



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

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TO: Commissioners Mital, Simpson, Helgeson, Manning and Brown

FROM: Steve Newcomb, Environmental Management Department Manager, and
Karl Morgenstern, Environmental Management Supervisor

DATE: November 20, 2015

SUBJECT: Real Property Policy (SD-14) and Property Management Procedures

OBJECTIVE: Board Action: Resolution No. 1532

Issue

Management of EWEB-owned property assets requires Board approved policies to guide the implementation of internal property management procedures. EWEB Property Management staff have updated current Board Policy SD-14 and developed a set of procedures to implement the policy to provide a legal and consistent approach to the actions associated with acquisition and disposition of property, encroachments, lease terms, easement and permit processes, and adds fees to cover EWEB staff costs associated with some of these activities. Management wants to inform the Board of Property Management Procedures (PM.200.PRC.01-00) that will be adopted following approval of SD-14.

Background

EWEB's Property Management portfolio includes: 244 parcels totaling approximately 1,500 acres; 41 leases with third parties to use EWEB property for cell towers, parking, building rental, storage, and other approved purposes. There are over 60 known encroachments on EWEB property by adjacent property owners (i.e., involving barns, sheds, stairs, decks, driveways, vegetation, fences, etc.); 7,983 easements; and, numerous revocable permits of various types. EWEB's Property Management group has been operating under a set of draft procedures dated October 1993 that were never adopted.

Discussion

Revisions to Real Property Policy SD-14 contains two changes to update this policy (see Attachment A). These changes are as follows:

- Property Acquisition – added reference to “other products (i.e., telecommunications)” and deleted “steam products”.
- Easement Acquisition – added “and public” to include the fact that EWEB currently obtains easements for EWEB facilities on private *and public* property.

The Property Management Procedures (PM.200.PRC.01-00) provide the process and approach to implementing the policy. Section 6 (*Property Management*) of the Procedures (see attachment B) contains the majority of changes that differ from how EWEB has managed properties in the past. The main changes include:

1. Instituting a Revocable Encroachment Permit process (Section 6.4.4); and
2. Charging fees for permits that EWEB issues to recover administrative costs (see Attachment C).

Documenting and enforcing encroachments that currently exist on nearly 25% of EWEB-owned properties in support of water, electric and generation operational needs and priorities may expose EWEB to legal challenges and disgruntled customers. These new procedures provide staff a process for preventing future encroachments from happening, while documenting and addressing existing encroachments through a permit process that requires removal of the encroachment upon sale of the property. The procedures provide a fee system that recovers costs associated with monitoring and evaluating encroachments.

Recommendation

Management recommends the Board approve Resolution No. 1532 to incorporate the language found in Attachment A and adopt the fee schedule found in Attachment C. Following Board approval of Resolution No. 1532, the All Utilities section of the Customer Service Policies will be updated to reflect the fee schedule.

Attachment A – Revised Real Property Policy

Policy Number: SD14

Policy Type: Strategic Direction

Policy Title: Real Property Policies

Effective Date: December 1, 2015

The following property policies shall govern the acquisition, management, and disposal of EWEB property and property rights.

1. Property Acquisition – To ensure that facilities are available for the production and distribution of useable energy, water, and ~~other steam~~ products (i.e., telecommunications), EWEB will consider the purchase of fee property. The decision to purchase fee property rather than lesser rights such as easements shall be based on the extent of control necessary to adequately protect the utility system.

2. Property Management – EWEB’s property shall be managed to comply with City, County, State and Federal ordinances, statutes, laws and EWEB’s Charter, Mission and Statement of Legacy.

3. Property Disposal – The Board may declare any real property surplus. The decision to declare a parcel surplus will be based on current and future utility needs land use and environmental considerations. The Board may direct staff to dispose of any properties declared surplus. Any properties disposed shall be disposed in accordance with applicable ordinances, statutes, laws and other Board policies.

4. Easement Acquisition – Easements will be obtained for all EWEB facilities located on private and public property, exclusive of electric service lines for the property owner’s sole use.

5. Easement Management – EWEB will provide customers with easement information when requested. EWEB may provide limited landscape maintenance within an easement only under certain circumstances.

6. Permits – EWEB will obtain permits for temporary uses on private property and on City of Eugene property where easements are not available.

7. Leases – EWEB staff, with Leadership Team Manager approval, may lease property for utility purposes when purchase of the property is not possible or in the best interest of EWEB.

Source: Real Property Policy & Procedures Approved 10/1993, Revised 07/05/2005, Revised 1/06/2015, Resolution No. 1503, Revised 12/1/2015, Resolution No. 1532.



Eugene Water & Electric Board

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Property Management Policies and Procedures

Document Owner: Karl Morgenstern

Authoring Department: Environmental Management

Resides with: Environmental Management Technical Assistant

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Approval

Signature

Date

DOCUMENT CHANGE LOG

A history of changes made to this document is shown below. The current document supersedes all previous procedure versions, understandings, agreements, and written or oral guidelines. Documents are effective the date they are approved and until superseded or determined obsolete.

Date	Rev	Change Description	Entry First Initial, Last Name	Check A Column	
				Major Change	Minor Change
mm/dd/yyyy					

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1. PURPOSE

The purpose of this document is to provide policies and procedures for the acquisition, management and disposal of EWEB real property and property rights, exclusive of improvements.

2. SCOPE

This procedure describes all aspects of Property Management responsibilities.

