



August 10, 2022

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Adopt Resolution Approving Updated Real Property Policies and Procedures Manual

Overview

The Orange County Transportation Authority is currently acquiring and managing numerous properties required for the construction and delivery of capital improvement projects. As part of the acquisition and management process, the Orange County Transportation Authority must, by general resolution, authorize certain policies and procedures to implement this process in compliance with federal and state laws. The current Real Property Policies and Procedures Manual of April 2018 was approved by the Board of Directors on May 14, 2018. Staff is requesting updates to the Real Property Policies and Procedures Manual which requires Board of Directors' approval.

Recommendation

Adopt Resolution No. 2022-052 approving the Real Property Policies and Procedures Manual, dated August 2022, to replace the current Real Property Policies and Procedures Manual of April 2018.

Background

In the course of developing and delivering transportation projects, the acquisition of public and private properties may be required to implement the project. Although extensive efforts are made during the design process to minimize impacts to property owners, some projects require the acquisition of public and private properties. Orange County Transportation Authority (OCTA) staff follows the current Real Property Policies and Procedures Manual of April 2018 (Current Policies Manual) to properly handle the acquisition and management of property, which was approved by the Board of Directors (Board) on May 14, 2018. The approved Current Policies Manual is intended to describe the internal steps that OCTA takes to ensure compliance with federal and state laws.

Discussion

Staff is seeking approval to implement the updated Real Property Policies and Procedures Manual, dated August 2022 (2022 Policies Manual), to describe steps OCTA will take to ensure federal and state laws and regulations are followed (Attachment A). The 2022 Policies Manual states OCTA will comply with the requirements of all federal and state laws, statutes and regulations, particularly, 49 Code of Federal Regulations (CFR) part 24, Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (Uniform Act); Title 25, CFR Chapter 6, Article 1, Section 6000 et seq., Relocation Assistance and Real Property Acquisition Guidelines; California Code of Civil Procedure; California Government Code Section 7260-7277; and Uniform Standards of Professional Appraisal Practice. Provided there are future changes to federal and state laws described above, the 2022 Policies Manual will automatically adopt the legislative changes and obligate OCTA to comply. Provided there is a significant change in legislation, staff will recommend another update to the 2022 Policies Manual. For example, staff is recommending changes regarding the Surplus Land Act (SLA) discussed further below.

When implementing all right-of-way (ROW) and property management activities, the 2022 Policies Manual describes how OCTA shall adhere to the California Department of Transportation (Caltrans) ROW Manual, if applicable. There are certain internal procedures described in the Caltrans ROW Manual which are not applicable to OCTA's internal administrative processes. The 2022 Policies Manual describes how OCTA staff will implement internal OCTA procedures not covered within the Caltrans ROW Manual, which include certain appraisal, acquisition, and relocation assistance procedures, appeal procedures, utility relocation procedures, project development procedures, the adoption of resolutions of necessity procedures, settlement authorizations, contract execution authorizations, use of consultant services, as well as internal administrative processes. OCTA staff recommends the Board adopt, by Resolution No. 2022-052, the approval of the 2022 Policies Manual (Attachment B). The adopted resolution will provide documentation to title insurance companies that validates the Chief Executive Officer (CEO), or designee, the authority to execute ROW and real estate-related documents on behalf of OCTA, such as conveyance deeds.

Two significant changes from the Current Policies Manual are updates to the CEO's settlement delegation authority and the introduction of the Incentive Payment Program (IPP) for property acquisitions. These two policies were previously approved for use by the Board and were implemented successfully on the Interstate 405, State Route 55, and State Route 91 improvement projects.

Staff recommends implementing modifications to the existing Board-approved settlement delegation authority thresholds for the CEO. The modifications will expedite the acquisition of property to help maintain project delivery schedules. The requested modifications would be related to ROW acquisition, negotiation, and eminent domain only. The proposed modifications authorize the CEO to approve a settlement when the difference between the approved appraisal and the proposed settlement is no more than 50 percent over the approved appraisal, and no more than \$500,000. This is an increase in the settlement authority of \$250,000 from the existing policy. The CEO will also be authorized to approve a settlement when the difference between the approved appraisal and the proposed settlement is more than 50 percent over the approved appraisal, but not more than \$100,000. This is an increase in the settlement authority of \$75,000 from the existing policy. This \$100,000 threshold is intended to resolve issues for smaller-valued parcels. A comparison of the existing settlement delegation authority to the proposed project-related settlement delegation authority is shown in Attachment C. The modifications to the settlement authority are intended to allow staff to react more quickly to reach a resolution of issues with property owners and reduce administrative and legal costs of lengthy negotiations. All proposed settlements will still require legal review and written justification that the proposed settlement is fair and reasonable.

