SUBJECT: Highway 101 Operational Improvements: Milpas to Cabrillo-Hot Springs Project: Right of Way

MEETING DATE: September 20, 2007 AGENDA ITEM: 8

STAFF CONTACT: Fred Luna

RECOMMENDATION:
Adopt Resolution 07-18 making a finding of public necessity for the acquisition of properties required for the construction of the Highway 101 Operational Improvements: Milpas to Cabrillo-Hot Springs Project (requires a two-thirds majority vote of the board).

SUMMARY:
All property acquisitions by Caltrans and SBCAG that are needed to place the Highway 101 Operational Improvements project out to bid are complete except for one. For the lone remaining acquisition, located at the corner of Hot Springs Road and Coast Village Road where a new roundabout will be constructed, SBCAG staff has negotiated a tentative agreement with a representative of the owners. That settlement covers six parcels, including 5 temporary construction easements and a single fee acquisition. The tentative agreement is currently being reviewed by the owner, owner’s representatives, and businesses that lease the property. Unfortunately, the legal documents for the agreement will not be executed in time for the September 20 SBCAG board meeting. Because the California Transportation Commission is scheduled to allocate funding and approve the project for bidding on November 7, the September board meeting is the deadline for SBCAG and Caltrans to have acquired all rights of way needed for the project or have resolutions of necessity in place authorizing the use of eminent domain to acquire remaining property. Because staff anticipates completing this acquisition on friendly terms before a construction contract is awarded, the resolution of necessity staff is recommending be adopted is largely a formality that will allow the CTC to approve the project for bidding at its November meeting. Staff has met with the property owner’s representatives as recently as September 5. They have been informed that a resolution would be adopted on September 20 in order to keep the project on schedule, that SBCAG would continue working with them to finalize the tentative agreement after the resolution is adopted, and that they may appear at the meeting and address the board on the adoption of the resolution. As of the writing of this staff report, the owner’s representatives have not indicated that they intend to appear.

Staff recommends adoption of the attached Resolution of Necessity. The resolution establishes that the property described in the resolution is necessary for a public project and authorizes acquisition through eminent domain, if necessary. The resolution does not include compensation amounts which are negotiated and settled separately and are not part of the board agenda item. If for any reason settlement cannot be completed on mutually agreeable terms after the board approves the resolution, staff would bring the matter back to the board for closed session discussion.

After CTC authorization to bid the project is received on November 7, bidding would begin in December, bids would be opened in March 2008, a contract awarded in April 2008, and construction started in the Summer of 2008.
DISCUSSION:

Background and Project Schedule
Since 2004, SBCAG and Caltrans have been working to complete the design of all components of the Highway 101 Milpas to Cabrillo Hot Springs project. Under cooperative agreements signed by the agencies, SBCAG has been responsible for designing non-highway elements of the project including the roundabout at the Hot Springs Road/Old Coast Highway/Coast Village Road intersection and a soundwall at the Santa Barbara Zoo. SBCAG is also responsible for acquiring the rights-of-way needed for constructing the improvements. Caltrans is responsible for designing and acquiring right of way for the highway elements of the project.

The two agencies have established a schedule requiring that right of way for the entire project be acquired, or resolutions of necessity be adopted, by September 20, 2007. This provides time for the California Transportation Commission to authorize Caltrans to initiate bidding for the project at its November meeting, advertising the project for construction in December 2007, opening and reviewing construction bids in March 2008, and awarding a construction contract in April 2008. Awarding a contract by April 2008 allows construction to begin in early summer 2008. Any delays in the construction award date would jeopardize key elements of work that are constrained by seasonal work windows such as the Sycamore Creek Bridge construction.
All property acquisitions that are the responsibility of SBCAG have been completed through negotiations and friendly settlement agreements except for one. As mentioned previously, on that one a tentative settlement agreement has been negotiated which covers the six project parcels. However, because a final settlement has not been reached and in order to keep the project on schedule, the SBCAG board has to adopt a resolution of necessity to prevent the project from being delayed. Though it is staff's recommendation that the resolution be adopted it is unlikely that any further condemnation actions will be necessary because a tentative agreement has been reached with the property owner and both sides continue to show a willingness to move forward and complete a settlement on friendly terms.

A total of six parcels are included in the Resolution of Necessity. Those parcels are shown below in Table 1 and identified graphically in Attachment B.

