



Board Report

File #: 2018-0689, **File Type:** Policy

Agenda Number: 43.

**REGULAR BOARD MEETING
OCTOBER 25, 2018**

SUBJECT: PURPLE LINE WESTSIDE SUBWAY EXTENSION TRANSIT PROJECT SECTION 2

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATION

CONSIDER:

- A. HOLDING a public hearing on the proposed Resolutions of Necessity; and
- B. ADOPTING the Resolutions of Necessity (Attachment B) authorizing the commencement of an eminent domain action to acquire a subsurface easement in the properties identified as Parcels: W-3301 (APN: 4328-014-005); W-3302 (APN: 4328-009-003); W-3303 (APN: 4328-009-023); W-3304 (APN: 4328-009-043); W-3402 (APN: 4328-008-002); W-3405 (APN: 4328-008-029 through 4328-008-048); W-3408 (APN: 4328-08-014); W-3503* (APN: 4328-007-107 through 4328-007-110); W-3504* (APN 4328-007-017); W-3505* (APN 4328-005-001).

*These parcels were previously included in the Resolutions of Necessity presented to the Board at its September 27, 2018 meeting. However, two-thirds of the Board was not present at the time of the vote and the item did not pass.

(REQUIRES 2/3 VOTE OF THE BOARD)

BACKGROUND

Acquisition of the above-referenced subsurface easements, referred to herein as “Property” is required for the construction of and operation of the Westside Purple Line Westside Extension Project Section 2 (“Project”). The subsurface easements are required for the tunnel alignment that will connect the Century City Constellation Station with the Beverly Hills Wilshire Rodeo Station.

A written offer was delivered to the Owners of Record (“Owners”), as required by California Government Code Section 7267.2. The Owners have not accepted the offer of Just Compensation made by the Los Angeles County Metropolitan Transportation Authority (“LACMTA”), and the parties have not at this time reached a negotiated settlement. Because the Property is necessary for construction of the Project, staff recommends the acquisition of the Property through eminent domain to determine the value of the Property and to maintain the Project schedule.

In accordance with the provisions of the California Eminent Domain law and Sections 30503, 30600, 130051.13, 130220.5 and 132610 of the California Public Utilities Code (which authorize 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) whether environmental review of the Project has complied with the California Environmental Quality Act (CEQA) 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 by LACMTA from all interested parties, LACMTA must make a determination as to whether to adopt the proposed Resolutions of Necessity to acquire the Property by eminent domain. In order to adopt the Resolutions, LACMTA must, based on the evidence before, and by a vote of two-thirds of all the members of its governing body, find and determine that the conditions stated in the items 1 - 6 above exist. Attached is evidence submitted by staff that supports adoption of the Resolutions that has been approved by counsel and which sets forth the required findings (Attachment A).

DETERMINATION OF SAFETY IMPACT

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

FINANCIAL IMPACT

The funding for the acquisition of the Property is included in the approved fiscal year 2019, project budget under Measure R Project 865522 (Purple Line Westside Extension Project Section 2), in Cost Center 8510, and Account Number 53103 (Acquisition of Land).

Since this is a multi-year project, the Project Manager, Cost Center Manager and Chief of Program Management will be responsible for budgeting costs in future fiscal years within the Adopted Life of Project Budget.

Impact to Budget

No increase to FY19 budget is required with this recommendation. The approved FY19 budget funding is comprised of Measure R 35% sales tax, Federal, TIFIA Loan, State and Local funds designated for the Westside Purple Line Extension, Section 2. These funds have been committed to the project through a Full Funding Grant Agreement and do not have an impact to operations funding sources. This Project is not eligible for Proposition A and C funding due to the proposed tunneling element of the Project. No other funds were considered.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

EQUITY PLATFORM FRAMEWORK CONSISTENCY

Implementation of the state's eminent domain laws assures that equity is afforded to property owners to engage and have a voice in the decision making process with regards to the acquisition of their property.

STRATEGIC PLAN CONSISTENCY

The Board action is consistent with Metro 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 properties for the Westside Purple Line Extension which will provide an additional mobility option.

