

## **Board Policy No. 33 Joint Use and Development of Real Property**

### Summary

This policy establishes joint use and real property development goals, objectives, and procedures ("Joint Development").

### Objectives and Goals

It is the intention of the Board to achieve the maximum utilization and benefits of District-owned property, consistent with transportation goals and community development objectives.

Joint Development of District property is centered on three major goals:

1. Transit Prioritization
  - a. Preserve NCTD Property for Transit Use. NCTD shall preserve the ability to safely operate and maintain transportation facilities on its properties.
  - b. Increase Transit Ridership. Joint Development shall aim to reduce greenhouse gas emissions and increase transit ridership by attracting new riders and increasing the number of transit trips.
2. Fiscal Responsibility
  - a. Maximize Revenue. Joint Development projects are expected to generate value by maximizing ground rent revenues received, or equivalent benefits negotiated, for the use of NCTD property.
  - b. Minimize Risk. Joint Development projects shall minimize financial risk to NCTD.
  - c. Feasibility. Joint Development projects should be reasonably viable, now and in the future.
3. Community Integration, Engagement, Land Use Policies and Design
  - a. Community Integration. NCTD shall seek to create projects that are compatible with the surrounding community and reflect the needs and desires of the neighborhood in which they are situated, to the extent this objective meets the transit prioritization and fiscal responsibility goals.
  - b. Community Engagement. The Joint Development will engage the local community members through the land use and entitlement process of the applicable local jurisdiction.
  - c. Land Use Policies. All Joint Development projects are subject to the land use policies and approval processes of the associated jurisdiction. When residential uses are applicable and jurisdiction requirements or allowances are applicable, NCTD shall advocate for affordable housing.

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- d. Design and Placemaking. NCTD shall pursue high quality design that enhances the surrounding community and creates inviting spaces and places around NCTD transit facilities.
- e. Transit Amenities. NCTD encourages inclusion of transit amenities on Joint Development sites that improves connectivity to transit corridors, rideshare, micro mobility options, provides shade, and other desirable amenities for NCTD current and future riders.

### Joint Use and Development Criteria

Joint use and development on NCTD real property shall adhere to the following criteria:

#### 1. Transit Prioritization

- a. NCTD shall retain authority over its transit facilities and services, and no development shall negatively impact existing or future public transportation facilities.
- b. No development shall obligate NCTD to any specific operational level of service, unless funds are provided by third party sources to cover specified operational levels.
- c. NCTD shall encourage Joint Developments to include designs that provide for ground floor retail, restaurant, and commercial uses that create more attractive destinations and amenities for transit riders.

#### 2. Financial Policies

- a. Use of a long-term ground lease is preferred as opposed to fee disposition.
- b. While maximizing asset securities, Joint Developments should minimize the commitment of NCTD financial resources and limit such commitments only to project components that have a direct public benefit to the District (i.e., transit parking, increased ridership, system optimization, etc.).
- c. Joint Developments should minimize any investment risks on behalf of NCTD.
- d. Capital or in -lieu contributions from other public agencies are encouraged in order to create a greater community economic benefit to NCTD Joint Development projects.
- e. When deemed to be in the interest of NCTD, NCTD may participate in grant or loan funding applications; independently seek funding; or issue letters of support in furtherance of Joint Developments at identified sites.

#### 3. Community Outreach

- a. Community Engagement. Developers are encouraged to proactively engage with the communities where the joint development projects occur through a variety of methods, which may include charrettes, focus groups, workshops, email updates, and social media communications. Developers selected for Joint Development projects shall demonstrate project viability and conformance with any community

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plan and/or general land use entitlement process of the local jurisdiction in which the subject property is located. Determinations of conformance shall be made by the local land use authority through the entitlement process.

- b. Local Collaboration. NCTD will consult and work cooperatively with local jurisdictions and developers to encourage transit -supportive, high-quality development at stations and surrounding properties. All developments must follow the local laws and policies of the jurisdiction in which they reside, as applicable.
- c. Design Rigor. Projects shall demonstrate a high quality of design that is both sensitive to community context and enhances the surrounding community.

### 4. State and Federal Policies

- a. Any properties identified for Joint Development that were purchased or improved with funding from the Federal Transit Administration (FTA), or include affixed assets purchased with FTA funding, must be reviewed and approved by the FTA.
- b. Any properties identified for Joint Development must follow guidelines provided by the California Department of Housing and Community Development guidelines, particularly as it relates to the Surplus Land Act.
- c. Any disposal of NCTD assets on Joint Development properties must be managed in accordance with Board Policy No. 29: Asset Management.

### 5. Solicitation Policies

- a. NCTD will seek developers via a competitive selection process that is further detailed herein. The competitive process will be performed through the Development Services Division and will be informed by NCTD Procurement Policies.

### 6. Acquisition Policies

- a. To encourage opportunities for Joint Developments surrounding transit investments, when appropriate, NCTD will consider Joint Development opportunities in the acquisition of required property, location of new station sites, and construction of station facilities.
- b. In the initial planning of a transit corridor project (e.g., during the preliminary environmental and engineering phases), NCTD may conduct site analysis, include a preliminary layout of each passenger station site, develop conceptual urban design strategies integrating station sites with adjacent communities, and evaluate proposed station sites for their Joint Development potential.

