

PPM 216: Third-Party Property Improvements

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TABLE OF CONTENTS

I.	POLICY SUMMARY	1
II.	DEFINITIONS	2
III.	POLICY TEXT	2
IV.	COMPLIANCE / RESPONSIBILITIES	5
V.	PROCEDURES.....	5
VI.	RELATED INFORMATION	5
VII.	FREQUENTLY ASKED QUESTIONS.....	5
VIII.	REVISION HISTORY	8

Note: For links to referenced documents see Section VI, *Related Information*, below.

I. POLICY SUMMARY

A. This section of the Policy and Procedure Manual (PPM) for the University of

California (UC) division of Agriculture and Natural Resources (ANR) describes the extent to which improvements may be made to non-UC-owned property in the UC ANR environment.

- B.** With this policy, UC ANR formalizes the appropriate use of public funds that flow to the division. It is the intention of UC ANR, including Facilities Planning and Management, to deliver our extension mission throughout California where our programs are conducted, whether those properties are owned by UC ANR or by third-parties. Communication around third-party property improvements should be cooperative, collaborative, mission-focused and policy-focused.
- C.** The information presented here is general and cannot address all of the unique concerns that may arise regarding improvements on third-party property. *Before UC personnel consider any such improvements on a third-party's property*, they should provide a summary of the desired improvements and any questions to the contact person noted on page 1 above. Additional coordination and consultation with the Director of Environmental Health and Safety services and the local or internal Fire Marshal and Building Official may be required.
- D.** With UC ANR's mission of research and public service, and its "learn by doing" methodologies, ANR academics, staff and volunteers may have occasion to conduct programs on the property of third parties such as municipal and county parks and the like. For such situations, this PPM section describes how the relationship with the third-party can be established with a Memorandum of Understanding (MOU), as well as the kinds of improvements that may or may not be installed on the cooperating third-party's property.

II. DEFINITIONS

- A. Construction:** The act, art, or business of moving, demolishing, installing, or building a structure, facility, or system according to a plan or by a definite process. Construction consists of the application of any of these techniques to physical plant facilities such as structures, utilities, excavations, landscaping, site improvements, drainage systems and roads, and additions, deletions, or modifications of such facilities. All painting, regardless of whether exterior or interior painting of either new or existing structures is a form of construction. (Source: UC *Facilities Manual*, Glossary of Facilities Manual Terms)

III. POLICY TEXT

- A.** As mentioned above, UC ANR frequently employs "learn by doing" strategies in its programs. This is especially evident in the UC Cooperative Extension (UCCE) arena. UCCE Master Gardener Program (MGP) demonstration gardens and similar projects are excellent examples of this valuable program modality, and are used frequently in UC ANR. Within the California 4-H Youth Development Program, pens for animals are another example. As well, third-parties such as municipalities, counties and other public or private entities may want to support UC ANR by supplying land (third-party site), and/or real property improvements for such programs. UC ANR generally welcomes such programmatic partnerships.

- B.** Before proceeding to establish a program at a third-party site, it is a best practice to clarify roles and expectations for such committed partnerships by formalizing them in an MOU. More information on MOUs is available in PPM Section 401, *Programmatic Memorandum of Understanding* (see Item VI, *Related Information* below for a link to this section).
1. If UC ANR or another party intends to improve the property as a part of the programmatic partnership, the MOU should highlight the contribution by including a description of those improvements. In a typical MGP demonstration garden for example, this might involve items like the installation of raised beds, irrigation tubing systems, small “kit” tool sheds, movable fencing and the like.
 2. In considering the composition of the MOU and all that UC ANR wants to contribute to the partnership, it is also appropriate to be mindful of the limitations on what ANR may do. Cooperative Extension activities such as the MGP and 4-H are supported with federal Smith-Lever funds which come with various funding restrictions. For example, Smith-Lever funding may not be used, directly or indirectly for construction as follows:
 - a. “Funds cannot be used, directly or indirectly, for the purchase, construction, preservation, or repair of any building or buildings, the purchase or rental of land..., or any other purpose not specified in the Smith-Lever Act.” (Source: USDA National Institute of Agriculture Federal Assistance *Policy Guide*)
 3. As well, it is prohibited to perform construction on property over which the University has no jurisdiction. University policy prohibits construction on third-party property as follows.
 - a. “...no building or other improvement shall be constructed... unless The Regents’ interest in the proposed site... is such as to assure the University of the undisturbed use and enjoyment of the site for the entire estimated life of the improvement. (Source: UC’s *Capital Improvements Longevity* policy.)
 4. References to a prohibition on construction naturally gives rise to the question, ‘What *is* construction?’ (Please refer to section II.A. above.) The Facilities Planning and Management Director (see contact information on page 1 above) must consider and respond to this question as it applies to specific situations. All UC construction projects must be performed via a construction contract, not a purchase order. In addition, all construction projects will have one or more of the following characteristics:
 - a. The project will meet the UC Facilities Manual definition of “construction” (see Item II. *Definitions* above).
 - b. The project will require a building permit, in accordance with the California Building Code.
 - c. The project will require a performance and/or payment bond, in accordance with the requirements of the UC *Facilities Manual*.

