

**RESOLUTION NO. 2022-075**

**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. Specifically, that portion from mile post 206.76 to mile post 206.89 (the “Rail Right of Way”); and

**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 Rail Right of Way and the adjacent hillside have been moving towards the Pacific Ocean at an incremental rate potentially resulting in a possible failure sometime in the future; and

**WHEREAS**, the Authority and its partners have over the past several months attempted to mitigate the movement of the Rail Right of Way and the adjacent hillside with the placement of approximately 18,000 tons of riprap at the base of the slope with the expectation that said action would alleviate the movement; and

**WHEREAS**, on September 24, 2022, the Authority was informed by its geotechnical consultant that the mitigation measures are no longer effective and Rail Right of Way and adjacent hillside is in imminent danger of catastrophic failure such that said Rail Right of Way could collapse in the Pacific Ocean permanently severing the only rail corridor between San Diego County and Orange and Los Angeles Counties; and

**WHEREAS**, the Authority has been advised by its geotechnical consultant that the Authority must take immediate action to prevent the catastrophic failure of the Right of Way; and

**WHEREAS**, the catastrophic failure of the 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 are no longer effective and Rail Right of Way and adjacent hillside is in imminent danger of catastrophic failure such that said Rail Right of Way could collapse in the Pacific Ocean; and

(c) The Authority has been advised by its geotechnical consultant that the Authority must take immediate action to prevent the catastrophic failure of the Right of Way; and

(d) The imminent failure of 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. 2022-075 shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this 3<sup>rd</sup> day of October 2022.

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MARK A. MURPHY, CHAIRMAN  
ORANGE COUNTY TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

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JAMES M. DONICH  
GENERAL COUNSEL