

CHAPTER 16
POLICIES FOR NON-DISTRICT USE OF
AQUEDUCT CORRIDORS

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This chapter of the P&P contains policies governing the use of the corridors for Salt Lake Aqueduct (“SLA”), Point of the Mountain Aqueduct (“POMA”), and Little Cottonwood Conduit - Raw Water (“LCC-RW”) (collectively, “Aqueduct Corridors”); construction, excavation, removal and/or placement of materials, or other earth work on the Aqueduct Corridors; and construction near enough to the Aqueduct Corridors to potentially adversely impact District facilities and Aqueduct Corridors, by persons or entities other than the District.

16-1 GENERAL BACKGROUND

- 1) SLA. The SLA, located in Wasatch, Utah, and Salt Lake Counties, is critical to the water supply of Salt Lake City’s retail water service area, Sandy City’s retail water service area, and other areas of Salt Lake County. Reclamation designed and constructed the SLA under authority of the Reclamation Act of 1902 and the Public Works Administration Appropriation Act of 1938. Since 1938, the District has been responsible for the operation and maintenance of the SLA, has repaid Reclamation all costs incurred in constructing the SLA, and has been entitled to the use of the SLA. Pursuant to the Provo River Project Transfer Act, Pub. Law. 108-382, and a title transfer agreement among the District, the Provo River Water Users Association, and the United States, title to the SLA, including the SLA Corridor, was transferred to the District on October 2, 2006. The SLA was constructed between 1939 and 1951.
- 2) POMA. POMA, located in Utah and Salt Lake County, is a pipeline and associated facilities constructed by the District to convey raw water to the District’s Point of the Mountain Water Treatment Plant, and to carry treated water to the District’s member cities and others. The District owns and is responsible for the operation and maintenance of all POMA facilities. POMA is critical to the water supply of Salt Lake City’s retail water service area, Sandy City’s retail water service area, and other areas of Salt Lake County. POMA was constructed between 2005 and 2006.
- 3) LCC-RW. LCC-RW, located in Salt Lake County, is a pipeline and associated facilities constructed by Salt Lake City in 1931 to convey water from Little Cottonwood Creek. In 1960, the LCC-RW was modified to supply raw water to the Little Cottonwood Water Treatment Plant. In 2014, MWDSLS received title to the LCC-RW, its corridor, and related improvements.

- 4) Clear Corridors Serve the Public Best. Aqueduct Corridors are most effective when clear of all obstructions excepting appropriate vegetation. The District's interests in the Aqueduct Corridors were acquired for the primary purpose to operate, maintain, repair and replace the aqueducts and related improvements. The District's goal is to maintain Aqueduct Corridors in a manner that will serve the District's need to safely and efficiently accomplish its mission of reliably delivering water to its member cities and others. Through education, negotiation, and other appropriate means, the District will work to gain certainty for the District and others regarding the rights and obligations of the District and others relative to District Corridors.

- 5) General Intent of this Chapter. The intent of this chapter is to provide guidelines and authorization to staff for the uses of District Aqueduct Corridors by others. The District recognizes the need to balance the objectively reasonable interests of non-District fee owners in the reasonable use of and protection of their property with the needs of the District and the District's right to utilize and protect the Aqueduct Corridors for the benefit of the public. Where the District holds property in fee, the District's current and future uses of the property must be considered before permitting use by a third party; in many cases this will preclude use by others. Agreements document balance between the needs of the District and Affected Property Owners. Agreements should reasonably accommodate other uses of Aqueduct Corridors so long as it is clear that such uses will not violate the District's rights. In doing so, the District desires to:
 - a) maintain its ability to have necessary, proper, and timely access to the Aqueduct Corridors as well as the Aqueducts and any related improvements;
 - b) minimize the costs to the public by protecting reasonable constructability for future repair and replacement projects;
 - c) minimize costs to the public by avoiding litigation;
 - d) minimize the exposure to liability claims;
 - e) provide adequate security;
 - f) enter into written agreements with others who are using the Aqueduct Corridors to outline the rights and obligations of the District and such others; and
 - g) fulfill the District's fiduciary responsibilities to protect District assets for the benefit of the District's member cities and the water users served by those member cities.

