

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Economic Development Agency/Facilities Management and Transportation Department

SUBMITTAL DATE:
January 24, 2013

SUBJECT: Resolution No. 2013-004, Resolution Agreeing to Hear Future Resolutions of Necessity for the Jefferson Street / Interstate 10 Interchange Project in the City of Indio

RECOMMENDED MOTION: That the Board of Supervisors Approve Resolution No. 2013-004, Resolution Agreeing to Hear Future Resolutions of Necessity for the Jefferson Street / Interstate 10 Interchange Project.

BACKGROUND: The Riverside County Transportation Department (RCTD) proposes to reconstruct, realign, and widen the existing Interstate 10 / Jefferson Street Interchange to reduce operational deficiencies, improve traffic operations and access along Jefferson Street (Project).

(Continued)



Juan C. Perez, Director
Transportation and Land Management



Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature BY: 
Jennifer L. Sargent

FORM APPROVED COUNTY COUNSEL
DATE 12/10/12
BY: ANNA WANG
Departmental Concurrence

Policy
 Policy
 Consent
 Consent
 Dep't Recomm.:
 Per Exec. Ofc.:

3-33

Prev. Agn. Ref.: N/A

District: 4/4

Agenda Number:

BACKGROUND: (Continued)

The existing Jefferson Street at Interstate 10 (I-10) freeway interchange is currently a modified diamond design. The reconstruction of the proposed interchange reconstruction at I-10/Jefferson is to improve the operational performance of the Jefferson Street Interchange, to address the anticipated traffic demand and associated potential congestion from the planned development in the vicinity of Jefferson Street access to and from I-10.

In the event the County is unable to negotiate voluntary purchases of properties necessary for the Project, this resolution set the Board of Supervisors as the hearing body for resolutions related to eminent domain. The acquisitions are subject to the requirements and procedures of the Caltrans Right-of-Way Manual and, in particular, are subject to the requirements and procedures of Sections 17.04.09.00 through 17.04.09.09 of that manual, which states, in part "State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System....If the County is to hear resolutions, then the County must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project".

The City of Indio adopted a Resolution on December 19, 2012, authorizing the County to act as lead agency to exercise the powers of eminent domain for the Jefferson Street/Interstate 10 Interchange Project.

This Form 11 has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

There are no costs associated with this Resolution.

2 Resolution No. 2013-004
3 Resolution Agreeing to Hear Future Resolutions of Necessity
4 for the Jefferson Street / Interstate 10 Interchange Project
5 (Caltrans EA 08-475200)

6 WHEREAS, the County of Riverside ("County") is empowered to acquire
7 property by eminent domain pursuant to Article 1, Section 19 of the California
8 Constitution, and pursuant to various statutes including Sections 1230.010 et seq. of
9 the California Code of Civil Procedure;

10 WHEREAS, pursuant to California Streets and Highways Code Section 102, the
11 State of California, acting by and through its Department of Transportation ("Caltrans"),
12 may acquire by eminent domain any property necessary for state highway purposes;

13 WHEREAS, the County, in cooperation with Caltrans, has proposed to
14 reconstruct, realign and widen the existing Interstate 10 /Jefferson Street Interchange
15 to reduce projected operational deficiencies, improve traffic operation, and improve
16 access along Jefferson Street. The proposed project is planned to include widening of
17 the existing ramps and addition of new entrance ramps and dedicated right-turn lanes
18 in conjunction with improving the Jefferson Street Interchange.

19 WHEREAS, the Interstate 10/Jefferson Street Interchange Project has been
20 designated by Caltrans (for reference purposes) as Caltrans EA 08-475200;

21 WHEREAS, County projects to condemn property for state highway purposes
22 are subject to the requirements and procedures of the Caltrans Right-of-Way Manual
23 and, in particular, are subject to the requirements and procedures of Sections
24 17.04.09.00 through 17.04.09.09 of that manual (true and correct copies of which are
25 attached hereto as Exhibit "A" and are incorporated herein by this reference); and

26 WHEREAS, Section 17.04.09.00 of the Caltrans Right-Of-Way Manual states (in
27 pertinent part) as follows:
28

FORM APPROVED COUNTY COUNSEL
BY: ANNA W. WANG
DATE: 10/17

1 "State statute allows the California Transportation Commission, cities and
2 counties to hear and adopt resolutions of necessity for the acquisition of property
3 needed for projects on the State Highway System...If the County is to hear the
4 resolutions, then the County must pass a resolution, by four-fifths vote, agreeing to
5 hear the Resolution of Necessity for the project".

