

RESOLUTION NO. 2023-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA DECLARING CERTAIN REAL PROPERTY INTERESTS NECESSARY FOR PUBLIC PURPOSES AND AUTHORIZING THE ACQUISITION THEREOF IN CONNECTION WITH THE PUBLIC STREET, DRAINAGE, AND RELATED IMPROVEMENTS FOR THE NICOLAS ROAD FROM BUTTERFIELD STAGE ROAD TO THE CALLE GIRASOL/NICOLAS ROAD CONNECTION (CERTAIN PROPERTY INTERESTS ON APN 957-090-023) AND MAKING FINDINGS THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED PURSUANT TO SECTION 15162 OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES AND SECTION 21166 OF THE PUBLIC RESOURCES CODE

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Findings.

A. The City of Temecula (“City”) is a municipal corporation, located in the County of Riverside, State of California.

B. The City originally approved the Development Agreement between the City of Temecula and Ashby USA, LLC (also known as the Pre-annexation and Development Agreement) pursuant to Ordinance No. 02-14. The Development Agreement was recorded on January 9, 2003 as Document No. 2003-018567 in the Official Records of the County of Riverside. The Development Agreement was amended pursuant to: (1) the First Amendment to the Development Agreement Between the City of Temecula and Ashby USA, LLC, dated February 14, 2006 and recorded on March 7, 2006 in the Official Records of Riverside County as Document No. 2006-0162268; (2) the Second Amendment to the Development Agreement Between the City of Temecula and Ashby USA, LLC, dated April 23, 2013 and recorded on July 3, 2013 in the Official Records of Riverside County as Document No. 2013-0324057, and (3) the Third Amendment to the Development Agreement dated March 8, 2016, and recorded on April 20, 2016 in the Official Records of Riverside County as Document No. 2016-0156276. Developer Woodside 05S, LP, a California Limited Partnership and Wingsweep Corporation, a California corporation are the successors to certain of these approved applications for development and propose to construct the Sommers Bend Project (“Sommers Bend Project” or “Development Project”).

C. To facilitate the orderly development of the Sommers Bend Project, the Third Amendment to the Development Agreement was approved subject to certain conditions set forth on Exhibit D (New Attachment 5-A to Development Agreement) to said Third Amendment. Specifically, Condition 3(A) to Exhibit D contains a specific condition of approval requiring Developer to construct certain public improvements in connection with Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Connection:

Description of Public Improvement. Complete engineering design and construct full Nicolas Road improvements from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection.

. . . Owners of Phase II Property shall be required, on behalf of the City, to provide for all required engineering design, construction plans, CEQA analysis & processing, environmental mitigation measures, right-of-way acquisition, and to obtain all necessary Resource Agency and Riverside County Flood Control and Water Conservation District permits.

Resource Agency permits for the offsite portion of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection were not obtained with the Resource Agency permits for Roripaugh Ranch Phase II. Due to Resource Agency regulations, the offsite portion of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection should be combined with the permits for the Santa Gertrudis Creek Channel improvements downstream of the existing culverts at Butterfield Stage Road and processed and obtained as a single package.

D. The Project requires the acquisition of an approximate 31,168 square foot temporary construction easement with a term of twelve months and a covenant authorizing the construction of certain permanent rip-rap and related drainage improvements in portions of said 31,168 square foot temporary construction easement area on the real property located at 39622 Liefer Road, Temecula, and identified as Riverside County Tax Assessor's Parcel Number 957-090-023 described more particularly at Section 3 below.

E. Pursuant to California Government Code Section 66462.5, when a condition of a subdivision map approval or a development agreement requires the installation or construction of improvements on offsite property not owned or controlled by a developer, and title cannot be obtained by negotiated purchase, a city is required to commence proceedings to acquire off-site property by eminent domain or such off-site improvement conditions will be waived. Pursuant to Government Code Section 66462.5(c), a city and a developer may enter into an agreement to allocate the costs and responsibilities for acquisition of such off-site property. The City and the developer of the Sommers Bend Project entered into that certain Agreement Pursuant to Government Code Section 66462.5 Between Woodside 05S, LP and Wingsweep Corporation, on the one hand, and City of Temecula, on the other, for Acquisition of Certain Real Property Interests (Calle Girasol/Nicolas Road Connection) as of April 12, 2022 in connection with the subject offsite public improvements.

