



February 8, 2021

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 this project. At this time, staff has been unable to reach an agreement to purchase required property rights from the subject properties. 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. 2021-003, 2021-004, 2021-005, and 2021-006, 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) 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 (SR-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. Those displaced 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 Nos. 2021-003 through 2021-006 pertain to OCTA's acquisition of several FEEs, PHE interests, and TCEs in the City of Santa Ana to accommodate widening of the freeway and provide sufficient work area to construct the freeway widening improvements. These proposed acquisition interests impact the common areas over four separate parcels within the business and office park complex known as the Brookhollow Office Park Association (Association). The Association is a common interest development with rights over all four parcels pursuant to certain covenants, conditions, and restrictions, including management and maintenance responsibilities over the common areas. One of the parcels subject to resolution is owned by three separate owners and is improved with four multi-tenant office/quasi-industrial/retail buildings. Two of the other parcels are owned by separate individual owners and each parcel is improved with one multi-tenant office building. The fourth parcel is owned by a single owner and is vacant land.

The following is a breakdown of the ownership interests impacted by the four separate parcels subject to resolution:

Resolution No. 2021-003 pertains to the acquisition of two partial FEEs and one TCE over a portion of the property owned by Moda Rentals, LLC. The acquisition of the subject partial FEEs is needed to realign the southbound off-ramp to Dyer Road. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway improvements.

Resolution No. 2021-004 pertains to the acquisition of one partial FEE and one TCE over a portion of the property owned by DL Investments SA, LLC. The acquisition of the subject partial FEE is needed to accommodate the widening of the SR-55 and realignment of the southbound off-ramp to Dyer Road. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway improvements.

Resolution No. 2021-005 pertains to the acquisition of one partial FEE, two PHEs, and three TCEs over a portion of the property owned by 1560 E. Warner Avenue Limited Partnership, a California limited partnership. The acquisition of the subject partial FEE and PHEs is needed to accommodate the widening of the SR-55 and realignment of the southbound off-ramp to Dyer Road. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway improvements.

Resolution No. 2021-006 pertains to the acquisition of one partial FEE, one PHE, and one TCE over a portion of the property owned by WTW Properties, LLC, a California Limited Liability Company; McFadden-Dale Industrial Hardware, LLC, a California limited liability company; and B & C Properties, Inc., a California corporation. The acquisition of the subject partial FEE and PHE is needed to accommodate the widening of the SR-55. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway 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 owners to conduct an OCTA policies and procedures first level review to describe the Project design and the need for the property interests to be acquired. In particular, OCTA has been in contact with the Association, which, as noted, has contractual responsibilities over the common area within the entire business park complex.

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 these properties will cause Project delays. Proceeding with these resolutions of necessity (RONs) 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 ownership 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 to be acquired 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 interests to be 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. 2021-003 (Moda Rentals, LLC) – Action is recommended for acquisition of two partial FEEs and one TCE over a portion of the property to realign the southbound off-ramp to Dyer Road and provide sufficient work area to construct the freeway improvements.
- Resolution No. 2021-004 (DL Investments SA, LLC) – Action is recommended for an acquisition of one partial FEE and one TCE over a portion of the property to accommodate the widening of the SR-55 and realignment of the southbound off-ramp to Dyer Road and provide sufficient work area to construct the freeway improvements.
- Resolution No. 2021-005 (1560 E. Warner Avenue Limited Partnership, a California limited partnership) – Action is recommended for an acquisition of one partial FEE, two PHEs, and three TCEs over a portion of the property to accommodate the widening of the SR-55 and realignment of the southbound off-ramp to Dyer Road and provide sufficient work area to construct the freeway improvements.

- Resolution No. 2021-006 (WTW Properties, LLC, a California limited liability company; McFadden-Dale Industrial Hardware, LLC, a California limited liability company; and B & C Properties, Inc., a California corporation) – Action is recommended for an acquisition of one partial FEE, one PHE, and one TCE over a portion of the property to accommodate the widening of the SR-55 and provide sufficient working area to construct the freeway improvements.

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.

Any 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 or interests to be acquired affected by the RON should not be discussed. In the event the Board approves the RONs (attachments D through G), 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 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. 2021-003
- E. Resolution No. 2021-004
- F. Resolution No. 2021-005
- G. Resolution No. 2021-006

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