



**May 13, 2019**

**To:** Members of the Board of Directors  
**From:** Darrell E. Johnson, Chief Executive Officer  
**Subject:** Adopt Resolutions of Necessity for the Interstate 405 Improvement Project Between State Route 73 and Interstate 605

### **Overview**

The Orange County Transportation Authority is implementing the Interstate 405 Improvement Project between State Route 73 and Interstate 605. The project requires acquisition of property rights from public and private parties adjacent to the existing freeway and city streets. On May 11, 2015, the Board of Directors approved acquiring right-of-way for the project. At this time, staff has been unable to reach an agreement to purchase required property rights from the subject property owners. It is now necessary for the Board of Directors to exercise its power of eminent domain by adopting resolutions of necessity in order to acquire these necessary property rights to make the properties available to meet the project delivery and construction schedules.

### **Recommendation**

Adopt Resolution of Necessity Nos. 2019-021 and 2019-033, and authorize and direct General Counsel to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests for the Interstate 405 Improvement Project between State Route 73 and Interstate 605.

### **Background**

The acquisition of public and private properties is often required to implement transportation projects, even though extensive efforts are made during the planning and design process to avoid or minimize the impacts to public and private properties. Design-build (DB) Cooperative Agreement No. C-4-1847 between the Orange County Transportation Authority (OCTA) and the California Department of Transportation (Caltrans) was approved by the Board of Directors (Board) on June 30, 2015, and defined the roles and responsibilities of OCTA and Caltrans for final design, construction, and

right-of-way (ROW) acquisition for the Interstate 405 Improvement Project between State Route 73 (SR-73) and Interstate 605 (I-605) (Project). Pursuant to the DB cooperative agreement, OCTA is the lead implementing agency for final design, construction, and ROW acquisition for the Project. The environmental document and project report were approved by Caltrans on May 15, 2015.

### ***Discussion***

Construction of the Project will impact 288 properties between SR-73 and I-605, including 179 residential properties, 71 commercial/industrial properties, 37 public properties, and one railroad property. There are 287 properties identified as partial acquisitions and one property became a full acquisition at the owner's request. The full acquisition of one property will result in the relocation of three businesses operating on the property. The real property requirements are comprised of acquisitions of partial fee interests (FEEs), permanent highway easements (PHEs), permanent footing easements (PFEs), temporary construction easements (TCEs), a permanent ground lease reduction (PGLR), a temporary ground lease reduction (TGLR), and access control rights needed to construct the proposed highway and express lane improvements for the Project. The full fee acquisition, partial FEEs, PHEs, PFEs, TCEs, PGLR, and TGLR are required for roadway and bridge construction, sound walls, retaining walls, drainage systems, and for the installation of above-ground and underground facilities, including electrical, telecommunication, water, sewer, gas, and storm drain systems.

Resolution No. 2019-021 pertains to the acquisition of one TCE over a portion of the property owned by Tadashi Tad Fujita and Judith M. Fujita, Trustees of the Tad and Judith Fujita Family Trust, dated March 25, 2011, and Masami Fujita. As a result of the I-405 widening, there is a need to reconstruct and widen the Bolsa Avenue overcrossing which slightly raises the grade of the intersection at Chestnut Street. The proposed design will require the existing sidewalk, curb, and gutter along Chestnut Street to be reconstructed closer to the subject property. However, the improvements shall remain within the public ROW. Acquisition of the subject TCE is needed to provide the DB contractor sufficient work area to reconstruct the existing sidewalk, curb, and gutter, and improve the existing driveway.

Resolution No. 2019-033 pertains to the acquisition of a partial FEE and two TCEs over a portion of the property owned by NM 168, a California limited liability company (LLC). As a result of the I-405 widening, there is a need to reconstruct and widen the Warner Avenue overcrossing. The proposed design

will require the existing sidewalk, curb, and gutter along Warner Avenue to be reconstructed closer to the subject property. Acquisition of the subject partial FEE is needed for these Warner Avenue improvements. Acquisition of the subject TCEs is needed to provide the DB contractor sufficient work area to construct the northbound off-ramp, reconstruct the existing sidewalk, curb, and gutter, and improve the existing driveway. The property owner, through its legal representative, provided OCTA staff with the attached written notice of the intent to appear and be heard on the proposed adoption of a resolution of necessity (RON) (Attachment A). Upon contacting the property owner's counsel, OCTA's legal counsel was informed that no specific objections were being made as the notice was sent to preserve the property owner's rights while settlement negotiations continued with OCTA. Subsequently, the property owner has agreed to terms and has executed a ROW contract to provide OCTA with the property rights needed to construct. Recommendation for approval of this RON, however, will need to proceed as the subject property is occupied by several tenants with lease agreements that may assert a leasehold interest in the property rights needed, assert a claim for loss of business goodwill, or potentially object to OCTA's possession of the property interests. One of the tenants, Sunrise Markets, has informed OCTA it intends to assert a claim for damages. Sunrise Markets would not execute the release of claims for the property interests, or for possession of those interests. Staff is recommending proceeding with approval of the RON to allow the tenants to resolve leasehold interest impacts due to the acquisition.