Table 1
Right of Way Parcels
Subject to SBCAG Resolution of Necessity

<table>
<thead>
<tr>
<th>APN</th>
<th>Project Parcel</th>
<th>Description and Purpose</th>
<th>Location / Map Reference</th>
<th>Total Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>009-211-040</td>
<td>TCE 3</td>
<td>One Temporary Construction Easement to re-construct a driveway to conform to sidewalk and road improvements along Coast Village Road</td>
<td>Driveway to Vons along Hot Springs Road [Map Reference 2]</td>
<td>0.015 acres</td>
</tr>
<tr>
<td>009-211-043</td>
<td>TCE 2B</td>
<td>One Temporary Construction Easement to re-construct a driveway to conform to sidewalk and road improvements along Coast Village Road</td>
<td>Driveways to Coast Village Shopping Center Annex, LLC [Map Reference 1 and 1A]</td>
<td>0.014 acres</td>
</tr>
<tr>
<td>TCE 1B</td>
<td></td>
<td>One Temporary Construction Easement to re-construct a driveway to conform to sidewalk and road improvements along Hot Springs Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>009-211-038</td>
<td>TCE 2A</td>
<td>One Temporary Construction Easement to re-construct a driveway to conform to sidewalk and road improvements along Coast Village Road</td>
<td>Driveways to Coast Village Shopping Center, LLC (former Shell Gas Station) [Map Reference 1 and 1A]</td>
<td>0.024 acres</td>
</tr>
<tr>
<td>TCE 1A</td>
<td></td>
<td>One Temporary Construction Easement to re-construct a driveway to conform to sidewalk and road improvements along Hot Springs Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A1</td>
<td>Partial Fee to extend sidewalk along Hot Springs</td>
<td>Along east side of Hot Springs Road [Map Reference 1B]</td>
<td></td>
<td>0.008 acres</td>
</tr>
</tbody>
</table>

The adoption of a Resolution of Necessity is the conditional first step by any public agency seeking to acquire rights of way via eminent domain. Subsequent legal action in order to obtain orders of possession would be the next course of action, however it is unlikely that any of the parcels listed in Table 2 would require further legal action since a tentative agreement has been reached with the owner. Staff is committed to continuing to work with the owners, tenants and negotiating representatives to work out a
settlement agreement. Compensation amounts for the temporary construction easements and acquisition are not included in the resolution. Offers have been made to the owner and a tentative agreement reached on the amount of compensation for temporary construction easements on driveways along Coast Village Road. An offer of compensation for the temporary construction easement and fee acquisition along Coast Village Road has been also made to the owner and is under review. It is expected that by the time a construction contract is awarded for the project that a settlement will be reached and subsequent legal actions to obtain orders of possession will not be necessary. In the unlikely event that an agreement cannot be reached, staff will bring the matter back to the board prior to initiating any legal actions.

Recommendation
Staff is recommending that the SBCAG board adopt Resolution 07-18 making a finding of public necessity for the acquisition of certain properties, listed on Table 1 and described in Exhibit A of Resolution 07-18, required for the construction of the Highway 101 Operational Improvements Milpas to Cabrillo-Hot Springs project.

Attachments:

A) Resolution 07-18: Matter of public necessity for acquisition of rights of way
B) Aerial Photo of Project: Showing rights of way required
RESOLUTION OF THE
SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS

RESOLUTION NO. 07-18

IN THE MATTER OF INSTITUTING PROCEEDINGS AND
MAKING A FINDING OF PUBLIC NECESSITY FOR THE
ACQUISITION OF CERTAIN PROPERTY IN THE FIRST
SUPERVISORIAL DISTRICT, COUNTY OF SANTA
BARBARA FROM:

COAST VILLAGE SHOPPING CENTER, LLC
COAST VILLAGE SHOPPING CENTER ANNEX, LLC
HMI, INC.
PACIFIC CAPITAL BANCORP

WHEREAS, the Santa Barbara County Association of Governments (SBCAG) has been designated as the
Santa Barbara County Local Transportation Authority pursuant to Section 18000 et seq. of the Public
Utilities Code; and

WHEREAS, SBCAG has authority, pursuant to Government Code Section 6588 to take title to such lands
as it determines necessary for its public purpose.

NOW THEREFORE, BE IT RESOLVED, that SBCAG does hereby find and determine as follows:

A. That SBCAG wishes to acquire certain interest in real property for the purpose of construction of
the Highway 101 Operational Improvements Project: Milpas to Cabrillo-Hot Springs.

B. That said real property necessary for completion of the project is legally described in the legal
descriptions Exhibit “A” attached herein and made a part hereof;

C. That the intent is to acquire said real property for all the uses and purposes of roadway and to
facilitate the construction of roadway and for purposes under the authority of:

   Article I, Section XIX of the California Constitution;
   Code of Civil Procedure, Section 1240.010, 1240.110, and 1240.120;
   Government Code Section 6588;
D. That SBCAG has entered into a cooperative agreement with the California Department of Transportation for the Highway 101 Operational Improvements Project: Milpas to Cabrillo-Hot Springs, based on an approved EIR dated March 2004, that includes the responsibility to acquire certain real properties necessary for the project.

