



# BOARD OF DIRECTORS

## Agenda Report

Administration Building  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
(714) 593-7433

---

**File #:** 2022-2054

**Agenda Date:** 1/26/2022

**Agenda Item No:** 3.

---

**FROM:** James D. Herberg, General Manager  
Originator: Kathy Millea, Director of Engineering

**SUBJECT:**

**ADOPTION OF A RESOLUTION OF NECESSITY FOR THE BAY BRIDGE PUMP STATION AND FORCE MAINS REPLACEMENT PROJECT**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION:

- A. Conduct a public hearing to receive written and oral comments on the proposed adoption of a Resolution of Necessity for the Bay Bridge Pump Station and Force Mains Replacement Project.
  - 1. Open the Public Hearing
  - 2. Receive staff report and recommendations
  - 3. Report of written communications by Clerk of the Board
  - 4. Public Comment
  - 5. Close Public Hearing
  - 6. Discussion by Board of Directors;
  
- B. Adopt Resolution of Necessity No. OC SAN 22-03 entitled, "A Resolution of the Board of Directors of the Orange County Sanitation District Finding and Determining that the Public Interest and Necessity require the Acquisition by Eminent Domain of Interests in Certain Real Property for Public Use and Authorizing and Directing Condemnation of Portions of Assessor Parcel No. 440-132-60"; and
  
- C. Authorize and direct OC San's General Counsel to prepare, commence, and prosecute a proceeding in eminent domain for the purpose of acquiring the necessary property interests for the Project.

**BACKGROUND**

The Orange County Sanitation District ("OC San") is implementing the Bay Bridge Pump Station and Force Mains Replacement Project, Project No. 5-67 (the "Project"), a vital public health and safety measure to replace an existing pump station and associated force mains in the City of Newport Beach. The Bay Bridge Pump Station is critical to OC San operations, as it conveys approximately 50 to 60 percent of the total Newport Beach wastewater flow through the force mains to Treatment

Plant No. 2. The pump station and force mains are at the end of their useful life, and the Project will replace them with facilities that meet current design and reliability standards.

The Project requires the acquisition of certain property interests from Bayside Village Marina LLC, a California Limited Liability Company (“Bayside Village”) directly adjacent to and across Pacific Coast Highway from the existing pump station. OC San’s Board of Directors (the “Board”) previously directed Staff and General Counsel to initiate the eminent domain process by sending a Notice of Intent to Appraise to Bayside Village. An appraisal of the property interests needed for the Project thereafter was prepared and a formal offer to acquire those property interests was made to Bayside Village on September 7, 2021.

Despite extensive efforts, staff has been unable to reach an agreement with Bayside Village for the voluntary purchase of the required property interests. Therefore, the Board must pursue the acquisition of the required property interests through eminent domain. The next step in the eminent domain process is to adopt a Resolution of Necessity (“Resolution”). If adopted, the Resolution would authorize OC San’s General Counsel to initiate an eminent domain proceeding. Adoption of the Resolution would not, however, foreclose continued negotiation with Bayside Village toward a voluntary purchase of the required property interests.

### ***Project Background***

The Project is intended to replace the existing Bay Bridge Pump Station and associated force mains owned and operated by OC San in Newport Beach. The Bay Bridge Pump Station is over 50 years old, outdated, and no longer meets structural, electrical, or maintenance standards. Further, the force mains under the Newport Bay Channel were constructed in 1970 and cannot be easily inspected to determine reliability.

The replacement pump station facility and force mains will be built to current design and reliability standards, thereby preventing spills and ensuring continuous service to the community for the design lifespan of 50 years. As the existing pump station is accessed directly from East Coast Highway, where traffic creates safety hazards for OC San vehicles, the Project also will increase safety for OC San Operations & Maintenance personnel by establishing an entry to and exit from the site that can be accessed more easily and safely by maintenance crews and drivers. In addition, the Project will improve odor control through a new odor control facility, to include a vapor-phase odor control scrubber system as well as two 10-foot diameter tanks to accommodate liquid phase odor control.

The Project includes demolition of the existing pump station building and construction of new pump station facilities, including a modernized pump station, generator, and odor control station, within and adjacent to the existing OC San property. The new, expanded pump station facility will be approximately 14,500 square feet in site area, as compared to the approximately 4,800 square-foot existing facility. In addition, portions of the existing OC San gravity sewer system would be replaced and/or reconstructed to convey wastewater to the new pump station wet well.

The force main improvements would include the construction of 1,500 linear feet of dual force mains (up to 32 inches in diameter) across the Newport Bay Channel south of Bay Bridge to connect the new pump station to the existing OC San force main system west of the Channel. Although various construction methods were studied, the currently proposed means and methods for constructing the Project will be through a microtunneling process.