NEXT STEPS

If this action is approved by the Board, the 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 interest by eminent domain. Counsel will also be directed to seek and obtain an Order of Prejudgment Possession in accordance with the provisions of the eminent domain law.

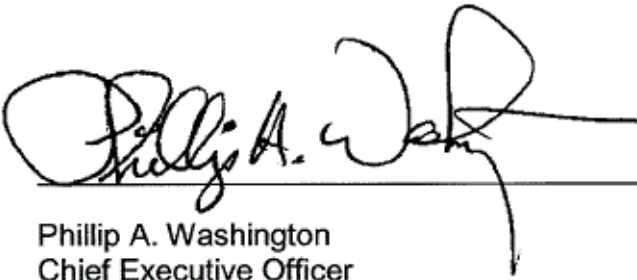
ATTACHMENTS

Attachment A - Staff Report

Attachment B - Resolutions of Necessity

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Phillip A. Washington
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ATTACHMENT A

STAFF REPORT REGARDING THE NECESSITY FOR THE ACQUISITION OF PROPERTY”) FOR THE WESTSIDE PURPLE LINE EXTENSION SECTION 2

BACKGROUND

The Property is required for the construction and operation of the Westside Purple Line Extension Section 2 ("Project"). The address, record owners (as indicated by a title report) ("Owners"), physical description, and nature of the property interest sought to be acquired for the Project are summarized on Attachment "1" attached hereto.

A written offer for acquisition of a subsurface tunnel easement under the Property was mailed the respective property Owners by letters dated April 20, 2018, May 16, 2018 and June 29, 2018. The parcels are identified as W-3301 (APN: 4328-014-005); W-3302 (APN: 4328-009-003); W-3303 (APN: 4328-009-023); W-3304 (APN: 4328-009-043); W-3402 (APN: 4328-008-002); W-3405 (APN: 4328-008-029 through 4328-008-048); W-3408 (APN: 4328-08-014); W-3503* (APN: 4328-007-107 through 4328-007-110); W-3504* (APN 4328-007-017); W-3505* (APN 4328-005-001) (hereinafter the "Property").

*These parcels were previously included in the Resolution of Necessity presented to the Board at its September 27th meeting. However, there were not two-thirds members of the Board present at the time of the vote and the item did not pass.

A. The public interest and necessity require the Project.

The need for the Project is based on population and employment growth, the high number of major activity centers served by the Project, high existing transit usage, and severe traffic congestion in Los Angeles County. The Project area bisects 12 large population and employment centers, all of which are served by extremely congested road networks that will deteriorate further with the projected increase in population and jobs. This anticipated growth will further affect transit travel speeds and reliability, even with a dedicated lane for express bus service on Wilshire Boulevard. The public interest and necessity require the Project for the following specific reasons:

1. The population and employment densities in the Project area are among the highest in the metropolitan region. Approximately five percent of the Los Angeles County population and 10 percent of the jobs are concentrated in the Project area.
2. Implementation of the Project will result in a reduction of vehicle miles per day and reduction of auto air pollutants.
3. The Project will relieve congestion on the already over capacity 1-405 San Diego and the 1-10 Santa Monica Freeways and surrounding major thoroughfares. In addition, it will reduce the parking demands in the Westside area by providing an alternative means of transportation, competitive in rush-hour travel times with the automobile.

4. The Project will be a major link in the existing county-wide rail transit system, and will thereby provide alternative means of transportation during fuel crises and increased future traffic congestion.
5. The Project will improve transportation equity by meeting the need for improved transit service of the significant transit-dependent population within the Project area.
6. The Project will help meet Regional Transit Objectives through the Southern California Association of Governments' (SCAG's) Performance Indicators of mobility, accessibility, reliability, and safety.

It is recommended that based on the above evidence, the Board find and determine that the public interest and necessity require the Project.

B The Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.

An Alternatives Analysis (AA) Study was initiated in 2007 to identify all reasonable, fixed-guide way, alternative alignments and transit technologies within the proposed Project Area. The fixed-guide way alternative alignments studied and analyzed during the AA process were heavy rail transit (HRT), light rail transit (LRT), bus rapid transit (BRT), and monorail (MR). Due to its capacity to meet the anticipated ridership demand and limit the number of transfers, HRT was identified as the preferred technology for further study.

