

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: October 3, 2022

From: MITCH WEISS, Executive Director

Reference Number: 4.1, Action

Prepared By: Paul Golaszewski
Deputy Director

Published Date: October 3, 2022

Subject: Finding of Emergency Situation Pursuant to the Bagley-Keene Open Meeting Act

Recommendation:

Staff recommends the California Transportation Commission (Commission) find that an “emergency situation” exists, as defined in the Bagley-Keene Open Meeting Act, due to the September 30, 2022, suspension of rail service in portions of Orange County and San Diego County resulting from shifting grounds beneath rail tracks in the area of San Clemente.

Issue:

The Bagley-Keene Open Meeting Act (Government Code 11121 et. seq.) sets forth requirements for state boards and commissions, including the Commission, to hold public meetings. Under this statute, the Commission typically must provide public notice of a meeting 10 days in advance. However, the Commission may meet on an emergency basis without providing a 10-day public notice “in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities.” A majority of Commissioners must, at the beginning of such an emergency meeting, find that an “emergency situation” exists. An “emergency situation” is defined as:

- (1) Work stoppage or other activity that severely impairs public health or safety, or both.
- (2) Crippling disaster that severely impairs public health or safety, or both.

On September 29, 2022, the Southern California Regional Rail Authority, commonly known as Metrolink, advised the public that continued ground movement under rail tracks in the San Clemente area was forcing suspension of the Orange County Line and Inland Empire-Orange County Line service south of the Laguna Niguel/Mission Viejo Station beginning the next day and until further notice. Also on September 29, 2022, the Los Angeles–San Diego–San Luis Obispo (LOSSAN) Rail Corridor Agency announced that safety concerns due to the same issue made it necessary to suspend Pacific Surfliner trains between Irvine and San Diego, also effective the next day and until further notice. The ground instability in the area was the result of heavy wind, rain, and storm surge that occurred in the area earlier in the month.

On October 3, 2022, the Director of the California Department of Transportation (Caltrans), pursuant to Government Code 14120, declared this situation an emergency, finding that it is a matter of State concern, and work and remedial measures are required to immediately alleviate, repair, or restore damage from storms and floods. On October 3, 2022, at 11am, the Orange County Transportation Authority (OCTA), the owner of the aforementioned right of way used by both Metrolink and LOSSAN, will hold an emergency meeting to adopt Resolution No. 2022-075, which states that the imminent failure of the right of way constitutes an emergency circumstance that requires immediate action. In Reference Item 2.6(a), OCTA and Caltrans will be requesting the Commission allocate funds from the State Transportation Improvement Program to address this emergency.

Attachments

- Attachment A: Caltrans' Declaration of Transportation Emergency in Orange County
- Attachment B: Orange County Transportation Authority Special Meeting Board Agenda

State of California
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION



From: TONY TAVARES, Director, Department of Transportation

Subject: DECLARATION OF TRANSPORTATION EMERGENCY IN ORANGE COUNTY

WHEREAS on September 9, 2022, Tropical Storm Kay ("Kay"), downgraded from a hurricane, brought heavy rain and winds to Southern California; and

WHEREAS there exists an unstable portion of slope adjacent to and within the locally-owned railroad right-of-way, in the vicinity of Mile Post 206.8 on the Orange Subdivision near San Clemente Beach in Orange County; and

WHEREAS this section of railway hosts passenger routes operated by the California Department of Transportation, Metrolink, and Amtrak, carrying between 3,000 and 5,000 passengers daily; and

WHEREAS as a result of heavy wind, rain, and storm surge there occurred slope movement adjacent to and within the rail right of way, which endangered the rail facility; and

WHEREAS slope stabilization measures were erected beginning on September 13, 2022; and

WHEREAS On September 24, 2022 it was made known that the slope movement mitigation measures are no longer effective to slow the slope and track movement; and

WHEREAS as a result of the accelerated slope movement and ongoing geotechnical engineering assessments, rail passenger service was suspended effective September 30, 2022; and

WHEREAS under the provisions of Government Code section 14120, the Director of the Department of Transportation may declare an emergency, if, in their opinion, the emergency is a matter of State concern, and work and remedial measures are required to immediately alleviate, repair, or restore damage from storms and floods; and

WHEREAS I find that closure of State-operated, locally-operated, and Amtrak-operated routes to be a matter of State concern; and

"Provide a safe and reliable transportation network that serves all people and respects the environment."