- d. The project will involve the use of professional/paid labor (and thereby trigger the California Department of Industrial Relations Prevailing Wage requirements).
 - e. The project will require an appropriate California contractor's license and/or any other state regulated certification to perform the improvements. This applies for all paid and volunteer activities.
5. Recognizing the above restrictions and the prohibition of construction projects performed by UC ANR, **there nevertheless remain many ways in which UC ANR can contribute to the development of a partnership at a third-party site**. For example, in the context of the MGP, this might include the aforementioned building of raised beds, creation of non-permanent, accessible pathways, and installation of portable fencing or other non-permanent structures (e.g., pre-packaged/pre-engineered "kit" greenhouses, "kit" sheds, temporary shade structures, and so on). It is important to be mindful that such improvements must be installed according to current regulatory requirements, best practices and manufacturer's recommendations, and that the relevant MOU must reflect appropriate insurance requirements. Again, questions on particular projects should be directed to the Facilities Planning and Management (FPM) Director (see contact information on page 1 above). For that work that would constitute a construction project, UC ANR may look to a third-party to improve the property if allowed by the appropriate MOU, lease, or other contractual provision approved by the FPM. In turn, on the programmatic side, UC ANR would play a supporting role by providing the academic and/or data-driven science and expertise needed to maximize the outcomes of the partnership, and/or agree to pay usage fees.
- a. The cost of UC ANR-funded improvements should be congruent with the period of time that ANR expects to use the improvement. UC ANR should not invest funding in a third-party-owned property without a reasonable expectation that our programs will be able to realize the value of the improvement. This is an important factor for planning improvements on a third-party's property.
 - b. UC ANR-funded improvements on third-party owned properties must be compliant with the Americans with Disabilities Act (ADA) and accessibility provisions of the California Building Code, as well as the University's seismic and sustainability policies.
 - c. Budget planning for improvements shall include provisions for ongoing maintenance and repairs over the life of the improvement with a summary outlining the source of funding.

IV. COMPLIANCE / RESPONSIBILITIES

A. Vice President

The Vice President is responsible for the overall implementation of this policy.

B. Associate Vice President for Business Operations

The Vice President has re-delegated the overall authority for implementation of this policy to the Associate Vice President for Business Operations.

C. Controller

The Controller is responsible for implementation of this policy, within the context of the issuance of programmatic MOUs and related forms of agreement.

D. Facilities Planning and Management Director

The Facilities Planning and Management Director is responsible for implementation of this policy, within the context of UC ANR's approved policies and procedures.

V. PROCEDURES

- A.** To initiate a programmatic partnership with a cooperating third-party, refer to PPM Section 401, Programmatic Memorandum of Understanding (see link in Item VI, *Related Information* below).
- B.** To explore questions regarding what would constitute a construction project and related matters, contact the Facilities Planning and Management unit (see link in item VI, *Related Information* below).

VI. RELATED INFORMATION

- [UC Office of the President *Facilities Manual*](#)
- [UC Office of the President *Facilities Manual*, Volume 1, Chapter 5.1., *University Policies, Capital Improvements Longevity*](#)
- [UC ANR Policy and Procedure Manual Section 401, *Programmatic Memorandum of Understanding*](#)
- [UC ANR Controller's Office – Administrative Policies and Business Contracts \(for assistance with questions related to MOUs\)](#)
- [UC ANR Facilities Planning and Management \(for assistance with questions related to construction projects\)](#)
- [UC ANR Risk and Safety Services \(should be informed of all off-site program locations\)](#)

VII. FREQUENTLY ASKED QUESTIONS

- A.** *My County's UC Cooperative Extension (UCCE) Master Gardener Program (MGP) has raised gift funds to install improvements such as utilities systems at a public park with whom we are partnering. UC has no ownership, lease or license rights*

over the public park. These improvements would constitute a construction project. However, as the construction would be performed using gift funds, and not Smith-Lever funds, they are not subject to the Smith-Lever funding restrictions, right?

