



AGENCY: City Council
MEETING DATE: June 12, 2023
DEPARTMENT: Public Works
PRESENTED BY: John Smith
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AGENDA ITEM SUMMARY

TITLE:

Staff Report Regarding Resolution of Necessity for the Acquisition of 1.65 Acres of Permanent Easement on the Property Identified as APNs 019-630-05, 019-640-01, 019-640-04 for the Purpose of Constructing a Primary Water Transmission Line

SUMMARY:

The City of Fort Bragg proposes to construct a section of a primary water transmission line that delivers raw water from sources at Waterfall Gulch, Newman Reservoir, and Summers Lane Reservoir to the City's water treatment plant and all uses appurtenant thereto ("Project"). The existing primary raw water transmission line is reaching the end of its service life and pipe failures are becoming more regular and widespread. The Project's purpose is to increase the reliability and resilience of the raw water supply system. This requires the construction of a subsurface waterline and certain associated facilities within the property identified as APNs: 019-630-05, 019-640-01, and 019-640-04.

To accommodate the Project, the City needs to acquire a permanent easement ("Permanent Easement") which is more fully described and depicted in the Resolution.

The larger parcel within which the Permanent Easement is located is owned by Redwood Timber Company LLC, RJS TIC HTC LLC, PV TIC HTC LLC, and RMB TIC HTC LLC ("Owner"). The property's current use is a timber operation.

Public Works and consultant staff have been in contact with representatives for the subject property Owner since 2019 to work on Project details and attempt to obtain the needed Permanent Easement by negotiation. Unfortunately, City efforts to resolve this matter by negotiation have not resulted in an executed agreement to date.

As a voluntary acquisition has not been reached with the Owner, at this time Staff recommends the adoption of a Resolution of Necessity to protect the Project's current construction schedule.

DISCUSSION:

Pursuant to Section 19, Article I of the California Constitution, Section 37350.5 and 38730 of the California Government Code, Sections 1230.010 et seq. 1240.010 of the California Code of Civil Procedure, Section 14.04.010 et seq. of the Fort Bragg Municipal Code and other applicable law, the City is authorized to acquire the Permanent Easement by eminent domain, provided certain procedural steps are followed.

Property considered for acquisition by the City is typically appraised, and an offer thereafter made to the owner of record based on the approved appraisal. Pursuant to

Section 7267 of the Government Code, these requirements do not apply to the acquisition of any easement or right-of-way to be acquired for the construction, reconstruction, alteration, enlargement, maintenance, renewal, repair, or replacement of subsurface waterlines. As such, the offer typically required by Section 7267.2 of the Government Code does not need to be made to the Owner.

The City is in the process of having the Permanent Easement appraised and intends to make an offer to the Owner for the appraised amount following approval of same. However, due to the Project's construction schedule, it is City staff's recommendation that the City commence an eminent domain action to acquire the Permanent Easement. Prior to the filing of an eminent domain action, the City must hold a hearing on the proposed Resolution of Necessity (Exhibit 1). The hearing must be duly noticed, which notice must give the Owner an opportunity to be heard, provided that the Owner has timely filed a request to be heard in writing with the City prior to the hearing. Attached is a copy of the Notice of Hearing, which was delivered in accordance with the applicable statutes (Exhibit 2).

After conducting the public hearing, if the City makes the following findings, the City should adopt by at least a two-thirds (2/3) vote of the City Council the attached Resolution, authorizing condemnation proceedings for the purpose of acquiring the Permanent Easement.

With respect to environmental review, the Project was previously analyzed by the City in connection with Resolution No. 4546-2022, which adopted a Mitigated Negative Declaration ("MND") for the Project. A Notice of Determination was filed with the County Clerk of the County of Mendocino and California Office of Planning and Research—State Clearinghouse and recorded in the Mendocino County Clerk's office on May 27, 2022. Acquiring the Permanent Easement for the Project is consistent with the Project analyzed in the MND. Therefore, no further environmental review is needed.

The findings to be made are as set forth in the Resolution of Necessity. Specifically, the City must find as follows:

1. That the public interest, convenience and necessity require the proposed Project.

As proposed, the Project will serve the public purposes discussed above of providing reliable and resilient raw water to the public. It is necessary to construct the Project to connect Waterfall Gulch, Newman Reservoir, and Summers Lane Reservoir to the City's water treatment plant. The Project is needed to increase the reliability and resilience of the raw water supply system.

The proposed Project will increase reliability by constructing a new pipeline located in more stable route that is less likely to be subjected to slope instability. The new pipeline will be constructed such that it can withstand the pressure of reverse flow, so that the City's reservoirs may be filled with water from the Noyo River, via the City's water treatment plant, during times of high river flows, reducing impacts on riparian habitats along the Noyo River, Newman Gulch, Waterfall Gulch, and Hare Creek during periods of low flows. This would not be possible without the new pipeline.

