



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Department Name:** Public Works/General Services  
**Department No.:** 054 (PW)/063(GS)  
**For Agenda Of:** August 29, 2023  
**Placement:** Departmental  
**Estimated Tme:** 25 minutes  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** 4/5

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**TO:** Board of Supervisors  
**FROM:** Department Scott McGolpin, Director of Public Works, (805) 568-3010  
Director Kirk Lagerquist, Director of General Services, (805) 560-1011  
Contact Walter Rubalcava, Deputy Director – Water Resources Division, (805) 568-3436  
Info: Skip Grey, Assistant Director of General Services, (805) 568-3083

**SUBJECT:** Resolution of Necessity to Acquire Easements for Toro Canyon Oil Water Separator Project, Santa Barbara, California, by the County of Santa Barbara (APN 155-020-041), First Supervisorial District

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**County Counsel Concurrence**

As to form: Yes

Other Concurrence: Real Property

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Recommended Actions:**

That the Board of Supervisors:

- a) Approve, adopt, and authorize the Chair to sign the Resolution of Necessity to acquire real property (easements) for the Toro Canyon Oil Water Separator Project (WA8231) on property owned by Mary McEwen and Dan Bellaart, Trustees of The McEwen-Bellaart Family 2015 Revocable Living Trust Dated July 22, 2015, identified on portions of County Assessor Parcel Number 155-020-041, in the unincorporated area of Santa Barbara of Toro Canyon, First Supervisorial District;
- b) Authorize the Director of Public Works, or designee, to execute any and all documents and to expend funds for deposit with the State Treasurer's Office in a sum equal to the appraised market value for the easements, in the amount of \$13,203 for APN 155-020-041, and any additional related costs and fees, in order to acquire fee interest; and
- c) Find that pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15269(c) Emergency Projects, these actions are necessary to prevent or mitigate an emergency, and are part of the Toro Canyon Oil Water Separator Replacement Project which the Board previously found exempt

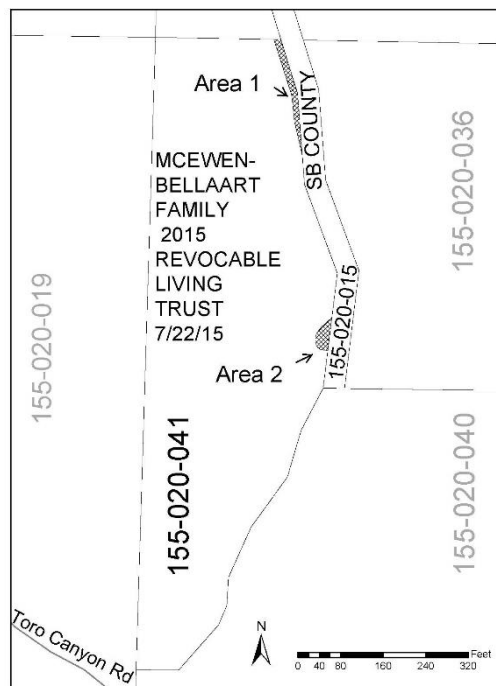
from CEQA. A Notice of Exemption was filed with the Clerk of the Board on July 27, 2023, and can be located at:

<https://content.civicplus.com/api/assets/86a7c3e9-68aa-49b2-8e9d-053e1ba2c8c0>

**Summary Text:**

This item is before the Board to adopt a Resolution of Necessity to facilitate the acquisition of two easements for the Toro Canyon Oil Water Separator Replacement Project (Project). It is in the public interest and necessity to acquire these easements to complete the Project. The Project is necessary to address damage to the facility as a result of the Thomas Fire and 1-9 debris flow, to prevent failures during high flows as experienced during the winter of 2023, and to bring the system up to current Health & Safety code standards, all of which will serve to prevent potential future oil leaks from the facility into Toro Creek, protect resources, and downstream property owners. Alternatives to the Project were previously considered and determined infeasible.

The Project is located at the upper headwaters of Toro Creek in steep terrain. The replacement facilities will be located in the same general footprint as the current facilities on three separate private parcels and one County owned parcel consisting of a long 40-foot wide strip of land (APN 155-020-015). The oil water separator is located at the end of a steep, narrow dirt road on a private parcel to the north. This road traverses several parcels and contains the buried pipeline. It is essential for access and safety. The McEwen-Bellaart Family Trust property (APN 155-020-041) contains two portions of the access road, and therefore a portion of this pipeline and essential access to the oil water separator above. The two portions are labeled as Area 1 and Area 2. Area 1 is 2,406 square feet and is necessary for the pipeline and for access to the pipeline and the oil water separator. Area 2 is 1,160 square feet and does not contain the pipeline but includes a curve in the road and is therefore necessary for access to the pipeline and the oil water separator.