- 6) District Rights. Portions of the Aqueduct Corridors are held in fee, portions are held in easement, and portions are in place pursuant to agreements. The application of these policies will necessarily vary depending upon the nature of the interest of the District. The District's rights should be reviewed for each property in applying these policies.

- 7) Site Characteristics. How the District addresses a particular non-District use of an Aqueduct Corridor may vary based on location, topography of that portion of the Corridor, the horizontal and vertical location of the aqueduct in the corridor, the District's property interest, existing and past agreements, and other similar factors. For example, areas more vulnerable to seismic events, or slope instability, or more prone

to require emergency repairs may have stricter requirements than areas without those characteristics.

- 8) General Implementation. The District's intent is to implement these objectives and provide these protections in a fair, timely, and reasonable manner. Except as otherwise directed by the Board, fees for Agreements should be reasonably calculated to generally recover direct and indirect costs to the District associated with evaluating, approving, and administering such Agreements as to District fee lands. Where the District holds an interest other than fee title the District should be responsible for direct and indirect District costs associated with evaluating, approving, and administering Agreements. The Engineering Committee or Board may authorize Agreements in addition to those the staff is authorized to issue by this chapter, or make exceptions to the policies, where doing so would serve the interests of the District and the public the District serves.
- 9) Pre-existing Uses. Many uses on the Aqueduct Corridors have occurred since acquisition of the Aqueduct Corridors. The District does not recognize existing uses as exempt from these policies (i.e., grandfathering). Uses inconsistent with these policies should be resolved during an agreement or agreement renewal.
- 10) Changes to this Chapter While Applications are Pending. An Application that is substantially complete and is being diligently pursued will be considered for approval based upon this chapter as written as of the time the District receives such Application, with the following exceptions: 1) applicable amendments to this chapter that are pending before the Board or a committee of the Board at the time an Application is received, and that are adopted before the Agreement is signed by the District, will apply; and 2) amendments to this chapter that occur after receipt of an Application and before the Agreement is signed by the District will apply if the General Manager ("GM") determines there is a compelling reason to apply such amendments. The GM is authorized to develop and implement guidelines to inform an Applicant that an application is not substantially complete or is not being diligently pursued.

16-2 GENERAL INTENT OF POLICIES

- 1) District Assumption of Reclamation Agreements. Reclamation has historically provided, by agreement, Affected Property Owners and others the right to use portions of the SLA Corridor pursuant to 43 United States Code, § 387; 43 Code of Federal Regulations, Part 429; and Reclamation Manual/Directives and Standards LND 08-01. As a condition of title transfer, the District assumed all of the rights and responsibilities of Reclamation under then-valid Reclamation agreements for use of the SLA Corridor. Many of these agreements with Reclamation have expired or will expire. The District is not obligated to extend such expired agreements.
- 2) Fair Market Value of Use of District Fee Lands. The District is generally obligated by state law to charge present fair market value for use of District lands and interests in

lands, unless the District has statutory authority to the contrary. *E.g., Salt Lake Cty. Comm'n v. Salt Lake Cty. Attorney*, 985 P.2d 899 (Utah 1999); *Municipal Building Authority of Iron Cty. v. Lowder*, 711 P.2d 273 (Utah 1985); *Sears v. Ogden City*, 533 P.2d 118 (Utah 1975). The basic premise of these cases is that the District holds title to District lands and interests in lands as a trustee for the benefit of its member cities and the water users served by those member cities. The District is charged with the obligation to put the interests of its member cities and the water users served by those member cities above other interests, including the interests of adjoining landowners, and the interests of the public generally. Utah Code Ann. §17B-1-103(2)(t) allows the District to permit uses of District lands and interests in lands by adjoining landowners or political subdivisions of the State for less than present fair market value if the Board finds that doing so is in the best interests of the District and the public. In sum, the District's ability to meet the desires of adjoining landowners and others is substantially constrained by law. The District will make reasonable efforts to comply with these requirements, and will take reasonable efforts to act within the District's limited authority to dispose of any right of use or interest in District lands and interests in lands if said disposal is in the best interest of the District, its member cities, and the water users served by those member cities. The District will reasonably recover the estimated actual costs to the District of processing and administering Cooperation Agreements as to District fee lands, while taking reasonable steps to minimize charges. The District will receive reasonable compensation for commercial uses of District fee lands.