OC San certified the final environmental impact report for the Project on February 24, 2021. OC San is now implementing and advancing design and property interest acquisitions for the Project.

### ***Property Interests Required***

Construction and use of the Project will impact Bayside Village's property located at 100 E. Coast Highway and 100 N. Bayside Drive, Newport Beach, California 92660 (Assessor Parcel Number 440-132-60) (the "Property"). The Property is comprised of approximately 5.768 acres of land on the Newport Harbor bay front adjacent to Coast Highway, including approximately 9,000 sq. ft. of submerged tidelands, and is currently being used for marina parking and dry storage of vehicles and boats. Attachments B and C provide information on property layout and location.

The real property requirements from Bayside Village for the Project include the acquisition of a partial fee interest of 9,713 sq. ft. (Parcel No. 5-67-01, or the "Fee Parcel"), a moveable Permanent Access Easement of 16,415 sq. ft. (Parcel No. 5-67-02, or the "Permanent Access Easement"), a Temporary Road Easement of 1,873 sq. ft. (Parcel No. 5-67-03, or the "Temporary Road Easement"), three Temporary Construction Easements of 401 sq. ft., 1,588 sq. ft., and 387 sq. ft. (Parcel Nos. 5-67-04, -05, and -06, respectively, or "TCE(s)"), and two Sewer Easements of 1,950 sq. ft. and 890 sq. ft. (Parcel Nos. 5-67-07 and -08, respectively, or "Sewer Easement(s)") (collectively, "Property Interests"). The Property Interests are more particularly described and depicted within the cover sheets, legal descriptions, and plat maps attached as Exhibits "A" through "E" of the Resolution (Attachment A). The Property Interests are also shown on the map attached hereto as Attachment D.

The Property Interests are needed to construct, maintain, and operate the new relocated pump station and force mains piping system and to demolish and reconstruct the existing pump station facilities.

The Permanent Access Easement will provide access to the new facility from Bayside Drive both during and after Project construction. The location and layout of the Permanent Access Easement were selected to utilize the existing Bayside Drive curb cut and a portion of the drive aisle currently serving the Property together with a portion of the contemplated access route established in consultation with and at the recommendation of Bayside Village in light of its stated future development plans. That location and layout are intended to be moveable at Bayside Village's discretion, to facilitate potential future redevelopment of the remaining land, provided that any proposed alternative location and layout maintain a minimum drive aisle width and provide substantially similar access to OC San. After Project construction, OC San's use of the Permanent Access will be limited to no more than 15 vehicle trips per week, except in cases of emergency.

The Temporary Road Easement is needed to allow safe and efficient movement of construction vehicles and equipment during Project construction. And the TCEs are needed to provide sufficient work area during Project construction. These acquisitions are temporary in nature such that they will expire on fixed terms defined within the cover sheets to their respective legal descriptions attached to the Resolution (Attachment A). The Temporary Road Easement is for a term of twenty-four (24) months, commencing after thirty (30) days' written notice to the property owner. TCE Parcel Nos. 5-67-04 and -05 are each for a term of twenty-four (24) months, and TCE Parcel No. 5-67-06 is for a term of forty-two (42) months, each commencing after thirty (30) days' written notice to the property owner.

### ***Efforts to Acquire the Property Interests by Negotiation***

In early-2021, the Board directed Staff and General Counsel to proceed with obtaining an appraisal of the Property Interests. OC San retained Stuart D. DuVall, MAI of George Hamilton Jones, Inc. to perform an appraisal of the Property for purposes of making an offer of compensation to acquire the Property Interests by negotiation. Bayside Village was given notice of OC San's notice of decision to appraise the Property on or about May 26, 2021. Mr. DuVall completed his appraisal on August 25, 2021, and the Board thereafter in closed session approved the appraisal and authorized Staff to make an offer of compensation to Bayside Village in the full amount of the appraisal pursuant to the requirements of Government Code Section 7267.2. OC San formally extended its written offer of compensation for the Property Interests to Bayside Village on September 7, 2021.

The Board authorized Staff to serve Bayside Village with a Notice of Intention to Adopt a Resolution of Necessity ("NOI") to acquire the Property Interests by eminent domain in late-September 2021. The NOI was served on October 15, 2021. The hearing on the proposed Resolution of Necessity originally was set for November 17, 2021. At the request of Bayside Village, with the Board's concurrence, that hearing date was continued to January 26, 2021, and a revised NOI with the new date was prepared and served, to allow the parties to participate in a mediation with the Honorable John W. Kennedy, Jr. (Ret.) at JAMS on December 20, 2021. Despite making some progress to bridge the sizeable gap between their respective valuation positions, the parties were unable to reach a settlement at the mediation. Nevertheless, Staff intends to continue negotiating with Bayside Village in hopes of achieving a voluntary purchase of the Property Interests even assuming the Resolution is adopted.

