Correspondence
Bd. 8/11/26, Item 52

Lopez, Maria [COB]

From: Stieler, Robin
Sent: Monday, August 10, 2026 2:18 PM
To: Guillen, Dora; Lopez, Maria [COB]; Ross, Jamie
Subject: FW: County of Orange v. Tenbrix: 8/10/26 Letter to R. Stieler, COO Clerk BOS -- BDG File 1931.01A
Attachments: Board-01.pdf

Attached is correspondence for Agenda Item #52 on the August 11th agenda.

Robin

Robin Stieler
Orange County Clerk of the Board of Supervisors

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**NEW EMAIL: Robin.Stieler@cob.oc.gov **

From: Kahanu Coleman <kcoleman@bdgfirm.com>
Sent: Monday, August 10, 2026 2:03 PM
To: Stieler, Robin <Robin.Stieler@cob.oc.gov>; COB_Response <COB.Response@cob.oc.gov>
Cc: Brian Bergman <bbergman@bdgfirm.com>; Andy K Cho <acho@bdgfirm.com>; Haubert, Michael <Michael.Haubert@coco.oc.gov>; Walsh, Nicole <Nicole.Walsh@coco.oc.gov>
Subject: County of Orange v. Tenbrix: 8/10/26 Letter to R. Stieler, COO Clerk BOS -- BDG File 1931.01A

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

ATTACHED PLEASE FIND: Letter to Robin Stieler, Clerk of the Board of Supervisors, County of Orange dated August 10, 2026.

Regards,

BDG
SERVICE • LOYALTY • SOLUTIONS
Kahanu Coleman | Executive Assistant | kcoleman@bdgfirm.com | www.bdgfirm.com

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August 10, 2025

OUR FILE NO. 1931.01A

VIA EMAIL ONLY

Robin Stieler
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Santa Ana, California 92702

Email: robin.stieler@ocgov.com
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Re: *County of Orange v. Tenbrix LTD., et al*
Orange County Superior Court Case No. 30-2025-01470145
- Substantial evidence in support of the findings of the Resolution of Necessity and the Amendment to the Resolution of Necessity

Dear Clerk of the Board:

Our firm, BDG Law Group ("BDG"), represents the County of Orange ("County") in the above referenced litigation, pursuant to Board of Supervisors ("Board") Resolution 25-007, to assist with the acquisition of property interests for the purpose of constructing, maintaining, and operating the Orange County Loop Project ("Project"). On August 11, 2026, Agenda Item No. 52, the Board will consider an amendment to the Resolution of Necessity ("RON") passed by the Board on January 14, 2025 ("Original RON") affecting the real property located at 7651 Stage Road, Buena Park, California, commonly known as the Amberwood Apartments ("Subject Property"). The Subject Property is owned by Tenbrix LTD. ("Tenbrix").

BDG respectfully submits this letter in support of amending the RON ("Amended RON") and in response to the objection letters from counsel for Tenbrix dated July 20, 2026 and August 7, 2026.

<u>County's Plans for the Project Minimize the Impacts to the Subject Property</u>

The current Project plans ("Current Plans") minimize the impacts to the Subject Property and were developed after several alternatives were considered and rejected for various reasons including infeasibility. In the Current Plans, the proposed bike path travels over the BNSF railroad tracks ("BNSF Tracks") and Stage Road via a bridge where it continues along the Coyote Creek Flood Control Channel ("Channel") adjacent to the Subject Property. The Channel is owned, controlled, and maintained by the Los Angeles County Flood Control District ("District").

This was not the initial design due to negotiations with BNSF. In July 2018, the initial 25% draft submittal of the plans for the Project proposed that the bike path cross under the BNSF Tracks, continue along the Channel on the opposite side of the Subject Property, cross the channel via a bridge after passing the Subject Property, and then continue along the Channel up to La Mirada Boulevard ("Initial Plan").[1]

In May 2019, the County reviewed the Initial Plan and seven (7) alternate routes.[2] The County's assessment was that the Initial Plan may be costly and difficult to implement because the alignment included three railroad crossings, multiple major utility crossings, and an I-5 Freeway crossing. However, the County also concluded that all seven of the alternatives were infeasible because the Cities of La Mirada and Santa Fe Springs raised various objections.