IT IS HEREBY FOUND AND DETERMINED by at least a two-thirds (9 of 13) vote of this Governing Board that:

A. The public interest and necessity require the proposed project.
B. The proposed 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 real property sought to be acquired, or interest in real property sought to be acquired, is necessary for the proposed project.
D. The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner(s) cannot be located with reasonable diligence and such offer has been refused.

BE IT RESOLVED, that the interest in the real property legally described in the legal descriptions Exhibit “A” and respectively attached hereto be condemned in the name of SBCAG for said public purposes, as specified herein and the law firm of Oliver, Sandifer, and Murphy, Special Counsel, together with Counsel of SBCAG are hereby authorized, empowered, and directed to prepare and prosecute in the name of SBCAG such proceeding or proceedings in the proper Court having jurisdiction thereof, as are necessary for such acquisition, and are authorized, at their discretion to apply for an order or orders fixing the amount of such security in the way of money deposits as said Court may direct, and for an order or orders permitting SBCAG to take immediate possession and use of said real property for the said public purposes.
PASSED AND ADOPTED, this 20th day of September 2007, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

SANTA BARBARA COUNTY
ASSOCIATION OF GOVERNMENTS

By: _______________________   Date: _________________________
   Jonny Wallis
   Chair, SBCAG

Attest: _______________________   Date: _________________________
   Jim Kemp
   Executive Director, SBCAG

Approved as to Form:

_______________________   Date: _________________________
   Kevin Ready
   Counsel to SBCAG
Legal Descriptions

Exhibit “A”
Proposed Right of Way Modification
portion of APN 009-211-038

Legal Description

FEE TAKE A1
That portion of Parcel “A”, in the City of Santa Barbara, County of Santa Barbara, State of California, as shown on the map filed in the office of the County Recorder of said County in Book C, Page 51 of Santa Barbara City Lot Splits, described as follows:

Beginning at a point in the northwesterly line of said Parcel “A”, said point being at the northeasterly terminus of that certain curve shown as having a radius and length of “110.00 feet and 57.20 feet”, respectively, on said map;

Thence, 1st, along said northwesterly line, North 58°12'35" East, 1.618 meters;

Thence, 2nd, leaving said line, South 31°40'06" East, 1.141 meters to the beginning of a non tangent curve concave northwesterly, having a radius of 5.051 meters and a radial center which bears North 57°05'39" West;

Thence, 3rd, southwesterly, along said curve, through a central angle of 22°20'39", an arc distance of 1.970 meters to the beginning of a reverse curve concave southeasterly having a radius of 41.292 meters;

Thence, 4th, southwesterly, along said curve, through a central angle of 17°55'51", an arc distance of 12.922 meters to the beginning of a reverse curve concave northwesterly having a radius of 63.708 meters;

Thence, 5th, southwesterly, along said curve, through a central angle of 07°32'39", an arc distance of 8.389 meters to said northwesterly line of said Parcel “A”;

Thence, 6th, along said line, North 28°46'00" East 4.833 meters to the beginning of a curve concave southeasterly having a radius of 33.528 meters;

Thence, 7th, continuing along said northwesterly line and along said curve, through a central angle of 29°47'44", an arc distance of 17.436 meters to the point of beginning.

Containing 33.63 square meters, more or less

The bearings and distances recited herein are based upon the California Coordinate System, NAD 83, Zone 5, epoch 1991.35. To convert grid distances to ground distances, multiply by the combined scale factor of 1.0000587.

End of description

Prepared by:
Kenneth S. Hughes
PLS 6170
License expiration
date: 3/31/08

Member Agencies
Buellton  Carpenteria  Goleta  Guadalupe  Lompoc  Santa Barbara  Santa Maria  Solvang  Santa Barbara County
Exhibit “A” (page 2)

Proposed Temporary Construction Easements
Over portions of APN 009-211-038

Legal Description

Those portions of Parcel “A”, in the City of Santa Barbara, County of Santa Barbara, State of California, as shown on the map filed in the office of the County Recorder of said County, in Book C, Page 51, of Santa Barbara City Lot Splits, described as follows:

**TCE 1A**
Beginning at the most northerly corner of said Parcel “A”;

Thence, 1st, along the northwesterly line of said Parcel “A”, South 58°12’35” West, 11.851 meters;

Thence, 2nd, leaving said northwesterly line, South 31°40’06” East, 8.160 meters;

Thence, 3rd, North 58°12’35” East, 6.602 meters to the easterly line of said Parcel “A”;

Thence, 4th, along said easterly line, North 01°02’54” East, 9.712 meters to the point of beginning.

Containing 75.29 square meters, more or less.