Lower Portion of Project Area Easements on 155-020-041

Due to steepness on all sides of the canyon, unstable terrain, and a year-round flowing tributary to Toro Creek, the oil pipeline must be replaced in the same general footprint as the existing facilities. In order to avoid acquisition of these easements, consideration was made to replace the pipeline and access road within the narrow portion of land the County owns adjacent to 155-020-041. The County and its engineering team concluded such efforts to relocate the Project were unreasonable due to: 1) the engineering challenges to design this section of pipeline upon a steep embankment, 2) the effort of excavating a new access road adjacent to the creek, 3) the additional high costs of construction work, 4) the increased risk of damages to an exposed section of new aboveground pipeline in a region subject to debris flows, and 5) safety concerns for conducting future maintenance and inspection work on a steep, unstable embankment. Because of the unstable banks on both sides of the channel, it is not safe to walk up the creek within the County 40-ft parcel. Therefore, Areas 1 and 2 are necessary for both foot and vehicle access to the pipeline and the oil water separator. No other reasonable alternative configurations are available that would provide a safe, cost-effective, and reasonable route for the pipeline, or safe, cost-effective, and reasonable access to the oil water separator.

Upon adoption of this Resolution, County Counsel and Special Legal Counsel shall commence with the necessary condemnation proceeding in Superior Court.

**Background:**

The Project is necessary to replace the existing oil water separator installed and operated by the U.S. Environmental Protection Agency (EPA) from 1998-2009. Prior to installation, EPA geologists considered the feasibility of controlling or otherwise stopping the flow at the source, but determined that such attempts would be hazardous and infeasible and no other acceptable options were available. After 2009, the County became the oversight agency in coordination with the State Water Resources Control Board.

The EPA-installed oil water separator system consists of a flow interceptor that captures water and oil from an artesian well, a concrete separator baffle box that skims the crude oil, and a pipeline that conveys oil via gravity to an underground storage tank located about 1,200 feet downstream of the separator.

After a series of structural failures in the system caused by the Thomas Fire and subsequent debris flows in 2017/2018, an Engineering Planning Study was prepared to evaluate replacement options for the system. The outcome of the study determined that the entire system needed replacement and that the only practical location was in same general footprint as the EPA-installed facility. Funding for the Project, including engineering design and project construction, was approved by the Board in July 2022. At that time, the County began discussing the replacement project and the required easements for construction, installation, and long-term operation and maintenance of the facilities with the affected property owners.

Two of the three adjacent property owners with major portions of the Project on their lands have agreed to permanent easements required for the Project to be installed and maintained. Construction is scheduled to be completed in fall of 2023. However, the Project cannot be completed without the easements on the McEwen-Bellaart Family Trust property.

On April 27, 2023, the County provided the property owner an initial exchange agreement whereby a portion of the County-owned parcel, 155-020-015, would be transferred in fee to the property owner with reserved easement for the Project, in exchange for permanent easement on Areas 1 and 2 of the McEwen-Bellaart Family Trust property. The agreement includes additional provisions to benefit and protect the owner's commercial interests and preferences. Negotiations on this exchange agreement are ongoing. If mutually acceptable terms are agreed upon between the owner and the County, the condemnation effort will be halted.

In May 2023, a State-licensed real estate appraiser completed an appraisal based upon the fair market value of the easements needed on the Property and the amount of \$13,203 was determined to be the fair market value for the easements needed on this Property. An offer of just compensation to purchase the easements needed on the Property was sent to the owners of the subject property on June 23, 2023. Although negotiations will continue, proceeding under eminent domain authority is necessary at this time to meet critical project milestones.

The Resolution of Necessity must contain a general statement of the public use for which the Property is to be taken and a reference to the statute that authorizes the County to acquire the Property by eminent domain. As stated herein, the real property interests are being acquired for the Toro Canyon Oil Water Separator Project as generally described above. The County is authorized to acquire property under the provisions of the California Constitution, and the California Government Code and Code of Civil Procedure. The Resolution of Necessity must describe the general location and extent of the property being taken. The property is described above and is being acquired as easements.

The Resolution of Necessity must also declare that the County has found and determined the following:

- (1) The public interest and necessity require the proposed project;
- (2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- (3) The property described in the resolution is necessary for the proposed project.
- (4) That either the offer required by Section 7267.2 of Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

As set forth in the narrative of this Board Letter together with supporting Project documents previously considered by the Board, each of the required findings can be factually supported, as public interest and necessity requires the Project. It has been planned and located in a manner that will be most compatible with the greatest public good and least private injury and the real property interests are necessary for the Project. Furthermore, a written offer containing a summary of the basis of the real estate appraisal valuation has been made to the Owners which was rejected. While it is the intent to continue ongoing negotiations with the property owners, it is necessary to proceed with the Resolution of Necessity at this time in order to meet Project timelines and prevent or mitigate an emergency.

Pursuant to Section 1245.235 of the Code of Civil Procedures, a hearing must be held prior to adoption of a Resolution of Necessity provided in Attachment 1. Notice of this hearing was sent to McEwen-Bellaart Family Trust.