3. TERMS AND ABBREVIATIONS

- *Application Fee* – A fee based upon the administrative cost to create a permit, operational and surveyor costs and recordation fees.
- *Appraisal* – An opinion of value based upon factual analysis. An estimation of value by third party of suitable qualifications.
- *Condemnation* – The taking of private property for public use. Consent of the owner is not required but fair compensation must be paid.
- *Deed* – Any one of many conveyancing or financing instruments, but generally a conveyancing instrument, given to pass free title to property upon sale.
- *Easement* – A non-possessory interest held by one person in property of another where the first person is accorded partial use of the property for a specific purpose.
- *Easement Vacation/Termination* – To end or to cause to stop or end an approved easement. Merger, release, or abandonment are the three basic means by which easements are terminated.
- *Eminent Domain* – A governmental right to acquire private property for public use by condemnation, and the payment of just compensation.
- *Encroachment* – Generally, construction onto the property of another, as of a wall fence, building, etc.
- *Environmental Assessment* – A physical inspection of a site (land and improvements) to determine if environmental problems exist. Typically this is done prior to sell or lease to identify potential liability and risk associated with environmental degradation.
- *Integrated Vegetation Management* – A decision making process where you use mechanical, manual, biological and chemical control methods to manage vegetation and pests in a decision making hierarchy.

- *Lease* – An agreement by which an owner of real property (lessor) gives the right of possession to another (lessee), for a specified period of time (term) and for a specified consideration (rent).
- *Lease Value* – The monetary worth of a property, good or service to buyers and sellers at a given time. Typically determined through market value or appraisal methods.
- *Pending Litigation* – Either a civil lawsuit brought by a citizen or group of citizens against another person or group of person, or a criminal charge brought against someone by the government or the state, that have not been “heard” or “tried” yet.
- *Permit* – An official document giving permission to conduct specific activities (permitted actions) to someone (grantee) on property owned by the entity providing authorization (grantor) for a specified period of time (term). Permits are revocable at will.
- *Preliminary Title Report* – A report prepared prior to issuing a policy of title insurance that shows the ownership of a specific parcel of land, together with the liens and encumbrances thereon which will not be covered under a subsequent title insurance policy.
- *Public Notice* – An advertisement published to announce EWEB property proposed for disposal.
- *Surplus Declaration* – Properties that have been determined by staff to be of excess to the needs of EWEB and recommended for sale.
- *Tax Assessor’s Map* – An official document showing the locations and parcel identification numbers for all property located within an ad valorem (property) tax jurisdiction.
- *Title Report* – See Preliminary Title Report.

4. RESPONSIBILITIES

The Property Management Procedures, *PM.200.PRC.01-00*, describes the roles and responsibilities of how EWEB Departments work together for the acquisition, disposition, and management of EWEB property rights, easements, leases, and permits.

5. PROPERTY ACQUISITION

Board Policy: To ensure that facilities are available for the production and distribution of useable energy, water, and other products (i.e., telecommunications), EWEB will consider the purchase of fee property. The decision to purchase fee property rather than lesser rights, such as easements, shall be based on the extent of control necessary to adequately protect the utility system.

Procedure:

5.1 DETERMINATION OF NEED

A Manager or Supervisor may initiate the acquisition process. Departments may determine the need for additional property based upon approved facility plans and/or Capital Investment Plans, and deliver property selection criteria to Property Management. These criteria may include general location, size parameters, access requirements and elevation parameters if appropriate. Property Management will seek available property that meets the criteria or investigate properties identified by staff. Property Management will work with the requestor and appropriate staff to evaluate and rate the available properties and make recommendations for further investigation where appropriate. Once the requestor has made a final decision on the most desirable property, and subject to the application of ORS Ch. 35, the General Manager may authorize Property Management to complete acquisition. Property acquired through Eminent Domain requires a Board action.

5.2 TITLE REPORT

A Status of Record Title (SORT) report will be obtained during preliminary evaluation of property options for acquisition. A preliminary Title report will be ordered as part of the execution of the sale agreement for the property to be acquired.

5.3 SALE AGREEMENT/ENTRY PERMIT

Property Management will negotiate a Sale Agreement with the owner of the desired property that contains authorizations to conduct due diligence upon the property for environmental assessment, survey/engineering work, and other needed activities. A typical Sale Agreement will contain provisions related to determining purchase price.

Subject to requirements of ORS Chapter 35 in lieu of a Sale Agreement, Property Management may contact the owner of the desired property, explain EWEB's interest in the property and negotiate an entry permit if necessary. The entry permit may contain provisions for an environmental site assessment, fee appraisal and survey/engineering work depending on the specific situation.

5.4 ENVIRONMENTAL ASSESSMENT

The Environmental Management Department will manage consultants to provide environmental assessments for desired properties per applicable ASTM Standards. A written report of the Level 1 environmental assessment results will be sent to the requesting Manager and other appropriate staff with a copy sent to Property Management. If the report contains a recommendation for a Level 2 environmental assessment, the requesting Manager will make a determination whether to proceed with the Level 2 assessment or pursue another parcel. Should Level 3 work be required on the proposed site, the requesting Manager will make the decision in consultation with Environmental Management to either proceed with the work or pursue a different parcel. Environmental Management will provide a recommendation to the requesting Manager

how to proceed based on environmental liability and risk as determined by the environmental assessment.

5.5 APPRAISALS

Property Management will initiate a contract for the services of a state certified appraiser. The appraisal shall identify the parcel and property rights appraised, the valuation approach used, and state the fair market value of the property or property right being appraised. Supporting documentation shall be included. Property Management will review the appraisal for its completeness and competence. Property Management will contract with an alternate appraisal firm to complete a review appraisal to confirm that the appraisal has followed the appropriate process and that the value conclusion is well supported. Appraisal review may trigger need for conducting a second appraisal. All properties identified for acquisition will be appraised, except if value is estimated below \$10,000. Property Management may provide a Letter of Value in lieu of appraisal to estimate acquisition price if less than \$10,000.