**TCE 2A**
Beginning at the most southerly corner of said Parcel “A”;

Thence, 1st, along the southwesterly line of said Parcel “A”, North 61°14’00” West, 13.351 meters;

Thence, 2nd, leaving said southwesterly line, North 28°07’53” East, 1.500 meters;

Thence, 3rd, South 61°52’07” East, 12.507 meters to the easterly line of said Parcel “A”;

Thence, 4th, South 01°02’54” West, 1.852 meters to the point of beginning.

Containing 20.33 square meters, more or less.

The bearings and distances recited herein are based upon the California Coordinate System, NAD 83, Zone 5, epoch 1991.35. To convert grid distances to ground distances, multiply by the combined scale factor of 1.0000587.

End of description

Prepared by:
Kenneth S. Hughes
PLS 6170
License expiration date: 3/31/08
Exhibit “A” (Page 3)

Proposed Temporary Construction Easements
Over portions of APN 009-211-043

Legal Description

Those portions of Parcel “B”, in the City of Santa Barbara, County of Santa Barbara, State of California, as shown on the map filed in the office of the County Recorder of said County, in Book C, Page 51, of Santa Barbara City Lot Splits, described as follows:

**TCE 1B**
Beginning at the northwesterly corner of said Parcel “B”;
Thence, 1st, along the northerly line of said Parcel “B”, North 58°12'36" East, 3.631 meters;
Thence, 2nd, leaving said line, South 31°40'06" East, 8.160 meters;
Thence, 3rd, South 58°12'35" West, 8.880 feet to the westerly line of said Parcel “B”;
Thence, 4th, along said westerly line, North 01°02'54" East, 9.712 feet to the point of beginning.

Containing 51.04 square meters, more or less.

**TCE 2B**
Beginning at the southwesterly corner of said Parcel “B”;
Thence, 1st, along the westerly line of said Parcel “B”, North 01°02'54" East, 1.852 meters;
Thence, 2nd, leaving said westerly line, South 61°52'07" East, 4.904 meters;
Thence, 3rd, South 28°07'53" West, 1.694 meters to the southerly line of said Parcel “B”;
Thence, 4th, along said southerly line, North 61°14'00" West, 4.061 meters to the point of beginning.

Containing 7.48 square meters, more or less.

The bearings and distances recited herein are based upon the California Coordinate System, NAD 83, Zone 5, epoch 1991.35. To convert grid distances to ground distances, multiply by the combined scale factor of 1.0000587.

End of description

Prepared by:
Kenneth S. Hughes
PLS 6170
License expiration
date: 3/31/08
Proposed Temporary Construction Easement
Over a portion of APN 009-211-040

Legal Description

TCE 3
That portion of Parcel “C”, in the City of Santa Barbara, County of Santa Barbara, State of California, as shown on the map filed in the office of the County Recorder of said County, in Book C, Page 51, of Santa Barbara City Lot Splits, described as follows:

Commencing at the southwesterly corner of said Parcel “C”; thence, along the southerly line of said Parcel, South 61°14'00" East, 13.386 meters to the True Point of Beginning;

Thence, 1st, South 61°14'00" East, 14.188 meters to the beginning of a non tangent curve concave northeasterly, having a radius of 257.557 feet and a radial center which bears North 28°46'00" East;

Thence, 2nd, southeasterly, along said curve, through a central angle of 02°15'06", an arc distance of 10.122 meters to the beginning of a non tangent curve concave northeasterly, having a radius of 9.000 meters and a radial center which bears North 39°01'14" East;

Thence, 3rd, northwesterly, along said curve, through a central angle of 16°11'47", an arc distance of 2.544 meters;

Thence, 4th, North 34°46'59" West, 1.402 meters to the beginning of a curve concave northeasterly having a radius of 9.000 meters;

Thence, 5th, northwesterly, along said curve, through a central angle of 10°27'31", an arc distance of 1.643 meters;

Thence, 6th, North 24°19'28" West, 2.323 meters;

Thence, 7th, South 65°40'32" West, 0.869 meters;

Thence, 8th, North 63°34'44" West, 16.979 meters;

Thence South 26°33'07" West, 2.491 meters to the True Point of Beginning.
Containing 60.83 square meters, more or less.

The bearings and distances recited herein are based upon the California Coordinate System, NAD 83, Zone 5, epoch 1991.35. To convert grid distances to ground distances, multiply by the combined scale factor of 1.0000587.

End of description

Prepared by:
Kenneth S. Hughes
PLS 6170
License expiration date: 3/31/08
ATTACHMENT B

AERIAL PHOTO SHOWING LOCATION OF RIGHTS OF WAY
FOR CONSIDERATION OF RESOLUTION OF NECESSITY