



January 22, 2018

To: Members of the Board of Directors

From: Darrell 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 Orange County Transportation Authority Board of Directors approved acquiring right-of-way for the project. At this time, the Orange County Transportation Authority 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. 2018-001, 2018-002, and 2018-003, and authorize and direct General Counsel to prepare, commence, and prosecute a proceeding 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 305 properties between SR-73 and I-605, including 181 residential properties, 79 commercial/industrial properties, 44 public properties, and one railroad property. All 305 properties were identified as partial acquisitions. The real property requirements are comprised of a combination of partial fee acquisitions (FEEs), permanent footing easements (PFEs), temporary construction easements (TCEs), and access control rights needed to construct the proposed highway and express lane improvements for the Project. The partial FEEs, PFEs, and TCEs are required for roadway and bridge construction, soundwalls and 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. 2018-001 pertains to the proposed acquisition of two partial FEEs, a PFE, and a TCE over a portion of the property owned by Sendero Huntington Beach, LLC (Sendero HB). The acquisition of the subject FEEs is needed to accommodate the widening of Magnolia Street in the City of Huntington Beach. The acquisition of the subject PFE is needed to provide an area underground for the location of the retaining wall footing. The acquisition of the subject TCE is needed to provide the DB contractor with sufficient work area to construct the proposed retaining wall along the property line and reconstruct the existing sidewalk. On April 19, 2017, OCTA presented a written offer to the former owner of record, Sendero Apartments, LLC, and proceeded with good faith negotiations for the purchase of the required property interests. At that time, Sendero Apartments, LLC disclosed to OCTA the fact the property was in escrow with a prospective buyer, Sendero HB. As indicated in Attachment A, OCTA staff had several communications and provided Sendero HB with all documentation relative to the Project and a copy of the written offer prior to the closing of escrow on October 20, 2017, and continued good faith negotiations with Sendero HB following this date. On November 13, 2017, OCTA presented Sendero HB, as the new owner of record, a written offer to acquire the property interests needed. In order to meet the Project delivery schedule, OCTA staff had intended to request adoption of a resolution of necessity (RON) at the November 27, 2017 Board meeting; however, this request was postponed to allow additional time for negotiation and

to provide Sendero HB with any additional information required. OCTA has received a letter from the legal representatives of Sendero HB objecting to the adoption of a RON (Attachment B).

Resolution No. 2018-002 pertains to the proposed acquisition of a partial FEE and a TCE over a portion of the property owned by Fountain Valley Industrial Parcel 13 Investment Co., a California limited partnership (Fountain Valley Industrial). The acquisition of the subject FEE is needed to provide area for the widening of the freeway southbound off-ramp at Ellis Avenue in the City of Fountain Valley. The acquisition of the subject TCE is needed to provide the DB contractor with sufficient work area for the construction of the freeway off-ramp. In order to meet the Project delivery schedule, OCTA staff had intended to request adoption of a RON at the November 27, 2017 Board meeting; however, this request was postponed to allow additional time for negotiations and to provide Fountain Valley Industrial with any additional information required following receipt of the attached written notice from the property owner's legal representative of the intent to appear and be heard on the proposed adoption of a RON (Attachment C).

Resolution No. 2018-003 pertains to the proposed acquisition of a TCE over a portion of the property located in the City of Huntington Beach owned by Bella Terra Medical Plaza, LLC, a Delaware limited liability company. The acquisition of the subject TCE is needed to provide the DB contractor with sufficient work area to widen the freeway and construct the proposed retaining wall within the existing Caltrans ROW.

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 A. These contacts include OCTA staff requesting a meeting with the property owners to conduct a first level review in accordance with OCTA-adopted policies and procedures for the purpose of providing a detailed understanding of 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 September through December 2018 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 D and E 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 the 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. 2018-001 – Action is recommended for an acquisition of two partial FEEs, one PFE, and one TCE over a portion of the property to remove existing improvements and provide area for the widening of the street, construct the proposed retaining wall, and reconstruct the existing sidewalk.
- Resolution No. 2018-002 – Action is recommended for an acquisition of one partial FEE and one TCE over a portion of the property to remove existing improvements and provide area for the widening and construction of the freeway off-ramp.
- Resolution No. 2018-003 – Action is recommended for an acquisition of one TCE over a portion of the property to remove existing improvements and construct the proposed retaining wall.

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 a 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 F1-F3), 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. Correspondence/Contact Summary, Resolution Nos. 2018-001 Sendero Huntington Beach, LLC; 2018-002 Fountain Valley Industrial Parcel 13 Investment Co., LP; and 2018-003 Bella Terra Medical Plaza, LLC
- B. Letter from Ivor E. Samson, Partner, Dentons US LLP, to Laurena Weinert, Clerk of the Board of Directors, Orange County Transportation Authority, Dated November 6, 2017
- C. Letter from Michael H. Leifer, Palmieri Tyler, to Clerk of the Board, Orange County Transportation Authority, Dated October 26, 2017
- D. List of Property Owners, Interstate 405 Improvement Project Between State Route 73 and Interstate 605, Board of Directors Exhibit Matrix
- E. Photo Aerial Exhibits
- F1. Resolution No. 2018-001
- F2. Resolution No. 2018-002
- F3. Resolution No. 2018-003

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