5.6 NEGOTIATIONS

Negotiations will be performed by Property Management in consultation with the requesting Manager and other staff as appropriate. Eminent Domain may be used, however, when considered necessary and authorized by the Board.

If EWEB chooses to exercise its right of Eminent Domain through condemnation to acquire property for utility purposes, Property Management will obtain legal counsel to refine the process. In general, the process for condemnation includes the following:

1. Board Resolution to authorize proceedings and acquisition of property in accordance with ORS Ch. 35. The Board Resolution will include the requisite determination of need and public purpose.
2. Provide land owner 15-day notice to access property for appraisal, inspections and other appropriate activities.
3. Determine appropriate appraisal format based on type of property.
4. Make offer to land owner and provide 40-days to accept or reject offer.
5. If landowner rejects offer, File Action & Order of Possession.
6. Attempt to negotiate settlement terms with landowner.
7. Offer to compromise 10 days before trial date.
8. Other actions as necessary.

EWEB staff shall consider the following when determining an appropriate path toward acquisition through condemnation: a) relocation costs of occupants; b) practical need for lot line adjustments; c) keeping home site with agricultural zoning; d) value of mineral rights or environmental attributes which are separable from property ownership; and e) the timing and expense of condemnation process.

5.7 CLOSING

EWEB will obtain property by Warranty Deed unless a suitable alternative form of deed is approved by the Environmental Manager or General Manager for good cause shown. Title Insurance, in an amount equal to the purchase price of the property, will be obtained at the time of closing, usually to be paid for by the seller. When properties are acquired from the open market, closing costs should be split equally between buyer and seller. When EWEB acquires property from a property owner who did not already have the property for sale, closing cost may be paid by EWEB. Closing will be handled through a Title Company. Where a Title Insurance Policy provides adequate protection for EWEB's interests, the Title Companies may be exempted from Business Service Agreement requirements.

6. PROPERTY MANAGEMENT

Board Policy: EWEB's property shall be managed to comply with City, County, State and Federal ordinances, statutes, laws and EWEB's Charter, Mission and Statement of Legacy.

Procedure:**6.1 PROPERTY INVENTORY**

EWEB Property Management will maintain a written or electronic inventory of all EWEB property. The inventory will be reviewed and updated periodically as needed and will include:

1. Tax Lot Number of Parcel
2. EWEB File Document Number
3. Size of Parcel
4. Present and Anticipated Future Use(s)
5. Last Field Inspection Date
6. Inspection Priority Status
7. Electronic Photo (optional)
8. Location
9. Zoning Code
10. Topography
11. Date Acquired
12. Environmental Conditions*
13. Property Map/Boundary Surveys
14. Notes

* Environmental Conditions will note such things as wetlands, Rare & Endangered plants, riparian zones, sensitive habitat, etc. when applicable.

6.2 PROPERTY INSPECTIONS

All EWEB property will be inspected regularly by surveyors and/or Property Management staff. EWEB properties under a FERC license agreement; appropriate staff will conduct inspections and maintenance per those license requirements. Parcels identified with a "HIGH" inspection priority will be visited within one year of such designation. Parcels known to be environmentally sensitive, have a higher frequency of unauthorized use, or have encroachment issues will be considered for "HIGH" inspection priority status. A parcel's inspection priority will be reviewed at the time of each inspection to verify and continue the designated priority or revise the priority for prospective action.

6.3 PROPERTY MAINTENANCE

EWEB will maintain its properties to support the present utility purpose and future needs taking into account reasonable financial and environmental stewardship:

6.3.1 EWEB will manage vegetation and appropriate landscaping per the Vegetation Management Plan developed for each property that takes into account operational needs, surrounding land use, and costs to perform activities. Property Management will coordinate with Environmental Vegetation Management Coordinator and the Right-of-Way Vegetation Management Supervisor to develop and update vegetation management plans for each property. EWEB will employ the Integrated Pest Management (IPM) in the maintenance of its lands. IPM involves recognizing the sensitivity to pesticides and acknowledging alternative methods to pest control and seeks a balance of environmental responsibility with economic reality (*Attachment A – Integrated Vegetation Management Plan 2011*).

6.3.2 Maintain all fencing, hardscaping, signage, and other features in working order in support of operational needs for the property and to attempt to mitigate adverse impacts to adjacent lands.

6.3.3 Maintain survey markers associated with properties to provide visible delineation of property boundaries.

6.3.4 Address illegal dumping and camping in a timely and consistent manner per EWEB's Illegal Camping Policy.

6.4 PERMIT GRANTING

EWEB may issue Entry or Encroachment Permits to document actions conditionally or permissively allowed on EWEB property, clarify expectations, and ensure activities are limited in scope and acceptable uses.

- 6.4.1 *Revocable Permits*: Revocable Permits are a hybrid of perpetual easements for other local government agencies and public utilities (e.g., City of Eugene, Springfield Utility Board). Revocable Permits are documents recorded at the County Deeds and Records and become public record (*Attachment B – Revocable Permit Templates*). A fee will be charged for Revocable Permits reflecting the cost of processing the permit and allow other charges to be billed (such as operational crew time or right of way agent time) (*Attachment C – EWEB Property Management Fee Schedule*).

In the event EWEB sells the property encumbered by the facility under a Revocable Permit, EWEB may: 1) revoke the permit requiring the facility to be relocated; 2) negotiate perpetual easement for the facility prior to sale; or 3) sell portion of property encumbered by the facility. Revocable Permit process is similar to easement granting (Section 6.5).

