




**May 14, 2018**

**To:** Members of the Board of Directors

**From:** Darrell E. 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 right-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. 2018-010, 2018-043, 2018-046, 2018-051, 2018-052, 2018-053, and 2018-054, 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 288 properties between SR-73 and I-605, including 179 residential properties, 71 commercial/industrial properties, 37 public properties, and one railroad property. There are 287 properties identified as partial acquisitions, and one property is identified as a full acquisition. The full acquisition of this one property will result in the relocation of three businesses operating on the property. The real property requirements are comprised of a combination of acquisitions of fee interests (FEEs), permanent highway easements (PHEs), 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 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. 2018-010 pertains to the proposed acquisition of three partial FEEs, a PFE, and three TCEs over a portion of the property owned by Carolyn B. Huish Properties, a California limited partnership, as to an undivided 50 percent interest, and John M. Huish, Trustee of the Huish Land Trust (dated May 24, 1984), as to an undivided 50 percent interest (owner) and leased to Apex Parks Group, an amusement park known as "Boomers! Fountain Valley" (tenant). 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 needed to provide an area underground for the location of the retaining wall footing along Magnolia Street. Two of the 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 the DB contractor with sufficient work area to install the Orange County Flood Control District's (OCFCD) underground storm drain facilities per an agreement with OCFCD. OCTA staff had intended to request adoption of a resolution of necessity (RON) at the February 26, 2018 Board meeting; however, this request was postponed to address engineering and survey requirements. Consequently,

a revised offer was presented to the property owner and additional time for negotiation was provided.

Also, the OCFCD owns a parcel that runs through the middle of the subject property described in Resolution No. 2018-010, which is utilized by the tenant. A separate offer has been presented to the OCFCD for the project's impact to this property and it is not subject to this resolution.

Resolution No. 2018-043 pertains to the proposed acquisition of a partial FEE, a PFE, a maintenance access easement (MAE), and a TCE over a portion of the property owned by Westminster Mall, LLC, a Delaware limited liability company. The acquisition of the subject partial FEE is needed for the widening of the existing street. 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 MAE is needed to provide access for maintenance of the retaining wall. The acquisition of the subject TCE is needed to provide the DB contractor with sufficient work area to construct the proposed improvements and reconstruct the existing one-way exit from the mall to Bolsa Avenue. OCTA staff had intended to request adoption of a RON at the March 26, 2018 Board meeting; however, this request was postponed to allow additional time for further negotiations with the owner in an attempt to reach a settlement.

Resolution No. 2018-046 pertains to the proposed acquisition of a partial FEE and two TCEs over a portion of the property owned by Golden Westminster Investments, LLC, a California limited liability company. The acquisition of the subject partial FEE is needed to provide for the widening of the freeway. The acquisition of the subject TCEs is needed to provide the DB contractor with sufficient work area to accommodate the freeway widening improvements and for reconstruction of the existing entrance to the property. OCTA staff had intended to request adoption of a RON at the March 26, 2018 Board meeting; however, this request was postponed to allow additional time for further negotiations with the owner. On March 29, 2018 and on April 12, 2018, OCTA staff met with the property owner and the tenant, 99 Cents Only Stores, LLC, in an administrative review to discuss and resolve all issues regarding the acquisition in an attempt to reach a settlement.

Resolution No. 2018-051 pertains to the proposed acquisition of a PHE and a TCE over a portion of the property owned by Southern California Edison Company, a corporation. The acquisition of the subject PHE is needed to provide additional area for the widening of the freeway, construction of a retaining wall, and underground footings. The subject TCE is needed to provide the DB contractor with sufficient work area to accommodate the freeway widening improvements and construct the retaining wall.

Resolution No. 2018-052 pertains to the proposed acquisition of a PFE and a TCE over a portion of the property owned by Sovran Acquisition Limited Partnership, a Delaware limited partnership. The acquisition of the subject PFE is needed to provide an area underground for the location of retaining wall footing along the freeway. The acquisition of the subject TCE is needed to provide the DB contractor with sufficient work area to construct the proposed improvements and erect a retaining wall.

Resolution No. 2018-053 pertains to the proposed acquisition of a TCE over a portion of the property owned by Dorothy Sublett-Miller and Walter J. Miller, Successor Trustees of The Miller Family Trust, originally dated October 12, 1979 (amended/restated February 05, 2004), as to an undivided one-half interest, and Dorothy Sublett-Miller and Walter J. Miller, Successor Trustees of the Miller Family Trust, originally dated October 12, 1979 (amended/restated February 05, 2004), as to an undivided one-half interest. The acquisition of the subject TCE is needed to provide the DB contractor with sufficient work area to accommodate the freeway widening improvements, including removal and reconstruction of a sound wall. The property owner, through a legal representative, provided OCTA staff with a written notice of intent to appear and be heard on the proposed adoption of a RON (Attachment A). This written notice of intent to appear and be heard also pertains to a request regarding Resolution No. 2018-054.

