

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

FROM: Patrick Thomas, Director of Public Works/City Engineer

DATE: February 14, 2023

SUBJECT: Adopt Resolutions of Necessity for Acquisition by Eminent Domain of Certain Real Property Interests for Public Purposes on Assessor's Parcel Numbers 957-150-005 and 957-090-019 in Connection with the Construction of Public Street, Drainage, Access and Related Improvements, and all Uses Necessary or Convenient Thereto for the Proposed Extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection

PREPARED BY: Ron Moreno, Principal Civil Engineer/City Surveyor
Anissa Sharp, Management Assistant
Paula Gutierrez Baeza, City Attorney's Office

RECOMMENDATION: That the City Council:

1. Consider the following Resolutions, which are Resolutions of Necessity of the City of Temecula, declaring certain real property interests necessary for public purposes and authorizing the acquisition thereof for public use in connection with the construction of public street, drainage, access, public utility and related improvements, and all uses necessary or convenient thereto for the proposed extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection:

RESOLUTION NO.

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, ACCESS AND RELATED IMPROVEMENTS FOR THE NICOLAS ROAD FROM BUTTERFIELD STAGE ROAD TO THE CALLE GIRASOL/NICOLAS ROAD CONNECTION (CERTAIN PROPERTY INTERESTS ON APN 957-150-005) 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

RESOLUTION NO.

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,
ACCESS AND RELATED IMPROVEMENTS FOR THE
NICOLAS ROAD FROM BUTTERFIELD STAGE ROAD TO
THE CALLE GIRASOL/NICOLAS ROAD CONNECTION
(CERTAIN PROPERTY INTERESTS ON APN 957-090-019)
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

2. Open and conduct a hearing on the adoption of the proposed Resolutions of Necessity, receive from City Staff the evidence stated and referred to in this Agenda Report (“Report”), take testimony from any person wishing to be heard on issues A, B, C, and D below, and consider all evidence to determine whether to adopt the proposed Resolutions of Necessity, each of which requires the City Council’s separate consideration and determination.
3. If the City Council finds, based on the evidence contained and referred to in this Report, the testimony and comments submitted to the City Council, that the evidence warrants the necessary findings with respect to the proposed Resolutions of Necessity, then City Staff recommends that the City Council, in the exercise of its discretion, adopt proposed Resolutions of Necessity, each of which requires a 4/5ths vote of the entire City Council, authorizing the acquisition by eminent domain of the Subject Property Interests summarized below and described more particularly in the Exhibits to each Resolution of Necessity:
 - (i) **Jose Leonardo Garcia & Mayerling Alida Monteros-Garcia – 31270 Tommy Lane, Temecula (APN 957-150-005 – Garcia Parcel)**
 - An approximate 26,957 square foot permanent maintenance and access easement described more particularly on ATTACHMENT A and depicted on ATTACHMENT B.

- An approximate 31,520 square foot temporary construction easement with a term of twelve months is described more particularly on ATTACHMENT A-1 and depicted on ATTACHMENT B-1.

The approximate 26,957 square foot permanent maintenance and access easement and the approximate 31,520 square foot temporary construction easement the City seeks to acquire on the Garcia Parcel are referred to below collectively as the “Garcia Property Interests”. The Garcia Property Interests are located on the portions of the Garcia Property within the Long Valley Wash, a natural flood control channel.

(ii) **Sohan Singh and Kuldip Kaur Singh – 39280 Deputy Road, Temecula (APN 957-090-019 – Singh Parcel)**

- An approximate 16,956 square foot permanent maintenance and access easement described more particularly on ATTACHMENT C and depicted on ATTACHMENT D.
- An approximate 648.59 square foot public utility easement in favor of Southern California Edison described more particularly on ATTACHMENT C-1 and depicted on ATTACHMENT D-1.
- An approximate 29,630 square foot temporary construction easement with a term of twelve months to facilitate the construction of the Project with a covenant that would authorize the construction of certain rip-rap and related improvements to protect the related street and drainage improvements from erosion and flooding and to construct an access driveway to the Nicolas Road improvements described more particularly on ATTACHMENT C-2 and depicted on ATTACHMENT D-2.