In January 2009, the Metro Board approved the AA Study and authorized preparation of a Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR). A total of seven alternatives, including five heavy rail subway (HRT) Build Alternatives, a No Build Alternative, and a relatively low-cost Transportation System Management (TSM) Alternative, were presented in the DEIS/DEIR. The DEIS/DEIR was circulated and reviewed by interested and concerned parties, including private citizens, community groups, the business community, elected officials and public agencies. Public hearings were held to solicit citizen and agency comments.

In October 2010, the Board approved the DEIS/DEIR and the Wilshire Boulevard to Santa Monica HRT option was selected as the Locally Preferred Alternative (LPA) for further analysis in the FEIS/FEIR. The FEIS/FEIR was released in March 2012 for public review. On April 26, 2012, the Board certified the FEIS/FEIR, and in May 24, 2012, it approved the route and station locations for the Project. A Record of Decision was received from the Federal Transit Administration in August of 2012.

The approved LPA will extend HRT (as subway) approximately nine (9) miles from the existing Metro Purple Line terminus at the Wilshire/ Western Station to a new western terminus at the West Los Angeles Veterans Affairs Hospital (Westwood/ VA Hospital Station). The LPA will include seven new stations spaced in approximately one-mile intervals, as follows:

- Wilshire/La Brea
- Wilshire/Fairfax

- Wilshire/La Cienega
- Wilshire/Rodeo
- Century City
- Westwood/UCLA
- Westwood/VA Hospital

The Project may cause private injury, including the displacement or relocation of certain owners and users of private property. However, no other alternative locations for the Project provide greater public good with less private injury. Therefore, the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

Due to its bulk, the FEIS/FEIR is not physically included in the Board's agenda packet for this public hearing. However, the FEIS/FEIR documents should be considered in connection with this matter. It is recommended that, based upon the foregoing, the Board find and determine that the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

C. The Property is necessary for the Project.

The Property is required for construction and operation of the underground tunnel connecting Wilshire/Rodeo Station and Century City/Constellation Station. The subsurface easements required for the Project are listed in Attachment A. The legal description of the required subsurface easement is attached to each Resolution of Necessity as Exhibit "A" and is depicted on the Plat Map attached as Exhibit B. The Property requirements were chosen based upon the approved FEIS/FEIR for the Project.

Staff recommends that the Board find that the acquisition of the Property is necessary for the Project.

D. Offers were made in compliance with Government Code Section 7267.2.

California Code of Civil Procedure Section 1245.230 requires that a Resolution of Necessity contain a declaration that the governing body has found and determined that either the offer required by Section 7267.2 of the California Government Code has been made to the Owner, or the offer has not been made because the Owner cannot be located with reasonable diligence.

California Government Code Section 7267.2 requires that an offer be made to the Owner and in an amount which the agency believes to be just compensation. The amount must not be less than the agency's approved appraisal of the fair market value of the property. In addition, the agency is required to provide the Owner with a written statement of, and summary of the basis for, the amount it established as just compensation.

Staff has taken the following actions as required by California law for the acquisition of the Property:

1. Retained an independent appraiser to determine the fair market value of the Property;
2. Reviewed and approved the appraisals, and established the amount it believes to be just compensation;
3. Determined the Owners of the Property by examining the county assessor's record a preliminary title report, and occupancy of the Property;
4. Made a written offer to the Owners for the full amount of just compensation - which was not less than the approved appraised value;
5. Provided the Owners with a written statement of, and summary of the basis for, the amount established as just compensation with respect to the foregoing offer.

It is recommended that based on the above Evidence, the Board find and determine that the offer required by Section 7267.2 of the California Government Code has been made to the Owners.

E. Metro has fulfilled the necessary statutory prerequisites.

Metro is authorized to acquire property by eminent domain for the purposes contemplated by the Project under Public Utilities Code §§ 30503, 30600, 130051.13, and 130220.5; Code of Civil Procedure §§ 1230.010-1273.050; and Article I, § 19 of the California Constitution.

