

# **FRANKFORT SQUARE PARK DISTRICT POLICY ESTABLISHING REQUIREMENTS FOR ACQUISITION AND ACCEPTANCE OF REAL PROPERTY**

## **PURPOSE**

The purpose of this policy is to prescribe District requirements, functions, procedures and responsibilities regarding determinations of the risk of exposing the District to liability for hazardous substances or other environmental cleanup costs and damages associated with the acquisition of any real property and, further, to establish additional requirements related to District acceptance of real property from developers. The requirements, functions and procedures prescribed are intended to ensure that the District determines, prior to real property acquisition, the likelihood of the presence and extent of hazardous substance-related and other environmental liability associated with real property. Such determinations must be a consideration in any decision to acquire real property and to establish the total actual or potential cost of or resulting from the acquisition and the suitability for District acceptance and use of real property proposed for donation to the District by developers.

## **SCOPE**

The responsibilities and requirements shall apply to any proposed District acquisition of real property to which District liability for hazardous substances or other environmental remediation or damages can attach.

### **A. LAND ACQUISITION ENVIRONMENTAL REVIEW GUIDELINES**

Minimize the potential liability of the District by acquiring real property that is not contaminated unless directed by the Board of Commissioners.

Identify potential hazardous substance-related threats to fish and wildlife and their habitats and other environmental problems prior to real property acquisition.

Remediate any identified hazardous substance or develop remediation plan for identified hazardous substances related to proposed property acquisition prior to closing.

Definitions:

1. **“Environmental Site Assessment”** means an analysis of an environmental site, prior to acquisition of real property, to determine the potential of, and extent of liability for hazardous substances or other environmental remediation or injury.
2. **“Hazardous Substances”** means all CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) listed substances [see 42 USC 9601(14)], petroleum products or their derivatives (including aviation fuel and motor oil).
3. **“Other Environmental Problems”** means problems associated with environmental contamination, whether or not involving hazardous substances.
4. **“Real Property”** means any land or an interest therein, and all buildings, structures and improvements affixed to the land.
5. **“Real Property Acquisition”** means the acquisition of real property, for any period of time, through discretionary acts or when required by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, revocation, or transfer.

6. **“Release”** means any release [see 42 USC 9601(22)], discharge [see 33 USC 1321(a)(2)], or threatened discharge of a hazardous substance into the air, soil, sediment, groundwater, surface water, or any structures located on the real property.

7. **“Remediation”** means meeting the requirements and standards of applicable Federal and state laws applicable to hazardous substance management or cleanup.

8. **“Remediation or Other Cleanup Costs”** means the actual or potential costs to the Department or the Service for remediation or other environmental cleanup, or other damages or costs associated with hazardous substance contamination of real property.

9. **“Requirements”** Environmental site assessments must be completed to satisfy the detailed planning and pre-acquisition requirements.

10. **“Planning Overview Surveys”** During the planning process, an "overview" survey or Phase I Environmental Survey is completed when a new parcel or property is proposed for acquisition. The purpose of an "overview" survey is to identify actual or potential hazardous substances or other environmental problems within the area proposed.

11. **“Acquisition Surveys and Analysis”** Before the District acquires any real property, the District shall:

- a. Complete a Phase I Environmental Survey to ascertain the likelihood of the presence and extent of hazardous substances or other environmental problems associated with such property and any remediation or other cleanup costs.
- b. Weigh the environmental and/or public benefits relative to the total cost of the acquisition including (a) fair market value, (b) actual or potential remediation or other environmental cleanup costs, and (c) any known or reasonably estimated monetary damages that could be associated with the acquisition.
- c. Inform the appropriate committees of the total cost(s) as determined above for any acquisition of contaminated property.

## **B. ENVIRONMENTAL SITE ASSESSMENTS**

1. **Phase I Environmental Survey** must be completed for all acquisitions. The Phase I Environmental Survey is used to determine whether there are any potential hazardous substance or other environmental problems and whether a Phase II Survey is needed.