Section 2. Adoption of Resolution of Necessity. The City Council of the City of Temecula adopts Resolution No. 2023-_____, A Resolution of the City Council of the City of Temecula Declaring Certain Real Property Interests Necessary for Public Purposes and Authorizing the Acquisition Thereof in Connection with the Public Street, Drainage, and Related Improvements for the Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection (Certain Property Interests on APN 957-090-023) and Making Findings that No Further Environmental Review is Required Pursuant to Section 15162 of the California Environmental Quality Act Guidelines and Section 21166 of the Public Resources Code.

A. The City hereby adopts the Resolution of Necessity authorizing the acquisition by eminent domain of the approximate 31,168 square foot temporary construction easement with a term of twelve months described more particularly in Section 3 below for public use, namely to facilitate the construction of certain public off-site improvements, consisting of public street, drainage, and related improvements, and for the construction of certain permanent rip-rap and related drainage improvements in portions of said 31,168 square foot temporary construction easement area, and all uses necessary or convenient thereto in connection with the proposed extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road pursuant to the authority conferred on the City of Temecula to acquire real property by eminent domain by Section 19 of Article 1 of the California Constitution, Government Code Sections 37350, 37350.5, 37351, 40404, and 66462.5, California Code of Civil Procedure Section 1230.010 et seq. (Eminent Domain Law), including but not limited to Sections 1240.010, 1240.020, 1240.110, 1240.120, 1240.510, 1240.610, 1240.650 and by other provisions of law. Code of Civil Procedure Section 1240.010 provides that “[t]he power of eminent domain may be exercised to acquire property only for a public use. Where the Legislature provides by statute that a use, purpose, object, or function is one for which the power of eminent domain may be exercised, such action is deemed to be a declaration by the Legislature that such use, purpose, object, or function is a public use.” Government Code Section 66462.5(c) authorizes the City and the developer of a project for which the construction of offsite improvements are required to enter into an agreement requiring the developer to complete the improvements pursuant to Government Code Section 66462 at such time as the City acquires an interest in the land that will permit such improvements to be constructed. Government Code Section 66462.5(a) provides that a city or county may “acquire by negotiation or commence eminent domain proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article (commencing with Section 1255.410) of Chapter 6 of that title.”

Section 3. Subject Property Interests. The City hereby authorizes the acquisition by eminent domain of the following real property interests (referred to below collectively as the “Subject Property Interests”) on the real property located at 39622 Liefer Road, Temecula, and identified as Riverside County Tax Assessor’s Parcel Number 957-090-023 (“Property”) for public use, namely to facilitate the construction of certain public improvements, consisting of public street, drainage, and related improvements, and all uses necessary or convenient thereto and to construct certain permanent rip-rap and related drainage improvements in portions of said 31,168 square foot temporary construction easement area on the Property in connection with the improvements for the Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection:

- An approximate 31,168 square foot temporary construction easement on the Property with a term of twelve months described more particularly on EXHIBIT A and depicted on EXHIBIT B attached hereto and incorporated herein by this reference to facilitate the construction of the Project with a covenant that would authorize the construction of certain rip-rap and related drainage improvements in portions of said 31,168 square foot temporary construction easement area to protect the related street and drainage improvements from erosion and flooding.

A rough depiction of the location of the permanent rip-rap and related drainage improvements that will be constructed within said 31,168 square foot temporary construction easement area is shown on EXHIBIT C attached hereto and incorporated herein by this reference.

Section 4. Environmental Review.

A. The environmental effects of the Project and the acquisition of the real property interests needed for the Project were studied and analyzed as an integral part of the Environmental Impact Report for the Roripaugh Ranch Specific Plan (“EIR”) pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code Section 21000 et seq., and the CEQA Guidelines, 14 Cal. Code Regs. Section 15000 et seq. (“CEQA Guidelines”). On November 26, 2002, the City Council adopted Resolution 02-111, A Resolution of the City Council of Temecula, California, Certifying the Final Environmental Impact Report Prepared for the Roripaugh Ranch Specific Plan and Related Planning Applications Actions and Adopting the Environmental Findings Pursuant to the California Environmental Quality Act, and the State CEQA Guidelines, a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations, in Connection therewith for the Roripaugh Ranch Specific Plan, Located near the Future Intersection of Butterfield Stage Road and Nicolas Road (Planning Application 94-0076). Said environmental documents are incorporated herein by this reference. Since the adoption of the EIR, five EIR Addendums have been prepared for the Development Project area. The most recent Addendum to the EIR was adopted on January 14, 2020.