- 6.4.2 *Revocable Entry Permits*: Any public or private organization or individual shall seek prior permission from EWEB to enter upon EWEB property, dedicated easement, and/or right of way in the form of a Revocable Entry Permit. Revocable Entry Permits are granted for temporary permission to enter upon EWEB property in order to maintain adjacent property, deliver or remove materials from adjacent property, or other acceptable activities. Revocable Entry Permits are not necessary for non-vehicular pedestrian access associated with day-use recreation at EWEB properties posted for such activity. Property Management will issue Revocable Entry Permits using legal counsel reviewed templates (*Attachment D – Revocable Entry Permit Templates*). A fee will be charged for Entry Permits reflecting the cost of processing the permit and allow other charges to be billed (such as operational crew time or right of way agent time) (*Attachment C – EWEB Property Management Fee Schedule*).

All permitted uses will be described in writing, approved and signed by the Supervisor(s) representing the subject parcel(s). In some instances draft Entry Permits will require review by Risk Management and/or Environmental Management to develop terms and conditions addressing potential liabilities associated with the permitted use(s) prior to permit approval. Acceptable uses will meet each of the following conditions:

- a) Uses will not interfere with the function of the utility;
- b) Uses will not cause additional expense to the utility without adequate reimbursement;
- c) Uses must conform to zoning laws, statutes and ordinances;
- d) Uses will not cause deterioration or degradation of the property including any known environmental resources.

EWEB's issuance of any permit does not determine the lawfulness of the intended use by the permitted user. In all instances, the permitted user remains responsible for their actions and compliance with all federal, state and local laws.

6.4.3 Water Use Agreement (Leaburg/Waltermville Canals): Historically, as a courtesy to property owners in the vicinity of the Leaburg and Waltermville Power Canals, EWEB has allowed the diversion of water from the power canals for irrigation purposes only (non-potable use). This practice continues at this time. The following procedures are required to allow current and future diversions to occur.

6.4.3.1 Requests to EWEB to divert water from either of the power canals will be routed to Property Management. Property Management will inform the potential irrigation water user that the following documentation is required to start the process:

1. Proof of applicable State of Oregon water right;
2. Proposed method to divert water from the power canal; and,
3. In the case of leased property, the lessee is required to provide a water right for the leased property, in addition to a copy of the signed lease.

Property Management will notify the Generation Manager, Hydro Generation Supervisor, and Generation Engineering Supervisor of the request. Generation Engineering will determine if the request for diversion can be granted under the circumstances and the location designated for diversion. Generation Engineering will report this information to Property Management for consideration whether to approve the proposed diversion.

6.4.3.2 If EWEB approves the request, Property Management will provide the requestor with two original Water Use Agreements for the requestor to review and sign, which shall incorporate EWEB drawing showing approved diversion station location and methods (*Attachment E – Water Use Agreement and current EWEB engineering standard, Drawing No. D-8834*). Property Management will also provide the requestor a letter that states:

1. Only installations as shown on EWEB current engineering standard (*Attachment E*) will be approved;
2. The irrigator shall follow the installation and posting requirements as noted on current EWEB engineering standard (*Attachment E*);
3. The irrigator's proposed method for diverting water from the canal shall be illustrated on a Professional Engineer stamped Installation Plan to be submitted to EWEB for approval. A materials list shall be included with the Installation Plan for approval;

4. No work on or near the canal will be allowed until an Installation Plan has been reviewed and approved by EWEB and proof of insurance provided per Water Use Agreement (*Attachment E*);
5. Installation shall be done by requestor with EWEB oversight of work on EWEB canal. EWEB will not sign the Water Use Agreement (*Attachment E*) until the diversion work has received a final inspection and acceptance by an EWEB engineer; and,
6. Failure to follow the requirements of the Water Use Agreement may result in immediate disconnection from the power canal.

6.4.3.3 Requestor shall be responsible for developing Professional Engineer stamped design as part of the Installation Plan using EWEB engineer standards (*Attachment E*). When received, Property Management will forward copies of the signed Water Use Agreement and proposed Installation Plan to the Generation Engineering Supervisor and request a review. Generation Engineering will review and either approve or reject the water users proposed Installation Plan to divert water from the power canal. The assigned engineer will notify Property Management of the engineer's approval or denial (with cause(s) for denial) of the diversion Installation Plan. Property Management will notify the water user of either design approval and establish a schedule for installation, or reasons for denial.

6.4.3.4 Once the request is approved and the irrigator notified, Generation Engineering will monitor the diversion installation and perform a final inspection with the Hydro Generation Supervisor for the Leaburg-Walterville project. Generation Engineering will inform Property Management via e-mail of their approval of the final inspection.

6.4.3.5 With Generation Engineering's approved final inspection, the Generation Manager will review and sign the Water Use Agreement and return both signed copies to Property Management. Property Management will send one signed original agreement to the water user, the second original to EWEB's Library file, scan and add to Property Management GIS, and provide copies to Generation Manager, Generation Engineering Supervisor, and Hydro Generation Supervisor.

- 6.4.4 *Revocable Encroachment Permits*: It is the policy of EWEB that there shall be no unauthorized encroachments over, upon, across, above or below the surface of any portion of EWEB property, easement, and/or right-of-way. Where an undocumented encroachment already exists without a valid EWEB permit, the owner shall be required to remove the encroachment at his/her own expense, EWEB will send owner a letter by certified mail requiring removal of encroachment from EWEB property, easement and/or right-of-way within 30 days. After 30 days, if not resolved EWEB will remove encroachment and recover costs from offending party. If existing encroachment is permanent infrastructure (i.e., building, barn, shed, concrete/paved driveway) and determined by EWEB to not be curable, a temporary Revocable Encroachment Permit may be issued.

Property Management will use legal counsel reviewed templates for the issuance of any Revocable Encroachment Permits (*Attachment F – Revocable Encroachment Permit Templates*).

