

RESOLUTION NO. 2020-279

A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF AN INTEREST IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF A PORTION OF ASSESSOR PARCEL NO. 402-142-11.

WHEREAS, the Orange County Transportation Authority (the "Authority") is undertaking the State Route 55 ("SR-55") Improvement Project between Interstate 405 and Interstate 5, a right-of-way for freeway purposes and all public uses appurtenant thereto (the "Project"); and

WHEREAS, the Project is intended to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding travel and high occupancy vehicle (HOV) lanes in each direction; and

WHEREAS, the Project requires the acquisition of property interests from public and private parties; and

WHEREAS, the Project will be a transportation improvement project serving the public interest; and

WHEREAS, subsection (a) of the California Public Utilities Code section 130220.5, authorizes the Authority to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

WHEREAS, a portion of the real property located at 17021-17041 Kenyon Drive, in the City of Tustin, California (the "Subject Property") is required for the Project. The specific portion of the Subject Property required for the Project is a temporary construction easement as legally described and depicted in Exhibit "A" hereto (the "Property Interest"); and

WHEREAS, reasonable vehicular and pedestrian access to and from the Subject Property will be maintained at all times; and

WHEREAS, the Authority communicated an offer of compensation to the owner or owners of record for the acquisition of the Property Interests; and

WHEREAS, in accordance with section 1245.235 of the California Code of Civil Procedure on September 11, 2020, the Authority mailed a Notice of Hearing on the Intent of the Authority to Adopt a Resolution of Necessity for acquisition by eminent domain of the Property Interest. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the Subject Property; and

WHEREAS, the Authority provided written notice to the City of Tustin as required by subsection (c) of California Public Utilities Code section 130220.5; and

WHEREAS, the Project, including all amendments thereto, together with the staff reports, environmental documents, and all other evidence presented to the Authority's Board of Directors at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

WHEREAS, pursuant to section 1245.235 of the California Code of Civil Procedure, the Authority scheduled a hearing for October 12, 2020, at 9:00 a.m, and gave to each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll a reasonable opportunity to be heard; and

WHEREAS, said hearing has been held by the Authority's Board of Directors; and

WHEREAS, the Authority may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, BE IT RESOLVED, by at least a two-thirds vote of the Authority's Board of Directors under Code of Civil Procedure sections 1240.030 and 1245.230, the Authority does hereby find and determine as follows:

Section 1. Incorporation of Findings and Recitals. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

Section 2. Compliance with California Code of Civil Procedure. There has been compliance by the Authority with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

Section 3. Public Use. The public use for which the Property Interest is to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Authority to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

Section 4. Necessity.

(a) The proposed Project is necessary to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding travel and high occupancy vehicle (HOV) lanes in each direction; and

(b) The public interest and necessity require the acquisition by eminent domain proceedings of the Property Interests.

Section 5. Description of Property Interests. The Property Interest sought to be acquired is more particularly described and depicted in Exhibit "A" attached hereto and incorporated herein by reference.

Section 6. Findings. The Authority hereby finds, determines, and declares each of the following:

(a) The public interest and necessity require the proposed Project;

(b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The Property Interest sought to be acquired is necessary for the proposed Project; and

(d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record.

Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the Property Interest is already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the Property Interest, or any portion thereof, are already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the Property Interest, or any portion thereof, are already devoted.

Section 8. Acquisition of Substitute Property. To the extent portions of the real property to be acquired for the Project are currently devoted to or held for some public use, the Authority intends to acquire substitute property pursuant to California Code of Civil Procedure sections 1240.320 and 1240.330. The requirements of said Code sections have been satisfied and the acquisition of said substitute property is necessary for the Project. The substitute property may be conveyed by the Authority to the owner(s) of the necessary property.

Section 9. Authority to Exercise Eminent Domain. The Authority is hereby authorized and empowered to acquire the Property Interests, including the improvements thereon, if any, by eminent domain for the proposed Project.

Section 10. Further Activities. The Authority's legal counsel ("Counsel") is hereby authorized and empowered to acquire the Property Interest in the name of and on behalf of the Authority by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be permitted and required by law, and to make such security deposits as may be required by law and/or order of court, to permit the Authority to take possession of the Property Interest at the earliest possible time.

Section 11. Effective Date. This Resolution of Necessity shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this _____ day of _____, 2020.

STEVE JONES, CHAIRMAN
ORANGE COUNTY
TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

JAMES M. DONICH
GENERAL COUNSEL

ATTEST:

I, Laurena Weinert, Clerk of the Board of Directors of the Orange County Transportation Authority, do hereby certify that the foregoing Resolution No. 2020-279, by the following votes:

AYES:

NOES:

ABSENT:

LAURENA WEINERT
CLERK OF THE BOARD

EXHIBIT A

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 402-142-11

Caltrans Parcel No.: 103746-1

This temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "A1" and depicted in Exhibit "A2" attached hereto, subject to the rights and limitations set forth herein ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the SR 55 Improvement Project. The TCE shall be for a period of sixty (60) months, a portion of which shall be exclusive (subject to the Rights and Limitations of Use and Occupancy set forth below) and a portion of which shall be non-exclusive. Specifically, the actual physical construction activities within the TCE area shall be limited to a period of thirty (30) consecutive months within the sixty (60) month TCE period (the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the Rights and Limitations of Use and Occupancy set forth below. OCTA's use and occupancy of the TCE during the remaining thirty (30) months of the TCE period will be non-exclusive.