B. On July 11, 2023, City Staff reviewed the environmental documentation prepared in connection with the Development Project in connection with Staff’s review of the proposed acquisition of the Subject Property Interests for the Project. City Staff reviewed the EIR, the First Addendum to the EIR adopted on April 23, 2013, the Second Addendum to the EIR adopted on March 22, 2016, the Third Addendum to the EIR adopted on January 23, 2018, the Fourth Addendum to the EIR adopted on November 6, 2019, the Fifth Addendum to the EIR adopted on January 14, 2020, and determined that the Project and acquisition of the Subject Property Interests needed for the Project are consistent with the EIR and Addenda to the EIRs. Pursuant to the criteria of Section 15162 of the CEQA Guidelines and Section 21166 of the Public Resources Code, City Staff concluded that no substantial changes have occurred in the Development Project, no substantial changes have occurred in the circumstances under which the Development Project is undertaken, and the City has obtained no new information of substantial importance that would require further environmental analysis. These environmental findings are the appropriate findings with respect to the proposed acquisition of the Subject Property Interests for the Project. The above documents are referred to below collectively as the “Environmental Documents.”

Section 5. The Project, as planned and designed, is in the public interest and necessity and is needed to construct the public street, drainage, access, public utility and related improvements in connection with the proposed extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection. The Subject Property Interests are required to protect the street and drainage improvements that will be constructed within the existing right of way as part of the construction and extension of Nicolas Road from erosion. The Subject Property Interests are also required for the construction of permanent rip-rap and related drainage improvements in portions of said 31,168 square foot permanent easement area to protect the street improvements

from flooding.

C. The Project, as planned and located, is consistent with the circulation and street system in the Roadway Plan depicted in the City of Temecula General Plan. Construction of the permanent rip-rap and related drainage improvements in a portion of the approximate 31,168 square foot portion of the Subject Property Interests is necessary to protect the street improvements from erosion and to minimize flooding. The drainage and rip-rap improvements that will be constructed in portions of the Subject Property Interests located within the Long Valley Wash will also help minimize flooding on the remainder portions of the Property.

D. The Project is planned and located in the manner that is most compatible with the greatest public good and the least private injury. The Project, as planned and designed, seeks to minimize the impact on private properties. The Subject Property Interests are located in the portions of the Property within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events. The permanent rip-rap and related drainage improvements that will be constructed in portions of said 31,168 square foot temporary construction easement area will help minimize flooding on the remainder portions of the Property. The construction of the Project will not result in the displacement of any persons because no residences or structures are located in the area of the Subject Property Interests. Based on the timing of the Project, it is necessary that the City consider the acquisition by eminent domain of the Subject Property Interests to proceed with the construction of the public street, drainage, and related improvements for the Project.

E. The public use for which the City seeks to acquire the Subject Property Interests in connection with the Project, namely for public street, drainage, and related improvements, and all uses necessary or convenient thereto in connection with the Project will not unreasonably interfere with or impair the continuance of the public use to which any easement holders may have appropriated the areas (Code of Civil Procedure Section 1240.510).

Section 6. Offer Letter. Pursuant to Government Code Section 7260 et seq., the City of Temecula obtained a fair market value appraisal of the Subject Property Interests and the Property. The City set just compensation for the Subject Property Interests in accordance with the fair market values. The City retained Overland Pacific & Cutler (“OPC”) as its acquisition consultant to assist the City with the City’s good faith negotiations for the acquisition of the Subject Property Interests. On September 20, 2022, the City extended a written offer pursuant to Government Code Section 7267.2 to the owners of record, Isaac G. Navejar and Isabel L. Navejar (Owners). The offer letter contained an appraisal summary statement that described the zoning, highest and best use of the Property explained the appraiser’s valuation methodology, and included the comparable sales data relied on by the appraiser. The offer letter offered to pay the reasonable costs, up to \$5,000, of an independent appraisal pursuant to Code of Civil Procedure Section 1263.025. Further, the offer letter included an eminent domain pamphlet that explained the eminent domain process and the rights of the record owners. On October 7, 2022, Mr. Navejar requested that the purchase price for the Subject Property Interests be increased. Additional discussions took place between the Parties. The City agreed to the Owners’ counteroffer and prepared a Purchase and Sale Agreement. Further communications were held between OPC and Mr. Navejar regarding his agreement to let the City use the Subject Property Interests for the agreed-upon purchase price. The Owners’ daughter, Vanessa Navejar Ugalde, later requested that all communications to her parents be sent

