



MEETING DATE: 9/07/04

AGENDA ITEM:

8

## COUNCIL AGENDA REPORT

DATE: September 2, 2004  
TO: MAYOR AND TOWN COUNCIL  
FROM: ORRY P. KORB, TOWN ATTORNEY *OK*  
SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN TO BECOME A CO-APPLICANT WITH VALLEY TRANSPORTATION AUTHORITY AND SOBRATO INTERESTS III IN AN APPLICATION TO THE CALIFORNIA PUBLIC UTILITIES COMMISSION TO CONVERT A PRIVATE RAILWAY CROSSING EASEMENT AT 14300 WINCHESTER BOULEVARD TO A PUBLIC CROSSING

### RECOMMENDATION:

Adopt a resolution authorizing the Town to become a co-applicant with Valley Transportation Authority and Sobrato Interests III in an application to the California Public Utilities Commission to convert a private railway crossing easement at 14300 Winchester Boulevard to a public crossing.

### BACKGROUND:

On May 3, 2004, the Town adopted an amendment to a planned development ordinance authorizing a mixed housing and office use at 14300 Winchester Boulevard (Ordinance No. 2130). Railroad tracks within a right-of-way parallel the frontage of that project on Winchester Boulevard. The right-of-way is owned by the Valley Transportation Authority ("VTA") and, in the vicinity of the development site, maintained by the Union Pacific Railroad ("UPRR"). The driveway entry to the project site is perpendicular to and crosses the tracks and right-of-way. That crossing is currently classified as a private crossing, meaning that its sole beneficiary is the owner of the project site, Sobrato Interests III ("Sobrato"). Condition No. 51 of Ordinance No. 2130 requires that the private crossing be improved with safety devices consistent with a public crossing, which would be maintained by Sobrato and VTA.

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:LMB/wp [N:\ATY\RRcrossing.tcr.wpd]

Reviewed by: PSJ Town Manager PSJ Assistant Town Manager \_\_\_\_\_ Clerk  
\_\_\_\_\_  
Finance Community Development

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MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TOWN TO BECOME A CO-APPLICANT WITH VALLEY TRANSPORTATION AUTHORITY AND SOBRATO INTERESTS III IN AN APPLICATION TO THE CALIFORNIA PUBLIC UTILITIES COMMISSION TO CONVERT A PRIVATE RAILWAY CROSSING EASEMENT AT 14300 WINCHESTER BOULEVARD TO A PUBLIC CROSSING

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Jurisdiction for approving the conversion of a private railroad crossing lies with the California Public Utilities Commission (“CPUC”). On March 5, 2004, VTA and Sobrato filed an application with the CPUC for permission to convert the crossing from private to public (Application No. 04-03-003) and for approval of new automatic warning devices and related traffic controls. These safety enhancements will be necessary to upgrade the crossing for increased use from the Sobrato development. Pursuant to a Construction and Maintenance Agreement to be executed by VTA and Sobrato, the proposed safety enhancements to the crossing will be designed by VTA, funded by Sobrato and owned and maintained by VTA, except that Sobrato will maintain the enhancements located on its property.

This application was objected to by UPRR, the prior owner of the railroad right-of-way, which retained an easement allowing its continued use of the track. UPRR argues that the Town, which has jurisdiction over the adjacent public roadway, Winchester Boulevard, should be a co-applicant. UPRR has indicated that the Town’s appearance in the proceeding and changes in maintenance arrangements with VTA would satisfy its protest. Consequently, both VTA and Sobrato have asked the Town to join in the application.

DISCUSSION:

The request to join the application of VTA and Sobrato has been evaluated in terms of whether it would further the Town’s goal in ensuring the safety improvements to the railway crossing, whether it would increase the Town’s legal liability for personal injury and property damage resulting from the use of the crossing and whether it expands the Town’s financial responsibility for the construction and maintenance of improvements to the crossing and any other improvements that might be required by the CPUC elsewhere on or near Winchester Boulevard.

We are informed by VTA’s legal counsel that the Town’s joinder in the application would likely be required by the CPUC before it would permit the crossing conversion and approve installation of the safety enhancements. However, active involvement in the application could also increase liability for damages and responsibility for improvement related costs. VTA, Sobrato and UPRR are not looking to the Town for reimbursement of any construction or maintenance costs. Additionally, VTA and Sobrato are offering to indemnify and hold the Town harmless against any risks associated with the new construction and use of the enhanced crossing and any responsibility for future construction or maintenance costs.

Assuming an acceptable form of indemnity, joining the application will enable the Town to help

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ensure that the crossing is improved without a significant increase in the Town's liability for damages or responsibility for improvement related costs arising from the joinder. Therefore Council should adopt the attached resolution which would approve joining the application upon receipt of indemnification from VTA and Sobrato in a form acceptable to the Town Attorney.

Attachment: Proposed Resolution

Distribution:

Benjamin H. Scharf, Senior Assistant Council, Santa Clara Valley Transportation Authority,  
3331 N. 1<sup>st</sup> St., Bldg. C-2, San Jose, CA 95134-1906

Tim Steele, Vice President, Sobrato Development Companies, 10600 N. De Anza Blvd., #200,  
Cupertino, CA 95014

RESOLUTION NO.

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AUTHORIZING THE TOWN TO BECOME A CO-APPLICANT WITH VALLEY  
TRANSPORTATION AUTHORITY AND SOBRATO INTERESTS III IN AN  
APPLICATION TO THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
TO CONVERT A PRIVATE RAILWAY CROSSING EASEMENT  
AT 14300 WINCHESTER BOULEVARD TO A PUBLIC CROSSING

**WHEREAS:**

- A. On May 3, 2004, the Town adopted an amendment to a planned development ordinance authorizing a mixed housing and office use at 14300 Winchester Boulevard (Ordinance No. 2130).
- B. Railroad tracks within a right-of-way parallel the frontage of the project site on Winchester Boulevard. The right-of-way is owned by the Valley Transportation Authority (“VTA”) and, in the vicinity of the project site, maintained by the Union Pacific Railroad (“UPRR”). The driveway entry to the project site is perpendicular to and crosses the tracks and right-of-way. That crossing is currently classified as a private crossing, meaning that its sole beneficiary is the owner of the project site, Sobrato Interests III (“Sobrato”). Condition No. 51 of Ordinance No. 2130 requires that the private crossing be improved with safety devices consistent with a public crossing, which would be maintained by Sobrato and VTA.
- C. Jurisdiction for approving the conversion of a private railroad crossing lies with the California Public Utilities Commission (“CPUC”). On March 5, 2004, VTA and Sobrato filed an application with the CPUC for permission to convert the crossing from private to public (Application No. 04-03-003) and for approval of new automatic warning devices and related traffic controls. These safety enhancements will be necessary to upgrade the crossing for increased use from the Sobrato development.

D. The application was objected to by UPRR, the prior owner of the railroad right-of-way, which retained an easement allowing its continued use of the track. UPRR argues that the Town, which has jurisdiction over the adjacent public roadway, Winchester Boulevard, should be a co-applicant. To eliminate this objection, both VTA and Sobrato have asked the Town to join in the application.

**RESOLVED:**

1. That the Town join in the Application No. 04-03-003 to the California Public Utilities Commission seeking permission to convert a private railway crossing easement at 14300 Winchester Boulevard to a public crossing.
2. That the Town Manager is authorized to sign documents necessary to implement this Resolution.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California held on the      day of      , 2004, by the following vote:

**COUNCIL MEMBERS:**

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN:**

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**ATTEST:**

CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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