



October 12, 2020

To: Members of the Board of Directors
From: Darrell E. Johnson, Chief Executive Officer
Subject: Adopt Resolutions of Necessity for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

Overview

The Orange County Transportation Authority is implementing the State Route 55 Improvement Project between Interstate 405 and Interstate 5. The project requires acquisition of property rights from public and private parties adjacent to the existing freeway and city streets. On September 11, 2017, 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 two of the 33 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 in time to make the properties available to meet the project delivery and construction schedules.

Recommendation

Adopt Resolutions of Necessity Nos. 2020-279 and 2020-280, 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 State Route 55 Improvement Project between Interstate 405 and Interstate 5.

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. Cooperative Agreement Nos. C-7-1753 and C-7-1936 between the Orange County Transportation Authority (OCTA) and the California Department of Transportation (Caltrans) were approved by the Board of Directors (Board) on June 12, 2017 and September 11, 2017, respectively. These documents define the roles and responsibilities of

OCTA and Caltrans for final design and right-of-way (ROW) acquisition for the State Route 55 Improvement Project between Interstate 405 and Interstate 5 (Project). Pursuant to the cooperative agreements, OCTA is the lead implementing agency for final design and ROW acquisition for the Project. The environmental document and project report were approved by Caltrans on August 31, 2017 and September 11, 2017, respectively.

Discussion

Construction of the Project will impact 33 properties between Interstate 405 and Interstate 5, including three multi-residential properties, 20 commercial/industrial properties, one hotel, three vacant properties, five public properties, and one railroad property. There are 31 properties identified as partial acquisitions and two properties identified as full acquisitions. The Project may require the displacement of tenants/occupants from a multi-residential complex and may cause the displacement of several businesses. Displacees will be provided relocation assistance in accordance with OCTA and Caltrans policies and procedures. The real property requirements for the Project include the acquisition of the two full fee interests, partial fee interests (FEE), permanent highway easements (PHE), permanent footing easements (PFE), permanent utility easements (PUE), tie-back easements, temporary construction easements (TCE), and access control rights needed to construct the proposed highway and high-occupancy vehicle lane improvements. The partial FEEs, PHEs, PFEs, PUEs, and TCEs are required for roadway construction, soundwalls, retaining walls, drainage systems, and for the installation of above-ground and underground facilities, including electrical, telecommunication, water, sewer, and storm drain systems.

Resolution No. 2020-279 pertains to the acquisition of a TCE over a portion of the property owned by New Kenyon Apartments LP, a California limited partnership. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway improvements and a retaining wall and soundwall along the realignment of the McFadden Avenue northbound (NB) off-ramp. The acquisition of the TCE may result in the permanent or temporary displacement of several of the occupants renting apartment units adjacent to the TCE area. The TCE limits the ability for the occupants to utilize their own garages for vehicular storage. In the event there may be a need to displace any occupant, relocation assistance will be provided in accordance with Caltrans' *Right of Way Manual* and OCTA's *Real Property Policies and Procedures Manual*. Relocation assistance will not be mandatory and would only occur on a voluntary basis if requested by an occupant.

Resolution No. 2020-280 pertains to the acquisition of a TCE over a portion of the property owned by HW-Dyer LLC, a cancelled Delaware limited liability company. The acquisition of the subject TCE is needed to provide sufficient

work area to realign and reconstruct the Orange County Flood Control District's (OCFCD) lane channel as a result of freeway widening 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 required first-level review to describe the Project design and the need for the property.

OCTA must secure possession of the interests in the subject properties by July 2021 in order to meet Project schedule deadlines. Delay in acquiring the interests in these properties will cause Project delays. Proceeding with these resolutions of necessity (RON) will ensure that Project schedules are maintained.

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 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. 2020-279 New Kenyon Apartments LP, a California limited partnership – Action is recommended for an acquisition of one TCE over a portion of the property to provide sufficient work area to construct the freeway improvements, a retaining wall, and soundwall along the realignment of the McFadden Avenue NB off-ramp.
- Resolution No. 2020-280 HW-Dyer LLC, a cancelled Delaware limited liability company – Action is recommended for an acquisition of one TCE over a portion of the property to provide sufficient work area to realign and reconstruct for the OCFCD's lane channel as a result of freeway widening 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 its 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 and 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 Summaries with Property Owners
- B. List of Property Owners, State Route 55 Improvement Project Between Interstate 405 and Interstate 5, Board of Directors Exhibit Matrix
- C. Photo Aerial Exhibits
- D. Resolution No. 2020-279
- E. Resolution No. 2020-280

Prepared by:



Joe Gallardo
Manager, Real Property
(714) 560-5546

Approved by:



James G. Beil, P.E.
Executive Director, Capital Programs
(714) 560-5646