

To: District Staff

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Subject: Fact Sheet - Policy Regarding Preservation of Floodways and Floodplains, and the Purchase of the Land for Future Improvements

The purpose of this fact sheet is to provide some insight on the District's Policy regarding the preservation of floodways and floodplains through the District's Property Acquisition Reserve.

History

In 1979, the Colorado State Legislature assigned the District four-tenths of a mill to be used for "maintenance and preservation of floodways and floodplains." The District's Board of Directors initially adopted this policy in 1989, which stated that property acquisition is an important tool, for use in specific cases, to ensure the maintenance and preservation of floodplains and floodways. The intent was also to reserve land for future drainage and flood mitigation improvements. In 1989, an identified preservation account was created in the Maintenance Fund, and through the years, a number of properties have been acquired using this policy and these maintenance funds.

The Policy has been amended a number of times over the years, resulting in some conflicting language and implementation problems. In addition, the level of funding was not able to keep up with the rising cost of property, which did not allow for effective use of the policy. The Board addressed this by adopting Resolution No. 69, Series of 2019, which updated the language of the existing Policy, and providing a sufficient reserve moving forward. In order to use the funds in this reserve, the District's Board of Directors must approve each proposed property acquisition by resolution.

Funding

The Board has set the new funding limit for this Property Acquisition Reserve at 3% of the District's annual revenue moving forward. Beginning in 2020, the reserve shall be administered with the intent that each county's expenditures are pro rata to the District's revenue share from that county over the history of the Reserve. If it becomes apparent that certain counties are not benefitting from the Property Acquisition Reserve, increases may be made to those counties' maintenance budgets until pro rata equity is achieved, under the guidance of the Board of Directors.

Use of the Funds

The Property Acquisition Reserve may be used for the following purposes only when other existing methods of preserving the floodplain or floodway, such as floodplain regulations, subdivision regulations, public land dedication requirements, etc., have been exhausted:

- As a last resort to prevent unsafe development from occurring in floodplains and floodways
- To preserve right-of-way for future drainage and flood mitigation improvements, identified in masterplans, when the right-of-way is in danger of being developed
- To prevent unsafe development downstream of detention facilities
- To purchase severely damaged properties after flooding as a part of a planned recovery efforts
- To preserve channel and floodplain storage when called for in a master plan
- When available for purchase from a willing seller, to acquire property and remove structures from the floodplain or floodway when called for in a master plan or final design
- To obtain right-of-way necessary to perform maintenance of floodplains and floodways
- To preserve flood routing capabilities of inadvertent detention facilities, when agreement for such preservation has been made between the District and the affected local governments
- To purchase properties in imminent danger of flood or flood-related damage
- Other similar purposes where preservation is in the best interests of the goals and objectives of the District and the local government

When the Property Acquisition Reserve is used to preserve right-of-way for a future flood mitigation project listed in the District's current five-year Capital Improvement Plan (CIP), that project may be required to reimburse the Property Acquisition Reserve when the project commences, subject to a decision by the Board. This reimbursement rate will be subject to the percentages set in the IGA with the local government for the CIP project, typically 50% -50% split, requiring the local government to reimburse 50% of the acquisition cost.

The Property Acquisition Reserve may also be used to acquire undeveloped floodplains in order to preserve them in their natural state. For such acquisitions, the District may contribute funds in an amount up to the lesser cost of 100% of the delineated floodplain portion of the floodplain property, or 50% of the entire floodplain property. All property acquired for purposes other than future construction right-of-way shall be utilized in a manner beneficial to the public, and consistent with the flood hazard such as recreation and open space. The District will attempt to work with appropriate agencies, such as parks and recreation departments and districts to provide for beneficial utilization of the acquisitions.

Once a property is acquired, Property Acquisition Reserve can be used for removal of any structures that remain on the property, site cleanup and grading, revegetation, and any fencing that may be required to secure the property. Once this work is complete, it is the responsibility of the local government receiving the property to maintain the property moving forward.

Process

Once a property has been identified, the District will work with the local government to determine the market value of the property, provide an environmental assessment (as needed) of the property to ensure it is free from contaminants, and negotiate the conditions of the sale. The District will typically look to the local government to lead this process through their established procedures for property acquisition, and provide support as requested. In the case that the local government is not able to do this, the District will take the lead, working closely with the local government.

Once the acquisition is complete, the local government, of whom has jurisdiction, shall own the acquired property either in a fee or in a non-revocable easement, of which they shall be responsible for as well. For each property acquired under this Policy, District will enter into an agreement with the local government having jurisdiction to ensure that the property shall not be used for any purpose that will diminish or preclude its natural state as a preserved floodplain or its use for drainage and flood mitigation purposes. The agreement will also ensure that the local government having jurisdiction shall not dispose of or change the use of the property without approval of, and reimbursement to District.