

**RESOLUTION NO. 2023-033**

**A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT AN EMERGENCY CONDITION EXISTS AND IMMEDIATE ACTION IS REQUIRED TO PRESERVE THE PROPERTY OF THE AUTHORITY AND PREVENT AN IMMEDIATE TERMINATION OF A CRITICAL AUTHORITY FUNCTION SUCH THAT PROCUREMENT OF EQUIPMENT, SERVICES, AND SUPPLIES FOR THOSE PURPOSES WITHOUT GIVING NOTICE FOR BIDS TO LET CONTRACTS IS REQUIRED.**

**WHEREAS**, the Orange County Transportation Authority (the “Authority”) is the owner of the certain rail right-of-way known as the Orange Subdivision Corridor, a portion of which is located in the City of San Clemente.

**WHEREAS**, the rail right-of-way and the entire rail corridor represent the only rail connection between San Diego County and Orange and Los Angeles Counties and is of state-wide and national importance; and

**WHEREAS**, the adjacent hillside to the rail right-of-way owned by the City of San Clemente has been sliding and depositing debris on the rail right-of-way resulting in closures of critical rail service; and

**WHEREAS**, the City of San Clemente has over the past several months attempted to mitigate the landslide impacting the rail right-of-way by grading the slope with the expectation that said action would alleviate the movement and depositing of debris onto rail right-of-way; and

**WHEREAS**, on June 5, 2023, the Authority was informed by its geotechnical consultant that the City of San Clemente mitigation measures are no longer effective, and the adjacent hillside is again sliding and depositing debris onto rail right-of-way thereby severing the only rail corridor between San Diego County and Orange and Los Angeles Counties; and

**WHEREAS**, the City of San Clemente has advised Authority that no solution or timeline to mitigate the landslide has been developed, therefore the Authority must take immediate action to develop measures to protect the rail right-of-way; and

**WHEREAS**, the sliding of the adjacent hillside and debris on the rail right-of-way represents a clear emergency circumstance requiring immediate action to preserve Authority property and prevent the immediate termination of a critical Authority function. Specifically, the movement of rail traffic along the Orange Subdivision; and

**WHEREAS**, this emergency circumstance will not permit the delay that would result from a competitive solicitation for bids; and

**WHEREAS**, Public Contract Code Section 22050 authorizes the Authority, in the case of an emergency, to repair or replace a public facility, take any action directly related or required by that emergency, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bid or letting of contracts pursuant to the Public Contract Code; and

**WHEREAS**, said action requires a four-fifths vote of the Authority's Board of Directors in order to delegate the emergency authority to its Chief Executive Officer.

**NOW, THEREFORE, BE IT RESOLVED**, by at least a four-fifths vote of the Authority's Board of Directors under Public Contract Code Section 22050, the Authority does hereby find and determine as follows:

Section 1. Incorporation of Findings and Recitals. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

Section 2. Findings. The Authority hereby finds, determines, and declares each of the following:

(a) The rail right-of-way and the entire corridor represent the only rail connection between San Diego County and Orange and Los Angeles Counties and is of state-wide and national importance; and

(b) The Authority has been informed by its geotechnical consultant that the previous mitigation measures implemented by the City of San Clemente are no longer effective and the adjacent hillside is continuing to move and deposit debris on said rail right-of-way thereby causing the further suspension of rail service along the corridor; and

(c) The Authority has been advised by its geotechnical consultant that there are options to design and construct a temporary wall at the bottom of the slope to provide the rail right-of-way protection from landslide debris and resume rail service until such time the City of San Clemente provides slope stabilization; and

(d) The continued slope failure depositing debris within the rail right-of-way constitutes an emergency circumstance that requires immediate action; and

(e) This emergency circumstance will not permit the delay that would result from a competitive solicitation for bids under the Public Contract Code.

Section 3. Acquisition of Necessary Equipment, Services, and Supplies. Pursuant to the authority set forth in Public Contract Code Section 22050, the Authority's Chief Executive Officer is hereby authorized to take any directly related and immediate action required to address the emergency circumstance detailed herein and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

Section 4. Review of Emergency Circumstance. Pursuant to Public Contract Code Section 22050, the Authority's Board of Directors shall review the circumstance set forth herein and shall terminate said emergency circumstance when the need to continue said action no longer exists.

Section 5. Effective Date. This Resolution No. 2023-033 shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this 12<sup>th</sup> day of June 2023.

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GENE HERNANDEZ, CHAIRMAN  
ORANGE COUNTY TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

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JAMES M. DONICH  
GENERAL COUNSEL