6 NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the
7 County of Riverside, State of California, not less than four-fifths of all members
8 concurring, in regular session assembled on February 5, 2013, that this Board hereby
9 agrees as follows:

10 1. This Board hereby agrees to hear and determine Resolutions of
11 Necessity regarding the Interstate 10/Jefferson Street Interchange Project; and

12 2. The County Counsel of the County of Riverside is hereby designated
13 to prepare (in conformance with applicable law), to review, to approve, and to
14 otherwise process resolution of necessity packages for the Interstate 10/Jefferson
15 Street Interchange Project (including the Notice of Intention to Adopt Resolution of
16 Necessity and the Resolution of Necessity) prior to those matters being heard by the
17 Board.

17.04.09.00 **Condemnation for LPA Projects - General**

The power of eminent domain can only be exercised if the condemning authority can establish:

- The necessity of the project,
- The project location is most compatible with the greatest public good and least private injury,
- And, the property is necessary for the project.

State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System. The exercise of eminent domain to acquire property for state highway purposes can be accomplished only by the state (Department) or by the county or city in which the property is located. (Also see Exhibit 17-EX-10 in this Chapter.)

The steps involved in taking resolution requests to a local board begin during the draft cooperative agreement phase. The local agency must have entered into negotiations to draft an agreement for the project. There must be a draft cooperative agreement. The decision to take Resolutions of Necessity to the Local Board of Supervisors or City Council is made for the project in its entirety. In addition to any language that may appear in the Cooperative Agreement, the local entity must obtain approval in writing from Headquarters Right of Way to proceed to take Resolutions of Necessity before the appropriate local body.

If the LPA is to hear the resolutions, then the city council must pass a resolution, by two-thirds vote, agreeing to hear the Resolutions of Necessity for the project. If the county is to hear the resolutions, then the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project.

If the county or city elects not to undertake this activity on behalf of another LPA (e.g., a Transportation Authority), then the Department should assume this task. The cost for providing legal services is reimbursable and the requirement for this service must be included in the Cooperative Agreement or Right of Way Services Agreement. In addition, prior budgetary authority for reimbursable work must be obtained.

17.04.09.01 **Approval for Local Agencies to Hear Resolutions of Necessity**

The Region/District will help to facilitate the submission of an approval package to the Chief of the Division of Right of Way in Headquarters. The package must include all of the following:

- Justification for the request
- Documentation of the resolution from the governing body of the city or county agreeing to acquire property for State Highway purposes and to hear resolutions
- Description of the project, i.e., number of parcels, maps, proposed construction project
- Proposed schedule for acquisition
- Draft copy of the cooperative agreement

The package will be logged in at Headquarters Right of Way and forwarded to the appropriate office chief, either Acquisition or Local Programs for review and recommendation. Final decision will rest with the Chief, Division of Right of Way.

A log will be kept in Headquarters of the approvals and denials. Once Headquarters has notified the Region/District of approval, then the Region/District is responsible for notifying the local agency in writing that they may proceed with the acquisition of real property or interest therein. The notification must designate the limits of the project under recommendation.

17.04.09.02 **Notice of Intent**

The local agency is required to follow the Department's Notice procedures. Please see Section 9.01.04.00. A Notice of Intent to adopt a Resolution of Necessity can only be served after the grantor has been given a reasonable amount of time to consider the offer presented. The Notice of Intent cannot be served immediately following the offer to acquire.

NOTE: In all cases, a copy of each Notice of Intent is to be sent to the Region/District Right of Way Local Programs Coordinator.

17.04.09.03 **Resolution of Necessity**

In all cases the resolution package must be reviewed and approved by the appropriate Legal Office in accordance with the authorizing agreement prior to being heard. The resolution must satisfy all of the requirements of the Code of Civil Procedures (CCP), Title 7, Chapter 4, Article 2. In the case where the LPA performs the legal activities, the LPA's Legal Counsel may be designated by the agreement to process the resolution package.