The Project will also enable the City to retain an existing pipeline in place to provide backup access to raw water in the event there is an impact to the ability of the new pipeline to deliver water. The existing water pipeline flows entirely by gravity, while the new water pipeline will be pumped for a short section, which requires electricity to pump the pipeline. If there were a power outage affecting the new pump station, the existing pipeline would be available to provide water to the City's water treatment plant.

2. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

The location of Waterfall Gulch, Newman Reservoir, Summers Lane Reservoir and the City's water treatment plant is fixed. The waterline needed on the subject property is required to connect Waterfall Gulch, Newman Reservoir and Summers Lane Reservoir to the City's water treatment plant. The waterline's location will best minimize tree loss and avoid wetlands and environmentally sensitive areas within the Project boundaries, to the extent possible.

The City evaluated various pipeline corridor alternatives for this segment of the pipeline during the planning phase to optimize the pipeline alignment with due consideration of numerous engineering, environmental, geotechnical, land use, cost, and other important criteria. These alternatives for the northern portion merge into two possible alternatives in the southern portion, with one located on each side of Newman Gulch.

The Alternative routes considered include:

- (1) Following the existing water main alignment from Georgia Pacific Haul Road along the eastern side of a pond and then up onto the top of Newman Gulch along the eastern slopes to the Newman Gulch intake;
- (2) Following the Georgia Pacific Haul Road to the west before climbing up onto relatively flat terrain to the west of Newman Gulch, continuing to the Newman Gulch Intake on the west side of Newman Gulch; and
- (3) Taking a more easterly path than the existing alignment proposed for Alternative 1 that rejoins the existing alignment about halfway between the Newman Gulch Intake and the Georgia Pacific Haul Road, with two sub variants.

City staff undertook a detailed evaluation of these alternatives that considered the following factors:

- Capital costs and life cycle costs;
- Construction schedule;
- Ease of, and costs to, acquire easements/right-of-way;
- Ease of operation and maintenance;
- Constructability;
- Geotechnical and geologic hazard assessment;
- Environmental impacts;
- Ease of permitting;
- Extent of tree removal and THP;
- Pipe hydraulics and pipe sizing;
- Public impacts during and after construction.

Using these factors, Alternative Two (the alignment set forth in the Permanent Easement) was identified as the best alternative of all those considered. Alternative Two had better access, less environmental concerns including significantly less timber removal, mostly followed flatter terrain, and a lower landslide risk.

Alternative One was rejected because it was located in heavily forested areas, with steep slopes, cross slopes, and limited workspace for staging. It also paralleled closely an existing pond near the Georgia Pacific Haul Road that would likely create a number of environmental concerns. Alternative One had the most difficult access, major environmental concerns, and the highest likelihood of landslide mitigation efforts.

Alternative Three and its sub-variants had the longest overall length, crossed steep slopes, and one subvariant had increased environmental concerns regarding nearness to the existing pond.

3. That the property interest sought to be acquired is necessary for the Project.

The Project as proposed consists of a pipeline from sources at Waterfall Gulch, Newman Reservoir, and Summers Lane Reservoir to the City's water treatment plant. Without the acquisition of the Permanent Easement, the proposed Project in its present configuration cannot be completed. This is because the Pipeline Easement will include the necessary facilities that connect the upstream and downstream portions of the Project pipeline.

VALUE:

Questions relating to value are not relevant to this proceeding. However, that does not mean that negotiations for the acquisition of the property interests are at an end. If the City Council adopts the Resolution of Necessity, after the hearing, negotiations for the acquisition of the property interests may continue.

SUGGESTED ACTION

Staff recommends the City Council:

1. Conduct a hearing on the Resolution finding and determining that the public interest, convenience and necessity require the acquisition of certain property interests for

public purposes (applicable to property identified as APNs: 019-630-05, 019-640-01, 019-640-04); and

2. Review the evidence presented, including this staff report and public comments and close the hearing; and
3. Adopt the Resolution authorizing the commencement of eminent domain proceedings so as to acquire the Easements described in the Resolution (Note: This requires an affirmative two third (2/3) vote of the City Council); and
4. Authorize the City Manager to execute such documents as may be necessary to implement the acquisition of the Easements.

ATTACHMENTS

Exhibit 1 - Resolution of Necessity with Exhibits

Exhibit 2 - Notice of Hearing (dated May 24, 2023)

Exhibit 3 – Updated Notice of Hearing (May 31, 2023)