



Board Report

File #: 2023-0087, File Type: Policy

Agenda Number: 38.

REGULAR BOARD MEETING
MARCH 23, 2023

**SUBJECT: WHITTIER BOULEVARD/PAINTER AVENUE INTERSECTION IMPROVEMENT
PROJECT RESOLUTIONS OF NECESSITY**

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATION

CONSIDER:

- A. HOLDING a public hearing on the proposed Resolutions of Necessity; and
- B. ADOPTING the Resolutions of Necessity authorizing the commencement of an eminent domain action to acquire a 28-month Temporary Construction Easement (“TCE”) interest from the properties located at:

13127 Whittier Boulevard, Whittier, CA, APN:8141-033-006, CPN: 81781-1;
 13205 Whittier Boulevard Whittier, CA, APN:8142-033-052, CPN: 81782-1;
 13241 Whittier Boulevard, Whittier, CA, APN:8142-033-068, CPN: 81783-1, -2
 13301 Whittier Boulevard, Whittier, CA, APN:8142-033-069, CPN: 81784-1;
 8421 Painter Avenue, Whittier, CA, APN:8142-033-070, CPN: 81785-1;

The above listed requirements are collectively identified as the “Property Interests” as identified in (Attachment A).

(REQUIRES TWO-THIRDS VOTE OF THE FULL BOARD)

ISSUE

Acquisition of the Property Interests is required for the construction and operation of the Whittier Boulevard/Painter Avenue Intersection Improvement Project (“Project”). After testimony and evidence has been received from all interested parties at the hearings, Los Angeles County Metropolitan Transportation Authority (“LACMTA”), by a vote of two-thirds of its Board of Directors (“Board”), must make a determination as to whether to adopt the proposed Resolutions of Necessity (Attachments B-1 through B-5) to acquire the Property Interests by eminent domain. Attached is evidence submitted by staff that supports the adoption of the resolutions and which sets forth the required findings (Attachment A).

BACKGROUND

The City of Whittier, in cooperation with LACMTA, the California Department of Transportation (Caltrans), and the Gateway Cities Council of Governments, propose to improve mobility, relieve congestion, and improve safety by address deficiencies including correcting inadequate truck turn paths and noncompliant Americans with Disabilities Act (ADA) facilities at the Painter Avenue Intersection on Whittier Boulevard (State Route 72) in the City of Whittier. At this intersection, the project would include an additional westbound and eastbound through lane along Whittier Boulevard 300 feet east of Painter Avenue to Washington Avenue and from Painter Avenue to Madison Avenue and increased storage on the westbound and eastbound left-turn lanes along Whittier Boulevard. The Project is one of 33 projects selected from the I-605 “Hot Spots” Feasibility Report.

Acquisition of the Property Interests is required for the construction and operation of the Project. The 28-month TCE identified as CPN 81781-1 is located along a portion of the southeastern end of the parcel and wraps around the corner of the intersection of Whittier Blvd and Washington Avenue. The TCE has an area of ± 140 square feet and is required to provide access to the contractor for the reconstruction of the existing curb ramp and sidewalk improvements within Caltrans right of way. The exclusive use construction period is 1 month. All improvements within the TCE area will be protected in place or replaced in kind.

The 28-month TCE identified as CPN 81782-1 is located at the southern end of the parcel along Whittier Blvd. It has a total area of $\pm 2,425$ square feet and has an estimated 2 week to 2 months exclusive use construction period. The TCE is needed to provide access to the contractor for the reconstruction of the existing driveway and sidewalk improvements within Caltrans right of way. The site improvements within the TCE area are being replaced in kind or protected in place.

The 28-month TCE identified as CPN 81783-1 contains $\pm 1,209$ square feet and impacts the parcel's easterly driveway along Whittier Boulevard. The TCE is needed to provide access to the contractor for the reconstruction of the existing driveway pavement and curb within the property due to improvements to the sidewalk within Caltrans right of way. The TCE has an estimated exclusive use construction period of 10 days to 2 months. All improvements within the TCE area will be protected in place or replaced in kind. The 28-month TCE identified as CPN 81783-2 contains $\pm 1,790$ square feet and impacts the larger parcel's Whittier Boulevard westerly driveway. The TCE is needed to provide access to the contractor for the reconstruction of the existing driveway pavement and curb within the property due to improvements to the sidewalk within Caltrans right of way. The TCE has an exclusive use construction period of 10 days to 2 months. All improvements within the TCE area will be protected in place or replaced in kind.

The 28-month TCE identified as CPN 81784-1 contains ± 231 square feet and impacts the pedestrian walkway on the property. It is needed to provide access to the contractor for sidewalk improvements within Caltrans right of way. The TCE has an exclusive use construction period of 4 days to 1 month. All improvements within the TCE area will be protected in place or replaced in kind.

The 28-month TCE identified as CPN 81785-1 contains ± 60 square feet and is located on the irregularly shaped parcel's Whittier Blvd frontage. It is required to provide access to the contractor for

sidewalk improvements and installation of drainage features within the Caltrans right-of-way. The TCE has an exclusive use construction period of 4 days to 2 months. Improvements within the TCE area will either be protected in place or replaced in kind.

