



Date: October 9, 2007

Committee Meeting Date: October 18, 2007

Board Meeting Date: November 1, 2007

BOARD MEMORANDUM

ACTION X DISCUSSION INFO

TO: Administration and Finance Committee
Santa Clara Valley Transportation Authority
Board of Directors

THROUGH: Michael T. Burns
General Manager

FROM: John H. Ristow
Acting Chief CMA Officer

SUBJECT: Authority for General Manager to Execute Purchase Agreements and Possession and Use Agreements for the Freight Railroad Relocation and Lower Berryessa Creek Project

Policy-Related Action: Yes

Government Code Section 84308 Applies: No

RECOMMENDATION:

Authorize the General Manager, for the Freight Railroad Relocation and Lower Berryessa Creek Project, to execute:

1. Real property purchase agreements where the purchase price equals VTA’s statutory offer of just compensation based upon an approved appraisal, or where the negotiated purchase price does not exceed \$100,000; and,
2. Possession and use agreements allowing immediate access for VTA to construct the Project prior to agreement on the purchase price.

BACKGROUND:

On June 15, 2006, the Board of Directors authorized the General Manager or Chief Financial Officer to enter into agreements and execute documents for VTA to issue bonds in an amount not to exceed \$440 million. The bonds include \$45 million dollars to fund VTA’s obligation to relocate Union Pacific Railroad facilities from VTA-owned property located in Fremont and Milpitas. The limits of work extend from approximately Grimmer Boulevard in Fremont to Montague Expressway in Milpitas. The Board of Directors has been requested to adopt a

Mitigated Negative Declaration for the Freight Railroad Relocation and Lower Berryessa Creek Project on October 4, 2007. Final design is nearing completion and the acquisition phase is now ready to begin. Approximately 13 properties or portions of properties have been determined to be required for the project.

Over the next several months, offers to purchase properties required for the relocation of freight railroad facilities and utilities, from Grimmer Boulevard to Montague Expressway, will be made to approximately 13 owners, pursuant to the Eminent Domain Law (Government Code Section 7267.2). As required by law, each offer will be based upon an approved appraisal. The appraisal is completed by a qualified independent appraiser and is reviewed by a **qualified review appraiser** and then additionally reviewed by VTA Real Estate staff. Real Estate staff will be responsible to then establish the amount of just compensation to be offered to the property owner, which cannot be less than the approved appraised amount.

According to the current project schedule, Resolutions of Necessity for properties that have not been acquired through negotiations and for which eminent domain proceedings must be instituted, are anticipated to be submitted for adoption at the December 2007, January 2008 and February 2008 Board meetings.

Section 5-3 of the Administrative Code provides for the General Manager to “execute real property purchase and possession and use agreements incident to the exercise of eminent domain power by the Authority,” when authorized by the Board. The Board has previously granted this authority to the General Manager, in April 1999 in connection with the 1996 Measure B Transportation Improvement Program.

DISCUSSION:

In order to expedite the acquisition process and to minimize bringing routine matters before the Board, it is requested that pursuant to Section 5-3 of the Administrative Code, the General Manager be authorized to execute real property purchase agreements when the purchase price for the property equals the amount of VTA’s statutory offer of just compensation.

It is further requested that the General Manager be authorized to execute purchase agreements in all cases where the negotiated purchase price does not exceed \$100,000, regardless of the amount of VTA’s statutory offer. When the purchase price exceeds \$100,000, and is greater than VTA’s statutory offer, the purchase agreement will be submitted to the Board for approval.

Of the approximate 13 properties to be acquired for the Project, approximately 12 have an estimated value under \$100,000.

Additionally, it is requested that the Board grant the General Manager the authority to execute possession and use agreements pursuant to Section 5-3 of the Administrative Code. Possession and use agreements give VTA immediate access to property for construction of a project, even though the purchase price has not been agreed to between VTA and the owner. These agreements require VTA to deposit the amount of its offer into escrow for the benefit of the owner, and establish criteria for continued negotiations over the price prior to the institution of

eminent domain proceedings. If, after a possession and use agreement is executed, VTA and the owner agree on the price, a purchase agreement will be prepared and approved subject to the authority granted to the General Manager for execution of purchase agreements.

ALTERNATIVES:

The Board could decline to provide the requested authorization to the General Manager, or grant the authorization in a lesser or greater amount. Declining to grant or limiting the authority requested may, however, result in property acquisition delays, causing at least a one-month delay in obtaining possession of the property while execution of the real property purchase and possession and use agreements await Board approval. Delays to property acquisition could lead to similar delays in project completion.

FISCAL IMPACT:

Funding for real estate acquisition is included in the adopted FY08 and FY09 2000 Measure A Program Capital Budget.

Prepared by: Juanita Villemaire, Senior Real Estate Agent