While the gift funds may not be subject to the restrictions on Smith-Lever funds, there are other policy restrictions that apply. Specifically, UC's *Capital Improvements Longevity* policy (see link in Item VI., *Related Information* above) provides that UC will not perform construction projects on property not owned by UC or properties that are leased or licensed by the University ("...no building or other improvement shall be constructed... unless The Regents' interest in the proposed site, is such as to assure the University of the undisturbed use and enjoyment of the site for the entire estimated life of the improvement."). Accordingly, UC ANR would look to the property owner to perform construction improvements at the property owner's cost, while asking the donor to reimburse/transfer the gift to the property owner. Additionally, UC ANR may provide non-construction improvements with the donated funds, such as the installation of raised beds, the supply of non-fixed equipment, and the like.

- B.** *I am planning to issue an MOU to partner with my County to perform one of my UCCE programs at a County park. The County is willing to pay for and perform improvements that would be very helpful to my program if UC ANR will reimburse them. Is this allowed?*

The answer to this question depends on the nature of the improvements. For minor, non-capital improvements with a relatively short life, yes, this would be allowable provided that the fund source to be used does not prohibit use for capital improvements. However, if the improvements are more extensive and have a longer life, they may not be supported with any kind of UC ANR fund source because UC's *Capital Improvements Longevity* policy (see link in Item VI., *Related Information* above) provides that UC will not expend funds to support construction projects on property not owned, leased or licensed by the University ("...no building or other improvement shall be constructed... unless The Regents' interest in the proposed site, is such as to assure the University of the undisturbed use and enjoyment of the site for the entire estimated life of the improvement."). For assistance in assessing the nature and cost of the kind of improvements contemplated, contact the Director of Facilities Planning and Management (contact information on page 1 above).

- C.** *My program's volunteer group has raised gifts to cover the cost of a construction project to be performed on a third-party's property. As well, all of the labor will be donated by the program volunteers. Accordingly, the project cost is essentially \$0. Can this work be performed on a third-party's property?*

Such work may be performed on the third-party's property if the "campus architect" (UC ANR's Director of Facilities Planning and Management) approved the project, **and if UC ANR leased the property for at least the life of the planned capital improvements.** It is important to note that in addition to the donated funds and labor, the project would require an on-going source of funds for future maintenance and repairs as needed. Notably, the donor would donate funds directly to the third

party for the benefit of the UC ANR Program. Also, a construction contract between the third party and the donor would still be required to confirm the insurance requirements and other provisions of the standard construction contract, including proper contractor licensure and payment of prevailing wage. The lease or MOU would need to specify how project management and administration would be performed, similar to what are known in the industry as “tenant improvements.” If this is minor, non-capital non-construction work, it may be included in the lease or MOU and possibly performed by UC ANR or by the owner, provided that it was installed according to current best practices and manufacturer’s recommendations, and that the MOU reflected appropriate insurance requirements.

D. *It is critically important to my program that I do work that constitutes a construction project on a property owned by a third-party. Isn't there any way this can happen?*

Yes, this may be possible if the “campus architect” (UC ANR’s Director of Facilities Planning and Management) approved the project, **AND** if UC ANR leased the property for at least the life of the planned capital improvements. It is important to note that in addition to the donated funds and labor, the project would require an on-going source of funds for future maintenance and repairs as needed. The project would be subject to construction competitive bidding and prevailing wage. In such a situation, the contractor would be required to obtain a permit and approval from the local jurisdiction. The lease or MOU would need to specify how project management, inspection and administration would be performed, similar to what are known in the industry as “tenant improvements.” The project may be subject to dual inspection by the local jurisdiction and UC ANR’s Building Official and/or designated Campus Fire Marshal.

E. *In my county a UCCE program was established on a third-party’s property and prior to my coming aboard, work was performed there that may have constituted a construction project. What should I do?*

Existing improvements (structures) at these locations may continue to operate as they currently do, subject to the following requirements:

1. Contact the Director of Facilities Planning and Management to review the improvements and to assess the situation. Improvements that were completed without Facilities approval must be reported to Facilities for review. If the improvements do not comply with law or policy, they may require removal or improvement.
2. The UCCE office should ensure that the Risk & Safety Services unit is aware of the off-site program location.
3. An MOU must be established with the property owner (if one does not already exist).
4. The UCCE County Director (CD) should ensure that future visits by Risk & Safety Services to their county include a visit to the off-site program location. After any such site visit the CD must also ensure the fulfillment of any environmental health and safety corrective action items noted by Risk & Safety Services.

- F. May portable shade structures requiring the installation of engineered footings be installed on third-party owned properties? (In other words, if they are permanent components, do they constitute construction?)

Installation of engineered footing meets the definition of construction. Therefore, refer to procedures for construction as outlined above.

VIII. REVISION HISTORY

December 2020: Not applicable (initial issuance of section).