F. Metro has complied with the California Environmental Quality Act.

A draft EIR/EIS was circulated for public review and comment. The FEIS/FEIR was released in March 2012 for public review. On April 26, 2012, the Board certified the FEIS/FEIR, and in May 24, 2012, it approved the route and station locations for the Project. A Record of Decision was received from the Federal Transit Administration in August of 2012. The FEIS/FEIR documents therefore comply with the California Environmental Quality Act. Since that time, none of the circumstances identified in CEQA Guidelines Section 15162 have occurred which would require the preparation of a subsequent EIR. As set forth above, Metro has also fulfilled the statutory prerequisites under Code of Civil Procedure § 1240.030 and Government Code § 7267.2.

Accordingly, Metro has fulfilled the necessary statutory prerequisites to acquire the Property by eminent domain.

CONCLUSION

Staff recommends that the Board adopt the Resolution of Necessity.

ATTACHMENTS

Attachment A – Summary of Property Owners and Property Requirements
Attachment B1 – B10 – Resolutions of Necessity for each Parcel

ATTACHMENT A

SUMMARY OF PROPERTY OWNERS AND PROPERTY REQUIREMENTS

Parcel No. Assessor's No.	Parcel Address	Property Owner	Purpose of Acquisition	Property Interest(s) Sought
W-3301 4328-014-005	9730 Wilshire Blvd., Beverly Hills, CA 90212	WILSHIRE-LINDEN PROPERTIES, LTD., a California limited partnership	Construction and operation of underground tunnel	Exclusive Subsurface Easement with upper limit of <u>101</u> feet below finish grade; lower limit <u>143</u> feet.
W-3302 4328-009-003	9740 Wilshire Blvd., Beverly Hills, CA 90212	STURGIS HOLDINGS, LLC	Construction and operation of underground tunnel	Exclusive Subsurface Easement with upper limit of <u>102</u> feet below finish grade; lower limit <u>144</u> feet.
W-3303 4329-009-023	9754 Wilshire Blvd., Beverly Hills, CA 90212	Southeast Corner, LLC, a California limited liability company	Construction and operation of underground tunnel	Exclusive Subsurface Easement with upper limit of <u>102</u> feet below finish grade; lower limit <u>145</u> feet.
W-3304 4328-009-043	120 S Spalding Dr., Beverly Hills, CA 90212	LF-120 SPALDING, LLC, a Delaware limited liability company	Construction and operation of underground tunnel	Exclusive Subsurface Easement with upper limit of <u>102</u> feet below finish grade; lower limit <u>144</u> feet.
W-3402 4328-008-002	121 S. Spalding Dr., Beverly Hills, CA 90212	GCIP HOLDINGS II, LLC, a Delaware limited liability company	Construction and operation of underground tunnel	Exclusive Subsurface Easement with upper limit of <u>103</u> feet below finish grade; lower limit <u>145</u> feet.

<p>W-3405 4328-008-029</p> <p>Through 4328-008-048</p>	<p>137 S. Spalding Dr., Beverly Hills, CA 90212</p> <p>Condo Units ##: 101, 102, 103, 104, 105, 106, 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 405, and 406.</p>	<p><i>Various Condominium Unit Owners</i></p> <p><i>* See full list of vestees below.</i></p>	<p>Construction and operation of underground tunnel</p>	<p>Exclusive Subsurface Easement with upper limit of <u>99</u> feet below finish grade; lower limit <u>141</u> feet.</p>
<p>W-3408 4328-008-016</p>	<p>138 S. Lasky Dr. Beverly Hills, CA 90212</p>	<p>CHEMICAL BANK and DONALD R. SPAIDAL, Executors of the ESTATE OF LILLIAN DIANA GISH</p>	<p>Construction and operation of underground tunnel</p>	<p>Exclusive Subsurface Easement with upper limit of <u>98</u> feet below finish grade; lower limit <u>141</u> feet.</p>
<p>W-3503</p> <p>4328-007-107 4328-007-108 4328-007-109 4328-007-110</p>	<p>208 S. Lasky Dr.</p> <p>Unit (APN #):</p> <p># 101 (4328-007-107) # 102 (4328-007-108) # 201 (4328-007-109) # 301 (4328-007-110)</p>	<p><u>Units # 101 and # 102:</u></p> <p>PAYMAN ESKANDARI, a married man as his sole and separate property ;</p> <p><u>Units # 201 and # 301:</u></p> <p>PAYMAN ESKANDARI and ADRIAN ESKANDARI, a single man, as to an undivided two-third (2/3) interest; and ALEX ASHTIANI and ROYA ASHTIANI, Trustees of THE ALEX AND ROYA ASHTIANI FAMILY TRUST, as to an undivided one-third (1/3) interest.</p>	<p>Construction and operation of underground tunnel</p>	<p>Exclusive Subsurface Easement with upper limit of <u>82</u> feet below finish grade; lower limit <u>126</u> feet</p>
<p>W-3504 4328-007-017</p>	<p>212 S. Lasky Drive Beverly Hills, CA 90212</p>	<p>EPDE HOLDINGS, LLC, a California limited liability company</p>	<p>Construction and operation of underground tunnel</p>	<p>Exclusive Subsurface Easement with upper limit of <u>79</u> feet below finish grade; lower limit <u>123</u> feet</p>

