Correspondence
Bd. 8/11/26, Item 52

Lopez, Maria [COB]

From:	Stieler, Robin
Sent:	Friday, August 7, 2026 12:15 PM
To:	Ross, Jamie; Lopez, Maria [COB]; Guillen, Dora
Subject:	Fw: Tenbrix LTD. - August 11, 2026, Hearing re Proposed Resolution of Necessity
Attachments:	2026.08.07 Objection Letter to County re Resolution of Necessity.pdf

See correspondence received for Agenda Item 52 for the August 11th Board Meeting.

Robin

Robin Stieler
Orange County Clerk of the Board of Supervisors
County Administration North
400 W. Civic Center Drive, Sixth Floor
Santa Ana, CA 92701
714-834-2206
https://cob.ocgov.com/

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

From: Armienta, Sylvia <sarmienta@allenmatkins.com>
Sent: Friday, August 7, 2026 12:05 PM
To: Stieler, Robin <Robin.Stieler@cob.oc.gov>
Cc: Friess, Rick <rfriess@allenmatkins.com>; Temourian, Nazani <ntemourian@allenmatkins.com>; English, Brian <benglish@allenmatkins.com>
Subject: Tenbrix LTD. - August 11, 2026, Hearing re Proposed Resolution of Necessity

Good afternoon. Please refer to the attached correspondence sent on behalf of Rick Friess. Thank you.

Sylvia Armienta | Legal Secretary
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K. Erik Friess
E-mail: rfriess@allenmatkins.com
Direct Dial: 949.851.5478 File Number: 4909-1460-4483.1/395512.00005

Via Email

August 7, 2026

Robin Stieler
Clerk of the Board of Supervisors
County of Orange
Post Office Box 687
400 W Civic Center Drive
Santa Ana, CA 92702

Re: The County's August 11, 2026, hearing on a proposed resolution of necessity to partially rescind Resolution of Necessity 25-007 to revise duration of subject property interests being acquired of Tenbrix LTD.'s Amberwood Apartments property located at 7667 Stage Road (APN 066-584-09) in connection with County's Coyote Creek Flood Control Channel and the OC Loop Bikeway Project and Tenbrix's objections to adoption of such a resolution of necessity

Agenda Item No. 52

Dear Ms. Stieler:

This firm represents Tenbrix LTD., the owner of the Amberwood Apartments located at 7667 Stage Road in Buena Park (Assessor's Parcel Number 066-584-09), which is the subject of the County's notice of hearing to adopt a resolution of necessity purporting to partially rescind resolution of necessity 25-007 to revise the duration of the property interests being acquired in connection with the County's Coyote Creek Flood Control Channel and the OC Loop Bikeway project.

We submit this letter to document and preserve Tenbrix's objections to the County's proposed resolution of necessity. Tenbrix requests that this objection letter be included in the record for Agenda Item Number 52 for the hearing for the Board to consider adoption of a resolution of necessity.

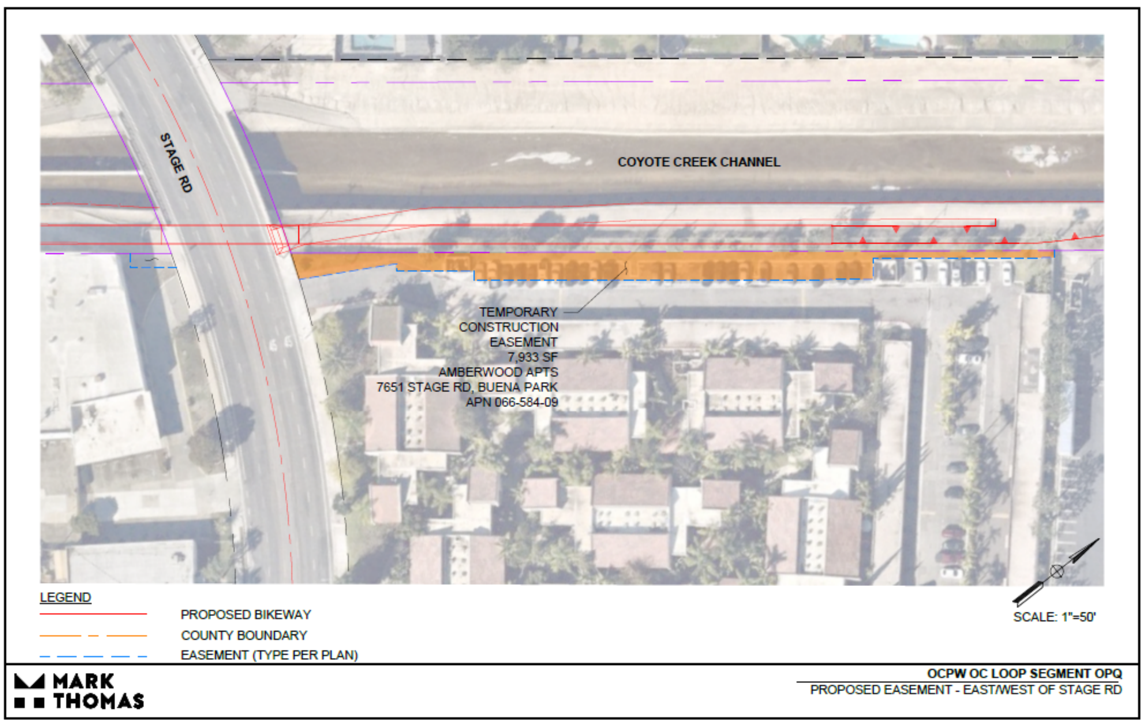
We request that copies of this objection letter be distributed to all County decision-makers before their considering the adoption of any resolution of necessity.