2. **Phase II Environmental Survey** may be necessary when Phase I Survey identifies potential presence or absence of hazardous substances in the potential sites identified in the Phase I survey. If the proposed acquisition continues on past this point, a Phase III environmental survey will be required.

3. **Phase III Environmental Survey** is required when the District determines that a hazardous substance is present. Additional sampling and research is necessary to determine the extent of any hazardous substance and the actual or potential cost for remediation.

## **C. ASSESSMENT STANDARDS AND CONDITIONS**

1. **Minimum Standards:** The Phase I environmental study should recognize existing environmental conditions and include information that is reasonably ascertainable. It must be complete in terms of technical accuracy and comprehensiveness.

2. **Qualifications of Personnel:** Environmental site assessments must be conducted by qualified individuals.
3. **Environmental Surveys** must be completed by an Environmental Contaminants Specialist or contractor approved by the Forest Preserve District.
4. **Time Limit:** The Environmental Site Assessment Level I Survey should be completed within one year prior to the real property acquisition
5. **Land acquisition budget requests** should include the costs for pre-acquisition surveys.
6. **Pre-acquisition environmental site assessments** are pre-acquisition costs and may be charged to the Land Acquisition Fund.
7. **Remediation or other cleanup costs** are post-acquisition costs and are not chargeable to these accounts.

## **D. ACCEPTANCE OF REAL ESTATE FROM DEVELOPERS**

### **1. Park Improvements to be Performed by Developer. Developers will complete, or caused to be completed, the following:**

#### **a. Engineering**

1. Park Sites shall be relatively flat with a minimum of 2% slope to allow for positive drainage.
2. All park land and trail shall have positive drainage to the creek with no low spots or areas holding water. If necessary, the grading of swales, storm sewer inlets, pipe or culverts shall be installed to provide positive drainage.
3. All storm sewer inlets, manhole covers and sanitary manhole covers shall be flush with proposed finished grade.
4. If soil borings and soil report from a registered engineer indicates such, modifications may be made to reflect the existing soil conditions.
5. All areas of a Park Site shall be fine graded, fertilized and seeded with cool season turf grass to provide an acceptable stand of grass. The Park District will provide the specifications for the types and mixes of fertilizer and seed, as well as the requirements for maintenance, and standards for final acceptance of established turf. Turf grass shall be maintained by the Developer as specified until the Park Site is deeded to the Park District.
6. The District may require additional details based on the scope of the proposed donations.
7. Property pins differentiating the Park Site from private property shall be clearly marked and visible at time of acceptance.
8. The Developer shall maintain the Park Site and trail until the improvements are accepted, and the property is deeded to the Park District per the requirements of this agreement. Maintenance shall include removing and repairing areas of encroachment on future park property i.e. grass clippings, yard waste, sod, debris, etc. All park property to be deeded to the Park District shall be free from encroachment and repaired to the specified condition prior to acceptance.

**b. Park Improvements.**

1. Developer shall prepare and submitted, or cause to be prepared and submitted, final engineering plans for improvements to be constructed on the Park Site to the Park District for its review and written approval. Developer shall complete, or cause to be completed, the improvements in conformity with such final engineering plans approved by the municipality, the municipality's Land/Cash Ordinance and the Park District's plans and details. Developer shall grant access to Park District to have the Park Site inspected and approved for conformance with such requirements. Developer shall complete, or cause to be completed, the Work as promptly as practicable following execution of an Agreement. Park District shall not bear responsibility for maintenance of the Park Site or for Park improvements until the Park District has accepted title to the Park Site.

2. The Developer shall cause no covenants, rules or regulations to be placed on the Park Site. The Title Commitment tendered with the deed for the lands conveyed hereunder shall demonstrate compliance with this requirement.