W-3505 4328-005-001	223 S. Lasky Drive Beverly Hills, CA 90212	BEVERLY LASKY, LLC, a California Limited Liability Company	Construction and operation of underground tunnel	Exclusive Subsurface Easement with upper limit of <u>68</u> feet below finish grade; lower limit <u>117</u> feet
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*** Parcel W-3405 – Property Owners:**

Title to each condominium unit is vested as follows:

UNIT	APN	VESTEE
101	4328-008-029	MC3RD IRREVOCABLE TRUST
102	4328-008-030	LAUREEN ELNITIARTA, a married woman as her sole and separate property
103	4328-008-031	BRISTOWEIGEN LTD, BVI
104	4328-008-032	WENDY FRANK, Trustee of the Louis Hughes Trust dated March 28, 2013
105	4328-008-033	LIKE TAMPI, a widow and CHRISTOPHER PUTRA GUNAWAN, a single man and TANIA PUTRI GUNAWAN, a single woman, all as joint tenants
106	4328-008-034	LEIGH SHAPIRO, Trustee of the LEIGHT M. SHAPIRO REVOCABLE TRUST Dated 6/3/2015, and successor Trustees
201	4328-008-035	Suhua Yan, an unmarried woman
202	4328-008-036	PYUNG WOO KIM, an married man, as his sole and separate property
203	4328-008-037	MARILYN WELTMAN (also known as Marilyn Weltman-Wizenberg and Marilyn Wizenberg), as Trustee of the HOWARD AND MARILYN WIZENBERG FAMILY TRUST, originally established on July 25, 1996, as amended
204	4328-008-038	MILA JOVOVICH, a married woman as her sole and separate property who took title as, an unmarried woman
301	4328-008-039	CYNTHIA HIRSHOWITZ, Trustee of the Survivor's Trust under the HIRSHOWITZ FAMILY TRUST, dated April 30, 2003
302	4328-008-040	ERVIN WIJAYA and ShianY ANGSANA, Husband and Wife and ANDREE WIJAYA, a single man, all as joint tenants
303	4328-008-041	HYUN JIN LILY LEE, a single woman
304	4328-008-042	SUSAN PATTICHI, an unmarried woman and STEPHEN PATTICHI, a single man, as Joint Tenants
401	4328-008-043	CYNTHIA E. BERCHAN, Trustee of the CYNTHIA E. BERCHAN INTER VIVOS TRUST, dated 08/29/06
402	4328-008-044	ONG HENARDI and NINARTI ONGKOYUWONO, husband and wife, as Joint Tenants
403	4328-008-045	HANINA MATHALON, Trustee of the MATHALON LIVING TRUST,

		under trust agreement dated January 20, 1987
404	4328-008-046	WILLIAM WIJAYA and MELISSA WIJAYA, trustees of the AMW REVOCABLE TRUST, dated May 25, 2015
405	4328-008-047	ITALBRIXONIA USA LLC, a Limited Liability Company
406	4328-008-048	YOUNG SIK KIM, an unmarried man

Attachment B

http://libraryarchives.metro.net/DB_Attachments/2018-0689_Attachment_B1_Resolution_of_Necessity.pdf