

REVISED AGENDA ITEM 25 AND SUPPLEMENTAL BACKUP MATERIAL

Board of Directors Meeting

**January 4, 2012
9:30 am**

Location:
San Bernardino Associated Government
Santa Fe Depot – SANBAG Lobby 1st Floor
1170 W. 3rd Street
San Bernardino, CA

Discussion Calendar

- 25.** Purchase & Sale Agreements for acquisition of property necessary for the Interstate 215 (I-215) Bi-County High Occupancy Vehicle (HOV) Gap Closure Project

Authorize the Executive Director to act on behalf of SANBAG in signing Purchase & Sale Agreements, pursuant to SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy 34507), to acquire Right-of-Way identified in Attachment "A" for construction of the I-215 Bi-County HOV Project.

This agenda item is revised to reference the Policy that describes the procedure for purchasing right-of-way. The Background was updated to reflect this change to the recommendation and to provide additional information on why this agenda item needed to go directly to Board. A standard Purchase and Sale Agreement has also been included as an attachment.



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

Minute Action

REVISED AGENDA ITEM: 25

Date: January 4, 2012

Subject: Purchase & Sale Agreements for acquisition of property necessary for the Interstate 215 (I-215) Bi-County High Occupancy Vehicle (HOV) Gap Closure Project

Recommendation:* Authorize the Executive Director to act on behalf of SANBAG in signing Purchase & Sale Agreements, pursuant to SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy 34507), to acquire Right-of-Way identified in Attachment "A" for construction of the I-215 Bi-County HOV Project.

Background: In February 2009, the Board authorized staff to start project development activities for the I-215 Bi-County HOV Gap Closure Project. The project involves the construction of approximately 7.5 miles of HOV lanes between the 60/91/215 Interchange in the City of Riverside, and Orange Show Road in the City of San Bernardino. The project would close the gap in the regional HOV network that will exist upon completion of the SR-91 HOV project in Riverside and SANBAG's I-215 widening project north of Orange Show Road.

The environmental document for the I-215 Bi-County HOV Gap Closure project was approved in April 2011, which cleared the way to proceed with the right-of-way acquisition process. The project requires the acquisition of partial takes, permanent easements, and temporary construction easements, mainly for the construction of retaining and sound walls.

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Approved
Board of Directors

Date: _____

Moved: _____ Second: _____

In Favor: _____ Opposed: _____ Abstained: _____

Witnessed: _____

| | | | | | | | |
|-----|-----|---|-----|--|------|-----|--|
| COG | CTC | X | CTA | | SAFE | CMA | |
|-----|-----|---|-----|--|------|-----|--|

At a Special Meeting on November 16, 2011, Staff reported to the Board that contrary to Staff's understanding, Caltrans was requiring SANBAG to sign the purchase & sales agreements, even though Caltrans has already approved of the appraisals and the offers. In order to keep the project moving forward in light of the March 2012 Right-of-Way Certification deadline, Staff recommended and the Board authorized the Executive Director to act on behalf of SANBAG in signing Purchase & Sale Agreements for 32 specific parcels for which appraisals were completed and approved by Caltrans. Staff knew that two additional parcels had been identified but did not have completed and approved appraisals at the time of the November 16, 2011 Special Board Meeting. Therefore, these two parcels are being presented now to the Board with the same recommendation. One parcel is a temporary construction and utility easement from Pacific West Management Company, and the other is a fee and quitclaim of easement rights from Lamar Advertizing Company.

Appraisal of the Pacific West property was delayed by about one month because staff had to prepare an additional mitigation plan to alleviate potential construction impacts. The mitigation plan was needed prior to finalizing the valuation analysis. The need for the Lamar Advertizing parcel was identified very late during the design process, and the appraisal was completed only two weeks ago. Staff is presenting these two parcels directly to the Board in order to make up for the lost time, and to reduce the risk of not meeting the March 2012 Right-of-Way Certification date.

As an agent to SANBAG, Overland, Pacific & Cutler, Inc. (OPC) has completed appraisals of the two (2) subject properties and the required documentation to purchase the rights-of-way. The two subject properties are summarized in attachment "A". Copies of the appraisals are on file with the Clerk of the Board and are available for review. The total price for acquiring required right-of-way on these two (2) parcels, including costs for the property owner to replace landscape plant materials and repair damaged landscape irrigation facilities within the temporary construction easements, is estimated at \$2,262,500, which includes a contingency of approximately 25%. The contingency amount is based on the potential value for loss of goodwill claims, potential impacts on the business operators, and anticipated administration settlements.

Since the project is on the State Highway System, and since Caltrans will conduct Resolution of Necessity hearings, if necessary, Caltrans has reviewed and approved the appraisals on the two subject properties.

Acquisition of these two parcels in a timely manner is critical to maintaining the planned construction schedule for the project so as not to jeopardize the

\$15.5 million of Congestion Mobility Improvement Account (CMIA) funds that have been programmed for construction. To reduce the risk of not meeting the March 2012 Right-of-Way Certification date, this item is being presented directly to the Board without prior Policy Committee review. Obtaining Board approval in this manner substantially reduces the risk of not meeting the March 2012 Right-of-Way Certification date, and allows the project to go to construction in the fall of 2012, in order to capture the CMIA funds.

