the Board changes in any material way.

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- F. Notwithstanding anything to the contrary contained in this Policy, if the Executive Director determines that it is in the best interests of the Corporation to stop progression of a Board approved Transaction during the one-year period of authorization provided in Section IV.C., the Executive Director may cancel the Transaction. An information report will then be provided to the Board, at its next scheduled meeting, detailing the reasons that the Transaction was cancelled.
- G. All Disposals will be reviewed by the Canal Recreationway Commission (CRC) for consistency with the CRP in accordance with the provisions of Section 138-b of the Canal Law and with the criteria and procedures adopted pursuant thereto.
- H. 1. No asset owned, leased or otherwise in the control of the Corporation may be sold, leased, or otherwise alienated for less than its fair market value except if:
- (a) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
 - (b) the purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
 - (c) in the event the Corporation seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Corporation's mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Corporation may effectuate such transfer.

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2. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Corporation Board and the public:
 - (a) a full description of the asset;
 - (b) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Corporation Board;
 - (c) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
 - (d) a statement of the value to be received compared to the fair market value;
 - (e) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (d) of this paragraph 2 of Section IV.H., a statement of the value to the private party; and
 - (f) the names of any other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
 3. Before approving the disposal of any property for less than fair market value, the Corporation Board shall consider the information described in paragraph 2 of this Section IV.H. and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.
- I. The Corporation shall use a competitive process open to the public for all Disposals, except in limited circumstances. The Corporation shall document the basis for progressing a Disposal without use of a public competitive process.

All Disposals or contracts for Disposal of real property of the Corporation shall be made after publicly advertising for bids except in limited circumstances where Disposals and contracts for Disposal may be negotiated or made by public auction without public advertising for bids.

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One of the following conditions must be met to dispose or contract for the Disposal of real property through negotiation or public auction without public advertising for bids:

1. The fair market value of the real property does not exceed fifteen thousand dollars (\$15,000);
 2. Bid prices after advertising are not reasonable, either as to all or some part of the real property, or have not been independently arrived at in open competition;
 3. The Disposal will be to the State or any political subdivision, and the estimated fair market value of the real property and other satisfactory terms of Disposal are obtained by negotiation;
 4. Under those circumstances permitted by Section IV.H. of this Policy; or
 5. The action is otherwise authorized by law.
- J. The Corporation shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

V. GENERAL PRACTICES**A. Transactional Analyses**

Every proposed Transaction shall have a documented analysis conducted that will address all salient real property-related issues, and that will consider all applicable alternatives listed in Section V.B. below.

B. Types of Transactions and the Appropriate Use Thereof**1. Disposals**

The Corporation may receive direct inquiries for purchasing Canal real property (e.g., easement, fee) or may determine on its own that Canal real property is no longer necessary or useful as part of the Canal System or as an aid to navigation thereon and that the disposition is in the interest of the Corporation's corporate purposes.

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The Corporation is authorized, after review and comment by the Canal Recreationway Commission (CRC), as to consistency with the CRP, to enter into leases of Canal System land which are consistent with the CRP. Lands to be leased must be determined by the Corporation to have no essential purpose for navigation. All other Disposals shall be reviewed in accordance with criteria established by the CRC.

Disposals may be performed by the Commissioner of General Services on behalf of the Corporation when the Corporation has entered into an agreement with the Commissioner of General Services pursuant to Article 9, Title 5-A of the Public Authorities Law and all other applicable provisions of the Public Authorities Law.

2. Acquisitions

The Corporation may acquire real property (e.g., fee, lease, easement) for a variety of purposes including, but not limited to, improvements to the Canal System such as the Canalway trail and maintenance, control or repair of the Canal System. The Corporation may also enter into permits and contracts to use real property not under the jurisdiction of the Corporation.

Real property may be acquired by purchase or by exercise of the power of eminent domain. When the need arises for the Corporation to acquire real property via exercise of the power of eminent domain, the Corporation shall take all steps to carry out the Acquisition in compliance with the Eminent Domain Procedure Law.

3. Permits

Permits may be used when limited privileges can be granted without detriment to canal navigation or damage to the banks or other structures thereof, but the real property cannot be disposed of because it is, or may in the future be, necessary or useful as part of the Canal System, as an aid to navigation thereon or for canal terminal purposes. Permits are revocable and may be used when the real property needs to be available upon thirty days notice for Corporation or public purposes. Unless otherwise authorized by the Executive Director, where a Disposal is contemplated, an Occupancy or Work Permit will not be issued in advance of completion of the Disposal.

Unless otherwise authorized by the Executive Director, where the issuance of an Occupancy Permit is contemplated, a Work Permit shall not be issued in advance of the issuance of the Occupancy Permit.

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4. Transfers of Jurisdiction

Transfers of Jurisdiction shall be progressed on such terms and conditions as approved by the Board.