- 3) SLA Rights Reserved by the United States. Pursuant to the Provo River Project Transfer Act, Pub. Law. 108-382, and a title transfer agreement among the District, the Provo River Water Users Association and the United States, the United States transferred the title of the SLA Corridor to the District and the United States reserved an easement for the continued, lawful, non-motorized public access across the SLA to adjacent public lands. The United States also reserved an easement for Central Utah Project facilities within a portion of Utah County. All uses of the SLA Corridor are subject to these easements. No action taken pursuant to these policies should be interpreted as adversely impacting such interests of the United States.
- 4) Critical Public Infrastructure. The District's Aqueducts are critical public infrastructure and as such the use of the Aqueduct Corridors will be subject to all applicable federal, state, and local statutes, regulations, rules, and ordinances.
- 5) Non-motorized Public Trail Development. The District believes that public, non-motorized recreational trail use of portions of the Aqueduct Corridors may be developed in a manner that does not adversely impact the security of the SLA or POMA, and does not adversely impact the District's ability to operate, maintain, repair, or replace District facilities. That said, the District's focus is providing supplementary wholesale water to the District's member cities. The District does not view its role as including the creation or promotion of recreational trail development. Any trail development on Aqueduct Corridors requires approval by the District's Board.

- 6) Encroachments. The District staff should continually review its Aqueduct Corridors to identify uses that may violate the District's rights. The staff may take action to remove such uses or bring them into compliance with these policies, including payment of all required fees and charges as applicable. In exigent circumstances the GM together with the Chair and General Counsel may initiate legal action to terminate encroachments if determined to be in the best interests of the District. In the absence of the Chair the Vice Chair or Secretary may approve such decisions. A report to the Board of such actions must be made as soon as practicable.
- 7) Restoration.
 - a) Fee lands. District Staff should take all reasonable measures to see that replacement or repair of non-District uses on fee lands are the responsibility of the Licensee, even if removal or damage is a result of the District's exercise of its rights. Licensees may replace or repair uses approved by a valid Agreement following their removal or damage unless District exercises its rights to limit or eliminate use.
 - b) Lands other than District fee lands. The District goal is that replacement or repair of uses on lands where the District does not hold fee should be the responsibility of the non-District user of the corridor, even if removal or damage is a direct result of District's exercise of its rights, unless the District is otherwise obligated to make such repairs or restoration, by agreement or otherwise.

16-3 DEFINITIONS

- 1) "Affected Property Owner" – An underlying fee owner or adjoining landowner.
- 2) "Agreement" – The agreement issued to an Applicant who has successfully completed the application process. An agreement may be in the form of a Cooperation Agreement, Easement Agreement, Temporary Use Permit, or another document as determined appropriate by the GM.
- 3) "Applicant" – A person or entity who applies for issuance of an Agreement from the District.
- 4) "Aqueduct" or "Aqueducts" – Salt Lake Aqueduct ("SLA"), Point of the Mountain Aqueduct ("POMA") and/or Little Cottonwood Conduit – Raw Water ("LCC-RW").
- 5) "Aqueduct Corridor" – Lands the District has the right to use for the purposes of the Aqueducts and related works, equipment, facilities and infrastructure and that are in addition designated as part of the Aqueduct Corridor by the Board. For example, a portion of the SLA crosses Little Cottonwood Water Treatment Plant and Terminal Reservoir lands, but these Little Cottonwood Water Treatment Plant and Terminal

Reservoir lands are not designated by the Board as portions of the SLA Corridor, and thus the Board has not authorized the District staff to license uses of such lands by others under this chapter.