The TCE's are scheduled to commence upon the project right of way certification or as soon thereafter as agreed by the underlying fee owner or ordered by the Court, but in all events will automatically expire no later than June 19, 2026.

There are no displacements of residents or local businesses resulting from acquisition of the Property Interests. Improvements within the TCE areas are generally comprised of landscaping and hardscape, which will be protected in place, replaced in kind, or compensated for. No building structures will be impacted by the TCE's.

DISCUSSION

A written offer of Just Compensation to purchase the Property Interests was presented to the Owner of Record for each Property (collectively, "Owners"): on June 29, 2022 for CPN 81781-1; July 26, 2022 for CPN 81782-1; June 29, 2022 for CPN 81783-1, -2 and CPN 81784-1; September 6, 2022 for CPN 81785-1, as required by California Government Code Section 7267.2. The Owners have not accepted the offers of Just Compensation made by the LACMTA", and the parties have not at this time reached a negotiated settlement for the acquisition. Because the Property Interests are necessary for the construction and operation of the Project, staff recommends the acquisition of the Property Interests through eminent domain to obtain possession in order to maintain the Project's schedule.

In accordance with the provision of the California Eminent Domain law and Section 30503, 30600, 130051.13, 130220.5 and 132610 of the California Public Utilities Code (which authorizes the public acquisition of private property by eminent domain), LACMTA has prepared and mailed notice of this hearing to the Owners 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 good and the least private injury; (3) whether the Property is necessary for the Project; (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; (5) that any environmental review of the Project, as may be necessary, pursuant to the California Environmental Quality Act (CEQA) has occurred and (6) whether LACMTA has given the notice(s) and followed the procedures that are a prerequisite to the exercise of the power of eminent domain.

After all of the testimony and evidence has been received from all interested parties at the hearing, LACMTA must make a determination as to whether to adopt the proposed Resolutions of Necessity to acquire the Easements by eminent domain. In order to adopt the resolutions, LACMTA must, based on the evidence before it, and by a vote of two-thirds of its Board, find and determine that the conditions stated in items 1 - 6 above exist.

Attached is the Staff Report prepared by staff and legal counsel setting forth the required findings for acquiring the Property Interests through the use of eminent domain (Attachment A).

DETERMINATION OF SAFETY IMPACT

The Board action will not have an impact on LACMTA's safety standards.

FINANCIAL IMPACT

The funding for the acquisition of the Property Interests is included in the fiscal year 23 budget under Project, Cost Center 4720, in Whittier Blvd. Intersection Improvements Project 460314, Task MR31572, Professional Services Account 53103.

Impact to Budget

The source of funds will be Measure R Highway Capital (20%) Funds. These program funds are not eligible for bus and rail operations and/or capital expenditures.

EQUITY PLATFORM

No other alternative locations for the Project provide a better opportunity to reduce congestion, improve roadway operations, improve safety, and improve ADA access on Whittier Boulevard (SR-72) at Painter Avenue. This public good will also support the fulfillment of Metro's LA County Traffic Improvement Plan under Measure R and the I-605 "Hot Spots" Feasibility Report. There are no displacements of residents or local businesses resulting from the acquisition of this Property Interests. Offers for the Property Interests were made throughout the months of March to October 2022, based on appraisals of fair market value. Fair market value is defined as "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available." Metro staff has been negotiating with the Owners beginning in the months of March to October 2022 to present, but agreements have not yet been reached. Approving this action will allow staff to continue negotiations while maintaining the project schedule.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The Board action is consistent with LACMTA Vision 2028 Goal #1: Provide high quality mobility options that enable people to spend less time traveling. Adoption of the Resolutions of Necessity is a required step to acquire these Property Interests for the Project which will reduce congestion, improve roadway operations, improve safety, and improve ADA access on Whittier Boulevard (SR-72) at Painter Avenue.

ALTERNATIVES CONSIDERED

The Board could choose not to approve the recommendations. This is not recommended as it will result in significant delays and cost increases for the Project.

NEXT STEPS

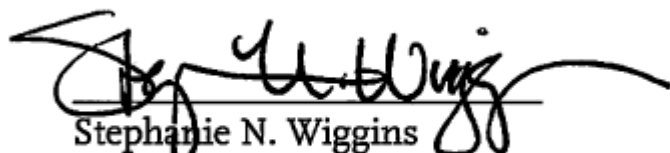
If this action is approved by the Board, LACMTA's condemnation counsel will be instructed to take all steps necessary to commence legal proceedings in a court of competent jurisdiction to acquire the Property Interests by eminent domain and to conclude those proceedings either by settlement or jury trial. Counsel will also be directed to seek and obtain Orders of Prejudgment Possession in accordance with the provisions of the eminent domain law.

ATTACHMENTS

Attachment A - Staff Report
Attachment B-1 - Resolution of Necessity
Attachment B-2 - Resolution of Necessity
Attachment B-3 - Resolution of Necessity
Attachment B-4 - Resolution of Necessity
Attachment B-5 - Resolution of Necessity

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