Encroachment Permits may be recorded in Lane County Deeds and Records at the discretion of Property Management in consultation with the Supervisor representing the subject parcel based on the nature of the encroachment. Encroachments involving landscaping, gardens or other vegetation will typically not be recorded in Lane County Deeds and Records. Encroachments involving structural improvements will typically be recorded in Lane County Deeds and Records. Recordation of the Encroachment Permit gives notice to potential Buyers of the existence of the encroachment that must be removed upon sale

Revocable Encroachment Permits shall contain the following terms and conditions:

- a) Grantor retains all property rights that existed prior to the granting of this permit. It is understood that this permit allows a limited encroachment for purposes specified above on the Grantor's property. In no way shall this permit be construed to allow any additional encroachment.
- b) No additional buildings or structures shall be constructed, placed or stored on the Grantor's property.
- c) Grantee agrees to keep the Grantor's property clear of storage and other obstructions except for those specifically approved herein. At no time shall the Grantee allow the permit area to become unsightly or violate any nuisance ordinance or applicable environmental or other law. At no time shall access be blocked to any utility facilities within the permit area.
- d) Grantee agrees to indemnify and hold harmless the Grantor from

any and all claims arising from or out of the use of said property by the Grantee or others.

- e) The Grantor may, with or without cause, revoke this permit with 90 days written notice to the Grantee.
- f) The Grantor intends to maintain its property as needed and reserves the right to do so including, but not limited to, mowing, clearing, and fencing etcetera.
- g) This permit is exclusive and personal to Grantee during his/her/its ownership of that above-referenced property located adjacent to the above-referenced Grantor property, and not to subsequent owners; it is neither transferrable nor perpetual. This permit shall terminate upon sale, transfer or conveyance of said Grantee's adjacent property. Grantee shall notify Grantor at its address noted below of the transfer of Grantee's said property at or prior to closing and the termination of this permit.
- h) Upon termination of this Permit, the Grantee agrees to remove all encroaching structures, fencing, gardening, landscaping, irrigation and other materials subject to this Permit at Grantee's sole expense within 30 days, except to the extent EWEB agrees, in writing, to allow specific encroachments to remain on Grantor's property. If the Grantee fails to remove unauthorized encroachments, EWEB will remove encroachments and Grantee agrees to reimburse Grantor for actual costs of removal per EWEB schedules.

Revocable Encroachment Permits shall carry with them the following fees (see *Attachment C – EWEB Fee Schedule*):

- a) An application fee based upon the administrative cost to create the permit, operational costs, and recordation fees. The application will also require EWEB Surveyors to create drawing as an exhibit that describes the location and nature of the encroachment with appropriate fees for Surveyor's time.
- b) A yearly fee for the use of EWEB property based on the actual area encumbered by the encroachment and the nature and/or severity of the encroachment. Legal review will guarantee this will not create a lease-hold estate and thus trigger a Landlord Tenant relationship.
- c) A fee to terminate the encroachment reflecting administrative cost to process the documents and recordation fees.

The above-described fees serve two purposes. First they will reflect the actual cost of staff time needed to handle these issues. Secondly, the fees serve as a disincentive to encroach on EWEB property.

In the event that the property owner rejects the Revocable Encroachment Permit, Property Management will issue written notice to the individual(s) responsible for the encroachment indicating EWEB's intent to pursue litigation for relief using legal counsel reviewed letter. Property Management will maintain and prioritize the list of encroachments pending litigation and select cases to move forward with based on available resources. It is expected that Property Management will move cases toward litigation within 180 days from issuance of intent to litigate letter. For cases moving to litigation, Property Management will consult with legal counsel to file suit to cure the encroachment.

6.5 EASEMENT GRANTING

This involves EWEB granting easements to third parties to place facilities on EWEB property. In limited situations the General Manager may grant easements for specific uses over, upon, across, above or below the surface encumbering EWEB owned land providing those uses will not conflict with EWEB's present or future uses for the property.

Uses that are permanent in nature may be considered for easements. Property Management will develop an Easement Request Memorandum that provides a description of the request, background of the circumstances, issues related to the request, and staff recommendations on how to proceed (*Attachment G – Easement/Permit Request Memorandum Template*). The Memorandum is circulated for signature approvals by all Managers associated with the property under easement consideration and routed to the General Manager for final approval. The General Manager may grant an easement if all of the conditions stated above in Permit Granting (Section 6.4.2) are met.

6.6 LEASE GRANTING

When a permanent easement is not appropriate EWEB may grant a lease. A lease is appropriate when the Lessee will profit, or generate revenue, from the use of the leased land or facilities.

6.6.1 *Lease Request Process*

When an offer to lease a portion of EWEB property or facilities is received the following process will be followed:

- a) Property Management is notified and takes the lead to ensure consistency of lease conditions, terms, valuation, and establishing proper billing accounts.
- b) Obtain concurrence from Manager(s) and Supervisor(s) responsible for property that lease activities and terms will not interfere with EWEB operations or interests using the same criteria listed in Permit Granting (Section 6.4.2).
- c) Use legally reviewed lease agreement templates that establish terms

and conditions (*Attachment H – Lease Agreement Templates*).

6.6.2 Lease Approval

Property Management staff will use legally reviewed lease agreement template (*Attachment H*). The Environmental Manager and Risk Manager will review all lease agreements prior to approval. The Manager representing the subject parcel will have final approval authority on the lease. Leases on joint-use property will be reviewed and approved by each Manager of the operational units potentially impacted by the lease. Once approvals are obtained from each Manager, the lease shall be subject to approval and execution by the General Manager or their designee will sign the lease as EWEB's authorized agent. Acceptable lease uses will meet the conditions detailed under "Permit Granting" in Section 6.4.2.

