



February 26, 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 Board of Directors approved acquiring rights-of-way for the project. At this time, staff 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 Resolutions of Necessity Nos. 2018-007, 2018-008, 2018-009, 2018-010, 2018-011, and 2018-013, and authorize and direct General Counsel to prepare, commence, and prosecute a proceeding in eminent domain for the purpose of acquiring necessary rights-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

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OCTA and Caltrans for final design, construction, and right-of-way (ROW) acquisition for the Interstate 405 Improvement Project (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 State Route 73 and Interstate 605, including 181 residential properties, 79 commercial/industrial properties, 44 public properties, and one railroad property. All 305 properties were identified as partial acquisitions (except that the owner of one of the commercial properties has requested a full acquisition for the reasons set forth below as it pertains to Resolution No. 2018-013). The real property requirements are comprised of a combination of partial fee acquisitions (FEEs), permanent highway easements (PHE), 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, PHEs, 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. 2018-007 pertains to the proposed acquisition of a partial FEE, a PFE, and a TCE over a portion of the property owned by International Asset Management Group, LLC, a California limited liability company. The acquisition of the subject partial FEE is needed to provide additional area for the widening of the freeway. The acquisition of the subject PFE is to provide an area underground for the location of the retaining wall footing. The subject TCE is needed to provide the DB contractor with sufficient work area to widen the freeway and construct the proposed retaining wall along the Caltrans property line.

Resolution No. 2018-008 pertains to the proposed acquisition of a PHE and the relinquishment of abutter's right, including access rights, as well as a TCE over a portion of the property owned by Southern California Edison Company (SCE), a corporation. The acquisition of the subject PHE is needed to provide additional area for the widening of the freeway. The abutter's rights, including access rights, are needed to prevent direct access from the SCE property to the freeway. The subject TCE is needed to provide the DB contractor with sufficient work area for construction of the freeway off-ramp.

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Resolution No. 2018-009 pertains to the proposed acquisition of two partial FEEs, two PFEs, and two TCEs over a portion of the property owned by the City of Fountain Valley (City), a municipal corporation. The acquisition of the subject partial FEEs is needed to provide additional area for the widening of the freeway and Ward Street. The acquisition of the subject PFEs is to provide an area underground for the location of retaining wall footings. The subject TCEs are needed to provide the DB contractor with sufficient work area to widen the freeway and Ward Street, and construct the proposed retaining walls. The City leases the property on a long-term basis to Mike Thompson's RV, a sales and repair dealership of recreational vehicles, and per the lease terms possess an ownership interest in the property. Eminent domain proceedings will allow Mike Thompson's RV a legal process to address its financial impacts, while OCTA continues negotiations with the City regarding the acquisition.

Resolution No. 2018-010 pertains to the proposed acquisition of three partial FEEs, a PFE, and three TCEs over a portion of the property owned by Carolyn B. Huisch Properties, a California limited partnership, as to an undivided 50 percent interest, and John M. Huisch, Trustee of the Huisch Land Trust, dated May 24, 1984, as to an undivided 50 percent interest. The acquisition of the subject partial FEEs is needed to provide additional area for the widening of Magnolia Street. The acquisition of the subject PFE is to provide an area underground for the location of the retaining wall footing along Magnolia Street. The two TCEs along Magnolia Street are needed to provide the DB contractor with sufficient work area to construct the proposed retaining wall, footing, and street improvements. The third TCE abutting the freeway is needed to provide sufficient work area to install underground piping through an agreement with the Orange County Flood Control District.

Resolution No. 2018-011 pertains to the proposed acquisition of two TCEs over a portion of the property owned by Frank B. De Gelas and Donna L. De Gelas, as Trustees of the Frank and Donna De Gelas Trust, dated February 27, 2003. This property is also occupied by Mike Thompson's RV and serves as its offsite storage lot. The acquisition of the subject TCEs is needed to provide the DB contractor with sufficient work area to widen the freeway and Talbert Avenue.

Resolution No. 2018-013 pertains to the proposed full FEE acquisition of an entire property at the request of the owner. The design documents identify a need for a partial FEE, a PFE, and two TCEs over a portion of the property owned by G.B. Enterprises, a partnership. The acquisition of the subject partial FEE is needed to provide an American with Disabilities Act (ADA) access ramp on the sidewalk closest to the northeast corner of the intersection of Bolsa Avenue and Goldenwest Street. The acquisition of the subject PFE is needed to provide an area underground for the location of the retaining wall footing. The subject TCEs

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are needed to provide the DB contractor with sufficient work area to construct the proposed retaining wall and footing, build an ADA access ramp, and reconstruct the sidewalk. However, the acquisition of only portions of the property would result in a grade difference between the property and the adjacent roadway that would significantly impair access to the property for three businesses. In light of access issues and significant mitigation costs to address the issues involved, the property owner was given an option for OCTA to either acquire the portions of the property referenced herein or acquire the entire property in FEE. The property owner, through its legal representative, has requested OCTA to acquire the entire property in FEE.

