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**PLANNING AND PROGRAMMING COMMITTEE
OCTOBER 14, 2009**

SUBJECT: REVISED JOINT DEVELOPMENT POLICIES AND PROCEDURES

**ACTION: ADOPT REVISED JOINT DEVELOPMENT POLICIES AND
PROCEDURES**

RECOMMENDATION

Adopt the Revised Joint Development Policies and Procedures. (Attachment A).

ISSUE

The California Environmental Quality Act (CEQA) requires public agencies to prepare an environmental impact report (EIR) on any project that may cause significant environmental effects prior to approving the project. Most joint development projects require multiple Board approvals before an environmental impact report can be completed. Under the current Board-approved Joint Development Policies and Procedures ("Policy") the Board adopts project-specific development guidelines prior to issuing a Request for Proposals, approves the selection of a developer, authorizes the Chief Executive Officer to enter into an Exclusive Negotiation Agreement (ENA) with the selected developer and approves the Joint Development Agreement subject to certain conditions, among them the completion of an EIR.

A California Supreme Court ruling on October 30, 2008 in *Save Tara vs. City of West Hollywood* and subsequent cases call attention to the timing of the EIR in relation to actions taken by the responsible/implementing agency that, viewed as a whole, can be construed as project approval. Actions that could be construed as approval would trigger a requirement that an EIR be completed prior to any agreement that would bind the agency or risk subjecting the EIR to a fatal flaw. Preparation of an EIR is generally undertaken by the selected developer once a project is defined and a joint development agreement is signed between the parties. This ruling affects LACMTA's joint development process as it requires a careful delineation between actions that advance project development and actions that could be construed as project approval and will require that the EIR be completed before the Board authorizes approval of a final and binding joint development agreement.

In addition to a policy provision addressing the court ruling, other revisions include requiring the selected developer to complete and execute an ENA prior to Board action, deletion of the joint development checklist and minor revisions for consistency.

POLICY IMPLICATIONS

Adopting the revisions to the existing policies and procedures allows us to comply with CEQA and to proceed with the project development process.

OPTIONS

The Board could determine not to approve the revised Policy, however LACMTA is required to comply with CEQA if the LACMTA is to continue to develop projects.

FINANCIAL IMPACT

There is no financial impact directly associated with adopting the recommended revisions and incorporating them in the LACMTA Joint Development Policies and Procedures.

BACKGROUND

The revised joint development policies and procedures now include the following: "III. F. Environmental Compliance. LACMTA shall not approve or be committed to a Project until the LACMTA as a responsible agency under CEQA and/or NEPA considers and analyzes the environmental impacts of the Project."

In addition to the strengthened policy on environmental compliance, the following revisions are included in the revised joint policies and procedures:

1. Addition of a provision in "C. Exclusive Negotiation Agreement" requiring selected developer to complete and execute an ENA with terms and conditions regarding general planning and development goals before the Board approves the selection of the developer and authorizes the CEO to enter into an ENA
2. Deletion of the Joint Development Checklist. The checklist may include slightly different criteria depending on the site and the proposed project and a corresponding weighting system. The Chief of Real Property Management and Development should retain this discretion.
3. Other minor changes to the joint development policies and procedures to reflect the entire document's consistency with major policy revisions and actual practice

NEXT STEPS

The Revised Joint Development Policies and Procedures will provide direction to staff and Metro joint development partners.

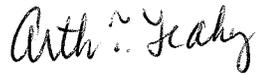
ATTACHMENT

Revised Joint Development Policies and Procedures

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JOINT DEVELOPMENT POLICIES AND PROCEDURES

Revised October, 2009

I. PURPOSE

Joint development is a real property asset development and management program designed to secure the most appropriate private and/or public sector development on properties owned by the Los Angeles County Metropolitan Transportation Authority ("LACMTA"). Joint Development also includes coordination with local jurisdictions in station area land use planning in the interest of establishing development patterns that enhance transit use.

This Joint Development Policies and Procedures document updates the Joint Development Policies and Procedures adopted by the LACMTA Board of Directors ("Board") in May 2005.

II. GOALS

- A. With respect to overall planning, LACMTA's Joint Development Program seeks to:
1. Encourage comprehensive planning and development around station sites and along transit corridors.
 2. Reduce auto use and congestion through encouragement of transit-linked development.
- B. With respect to specific sites, LACMTA's Joint Development Program seeks developments that include a mix of the following goals:
1. Promote and enhance transit ridership.
 2. Enhance and protect the transportation corridor and its environs.
 3. Enhance the land use and economic development goals of surrounding communities and conform to local and regional development plans.
 4. Generate value to LACMTA based on a fair market return on public investment.

