

# Real Estate Acquisition for VTA Projects



As the Congestion Management Agency for Santa Clara County, delivering transportation projects is a fundamental role VTA performs for the region, and real estate acquisition is an essential part of project delivery. VTA's transportation projects are complex and diverse, and include transit, bicycle, pedestrian, and highway improvement projects, VTA's BART Silicon Valley Program, and other major improvement projects.

All VTA appraisal, acquisition, and relocation activities follow the California Government Code, Code of Civil Procedure and Code of Regulations, as well as the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, where applicable. More detailed information on how VTA acquires real estate can be found below.

This information generally describes how VTA purchases real property and addresses frequently asked questions by members of the community.

## What Types of Real Property Does VTA Purchase?

The real property interests that VTA acquire may be permanent or temporary, may consist of an entire property or only a portion of the property, and may involve surface, subsurface, and/or aerial rights.

The three types of property interests that VTA typically purchases include the following:

- Fee simple – permanent full ownership of all property interests in either an entire property or a portion of a property.
- Easements – the permanent right to use an aerial, surface, and/or subsurface property interest for purposes such as access to and/or installation of transportation improvements or utilities. Easements do not include the full bundle of property rights included in a fee simple interest.
- Temporary Construction Easements – a temporary right for a specific time period, typically for construction and/or construction staging purposes. Property encumbered by this type of easement would typically be returned to the property owner based on the terms of the easement. Temporary easements may be needed for several weeks or up to several years.

## How are Property Owners Protected When VTA Purchases Real Property?

Property owners' rights are protected by the federal and State Constitutions and applicable State and federal laws and regulations. These include, but are not limited to:

- Federal: U.S. Constitution, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 49 Code of Federal Regulations Part 24
- State: California Constitution, California Government Code, California Relocation and Real Property Acquisition Guidelines (CCR Title 25, Chapter 26), and the California Code of Civil Procedure.

The acquisition process typically does not begin until after the planning process and environmental clearance are completed and the engineering design work has confirmed the parcels and types of property interests that are required to construct and operate the proposed project. At that time, maps are prepared showing the exact boundaries of needed real property, along with their legal descriptions.

## When Will Property Owners Know Whether Their Property Will Be Acquired?

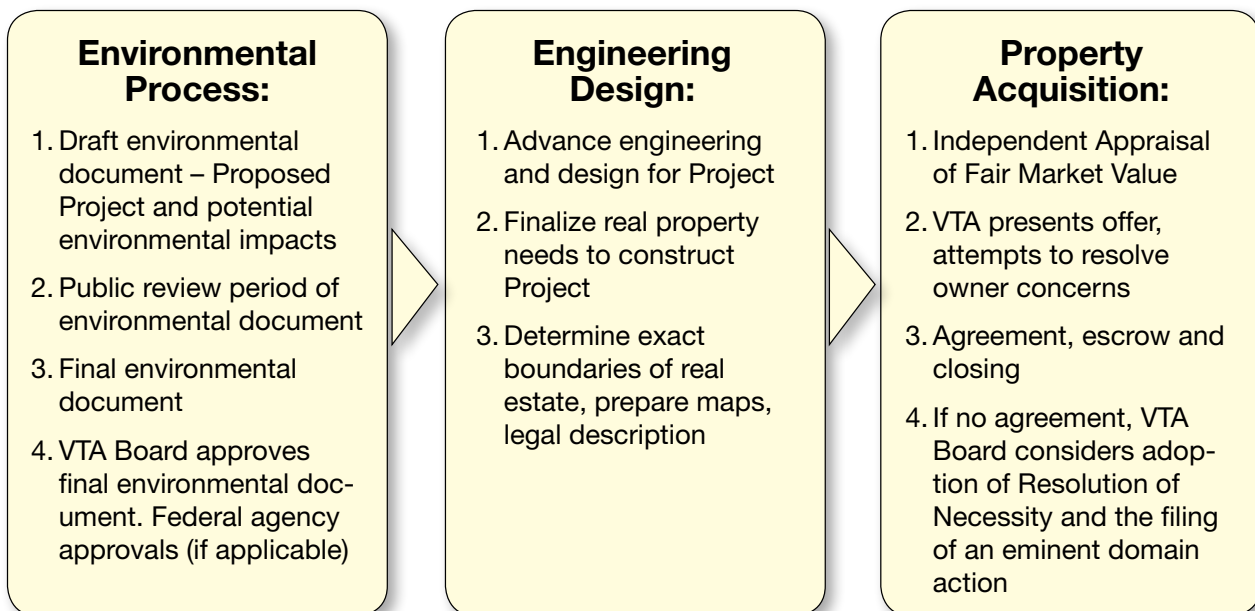
If property is needed to construct a transportation project, the environmental document would identify properties within the boundaries of the proposed project and each of the project alternatives (if applicable). Typically, engineering design is not 100% complete at the environmental clearance phase; however, it is sufficient to identify needed properties to complete environmental clearance. An important note is that the design could be refined and optimized based on public input during the environmental process, and options and alternatives that are not preferred may be eliminated. This means that when a property interest is identified in a draft environmental document, it does not necessarily mean that VTA will acquire that property or property interest. Property owners will know if their property or a portion of their property is required for construction or operation of the project after environmental clearance is complete and engineering progresses to more detailed design work.