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### Process

#### 1. Inventory and Site Selection

- a. Inventory. NCTD maintains an inventory of properties that are potential sites for future Joint Development. NCTD staff will monitor market conditions and communicate with local jurisdictions and stakeholders about development potential.
- b. Site Selection. The determination to select sites for Joint Development is dependent on several factors including, but not limited to: market conditions, community input, local jurisdiction input, and NCTD resources. These factors may provide the basis for establishing project priorities, project implementation strategies, and ultimately the creation of Development Guidelines for a given site, to ensure maximum attainment of the objectives and goals stated in this policy.
- c. Surplus Land Act Designation. After identifying sites for redevelopment, NCTD Board will declare potential projects as either Surplus or Exempt Surplus land at a public meeting. Afterwards, written notice will be provided to the California Department of Housing and Community Development (HCD). If HCD determines land to be “Surplus”, then the development is subject to the rules and regulations specified in HCD Guidelines. If HCD concurs the “Exempt Surplus Land” declaration, the project may continue as specified in this document.
- d. Determination of Financing Requirements. Upon the selection of a site for a Joint Development project, NCTD staff will determine the funding sources that were involved in the acquisition of and investments in the selected site. Depending upon the financing that was used, the project may be subject to review by the FTA.

#### 2. Community Outreach and Scoping

- a. Community Engagement. Once a site has been selected for a potential Joint Development, NCTD may consult with local jurisdictions surrounding the site to determine a vision for the potential project that is consistent with the transit prioritization and fiscal responsibility goals of this Policy. This vision may range from general to highly specific, depending on the context of the site. Community outreach associated with a Joint Development project shall occur early in the design process and will be supported by NCTD staff. A Developer once recommended and approved by the NCTD Board, will develop an outreach strategy with the input of NCTD staff, and will prioritize early input from the community; responsiveness; and prioritize diversity, equity, and inclusivity in the means and methods of communication.
- b. Development Guidelines. NCTD will prepare Development Guidelines, which will be memorialized in the request for proposal, or RFP, that is specific to the site. The Development Guidelines will articulate the goals and type of land uses that NCTD, the local municipality and the community desire for that site, as well as any desired transit and urban design features. Development Guidelines may range from general to highly specific, depending on the context of the site. With respect to those elements related to NCTD transit operations, the Development Guidelines shall be informed by:

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- i. Existing or planned transit stations or stops
  - ii. NCTD Rail Design Criteria
  - iii. Input from the NCTD Rail and Bus Operations and Transportation Planning Divisions
  - iv. Transit Parking Plans
  - v. Local jurisdiction's applicable specific plans
  - vi. Other policies and departments as applicable
3. Competitive Solicitation Process
  - a. Solicitation. NCTD will solicit proposals for Joint Development of the site through a RFP. The RFP procedure will be managed t by the Development Services Division and will be informed by Procurement Policies and for those properties with and FTA interest, must conform to FTA circular 7050.1 which governs Joint Development.
  - b. Evaluation. Joint Development proposals shall be evaluated based upon criteria stated in the RFP, which shall consider how well the proposal meets project requirements, the experience of the developer and developer team, and the financial strength of the developer and their proposed plan for financing. Staff will assemble a Source Selection Committee (SSC) consisting of five (5) voting members, with a minimum of three (3) being NCTD Staff. The SSC will include non-voting Technical Advisors as needed. The SSC shall evaluate Joint Development proposals and advise the NCTD Executive Director on a proposal and respective developer to be recommended to the Board. The Executive Director may recommend a proposal and developer to the Board or defer Joint Development if none of the proposals maximize Joint Development Objectives.
4. Development Phase
  - a. Exclusive Negotiation Agreement. After the Board has approved the recommended developer and their proposal, NCTD and the developer shall negotiate an Exclusive Negotiation Agreement (ENA). The ENA will include a project concept, terms and conditions, general planning and development goals, deposit and fees, design review and a predevelopment schedule agreed to by the proposed developer and NCTD. Upon approval of a recommended developer and authorization by the Board, the Executive Director shall execute the ENA with the developer.
    - i. The term of the ENA shall generally be eighteen (18) months but may be revised as mutually agreed upon by the parties; provided however, the term and any extensions shall not exceed thirty (30) months. In considering an extension, the Executive Director shall determine whether substantial progress has been made towards fulfillment of the requirements of the ENA and may require payment of additional fee and/or deposit amounts.

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Developer responsibilities under the ENA include but are not limited to:

- i. Negotiate in good faith, including such project design and project financing information as necessary for NCTD Staff to negotiate a transaction.
- ii. In consideration of entering into the ENA, the developer shall provide NCTD a non-refundable fee in an amount determined by the Executive Director or his/her designee.
- iii. Create a robust development plan that will carry throughout the design, entitlement and construction process for the project.