- 6) “District” – The Metropolitan Water District of Salt Lake & Sandy.
- 7) “Encroachment” – A non-District use within an Aqueduct Corridor.
- 8) “Hazardous Materials” include:
 - a) Those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901, *et seq.*, the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1981, *et seq.*, and the regulations promulgated pursuant to such statutes.
 - b) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the United States Environmental Protection Agency as hazardous substances (40 CFR Part 302 and amendments thereto).
 - c) Such other substances, materials and wastes which are or become regulated or which are classified as hazardous or toxic under applicable federal, state, or local laws, statutes, ordinances or regulations. This does not include public sewers.
- 9) “Licensee” – The person or entity that is a party to an Agreement with the District for use of Aqueduct Corridor lands. Any reference in these policies to “Licensee” should also be interpreted as referring to Licensee’s contractors, subcontractors, employees, agents or representatives.
- 10) “MWDSLS” – The Metropolitan Water District of Salt Lake & Sandy.
- 11) “Reclamation” – A bureau of the United States Department of the Interior that designed and constructed the SLA and originally held title to the SLA and SLA Corridor.
- 12) “Standard Specifications Manual” – A manual of specifications that directs use of and construction in, and in some cases near, the Aqueduct Corridors. The District may make changes to the Standard Specifications Manual from time to time as it deems appropriate.

16-4 AGREEMENTS

- 1) District Fee Lands. District fee land refers to property owned by the District. An application for use of the District property does not guarantee an Agreement. An Agreement is required on District fee lands for:
 - a) Vehicle Access. Except where an Aqueduct is located under a validly existing public road, an Agreement is required for any vehicle access on or over District fee lands. Weight restrictions for Aqueducts should be strictly observed.
 - b) Excavation, Earthwork, Construction, Landscaping, Etc. Any significant excavation, removal of material, placement of material, or other earthwork, or construction or landscaping work on District fee lands requires an agreement.
 - c) Modifications to Previously Approved Encroachments. Any material modification to a previously approved Encroachment on District fee lands should require a new Agreement or addendum to an existing Agreement.
 - d) Public Use of District Fee Lands. Use of District fee lands by the public will not be permitted without an Agreement.
- 2) District Interest Other Than Fee. As to lands where the District's interest is not fee, the District will pursue Agreements where the proposed use of the Aqueduct Corridor would be a violation of the rights of the District without such an Agreement. As to lands where the District does not hold fee, and except as otherwise directed by the Board or the Engineering Committee, the GM has authority to negotiate and execute agreements, including permanent agreements, which more clearly and objectively define the relative rights and responsibilities of the District and the fee owner, or that provide the District with adequate property interests it would not otherwise have, if the GM determines that such agreements are in the best interest of the District, the member cities and the public served by the member cities. Such agreements may allow improvements of the Affected Property Owner that would otherwise be prohibited under this Chapter of the P&P if the GM determines that such agreements are in the best interest of the District, the member cities and the public served by the member cities. Such agreements are to be reported to the Engineering Committee.
- 3) Agreement Form. Agreements should be on a form carefully tailored to reflect the approved use and to protect the District's interests. Agreements may contain terms, conditions and/or limitations that are not reflected in previous or form Agreements or are specifically mentioned in these policies. The GM is authorized to enter into Agreements that are consistent with these policies and applicable law on behalf of the District. All activities conducted on Aqueduct Corridors pursuant to an Agreement should be in conformity with these policies.

- 4) Agreement Duration. As to District fee lands, the GM has discretion to determine Agreement durations provided they do not exceed 25-years for a private person or organization, or 50-years for a public organization. As to lands where the District's interest is not fee, the GM has discretion to determine the Agreement durations that are in the District's interest. Appropriate durations provide opportunity to regularly review use of the Aqueduct Corridors with Affected Property Owners.
- 5) Agreement Renewal. At the end of the term of an Agreement, the Licensee may be required to remove the Encroachment or renew the Agreement, as is consistent with the then-existing policies and the District's rights. The Licensee should be required to pay all required fees and charges as applicable to renew the Agreement.
- 6) Licensees Responsible for Employees, Contractors. Licensees should be held liable for failure of their employees, agents, contractors or subcontractors to perform in strict conformity with the Agreement and these policies.
- 7) Denial of Agreement. The GM may deny a new or renewed Agreement if he determines that such may jeopardize the interests of the District in a manner not contemplated by these policies or applicable laws. The GM may deny a new or renewed Agreement if the District or other agency has any outstanding encroachment issues with the Applicant, Licensee, or related persons or entities. Refer to paragraph 16-8 for policies relating to appeal.