WHEREAS I find that immediate measures are necessary to stabilize the slide, repair damage, and ensure the operational safety of a vital rail line,

NOW, THEREFORE, I, TONY TAVARES, Director of the California Department of Transportation, in accordance with the authority vested in me by the State Constitution and statutes, including Government code section 14120, HEREBY PROCLAIM A TRANSPORTATION EMERGENCY to exist at the slide location adjacent to and within the railroad right-of-way, in the vicinity of Mile Post 206.8 on the Orange Subdivision near San Clemente Beach in Orange County.



Special Meeting

BOARD AGENDA

Board Members

Mark A. Murphy, Chairman
Gene Hernandez, Vice Chairman
Lisa A. Bartlett
Doug Chaffee
Barbara Delgleize
Andrew Do
Katrina Foley
Brian Goodell
Patrick Harper
Michael Hennessey
Steve Jones
Fred Jung
Joseph Muller
Tam Nguyen
Vicente Sarmiento
Donald P. Wagner
Ryan Chamberlain

Orange County Transportation Authority
Board Room
550 South Main Street
Orange, California

Monday, October 3, 2022 at 11:00 a.m.

Any person with a disability who requires a modification or accommodation in order to participate in this meeting should contact the Orange County Transportation Authority (OCTA) Clerk of the Board's office at (714) 560-5676, no less than two business days prior to this meeting to enable OCTA to make reasonable arrangements to assure accessibility to this meeting.

Agenda Descriptions

Agenda descriptions are intended to give members of the public a general summary of items of business to be transacted or discussed. The posting of the recommended actions does not indicate what action will be taken. The Committee may take any action which it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

Public Availability of Agenda Materials

All documents relative to the items referenced in this agenda are available for public inspection at www.octa.net or through the Clerk of the Board's office at the OCTA Headquarters, 600 South Main Street, Orange, California.



Special Meeting

BOARD AGENDA

Meeting Access and Public Comments on Agenda Items

Members of the public can either attend in-person (subject to OCTA's Coronavirus (COVID-19) safety protocols) or listen to live audio streaming of the Board and Committee meetings by clicking the below link:

<https://www.octa.net/About-OCTA/Who-We-Are/Board-of-Directors/Live-and-Archived-Audio/>

Members of the public may address the Board of Directors regarding any item in two ways:

In-Person Comment

Members of the public may attend in-person (subject to OCTA's COVID-19 safety protocols) and address the Board regarding any item. Members of the public will be required to complete a COVID-19 symptom and temperature screening.

Please complete a speaker's card and submit it to the Clerk of the Board (or notify the Clerk of the Board the item number on which you wish to speak). Speakers will be recognized by the Chairman at the time the agenda item is to be considered. A speaker's comments shall be limited to three minutes.

Written Comment

Written public comments may also be submitted by emailing them to ClerkOffice@octa.net, and must be sent by **5:00 p.m. the day prior to the meeting**. If you wish to comment on a specific agenda item, please identify the item number in your email. All public comments that are timely received will be part of the public record and distributed to the Board. Public comments will be made available to the public upon request.

Call to Order

Invocation

Director Hennessey

Pledge of Allegiance

Director Hernandez



Special Meeting

BOARD AGENDA

1. Closed Session

A Closed Session is scheduled as follows:

Pursuant to Government Code Section 54956.9(d) - Conference with General Counsel - Potential Litigation - One Item.

Regular Calendar

Orange County Transportation Authority Regular Calendar Matters

2. Adopt Resolution No. 2022-075 and Authorize the Chief Executive Officer to Take all Necessary Actions to Address the Emergency Need for Railroad Track Stabilization in the Vicinity of Mile Post 206.8 on the Orange Subdivision

Jason Lee/James G. Beil

Overview

A hillside adjacent to the Orange County Transportation Authority-owned railroad right-of-way, in the vicinity of Mile Post 206.8 on the Orange Subdivision, has failed and continues to incrementally move, pushing the railroad tracks toward the Pacific Ocean. Measures must be taken to stabilize this landslide to restore and maintain passenger and freight rail service.

Recommendation

Adopt Resolution No. 2022-075 and authorize the Chief Executive Officer to take all necessary actions to address the emergency need for railroad track stabilization in the vicinity of Mile Post 206.8 on the Orange Subdivision, and to return to the Board of Directors, as required, to report on the status thereof.

