



April 25, 2018

To: Finance and Administration Committee
From: Darrell E. Johnson, Chief Executive Officer
Subject: Adopt Resolution Approving the 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 May 2013 was approved by the Board of Directors on June 10, 2013. An update of the Real Property Policies and Procedures Manual is required.

Recommendation

Adopt Resolution No. 2018-050 approving the Real Property Policies and Procedures Manual, dated April 2018, to replace the current Real Property Policies and Procedures Manual of May 2013, previously adopted by the Board of Directors.

Background

In the course of developing and delivering transportation projects, the acquisition of public and private properties is often required to implement the project. Although extensive efforts are made during the design process to minimize the 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 May 2013 (Current Policies Manual) to properly handle the acquisition and management of property, which was approved by the Board of Directors (Board) on June 10, 2013. The Current Policies Manual was intended to describe the internal steps that OCTA takes to ensure compliance with federal and state laws. The Current Policies Manual requires clarification of its "Conflict of Interest:

Employee or Board of Director Owned Property” policy and requires a clarification of its disposal of excess land policy, as well as address administrative changes within OCTA over the past five years.

Discussion

Staff is seeking approval to implement the Real Property Policies and Procedures Manual, dated April 2018 (2018 Policies Manual), to describe steps OCTA will take to ensure federal and state laws and regulations are followed (Attachment A). The 2018 Policies Manual states OCTA will comply with the requirements of all federal and state laws, statutes and regulations, particularly, 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (Uniform Act); Title 25, California Code of Regulations 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; Uniform Standards of Professional Appraisal Practice. Provided there are future changes to federal and state laws described above, the 2018 Policies Manual will automatically adopt the legislative changes and obligate OCTA to comply.

When implementing all right-of-way (ROW) and property management activities, the 2018 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 2018 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. 2018-050, the approval of the 2018 Policies Manual (Attachment B). The approved 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. Also, as part of the property acquisition process, the Board has delegated settlement authority to the CEO, or designee, in an effort to streamline negotiations with property owners and businesses impacted by OCTA projects. This settlement authority allows for agreements to be approved by the CEO, or designee, above the appraised value for needed properties or business impact valuations. The CEO’s Settlement Delegation Authority, Paragraph VI, as

described in the 2018 Policies Manual, remains unchanged from the Current Policies Manual as approved by the Board.

The majority of the revisions described in the 2018 Policies Manual provides clarification for the Real Property Manager and the Executive Director of Capital Programs to implement the Caltrans ROW Manual, as well as address changes that have occurred over the past five years regarding internal OCTA administrative processes.

The primary revisions to the 2018 Policies Manual is the result of an Incurred Cost Audit (Audit) performed by the Caltrans Office of Audit and Investigations on behalf of the Federal Highway Administration. The Audit was conducted to ensure state and federal funds were properly expended on the Orangethorpe Avenue Railroad Grade Separation Project. This Audit included a review of five OCTA business relocation assistance files and a review of OCTA's Current Policies Manual.

The draft Audit findings recommended improvement of OCTA's Conflict of Interest: Employee or Board of Director Owned Property (Conflict of Interest Policy). The auditor's finding stated OCTA's current Conflict of Interest Policy did not allow for negotiations in instances where property owned by an OCTA employee or OCTA Board Member would be obtained for needed ROW, and is in violation of California Government Code 7267.1 (a), which requires acquisition by negotiations. The auditor's finding also stated OCTA's current Conflict of Interest Policy could be potentially coercive and in violation of 49 CFR 24.102 (h) on coercive action. Therefore, OCTA's General Counsel revised the Conflict of Interest Policy described in the 2018 Policies Manual, Paragraph IX, to address the audit finding while still ensuring that the acquisition process did not violate conflict of interest laws. The proposed revision to the Conflict of Interest Policy has been reviewed by Caltrans District 12 and the Caltrans Office of Audit and Investigations, and both parties have concurred that the draft Conflict of Interest Policy will satisfy the audit finding. Attached is a comparison of the current Conflict of Interest Policy approved by the Board in June 2013 to the proposed Conflict of Interest Policy to be included in the 2018 Policies Manual (Attachment C).

Also as a result of the draft Audit, staff proposes a clarification to OCTA disposal of excess property processes. The Current Policies Manual states that OCTA shall follow California Government Code Sections 54220-54232 in the disposal and sale of excess or surplus properties. The auditor's finding is OCTA's policy to dispose of excess land under California Government Code Sections 54220-54232 appears to give precedence to low and moderate income housing or park and recreations purposes, at a lower than fair market value instead of for transportation purposes as required by 23 CFR 710.403 (d). OCTA

is a County Transportation Commission formed pursuant to Public Utilities Code Sections 130000 et seq., and is not required to follow Government Code Sections 54220-54232. In February 2015, OCTA staff obtained Board approval to dispose of excess land at the highest possible value through a commercial real estate brokerage consultant that has successfully disposed of properties on behalf of OCTA. By contracting the commercial real estate brokerage consultant, OCTA does comply with 23 CFR 710.403 (d); however, since the adoption of the Current Policies Manual, OCTA has not disposed of excess land that requires federal reimbursement.

Minor administrative changes to the 2018 Policies Manual may be amended by a recommendation for approval from the Real Property Manager and the Executive Director of Capital Programs to the CEO. 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's General 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 2018 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. 2018-050 approving the Real Property Policies and Procedures Manual, dated April 2018, to replace the current Real Property Policies and Procedures Manual of May 2013.

Attachments

- A. Orange County Transportation Authority Real Property Policies and Procedures Manual, Dated April 2018
- B. [Proposed] Resolution No. 2018-050
- C. Conflict of Interest: Employee or Board of Director Owned Property Comparison

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