

**Board Report**

File #: 2019-0482, **File Type:** Policy

Agenda Number: 16.

**FINANCE, BUDGET AND AUDIT COMMITTEE
SEPTEMBER 18, 2019**

SUBJECT: DELEGATION OF AUTHORITY TO APPROVE REAL ESTATE TRANSACTIONS

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATION

AUTHORIZING the Chief Executive Officer (CEO) to:

- A. ESTABLISH just compensation for the acquisition of real property based on an approved appraisal of the fair market value as long as the amount is within the overall Life of Project (LOP) budget or within the approved current annual budget if LOP has not yet been adopted;
- B. APPROVE administrative or litigated settlements (including goodwill, furniture, fixtures, and equipment, and other acquisition costs) of up to \$1,000,000 above the appraised value or 20% above the appraised value (up to \$5 million), whichever is greater, if the amount is within the overall LOP budget or within the approved current annual budget if LOP has not yet been adopted;
- C. DIRECT the CEO to report back to the Board quarterly on just compensation and/or settlements over \$500,000; and

AUTHORIZE the Inspector General to perform periodic random spot-check audit of these transactions to ensure to the Board that the system and policy are performing in the manner described in the recommendation.

ISSUE

The Real Estate Department estimates that Metro will need to acquire thousands of parcels over the next three to ten years for Measure M projects. Currently, the authority for the CEO to establish just compensation or to enter into settlement agreements is limited to \$500,000; amounts above \$500,000 require Board approval. With the current threshold, and the nature of the property rights that will be required, the number of acquisitions that will require Board approval will be significantly increased. Therefore, delegating additional authority to the CEO will expedite the acquisition process, improve the ability to deliver the properties for construction in the necessary timeframes, and avoid placing unnecessary burdens on the Board.

BACKGROUND

The Authority of the CEO to approve just compensation was increased from \$200,000 to \$500,000 in September 2003 (see Attachment A). At the time of the 2003 Board action, the parcels being acquired were generally partial acquisitions and easements that affected residential and small commercial properties. The parcels to be acquired for future Measure M projects are generally in improved, urban areas which have higher acquisition costs. In addition, the value of real property has increased significantly. In the 15 years since the threshold's last increase, there has been a 72% increase in the purchase price for a single-family home in the Los Angeles area as reported by the S&P Case-Shiller Index

In January 2018, the Board authorized the CEO to negotiate and execute project-related agreements, including contract modifications, up to the authorized LOP budget on all transit and regional rail capital projects program-wide (see Attachment B). It is unclear whether that delegation authority applies to real estate transactions, and therefore staff has continued to bring real estate transactions above \$500,000 to the Board for approval. The authorization requested in this report is intended to clarify the CEO's real estate acquisition authority.

This request for additional delegation does not include relocation costs which are determined and paid in accordance with federal and state law, as well as Metro policy. Relocation costs do not require Board approval unless they exceed the LOP or approved current annual budget. Similarly, court costs and interest are statutorily required payments that do not require board approval or delegation of additional authority. In addition, the adoption of a Resolution of Necessity to initiate eminent domain requires a 2/3 vote of the Board and cannot be delegated to the CEO.

DISCUSSION

Just Compensation

According to the Federal Uniform Act and California State law, just compensation must be established by an agency official and be no less than the approved appraisal of the fair market value. The following process is required by Federal and State law:

- Upon identification of the property requirements for the project, an independent appraiser is contracted to prepare an appraisal report to opine on the fair market value of the property interest to be acquired.
- For federally-funded projects, the appraisal must be reviewed by a second independent appraiser.
- For projects funded by the Federal Transit Administration (FTA) where the valuation is greater than \$1 million, FTA concurrence is required.
- Just compensation is established by an authorized agency official based on the amount of the approved appraisal.
- An offer of just compensation is made to the property owner to acquire the necessary property rights.

The authorization being requested herein would allow the CEO to establish just compensation based on the approved appraisal, following the process listed above, as long as it is within the LOP or

approved current annual budget.

Settlements

After an offer of just compensation has been made to the property owner, the property owner has the opportunity to provide feedback or additional information about the property or the appraisal that may impact the value. When a property owner provides credible evidence, Metro staff reviews it and may make a recommendation to enter into a settlement above the Metro appraised value. When a settlement is reached outside of the eminent domain process, it is referred to as an administrative settlement. When a settlement is reached as part of the eminent domain process, it is referred to as a litigated settlement.

Generally, administrative or litigated settlements within 10% of just compensation are considered appropriate given the range of differing appraisal methodologies and opinions. Settlements within 20% of just compensation are generally considered allowable with adequate, documented rationale which includes a comparison to the appraisal on which just compensation was established.

The authorization being requested herein would allow the CEO to approve administrative or litigated settlements (including goodwill, furniture, fixtures, and equipment, and other acquisition costs) of up to \$1,000,000 above the appraised value or 20% above the appraised value (up to \$5 million), whichever is greater, as long as it is within the LOP budget or approved current annual budget.

Currently, the FTA must review all settlements that exceed \$50,000 of just compensation. However, the FTA will approve agency-specific and project-specific agreements to increase that threshold. Staff will pursue this type of agreement with the FTA to increase the settlement approval threshold and expedite the settlement process.

The full acquisition process can be seen in the flowchart provided as Attachment C.

LOP /Approved Current Annual Budget

Real Estate prepares the property acquisition estimates and Program Management incorporates them into the annual budget until LOP is adopted, at which time the remaining real estate estimates are included in the LOP. During the acquisition process, Real Estate monitors the appraised and settlement amounts against the estimate included in the annual budget or LOP. All transactions that would cause the annual budget or LOP to be exceeded for the project will be presented to the Board for approval.

Equity Platform

Expediting the acquisition approval process will allow many property owners to be paid sooner, create more certainty in the acquisition process and permit Metro to acquire needed properties faster, thereby facilitating construction and delivery of Metro projects.

DETERMINATION OF SAFETY IMPACT

This action has no safety impact.

FINANCIAL IMPACT

This action has no financial impact.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

This policy change aligns with Metro Strategic Plan Goal Five to provide a more efficient, accountable, and trustworthy governance of Metro resources.

ALTERNATIVES CONSIDERED

The Board could maintain the current CEO approval level or authorize a lesser level than recommended herein. This is not recommended as it could delay the acquisition of the properties for Measures M projects and cause schedule issues for construction and service.

NEXT STEPS

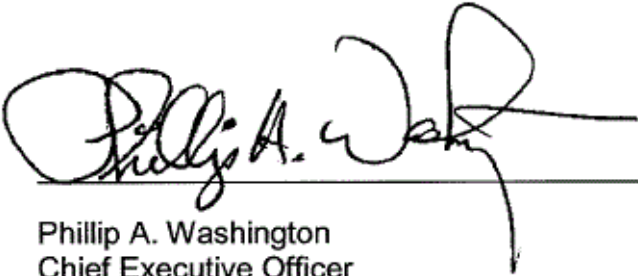
Upon approval, staff will only bring to the Board those settlements that exceed \$1 million above the appraised value or 20% above the appraised value (up to \$5 million), whichever is greater. All other transactions will be approved by the CEO. CEO will report back to the Board quarterly on just compensation and/or settlements over \$500,000. Staff will also pursue a higher settlement approval threshold with the FTA to expedite Metro's property acquisition process.

ATTACHMENTS

- Attachment A - Approval of Real Estate Transactions CEO Authority
- Attachment B - Like Authority for Construction Related Contracts
- Attachment C - Real Estate Acquisitions Flowchart

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