6.6.3 Terms of Lease

The length of lease shall be no greater than five years, but may be renewable. Lease payments shall be due at the beginning of each month. Lease payments, at the discretion of the Lessee, may be paid annually in advance. Lessee must provide adequate liability insurance to protect EWEB. The amount of insurance will be determined by EWEB's Risk Manager.

6.6.4 Determination of Lease Value

Property Management will be responsible for determining lease value in consultation with the Manager and/or Supervisor representing the subject parcel. Except grazing leases, lease values will generally be determined in consultation with a licensed real estate appraiser or broker. A minimum value for all leases will be set to cover administration expenses. Grazing leases may be exempted from all but the minimum value to cover administration expenses to EWEB in not having to mow the parcel to stay within vegetation requirements.

Lease consideration shall not be set below market value except when good cause is established for a lease to other government agencies and/or nonprofit organizations for use dedicated to public service and subject to approval from Manager representing the subject parcel(s).

7. PROPERTY DISPOSAL

Board Policy: The Board may declare any real property surplus. The decision to declare a parcel surplus will be based on current and future utility needs, land use and environmental considerations. The Board may direct staff to dispose of any properties declared surplus. Any properties disposed shall be disposed in accordance with applicable laws, statutes, ordinances and other Board policies.

Procedure:**7.1 STAFF REVIEW**

Property Management will review all properties not currently used or slated to be abandoned in the near future. A list of parcels identified in the review will be routed to the all Managers to determine present and future needs for each parcel. Examples of needs include, but are not limited to:

1. Property for utility facilities such as water treatment and intake sites, substations, reservoirs, utility corridors and pump stations.
2. Land use and environmental considerations such as preservation and enhancement of water quality, increased utility setbacks or buffer strips for sight, sound and safety, trees and drainages (e.g. wildlife habitat and wetlands) where these uses are consistent with the utilities mission.
3. Uses that may otherwise assist the Board in implementing measures consistent with the utility's Mission, Vision and strategic directions.

The parcels that are determined by all Managers as not having a present or future need for utility purposes will be added to a Potential Surplus Property List that is maintained by Property Management.

7.2 SURPLUS DECLARATION

Those properties that have been determined by Staff to be excess to the needs of the utility and recommended for surplus designation by the Property Horizontal Team will be presented to the Board for a resolution declaring property surplus. Staff will provide conclusive findings in a Memorandum that demonstrates to the Board that such properties do not meet the utilities needs as described above. Board action declaring a parcel surplus may take place at any time. Actual disposal does not have to immediately follow Board action. Properties declared as surplus by Board resolution will be added to the Surplus Property List (*Attachment I – Board Surplus Designation Resolution Template*).

7.3 PRELIMINARY TITLE REPORT

Prior to any attempt to dispose of a surplus parcel, a preliminary Title Report will be ordered from a licensed Title company.

7.4 APPRAISAL

Prior to any attempt to dispose of a surplus parcel, an appraisal will be obtained. Refer to Section 5.5, Property Acquisition Appraisals, of this document for appraisal details.

7.5 CITY OF EUGENE NOTICE

After obtaining Board a surplus designation and prior to attempts to dispose of a surplus parcel, Staff will notify the Eugene City Manager, Attorney, and Executive Assistant in writing of the availability of the property pursuant to Eugene Code 2.196 (*Attachment J – City of Eugene Potential Surplus Letter Template*). If the City desires to obtain the property, the City Manager shall request negotiations within thirty (30) days of the notification.

After requesting negotiations, the City Manager and EWEB General Manager, or their representatives, have 90 days to negotiate an agreement to compensate the Board for the property to be transferred. Any agreed transfer to the City and compensation to the Board shall be completed within five (5) years from the date of the signed agreement.

The Board may dispose of the property by such means and terms as it deems appropriate if the City Manager, or the City Managers authorized representative, notifies EWEB in writing that the City is not interested in the property, fails to request negotiations within thirty (30) days of notification of availability of the property or if negotiation of the property transfer agreement is not completed within five (5) years of that notification.

7.6 NOTICE OF OTHER AGENCIES

If the City of Eugene declines the opportunity to obtain a parcel of surplus property, an opportunity may be afforded to other public agencies within whose boundaries the property lies, such as Lane County, City of Springfield and School Districts. The notified agencies will be given 30 days to respond. Those properties which receive no agency interest and are not immediately marketed will be added to a Surplus Property List, which will be maintained by the Property Management.

7.7 PUBLIC NOTICE

Advertisements announcing the proposed disposal of EWEB property shall be published within one week prior to the Board meeting for approval of property disposal and shall contain: tax lot number, legal description, size, location, zoning, EWEB's mailing address, Property Management's phone number, and time and place of Board meeting. The notice will be displayed in the Register Guard. The public notice and Board meeting shall comply with ORS. 221.725.

7.8 DISPOSAL OPTIONS

After the property has been declared surplus by the Board, a Title Report and appraisal have been obtained, and public notice issued for listing, Property Management will make a presentation to the Board. As part of that presentation, staff will recommend one of the following disposal options. The Board will select a disposal option and

approve a resolution directing staff to market the surplus property.

1. Direct Sales

Direct sales are straight forward transactions, exchanging land for dollars. Parcels for direct sale include whole parcels, minor partitions and/or lot line adjustments.

2. Trades

Trades of surplus property for property that can be used by the utility as provided by ORS 271.340. Appraisals shall conform to ORS 271.350.

3. Donations (Disposal at less than Market Value)

Donations of EWEB property shall be limited to other governmental agencies and non-profit organizations and shall conform to ORS 271.330 and ORS 271.350.

Potential beneficiaries may include the City of Eugene, City of Springfield, Lane County, school districts and land trusts. Donation of property is allowed, providing the donation conforms to the Board's policy and is otherwise permitted by law.

