



June 25, 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. 2018-061 and 2018-066, 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 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 partial 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 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. 2018-061 pertains to the acquisition of two FEEs and two TCEs over a portion of the property owned by BRE/LQ Properties, LLC, a Delaware limited liability company (La Quinta Inn). The acquisition of the FEEs are needed to provide additional area for the widening of the freeway and to accommodate the realignment of the on-ramp. The acquisition of the subject TCEs along the freeway are needed to provide the DB contractor with sufficient work area to construct the freeway widening improvements.

Resolution No. 2018-066 pertains to the acquisition of a FEE, a PFE, and a TCE over a portion of the property owned by G. B. Enterprises, a partnership. The acquisition of the subject FEE is needed to accommodate the widening of Goldenwest Street. The acquisition of the subject PFE is needed to provide an area underground for the location of the proposed retaining wall footing along Goldenwest Street. The acquisition of the subject TCE is needed to provide the DB contractor with sufficient work area to construct the proposed retaining wall, footing, and street improvements. There is an outdoor advertising sign within the acquisition area that will be acquired as part of the resolution.

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 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 April 2019 through June 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 resolutions of necessity (RONs) will ensure that Project schedules are maintained and contractual commitments are met by OCTA.

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 resolutions are recommended:

- Resolution No. 2018-061 BRE/LQ Properties, LLC, a Delaware limited liability company – Action is recommended for an acquisition of two FEEs and two TCEs over a portion of the property to provide area for the realignment of the freeway on-ramp and widening of the freeway.
- Resolution No. 2018-066 G.B. Enterprises, a partnership – Action is recommended for an acquisition of one FEE, one PFE, and one TCE over a portion of the property to provide area for the widening of the street and construct the proposed footing and 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 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 D-E), 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 No. 2018-061 BRE/LQ Properties, LLC, and Resolution No. 2018-066 G.B. Enterprises, a partnership
- 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. 2018-061
- E. Resolution No. 2018-066

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