OBJECTIONS

1. This "partial rescinding" of the adopted resolution is a partial abandonment. Tenbrix has been telling the County of its problematic easement since before the County adopted resolution of necessity 25-007. The County could have avoided years of litigation and a significant sum if it listened to Tenbrix *in 2024*. Now the County has wasted years and owes Tenbrix its litigation expenses.

Tenbrix's property is improved with a residential apartment complex – called Amberwood Apartments – with 122 one- and two-bedroom apartment units. Amberwood Apartments is surrounded by landscaping and trees, which creates a tranquil feel for the apartment complex.

The County's temporary construction easement is located within 30 parking spaces. The following is an aerial photograph that overlays the County's easement on these parking spaces:



The County's original resolution of necessity identified it was for a period of 60-months and made *no* mention of a 12-month limitation. The following is the County's original resolution of necessity:

> A 60-month temporary construction easement interest in and to that parcel of land identified as Project Parcel TR05B-800.2 a portion of Orange County Assessor's Parcel Number 066-584-09 ("Temporary Easement"). The Temporary Easement is more particularly described in Exhibit A and depicted in Exhibit B attached hereto and by this reference made a part hereof.

The County's appraiser valued the 30 parking spaces as being unavailable for 12 months even though the duration of the County's temporary construction easement is 60 months. An agency's resolution of necessity *conclusively establishes* the scope of the easement being acquired. This means that the County cannot introduce evidence to reduce the scope of the easement identified in the resolution of necessity. Instead, the "most injurious use of the property reasonably possible" under the easement's language *must* be assumed in valuing the easement. (*County of San Diego v. Bressi* (1986) 184 Cal.App.3d 112, 123; see also *Coachella Valley Water District v. Western Allied Properties* (1987) 190 Cal.App.3d 969, 978.) *Bressi* and *Coachella Valley* prohibit a condemning agency from trying to avoid paying full compensation for an easement that it is taking by arguing that the agency "really" plans to use the easement less harmfully than allowed under the easement language. That is *exactly* what the County attempted to do with its original resolution of necessity by valuing the parking impacts for 12 months only while the total duration of the temporary construction easement was 60 months. Tenbrix urged that the County change the duration of its temporary construction easement identified in the original resolution of necessity to 12 months or redo the County's appraisal to properly value the *full* scope and duration of the five-year temporary construction easement. The County did neither.

The County had several opportunities to fix its fundamentally flawed easement and resolution of necessity, but it squandered those opportunities.

Tenbrix warned County staff. County staff ignored Tenbrix's warnings about the County's fundamentally flawed easement. Tenbrix's attorney pointed out the failure of the County to include a 12-month provision its easement's language *on November 4, 2024*, stating:

From: Temourian, Nazani <ntemourian@allenmatkins.com>
Sent: Monday, November 4, 2024 6:57 PM
To: Cops, David <David.Cops@ocgov.com>
Cc: Friess, Rick <rfriess@allenmatkins.com>
Subject: RE: OC Loop Bikeway Project - TR05B-800.2 - Tenbrix Ltd

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

Hi David,

I hope you are doing well. I am following up on this request. Are there any documents that show what this area will look like when the project is completed?

I noticed that the County's appraiser valued the 30 parking spaces for 12 months even though the County's temporary construction easement is for a duration of 5 years. I did not see a document in the package provided that specifies that the 30 parking spaces will be used for only 12 months. Was a document inadvertently not provided that has this 12-month information? Can you please provide?

Thanks,
Nazani

Nazani N. Temourian | Senior Counsel | Allen Matkins

The County did not provide such documentation:

I'm sorry for not giving you an update on this. I asked the project engineers to create an exhibit that will give your client a better idea of what the project will look like near the TCE area. I will send it over as soon as I get it.

While the easement can last up to 5 years, the County will only occupy the easement area during construction of the bikeway improvements that are immediately adjacent the the easement area. While the construction will take less than 12 months, the appraisal used 12 months of use in case of unanticipated delays.

I hope to get the exhibit to you soon. Thanks for your patience.

David L. Cops
County Executive Office | Real Estate
400 West Civic Center Drive
Santa Ana, CA 92701

Tenbrix's attorney asked *again*:

From: Temourian, Nazani <ntemourian@allenmatkins.com>
Sent: Tuesday, November 5, 2024 11:24 AM
To: David.Cops@ocgov.com
Cc: Friess, Rick <rfriess@allenmatkins.com>
Subject: RE: OC Loop Bikeway Project - TR05B-800.2 - Tenbrix Ltd

Hi David,

Thanks for the update about the exhibit. That will be very helpful.

Thanks for that explanation. Is there a document that was not provided to us that identifies that the County will occupy the 30 parking spaces only during the construction of the bikeway improvements for 12 months or less? The temporary construction easement does not mention this 12-month period. I want to make sure we have all the documents from the County in connection with this acquisition.

Thanks,
Nazani

Nazani N. Temourian | Senior Counsel | Allen Matkins

What was the County's response to the lack of documentation identifying this alleged 12-month limitation? *Radio silence* until the County's providing notice of its intention to adopt its original resolution of necessity.