III. POLICIES

A. Transportation and Land Use Coordination Policies:

To encourage coordinated transportation and land use decisions, LACMTA shall:

1. Consult and work cooperatively with local jurisdictions, redevelopment agencies, developers, and other public and private sector entities to promote land use policies and plans which encourage intensive, high quality development at stations and surrounding properties that are located in regional/community activity centers.
2. In consultation with local jurisdictions and with community input, prepare development guidelines specific to each joint development site that articulate the intensity and type of land uses that LACMTA desires for that site as well as any desired transit and urban design features. Obtain Board approval of the development guidelines for each site.

3. Encourage transit compatible land use plans that enhance LACMTA's multi-modal transit, regional mobility, ridership and revenue goals.
4. Consider joint development opportunities in the acquisition of property, location of new station sites, and construction of station facilities.
5. In the initial planning of a transit corridor project (e.g., during the environmental and preliminary engineering phases) LACMTA will conduct site analysis, include a preliminary layout of each passenger station site, develop conceptual urban design strategies integrating station sites with adjacent communities, and evaluate proposed station sites for their joint development potential.
6. Actively encourage and allow surrounding property owners/developers, at their expense, to construct direct connections to stations from their properties/buildings and require connector fees or equivalent consideration for such connections based on the proportional benefit to any such property/building.

B. Development Policies:

LACMTA shall consider joint development projects based on the following criteria:

1. LACMTA shall retain authority over its transit facilities and services.
2. Projects shall be consistent with development guidelines to be established by LACMTA for individual joint development sites. (Refer to Item #2 above.)
3. Projects shall not negatively impact present or future public transportation facilities.
4. Projects shall be consistent with regional and local community policies and plans.
5. Projects must demonstrate, at a minimum, fair market value to LACMTA.
6. Selection between projects will be based on those which meet the above criteria and additionally demonstrate:
 - a. The greatest potential to increase transit ridership and enhance the transit system environment.
 - b. The greatest economic development potential to the community consistent with adopted land use plans.
 - c. Responsiveness to community needs for housing, employment, services, or other facilities.
7. Projects are encouraged which create a long-term source of revenue to LACMTA and allow LACMTA to participate in the increase in value of its real estate assets over time. This will generally take the form of a long-term lease. Under extraordinary circumstances, LACMTA may consider sale of property if it is determined to be in LACMTA's best interest.
8. Projects are encouraged which do not require commitment of LACMTA financial resources, minimize any investment risk, and maximize asset security for LACMTA.
9. Projects are encouraged which obtain investment capital from other public agencies, or in-lieu contributions, where needed, to create greater economic benefit to LACMTA-sponsored joint development projects.
10. Where appropriate, projects are encouraged which provide for increased station access using alternative modes. Where appropriate and after consideration of possible alternative modes of access, projects are encouraged which provide new or additional park-and-ride facilities (except at Downtown Los Angeles stations).
11. Consistent with LACMTA procurement policy, encourage involvement of disadvantaged, minority and women-owned business enterprises.
12. Projects shall take into account LACMTA's Public Restroom Policy in effect at the time.

13. Projects with a residential component are encouraged to provide a range of housing types to meet the needs of a diversity of household income, sizes, and ages particularly if such diversity of housing is not currently provided within walking distance of the transit system.

IV. JOINT DEVELOPMENT IMPLEMENTATION PROCEDURES

A. Project Proposals Initiation/Solicitation:

LACMTA will periodically conduct market feasibility studies for LACMTA-owned properties at transit stations. LACMTA will also consult with local jurisdictions regarding local land use development efforts. These market analyses and consultations with local jurisdictions shall provide the basis for establishing project priorities and project implementation strategies to ensure maximum attainment of LACMTA's joint development goals.

Based on the consultation with the local jurisdiction and with community input, LACMTA will prepare development guidelines specific for each joint development site that articulate the intensity and type of land uses that LACMTA desires for that site as well as any desired transit and urban design features. Staff will forward proposed development guidelines for each site to the Board for approval, which shall include information regarding necessary California Environmental Quality Act ("CEQA") compliance procedures, National Environmental Protections Act ("NEPA") compliance procedures, Federal Transit Authority approval requirements, California Department of Transportation approval requirements and the presence of LACMTA Financing or tax-exempt bonds on the Property.

LACMTA will be open and competitive in marketing its properties.

LACMTA will solicit proposals for joint development of its properties through a Request for Proposal or other forms of competitive solicitation as appropriate except that an unsolicited proposal may be recommended in limited cases, such as when the site is small or constrained by location or access. If solicited by LACMTA, the standard Request for Proposal ("RFP") procedure as practiced by the Procurement Department following Procurement Policies and Procedures shall be used as a general guideline for determining the appropriate process for solicitation.

