




**November 23, 2020**

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

**From:** Darrell E. Johnson, Chief Executive Officer 

**Subject:** Adopt Resolution 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. To date, staff has been unable to reach an agreement to purchase required property rights from the subject property owner. It is now necessary for the Board of Directors to exercise its power of eminent domain by adopting a resolution of necessity in order to acquire these necessary property rights in time to make the property available to meet the project delivery and construction schedules.

### **Recommendation**

Adopt Resolution of Necessity No. 2020-285, 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 project.

### **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) was approved by the Board of Directors (Board) on June 12, 2017 and September 11, 2017, respectively. These documents defined 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 (I-405) and Interstate 5 (I-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 I-405 and I-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 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. 2020-285 pertains to the acquisition of one partial FEE and two TCEs over a portion of the property owned by First American Title Insurance Company, a California corporation. The acquisition of the subject partial FEE is needed to realign the Orange County Flood Control District's (OCFCD) Lane Channel as a result of the freeway widening improvements and provide maintenance access for OCFCD. The acquisition of the subject TCEs is needed to provide sufficient work area to reconstruct the OCFCD's Lane Channel.

The property owner has been given substantially more time than the 30 days required by the Federal Highway Administration to consider OCTA's written purchase offer and has 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.

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

The “List of Property Owner” and “Photo Aerial Exhibit,” attachments B and C respectively, provide information on property ownership and location.

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 property required for the Project and to comply with state and federal laws for ROW acquisition, the Board is requested to adopt the RON for the subject property. This action will allow OCTA to commence eminent domain proceeding to acquire the interests in real property needed for the Project.

The following resolution is recommended:

- Resolution No. 2020-285 First American Title Insurance Company, a California corporation – Action is recommended for an acquisition of one FEE and two TCEs over a portion of the property to realign OCFCD’s Lane Channel as a result of the freeway widening improvements, provide maintenance access, and provide sufficient work area to reconstruct the OCFCD’s Lane Channel.

The eminent domain proceeding commences 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.

The property owner 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 RON (Attachment D), OCTA's General Counsel will proceed with litigation in order to obtain possession and ultimate use of the property interests. Staff will continue negotiation with the property owner 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. A statutory offer has been made to the property owner and negotiation is ongoing. Adopting this RON and commencing eminent domain proceeding is requested to maintain the Project delivery schedule.

***Attachments***

- A. Correspondence/Contact Summary: Resolution No. 2020-285 First American Title Insurance Company, a California corporation
- B. List of Property Owner, State Route 55 Improvement Project Between Interstate 405 and Interstate 5, Board of Directors Exhibit Matrix
- C. Photo Aerial Exhibit, Resolution No. 2020-285 (First American Title Insurance)
- D. Resolution No. 2020-285

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