Tenbrix warned the County's Board of Supervisors. Tenbrix raised the fundamental flaw in the County's easement and resolution of necessity in its January 13, 2025, objection letter. Tenbrix has enclosed its January 13, 2025, objection letter for ease of reference – please review pages 4 through 6. Tenbrix highlighted that the County's appraiser valued the 30 parking spaces as being unavailable for 12 months enough though the duration of the County's temporary construction easement is 60 months. Tenbrix noted that there was *no* 12-month limitation in the County's resolution of necessity. The County's Board went ahead and adopted the fundamentally flawed resolution of necessity over Tenbrix's objections.

Tenbrix raised this objection in eminent-domain litigation. After the County filed its complaint in eminent domain, Tenbrix raised the same objection as a right-to-take challenge. Rather than proceed to a right-to-take trial, the County *finally* listened to Tenbrix's years-long objection by seeking to partially abandon and revise its problematic resolution of necessity.

Now, because the County is pursuing a partial abandonment, Tenbrix is entitled to recover its litigation expenses under Code of Civil Procedure section 1268.610. But the County's revised resolution of necessity does not address Tenbrix's recovery of litigation expenses at all.

The County could have avoided years of doomed litigation and a significant sum for Tenbrix's litigation expenses if it listened to and addressed Tenbrix's concerns about its easement and resolution of necessity in 2024.

Tenbrix has significant concerns about the County's revisions to its resolution of necessity. Tenbrix hopes the County listens and adjusts its proposed resolution of necessity now before going along with a still-flawed resolution of necessity.

2. The County has *not* satisfied State-mandated prerequisites for adopting a resolution of necessity. More specifically, the County failed to make an offer of just compensation based on an adequate appraisal of the property. Thus, the County can*not* adopt a resolution of necessity.

Under California's Eminent Domain Law, a condemning agency must comply with several procedural prerequisites before adopting a resolution of necessity and instituting a condemnation action. Among other requirements, the condemning agency: (1) must appraise the fair market value of the property to be condemned; (2) must make an offer of just compensation reflective of that value; (3) must provide a written statement explaining the basis of the agency's determination of fair market value; and (4) must engage in good-faith negotiations before initiating a condemnation action. (Gov. Code, §§ 7267.1, 7267.2; Code Civ. Proc., § 1245.230.)

The County has not completed the above-listed prerequisites for adopting a resolution of necessity to condemn Tenbrix's property. The County must pay Tenbrix the fair market value of the property the County intends to take. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.310.) Accordingly, the County's appraisal must accurately reflect the fair market value of Tenbrix's property and take into account all relevant considerations.

3. The County failed to obtain a new appraisal and did not make a new precondemnation offer to Tenbrix. The County must do so if it wants to proceed with this taking and avoid a right-to-take challenge.

Despite this being a new resolution of necessity (i.e., a new legislative act), the County failed to obtain a new appraisal and did not make Tenbrix a new precondemnation offer before noticing this hearing.

Because the revised resolution is a new resolution of necessity, it must contain all the required elements of Code of Civil Procedure section 1245.230, including a declaration that the Government Code section 7267.2 offer has been made. That declaration cannot be made unless a new appraisal has been obtained and a new offer has been extended to Tenbrix reflecting the revised taking. In *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, the city adopted an original resolution of necessity and then a second resolution of necessity. (*Id*. at pp. 1215-1217.) The city made a new offer to the owner before the second resolution of necessity hearing. (*Id*. at p. 1217.) The appellate court confirmed that the two resolutions were distinct legislative acts (*id*. at p. 1232), supporting the mandatory nature of the precondemnation offer requirement applying to *each* new resolution. The County must complete these procedural requirements otherwise it faces another right-to-take challenge for noncompliance with Government Code section 7267.2.

The County has not made an offer under Government Code section 7267.2 and cannot make a finding that it has. Thus, the County cannot properly adopt a resolution of necessity.

And since the County needs to obtain a new appraisal and make a new precondemnation offer to Tenbrix, the County should concurrently cure the defects in its original appraisal and offer by valuing the land as improved as outlined in Tenbrix's January 13, 2025, objection letter. (See Govt. Code, § 7267.2; Code Civ. Proc., §§ 1240.040, 1245.230(c)(4); Evid. Code, § 816.) The County's appraiser should also consider the categories of severance damages and restoration costs Tenbrix previously identified for the County before the County adopted its original resolution of necessity. Tenbrix incorporates by reference the objections detailed in its attached January 13, 2025, letter.

4. The County tried to fix its *Bressi* and *Coachella Valley* problem. But the County's revised resolution of necessity fails to fix the County's problem.

The following is the County's revised resolution of necessity:

> A twelve-month temporary construction easement interest in and to that parcel of land identified as Project Parcel TR05B-800.2 a portion of Orange County Assessor's Parcel Number 066-584-09 ("Temporary Easement"), that may be used during the 60-month temporary construction easement period. At least three months' notice shall be given to
>
> property owner, Tenbrix LTD, prior to usage of the 12-month TCE. The County shall mitigate any parking lost by the Owner during the use of the Temporary Easement by obtaining City approval to provide alternative replacement parking such that up to 32 parking spaces may be available. Additionally, the construction activities within the temporary easement may be completed in stages such that at most only 15 parking spaces are made unavailable for a maximum period of 6 consecutive months. The Temporary Easement is more particularly described in Exhibit A and depicted in Exhibit B attached hereto and by this reference made a part hereof.