Discussion Items

3. Public Comments

4. Chief Executive Officer's Report

5. Directors' Reports



Special Meeting

BOARD AGENDA


6. Adjournment

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, October 10, 2022** at the OCTA Headquarters, Board Room, 550 South Main Street, Orange, California.



October 3, 2022

To: Members of the Board of Directors

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Adopt Resolution No. 2022-075 and Authorize the Chief Executive Officer to Take all Necessary Actions to Address the Emergency Need for Railroad Track Stabilization in the Vicinity of Mile Post 206.8 on the Orange Subdivision

Overview

A hillside adjacent to the Orange County Transportation Authority-owned railroad right-of-way, in the vicinity of Mile Post 206.8 on the Orange Subdivision, has failed and continues to incrementally move, pushing the railroad tracks toward the Pacific Ocean. Measures must be taken to stabilize this landslide to restore and maintain passenger and freight rail service.

Recommendation

Adopt Resolution No. 2022-075 and authorize the Chief Executive Officer to take all necessary actions to address the emergency need for railroad track stabilization in the vicinity of Mile Post 206.8 on the Orange Subdivision, and to return to the Board of Directors, as required, to report on the status thereof.

Discussion

The Orange County Transportation Authority (OCTA) owns the Orange Subdivision railroad right-of-way between the Fullerton Junction and the San Diego County Line. This rail corridor is part of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor that provides intercity and commuter passenger and freight rail service. This rail corridor is of state and national importance and is also designated as a national defense connector line as part of the Strategic Rail Corridor Network by the Department of Defense.

On September 16, 2021, the Southern California Regional Rail Authority (SCRRA) suspended passenger rail service for three weeks through south Orange County due to the failure of an adjacent slope which moved the tracks toward the ocean at Mile Post (MP) 206.8 (Attachment A). At that time, SCRRA began emergency

Adopt Resolution No. 2022-075 and Authorize the Chief Executive Officer to Take all Necessary Actions to Address the Emergency Need for Railroad Track Stabilization in the Vicinity of Mile Post 206.8 on the Orange Subdivision

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work to stabilize and realign the track with the addition of rock revetment on the ocean side of the tracks to stop slide movement and to protect the track from the ocean. Although passenger rail service resumed on October 4, 2021, SCRRA placed additional emergency rock revetment found necessary to continue stabilizing the track. During this emergency effort, between late 2021 and early 2022, over 18,000 tons of riprap was placed along the beach adjacent to the track to halt the slope movement. Over this period, the track was laterally deflected toward the ocean by more than 28 inches. The track was realigned, and SCRRA continues to monitor the stability of the slope and track with inclinometers. Inclinometer readings from February 2022 to August 2022 were relatively stable with nearly no movement.

Due to recent higher tidal events, ocean currents and waves, and storm surge brought on by Hurricane Kay, a continued slope movement trend began to show in early September 2022, with movement between 0.01 inch and 0.04 inch per day. SCRRA began placing more riprap on September 13, 2022, and the effort is ongoing. An additional approximate 2,100 tons of riprap was placed to date and continued riprap placement will continue to help mitigate slope and track movement. However, the riprap placement effort is unable to slow or stop the movement. Rising tidal patterns, the upcoming rainy season, and risk of a seismic event may lead to additional and potential acceleration of the slide movement.

Inclinometer readings indicate recent continued slope movement ranging between 1.5 to 2.0 inches at a depth to 20 feet below the tracks (Attachment B). At the current rate of movement, within days, the deflection will exceed the limits of the inclinometer, at which time SCRRA will require personnel onsite 24/7 to monitor the situation and to warn and stop rail traffic if necessary. A new inclinometer is being installed but will not be operational until sometime in October 2022.

On September 24, 2022, OCTA staff was informed that the current slope movement mitigation measures are no longer effective to slow the slope and track movement, and that the adjacent slope is in imminent danger of continued and accelerated failure. OCTA has been advised by its geotechnical engineering consultant that immediate action must be taken to prevent the further slipping of the slope which would result in pushing the track into the ocean. OCTA, in cooperation with SCRRA, is proposing to procure a specialized contractor with expertise in geotechnical slope stability design and construction, to stabilize the slope and stop the movement of the railroad track.

