



December 10, 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 Resolution of Necessity Nos. 2018-164, 2018-165, and 2018-166, and authorize and direct General Counsel to prepare, commence, and prosecute proceedings 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 (Project) between State Route 73 (SR-73) and Interstate 605 (I-605). 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 acquisitions of partial fee interests (FEEs), permanent highway easements (PHEs), permanent footing easements (PFEs), temporary construction easements (TCEs), a permanent ground lease reduction (PGLR), a temporary ground lease reduction (TGLR), and access control rights needed to construct the proposed highway and express lane improvements for the Project. The full fee acquisition, partial FEEs, PHEs, PFEs, TCEs, PGLR, and the TGLR 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. 2018-164 pertains to the acquisition of a partial FEE and a TCE over a portion of the property owned by Hospitality Properties Trust. The acquisition of the subject partial FEE is needed to accommodate widening of Brookhurst Street. As a result of the I-405 widening, there is a need to reconstruct and widen the Brookhurst Street Bridge. The proposed design will require the existing sidewalk, curb, and gutter along Brookhurst Street to be reconstructed closer to the subject property. The acquisition of the subject TCE will allow the DB contractor sufficient work area to reconstruct the existing sidewalk, curb, and gutter.

Resolution No. 2018-165 pertains to the partial acquisition of a leasehold interest that encumbers property owned by Caltrans. Caltrans entered into a long-term ground lease over the entire property with Perlin Development & Engineering Corporation, a California corporation (Lessee), and subleases the property to three separate retail tenants. The property is owned by Caltrans and is identified as operating ROW to be used for freeway purposes; therefore, there is no need to acquire real estate rights. However, there is a need to reduce the area described under the terms of the lease as the "leased

premises” on a permanent and temporary basis. These reductions to the “leased premises” under the ground lease are described in the resolution of necessity (RON) as partial acquisitions of the leasehold interest, with the corresponding affected land areas and legal descriptions depicted in RON Exhibits “A – D,” respectively. There is a need to permanently reduce the scope of the “leased premises” as described in the ground lease in two separate areas. One area is needed to realign the northbound on-ramps, as a result of the freeway widening, and the second area is needed for widening of Magnolia Street. As a result of the I-405 widening, there is a need to reconstruct and widen the Magnolia Street Bridge. The proposed design will require the existing sidewalk, curb, and gutter along Magnolia Street to be reconstructed closer to the subject property. Also, there is a need to reduce the area encumbered by the ground lease on a temporary basis to provide the DB contractor sufficient work areas to construct the freeway improvements and the retaining wall, and reconstruct the existing driveway to match the grade of the new improvements.

Resolution No. 2018-166 pertains to the acquisition of a partial FEE and two TCEs over a portion of the property owned by G6 Hospitality Property, a Delaware limited liability company. The acquisition of the subject partial FEE is needed to accommodate widening of Westminster Boulevard. As a result of the I-405 widening, there is a need to reconstruct and widen the Westminster Boulevard Bridge. The proposed design will require the existing sidewalk, curb, and gutter to be reconstructed closer to the subject property along Westminster Boulevard. The acquisition of the subject TCEs is needed to provide the DB contractor sufficient work area to construct the freeway improvements and the soundwall, and reconstruct the existing driveway to match the grade of the new improvements.

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 May 2019 through January 2020 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 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. 2018-164 Hospitality Properties Trust – Action is recommended for an acquisition of one partial FEE and one TCE over a portion of the property to accommodate widening of Brookhurst Street and provide sufficient working area to reconstruct the existing sidewalk, curb, and gutter.
- Resolution No. 2018-165 Caltrans – Action is recommended for an acquisition of two separate areas permanently reducing the ground lease to accommodate widening of the freeway, realignment of the freeway on-ramps, construction of a footing for a retaining wall, and one area temporarily reducing the ground lease to provide sufficient working areas to construct the freeway improvements and the retaining wall, and reconstruct the existing sidewalk, curb, gutter, and concrete driveway.
- Resolution No. 2018-166 G6 Hospitality Property, a Delaware limited liability company – Action is recommended for an acquisition of one partial FEE and two TCEs over a portion of the property to accommodate widening of Westminster Boulevard, realignment of the freeway off-ramp, construction of a footing for a soundwall, and provide sufficient working areas to construct the freeway improvements and the soundwall, and reconstruct the existing sidewalk, curb, gutter, and concrete driveway.

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-F), 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.

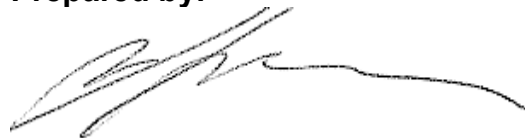
Summary

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. 2018-164 Hospitality Properties Trust; 2018-165 California Department of Transportation; and 2018-166 G6 Hospitality Property
- 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. 2018-164
- E. Resolution No. 2018-165
- F. Resolution No. 2018-166

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