16-5 APPLICATION PROCEDURES, FEES, SPECIFICATIONS

- 1) Forms, Fees, Standard Specifications. The GM is authorized to develop application forms, instructions, and procedures to guide Applicants and staff through the application process and resolution thereof.
- 2) Fees. The GM should recommend a fee schedule for fees consistent with these policies for approval of the Board. Fees for use of District fee lands may be waived in whole or in part by the GM to the extent the licensed use or Agreement is determined to be beneficial to the District (for example, landscaping developed and maintained by others).
- 3) Standard Specifications. The GM is authorized to develop a Standard Specifications Manual for any work to be performed on the Aqueduct Corridors or close enough to the Aqueduct Corridors to potentially impact the District's rights.

16-6 GENERAL REQUIREMENTS

- 1) Service Interruption or Restriction. The Aqueducts remain in service year-round and are critical to the water supply of hundreds of thousands of people. **Service interruptions of any of the Aqueducts must be expressly authorized in advance in**

writing by the GM, and are not permitted except in very extraordinary circumstances. Unauthorized interruptions or restrictions to service of the Aqueducts will not be tolerated and could result in the responsible party paying any and all incidental and consequential damages including, but not limited to:

- a) Lost revenue from water sales;
 - b) Personnel time;
 - c) All costs required to return the affected pipeline back to its full service capacity;
 - d) Any costs incurred by the District's member cities that are over and above the normal costs associated with the affected pipeline;
 - e) The value of the water which could not be used due to the interruption; and
 - f) Third party claims tied to lack of water.
- 2) Contamination of Water Supply. Water conveyed by the Aqueducts is used in a municipal and industrial water supply. **The District will not allow or tolerate the introduction of matter of any kind into water conveyance facilities by others.** Agreements should require that in the event of a hazardous material spill, or if there is any release of matter into the water, the Licensee shall notify the District immediately.
- 3) GM Authorized to Address Service Interruptions or Introduction of Matter into Water. **Unauthorized interruptions or restrictions to Aqueduct service, or introduction of matter of any kind into water conveyance facilities will likely result in criminal and civil actions, particularly if determined to be willful or negligent. The District will participate in, and direct vigorous enforcement activities against, any persons who cause, or who are associated with causing, any unauthorized interruptions or restrictions in service of the Aqueducts.** In exigent circumstances the GM together with the Chair and General Counsel may initiate legal action if determined to be in the best interests of the District. In the absence of the Chair the Vice Chair or Secretary may approve such decisions. A report to the Board of any such action must be made as soon as practicable.
- 4) Record Drawings for Licensed Uses. Licensees should be required to provide to the District record drawings where appropriate in a format acceptable to the District.

16-7 PROTECTION STANDARDS

- 1) Purpose: The purpose of this section is to provide a guidance for use of the Aqueduct Corridors by non-District individuals and entities. The lists provided below are not exhaustive. Staff should consider all applications for use of the

Aqueduct Corridors on a case-by-case basis under the standards in the chapter as a guide. The GM has authority to interpret and extrapolate the standards in this chapter for existing and requested uses of the Aqueduct Corridors.

- 2) Specifications and Applicable Law. All uses of the Aqueduct Corridors should be in compliance with District Standard Specifications and applicable federal, state, and local statutes, regulations, and ordinances.
- 3) Roads and Driveways.
 - a) Public Roads. The District staff may allow public roads to cross Aqueduct Corridors so long as their construction and use does not unreasonably interfere with the integrity, operation, maintenance, repair, or replacement of any District facilities.
 - i) Public roads are not desirable within Aqueduct Corridors unless alternative traffic corridors are available to accommodate the rerouted traffic for times of repair or replacement of the Aqueducts or associated works, equipment, facilities, and infrastructure.
 - ii) Angles of crossing should be 90 degrees in relation to the Aqueducts whenever practicable and should not be less than 60 degrees. For District fee lands, angles of crossing shall be as near 90 degrees as possible in relation to the Aqueducts. Angles of crossing should extend the width of the Aqueduct Corridor.
 - iii) Acceptable public roads include asphalt, curbs, gutters, park strips, and sidewalks.
 - iv) All public roads are subject to approval by the GM on an individual basis.
 - v) Where public roads will be constructed by or for a developer, but dedicated to a municipality or other governmental entity, the District should require the Agreement to be signed by both the developer and that municipality or other governmental entity where such crossing is on District fee lands.
 - vi) Public trails are not considered to be part of the public road. See paragraph 16-2(5) for policies related to public trails.
 - vii) Utilities are not considered to be part of the public road. See paragraph 16-7(13) for policies related to utility crossings.
 - viii) Where public roads cross the Aqueduct Corridors access to the Aqueduct Corridor should be considered. For example, a curb cut may be

