

Date: January 28, 2008

Committee Meeting Date: January 16, 2008

Board Meeting Date: February 7, 2008

BOARD MEMORANDUM

ACTION ITEM

TO: Santa Clara Valley Transportation Authority
Board of Directors

THROUGH: Michael T. Burns
General Manager

FROM: John H. Ristow
Chief CMA Officer

SUBJECT: Freight Railroad Relocation Project
Resolutions of Necessity

Policy-Related Action: No

Government Code Section 84308 Applies: No

RECOMMENDATION:

Adopt Resolutions of Necessity determining that the public interest and necessity require the acquisition of property interests from three parcels for the Freight Railroad Relocation Project.

BACKGROUND:

The Santa Clara Valley Transportation Authority (VTA) acquired a railroad right-of-way (ROW) from Union Pacific Railroad (UPRR) in December 2002. The purchased railroad, formerly known as the WP Milpitas Line is located between Paseo Padre Boulevard in Fremont and 24th Street in San Jose, California, as shown in Exhibit A. Under the terms of the Purchase and Sale agreement with UPRR, UPRR retained the rights to operate the WP Milpitas Line until VTA constructs a new freight rail alignment adjacent to UP's adjacent Warm Springs line. The new freight rail facilities will be constructed primarily within adjoining UPRR property; however, portions of privately owned property will need to be acquired for the track alignment and installation of relocated utilities and ancillary facilities. The limits of this work will extend from Grimmer Boulevard in Fremont to Curtis Avenue in Milpitas. The Board certified the Initial Study with Mitigated Negative Declaration for the project on October 4, 2007. A proposed amendment to this document is expected to be completed in March 2008.

There are a total of three commercial/industrial/office properties impacted by this recommendation.

One parcel is utilized as a recreational vehicle and storage facility. Approximately twenty-one percent of that parcel will be acquired for the permanent relocation of UPRR railroad tracks and utilities, as shown in Exhibit B. Approximately seventy-three percent of the parcel is required for

a two-year period for the temporary relocation of UPRR trackage and for a construction staging area. The storage business, a residential tenant in a motor home, and personal property owned by approximately 182 storage tenants, will be relocated.

The second acquisition consists of public utility easement and a two-year construction staging area associated with the relocation of fiber optic and telecommunication facilities, as shown in Exhibit C.

The third acquisition impacts a portion of a former roadway, which crosses the existing railroad corridor, as shown in Exhibit D.

If an agreement with the owner to purchase is reached or a possession and use agreement is obtained for any of these properties before the Board meeting, this recommendation will be amended to reflect the number of parcels proceeding through the condemnation process.

DISCUSSION:

A prerequisite to commencement of eminent domain proceedings by a public entity is adoption of a Resolution of Necessity (Code of Civil Procedure section 1245.220). This statutory requirement is designed to ensure that public entities will verify and confirm the validity of their intended use of the power of eminent domain.

A Resolution of Necessity must contain a general statement of the public use for which the property is to be taken, a reference to the authorizing statutes, a description of the property and a declaration stating that each of the following have been found and determined to be true:

1. The public interest and necessity require the proposed project;
2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The property described in the resolution is necessary for the proposed project; and,
4. That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

The information addressing each of these items, and any additional findings that must be made, is included in a staff report that will be distributed to the members of the Board. The staff report also contains specific information on each of the properties impacted.

ALTERNATIVES:

There are no practical alternatives to the recommended action if the current project schedule is to be maintained. These properties are required for the project and the condemnation actions must be initiated in order to obtain possession of the parcels to avoid delaying the start of construction.

FISCAL IMPACT:

Funding to cover the costs associated with acquisition of these properties has been included in the adopted Measure A Capital Budget Augmentation of January 4, 2007.

STANDING COMMITTEE DISCUSSION/RECOMMENDATION:

The Transit Planning and Operations Committee considered this item as part of its January 17, 2008 Agenda and approved it unanimously, recognizing that these actions are part of the U.P. Freight Railroad relocation work agreed to at the time of right-of-way purchase.

Prepared by: Juanita Villemaire, Senior Real Estate Agent