The County's revised resolution of necessity continues to reflect an improper approach to valuation of the temporary construction easement. It continues to fail to value the easement for its entire 60-month duration. A temporary construction easement must be valued for the entire duration of the easement. A temporary construction easement cannot be active or "float" (e.g., using a 12-month span of work across an authorized 60-month window as here).

Caltrans's Right-of-Way Manual is instructive. Manual section 7.04.08.00 states: "*Although the actual/physical use of a property may be anticipated for a limited duration within a set time frame, a property is considered to be encumbered for the entire duration of the easement term*. While the extent of an owner's loss of utility and enjoyment may be influenced by a potential constraint to the lease or general use of the encumbered area, *the temporary easement valuation shall employ one consistent (flat) rate for the compensable period*." (Caltrans Right-of-Way Manual (2026 ed.) § 7.04.08.00, emphasis added.)

The County's deviation from Caltrans's direction is not justified. If the County is only going to use the temporary-construction-easement area for 12 months, its resolution of necessity should be limited to a specific 12-month period. If the County insists on a 60-month temporary construction easement, the County must value the easement for 60 months.

5. The County's revised resolution of necessity does not fix the significant parking impacts created by the County's acquisition.

The County's proposed revisions to the resolution of necessity do not meaningfully fix Tenbrix's tenants' parking impacts. To start, Tenbrix cannot reasonably manage its tenants' parking needs on only three months' notice.

Moreover, the revised resolution does *not* require the County to actually provide replacement parking to Tenbrix's tenants; it merely requires the County to seek City approval. What if the City denies approval? What if no location exists for replacement parking that is proximate to Tenbrix's property? The County has simply not guaranteed replacement parking will be provided and has not committed to actually providing replacement parking. A guarantee and commitment are required. The County must remember *Bressi* and *Coachella Valley*.

And the County has provided no information about where the replacement parking would be located, how it would be accessed, or whether it would be adequate for Tenbrix's tenants' operational needs. Tenbrix is unable to determine whether such replacement parking will be suitable for its tenants – if it exists.

Based on the assertion that the County is seeking City's approval for unidentified and unspecified parking, Tenbrix guesses that a portion of Stage Road will be changed from no parking to allow for parking during the temporary-construction period. If this guess is correct, this cannot be open parking available for all. The street parking must be by permit to ensure that only Tenbrix's tenants whose parking has been taken by the County can use the area. And the County needs to monitor the area during the term of the temporary construction easement to ensure that there is no unauthorized parking (and coordinate towing if there is). The parking area must also be kept secure by the County. How will the County guarantee these things? Without this, legally, the County is providing zero replacement parking!

6. The County's revised resolution of necessity is unclear and needs clarification.

Further, some of the proposed revisions to the County's resolution of necessity are unclear and confusing. The proposed revisions to the resolution of necessity state that "the temporary construction easement will not be used for staging for the full 60-month period and instead will be used for only a portion of that time, not to exceed a period of twelve (12) consecutive months." But the proposed revisions go on to say that "the construction activities within the temporary easement may be completed in stages such that at most only 15 parking spaces are made unavailable for a maximum period of 6 consecutive months." Again, the County uses permissive language: "may" – will the construction activities be completed in stages or is that up to the discretion of the County's contractor? Are 15 parking spaces going to be made unavailable for six consecutive months followed by the other 15 parking spaces being made unavailable the next six-consecutive-month period, or is the County's temporary construction easement going to be used for a period not to exceed six consecutive months? Are 30 parking spaces being taken offline or 15? The County's draft resolution raises more questions than it answers. The County's resolution desperately needs clarification. Again, the County must consider *Bressi* and *Coachella Valley*.

7. The County's revised resolution of necessity fails to address how County personnel and contractors are to access the temporary-construction-easement area. This is yet another *Bressi* and *Coachella Valley* problem.

The proposed revisions to the County's resolution of necessity do not prohibit County personnel and contractors from traversing Tenbrix's property to access the temporary-construction-easement area. County personnel and contractors should be explicitly limited to accessing the easement area from the channel. If this prohibition is missing, the County creates valuation problems.

8. Conclusion.

In sum, the County's proposed partial abandonment and revised resolution of necessity fail to address many significant issues including (i) Tenbrix's litigation expenses due to the County's partial abandonment, (ii) proper valuation of the temporary construction easement for its full duration, (iii) concrete, enforceable County obligations, and (iv) details about replacement parking the County is to provide to Tenbrix's tenants, including location and timing.

Tenbrix therefore respectfully requests that the County continue its resolution of necessity hearing to implement the changes and clarifications needed to the resolution outlined in this letter. The County can then commission a new appraisal that properly assesses Tenbrix's property and make a new precondemnation offer before proceeding with a revised resolution of necessity. (See Cal. Code Regs., tit. 25, § 6182, subd. (i)(2).)