appropriate to allow District-authorized access. Fencing and gates with appropriate signs should be required as needed to prevent unauthorized access.

- b) Public Road Amenities. Public road amenities (e.g., signs, lights, medians, guardrails) are not permitted on District fee lands or where the same would be a violation of District rights unless the GM determines the public road amenity sufficiently enhances the safety, health, or welfare of the public. Where safety, health, or welfare of the public is a factor in the installation of a public road amenity, the owner of the public road amenity should be required to coordinate design with the District to protect District Aqueducts, works, equipment, facilities, and infrastructure.
 - c) Private Roads. Except for District purposes, new, primary access, private roads are not permitted on District fee land or where the same would be a violation of the rights of the District.
 - d) Private Driveways, Walkways. Except for District purposes new, private, hard-surface driveways and walkways (walkways include stairs leading to a building entrance) should not be allowed within Aqueduct Corridors on District fee lands, or where the same would violate District rights. Existing private driveways and walkways on District fee lands may remain pursuant to a valid Agreement. An Agreement is not required for existing private driveways and walkways where the District's interest is not fee, unless the driveway or walkway violates District's rights.
 - e) Loading Restrictions. Allowable loading varies by Aqueduct and location. Vehicular travel, grading, staging, and similar uses should not occur within Aqueduct Corridors without the prior written consent of the District. Such use should be designed to not exceed maximum allowable loads and to at least meet minimum cover requirements. Pipeline depth should not be estimated from project drawings. District-supervised potholing of the Aqueduct should be required for new road crossings.
 - f) Maintenance of Roads, Driveways, and Walkways. Except as otherwise expressly agreed in writing by the District, road maintenance (e.g., repair, replacement, snow removal) should be the responsibility of the owner of the road and its successors.
- 4) Structures, Hard Surfaces.
- a) Structures. Buildings, structures and similar uses should not be authorized within or overhanging Aqueduct Corridors. The list of unacceptable items

includes, but is not limited to, buildings, poles, retaining walls, pools, and water features.

- i) Buildings. Buildings, even if not fixed to the ground, should not be authorized by District staff within or overhanging District fee lands or where such would violate District rights. Buildings, in most cases, will violate District rights. Buildings include, but are not limited to, footings, foundations, decks, carports, greenhouses, and sheds. The GM is authorized to permit, by Agreement, existing buildings that encroach or overhang Aqueduct Corridors under terms that are in the District's interest.
- ii) Poles, Posts. Existing post mailboxes may remain on District fee lands by Agreement. New post mailboxes, and all flag, light, sports, and other poles (whether or not existing) should not be permitted on District fee lands or where the rights of the District may be violated. For fence posts see 16-7(5).
- iii) Retaining Walls. Except for District purposes, retaining walls shall not be permitted within District fee lands. Where the District does not own fee, non-reinforced, gravity (i.e., without footing or foundation) modular block or rock retaining walls may be allowed on a case-by-case basis for grading that is not supporting a building, road, or structure if they will not violate District rights. Concrete or masonry retaining walls should be excluded from Aqueduct Corridors.
- iv) Pools, Water Features. Pools, whether above or below ground, and water features are not to be permitted on District fee lands or within the Aqueduct Corridors where such uses will violate District rights.

b) Hard Surfaces.

- i) Hard surfaces (e.g., concrete, asphalt) not part of an existing driveway or walkway, or road are not to be permitted on District fee lands.
- ii) Where District interest is not fee title hard surfaces should be coordinated with the District prior to installation to ensure the same do not violate District rights (e.g., proper clearance and loading restrictions are met).