The Resolution of Necessity must contain a general statement of the public use for which the property is being acquired and must reference the appropriate statute for the property rights to be acquired by eminent domain. Frequently cited references are:

- Streets and Highways Code Section 102 allows for acquisition by eminent domain for state highway purposes
- CCP Section 1240.410 – the acquiring agency is acquiring a remnant of such size, shape or condition that it will have little market value
- CCP Section 1240.510 – the property is being acquired from another public agency for a compatible use
- CCP Section 1240.610 – the property is being acquired from another public agency for a more necessary public use
- CCP Section 1240.220 – the public agency is acquiring additional property for future use, requires owner's consent
- CCP Section 1240.150 – entire parcel is to be acquired when the remainder would be of little value to the owner, requires owner's consent

The resolution must also contain a general location and extent of property rights to be acquired to allow for reasonable identification. The resolution document must declare the public finds each of the following:

- Public interest and necessity require the project
- The project is located in a manner to provide the greatest public good and least private injury
- The property is necessary for the project
- An offer has been made to purchase the property in accordance with Section 7267.2 of the Government Code

Upon passage of a resolution, a copy of that resolution must be sent to Region/District Right of Way Local Programs.

17.04.09.04 **Request to Appear**

Statute allows the property owner fifteen days within which to request an appearance before the board hearing the resolution request. If a Request to Appear is not timely, then the right to appear has been waived and the resolution will be heard as a consent item. Exceptions to timely requests may be granted jointly by the delivering agency and the governing body. The reasons for exception will be documented in every case. Possible reasons are documented illness or documented travel.

If the owner requests an appearance, then the local agency must follow a review process. The review process may require postponement of the date the resolution is heard before the CTC, County Board of Supervisors or City Council.

The Condemnation Evaluation Meeting and Condemnation Panel Review Meeting provide a forum where property owners can meet with Local Agency Right of Way and Design managers in an effort to resolve design issues. These reviews address the concerns of the property owner. It is important that a decision-maker be included in the review process. Occasionally, certain acceptable design exceptions with minor impact can satisfy the property owner's concerns. The Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting may be combined only when there are no design issues. If there are no design issues, then the decision to combine the two meetings is made by the LPA.

17.04.09.05 **Reviews Prior to Appearance (Heard by California Transportation Commission)**

When a request for an appearance is on a Resolution of Necessity to be heard by the California Transportation Commission (CTC), regardless of who is performing the right of way and design activities, the Department will conduct the Reviews, and will make the presentation before the Commission. Appropriate local agency staff shall participate in the reviews and may be asked to be present at the Commission meeting.

17.04.09.06 **Reviews Prior to Appearance (Heard by City Council or County Board of Supervisors)**

Refer to Exhibit 17-EX-10.

17.04.09.07 **Condemnation Responsibilities (Department)**

Following are the usual responsibilities of the respective parties whenever the Department undertakes legal services for the acquiring agency and which must be included in the Cooperative Agreement:

- A. Legal opinions and advice in all matters relating to the right to acquire the property for the project or to the valuation of said property.
- B. Department will obtain the necessary Resolution of Necessity from the CTC, or other appropriate body.
- C. Attorney services in connection with selection of witnesses for trial, the preparation and conduct of the trial, post-trial motions and appellate proceedings in condemnation cases for the acquisition of property or actions to acquire possession of property.
- D. Attorney services as necessary or required for property management and/or relocation assistance proceedings.

17.04.09.08 **Condemnation Responsibilities (LPA)**

In preparation for condemnation, the LPA will *normally* provide the following:

- A. Current title reports with indications of each interest to be named in the lawsuit and updates of such reports as necessary.
- B. Relocation assistance certificates of occupancy indicating names of persons of other entities in possession of the property.
- C. An adequate legal description of the property.
- D. Right of Way/Parcel maps as required for condemnation complaints.
- E. All notices and reports necessary to obtain Resolutions of Necessity including reports and/or presentations where an owner seeks to exercise his right to appear before the appropriate governing body to contest the necessity for the taking.
- F. Documents necessary to deposit the just compensation with the State Treasurer.
- G. Necessary information for obtaining orders of possession.
- H. All efforts required to process suit papers and to file, serve, and prepare proof of service documents for required summons, complaints, and orders for possession.
- I. An authorized representative from the LPA who will appear at the hearing before the appropriate governing body to adopt the Resolution of Necessity.

17.04.09.09 **Condemnation Trials Responsibilities (LPA)**

In preparation for trial, the LPA will *usually* provide the following:

- A. A copy of the LPA's staff appraisal report.
- B. Relevant acquisition files and data, including copies of parcel diaries, correspondence, and other related material.
- C. Engineering witnesses familiar with the property to be acquired, the proposed project and the improvements associated therewith.
- D. All maps, exhibits, and photographs required for trial.