The approximate 16,956 square foot permanent maintenance and access easement and the approximate 29,630 square foot temporary construction easement with a term of twelve months with a covenant that would authorize the construction of certain drainage, rip-rap and related improvements to protect the related street and drainage improvements from erosion and flooding and to construct an access driveway to the Nicolas Road improvements, and the approximate 648.59 square foot public utility easement in favor of Southern California Edison on the Singh Parcel are referred to below collectively as “Singh Property Interests”. The permanent maintenance and access easement and the temporary construction easement are located on the portions of the Singh Parcel within the Long Valley Wash, a natural flood control channel. A rough depiction of the improvements that will be constructed within the Permanent Maintenance and Access Easement and the Temporary Construction Easement is attached as ATTACHMENT E and incorporated herein by this reference.

4. If the City Council adopts the proposed Resolutions of Necessity, authorize the City Attorney's Office to file and prosecute eminent domain proceedings for the acquisition of the Subject Property Interests by eminent domain.
5. Authorize the City Manager to execute all necessary documents.
6. Authorize the City Clerk to certify the adoption of the Resolutions of Necessity.

BACKGROUND:

Background and Summary

The City Council has before it two proposed Resolutions of Necessity for the acquisition by eminent domain of the Subject Property Interests described above and in the attached Resolutions of Necessity for public use. The City seeks to acquire the Subject Property Interests for public use, namely for the construction of certain public off-site improvements, consisting of public street, drainage, access, public utility and related improvements, 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 connection ("Project").

Background Regarding Sommers Bend Development Project and Relevant Off-Site Public Improvements in Connection with Extension of Nicolas Road from Butterfield Stage Road to Calle Girasol/Nicolas Road Connection and Related Improvements

As discussed below, the Project will construct certain public improvements, consisting of public street, drainage, access, public utility and related improvements, 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. The Garcia Property Interests and the Singh Property Interests are required to protect the street improvements that will be constructed within the existing right of way as part of the construction and extension of Nicolas Road from erosion. The Garcia Property Interests and the Singh Property Interests are required for the construction of drainage purposes in connection with the Project, including construction of culverts, placement of rip-rap and related improvements, to protect the street improvements from flooding, to provide access to the permanent maintenance and access easement on the Garcia Parcel, and to construct a driveway to provide ingress and egress from the Singh Parcel to the new Nicolas Road improvements.

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 (“Developer”) 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”). Said development documents are incorporated herein by this reference.

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.

The Subject Property Interests are required to complete the offsite public street, drainage, access, and related improvements in connection with the Project.

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.

Authorization for Acquisition of Subject Easement by Eminent Domain and Findings Required for Adoption of Resolutions of Necessity

The City seeks to acquire the Subject Property Interests for public use, namely for the construction of certain public off-site improvements, consisting of public street, drainage, access, public utility and related improvements, and all uses necessary or convenient thereto in connection with the Project 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 the Sommers Bend Project to enter into an agreement requiring the Developer to complete the required offsite improvements required for the Project 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.”

In order to adopt the proposed Resolutions of Necessity for the acquisition by eminent domain of the Subject Property Interests the City Council must find and determine with respect to each Resolution of Necessity 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 described in each Resolution of Necessity are necessary for the Project; and**
- D. The City has made an offer as required by Government Code Section 7267.2 to the owners of record of the Subject Property Interests the City seeks to acquire.**

The amount of just compensation is not an issue before the City Council at this hearing. The hearing relates to issues A, B, C, and D above. The amount of just compensation would be

determined in the eminent domain proceedings that would be filed if the City Council, in its sole discretion, adopts the proposed Resolutions of Necessity.

Environmental Analysis

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.

On January 10, 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”.

City’s Actions Pursuant to Government Code Section 7260 et seq.

Pursuant to Government Code Section 7260 et seq., the City of Temecula obtained fair market value appraisals of the Subject Property Interests and the larger parcels of which they are a part. The City set just compensation for the Subject Property Interests and 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.

Government Code Section 7260 Offer – Garcia Property Interests

On October 4, 2022, the City extended a written offer pursuant to Government Code Section 7267.2 to the owners of record, Jose Leonardo Garcia and Mayerling Alida Monteros-Garcia. The offer letter contained an appraisal summary statement that described the zoning, highest and best use of the parcel, 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.