5) Play Equipment.

- a) Play equipment (e.g., trampolines, swing sets, play sets) that is not permanently anchored to the ground is acceptable where the District holds an interest other than fee title. Anchored equipment is not permitted if it violates District rights.
- b) Play equipment, whether anchored or not, is not permitted on District fee lands.

6) Landscaping.

- a) Acceptable Landscaping Uses. Landscaping uses generally acceptable to the District, as to both fee and easement, include edging, gardening, free-sitting pavers, shrubs less than four feet tall when mature, ornamental above-ground landscape rock no greater than 36 inches in any direction, sprinkler systems, and turf. Sprinkler systems should include an accessible shutoff valve located outside the Aqueduct Corridor. A landscape plan should be provided by the Applicant for review.
- b) Water-wise Landscaping. Landscaping uses of District property should incorporate water-wise plants and designs. New turf on District fee lands should not exceed 35% of the total use area.
- c) Trees, Shrubs Taller than Four Feet at Maturity, and Vines.
 - i) Except for District purposes, trees, shrubs greater than four feet tall when mature, or vines should not be permitted on District fee lands.
 - ii) Where the District's interest is not fee, trees, shrubs more than four feet tall when mature, and vines should not be permitted within 20 feet of the centerline of District pipelines or on access paths and roads used by District or where their presence would otherwise violate District rights.
- d) Fire Pits. Fire pits should not be permitted on District fee lands or where they would violate District rights.
- e) Landscape Power and Lighting. Landscape power and lighting should not be permitted on District fee lands or where their presence would violate District rights.
- f) Landscaping Maintenance. All landscaping uses within the Aqueduct Corridors should be maintained by the Affected Property Owner or Licensee. For landscaping of District fee lands, District maintenance of the remaining property should be considered. The Licensee may be required, by Agreement, to reduce or expand their use area to provide benefit to the District as described in paragraph 16-5(1).
- g) Proactive District Trimming or Removal of Trees. The District may remove or trim trees, shrubs, and vines located within Aqueduct Corridors where such are on District fee lands or violate District rights. The GM is authorized to develop a proactive tree maintenance program to remove trees and/or portions of trees

and branches within Aqueduct Corridors. This program does not exempt Licensees' from their responsibility to maintain these features.

7) Fences.

- a) Fences on District Fee Lands. Existing fences may be permitted by Agreement on District fee lands until the District determines that District activities require removal. Fences may be replaced provided the Licensee has an active, valid Agreement permitting the fence. Except for District purposes no new fences should be permitted on District fee lands.
- b) Fences Where District Interest is Not Fee. New fences are acceptable where the District's interest is not fee, provided the fences permit reasonable and efficient access to enclosed portions of Aqueduct Corridors. Masonry, block, wall, and related styles of fencing should not be permitted within Aqueduct Corridors.
- c) Access. Gates should be installed in all fences that cross the Aqueducts or restrict access to a portion of the Aqueduct Corridor that is not otherwise accessible. Gates should not permit unauthorized vehicular access onto Aqueduct Corridors. If gates are to be locked the District should have the ability to install a District lock for District access.

8) Equipment Parking and Storage.

- a) Equipment Parking and Storage on District Fee Lands. The parking of equipment (e.g., vehicles, trailers) is permitted on District fee title lands only within existing roads and driveways. Equipment should not otherwise be parked or stored on District fee title lands unless determined by the GM to serve a District purpose.
- b) Equipment Parking and Storage Where the District Interest is Not Fee. The parking of equipment should be permitted where the District does not own fee provided that the equipment does not block District access roads, works, equipment, facilities, or infrastructure; the equipment can be reasonably relocated (i.e., equipment is operational); and the equipment does not exceed load requirements for the Aqueduct (see 16-7(3)(e)). District staff should minimize or eliminate equipment parked or stored on District access roads, or other access areas.

9) Materials.

- a) Materials on District Fee Lands. Materials, including but not limited to construction materials, hazardous materials, yard waste, litter, or debris should not be permitted on District fee lands.

- b) Materials Where the District Interest is not Fee. District staff should minimize or eliminate materials including, but not limited to, construction materials, hazardous materials, yard waste, litter, and debris, placed or stored on Aqueduct Corridors, access roads, or other access areas if it violates District's rights or otherwise violates applicable law.