3. **Subdivision Improvements.** Prior to Park District acceptance of a Park Site from a Developer, the Developer shall construct or cause to be constructed, at no cost to the Park District, as required by the final engineering and landscape plans approved by the municipality, any subdivision improvements on and adjacent to the Park Site required by the municipality, including without limitation, public street improvements with the required curb and gutter, concrete sidewalk, sod or seed with erosion control blanket, and street trees in parkway, etc.

4. **Security for Developer Performance.** Developers shall be required to provide as security for the full and faithful performance of Park Improvements, an Irrevocable Letter of Credit from an approved banking institution or Performance Bond in the name of the Park District in an amount equal to 110% of the cost for completing the Park Improvements. Said security shall be in a form approved by the Park District, and a written notice of expiration shall be provided to the Park District 90 days in advance of expiration date. (Performance for the installation of utilities, stormwater management facilities, curb and gutter, sidewalks, street trees, and other infrastructure required by the municipality, and already covered by a financial guarantee to the municipality, need not be included.)

**c. Deed of Dedication.**

Developers shall be required to cause Park Sites to be conveyed to the Park District by Deed as soon as Developer has completed the Park Improvements. When the Work has been completed, Developer shall be required to send notice to the Park District advising Park District that the Park Improvements have been completed and that Developer is prepared to cause execution of a Deed conveying the Park Site to Park District. Within thirty (30) days after receipt of notice that the Park Improvements have been completed, Park District shall advise Developer if any portion of the Park Improvements have not been completed or have not been completed. Upon determining that the Developer has completed the Park Improvements satisfactorily, the Park District will issue a letter of acceptance to the Developer requesting a copy of the recorded Plat, the original Warranty Deed from Developer conveying the Park Site to the Park District, Title Insurance Policy and a completed Form PTAX-203 executed by the Park District. There shall be no encumbrances on the Park Site including but not limited to homeowners association fees, special service areas, recapture fees, mortgages, liens or any other financial obligation.

**d. Real Estate Taxes.** All general real estate taxes on the Park Site to the date of delivery of the Deed conveying such Park Site to the Park District, shall be paid by Developer, and any and all general real estate taxes accruing or arising for the period after the date of recording of said Deed shall be paid by Park District.

**e. Reservation of Easements.**

1. **Construction Easements.** The Park District may reserve easements in the Deed conveying the Park Site to the Park District in favor of the municipality, and Developer, their employees, agents, representatives and contractors, to enter upon, cross and recross the Park Site as may be necessary for the municipality and Developer to carry out their obligations set forth herein or other obligations required by law when shown to be required by a public utility. All restoration to the said area shall be done without cost to the Park District (unless the damage is caused by the Park District, its agents or contractors).

2. **Utility Easements.** The Park District may, at the request of a Developer, and without cost, grant to the municipality, to a Water Reclamation District, to Commonwealth Edison Company, or to other public utilities, temporary and permanent easements and rights-of-way, across, over, under and through the Park site which are reasonably required for the construction, installation and maintenance of water and sewer facilities, or other public utility services required for the improvements of this development, provided, however, that the location of such easements and rights-of-way shall be subject to the approval of the Park District, which approval may include consideration of aesthetic, functional and safety factors given the use of the land as a public park but which approval in all events shall not be unreasonably withheld. There will be no blanket easements over any part of a Park Site.

3. **Easement Conditions.** As a condition to the granting of any easement of right-of-way, the grantee thereof shall be required to agree that, in the event of any use of such easement or right-of-way for the construction, installation or maintenance of the facility for which such easement or right-of-way was granted, that (a) the grantee shall be solely responsible for continuing maintenance, (b) the grantee shall hold the Park District harmless from any claims for personal injury or property damage which may arise or result from the activities of the grantee, its employees, agents, representatives and contractors, in connection with such construction, installation or maintenance, and (c) all restoration to the said area shall be done without cost to the Park District.

This policy is effective as of \_\_\_\_\_, 2016.

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Board President

ATTEST:

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Park Board Secretary