NCTD responsibilities under the ENA include:

- i. During the negotiation period, provided that the developer is not in default of its obligations under the ENA, NCTD shall negotiate exclusively and in good faith with the developer a Development Agreement ("DA"), Ground Lease or other necessary documents to be entered into between NCTD and the developer, and NCTD shall not solicit or entertain offers or proposals from other parties concerning the site.
- b. Development Agreement. The DA shall describe the rights and responsibilities of both parties. The recommendations may also include the terms for a ground lease, or another form of purchase and sale agreement as appropriate.
- c. FTA Concurrence. If the Joint Development site was purchased with Federal Funding, before NCTD may enter into a ground lease, the project must seek and obtain concurrence from the FTA.
- d. Ground Lease. Upon satisfactory fulfillment of the closing conditions required in the DA, and receipt of FTA concurrence as applicable, NCTD shall enter into a Ground Lease for the lease of the site. The Ground Lease shall describe the rights and responsibilities of both parties with respect to the site. The Executive Director may also enter into such other documents and agreements to implement and administer the project as described in the DA and Ground Lease.
- e. Environmental Compliance. NCTD shall not approve or be committed<sup>1</sup> to a project until the appropriate Lead and Responsible Agencies consider and analyze the environmental impacts of the project. The project must comply with California Environmental Quality Act (CEQA) before final authorization for use or development of the NCTD property may be approved by the Board. NCTD is not the lead CEQA agency for Joint Development projects; the agency with local regulatory and land use authority generally serves that function. Upon satisfactory fulfillment of the development requirements in the ENA, negotiation of acceptable terms, obtaining all necessary project entitlements, and adoption and certification of a CEQA document by the applicable lead agency. Staff will recommend to the Board to; (a) review and adopt the CEQA findings as a responsible party and (b)

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<sup>1</sup> For purposes of this Policy, "committed" shall mean: through funding commitments or budget allocations, project alternative rejection, or any other action which would commit NCTD to the particular scope or project prior to CEQA compliance.

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enter into any final documents required for the implementation of a project. If adopted by the Board, CEQA findings must be signed prior to execution by NCTD of a Ground Lease.

### **5. FTA Regulations**

NCTD Joint Development sites which were acquired with assistance from the FTA are subject to FTA Joint Development policies and NCTD Board Policies No. 11: Real Estate and No. 12: Excess Real Property Utilization Plan. Current guidance in FTA Circular 7050.1 on FTA -funded real property for Joint Development, stipulates that Joint Developments follow four criteria:

- a. Economic Benefit — project must enhance economic benefit or incorporate private investment.
- b. Public Transportation Benefit — project must provide physical transit improvement or enhanced connection between modes.
- c. Revenue — generally, project must generate a fair share of revenue (at least equal to the amount of original federal investment) and be used for public transportation purposes.
- d. Tenant Contributions — tenants pay a fair share of the costs through rental payments or other means.

NCTD Joint Development sites which were acquired with FTA funds are subject to and will follow FTA guidance as it is updated from time to time. Joint Development projects will be reviewed individually by the FTA to ensure compliance.

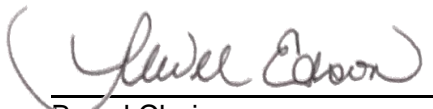
In addition, NCTD shall ensure that Joint Development projects comply with FTA Title VI Civil Rights and Environmental Justice requirements. Compliance with Title VI will be required of developers selected for Joint Development projects.

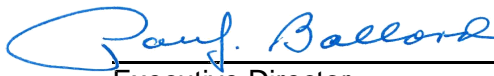
6. Prevailing Wage. Payment of prevailing wages and compliance with the requirements of California Labor Code Sections 1720-1743, 1770 et seq. is required for Joint Development projects. However, to the extent that a developer submits proof to NCTD during the exclusive negotiating period of a legal opinion issued by the Department of Industrial Relations (DIR) stating that the Joint Development project has both private and public components, which could be considered two separate projects, and that does not require the payment of prevailing wage on the private component(s), NCTD will accept such a determination as defining the labor requirements for the Joint Development project. Absent any such legal opinion issued by the DIR, the prevailing wage requirements shall apply to all elements of the Joint Development project.

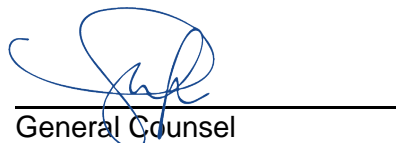
### **APPROVALS ON FOLLOWING PAGE**

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### Approvals

  
Board Chair 10/19/2023  
 Date

  
Executive Director 10/19/2023  
 Date

  
General Counsel 10/19/2023  
 Date

| DATE       | REVISION No. | RESOLUTION No. | COMMENT  |
|------------|--------------|----------------|--|
| 1/21/2016  | Adoption     |                |  |
| 10/18/2018 | 1            | 18-09          | 2018 REVISION  |
| 10/15/2020 | 2            | 20-08          | 2020 REVISION  |
| 10/21/2021 | 3            | 21-05          | 2021 REVISION  |
| 10/19/2023 | 4            | 23-06          | 2023 REVISION; ADDED PREVAILING WAGE REQUIREMENTS AND INCLUSION OF TRANSIT AMENITIES |