Resolution No. 2018-054 pertains to the proposed acquisition of a TCE over a portion of the property owned by M. Westland, LLC, a Delaware limited liability company. The acquisition of the subject TCE is needed to provide the DB contractor with sufficient work area to accommodate the freeway widening improvements. The property owner, through a legal representative, provided OCTA staff with a written notice of intent to appear and be heard on the proposed adoption of a RON (Attachment A). This written notice of intent to appear and be heard also pertains to a request regarding Resolution No. 2018-053.

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 B. These contacts include OCTA staff requesting a meeting with the property owner to conduct an OCTA policies and procedures first level review to describe 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 November 2018 through January 2019 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 C and D 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. 2018-010 Carolyn B. Huish Properties, a California limited partnership, as to an undivided 50 percent interest, and John M. Huish, Trustee of the Huish Land Trust (dated May 24, 1984), as to an undivided 50 percent interest – Action is recommended for an acquisition of three partial FEEs, one PFE, and three TCEs over a portion of the property to accommodate widening of Magnolia Street, construct the proposed retaining wall, and provide working areas to construct proposed freeway improvements.
- Resolution No. 2018-043 Westminster Mall, LLC, a Delaware limited liability company – Action is recommended for an acquisition of one partial FEE, one PFE, one MAE, and one TCE over a portion of the property to provide areas for the northwest access road, construct a retaining wall, provide access to the retaining wall for maintenance purposes, and provide working areas for construction of project improvements.
- Resolution No. 2018-046 Golden Westminster Investments, LLC, a California limited liability company – Action is recommended for an acquisition of one partial FEE and two TCEs over a portion of the property to provide for the widening of the freeway, provide working areas to construct proposed freeway improvements, and reconstruct the existing entrance.

- Resolution No. 2018-051 Southern California Edison Company, a corporation – Action is recommended for an acquisition of one PHE and one TCE over a portion of the property to construct the proposed retaining wall and provide working areas to construct proposed freeway improvements.
- Resolution No. 2018-052 Sovran Acquisition Limited Partnership, a Delaware limited partnership – Action is recommended for an acquisition of one PFE and one TCE over a portion of the property to construct the proposed retaining wall and provide working area for construction of retaining wall.
- Resolution No. 2018-053 Dorothy Sublett-Miller and Walter J. Miller, Successor Trustees of The Miller Family Trust, originally dated October 12, 1979 (amended/restated February 05, 2004), as to an undivided one-half interest, and Dorothy Sublett-Miller and Walter J. Miller, Successor Trustees of the Miller Family Trust, originally dated October 12, 1979 (amended/restated February 05, 2004), as to an undivided one-half interest – Action is recommended for an acquisition of one TCE over a portion of the property to provide working area to construct proposed freeway improvements.
- Resolution No. 2018-054 M. Westland, LLC, a Delaware limited liability company – Action is recommended for an acquisition of one TCE over a portion of the property to provide working area to construct proposed freeway improvements.

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 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 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 the 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 E-K), 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. Letter from David A. Robinson, Enterprise Counsel Group, to Laurena Weinert, Clerk of the Board, Orange County Transportation Authority, Dated April 13, 2018, Re: Request to be Heard & Request to Further Address Onsite Drainage Issues Resolution of Necessity for the I-405 Improvement Project 5400-5440, 5772 & 5880 Garden Grove Boulevard, Westminster, CA 92683
- B. Correspondence/Contact Summary:  
Resolution No. 2018-010 Huish Properties and Trustee of the Huish Land Trust, Resolution No. 2018-043 Westminster Mall, LLC, Resolution No. 2018-046 Golden Westminster Investments, LLC, a California Limited Liability Company, Resolution No. 2018-051 Southern California Edison, Resolution No. 2018-052 Sovran Acquisition LP, Resolution No. 2018-053 Miller Family Trust, and Resolution No. 2018-054 M. Westland, LLC
- C. List of Property Owners, Interstate 405 Improvement Project Between State Route 73 and Interstate 605, Board of Directors Exhibit Matrix
- D. Photo Aerial Exhibits
- E. Resolution No. 2018-010
- F. Resolution No. 2018-043
- G. Resolution No. 2018-046
- H. Resolution No. 2018-051
- I. Resolution No. 2018-052
- J. Resolution No. 2018-053
- K. Resolution No. 2018-054

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