

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

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

DATE: July 25, 2023

SUBJECT: Recommended Adoption of Resolution of Necessity for Acquisition by Eminent Domain of Certain Real Property Interests for Public Purposes on Assessor's Parcel Number 957-090-023 in Connection with the Construction of Public Street, Drainage, 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, Assistant Director of Public Works
Anissa Sharp, Management Assistant
Paula Gutierrez Baeza, City Attorney's Office

RECOMMENDATION: That the City Council take the following actions:

1. Consider the following Resolution, which is Resolution 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, 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. 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

2. Open and conduct a hearing on the adoption of the proposed Resolution 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 Resolution of Necessity.
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 Resolution of Necessity, then City Staff recommends that the City Council, in the exercise of its discretion, adopt proposed Resolution No. 2023-_____ (“Resolution of Necessity”), 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 the Resolution of Necessity:
 - (i) **Isaac G. Navejar and Isabel L. Navejar – 39622 Liefer Road, Temecula (APN 957-090-023 – Navejar Parcel)**
 - An approximate 31,168 square foot temporary construction easement with a term of twelve months on the Navejar Parcel described more particularly on EXHIBIT A and depicted on EXHIBIT B to Resolution No. 2023-_____ with a covenant authorizing the construction of certain permanent rip-rap and related drainage improvements in portions of said approximate 31,168 square foot temporary construction easement area shown roughly on EXHIBIT C to Resolution No. 2023-_____.

The approximate 31,168 square foot temporary construction easement the City seeks to acquire on the Navejar Parcel with the covenant authorizing the construction of permanent rip-rap and related drainage improvements in portions of said 31,168 square foot area are referred to below collectively as the “Subject Property Interests.” The Subject Property Interests are located on the portions of the Navejar Property within the Long Valley Wash, a natural flood control channel.
4. If the City Council adopts the proposed Resolution of Necessity, authorize the City Attorney’s Office to file and prosecute an eminent domain proceeding 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 Resolution of Necessity.

BACKGROUND:

Background and Summary

The City Council has before it a proposed Resolution of Necessity for the acquisition by eminent domain of the Subject Property Interest described above and in the attached Resolution of Necessity for public use. The City seeks to acquire the Subject Property Interest for public use, namely 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”).

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 Connection. The Subject Property Interests are required to facilitate 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 and to protect said improvements from erosion. The Subject Property Interests are also required to construct rip-rap and related drainage improvements in portions the 31,168 square foot temporary construction easement area that will protect the related street improvements from erosion and flooding.

The drainage and related improvements that are necessary to support the public street improvements that will be constructed within the existing right of way as part of the extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection are in the public interest and necessity. Said improvements are necessary to protect the street improvements, provide necessary drainage, and mitigate erosion and flooding in the area of the street 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 drainage and related improvements necessary to protect the related street and drainage improvements constructed as part of the Project from erosion and flooding. The City seeks to use the 31,168 square foot temporary construction easement for a term of twelve months to facilitate the construction of the Project and to construct the permanent rip-rap and related drainage improvements on the portions of said 31,168 square foot temporary construction easement depicted roughly on EXHIBIT C to Resolution No. 2023-_____. The Subject Property Interests are located on portions of the Navejar Property within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events.

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 the Subject Property Interests by Eminent Domain and Findings Required for Adoption of Resolution of Necessity

The City seeks to acquire the Subject Property Interests for public use, namely to facilitate the construction of the street and drainage improvements for the Project and to construct drainage 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.”

To adopt the proposed Resolution of Necessity for the acquisition by eminent domain of the Subject Property Interests the City Council must find and determine 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 the 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 Resolution 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 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”.

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

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 larger parcel of which said Subject Property Interests are a part. The City set just compensation for the Subject Property Interests in accordance with the fair market value. 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 – 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 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 Owners on several occasions to discuss the City’s offer and negotiate in good faith with the owners for the acquisition of the Subject Property Interests. On October 7, 2022, Mr. Navejar requested that the offer to purchase the Subject Property Interests be increased to \$12,000 from the fair market value set as just compensation. The parties negotiated the proposed purchase of the Subject Property Interests in good faith and the City agreed to the counter-offer presented by the Owners. Additional communications were held regarding the Project. The Owners submitted a letter objecting to the adoption of a resolution of necessity for the Navejar Parcel in connection with a February 14, 2023 hearing that considered the adoption of resolutions of necessity for property interests needed from two other parcels. A resolution of necessity relating to the Navejar Parcel was not on the City Council Agenda at that time. The City understood that the Owners had reached an agreement for the City’s use the Subject Property Interests and followed up with the Owners regarding said agreement.

