



January 23, 2023

To: Members of the Board of Directors

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Adopt Resolutions of Necessity for the State Route 91 Improvement Project Between State Route 57 and State Route 55

Overview

The Orange County Transportation Authority is implementing the State Route 91 Improvement Project between State Route 57 and State Route 55. The project requires acquisition of property rights from public and private parties adjacent to the existing freeway and city streets. Currently, staff has been unable to reach or finalize an agreement to purchase required property rights from the subject properties. It is necessary for the Board of Directors to adopt resolutions of necessity and commence the eminent domain process to obtain possession of required property rights to maintain the project delivery and construction schedules.

Recommendation

Adopt Resolution of Necessity Nos. 2023-001, 2023-002, and 2023-003 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 State Route 91 Improvement Project between State Route 57 and State Route 55.

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. Cooperative Agreement Nos. C-9-1274 and C-0-2583 between the Orange County Transportation Authority (OCTA) and the California Department of Transportation (Caltrans) were approved by the Board of Directors (Board) on June 10, 2019, and October 12, 2020, respectively. These documents define the roles and responsibilities of OCTA and Caltrans for final design and right-of-way (ROW) acquisition for the

State Route 91 (SR-91) Improvement Project between State Route 57 and State Route 55 (SR-55) (Project). Pursuant to the cooperative agreements, OCTA is the lead implementing agency for final design and ROW acquisition for the Project. The environmental document and project report were approved by Caltrans on June 22 and June 24, 2020, respectively.

Discussion

Construction of the Project will impact 19 properties, including one multi-residential property, eight commercial/industrial properties, and ten vacant properties. There are four properties identified as partial acquisitions and no properties identified as full acquisitions. The remaining 15 properties are all identified as temporary acquisitions only. The Project does not require any displacement of tenants/occupants. The real property requirements for the Project include the acquisition of partial fee interests (FEE), permanent easements (PE), and temporary construction easements (TCE) to construct the proposed highway improvements. The partial FEEs, PEs, and TCEs are required for roadway construction, soundwalls, and retaining walls.

The Project is identified as Project I in the Renewed Measure M2 Transportation Ordinance and Investment Plan approved by the voters in November 2006 and included in the 2020 update to the Next 10 Delivery Plan approved by the Board in April 2021. The Project is being delivered in three logical segments: SR-91 between SR-55 to Lakeview Avenue (Segment 1), SR-91 La Palma Avenue to SR-55 (Segment 2), and SR-91 Acacia Street to La Palma Avenue (Segment 3). Currently, staff has been unable to reach or finalize an agreement to purchase required property rights from three subject properties for Segment 1.

Resolution No. 2023-001 pertains to the acquisition of one partial FEE and one TCE over a portion of the property owned by Luther E. Secrest and Charmella C. Secrest, Trustees of the Brandon Chase Trust, dated May 3, 2004. The acquisition of the subject partial FEE is needed to accommodate the construction of a retaining wall and soundwall as part of the freeway widening improvements. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway widening improvements.

Resolution No. 2023-002 pertains to the acquisition of one TCE over a portion of the property owned by Gene Secrest, Trustee of the Brandon Chase Trust. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway widening improvements.

Resolution No. 2023-003 pertains to the acquisition of one partial FEE and one TCE over a portion of the property owned by Alston Community Association, a California nonprofit mutual benefit corporation. The acquisition of the subject partial FEE is needed to accommodate the widening of the SR-91, realignment

of the westbound on-ramp at Lakeview Avenue, and construction of a soundwall. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway widening improvements.

The property owners have been given substantially more time than the 30 days required by the Federal Highway Administration to consider OCTA's written offer. A history of the communication to negotiate an agreement with each property owner is described in Attachment A. These communications include OCTA staff requesting a meeting with the property owners to conduct an OCTA policies and procedures first level review meeting to describe the Project design and the need for the property.

OCTA must secure possession of the interests in the subject properties by August 2023 for Segment 1 to meet Project schedule deadlines. Delay in acquiring the interests in these properties will cause Project delays. Proceeding with these resolutions of necessity (RON) will ensure that Project schedules are maintained.

The "List of Property Owners" and "Photo Aerial Exhibits," Attachments B and C, respectively, provide information on property ownership 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 to be acquired was offered to the property owner under the requirements of Governmental Code Section 7267.2.

In order to proceed with the acquisition of the property interests 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 needed property interests.

The following resolutions are recommended:

- Resolution No. 2023-001 (Luther E. Secrest and Charmella C. Secrest, Trustees of the Brandon Chase Trust, dated May 3, 2004) – Action is recommended for the acquisition of one partial FEE and one TCE over a portion of the property to accommodate the construction of a retaining wall and soundwall and to provide sufficient work area to construct the freeway widening improvements.

- Resolution No. 2023-002 (Gene Secret, Trustee of the Brandon Chase Trust) – Action is recommended for the acquisition of one TCE over a portion of the property to provide sufficient work area to construct a soundwall and the freeway widening improvements.
- Resolution No. 2023-003 (Alston Community Association, a California nonprofit mutual benefit corporation) – Action is recommended for the acquisition of one partial FEE and one TCE over a portion of the property to accommodate the realignment of the westbound on-ramp at Lakeview Avenue and construction of a soundwall and to provide sufficient work area to construct the freeway widening improvements.

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/are 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.

Any property owner 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 or interests to be acquired affected by the RON should not be discussed. In the event the Board approves the RONs (Attachments D-F), OCTA's General Counsel will proceed with litigation 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.

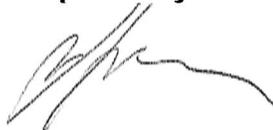
Summary

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. Adoption of these RONs and commencement of eminent domain proceedings are requested to maintain the Project delivery schedule.

Attachments

- A. Correspondence/Contact Summary with Property Owners
- B. List of Property Owners, State Route 91 Improvement Project Between State Route 57 and State Route 55, Board of Directors Exhibit Matrix
- C. Photo Aerial Exhibits
- D. Resolution No. 2023-001
- E. Resolution No. 2023-002
- F. Resolution No. 2023-003

Prepared by:



Joe Gallardo
Manager, Real Property
(714) 560-5546

Approved by:



James G. Beil, P.E.
Executive Director, Capital Programs
(714) 560-5646