Very truly yours,

K. Erik Friess

kef

Enclosure: Tenbrix's January 13, 2025, objection letter

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
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K. Erik Friess
E-mail: rfriess@allenmatkins.com
Direct Dial: 949.851.5478   File Number: 395512.00005/4909-2841-9340.5

Via Email

January 13, 2025

Robin Stieler
Clerk of the Board of Supervisors
County of Orange
Post Office Box 687
400 W Civic Center Drive
Santa Ana, CA 92702

Email: Robin.Stieler@ocgov.com

Re: The County's January 14, 2025, hearing on a proposed resolution of necessity for partial condemnation of Tenbrix LTD.'s Amberwood Apartments property located at 7667 Stage Road (APN 066-584-09) in connection with County's Coyote Creek Flood Control Channel and the OC Loop Bikeway Project and Tenbrix's objections to adoption of such a resolution of necessity

Agenda Item No. 40

Dear Ms. Stieler:

This firm represents Tenbrix LTD., the owner of the Amberwood Apartments located at 7667 Stage Road in Buena Park (Assessor's Parcel Number 066-584-09), which is the subject of the County's notice of hearing to adopt a resolution of necessity authorizing partial condemnation for a five-year "temporary" construction easement on the property in connection with the County's Coyote Creek Flood Control Channel and the OC Loop Bikeway project.

We submit this letter to document and preserve Tenbrix's objections to the County's proposed resolution of necessity. Tenbrix requests that this objection letter be included in the record for Agenda Item Number 40 for the hearing for the Board to consider adoption of a resolution of necessity.

We request that copies of this objection letter be distributed to all County decision-makers prior to their considering the adoption of any resolution of necessity.

OBJECTIONS

1. The County has not satisfied State-mandated prerequisites for adopting a resolution of necessity. More specifically, the County failed to make an offer of just compensation based on an adequate appraisal of the property. Thus, the County can*not* adopt a resolution of necessity.

Under California's Eminent Domain Law, a condemning agency must comply with several procedural prerequisites before adopting a resolution of necessity and instituting a condemnation action. Among other requirements, the condemning agency: (1) must appraise the fair market value of the property to be condemned; (2) must make an offer of just compensation reflective of that value; (3) must provide a written statement explaining the basis of the agency's determination of fair market value; and (4) must engage in good-faith negotiations before initiating a condemnation offer. (Gov. Code, §§ 7267.1, 7267.2; Code Civ. Proc., § 1245.230.)

The County has not completed the above-listed prerequisites for adopting a resolution of necessity to condemn Tenbrix's property. The County is required to pay Tenbrix the fair market value of the property the County intends to take. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.310.) Accordingly, the County's appraisal must accurately reflect the fair market value of Tenbrix's property and take into account all relevant considerations.

But the County's appraisal is seriously defective, as detailed below. Because of these significant defects in the appraisal, the County has not properly made an offer under Government Code section 7267.2 and cannot make a finding that it has. Thus, the County cannot properly adopt a resolution of necessity.

The County's appraisal misses the proper value of Tenbrix's property.

Tenbrix's property is improved with a residential apartment complex – called Amberwood Apartments – with 122 one- and two-bedroom apartment units. Amberwood Apartments has lush landscaping and trees, which creates a tranquil feel for the apartment complex.

The County's appraiser concludes that the highest-and-best use is its current use: multifamily residential. But the appraiser provides no discussion or analysis regarding increasing the complex's density despite several recent California State laws that provide for increased density in particular circumstances. Nor is there any discussion or analysis regarding redevelopment of the property to maximize density and/or changing or augmenting its current use (e.g., mixed-use development). At a minimum, the County's appraiser should have completed these significant analyses.

Even though Tenbrix's property is improved and entitled, the County's appraiser disregarded the improvements, which is improper. By defining the property as "land only," the appraiser excluded from the analysis various severance damages (as discussed below). No law allows the County to appraise an *improved* property using the fiction that it is *vacant*.

The County's appraisal used non-reflective and outdated comparable sales.

To determine land value, the County's appraisal includes eight "comparable" land sales. All of these "comparable" sales were located in different cities from Tenbrix's property, with some properties as far as 21 miles away.

At least four "comparable" land sales are not zoned for multifamily residential; they are zoned commercial. It is unclear why the County's appraiser selected three commercially zoned land sales as "comparable" sales when the appraiser's highest-and-best-use conclusion is multifamily residential. The County's appraiser also selected a comparable sale zoned for transitional residential, which has a lower investment quality and price compared to Tenbrix's apartment complex.

The County's appraiser did not indicate whether these "comparable" land sales were put under contract at *un*entitled values. There was no discussion or analysis of the properties' entitlement status. This is a significant miss as buyers often seek residential entitlements *after* the properties are put under contract, thereby locking in *lower* prices per square foot. And the County's appraiser offers no discussion or analysis of the density of residential comparable sales compared with Tenbrix's property. Small-scale multifamily residential properties are less valuable than high-density residential properties.

The non-residential, unentitled "comparable" land sales used by the County's appraiser drove down the value conclusion for Tenbrix's property. These non-residential, unentitled "comparable" land sales do not reflect Tenbrix's property. The County's appraiser's residential "comparable" sales have significantly higher prices per square foot than the appraiser's non-residential "comparable" sales. Despite this, the County's appraiser chose a price per square foot in the *middle* of the range of the "comparable" sales. At a minimum, Tenbrix's price per square foot should have been at the top of the range, similar to the other residential sales.

Additionally, some of the sales dates of these properties were over two years before the date of value in the County's appraisal. Some sales were as far back as August 2022, which is a very different real-estate market. Residential property values have increased in these last three years. Such outdated "comparable" sales do not reflect fair market value in this rapidly escalating real-estate market. This should be reflected in the County's appraisal.

The County's appraisal ignored the income-producing nature of Tenbrix's property.