Accordingly, at that time the County reasonably chose to pursue the Initial Plan for the Project.

However, by April 2021, BNSF had concluded that an underpass would require an alternative/detour for the tracks during the construction. Based on County's research of a similar project in Flagstaff, Arizona, this requirement could add an estimated $66 million to the Project – making that option cost prohibitive.

The County thus pursued a bridge over the BNSF Tracks, which is required to have a 23.5' minimum vertical clearance under the structure. In addition, the County must design the path to meet ADA standards which require a 5% maximum longitudinal slope. Designing a path with 5% longitudinal slopes results in a very long incline and decline. A steeper grade would result in a shorter bridge, but would not meet ADA standards, would make the path of travel more difficult to traverse up the bridge, and would make downhill speed significantly faster, which would be more dangerous for both cyclists and pedestrians that are using the bike path.[3]

In addition, it was determined during the design process for the Project that an approximately 23.5'-feet high bridge on the opposite side of the Channel from the Subject Property would have

[1] July 2018 Plan Sheets, Sheets L-11 and L12.
[2] Project Programing Report, dated May 2019.
[3] An underpass under the BNSF tracks would be 10 feet deep, resulting in an underpass of 720 feet before returning back to grade. However, a 35-foot high bridge with a 5% ADA compliant grade would extend the bridge and approach structures approximately 2,150 feet in length.

significant privacy impacts for residents of Granada Drive. Pedestrians and cyclists traveling on the bridge would have an unobstructed view of the private backyards of the Granada Drive residents. Cyclists and pedestrians would either view the private backyard of Granada Drive residents or the parking lot of the Subject Property. Given these options, the County determined that the feasible and reasonable location for the bike path was on the side adjacent to the Subject Property.

Under the plans and design of the Project in November 2022, because of the length of the bridge over the BNSF Tracks and Stage Road, the County required approximately 9,271 sq. ft. and 39 parking spaces within the Subject Property for the TCE.[4] However, after refinement of the Project plans, the County was able to reduce the size of the TCE from 9,271 sq. ft. to 7,933 sq. ft., and the number of parking spaces from 39 to 30, thereby minimizing the impact on the Subject Property.[5] Moreover, under the Amended RON, the County will work to obtain alternate parking that has been approved by City staff to further reduce the impacts on Tenbrix and its residents. The County acted reasonably to minimize the impact of the TCE on the Subject Property.

Responses to Specific objections in the July 31, 2026 letter from Tenbrix

Legal counsel for Tenbrix contacted the County to object to the Amended RON. As an initial matter, Tenbrix challenged the County's newest appraisal ("County Appraisal") to reflect the Amended RON's impact, prepared by Adam Bogorad, MAI ("Appraiser"), on the ground that the County Appraisal and offer was deficient and therefore did not satisfy the offer requirement of Government Code section 7267.2. The County should consider this objection to lack legal support.

Section 7267.2 does not permit a challenge to the RON based on the amount of the offer.

1. Re: Specific Objections by Tenbrix to the Appraisal:

Tenbrix lacks a legal basis to challenge the Board's adoption of the Amended RON based on the offer and the County Appraisal. Nevertheless, assuming Tenbrix may challenge the RON and the Amended RON because of the offer and the County Appraisal, Tenbrix's objections are without basis as further described below.

a. County Appraisal properly concluded that the "highest and best use" of the Subject Property was as a multifamily residential use.

Tenbrix objects that the County's Appraisal made no analysis of the increasing population in the area and therefore it was improper to conclude the "highest and best use" of the Subject Property was a multifamily residential use. Tenbrix's objection is without basis.

[4] Design Plans at 35%, November 2022.
[5] Design Plans at 65%, August 2023; and Design Plans at 95%, April 2025.

The County's highest and best use conclusion of multifamily residential use is well supported. The Subject Property is zoned RM-20[6] and with 122 units on 5.894 acres, the Subject Property is already at its maximum zoned density with 20.7 units per acre. The County Appraisal concluded that a zoning change is not likely and there is no support that demolishing a stabilized 122-unit complex for denser or mixed-use redevelopment would be financially feasible or maximally productive.[7]

b. County Appraisal properly valued the property interest taken by the County as vacant land.