OPC attempted to meet with the record owners on several occasions to discuss the City’s offer and negotiate in good faith with the owners for the acquisition of the Garcia Property Interests. The owners did not make themselves available for a meeting. Mr. and Mrs. Garcia sent a letter to OPC dated November 21, 2022 advising OPC that they refused the City’s offer and instructed OPC to contact their counsel, Robert Stack, Esq. Mr. Stack, OPC representatives, City Staff and the City Attorney’s office met on January 18, 2023 to discuss the Project and the proposed acquisition of the Garcia Property Interests. As of the date of this Agenda Report, the parties have not reached a negotiated agreement. Based on the timing of the Project and the owner’s decision not to consider a negotiated sale of the Garcia Property Interests, it is necessary that the City consider the adoption of the Resolution of Necessity at this time. The adoption of a Resolution does not preclude negotiations between the parties for the City’s acquisition of the Garcia Property Interests.

Government Code Section 7260 Offer – Singh Property Interests

On September 20, 2022, the City extended a written offer pursuant to Government Code Section 7267.2 to the owners of record, Sohan Singh and Kuldip Kaur Singh. The offer letter contained an appraisal summary statement that described the zoning, highest and best use of the parcel, 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.

OPC contacted the record owners several times and OPC was informed by Mr. and Mrs. Singh’s daughter, that the owners had determined to obtain their own independent appraisal. They also requested that the surveyor stake the areas of the Singh Property Interests. The owners canceled the staking scheduled in December 2022. The staking was tentatively rescheduled for the week of January 30, 2023. As of the date of this Agenda Report, OPC had not been informed that the owners’ independent appraisal is completed. Based on the timing of the Project, it is necessary that the City consider the adoption of the Resolution of Necessity at this time. The adoption of a Resolution at this time does not preclude negotiations between the parties for the City’s acquisition of the Singh Property Interests.

City's Actions Pursuant to Code of Civil Procedure Section 1245.235

Code of Civil Procedure Section 1245.235 Notice – Garcia Property Interests

Pursuant to Code of Civil Procedure Section 1245.235, the City sent a letter and a notice by first-class mail dated January 24, 2023 to the owners of record, Jose Leonardo Garcia and Mayerling Alida Monteros-Garcia, the record owners of the Garcia Property Interests the City seeks to acquire. The letter and notice informed Mr. and Mrs. Garcia of the City's intent to consider at its February 14, 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 record 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 record owners of the Garcia Property Interests that the owners 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 Garcia Property Interests the City seeks to acquire from the owners of record are necessary for the Project. On January 25, 2023, City Staff sent a courtesy copy of said notice to Robert Stack, Esq., counsel for Mr. and Mrs. Garcia.

Code of Civil Procedure Section 1245.235 Notice – Singh Property Interests

Pursuant to Code of Civil Procedure Section 1245.235, the City sent a letter and a notice by first-class mail dated January 24, 2023 to the owners of record, Sohan Singh and Kuldip Kaur Singh, the record owners of the Singh Property Interests the City seeks to acquire. The letter and notice informed Mr. and Mrs. Singh of the City's intent to consider at its February 14, 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 record 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 record owners of the Singh Property Interests that the owners 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 Singh Property Interests the City seeks to acquire from the owners of record are necessary for the Project. On January 25, 2023, City Staff sent a courtesy copy of said notice to Ms. Basi, daughter of Mr. and Mrs. Singh.

REQUIRED FINDINGS FOR ADOPTION OF RESOLUTIONS OF NECESSITY

A. The Public Interest and Necessity Require the Project

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. The Garcia Property Interests and the Singh Property Interests are required

to protect the street improvements that will be constructed within the existing right of way as part of the construction and extension of Nicolas Road from erosion. The Garcia Property Interests and Singh Property Interests are required for the construction of drainage purposes in connection with the Project, including construction of culverts, and related improvements, to protect the street improvements from flooding, to provide access to the permanent maintenance and access easement on the Garcia Parcel, and to construct a driveway to provide ingress and egress from the Singh Parcel to the new Nicolas Road improvements.