to her with a copy to Mrs. Navejar. Further communications were held between the City and the Owners' daughter. The Purchase and Sale Agreement was emailed to Mr. and Mrs. Navejar's daughter, on March 7, 2023. Mrs. Navejar was included in the email transmission. The City followed up several times and on March 23, 2023, Ms. Navejar Ugalde informed the City that the Owners "did not agree with any of [the City's] information and are definitely not interested in any of your (cities, builders) thoughts and opinions" regarding the Property. As of July 25, 2023, the Parties have not reached an agreement for the City's acquisition of the Subject Property Interests.

Section 7. Notice Pursuant to Code of Civil Procedure Section 1245.235. Pursuant to Code of Civil Procedure Section 1245.235, the City sent a letter and a notice by first-class mail dated July 7, 2023 to the Owners, Isaac G. Navejar and Isabel L. Navejar, the record owners of the Subject Property Interests. The letter and notice informed the Owners of the City's intent to consider at its July 25, 2023 meeting, the adoption of a Resolution of Necessity for the acquisition by eminent domain of the Subject Property Interests in connection with the Project. The noticed advised the Owners of their right to appear and be heard regarding the City's proposed adoption of the Resolution of Necessity by filing, within fifteen (15) days of the date the notice was mailed, a written request with the City to appear at the hearing. The notice specifically informed the Owners of the Subject Property Interests that they have an opportunity to appear before the City Council and raise questions about whether the public interest and necessity require the Project; whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and whether the Subject Property Interests the City seeks to acquire from the Owners are necessary for the Project. On July 7, 2023, City Staff also sent a courtesy copy of said notice by electronic mail to the Ms. Navejar and the Owners' daughter.

Section 8. Based on the evidence presented at the hearing regarding the acquisition of the Subject Property Interests for the Project, including the Agenda Report, the documents referenced therein, and any oral or written testimony at the hearing, the City Council hereby finds and determines that:

- A. The public interest and necessity require the Project;
- B. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
- C. The Subject Property Interests, consisting of the approximate 31,168 square foot temporary construction easement with a term of twelve months on the Property to facilitate the construction of the Project and to protect the related street and drainage improvements constructed as part of the Project from erosion and flooding, which is described more particularly on EXHIBIT A and depicted on EXHIBIT B hereto, and the covenant that would authorize the construction of certain permanent rip-rap and related drainage improvements in portions of said 31,168 square foot temporary construction easement area roughly shown on EXHIBIT C hereto to protect the street improvements from erosion and to minimize flooding, are necessary for the Project; and
- D. The City has made the offer required by Government Code Section 7267.2 to the owners of record of the Subject Property Interests the City seeks to acquire.

Section 9. The findings and declarations contained in this Resolution are based upon the record before the City Council, including the Agenda Report, and all documents referenced therein, all of which are incorporated herein by this reference, documents and testimony and/or comments submitted to the City by the Owners or the Owners' representative(s). These documents include, but are not limited to the City of Temecula General Plan, the documents relating to the Sommers Bend Development, offer letter sent to the Owners pursuant to Government Code Section 7267.2, the letter and notice pursuant to Code of Civil Procedure Section 1245.235, and Environmental Documents relating to the Development Project.

Section 10. Authorization to File Eminent Domain Proceeding. The City Attorney's Office is authorized to take all steps necessary to commence and prosecute legal proceedings in a court of competent jurisdiction to acquire the Subject Property Interests, consisting of the approximate 31,168 square foot temporary construction easement with a term of twelve months described more particularly on EXHIBIT A and depicted on EXHIBIT B hereto to facilitate the construction of the Project and a covenant that would authorize the construction of certain rip-rap and related improvements in portions of said 31,168 square foot temporary construction easement roughly depicted on EXHIBIT C hereto to protect the related street and drainage improvements roughly from erosion and flooding and to help minimize flooding on the remainder portions of the Property.

Section 11. City Manager Authority. The City Manager is authorized to execute all necessary documents in connection with the eminent domain proceeding.

Section 12. Certification. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 25 day of July, 2023.

Zak Schwank, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Resolution No. 2023- was duly and regularly adopted by the City Council of the City of Temecula at a meeting thereof held on the 25th day of July, 2023, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Randi Johl, City Clerk