The property owners have been given substantially more time than the 30 days required by the Federal Highway Administration to consider OCTA's written purchase offer and have been contacted multiple times as described in Attachment B. These contacts include OCTA staff requesting a meeting with the property owner to conduct an OCTA policies and procedures first level review to describe the Project design and the need for the property.

In accordance with the DB contract, OCTA must secure possession of the interests in the subject properties by applicable dates in April 2020 through October 2020 to meet Project schedule deadlines. Delay in acquiring the interests in these properties will cause Project delays and can potentially subject OCTA to a delay claim from the DB contractor. Proceeding with these RONs will ensure that Project schedules are maintained and contracted commitments are met by OCTA.

The "List of Property Owners" and "Photo Aerial Exhibits," Attachments C and D respectively, provide information on property ownerships and locations.

Acquisition of the subject property interests is being conducted in accordance with OCTA's Real Property Policies and Procedures and Caltrans guidelines. The required property interests were identified, engineered, and appraised by OCTA. The full appraised amount for each respective property interest was offered to the property owner under the requirements of Governmental Code Section 7267.2.

In order to proceed with acquisition of the properties required for the Project and to comply with state and federal laws for ROW acquisition, the Board is requested to adopt the RONs for the subject properties. This action will allow OCTA to commence eminent domain proceedings to acquire the interests in real property needed for the Project.

The following resolutions are recommended:

- Resolution No. 2019-021 Tadashi Tad Fujita and Judith M. Fujita, Trustees of the Tad and Judith Fujita Family Trust, dated March 25, 2011, and Masami Fujita – Action is recommended for the acquisition of one TCE over a portion of the property to provide sufficient working areas to reconstruct the existing sidewalk, curb, and gutter, and to improve the existing driveway.
- Resolution No. 2019-033 NM 168, LLC – Action is recommended for the acquisition of one partial FEE and two TCEs over a portion of the property to reconstruct the Warner Avenue improvements, and provide sufficient working areas to construct the northbound off-ramp, reconstruct the existing sidewalk, curb, and gutter, and to improve the existing driveway.

The eminent domain proceedings commence with action by the Board to adopt a RON in accordance with the California Code of Civil Procedure Section 1245.240, which requires an affirmative vote of two-thirds of the Board members. The Board is requested to determine whether the following criteria have been met:

1. The public interest and necessity require the Project;
2. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The property interest(s) sought to be acquired is necessary for the Project; and
4. The offer required by Section 7267.2 of the Governmental Code has been made to the owner or owners of record.

Property owners and/or its designated representative affected by a RON may request an appearance to speak to the Board when the RON is considered on matters of Project design and the impact to the subject property. The issue regarding compensation for the value of the property affected by the RON should not be discussed. In the event the Board approves the RONs (Attachments E-F), OCTA's General Counsel will proceed with litigation in order to obtain possession and ultimate use of the property interests. Staff will continue negotiations with the property owners throughout the eminent domain process with the objective of reaching an agreement on the acquisition without the necessity of trial.

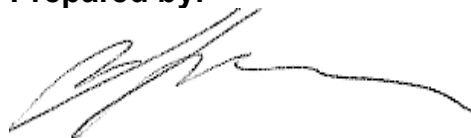
***Summary***

The acquisition of specified real property interests is required for the construction of the Project. Statutory offers have been made to the property owners, and negotiations are ongoing. Adopting these RONs and commencing eminent domain proceedings are requested to maintain the Project delivery schedule.

***Attachments***

- A. Letter from Norman Feirstein, The Feirstein Law Firm, to Clerk of the Board, Orange County Transportation Authority, Dated April 4, 2019, Re: NM 168 LLC Hearing date, May 13, 2019 9 a.m.
- B. Correspondence/Contact Summary:  
Resolution Nos. 2019-021 Fujita Family Trust and Masami Fujita and 2019-033 NM 168, LLC
- C. List of Property Owners, Interstate 405 Improvement Project Between State Route 73 and Interstate 605, Board of Directors Exhibit Matrix
- D. Photo Aerial Exhibits
- E. Resolution No. 2019-021
- F. Resolution No. 2019-033

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