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 (Figure C-2). Construction of the drainage improvements and rip rap in the permanent maintenance and access easement areas on the Garcia Parcel and Singh Parcel are necessary to protect the street improvements from erosion and flooding. Rip rap will also be placed on a small portion of the temporary construction easement area on the Singh Parcel to also help protect the street and drainage improvements from erosion and also to protect that portion of the Singh Parcel from erosion and to minimize flooding. The rough location of these improvements on Singh Property Interests are shown on EXHIBIT C to Resolution No. 2023-XX. The drainage and rip-rap improvements will help minimize flooding on the remainder portions of the Garcia Parcel and the Singh Parcel.

The Project, as planned and designed, seeks to minimize the impact on private parcels. The Garcia Property Interests and the permanent maintenance and access easement and temporary construction easement areas on the Singh Parcel are located in the portions of the Garcia Parcel and the Singh Parcel within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events. The drainage and rip-rap improvements will help minimize flooding on the remainder portions of the Garcia Parcel and the Singh Parcel. The construction of the Project will not result in the displacement of any persons because the residences located on the Garcia Parcel and the Singh Parcel are not 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 so that the public street, drainage, rip-rap, access, and related improvements can be constructed.

The public use for which the City seeks to acquire the Subject Property Interests in connection with the Project, namely for public street, drainage, access, public utility 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).

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

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 is planned and designed to construct necessary public street, drainage, access, public utility and related improvements, and all uses necessary or convenient thereto consistent with the Roadway Plan of the City's General Plan. The Garcia Property Interests and the Singh Property Interests are required 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. The

Garcia Property Interests and the Singh Property Interests are necessary to protect the street improvements that will be constructed within the existing right of way as part of the construction and extension of Nicolas Road from erosion. The Garcia Property Interests and Singh Property Interests are required for the construction of drainage purposes in connection with the Project, including construction of culverts, and related improvements, to protect the street improvements from flooding, to provide access to the permanent maintenance and access easement on the Garcia Parcel, and to construct a driveway to provide ingress and egress from the Singh Parcel to the new Nicolas Road improvements.

The Project is also planned and located to minimize the impact on private parcels. The permanent maintenance and access easements and the temporary construction easements on the Garcia Parcel and the Singh Parcel are located within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events. The drainage, culvert, and rip-rap improvements that are necessary to protect the street improvements from erosion and protect the roadway from flooding will also minimize flooding on the remainder portions of the Garcia Parcel and the Singh Parcel. It is expected that, in the after condition, less of the remainder portions of these parcels will be located within the Long Valley Wash, a natural flood control channel, that experiences flooding during rain events.

The construction of the Project will not result in the displacement of any persons because the Subject Property Interests are located in the portions of the Garcia Parcel and the Singh Parcel located within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events. The Project will not impacted the residences on said parcels.

The public use for which the City seeks to acquire the Subject Property Interests in connection with the Project, namely for public street, drainage, access, public utility 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).

C. The Subject Property Interests Described in each Resolution of Necessity are Necessary for the Project

The City seeks to construct the Project, as planned and designed, to construct necessary public street, drainage, access, public utility and related improvements consistent with the Roadway Plan of the City's General Plan. The Garcia Property Interests and the Singh Property Interests are required 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. The Garcia Property Interests and the Singh Property Interests are necessary to protect the street improvements that will be constructed within the existing right of way as part of the construction and extension of Nicolas Road from erosion. The Garcia Property Interests and Singh Property Interests are required for the construction of drainage purposes in connection with the Project, including construction of culverts, and related improvements, to protect the street improvements from flooding, to provide access to the permanent maintenance and access easement on the Garcia Parcel, and to construct a driveway to provide ingress and egress from the Singh Parcel to the new Nicolas Road improvements. The Project cannot be constructed without the acquisition of the Subject Property Interests.

As stated above, the public use for which the City seeks to acquire the Subject Property Interests in connection with the Project, namely for public street, drainage, access, public utility 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).

D. The City has Made an Offer as Required by Government Code Section 7267.2 to the Owners of Record of the Subject Property Interests

The City's actions under Government Code Section 7260 et seq. in connection with the acquisition of the Subject Property Interests are detailed above.