Tenbrix further objects that the Subject Property is improved, but that the County Appraiser did not take into consideration the improvements.

Again, Tenbrix's objection is without merit, because the acquisition is for a temporary construction easement over 7,930 sq. ft. of parking and landscaping, which is approximately 3-percent of the total Subject Property area. No permanent rights are being acquired and no structures are within or affected by the TCE area. In addition, access and travel through the Subject Property are likewise unaffected, since both Stage Road driveways will remain open and none of the internal roadways within the Subject Property will be blocked during construction. Accordingly, the land value is the proper basis for calculating the rental value for the TCE, and when improvements are temporarily affected, the County Appraisal properly analyzed the temporary loss of the 30 parking spaces as a separate component of the compensation.

c. County Appraisal used reasonable and appropriate comparable sales in valuing the TCE acquired by the County for the Project.

Tenbrix objects that the County Appraisal included comparable sales that were not proper. Again, Tenbrix's objection is without merit.

The Buena Park/Cypress apartment submarket is essentially built out, showing zero apartment completions from 2015 through 2020 and again from 2023 through projected 2025, and sales of developable multifamily land within the city are correspondingly scarce. The comparable sales used by the Appraiser are located 2.1 to 13.8 miles from the Subject Property and each sale was rated and adjusted for the location. A search of the market did not identify more proximate multifamily land sales, and it appears that despite the fact that the Buena Park/Cypress area is essentially built out, Tenbrix demands that the Appraiser use comparable sales that do not exist.

Furthermore, zoning designation does not describe the substance of these transactions. All eight sales were purchased for multifamily or townhome residential development, including the commercially zoned sales. In appraisal methodology, comparability is determined by highest and

[6] RM-20 permits 20 dwelling units per acre
[7] Tenbrix also admits that the Subject Property has many long time residents, which indicates that demolishing the Subject Property for denser or mixed use redevelopment is not likely.

best use, not zoning designation alone, and each sale shares the residential development use concluded for the subject.

d. County is acquiring a temporary construction easement, and therefore the income producing nature of the Subject Property is not appropriate to consider in the valuation.

Tenbrix objects that the County's Appraisal should have used the income-capitalization approach, instead of the sales-comparison approach, to value the Subject Property.

Tenbrix's objection is without merit. Where the County's acquisition is a ***temporary*** construction easement with no permanent property rights being acquired, the proper inquiry focuses on the characteristics of the Subject Property that is being acquired and whether the County's acquisition affects the income producing nature of the Subject Property. In this case, proper inquiry was made into whether the County's acquisition affected parking, access, and travel within the Subject Property.[8]

Each of these were examined and found that access and travel within the Subject Property was not affected. Parking would be affected, and the County Appraisal properly analyzed and compensated Tenbrix for the potential loss of income caused by the lost parking spaces.

A temporary construction easement is essentially a temporary lease of the land, and the County Appraisal applied a market-derived rate of return to the land value of the easement area to conclude an annual land rent, paid for over the full five-year easement term. The temporary loss of approximately 30 parking spaces was measured as lost income, with surveyed market parking rents supporting $150 per space per month and an additional $100 per space per month as a rental-reduction allowance for affected units, totaling $250 per space per month over the construction period. An income-capitalization analysis of the apartment operation as a whole would value the entire improved property, which is not being acquired and is not the measure of compensation for any component of this acquisition; developing that analysis would not change the compensation.

e. County Appraisal used an appropriate annual rate of return to value the temporary construction easement.

The rate of return was not selected arbitrarily by the Appraiser and the analysis supporting it appears in the County Appraisal. The Appraiser surveyed the land leasing practices of ten Southern California public agencies, which reported rates ranging from 5.0% to 10.0%, and noted that rates at the high end of the range represent asking positions rather than rates achieved in actual transactions. Fair market value reflects the price agreed to between the parties, not an initial asking position, and the reconciled rate of 7.5% reflects the survey on that basis. The rate

[8] It must be remembered that the County is not acquiring any of the apartment units, and therefore, there is no need to analyze the lost rental income from the loss of the apartment units. Only the parking spaces are being used for the TCE.

is applied to the concluded fee value of the easement area for the full five-year easement term, a period the appraisal notes is longer than the anticipated construction period, with rent paid for the entire term. Potential present value discounting of the rental stream was treated as offset by anticipated rental increases, so the rent was neither discounted nor escalated.