Emergency Procurement

Under normal circumstances, OCTA, like most public agencies, is required by the Public Contract Code (PCC) to procure public works projects utilizing a competitive process which normally includes an invitation for bids and awarding the contract to the lowest, responsible, responsive bidder. However, in certain circumstances, the PCC does allow for emergency procurements whereby the requirement for a competitive process is waived and the public agency can authorize the procurement of equipment, services, and supplies to address emergency circumstances without giving notice for bids to let contracts.

Specifically, PCC Section 22050 provides that a public agency can, by a four-fifths vote of its governing body, authorize the procurement of equipment, services, and supplies to address an emergency circumstance. Before taking this action, the governing body is required to make findings, based upon substantial evidence, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency. The governing body can then delegate authority to order any action required to address the emergency.

Once the governing body has made those findings, the authorized individual, in the present case the Chief Executive Officer (CEO), can immediately enter into contracts necessary to address the emergency circumstance. The CEO is then required by the statute to report to the governing body, at its next regular meeting, and at every regularly scheduled meeting thereafter, the status of the emergency and the governing body must determine at each meeting by a four-fifths vote that there is a need to continue the emergency action until such time that the emergency no longer exists.

In the present case, OCTA has been informed by geotechnical consultants that the previous mitigation actions have ceased to work in regard to the stabilization of the slope in question and that OCTA's right-of-way, including the railroad tracks, are in imminent threat of failure. The current situation does not permit the delay that would result from following OCTA's approved policies and procedures of solicitation of bids. Moreover, the action is necessary for the preservation of OCTA property and to prevent an immediate termination of a critical OCTA function.

Adopt Resolution No. 2022-075 and Authorize the Chief Executive Officer to Take all Necessary Actions to Address the Emergency Need for Railroad Track Stabilization in the Vicinity of Mile Post 206.8 on the Orange Subdivision

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Summary

Staff recommends adoption of Resolution No. 2022-075 and authorization for the Chief Executive Officer to take whatever actions are necessary to address the emergency need for railroad track stabilization in the vicinity of Mile Post 206.8 on the Orange Subdivision, and to return to the Board of Directors, as required, to report on the status thereof (Attachment C).

Attachments

- A. Project Location Map
- B. Inclinator Data Dated September 28, 2022
- C. Resolution No. 2022-075

Prepared by:



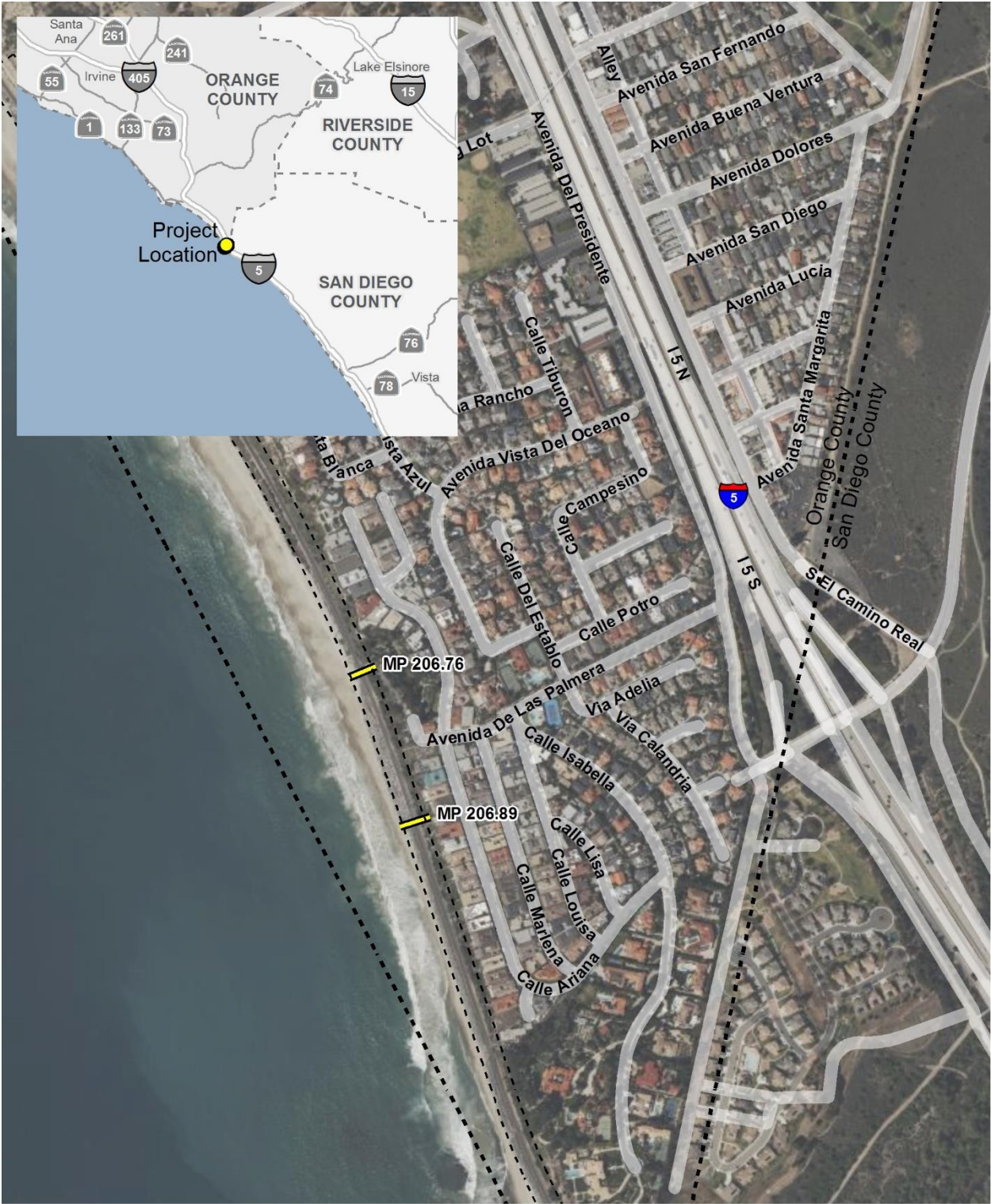
Jason Lee
Project Manager
(714) 560-5833