Government Code Section 7260 Offer – Garcia Property Interests

As noted above, on October 4, 2022, the City extended a written offer pursuant to Government Code Section 7267.2 to the owners of record, Jose Leonardo Garcia and Mayerling Alida Monteros-Garcia. The offer letter contained an appraisal summary statement that described the zoning, highest and best use of the parcel and explained the appraiser's valuation methodology. 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.

OPC attempted to meet with the record owners on several occasions to discuss the City's offer and negotiate in good faith with the owners for the acquisition of the Garcia Property Interests. The owners did not make themselves available for a meeting. Mr. and Mrs. Garcia sent a letter to OPC dated November 21, 2022 advising OPC that they refused the City's offer and instructed OPC to contact their counsel, Robert Stack, Esq. Mr. Stack, OPC representatives, City Staff and the City Attorney's office met on January 18, 2023 to discuss the Project and the proposed acquisition of the Garcia Property Interests. As of the date of this Agenda Report, the parties have not reached a negotiated agreement. Based on the timing of the Project and the owner's decision not to consider a negotiated sale of the Garcia Property Interests, it is necessary that the City consider the adoption of the Resolution of Necessity at this time.

Government Code Section 7260 Offer – Singh Property Interests

On September 20, 2022, the City extended a written offer pursuant to Government Code Section 7267.2 to the owners of record, Sohan Singh and Kuldip Kaur Singh. The offer letter contained an appraisal summary statement that described the zoning, highest and best use of the parcel and explained the appraiser's valuation methodology. 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.

OPC contacted the record owners several times and OPC was informed by Mr. and Mrs. Singh's daughter, that the owners had determined to obtain their own independent appraisal. They also requested that the surveyor stake the areas of the Singh Property Interests. The owners canceled the first scheduled date in December 2022 for the staking. The staking was tentatively rescheduled

for the week of January 30, 2023. As of the date of this Agenda Report, OPC has not been informed that the owners' independent appraisal is completed. Based on the timing of the Project, it is necessary that the City consider the adoption of the Resolution of Necessity at this time.

INCORPORATION OF DOCUMENTS

The following documents referenced above are on file with the City Clerk's Office and/or the Public Works Department and are incorporated herein by this reference:

- Resolution No. 2023-_____, Resolution of Necessity with ATTACHMENT A, ATTACHMENT B, ATTACHMENT A-1, and ATTACHMENT B-1 in connection with Garcia Property Interests (attached hereto)
- Resolution No. 2023-_____, Resolution of Necessity with ATTACHMENT C, ATTACHMENT D, ATTACHMENT C-1, ATTACHMENT D-1, ATTACHMENT C-2, ATTACHMENT D-2 and ATTACHMENT E in connection with Singh Property Interests (attached hereto)
- City of Temecula General Plan
- Offer letters to the record owners of the Subject Property Interests
- Notices pursuant to Code of Civil Procedure Section 1245.235 to record owners of the Subject Property Interests
- Development Project Documents
- Environmental Documents relating to Development Project

FISCAL IMPACT:

The City would plan to deposit the probable amount of just compensation for the Subject Easement in the Condemnation Fund of the State Treasurer's Office to obtain an order for prejudgment possession. The City will also incur additional costs in connection with any filed eminent domain proceedings, including costs for litigation guarantee, new appraisal during the course of the eminent domain proceeding, expert witness costs, and attorney's fees. Woodside 05S, LP, a California Limited Partnership and Wingsweep Corporation, a California Corporation are responsible for all of the City's acquisition costs pursuant to 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 (Sommers Bend) entered into as of April 12, 2021.

ATTACHMENTS:

1. Resolution - Resolution of Necessity in connection with Garcia Property Interests (APN 957-150-005)
2. Attachments A, B, A-1, and B-1 in connection with Garcia Property Interests (APN 957-150-005)
3. Resolution - Resolution of Necessity in connection with Singh Property Interests (APN 957-090-019)
4. Attachments C, D, C-1, D-1, C-2, D-2, and E in connection with Singh Property Interests (APN 957-090-019)