

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

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

DATE: July 25, 2023

SUBJECT: Adopt Resolution Approving a Purchase and Sale Agreement for the Purchase of Certain Real Property Interests on Real Property Located at 31249 Indian Summer Road in the City of Temecula (APN 957-090-022) in Connection with the Construction of Off-Site Improvements for the Proposed Extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection

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RECOMMENDATION: That the City Council adopt a resolution entitled:

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA APPROVING THAT CERTAIN PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN LAM NGO & HUYEN LAM TRAN AND THE CITY OF TEMECULA IN CONNECTION WITH THE CALLE GIRASOL/NICOLAS ROAD CONNECTION STREET AND DRAINAGE IMPROVEMENTS (PORTIONS OF APN 957-090-022) 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

BACKGROUND:

Acquisition of Certain Subject Property Interests on APN 957-090-022

The City Council has before it a proposed Resolution approving that certain Purchase and Sale Agreement and Joint Escrow Instructions Between Lam Ngo & Huyen Lam Tran and the City of Temecula in Connection with the Calle Girasol/Nicolas Road Connection Street and Drainage Improvements (Portions of APN 957-090-022) ("Purchase and Sale Agreement"). The Purchase

and Sale Agreement sets for the terms for the City's acquisition from Lam Ngo and Huyen Lam Tran ("Owners") of the following real property interests (referred to below collectively as the "Subject Property Interests") on the real property located at 31249 Indian Summer Road, Temecula, California, and identified as APN 957-090-022 ("Property"):

- (i) An approximate 51,003 square foot permanent easement for conservation purposes, and all uses necessary and convenient thereto in connection with the Project dedicated by Owners in favor of the City and for the benefit of Fallbrook Land Conservancy, a California non-profit corporation pursuant to that certain Irrevocable Offer of Dedication of Conservation Easement Pursuant to Government Code Section 7050 ("Irrevocable Offer of Conservation Easement"). The approximate 51,003 square foot permanent conservation easement area is described more particularly on EXHIBIT B and depicted on EXHIBIT C to the form of Irrevocable Offer of Conservation Easement attached as EXHIBIT 1 to the Purchase and Sale Agreement and incorporated herein by this reference ("Conservation Easement").
- (ii) An approximate 83,324 square foot Temporary Construction Easement with a term of twelve months and covenant that would authorize the City to construct certain permanent drainage improvements within portions of the approximate 83,324 square foot area. The approximate 83,324 square foot TCE is described more particularly on EXHIBIT A and depicted on EXHIBIT B to the form of the Grant of the Temporary Construction Easement and Covenant attached as EXHIBIT 2 to the Purchase and Sale Agreement and incorporated herein by this reference ("TCE Agreement and Covenant"). The approximate 83,324 square foot area described in EXHIBIT A and depicted on EXHIBIT B to EXHIBIT 2 is referred to below as the "TCE Area".

The City seeks to acquire the Subject Property Interests for public use, namely for conservation purposes and for the construction of certain public off-site improvements, consisting of public street, drainage, 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"). The Irrevocable Offer of Dedication dedicates to the City pursuant to Government Code Section 7050 that certain 51,003 square foot conservation easement described in the Irrevocable Offer. The City seeks to acquire the Conservation Easement for the benefit of Fallbrook Lands Conservancy. The authorization to use the approximate 83,324 square foot TCE Area will facilitate the construction of the public street, drainage, and related improvements in connection with the Project. The grant of the rights to use the 83,324 square foot TCE Area will also authorize the City to construct certain permanent rip-rap and related drainage improvements in portions of said 83,324 square foot TCE Area to protect the street improvements from erosion and to minimize flooding. These permanent rip-rap and related drainage improvements will also help minimize flooding in the remainder portions of the Property.

Sommers Bend Development and Construction of Off-Site Improvements in Connection with the Extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection

The Subject Property Interests are required for the construction of the the off-site public street and drainage improvements and for conservation purposes, and all uses necessary or convenient thereto

in connection with the extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection.

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.

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.

Environmental Review

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 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.

Summary of Project and Salient Terms of Purchase and Sale Agreement

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 for conservation easement purposes, to facilitate the construction of the Project, and for the construction of permanent rip-rap and related drainage improvements in portions of the approximate 83,324 square foot TCE Area. 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.

The Project, as planned and designed, seeks to minimize the impact on private parcels. The Subject Property Interests are located in portions of the Property within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events. The authorization to use the 83,324 square foot TCE Area will help facilitate the construction of the Project and authorize the construction of permanent rip-rap and related drainage improvements in portions of the said 83,324 square foot TCE Area to protect the street and drainage improvements from flooding. The

permanent rip-rap and related drainage improvements will also help minimize flooding on the remainder portions of the Property.

The Purchase and Sale Agreement provides that the City will pay to owners the total purchase price of \$170,500.00 (One Hundred Seventy Thousand Five Hundred Dollars) for the Subject Property Interests. Under the Purchase and Sale Agreement, the \$170,500.00 Purchase Price is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of and rights to the Conservation Easement described in the Irrevocable Offer of Dedication of Conservation Easement and rights to use the 83,324 square foot TCE Area to facilitate the construction of the Project under the terms of the Temporary Construction Easement Agreement and Covenant attached to the Purchase and Sale Agreement, including the authorization to install the permanent improvements consisting of rip-rap slope-erosion protection improvements in the location of the 83,324 square foot TCE Area shown on EXHIBIT C to EXHIBIT 2 to the Purchase and Sale Agreement, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, any future maintenance costs of Owners relating to maintaining the rip-rap and related drainage and slope-erosion improvements, any obligations of Owners under the Conservation Easement, any other damages of every kind and nature suffered by Owners by reason of City's acquisition of the Subject Property Interests, the Project for which City is acquiring the Subject Property Interests, and all costs and expenses whatever in connection therewith.

The City will initially consent to the recordation of the Irrevocable Offer of Dedication for the conservation easement. After the construction of the Project is completed and the area of the conservation easement is planted with the native plants and the mitigation requirements are complete, the City will accept the dedication of the conservation easement. After the City accepts the dedication of the conservation easement, the City plans to transfer its interest in the conservation easement to the Fallbrook Lands Conservancy. Pursuant to the Irrevocable Offer of Dedication, the Owners acknowledge and agree that the dedication of the conservation easement is for the benefit of Fallbrook Lands Conservancy or similar entity authorized to manage and retain conservation easements. Final exhibits to the conservation easement will be included at the time of acceptance.

City Staff recommends that the City Council approve the Resolution approving the Purchase and Sale Agreement for the acquisition of the Subject Property Interests.

FISCAL IMPACT: The City will deposit with Escrow the \$170,500.00 Purchase Price for the benefit of the Owners together with escrow costs, which are not expected to exceed \$10,000.00. Woodside 05S, LP, a California Limited Partnership and Wingsweep Corporation, a California Corporation are responsible for the acquisition costs relating to the Subject Property Interests 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, 2022.

ATTACHMENTS: Resolution Approving Purchase and Sale Agreement

1. Purchase & Sale Agreement for the acquisition of the Subject Property Interests and Exhibits to the Purchase and Sale Agreement
 - EXHIBIT 1 – Form of Irrevocable Offer of Dedication of Easement and Exhibits, including legal description and depiction of approximate 51,003 square foot Conservation Easement Area
 - EXHIBIT 2 - Form of Grant of Temporary Construction Easement and Covenant for Construction of Certain Permanent Improvements and Exhibits, including legal description and depiction of approximate 83,324 square foot TCE Area and depiction of area in which permanent rip-rap and related drainage improvements will be constructed