The County's appraiser used only the sales-comparison approach to value Tenbrix's property. The County's appraiser ignored that Tenbrix's property is income-producing. So the

County's appraiser should have also used the income-capitalization approach to value Tenbrix's property. This is a significant omission. The County's appraiser's miss of the income-capitalization approach is puzzling given that the appraiser valued the loss of the 30 parking spaces on a rent-per-month basis, thereby acknowledging the income-producing nature of the property.

The County's appraisal used a low annual rate of return to value the temporary construction easement.

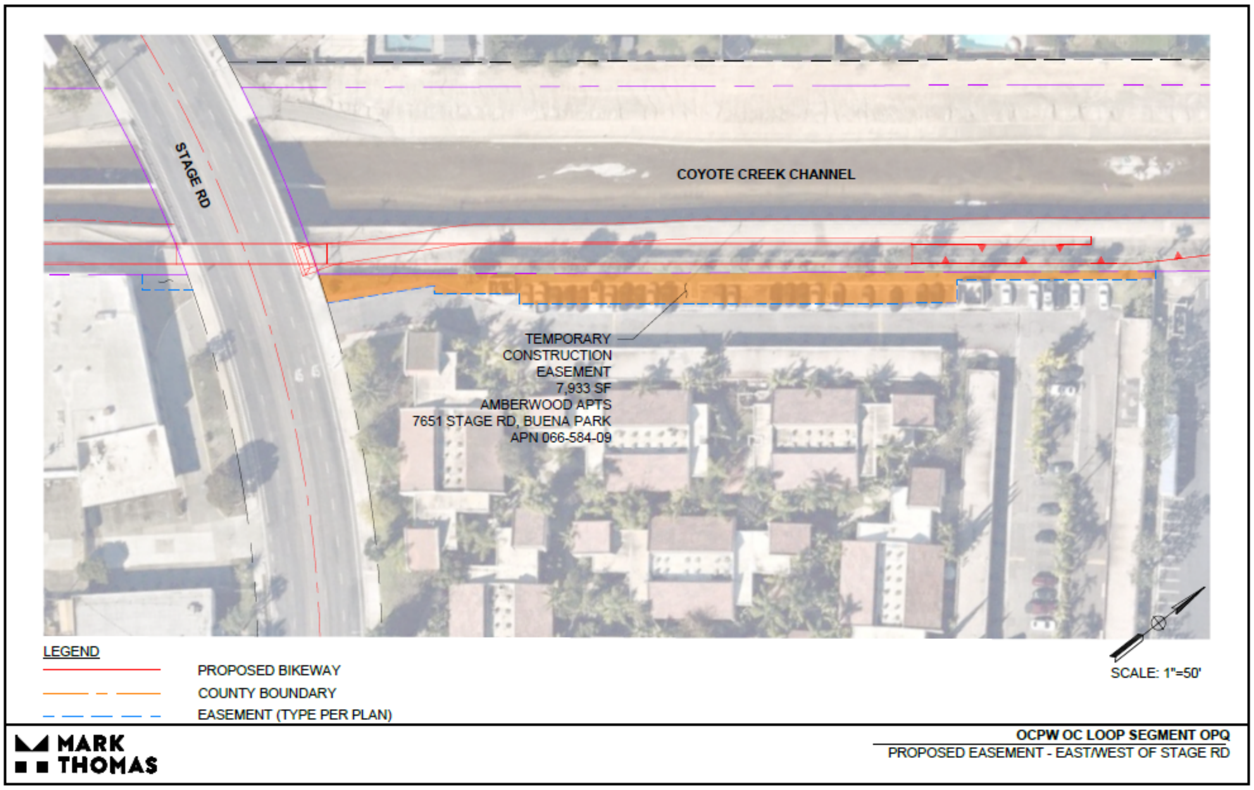
The County's appraiser selected a low annual rate of return to value the temporary construction easement: 7.5%. No analysis or reasoning is provided to explain the County's appraiser's seemingly arbitrary selection of 7.5%. Rates of return for temporary construction easements are typically several percentage points higher.

The County's appraisal's valuation of improvements within the temporary-construction-easement area is too low.

The County will be removing landscaping within the temporary-construction-easement area but does not specify what will be removed. There are over two dozen mature palm and fruit trees, shrubs, and grass in this area. There is no analysis provided about what landscaping will be removed due to the County's project, and how the $15.96-per-square-foot valuation for the landscaping was determined. The County's appraiser's valuation is too low since it does not provide for the planting of replacement *mature* palm and fruit trees. And the County's appraiser did not value severance damages for the aesthetic downgrade in landscaping during construction and after project completion.

The County's appraisal has a glaring *Bressi* and *Coachella Valley* problem, which led to significant undervaluing of the easement and resultant severance damages.

The County's five-year temporary construction easement is located within 30 parking spaces. The following is an aerial photograph that overlays the County's easement on these parking spaces:



There are several problems with the County's appraiser's valuation of the 30 parking spaces located within the temporary construction easement area.

First, there is no explanation or analysis about how the appraiser concluded that each parking space's monthly rent is $250.

Most significant, the appraiser's valuation of the 30 parking spaces violates *Bressi* and *Coachella Valley*. The County's appraiser valued the 30 parking spaces as being unavailable for 12 months even though the duration of the County's temporary construction easement is 60 months.