Staff proposes to introduce the OCTA Acquisition – Incentive Payment Program (Attachment D), which encourages the expeditious acquisition of needed real property and is consistent with the intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). The Federal Highway Administration (FHWA), Office of Real Estate Services, has determined that the FHWA may participate in ROW acquisition incentive payments made under the FHWA-approved plan or program. Acquisition incentive payments are payments that are over and above the just compensation offer provided by the Uniform Act.

The IPP will provide an incentive to all property owners that execute an agreement within 60 days of the first written offer. The IPP incentive will allow payment of a lump sum of 20 percent above the appraised value, with a minimum payment of \$1,000, and a maximum payment of \$100,000 for each acquisition. The IPP is intended to help maintain project delivery schedules, reduce the possibility of impasses in negotiations with property owners, and reduce project legal and administrative costs in trying to reach settlements. Considering fluctuating cost trends for real estate and construction labor and materials, as well as legal expense and project delay cost risks associated with eminent domain, it is in the interest of the public and OCTA to use all available methods to deliver transportation projects quickly with as little reliance on eminent domain as possible. OCTA intends to implement the IPP on all OCTA acquisitions. OCTA's policy complies with the terms of the Caltrans incentive program;

however, Caltrans is limited to a ten percent incentive payment. When implementing the IPP on the State Highway System, OCTA will be required to obtain Caltrans' concurrence to provide a 20 percent incentive payment.

Another significant update to the Current Policies Manual is the addition of policies and procedures to comply with the California SLA, Government Section 54220 et seq.¹ It was previously determined that OCTA was not subject to the SLA; however, recent amendments make the SLA applicable to OCTA in the disposal and sale of surplus property. OCTA is now subject to various requirements in disposing of property which it owns in fee, including the SLA, which applies to the sale or lease of any property declared surplus or exempt surplus; Code of Civil Procedure section 1245.245, which applies to property that has been condemned and not used for the purpose acquired; and Caltrans ROW Manual Chapter 17.

Under the SLA, surplus land means land owned in fee simple by OCTA for which OCTA's Board takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for OCTA's use (Section 54221). Any disposition of surplus land must comply with the SLA guidelines published by the California Department of Housing and Community Development (HCD). The SLA and guidelines generally require OCTA to issue notices of availability of surplus land to local public entities and housing sponsors; when applicable, participate in good faith negotiations after receiving notice of interest to purchase or lease the surplus land, provide HCD with specified information related to the potential disposition of surplus land and exempt surplus land, and record restrictions against the property, if required.

Many of OCTA's properties are purchased with state or federal funds, and thus disposition of these lands must also comply with applicable state and federal laws and regulations, including federal requirements to dispose of property at fair market value. To accomplish this, OCTA obtains property appraisals prior to disposition and utilizes the services of a commercial brokerage real estate agent to market OCTA properties and obtain competitive bids when possible. OCTA staff will work in consultation with OCTA General Counsel to dispose of surplus property pursuant to these procedures.

Minor administrative changes to the 2022 Policies Manual may be made through amendment by a recommendation from the Real Property Manager and the Executive Director of Capital Programs. Any recommended amendment must be in compliance with the requirements of all federal and state laws, statutes, and regulations, as referenced above, and must be concurred with by OCTA General

¹ All section references hereinafter refer to the California Government Code unless otherwise specified.

Counsel. A recommended amendment must also be in compliance and cannot conflict with any action approved by the Board.

The replacement of the Current Policies Manual with the recommended updated 2022 Policies Manual will facilitate OCTA's ability to comply with all ROW and property management requirements under the law.

Summary

Staff recommends the Board of Directors adopt Resolution No. 2022-052 approving the Real Property Policies and Procedures Manual, dated August 2022, to replace the current Real Property Policies and Procedures Manual of April 2018.

Attachments

- A. Orange County Transportation Authority Real Property Policies and Procedures Manual, Dated August 2022
- B. [Proposed] Resolution No. 2022-052
- C. Settlement Delegation Authority Comparison
- D. Orange County Transportation Authority Improvement Acquisition – Incentive Payment Program

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