Rights and Limitations of Use and Occupancy of TCE:

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days' written notice as to when the Construction Period will commence.
- During the Construction Period, OCTA may place a temporary fence around the TCE area.
- Reasonable pedestrian access to the property shall be maintained at all times.
- Access to the TCE area by OCTA shall be from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. Any and all improvements so removed shall be included in the compensation paid by OCTA for this TCE.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials including, without limitation, any temporary fence, any temporary improvements, and all construction-related debris. The TCE area will be graded and compacted. Functionally equivalent pavement material will be installed by OCTA to restore the TCE area to a similar condition that existed prior to commencement of the construction activities.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

EXHIBIT "A1"
LEGAL DESCRIPTION

CALTRANS PARCEL NO. 103746-1

TEMPORARY CONSTRUCTION EASEMENT

APN 402-142-11

THAT PORTION OF LOT 7 OF TRACT NO. 5469, IN THE CITY OF TUSTIN, COUNTY OF ORANGE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 198, PAGES 30 AND 31, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 7;

THENCE ALONG THE WESTERLY LINE OF SAID LOT 7 NORTH 12°10'05" EAST, 112.52 FEET TO THE NORTHWESTERLY LINE OF SAID LOT 7;

THENCE LEAVING SAID WESTERLY LINE AND ALONG SAID NORTHWESTERLY LINE NORTH 50°40'07" EAST, 50.44 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE SOUTH 39°19'53" EAST, 5.00 FEET;

THENCE SOUTH 50°40'07" WEST, 48.70 FEET;

THENCE SOUTH 12°10'05" WEST, 110.78 FEET TO THE SOUTHERLY LINE OF SAID LOT 7;

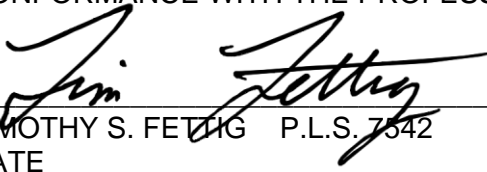
THENCE ALONG SAID SOUTHERLY LINE NORTH 77°45'18" WEST, 5.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS A GRID AREA 806 SQUARE FEET OR 0.019 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE CALIFORNIA COORDINATE SYSTEM (CCS83), ZONE VI, NAD 83 (1991.35 EPOCH OCS ADJUSTMENT), ALL DISTANCES SHOWN ARE GRID, TO OBTAIN GROUND DISTANCES DIVIDE BY 0.99997834.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "A2", ATTACHED HERETO AND MADE A PART HEREOF.

THIS DOCUMENT HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.


TIMOTHY S. FETTING P.L.S. 7542
DATE

2/13/2020



PLAT TO ACCOMPANY
LEGAL DESCRIPTION



PREPARED BY ME OR UNDER MY DIRECTION:

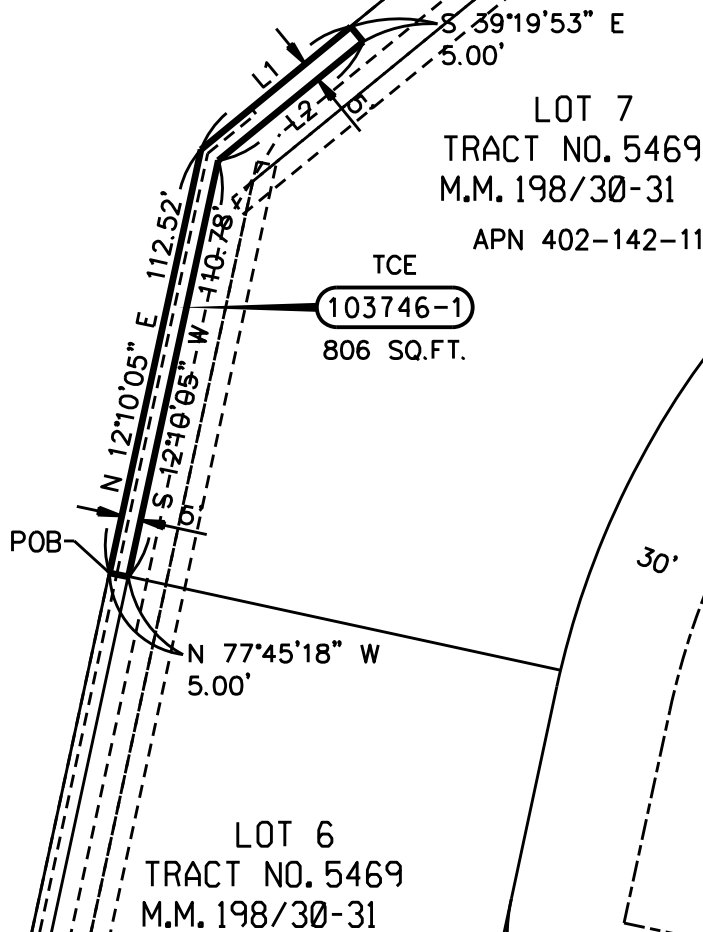
Tim Fetting
TIMOTHY S. FETTING P.L.S. 7542

02/13/2020

DATE

LINE TABLE		
NO.	BEARING	LENGTH
L1	N 50°40'07" E	50.44'
L2	S 50°40'07" W	48.70'

STATE ROUTE 55



INST. NO. 2017000015727 O.R.
REC. 1/12/2017

SHEET 1 OF 1

THE BEARINGS AND DISTANCES SHOWN ARE
CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83),
ZONE VI, NAD 83 (1991.35 EPOCH
O.C.S. GPS ADJUSTMENT).

ALL DISTANCES SHOWN ARE GRID DISTANCES.
DIVIDE THE GRID DISTANCES SHOWN
BY 0.99997834 TO OBTAIN GROUND DISTANCES.

EXHIBIT "A2"

103746-1