A summary of correspondence/contacts between Staff/General Counsel and Bayside Village from and after service of OC San's notice of decision to appraise is included as Attachment E hereto.

### ***Resolution of Necessity***

In order to permit the filing of an eminent domain proceeding, the Board must approve and adopt a Resolution of Necessity, by at least a 2/3 majority vote, finding and determining each of the following:

- The public interest and necessity require the proposed Project;
- The proposed Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
- The property interests sought to be acquired are necessary for the proposed Project; and
- The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record.

These elements are to be considered by the Board in light of the full administrative record, including without limitation, the Staff presentation on the item and any objections made during the public hearing.

Bayside Village and/or its designated representative affected by the Resolution may request an appearance to speak to the Board on matters of Project design and the impact to the Property when the Resolution is considered. The issue regarding compensation for the value of the property affected by the Resolution should not be discussed. In the event the Board approves the Resolution

(Attachment A), OC San's General Counsel will proceed with litigation in order to obtain possession and ultimate use of the Property Interests. Staff will continue negotiations with Bayside Village throughout the eminent domain process with the objective of reaching an agreement on the acquisition without the necessity of trial.

Adoption of the Resolution of Necessity will not foreclose continued negotiations between the parties for a voluntary purchase of the Property Interests.

## **RELEVANT STANDARDS**

- Comply with Government Code Section 7267.2
- Operate and maintain facilities to minimize impacts on surrounding communities, including odor, noise, and lighting
- Ensure the public's money is wisely spent
- Ensure OC San's mission statement: "To protect public health and the environment by providing effective wastewater collection, treatment, and recycling." In order to fulfill this mission, OC San must prevent wastewater discharges by, *inter alia*, replacing wastewater collections facilities that are at the end of their useful life.

## **PROBLEM**

OC San needs to obtain the Property Interests from Bayside Village in order to replace the existing aged facilities. Despite their best efforts, Staff has been unable to reach an agreement for the voluntary sale/purchase of the property interests from Bayside Village. Therefore, the Board must exercise its power of eminent domain. The next step in the process is the adoption of a Resolution of Necessity for the acquisition of these interests.

## **PROPOSED SOLUTION**

Adoption of a Resolution of Necessity in order to proceed with the eminent domain process.

## **TIMING CONCERNS**

Failure to adopt the Resolution now would prevent the acquisition of the needed Property Interests by eminent domain, thereby affecting the timing and/or the ability to deliver the Project, which is needed to replace a pump station and force main sewers that are at the end of their useful lives.

## **RAMIFICATIONS OF NOT TAKING ACTION**

Without this Resolution, OC San would be precluded from pursuing an eminent domain proceeding to acquire the Property Interests needed to replace critical infrastructure that has reached the end of its useful life, thus exposing Newport Bay to an unacceptable risk of raw sewage spills.

## **PRIOR COMMITTEE/BOARD ACTIONS**

August 2021 - Approved the appraisal of Back Bay Landing at Coast Highway and Bayside Drive in Newport Beach for report titled "OC San Pump Station Bay Bridge Pump Station Expansion Project"

dated August 25, 2021; and authorized staff to offer Bayside Village Marina, LLC in the full amount of the appraised value for the real property interests and that are needed to construct the Project; and authorize staff to reimburse Bayside Village Marina, LLC for the reasonable costs of an independent appraisal.

February 2021 - Authorized staff to retain an appraiser to appraise the property interests that OC San needs to construct the Bay Bridge Pump Station and Force Mains Replacement Project; and issue a Notice of Intent to Appraise to the property owner.

### **ADDITIONAL INFORMATION**

The acquisition of specified real property interests is required for the construction of the Project. A statutory offer has been made to the property owner and negotiations are ongoing. Adopting the Resolution of Necessity and commencing an eminent domain proceeding is requested.

### **CEQA**

OC San certified its Final Environmental Impact Report for the Project on February 24, 2021.

### **FINANCIAL CONSIDERATIONS**

This request complies with the authority levels of OC San's Purchasing Ordinance. This item has been budgeted (Budget Update, Fiscal Year 2021-2022, Appendix A, Page A-7, Bay Bridge Pump Station and Force Mains Replacement Project, Project No. 5-67) and the budget is sufficient for the recommended action.

### **ATTACHMENTS**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Attachment A - Resolution No. OC SAN 22-03
- Attachment B - Location of the Property
- Attachment C - Photo Aerial Exhibits
- Attachment D - Map of Proposed Acquisitions
- Attachment E - Correspondence/Contact Summary
- Attachment F - Correspondence from Bayside Village's Counsel