Approved by:

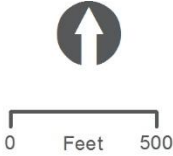


James G. Beil, P.E.
Executive Director, Capital Programs
(714) 560-5646

Project Location Map



- Approximate Project Limits
- - - Rail Right-of-way
- - - County Boundary



Inclinometer Data Dated September 28, 2022

Below are the inclinometer readings of the movement at various depths along the slope. The data shows increased daily movement (24-hour period) between September 26-28, 2022.

Date	Rate of Daily Movement (inches)										
	Depth (feet)										
	0	5	10	15	20	25	30	35	40	45	50
23-Sep-2022	0.01	0.01	0.01	0.01	0.01	-	-	0.01	-	-	-
24-Sep-2022	0.01	0.01	0.01	0.01	0.01	-	-	-	-	-	-
25-Sep-2022	0.01	0.01	0.01	0.01	0.01	-	-	-	-	-	-
26-Sep-2022	0.03	0.03	0.04	0.03	0.04	-	-	-	-	-	-
27-Sep-2022	0.04	0.04	0.03	0.04	0.03	-	-	-	-	-	-
28-Sep-2022	0.03	0.03	0.03	0.03	0.03	-	0.01	-	-	-	-

Date	Inclinometer Displacement Readings										
	Depth (feet)										
	0	5	10	15	20	25	30	35	40	45	50
9/28/2022 12:00 AM	1.54	1.61	2.04	2.02	1.98	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 1:00 AM	1.54	1.61	2.04	2.02	1.98	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 6:00 AM	1.54	1.61	2.04	2.02	1.99	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 7:00 AM	1.54	1.61	2.04	2.02	1.98	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 8:00 AM	1.54	1.62	2.05	2.03	1.99	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 9:00 AM	1.54	1.61	2.04	2.02	1.99	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 10:00 AM	1.54	1.61	2.04	2.02	1.99	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 11:00 AM	1.54	1.61	2.04	2.02	1.98	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 12:00 PM	1.53	1.60	2.03	2.01	1.98	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 1:00 PM	1.54	1.61	2.04	2.02	1.98	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 2:00 PM	1.54	1.61	2.04	2.02	1.98	0.44	0.01	0.12	0.01	0.02	-
9/28/2022 3:00 PM	1.54	1.61	2.04	2.02	1.98	0.44	0.01	0.12	0.01	0.02	-
9/28/2022 4:00 PM	1.54	1.61	2.04	2.02	1.98	0.44	0.02	0.12	0.01	0.02	-
9/28/2022 5:00 PM	1.54	1.62	2.05	2.03	1.99	0.44	0.02	0.12	0.01	0.02	-

RESOLUTION NO. 2022-075

A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT AN EMERGENCY CONDITION EXISTS AND IMMEDIATE ACTION IS REQUIRED TO PRESERVE THE PROPERTY OF THE AUTHORITY AND PREVENT AN IMMEDIATE TERMINATION OF A CRITICAL AUTHORITY FUNCTION SUCH THAT PROCUREMENT OF EQUIPMENT, SERVICES, AND SUPPLIES FOR THOSE PURPOSES WITHOUT GIVING NOTICE FOR BIDS TO LET CONTRACTS IS REQUIRED.