2. Additional Specific Objections by Tenbrix to the Adoption of the Amended RON Lack Merit

a. Landscaping planted within the portion of the Channel that is owned by the District.

Tenbrix has repeatedly claimed that it will lose over two dozen mature palm and fruit trees, shrubs, and grass (collectively, the "Landscaping") because of the Project and the County's Appraiser did not place any value on the aesthetic loss caused by the loss of this Landscaping.

Tenbrix's objection is without basis because the Landscaping that Tenbrix alleges will be lost are all planted by Tenbrix within property owned by the District, not by Tenbrix. Indeed, Tenbrix has improperly encroached and trespassed on District Channel property. Tenbrix is not legally entitled to compensation for the loss of the Landscaping aesthetics created by Tenbrix's improper encroachment Landscaping.

b. Tenbrix has already been informed during site visits of the Subject Property that the trash enclosure will be either protected in place and accessible, or will be temporarily relocated.

During site visits of the Subject Property with the County and representatives from Tenbrix, Tenbrix has repeatedly been told that the trash enclosure will be protected in place and made accessible to the tenants, but if it is necessary, the trash bins will be relocated, so that the tenants will be able to continue to access and use a trash bins.

c. The County will restore and perform repairs to the parking spaces after use of the TCE.

Tenbrix's objection that the Tenbrix will need to expend costs to restore and repave the parking lot area used by the County for construction of the Project is without basis and is completely speculative. The County, consistent with best business practices, will restore and perform repairs as needed to bring the parking spaces back to the original condition that it was in prior to the County's use of the TCE area. Accordingly, Tenbrix will not incur any costs to make repairs to the parking area, and thus, the County's Appraiser was not required to include any such restoration costs in the appraisal.

3. The RON is not required to address issues regarding litigation expenses

Tenbrix claims that it is entitled to recover its litigation expenses under Code of Civil Procedure section 1268.610 because the County is partially "abandoning" its prior taking adopted in the

Original RON. This is not an issue that must be addressed by the Amended RON and is not a reason to delay or not adopt an amendment as requested by the County. Even if this were an issue at this point, Tenbrix is not entitled to recovery of litigation expenses since there was no abandonment, but merely a clarification of the scope of the RON. The passage of an amended RON that clarifies the scope of the taking does not create an abandonment. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1232-1233.)

Here, the County is not abandoning a property right but is amending the RON to clarify the original intent and scope of the TCE. The County has always intended that the TCE would be for five (5) years, but that the County's use would only be used for a maximum of one (1) year, which is evident from the County's Appraisal wherein the Appraiser valued the TCE for a period of five (5) years with a separate compensation for the loss of parking for only one (1) year during the actual use and construction of the Project.

In addition, contrary to Tenbrix's objection, a RON is only required to provide a general statement of the public use, a description of the general location of the property, and a declaration that: (1) the public interest and necessity require the proposed project, (2) the proposed project is planned or located in the manner that is most compatible with the greatest public good and least private injury, (3) property is necessary for the proposed project, and (4) an offer has been made to the record owner. There is no requirement that the Amended RON address Tenbrix's recovery of litigation expenses for the alleged abandonment.

Furthermore, since the Amended RON merely clarifies the original intent and scope of the TCE, it is not a new RON. In addition, since the Amended RON is consistent with the County Appraisal, there is no need for a new appraisal. (*See Cmty. Redevelopment Agency of L.A. v. Kramer Metals*, 2010 Cal. App. Unpub. LEXIS 2960, *29 (While no published decision has directly addressed the issue of redoing an offer appraisal prior to amending a RON to clarify the scope of a taking, the unpublished decision in *Kramer Metals* fully supports the County's position and is guidance on how a future court would look at the issue).

