



**March 22, 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. Currently, staff has been unable to reach an agreement to purchase required property rights from the subject properties. It is necessary for the Board of Directors to adopt resolutions of necessity and commence the eminent domain process to obtain possession of required property rights to maintain the project delivery and construction schedules.

### **Recommendation**

Adopt Resolution of Necessity Nos. 2021-017, 2021-018, and 2021-019, 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 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. 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. 2021-017 pertains to the acquisition of one partial FEE and two TCEs over a portion of the property owned by John Washer, Trustee of the John Washer Living Trust, dated August 9, 2005. The acquisition of the subject partial FEE is needed to accommodate the widening of SR-55 and construct a retaining wall. The acquisition of the subject TCEs are needed to provide sufficient work area to construct the freeway improvements, retaining wall, and Duryea Avenue modifications. The property owner, through its legal representative, provided OCTA staff with the attached written notice of the intent to appear and be heard on the proposed adoption of a resolution of necessity (RON) (Attachment A).

Resolution No. 2021-018 pertains to the acquisition of one partial FEE, one PHE, and one TCE over a portion of the property owned by HBR, LLC. The acquisition of the subject partial FEE and PHE is needed to accommodate the widening of SR-55. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway improvements.

Resolution No. 2021-019 pertains to the acquisition of one partial FEE, one PHE, and one TCE over a portion of the property owned by Dan R. O'Neil and Bonnie J. O'Neil, Trustees of the Dan R. O'Neil and Bonnie J. O'Neil Grantor Trust, dated February 8, 1996. The acquisition of the subject partial FEE and PHE is needed to accommodate the widening of SR-55. The acquisition of the subject TCE is needed to provide sufficient work area to construct the freeway improvements. The property owner, through its legal representative, provided OCTA staff with the attached written notice of the intent to appear and be heard on the proposed adoption of a RON (Attachment B).

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 C. 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.

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 RONs will ensure that Project schedules are maintained.

The "List of Property Owners" and "Photo Aerial Exhibits," attachments D and E 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. 2021-017 John Washer, Trustee of the John Washer Living Trust, dated August 9, 2005 – Action is recommended for an acquisition of one FEE and two TCEs over a portion of the property to accommodate the widening of SR-55 and construct a retaining wall, and provide sufficient work area to construct the freeway improvements, retaining wall, and Duryea Avenue modifications.

- Resolution No. 2021-018 HBR, LLC – Action is recommended for an acquisition of one FEE, one PHE, and one TCE over a portion of the property to accommodate the widening of SR-55 and provide sufficient work area to construct the freeway improvements.
- Resolution No. 2021-019 Dan R. O’Neil and Bonnie J. O’Neil, Trustees of the Dan R. O’Neil and Bonnie J. O’Neil Grantor Trust, dated February 8, 1996 – Action is recommended for an acquisition of one FEE, one PHE, and one TCE over a portion of the property to accommodate the widening of SR-55 and provide sufficient work 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 Governmental Code Section 7267.2 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 affected by the RON should not be discussed. In the event the Board approves the RONs (attachments F-H), 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. Letter from John S. Peterson, Peterson Law Group, to Clerk of the Board, Orange County Transportation Authority, Dated March 4, 2021
- B. Letters from William P. Warden, William P. Warden Attorney at Law, to Clerk of the Board, Orange County Transportation Authority, Dated March 11, 2021
- C. Correspondence/Contact Summary with Property Owners
- D. List of Property Owners, State Route 55 Improvement Project Between Interstate 405 and Interstate 5, Board of Directors Exhibit Matrix
- E. Photo Aerial Exhibits
- F. Resolution No. 2021-017
- G. Resolution No. 2021-018
- H. Resolution No. 2021-019

**Prepared by:**



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

**Approved by:**



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