## When Does VTA Purchase Real Property for Transportation Projects?

Unless an owner voluntarily offers to sell his/her real property, VTA does not acquire any real property until after environmental review has been completed and certified by the VTA Board of Directors.

The Figure below illustrates when property acquisition typically commences in a Capital Project.

**Figure: Process Leading to Property Acquisition**



## **When and How Will Property Owners Be Contacted?**

A member of VTA's Community Outreach Team may contact a property owner during the planning and environmental review phase for a proposed project. Community Outreach staff has current information about the proposed project and is available to assist property owners with general project information and answer questions or address concerns they may have regarding the proposed project and schedule of key activities.

Due to statutory and/or regulatory prohibitions, and as a general matter, VTA's Real Estate staff cannot discuss potential acquisitions with property owners before a project is environmentally cleared, including, but not limited to, discussions relating to potential purchase of specific property interests, potential current or future property values, and potential compensation.

VTA's Real Estate staff typically do not contact property owners until after environmental clearance is complete and after the engineering team has confirmed the exact boundaries and nature of the property interests required for construction of the project. The initial contact will likely concern the scheduling of an appraisal inspection, which property owners are encouraged to attend. A VTA acquisition agent will be assigned and will share his/her contact information with the property owner and will be available throughout the acquisition process.

Major Capital Projects are often designed and constructed in multiple phases, which means that the property acquisition phase may also occur in phases. Depending on the size of the project and its phasing, purchase of a particular real estate interest may occur anytime from before construction begins to several years after construction commences. This means a property owner may be contacted by a member of VTA Real Estate staff sometime before construction starts or up to several years after construction starts.

## **What Are the Steps During the Acquisition Process?**

If and when it is determined that a specific property or property interests are required to construct a project, VTA will hire an independent licensed appraiser to determine the Fair Market Value of the proposed acquisition. The appraisal typically occurs after environmental clearance is complete and after the engineering team confirms the boundaries and nature of the needed property interest.

VTA will then prepare an offer based on just compensation (fair market value, as defined under California law) and present the offer to the property owner. The property owner can accept the offer or make a counter-offer to VTA. If the property owner desires to hire his/her own appraiser, VTA will reimburse the owner for his/her costs for the appraisal up to \$5,000.

After VTA and the property owner agree on the purchase price and other terms and conditions, a contract will be signed between the parties, and escrow will be opened. During escrow, issues affecting the title will need to be resolved. Upon close of escrow, the property owner will be paid the agreed upon purchase price, and the property will be conveyed to VTA.

## **How are Properties Valued and What Compensation is Paid by VTA?**

Property owners must be paid "just compensation" for the property. This means that property owners should receive the fair market value, as defined under California law, for the property. VTA's appraiser is required to identify the fair market value of the property, ignoring any increase or decrease in the value of the property that results from the project. If VTA is acquiring only a portion of an owner's property, VTA is also required to pay severance damages if the proposed project causes a decrease in value to the remainder of the property. Additionally, businesses may be eligible for compensation for damages for loss of goodwill if they can demonstrate such losses as required under state law.

Eligible property owners and tenants who are required to relocate as a result of the acquisition may also be entitled to relocation benefits as provided by law.

## What If I Don't Want to Sell My Property to VTA?

State law authorizes certain public agencies, including VTA, to purchase private property even if an owner does not wish to sell his/her property or property interest. This eminent domain authority applies to situations where findings can be made that the subject property is required for the project, the public interest and necessity require the project, and the project is planned or located in a manner that is compatible with the greater public good and the least private injury.

VTA always seeks to first enter into voluntary purchase agreements with property owners and strives to resolve an owner's concerns to the extent that is reasonably feasible. However, in some situations, property owners are either unresponsive or negotiations have reached an impasse and possession of the property interest is needed to allow construction to remain on schedule. When such a situation occurs, VTA staff may seek the VTA Board of Directors' (Board) approval to adopt a Resolution of Necessity. This authorizes VTA staff to file an eminent domain action. The property owner will receive notice of the hearing on the Resolution of Necessity and may appear before the Board to be heard. The issue of compensation is not part of the hearing.

If the Board adopts the Resolution of Necessity, thereby authorizing the filing of an eminent domain action, VTA will file a complaint and if necessary, a motion to obtain a court order for prejudgment possession of the property. The issue of compensation will be determined by a judge or jury unless the parties can resolve the matter. VTA will continue to try to resolve the terms of the proposed acquisition with the property owner throughout the eminent domain process.

*Disclaimer: This information is not, nor is it intended to be, legal advice. This information is only intended to provide a general description of a public process. This information is not, and is not intended to be, an announcement of an intent to acquire any private property.*

## How to Reach Us

For more information, please contact VTA at [community.outreach@vta.org](mailto:community.outreach@vta.org), (408) 321-7575 or TTY for the hearing-impaired (408) 321-2330.