10) Animals.

- a) Animals on District Fee Lands. Animals should not be kept or grazed on District fee lands.
- b) Animals on Aqueduct Corridors Where the District Interest is not Fee. District staff should attempt to keep animals greater than 20 feet from District pipelines, access paths, and roads or where their presence would otherwise violate District rights. A secure area should be available off the Aqueduct Corridors to which animals can be relocated by the property owner when needed to permit the District to exercise its rights.

11) Changes in Ground Surfaces.

- a) Minimum and Maximum Aqueduct Cover. Minimum and maximum cover depths must be maintained to protect the Aqueducts. District staff should take steps to see that all temporary or permanent changes in ground surfaces comply with District requirements for minimum and maximum cover over the Aqueducts.
- b) Earthwork Adjacent to Corridors. Any fills and cuts on properties adjacent to Aqueduct Corridors should not be permitted to encroach onto District fee lands without prior written approval by the District. Modifications of properties adjacent to Aqueduct Corridors should not be permitted to materially reduce lateral support for Aqueduct Corridors without prior written approval by the District.

- 12) Drainage From or Onto Aqueduct Corridors. District staff should attempt to see that existing drainage over and from Aqueduct Corridors are maintained and that any erosion from construction, operation, maintenance or use activities is appropriately controlled. District staff should attempt to see that no new concentration of surface or subsurface drainage is directed onto or under the Aqueduct Corridors inappropriately.

13) Utilities, Corrosion Protection.

- a) Utilities on District Fee Lands. Where utilities will be constructed by or for a developer on District fee lands, but dedicated to a municipality or other local governmental entity or utility, the District should require the Agreement to be signed by both the developer and that municipality or other local governmental entity.
- b) Parallel Utilities. Parallel utilities can be a significant problem within Aqueduct Corridors. Angles of crossing should be 90 degrees in relation to the Aqueduct whenever practicable and should not be less than 60 degrees.
- c) Corrosion Protection. Metal pipes and high voltage power which are in close proximity to and may affect District pipelines should be required to implement corrosion protection measures that provide adequate protection of the District's pipelines.
- d) New Residential Utilities. New residential utilities, meaning those not owned by a utility company such as water downstream of the meter, sewer upstream of the main, and electrical downstream of the meter, should not be permitted within Aqueduct Corridors on District fee lands or where the utility would be a violation of the rights of the District. Existing residential utilities on District fee land should only be permitted by a valid Agreement.

16-8 APPEALS

- 1) Appeal. In the event an Applicant or Licensee disagrees with a determination related to their desired use of the Aqueduct Corridors, the Applicant or Licensee may appeal the determination to the Assistant General Manager ("AGM"). Any decision of the AGM may be appealed to the General Manager ("GM"). Appeals should be made as described here.
- 2) Form. All appeals shall:
 - a) be in writing,
 - b) explain in detail the bases for the appeal, and
 - c) state clearly the relief sought.
- 3) Deadline. The written appeal must be received by the District within 30 calendar days following receipt of the decision that is being appealed. At the request of the person(s) filing the appeal or the GM, the Chair of the Engineering Committee may extend the time for appeal upon good cause shown.

- 4) Appeals Raising Question to Misinterpretation of Misapplication of District Policy. To the extent an appeal appears to raise concerns that some portion of these policies were misapplied or misinterpreted, the GM shall refer that portion of the appeal to the Engineering Committee.
- 5) Appeals Seeking Modification of an Exception to District Policy. To the extent an appeal appears to request an exception to, or a modification of, some portion of these policies, the GM may, after consulting with the Chair of the Engineering Committee, refer that portion of the appeal to the Engineering Committee and request the Engineering Committee consider making a recommendation to the Board.
- 6) Appeals May be Decided on Information Submitted with Appeal. The individual or body addressing an appeal, whether the AGM, GM, Engineering Committee, or the Board, has discretion to resolve the appeal with or without information beyond the written appeal.
- 7) Decisions to be in Writing. Decisions will be made in writing and mailed or delivered to the person(s) filing the appeal. The District may implement electronic notification.