Upon completion of construction activities in this area, the property will be sold in accordance with OCTA's excess property policy and procedures, with the proceeds from the sale being returned to the Project.

The design and needed construction activities to improve the intersection of Bolsa Avenue and Goldenwest Street will significantly impact three businesses operating on the property. Relocation assistance is being provided to a sporting goods store, a mattress retailer, and a donut shop in accordance with the Uniform Relocation and Real Property Acquisition Act and the California Government Code 7260. Under state and federal regulations, any qualified displacee or occupant is entitled to receive relocation advisory assistance, actual and reasonable moving expenses for its personal property, and a re-establishment payment to assist in identifying a replacement site.

Each of the property owners listed above for each of the RONS has been given substantially more time than the 30 days required by the Federal Highway Administration to consider OCTA's written purchase offer and has been contacted multiple times as described in Attachment A. These contacts include OCTA staff requesting meetings 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 between September and 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 resolutions of necessity (RONS) will ensure that Project schedules are maintained and contractual commitments are met by OCTA.

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The List of Property Owners and Photo Aerial Exhibits, Attachments B and C 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 RONS are recommended:

- Resolution No. 2018-007 International Asset Management Group, LLC, a California limited liability company – Action is recommended for an acquisition of one partial FEE, one PFE, and one TCE over a portion of the property to remove existing improvements, construct the proposed retaining wall, and provide area for the widening of the freeway.
- Resolution No. 2018-008 Southern California Edison Company, a corporation – Action is recommended for an acquisition of one PHE and the relinquishment of abutter's rights, including access rights and one TCE over a portion of the property to remove existing improvements, and provide area for the widening of the freeway off-ramp.
- Resolution No. 2018-009 City of Fountain Valley, a municipal corporation – Action is recommended for an acquisition of two partial FEEs, two PFEs, and two TCEs over a portion of the property to remove existing improvements, construct the proposed retaining wall, and provide area for the widening of Ward Street and the freeway.
- Resolution No. 2018-010 Carolyn B. Huisch Properties, a California limited partnership, as to an undivided 50 percent interest, and John M. Huisch, Trustee of the Huisch Land Trust, dated May 24, 1984, as to an undivided 50 percent interest – Action is recommended for an acquisition of three

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partial FEEs, one PFE, and three TCEs over a portion of the property to remove existing improvements, construct the proposed retaining wall, and provide area for the widening of Magnolia Street.

- Resolution No. 2018-011 Frank B. De Gelas and Donna L. De Gelas, as Trustees of the Frank and Donna De Gelas Trust, dated February 27, 2003 – Action is recommended for an acquisition of two TCEs over a portion of the property to remove existing improvements, provide area for the widening of Talbert Avenue, and construction of freeway improvements.
- Resolution No. 2018-013 G. B. Enterprises, a partnership – Action is recommended for a full fee acquisition of the property at the request of the property owner to remove existing improvements, construct the proposed retaining wall, ADA access ramp, and reconstruct the existing sidewalk.

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 Governmental Code Section 7267.2 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 D1-D6), 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.

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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

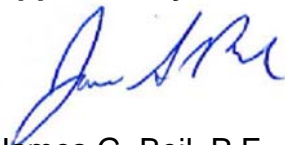
- A. Correspondence/Contact Summary, Resolution Nos. 2018-007 International Asset Management Group; 2018-008 Southern California Edison Company; 2018-009 City of Fountain Valley; 2018-010 Carolyn B. Huish Properties; 2018-011 Frank B. De Gelas and Donna L. De Gelas; and 2018-013 G.B. Enterprises
- B. List of Property Owners, Interstate 405 Improvement Project Between State Route 73 and Interstate 605, Board of Directors Exhibit Matrix
- C. Photo Aerial Exhibits
- D. Resolution No. 2018-007
- E. Resolution No. 2018-008
- F. Resolution No. 2018-009
- G. Resolution No. 2018-010
- H. Resolution No. 2018-011
- I. Resolution No. 2018-013

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