7.9 MARKETING

When a particular parcel, or portion of a parcel, is to be marketed, Property Management will order a preliminary Title Report and an appraisal. When an independent fee appraiser is used, the same criteria established under Property Acquisition Section 5.5 will apply. If less than one year has elapsed since the property was declared surplus, the appraisal obtained at that time may be sufficient.

In order to maximize value, some parcels may require a planning action such as:

1. Re-Zoning
2. Reservation of an Easement
3. Formal Partition
4. Subdivision
5. Verification of Unit of Land/Legal Lot Status
6. Septic Approval
7. Installation of adequate water supply
8. Use of conservation easement or CCR to protect social and/or environmental values important to EWEB and/or the community.

Property Management may employ two different approaches to marketing properties for sale:

1. *Auction:* Use internal sources or hire an auction company to advertise property for sale. The ad will contain the location, size, zoning, physical description, Board approved minimum bid price of the parcel, and the last date bids will be accepted. If no bids are received at or above the minimum bid price, the Board may choose to accept or deny any and all bids received. Staff may accept, without additional Board

approval the highest acceptable bid over the minimum bid price established by the Board.

2. *Direct Sale:* EWEB will employ a local Real Estate Broker with expertise regarding the type of property to be sold to represent EWEB interests.

7.10 CLOSING

Closing will be executed through a Title company. EWEB will pay for fifty percent (50%) of the closing costs as well as purchase Title insurance on the parcel sold. All sales will be fully payable at closing and there will be no mortgage terms. EWEB will not finance or “hold paper” on any property sold. Ten percent (10%) of the bid price in the form of a cashier’s check shall be submitted with the written sealed offer. The balance is due at closing.

8. **EASEMENT ACQUISITION**

Board Policy: Easements will be obtained for all EWEB facilities located on private and public property, exclusive of electric service lines for the property owner’s sole use.

Procedure:

8.1 EWEB INITIATED EASEMENTS

EWEB initiated easements are those easements required for system improvements, road widening projects or other projects that are not a result of a request for service. EWEB staff requesting Property Management to acquire an easement shall follow the Easement Acquisition Procedure Manual (*Attachment K – Easement Acquisition Procedure Manual*). Staff will attempt to acquire the easement without monetary compensation to the property owner. Staff will notify EWEB's Financial Services of any easement compensation paid for proper IRS reporting.

8.2 CUSTOMER INITIATED EASEMENTS

Customer initiated easements are those easements required due to a customer’s request for service. Staff will attempt to acquire the easement at no cost in an effort to keep facility extension costs reasonable. If the owner of the property over which the easement is requested insists on compensation, the property owner and the customer will be encouraged to work out a fair settlement without involving EWEB. Any costs incurred preparing and acquiring the easement plus EWEB overhead will be passed on to the customer as part of the facility extension costs.

8.3 STRIP EASEMENTS

Strip easements are those easements of a consistent width that are adjacent and contiguous to a property line. Strip easement documents will be prepared by Property Management and reviewed by survey personnel per the Easement Acquisition

Procedure Manual (*Attachment K*).

8.4 AS-BUILT EASEMENTS

As-built easements are those easements that are obtained after the facility, for which the easement is being obtained, has been installed. As-built easements require surveys and will be prepared by survey personnel and reviewed by Property Management per the Easement Acquisition Procedure Manual (*Attachment K*).

8.5 EXHIBIT EASEMENTS

Exhibit easements may be obtained prior to the installation of the facilities. Exhibit easements do not require surveys but have attached exhibits showing details of the facility's intended location the Easement Acquisition Procedure Manual (*Attachment K*).

8.6 EASEMENT TRACKING

Requests for easements will be coordinated and tracked by Property Management. Written requests for easements submitted to Property Management should include a Work Order, name of EWEB staff, Tax Assessor's Map with the requested easement indicated, and a copy of the job drawing or sketch. In an effort to save money, customers requesting service may request the opportunity to prepare the easements related to their project. EWEB will only allow customer prepared easements to be accomplished using Licensed Professional Surveyor and/or Attorney of Law representing the customer. Although this option is not preferred, blank easement forms will be provided to the customer's agent to prepare and obtain the necessary easements on behalf of their client. After the customer's agent has prepared the easement and before the easement has been signed by the property owner(s), the easement document shall be returned to Property Management for review. Once Property Management has approved the easement, the customer's agent will have the property owner(s) sign the document and have the signatures notarized. The easement document must be accepted by the appropriate EWEB Supervisor(s) or Manager(s) potentially affected by this action. The customer's agent will then properly record the document at the County Records Office, and return a copy of the fully executed and recorded easement to Property Management. Property Management will enter the recorded easement into EWEB's GIS system for tracking.

All easement documents will have an attached exhibit clarifying the intent of the easement.

9. EASEMENT MANAGEMENT

Board Policy: EWEB will provide customers with easement information when requested. EWEB may provide limited landscape maintenance within an easement only under certain circumstances.

Procedure:**9.1 CUSTOMER INQUIRES****9.1.1 *Easement Inquiries***

Property Management will provide EWEB easement information to anyone who requests it. All existing EWEB easements are recorded at the County Deeds and Records Office and are therefore public information. EWEB will not establish the physical location of an easement because this requires a survey.

9.1.2 *Vegetation Control*

EWEB will not normally provide landscape maintenance within easements. However, with approval of the Supervisor responsible for the subject facilities the easement protects, staff may provide limited landscape assistance under special circumstances. Staff may maintain clearance and access to its facilities by trimming vegetation away from electric or water facilities in accordance with EWEB's established environmental management procedures (*Attachment A – Integrated Vegetation Management Plan 2011*).