The case cited by Tenbrix, *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, does not support Tenbrix's position. In *Barringer*, the City of Lincoln ("City") adopted a RON to acquire approximately 1.4 acres of the property owners' 8.9 acres as a combination of a permanent interests and a temporary construction easement. (*Id*. at p. 1216.) Subsequently, the City decided to acquire the remaining 7.5 acres of the property as a "remnant," and sent the property owners an offer letter under Government Code section 7267.2, which was rejected. (*Id*. at pp. 1216-1217.) The court stated that repeal of legislative decisions by implication are disfavored, and that if there are two legislative acts, they will be reconciled to give effect to both, if possible. (*Id*. at p. 1232.) There was nothing in *Barringer* where the court found that the second RON required a new appraisal.

4. County Appraisal properly valued the entire TCE for a five (5) year period, with a separate valuation for the actual loss of parking for a one (1) year period.

Tenbrix's objection claims the County Appraisal is improper because it fails to value the easement for its entire 5-year period.

Tenbrix's objection is contradictory in that it acknowledges that the County is "fix[ing] the *Bressi* and *Coachella Valley* valuation problem" but then claims that the County must value the TCE for the entire five (5) year period. In addition, Tenbrix ignores that the County Appraisal valued the TCE for the entire five (5) year period and separately valued the actual loss of parking for the one (1) year period. It appears that Tenbrix is proposing that it is entitled to a windfall of four (4) years of lost parking, when construction and use of the TCE will only be for one (1) year.

5. Tenbrix's objection that the Amended RON is ambiguous is without basis

a. The Amended RON properly directs the County to obtain alternative parking in an attempt to further minimize impacts on the tenants of the Subject Property.

Tenbrix objects to the Amended RON on the ground that it does not direct the County to provide alternative parking. Again, Tenbrix's objection is without basis as the Amended RON states that the County "shall mitigate any parking lost during the use of the Temporary Easement." The City has approved such parking use.

Tenbrix also claims that the "County has provided no information about where replacement parking would be located, how it would be accessed, or whether it would be adequate for Tenbrix's tenants." Again, such information is not the type of information that is required in a RON. In addition, whether Tenbrix is able or "unable to determine whether such replacement parking will be suitable for its tenants" is not information that is required to be a part of the Amended RON.

Furthermore, the County has been working diligently with the City to obtain alternative parking, and, as of July 8 2026, the County's plan for temporary parking along Stage Road has been approved by City staff.

b. Amended RON properly directs the County to construct the Project and use the TCE in stages, in an attempt to further minimize the impact on the tenants of the Subject Property.

Tenbrix objects that the Amended RON is "unclear and confusing" as to the requirement that, if feasible, the County should attempt to construct the Project in stages to minimize the amount of lost parking during the construction of the Project and use of the TCE at the Subject Property.

Construction schedules are complicated and require the coordination of many different parties, such as contractors, their employees, and subcontractors as well as acquiring the necessary equipment and coordination with utility providers who may be impacted during the Project. To provide as much flexibility as possible for the County in the construction of the Project ***and*** to require the County take as many steps as feasible to minimize impacts to Tenbrix and its tenants, the County may use the TCE in stages, instead of the full 12-month period. Again, as with alternative parking, the Amended RON directing the County to construct in stages to minimize the impact is reasonable.

c. The Amended RON is not required to speculate and identify all things that the County should be prohibited from doing during the construction of the Project.

Tenbrix also objects that the Amended RON does not prohibit the County from traversing larger Tenbrix property to access the TCE area, and therefore the Amended RON is improper. Again, Tenbrix's objection is without basis.

There is no dispute that private property cannot be used without compensation and authorization. The Amended RON only permits the use of a portion of the Subject Property for a TCE. The Amended RON does not permit the use of the Subject Property for any other use, and therefore the County is not permitted to do so. In addition, the County has already made plans to access the TCE from the public right-of-way on the channel side and will not use the private roads within the Subject Property.

If you have any questions or would like to discuss this matter further, please contact me at your earliest convenience.

Sincerely,

Brian J. Bergman
Andy K. Cho