B. Proposal Evaluation:

1. Solicited Proposals:

At LACMTA's discretion, staff can initiate an RFP process to solicit development proposals. In soliciting joint development proposals, LACMTA shall provide all available relevant site information including the Board adopted design guidelines for the site and encourage developers to seek information or consult with local jurisdictions regarding current and planned land uses in the project area.

In evaluating proposals solicited through an RFP process, staff will use LACMTA's Procurement Policies and Procedures as a general guideline for determining the appropriate process. Staff will utilize an evaluation panel generally consisting of key

personnel, joint development and urban design consultants, academic and legal professionals, and local jurisdiction technical staff, where appropriate.

Additionally, an urban design panel may be used to evaluate projects in an advisory capacity to the evaluation panel. The panel shall evaluate joint development proposals and advise the LACMTA Chief Executive Officer ("CEO") on a developer to be recommended to the Board. The CEO may recommend a developer to the Board or defer joint development if none of the proposals maximize joint development objectives.

2. Unsolicited Proposals:

The CEO shall evaluate and recommend unsolicited proposals only in limited cases such as when the site is small or constrained by location or access. In the event that LACMTA receives an unsolicited proposal, staff will ensure that at a minimum, the unsolicited proposal contains sufficient information to allow the adequate evaluation of the proposal in a manner consistent with solicited proposals. The CEO shall evaluate whether the unsolicited proposal meets the exceptions for non-competitive solicitation and is in the best interest of LACMTA to accept for evaluation. The CEO will evaluate the unsolicited proposal and, if the proposal maximizes joint development objectives, make a recommendation to the Board of Directors to enter into a written agreement reflecting the parties' intent to work toward joint development as presented to the Board.

C. **Exclusive Negotiations Agreement: Before the CEO recommends the developer's proposal to the LACMTA Board, developer shall complete and execute an Exclusive Negotiation Agreement ("ENA") with terms and conditions regarding general planning and development goals agreed to by the proposed developer.** Upon approval of a recommended developer and authorization by the LACMTA Board, the CEO shall enter into the ENA with the developer.

1. **Developer Responsibilities under the ENA:**

- a. In consideration for entering into the ENA, developer shall provide LACMTA a non-refundable fee ("Fee") in an amount determined by the CEO but in no event less than twenty-five thousand dollars (\$25,000) or such other consideration as determined by the CEO.
- b. In addition to the fee, developer shall also provide LACMTA with a good faith deposit ("Deposit") in an initial amount determined by the CEO to pay LACMTA's actual costs to negotiate the documents to implement the proposal and any LACMTA in-house and third party costs incurred to evaluate the Proposal.

2. **LACMTA Responsibilities under the ENA:** During the Negotiation Period and provided that Developer is not in default of its obligations under the ENA, Metro shall negotiate exclusively and in good faith with Developer with respect to a Joint Development Agreement ("JDA") and Ground Lease to be entered into between

LACMTA and Developer, and shall not solicit or entertain offers or proposals from other parties concerning the Site.

Term of the ENA: The ENA term shall be determined by the CEO; provided, however, such term, including any extensions thereto as determined by the CEO, shall not exceed 18 months. In considering an extension, the CEO shall determine whether substantial progress have been made towards fulfillment of the requirements of the ENA in considering an extension and may require payment of additional Fee and/or Deposit amounts.

- D. **Development Agreement:** Upon satisfactory fulfillment of all the development requirements in the ENA, LACMTA may enter into a JDA for the implementation of a Project. The JDA shall describe the rights and responsibilities of both parties.
- E. **Ground Lease and Other Miscellaneous Documents:** Upon satisfactory fulfillment of all the closing conditions required in the JDA, LACMTA shall enter into a Ground Lease for the lease of the site. The Ground Lease shall describe the rights and responsibilities of both parties with respect to the site. The LACMTA CEO may also enter into such other documents and agreements necessary to implement and administer the Project as described in the JDA and Ground Lease.
- F. **Environmental Compliance:** LACMTA shall not approve or be committed to a Project until the LACMTA Board as a responsible agency under CEQA and/or NEPA considers and analyzes the environmental impacts of the Project.
- G. **Statutory Basis:** LACMTA's joint development function acquired a statutory basis through one of its predecessor agencies, the Southern California Rapid Transit District. Under California Public Utilities Code, Section 30600: "The district may take by grant, purchase, gift, devise, or lease, or by condemnation, or otherwise acquire, and hold and enjoy, real and personal property of every kind within or without the district necessary or incidental to the full or convenient exercise of its powers. That property includes, but is not limited to, property necessary for, incidental to, or convenient for joint development and property physically or functionally related to rapid transit service or facilities. The Board may lease, sell, jointly develop, or otherwise dispose of any real or personal property within or without the district when, in its judgment, it is for the best interests of the district to do so."

Los Angeles County Metropolitan Transportation Authority Joint Development Implementation Procedures