9.2 EASEMENT VACATION/TERMINATION

EWEB staff will recommend that the General Manager re-convey and vacate easements when no present or future utility use for the easement can be determined.

When a request for easement vacation has been received, Property Management will route the request along with applicable maps to the Supervisors and staff associated with the facilities potentially impacted by the action. With staff Supervisors concurrence, Property Management will prepare Resolution and Conveyance & Release documents for appropriate Leadership Team Manager approval before routing to the General Manager for final approval and signature.

9.3 EASEMENT ENCROACHMENTS

To protect EWEB easement rights, encroachments will be addressed as described in Property Management Section 6.4.4.

10. PERMITS

Board Policy: EWEB will obtain permits for temporary uses on private property and on City of Eugene property where easements are not available.

Procedure:**10.1 ENTRY PERMITS**

Entry Permits are to be obtained prior to final design on projects requiring as-built

easements (*Attachment L – As-Built Easement Entry Permit Template*). Permits will allow for EWEB employees, contractors and assigns to enter upon private property to facilitate the installation of facilities and to survey facilities for the preparation of the final easement document. EWEB will agree to hold the property owner harmless from EWEB negligence and the property owner will agree to grant EWEB an easement once the document is prepared.

10.2 USE PERMITS

The City of Eugene and EWEB have agreed to grant each other Use Permits instead of easements.

10.3 RAILROAD PERMITS

When a Railroad Permit is required, EWEB Engineering staff will deliver to Property Management a sketch showing the exact location of the crossing and a detailed description of all facilities to be placed in the proposed crossing per Railroad Permit Procedure Manual (*Attachment M – Railroad Permit Procedure Manual*). This process must take place well in advance of the expected construction phase as the railroad companies frequently take in excess of three months to process an application. Railroads charge annual fees for all crossings. An attempt will be made to pay a larger, one-time, up-front charge so additional annual fees can be avoided.

11. LEASES

Board Policy: EWEB staff with Leadership Team Manager approval, may lease property for utility purposes when purchase of the property is not possible or in the best interest of EWEB.

Procedure:

Leases are not a preferred property right and should be avoided. However, in some Circumstances such as out-of-town office space, a lease is the only option. All lease agreements will be reviewed by Legal Counsel prior to execution. Leases shall conform to ORS. 271.360.

12. REFERENCE DOCUMENTS

12.1 [Attachment A – Integrated Vegetation Management Plan 2011](#)

12.2 [Attachment K - Easement Acquisition Procedure Manual](#)

12.3 [Attachment M – Railroad Permit Procedure Manual](#)

PROPERTY MANAGEMENT ACTIVITY FEE SCHEDULE - Updated October 20, 2015				
Property Management Activity	Fee Amount	Fee Duration	Reason for Fee	Calculation of Fee
Revocable Permit	\$400	One-Time	Administrative costs for setup and recording with County	WAM Work Design No 150647 - Right-of-Way Agent time (average 4 hours); vehicle use (average 1 hour); recordation fee (average \$57)
Revocable Permit	\$225	As Needed	Operational costs for inspection and/or standby	WAM Work Design No 150649 - Line crew lead (average 2 hours); Crew vehicle (average 2 hours)
Revocable Entry Permit	\$345	One-Time	Administrative costs for setup and tracking	WAM Work Design No 150648 - Right-of-Way Agent time (average 4 hours); vehicle use (average 2 hours)
Revocable Entry Permit	\$225	As Needed	Operational costs for inspection and/or standby	WAM Work Design No 150649 - Line crew lead (average 2 hours); Crew vehicle (average 2 hours)
Revocable Encroachment Permit	\$940	One-Time	Administrative costs for setup, survey/mapping encroachment, and recording with County	WAM Work Design No 150650 - Right-of-Way Agent time (average 5.5 hours); vehicle use (average 1 hour); recordation fee (average \$57); Average 2.5 hours survey crew time; crew vehicle use (2.5 hours)
Revocable Encroachment Permit	\$335	Annual	Permit renewal fee including encroachment inspection	WAM Work Design No 150651 - Right-of-Way Agent time (average 4 hours); vehicle use (average 1 hour)
Revocable Encroachment Permit	\$390	One-Time	Administrative costs associated with termination of permit (vacation process)	WAM Work Design No 150652 - Right-of-Way Agent time (average 4 hours); vehicle use (average 1 hour); recordation fee for vacating (average \$57)

**RESOLUTION NO. 1532
DECEMBER 2015**

**EUGENE WATER & ELECTRIC BOARD
RESOLUTION APPROVING REVISION TO
REAL PROPERTY POLICIES**

WHEREAS, The Eugene Water & Electric Board (EWEB) periodically reviews, revises and updates Board Policies for consistency, legality, correctness and to reflect actual practices evolving as continual improvement;

WHEREAS, The Board Policy SD14 – having been presented at the November 3, 2015 and December 1, 2015 Regular Board Meeting and revised as follows:

1. Modifications to language in Real Property Policy (SD-14) to update Property Acquisition, Easement Acquisition, and Leases;
2. Implementation of the Property Management Activity Fee Schedule, effective December 2, 2015.

NOW THEREFORE, BE IT RESOLVED, that the Eugene Water & Electric Board does hereby resolve to adopt the revisions of Real Property Policy (SD-14) as so revised. Furthermore, be it resolved that the Board hereby authorizes the General Manager to implement the Property Management Activity Fee Schedule and reflect those prices in updated Customer Service Policies effective December 2, 2015.

DATED this 1st day of December, 2015.

THE CITY OF EUGENE, OREGON
Acting by and through the
Eugene Water & Electric Board

President

I, ANNE KAH, the duly appointed, qualified and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is true and exact copy of the amended Resolution adopted by the Board in its December 1, 2015 Regular Board Meeting.

Assistant Secretary