Staff is recommending that the Board authorize the Executive Director to act on behalf of SANBAG in signing Purchase & Sale Agreements, pursuant to SANBAG Valley Freeway Program Policy 40004 (reference: Administrative Settlement Policy 34507). This Board-approved policy establishes a standard administrative process for acquisition of right of way whereby the Executive Director and Director of Program Management are authorized to pursue acquisitions utilizing certain factors, such as an available appraisal, the inexact nature of the process by which just compensation is determined through legal processes, and the impact of such acquisitions through voluntary settlement on the project-wide perspective, including, e.g., project deadlines and funding issues. This process is appropriate for the acquisition of the two properties identified herein. Standard Caltrans agreement format will be used for these acquisitions and a copy of this standard agreement is attached for reference.

Financial Impact: This item is consistent with the adopted Fiscal Year 2011/2012 budget. Funding is provided under Task No. 83912000. The funding source is Congestion Mitigation Air Quality, and MSI – 1990 Valley Major Projects.

Reviewed By: This item has not received prior Policy Committee review. The item has been reviewed by SANBAG counsel.

Responsible Staff: Garry Cohoe, Director of Project Delivery

ATTACHMENT "A"
I-215 Bi-County HOV Gap Closure Project - Parcels Information

| PARCEL # | A.P.N. # | CALTRANS # | Owner | ADDRESS | CITY | TYPE |
|----------|-------------|------------|-------------------------------|---------------------|--------|--|
| 1 | 1167-151-03 | 21980 | Pacific West Management Etial | 280 De Berry Street | Colton | Temporary Construction Easement & Utility Easement |
| 2 | N/A | 22397 | Lamar Advertising Co. Inc. | | Colton | Fee and Quitclaim of Easement Rights |

**RIGHT OF WAY CONTRACT
STATE HIGHWAY**

RW 8-3 (Rev. 6/95)

CONFIDENTIAL
This document contains personal information, and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

APN:

| District | County | Route | P.M. (KP) | E. A. | Program | Fed. Ref. | Name | Parcel |
|----------|--------|-------|-----------|-------|---------|-----------|------|--------|
| | | | | | | | | |

_____, California

_____, 2011

Grantor(s)

RIGHT OF WAY CONTRACT -- STATE HIGHWAY

Document No. _____ to the State of California, in the form of a _____, outlined on the attached map marked Exhibit A and covering the property particularly described in Clause 3 below, has been executed and delivered to Janet M Parks, SR/WA, R/W-AMC, Project Manager, Overland, Pacific & Cutler, Inc.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed improvement.
2. The San Bernardino Associated Governments (hereinafter referred to as "SANBAG") shall pay the undersigned Grantor the sum of \$0.00 for this acquisition.
3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in the contract, the right of possession and use of the subject property by the State, shall commence upon the 30 day notice to start construction within your property, or the close of the escrow controlling this transaction, whichever occurs first, and that the amount shown in Clause 2 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.
4. The undersigned Grantor warrants that he is the owner in fee simple of the property affected by this acquisition as described in Clause 3 above and that he has the exclusive right to grant these rights.
5. Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding one month and that Grantor agrees to hold the State harmless and reimburse State for any and all its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor for a period exceeding one month. Grantor acknowledges that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deed is to be provided to State prior to the close of escrow.

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6. In consideration of the State's waiving the defects and imperfections in all matters of record title, the undersigned Grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor's obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract.
 7. It is understood and agreed by and between the parties hereto that payment as provided in clause 2(A) includes, but is not limited to, payment for any and all damages, and any and all damages which may accrue to the Grantors' remaining property by reason of its severance from the property conveyed herein and the construction and use of the proposed highway project, including, but not limited to, any expense which Grantors may incur in restoring the utility of their remaining property.
 8. Grantor understands and agrees that after completion of the work described above, if any, said facility will be considered as Grantor's sole property and Grantor will be responsible for any necessary maintenance and repair.
 9. [Insert interest to be acquired], as identified in Exhibit A (attached) is needed for construction of the proposed highway improvements. [Insert if TCE is required] Said easement shall be for a period of eighteen (18) months from the date the contractor starts such construction within the easement. Said eighteen (18) months shall begin no sooner than the date on which the department awards the construction contract and end no later than the completion of the construction within the easement or 1.5 years from contract award, whichever occurs first.

Permission is hereby granted the State or its authorized agent to enter upon Grantors' land, within **the temporary construction easement**, shown on the map marked Exhibit "A" attached hereto and made a part hereof. Existing improvements located within this temporary construction easement will either be protected in place or removed and replaced in-kind by the State or the State's contractor. The State, upon termination of the temporary construction easement, shall restore the Grantors' land and any improvements disturbed by the State or its contractors to as good or better condition prior to any such installation or work.

10. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and or assignees.
11. State agrees to indemnify and hold harmless the undersigned Grantors [insert names of Grantors] from any liability arising out of State's operations under this agreement. State further agrees to assume responsibility for any damages proximately caused by reason of State's operations under this agreement and State will, at it option, either repair or pay for such damage.
12. This transaction shall be handled through an internal escrow by the State of California, Department of Transportation.

In Witness Whereof, the Parties vested have executed this agreement the day and year first above written.

[Insert Full Property Vesting]

Grantor Date

Grantor Date

Grantor Date

Grantor Date

San Bernardino Associated
Governments (SANBAG):

By _____
William T. Schuiling
Interim Executive Director

No Obligations Other Than Those Set Forth Herein Will Be Recognized