An agency's resolution of necessity *conclusively establishes* the scope of the easement being acquired. This means that the County cannot introduce evidence to reduce the scope of the easement identified in the resolution of necessity. Instead, the "most injurious use of the property reasonably possible" under the easement's language *must* be assumed in valuing the easement. (*County of San Diego v. Bressi* (1986) 184 Cal.App.3d 112, 123; see also *Coachella Valley Water District v. Western Allied Properties* (1987) 190 Cal.App.3d 969, 978.) *Bressi* and *Coachella Valley* prohibit a condemning agency from trying to avoid paying full compensation for an easement that it is taking by arguing that the agency "really" plans to use the easement less harmfully than allowed under the easement language. That is *exactly* what the County is attempting to do here by valuing the parking impacts for 12 months only while the total duration of the temporary construction easement is 60 months in the County's resolution of necessity.

There is *no* 12-month limitation in the County's resolution of necessity for the temporary construction easement. And there is *no* extraordinary assumption in the County's appraisal that specifies that the 30 parking spaces will be unavailable for 12 months only.

To comply with *Bressi* and *Coachella Valley*, the County must either: (a) change the duration of its temporary construction easement identified in the resolution of necessity to 12 months, or (b) the County's appraisal must be redone to properly value the *full* scope and duration of the five-year temporary construction easement.

The County's project is not planned or located in a manner that will be most compatible with the greatest public good and the least private injury. In addition to failing to plan its project to cause the least private injury, the County's appraisal grossly underestimates Tenbrix's devastating severance damages, both for physical changes caused by the County's project and impacts to parking and tenancy.

A public agency may not exercise the power of eminent domain for a proposed project unless it establishes that "the project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury." (Code Civ. Proc., § 1240.030, subd. (b).) The County's project is *not* planned to create the least private injury to Tenbrix.

The County's project eliminates 30 parking spaces for five years. These 30 parking spaces are assigned to 30 one-bedroom apartment units and are included in the rental rates for these apartments. These parking spaces are necessary for Amberwood residents as there is no practical street parking available. By eliminating 30 parking spaces for five years, the County's project in effect renders 30 one-bedroom apartment units unavailable for the five-year term resulting in several millions of dollars of lost rent. And Tenbrix will need to offer significant rent reductions and concessions to try to minimize the loss of these tenants caused by years-long insufficient parking. Additionally, the loss of 30 parking spaces may cause Tenbrix to be out of compliance with its entitlements.

A significant portion of Amberwood tenants are long-term residents. Many tenants are elderly and are part of the local Korean community. Once these long-term residents are displaced, they likely will never return, negatively impacting Amberwood and the local community. Tenbrix will experience increased resident turnover and will incur costs in locating and obtaining replacement tenants (e.g., marketing costs, updates). Non-long-term residents typically vacate every two years. It takes about 10 turnover cycles to locate a long-term resident. Each turnover costs Tenbrix several thousand dollars. It will take years and years for Tenbrix to once again achieve stable residency for the 30 apartments, and this will likely cost well over one million dollars.

The decreased parking and following impacts, together with the five-year "temporary" construction easement involving construction trucks, equipment, and heavy machinery, will likely lead to increased vacancies and reduced rental rates for Amberwood Apartments, especially for the apartment units closest to the construction area. And the vacancies and reduced rental rates are not limited to the construction period; because of physical changes to Tenbrix's property (e.g., less landscaping, fewer trees, increased graffiti, loss of privacy due to above-grade bridge), apartment units closest to the take area will be permanently impacted. The County's appraisal ignores these severance damages. Ridiculously, the County's appraisal identifies *zero* severance damages.

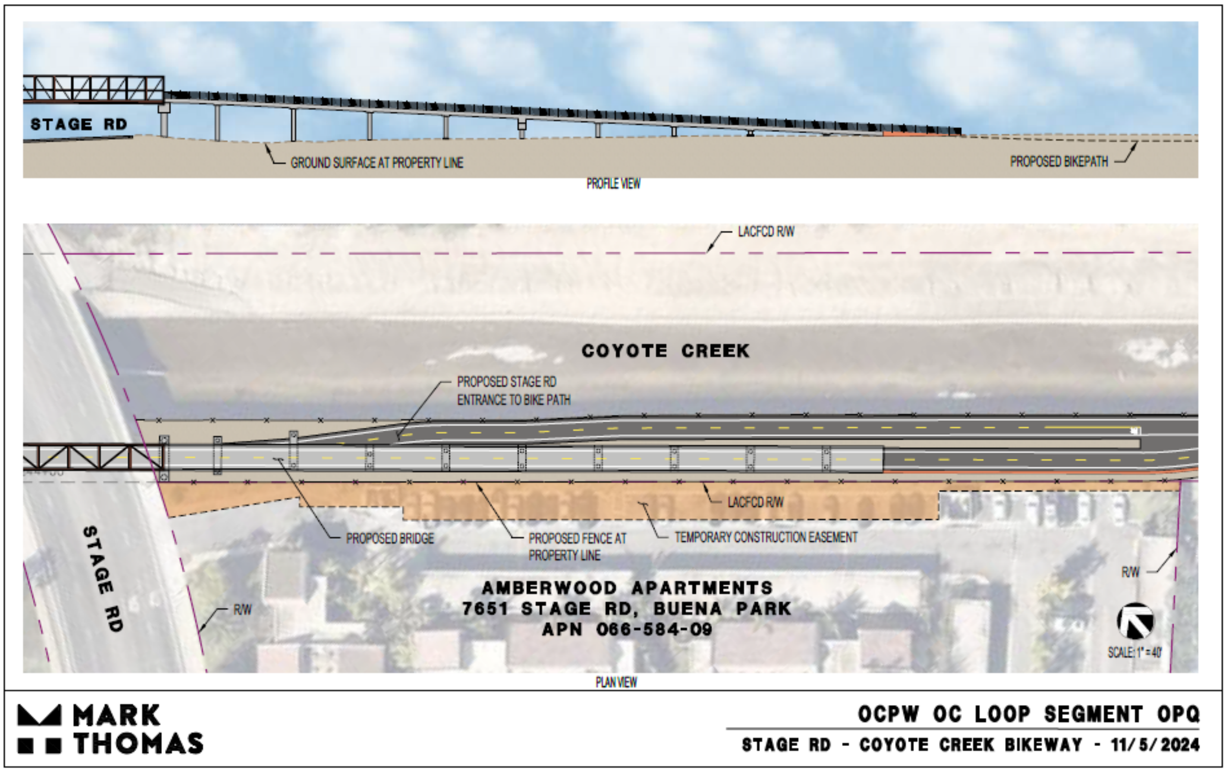
During the County's extended construction period, Tenbrix will lose its mature landscaping and palm and fruit trees that provide a visual barrier to the existing channel. And after the County's construction is over, Tenbrix will need to install replacement landscaping. But Tenbrix cannot install replacement *mature* palm and fruit trees and landscaping. Tenbrix will be limited to newer, shorter palm and fruit trees and shrubbery, which will take years to reach the condition of the existing trees and shrubs. The negative aesthetic impacts will result in Tenbrix's inability to obtain market rent.

