



Board Report

File #: 2016-0280, **File Type:** Policy

Agenda Number: 42.

**REGULAR BOARD MEETING
APRIL 28, 2016**

SUBJECT: REGIONAL CONNECTOR TRANSIT CORRIDOR PROJECT

ACTION: **ADOPT AN AMENDED RESOLUTION OF NECESSITY TO PROVIDE FOR THE FUTURE BIFURCATION OF AN EXISTING SUBSURFACE TUNNEL EASEMENT, AND FOR THE OUTGRANT TO THE PROPERTY OWNER OF CERTAIN EASEMENT RIGHTS IN A PORTION OF ASSESSOR’S PARCEL NOS. 5161-017-021, 5161-017-022, 5161-017-023, & 5161-017-033 (HEREINAFTER THE “PROPERTY”).**

RECOMMENDATION

CONSIDER:

- A. HOLDING a public hearing on the proposed Amended Resolution of Necessity;
- B. ADOPTIING an amended **Resolution of Necessity** clarifying the nature of the property rights to be acquired in the pending eminent domain action against **Japanese Village, LLC, et al (hereinafter "Owner")**, in support of the Metro Regional Connector Transit Corridor Project, including a provision for the bifurcation of the existing subsurface tunnel easements, and for the outgrant to the Property Owner of the space between the bifurcated tunnel easements in the context of Metro’s long-range plans affecting the Property.

(REQUIRES TWO-THIRDS VOTE)

DISCUSSION

As part of the Regional Connector Transit Corridor Project (“Project”), the Los Angeles County Metropolitan Transportation Authority (“METRO”) requires certain subsurface tunnel and grouting easements on the Property. A written offer was presented to the Owner, as required by California Government Code Section 7267.2. The parties were unable to reach a negotiated agreement, and the METRO Board previously approved a Resolution of Necessity on June 26, 2014, authorizing the commencement of eminent domain proceedings through the filing of a complaint in eminent domain (“Complaint”). METRO filed the Complaint on July 3, 2014, wherein METRO sought to acquire the following property interests from the Owner:

- Two permanent subsurface easements for tunnel alignment, designated as METRO Project

Parcel Nos. RC-450 and RC-451; and

- Multiple subsurface easements for the installation of grouting pipes, designated as METRO Project Parcel Nos. RC-450-1, RC-451-1, RC-451-2, RC-451-3, and RC-451-4

On June 4, 2015, the Court granted an Order for Prejudgment Possession to METRO for the aforementioned subsurface tunnel and grouting easement rights (see Attachment A).

In an effort to mitigate the impacts to the Property, and to enable the Property Owner to develop its Property to its fullest possible potential, METRO re-evaluated the need for the proposed 'monolithic' (single) subsurface tunnel easements for the two proposed subway tunnels. METRO's design team determined that it could bifurcate (split into two parts) the monolithic subsurface tunnel easements, which would result in a three (3) to four (4) foot wide area between the bifurcated subsurface tunnel easements, to allow for future development use by the Property Owner. The METRO design team also determined that additional (new) grouting easements, and changes to the existing subsurface tunnel easements, would be required to facilitate the bifurcation of the subsurface tunnel easements. METRO submitted these proposed changes to the Court in its Motion for Leave to Amend the original Complaint ("Motion"). A hearing on the Motion was held on March 4, 2016 wherein the Motion was granted, subject to the adoption of a new Resolution of Necessity.

Following the hearing on the Motion, the proposed changes to the easements were again reevaluated. METRO's design team determined that all of the necessary grouting required for bifurcation could be accomplished within the existing easement areas granted to METRO pursuant to the Court's Prejudgment Possession Order dated June 4, 2015. Further, it was determined that the only change to the existing subsurface tunnel easements, would be to delineate the portion of the subsurface tunnel easements which could be abandoned (returned) to the Property Owner for future development use. The portion of the subsurface tunnel easements to be abandoned upon completion of construction is shown in Attachment A-1 and designated as Project Parcel RC-451-A. The portion of the subsurface tunnel easements to be retained by METRO upon completion of construction is shown in Attachment A-2 and designated as Project Parcels RC-451-B1 and RC-451-B2. Note that Attachments A-1 and A-2 are for illustrative purposes only, and that the precise portions of the subsurface tunnel easements to be abandoned and retained can only be determined after the completion of construction by a licensed surveyor.

Because the subsurface tunnel and grouting easements are necessary for construction of the Project, staff recommends the acquisition of the subsurface tunnel and grouting easements through eminent domain. None of the work contemplated under the subsurface tunnel and grouting easements will cause displacement or significantly impede the operations of the Owner. An amended Resolution of Necessity is necessary to enable Metro to amend its existing Complaint against the Owner, so that the Complaint conforms to changes in the Project with regard to the property that is required to construct the Project.

In accordance with the provisions of the California Eminent Domain law and Sections 30503, 130220.5 and 132610 of the California Public Utilities Code (which authorize the public acquisition of private property by eminent domain), METRO has prepared and mailed notices of this hearing to the Owner informing them of their right to appear at this hearing and be heard on the following issues: (1) whether the public interest and necessity require the Project; (2) whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least

private injury; (3) whether the Property is necessary for the Project; and (4) whether either the offer required by Section 7267.2 of the Government Code has been made to the Owner, or the offer has not been made because the Owner cannot be located with reasonable diligence.

Attached is evidence submitted by staff that supports adoption of the Resolution that has been approved by counsel, and which sets forth the required findings (Attachment "B"). After all of the testimony and other evidence has been received by METRO from all interested parties, METRO must make a determination as to whether to adopt the proposed Resolution of Necessity (Attachment "C") to acquire the Property by eminent domain. In order to adopt the resolution, METRO must, based upon all the evidence before it, and by a vote of two-thirds of all the members of its governing body, find and determine that the conditions stated above exist.

DETERMINATION OF SAFETY IMPACT

This Board action will not have an impact on safety standards for Metro.

FINANCIAL IMPACT

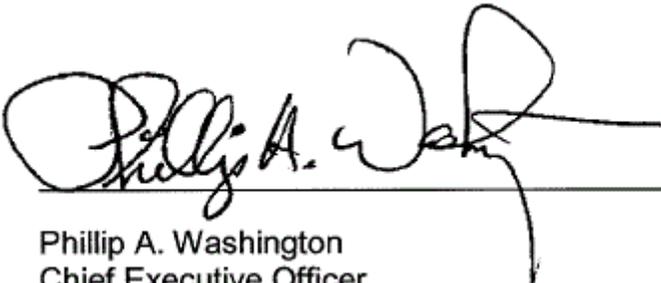
This project is funded by Measure R 35% backed TIFIA loan, and a combination of various local and state grants and Federal grants. The funding to acquire the Property is included in the approved fiscal year 2016 project budget, under Measure R Project Regional Connector Transit Corridor Project 860228, in cost center 8510 (Construction Procurement), account number 53103 (Acquisition of Land). This has no impact to operations eligible funds.

ATTACHMENTS

- Attachment A- Order for Prejudgment Possession
- Attachment A-1-Subsurface Easements - Portion to be Abandoned
- Attachment A-2-Subsurface Easements - Portion to be Retained
- Attachment B-Staff Report
- Attachment C-Resolution of Necessity

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