5. Amendments, Extensions, and/or Renewals of Existing Permits and Leases

Occupancy Permits shall be reviewed before the next annual payment date or as soon as practicable thereafter, and, if necessary, revoked or redrafted to reflect this Policy and the requisite operational and/or administrative procedures.

Leases will be reviewed at the time of the next renewal and amended to reflect this Policy and the requisite operational and/or administrative procedures, consistent with the terms of the lease.

C. Use of Appraisals

1. No disposition of real property, or any interest in real property, shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the Transaction.
2. At least one appraisal shall be conducted by an independent appraiser for all Disposals and Acquisitions. Two appraisals shall be conducted by independent appraisers if: (i) the appraised value of the real property is greater than \$300,000; or (ii) it is deemed to be in the best interest of the Corporation as determined by the Contracting Officer.
3. An appraisal shall be conducted or coordinated by authorized Corporation staff for all Permits for which an appraisal is necessary.
4. When the need arises for the Corporation to acquire real property via exercise of the power of eminent domain, the Corporation shall comply with all appraisal requirements in the Eminent Domain Procedure Law.

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D. Advertising and Bidding for Disposals

When advertising for bids is required: (1) the advertisement shall be made at such time, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the real property; (2) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (3) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State and the Corporation, price and other factors considered, provided, that any and all bids may be rejected when it is in the public interest to do so.

E. Documenting Disposals by Negotiation

At least 90 days before the Disposal, an explanatory statement for each Disposal by negotiation shall be prepared and distributed by the Contracting Officer in accordance with Article 9, Title 5-A of the Public Authorities Law detailing the circumstances of the Disposal, including but not limited to, the proposed price. The statement shall be prepared and distributed prior to bringing the Transaction to the Board for approval.

The following Disposals by negotiation require an explanatory statement:

1. Any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000), except that any real property disposed of by lease or exchange shall only be subject to clauses 2 and 3 below;
2. Any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000);
3. Any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

F. Review by the Office of the State Comptroller (OSC)

The following Transactions shall be submitted to OSC for review and approval:

1. Disposals of real property or interests therein where the value exceeds \$10,000.
2. Acquisitions of real property or interests therein where the total payment exceeds \$50,000.

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G. Review by the Canal Recreationway Commission (CRC)

In accordance with the provisions of the Canal Law and SOP 900-1-02.3, Canal Recreationway Commission, the CRC will review certain Transactions to ensure that the proposed Transactions are consistent with the CRP.

H. Review of Environmental Impacts

In accordance with the State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA), the Corporation shall consider potential environmental impacts and permit requirements associated with any Transaction.

I. Review by Other Agencies

Transactions shall be coordinated with local, State and federal agencies as may be required by statute or regulation. Such agencies include, but are not limited to: NYS Office of Parks, Recreation and Historic Preservation, NYS Department of Transportation, NYS Office of General Services, NYS Department of Environmental Conservation and U.S. Army Corps of Engineers.

J. Reports

The Corporation will develop and distribute reports regarding real property management activities as required by law including, but not limited to, annual inventory reports, annual real property disposition reports, and Disposal by negotiation statements.

VI. RESPONSIBILITIES AND AUTHORIZATIONS

- A. The Board shall designate a Contracting Officer who is responsible for compliance with and enforcement of the Policy as it applies to Disposals and Acquisitions of real property.
- B. The Executive Director is authorized to interpret, implement, and administer this Policy and shall develop SOPs necessary to carry out its intent. These SOPs should identify the roles and responsibilities of Corporation personnel who implement and administer this Policy and define the manner in which those responsibilities are to be fulfilled.

The Executive Director is also authorized to oversee the actions of Corporation staff to ensure compliance with applicable laws, rules and regulations, and with this Policy.

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- C. The Chief Engineer is authorized to acquire and dispose of real property necessary to progress capital projects in accordance with the provisions of the annual Contracts Program approved by the Board. All such Acquisitions and Disposals shall be progressed in accordance with the provisions of this Policy. In general, Board approval shall not be required for such Acquisitions and Disposals, provided however, Board approval shall be required for all Disposals for less than fair market value.
- D. The Contracting Officer or designee is authorized to approve real property Occupancy Permits.
- E. The Director of Canals or designee is authorized to approve real property Work Permits.
- F. The Director of Real Property Management is authorized, in consultation with the Contracting Officer, to interpret the SOPs and to resolve any questions among staff regarding the SOPs.

VII. PENDING DISPOSALS AND ACQUISITIONS

All Disposals and Acquisitions approved by the Board prior to March 1, 2010 that are still pending final execution shall be reevaluated by the Contracting Officer to ensure compliance with this Policy. If, upon reevaluation, the terms and conditions as authorized by the Board resolution do not comply with this revised Policy, the Contracting Officer must promptly prepare a report to the Executive Director and the Board detailing the reasons that the item(s) can or cannot be progressed. When an item cannot be progressed, the Contracting Officer in consultation with the Executive Director and the Director of Canals must seek further direction from the Board which may result in the item being amended, withdrawn or otherwise resolved.