The County's appraisal ignored the trash enclosure in the take area.

There is a trash enclosure located within the temporary construction easement area. It is unclear if this trash enclosure will be protected in-place by the County during the construction period. Regardless of whether the trash enclosure is removed or protected in-place, it is unavailable during the five-year temporary-construction-easement period. So Tenbrix will need to build a new trash enclosure elsewhere on the property, which may result in the loss of even more parking spaces and will subject Tenbrix to the City of Buena Park's discretionary review, possibly resulting in the need to reconfigure *all* parking.

The County's appraisal ignored impacts caused by the proposed bridge.

In the after condition, Amberwood Apartments will face a massive, above-grade concrete bridge rather than its current open perspective. The following is an exhibit that depicts the County's proposed bridge structure adjacent to Amberwood Apartments (the area in light grey is the above-grade portion of the bridge):



This massive concrete bridge will attract graffiti, which Amberwood will not be able to cover or address as the bridge is located on County land. And the bridge structure will also attract crime and homeless encampments, which will negatively impact Tenbrix's property. Finally, the entire apartment complex, especially the apartment units closest to the construction area, will experience a loss of privacy due to the bridge's above-grade view into the complex.

The County's appraisal missed restoration costs.

The County's appraisal missed the restoration costs needed to address the negative impacts of its project.

First, even though the 30 parking spaces will be used for construction staging and related uses, there is no compensation for Tenbrix to resurface the parking spaces. It is unclear if City approval will be required to restore the 30 affected parking spaces. And there is no consideration of permanent impacts if the City refuses to allow the restoration of the 30 parking spaces and instead limits restoration of fewer parking spaces.

The County's resolution of necessity does *not* prohibit County personnel from traversing Tenbrix's remainder property to access the temporary-construction-easement area; County personnel are *not* limited to accessing the easement area from the channel. The County's resolution of necessity does *not* prohibit County personnel from using Dodds Avenue – a private street running throughout Amberwood Apartments – to access the easement area. Not only will construction trucks and heavy construction equipment and machinery deteriorate the roadway's pavement, but they create unsafe conditions for Amberwood residents and employees. And after completion of County construction, Tenbrix will need to restore the deteriorated Dodds Avenue at a significant cost.

Second, Tenbrix will need to clean, repaint, and repair the garages and buildings that face the five-year temporary construction easement area. These garages and buildings will experience increased dust and debris during the construction period.

It is also unclear if the County will be installing light poles for its project in the area adjacent to Tenbrix's property. If so, there may be light intrusion and impacts to the apartment units adjacent to the bridge. Light intrusion will negatively impact the rental rates for these apartment units.

The County's appraisal missed construction impacts to Tenbrix's property.

Tenbrix will need to address and manage tenant issues and other inconveniences during the County's years-long construction period. Increased noise, dust, debris, vibrations, and other disruptions caused by construction will drive away Amberwood tenants – not just those tenants who lost their parking because of the County's project. Tenbrix will also experience light and noise pollution during the County's construction. The County will likely use noisy electric generators to power flood lights for its construction. This will negatively impact all Amberwood tenants, especially tenants with windows facing the construction area. Tenbrix will need to offer rent reductions and concessions to try to minimize the loss of tenants, and it will need to offer significant incentives to attract prospective tenants. Tenbrix's marketing and turnover costs will increase, likely costing Tenbrix well over one million dollars.

2. Conclusion.

Because the evidence presented in these objections establishes that the County's appraisal is fundamentally flawed, the County must commission a new appraisal that properly assesses Tenbrix's property, and the County must make a new offer before proceeding with a resolution of necessity. (See Cal. Code Regs., tit. 25, § 6182, subd. (i)(2).)

Tenbrix therefore respectfully requests that the County (1) *not* proceed with the adoption of any resolution of necessity and that the County instead (2) obtain a new or updated appraisal that properly values the property and resultant severance damages and (3) make a proper offer to purchase.

Very truly yours,

K. Erik Friess

KEF

cc: Nazani N. Temourian
Brian English