WHEREAS, the Orange County Transportation Authority (the “Authority”) is the owner of the certain rail right of way known as the Orange Subdivision Corridor, a portion of which is located in the City of San Clemente. Specifically, that portion from mile post 206.76 to mile post 206.89 (the “Rail Right of Way”); and

WHEREAS, the Rail Right of Way and the entire rail corridor represent the only rail connection between San Diego County and Orange and Los Angeles Counties and is of state-wide and national importance; and

WHEREAS, the Rail Right of Way and the adjacent hillside have been moving towards the Pacific Ocean at an incremental rate potentially resulting in a possible failure sometime in the future; and

WHEREAS, the Authority and its partners have over the past several months attempted to mitigate the movement of the Rail Right of Way and the adjacent hillside with the placement of approximately 18,000 tons of riprap at the base of the slope with the expectation that said action would alleviate the movement; and

WHEREAS, on September 24, 2022, the Authority was informed by its geotechnical consultant that the mitigation measures are no longer effective and Rail Right of Way and adjacent hillside is in imminent danger of catastrophic failure such that said Rail Right of Way could collapse in the Pacific Ocean permanently severing the only rail corridor between San Diego County and Orange and Los Angeles Counties; and

WHEREAS, the Authority has been advised by its geotechnical consultant that the Authority must take immediate action to prevent the catastrophic failure of the Right of Way; and

WHEREAS, the catastrophic failure of the Right of Way represents a clear emergency circumstance requiring immediate action to preserve Authority property and prevent the immediate termination of a critical Authority function. Specifically, the movement of rail traffic along the Orange Subdivision; and

WHEREAS, this emergency circumstance will not permit the delay that would result from a competitive solicitation for bids; and

WHEREAS, Public Contract Code Section 22050 authorizes the Authority, in the case of an emergency, to repair or replace a public facility, take any action directly related or required by that emergency, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bid or letting of contracts pursuant to the Public Contract Code; and

WHEREAS, said action requires a four-fifths vote of the Authority's Board of Directors in order to delegate the emergency authority to its Chief Executive Officer;

NOW, THEREFORE, BE IT RESOLVED, by at least a four-fifths vote of the Authority's Board of Directors under Public Contract Code Section 22050, the Authority does hereby find and determine as follows:

Section 1. Incorporation of Findings and Recitals. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

Section 2. Findings. The Authority hereby finds, determines and declares each of the following:

(a) The Rail Right of Way and the entire corridor represent the only rail connection between San Diego County and Orange and Los Angeles Counties and is of state-wide and national importance; and

(b) The Authority has been informed by its geotechnical consultant that the previous mitigation measures are no longer effective and Rail Right of Way and adjacent hillside is in imminent danger of catastrophic failure such that said Rail Right of Way could collapse in the Pacific Ocean; and

(c) The Authority has been advised by its geotechnical consultant that the Authority must take immediate action to prevent the catastrophic failure of the Right of Way; and

(d) The imminent failure of the Rail Right of Way constitutes an emergency circumstance that requires immediate action; and

(e) This emergency circumstance will not permit the delay that would result from a competitive solicitation for bids under the Public Contract Code.

Section 3. Acquisition of Necessary Equipment, Services, and Supplies. Pursuant to the authority set forth in Public Contract Code Section 22050, the Authority's Chief Executive Officer is hereby authorized to take any directly related and immediate action required to address the emergency circumstance detailed herein and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

Section 4. Review of Emergency Circumstance. Pursuant to Public Contract Code Section 22050, the Authority's Board of Directors shall review the circumstance set forth herein and shall terminate said emergency circumstance when the need to continue said action no longer exists.

Section 5. Effective Date. This Resolution No. 2022-075 shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this 3rd day of October 2022.

MARK A. MURPHY, CHAIRMAN
ORANGE COUNTY TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

JAMES M. DONICH
GENERAL COUNSEL