Further communications were held between OPC and Mr. Navejar regarding his agreement to let the City use the Subject Property Interests for \$12,000. The Owners’ daughter, Vanessa Navejar Ugalde later requested that all communications to her parents be in writing and that said communications 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 the Owners’ daughter on March 7, 2023. Mrs. Navejar was included in the email transmission. The City followed up several times and on March 23, 2023, the Owners’ daughter 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 Navejar Property. 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 Owners’ decision not to proceed with a negotiated sale of the Subject 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 further negotiations between the parties for the City’s acquisition of the Subject Property Interests.

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

Code of Civil Procedure Section 1245.235 Notice – Subject Property Interests

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 City seeks to acquire. A courtesy copy of the letter and notice was also emailed to Mrs. Navejar and to the Owners’ daughter. 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 letter and notice 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.

REQUIRED FINDINGS FOR ADOPTION OF RESOLUTION 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 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 certain rip-rap and related drainage improvements in portions of the 31,168 square foot temporary construction easement area to protect the street improvements from flooding.

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 drainage improvements in a portion of the approximate 31,168 square foot temporary construction easement area will help protect the street and drainage improvements from erosion and will also help protect the remaining portions of the Navejar Parcel from erosion and to minimize flooding. The rough location of the rip-rap and related drainage improvements on Subject Property Interests are shown on EXHIBIT C to Resolution No. No. 2023-_____. The drainage and rip-rap improvements are located in the portions of the Navejar Parcel within the Long Valley Wash.

The Project, as planned and designed, seeks to minimize the impact on private parcels. The Subject Property Interests are located in the portions of the Navejar 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 Navejar Parcel. The construction of the Project will not result in the displacement of any persons because the residence and improvements located on the Navejar 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 at this time because the acquisition of the Subject Property Interests are necessary to help the City facilitate the construction of the

public street, drainage, rip-rap, and related improvements that will be constructed as part of the Project.

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).

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 Subject Property Interests are required to facilitate the construction of the public street, drainage, 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 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 Subject Property Interests are also required for the construction of rip-rap and related drainage improvements in portions of said 31,168 square foot temporary construction easement area to protect the street improvements from flooding.

The Project is also planned and located to minimize the impact on private parcels. The Subject Property Interests on the Navejar Parcel are located within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events. The rip-rap and related drainage improvements that the City will construct in portions of said 31,168 square foot Subject Property Interests are necessary to protect the street improvements from erosion and flooding and will also help minimize flooding on the remainder portions of the Navejar Parcel. It is expected that, in the after condition, less of the remainder portion of the Navejar Parcel will be located within the 100-year flood limits.

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 Navejar Parcel within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events. No residences or other structures are located in the area of the Subject Property Interests.

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).

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 Subject Property Interests are required to facilitate the construction of the public street, drainage, 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 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 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 temporary construction easement area to protect the street improvements from erosion and flooding. The rip-rap and related drainage improvements that will also help minimize flooding on the remaining portions of the Navejar Parcel. The Subject Property Interests are located in the portions of the Navejar Parcel within the Long Valley Wash, a natural flood control channel that experiences flooding during rain events. No residences or structures are located in the area of the Subject Property Interests. 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, 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 – Subject Property Interests

As noted above, on September 20, 2022, the City extended a written offer pursuant to Government Code Section 7267.2 to the Owners, Isaac G. Navejar and Isabel L. Navejar, the record owners. 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 Subject Property Interests. On October 7, 2022, Mr. Navejar requested that the offer to purchase the Subject Property Interests be increased to \$12,000 from the fair market value set as just compensation. The parties negotiated the proposed purchase of the Subject Property Interests in good faith and the City agreed to the

counter-offer presented by the Owners. Additional communications were held regarding the Project. The Owners submitted a letter objecting to the adoption of a resolution of necessity for the Navejar Parcel in connection with a February 14, 2023 hearing that considered the adoption of resolutions of necessity for property interests needed from two other parcels. A resolution of necessity was not on the City Council Agenda and was not considered for the Navejar Parcel at that time. The City understood that the Owners had reached an agreement for the City's use of the Subject Property Interests and followed up with the Owners regarding said agreement.

Further communications were held between OPC and Mr. Navejar regarding his agreement to let the City use the Subject Property Interests for \$12,000. The Owners' daughter, Vanessa Navejar Ugalde later requested that all communications to her parents be in writing and that said communications 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 the Owners' daughter on March 7, 2023. Mrs. Navejar was included in the email transmission. The City followed up several times and on March 23, 2023, the Owners' daughter 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 Navejar Property.

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 Owners' decision not to proceed with a negotiated sale of the Subject 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 further negotiations between the parties for the City's acquisition of the Subject Property Interests.

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 EXHIBIT A, EXHIBIT B, and EXHIBIT C in connection with the Subject 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: Pursuant to the 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, the Developer is responsible for the acquisition costs in connection with the real property interests required for the construction of the off-site improvements.

ATTACHMENTS:

1. Resolution - Resolution of Necessity in connection with Navejar Property Interests (APN 957-090-023)
2. Exhibits A, B and C to the Resolution of Necessity in connection with Navejar Property Interests (APN 957-090-023)