

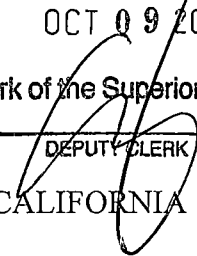
1 MICHELLE M. KENYON, CITY ATTORNEY
2 CITY OF PACIFICA; and
3 Albert Tong (SBN 208439)
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5 BURKE, WILLIAMS & SORENSEN, LLP
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9 Attorneys for Plaintiff
10 CITY OF PACIFICA

FILING FEE EXEMPT PURSUANT TO
GOVERNMENT CODE § 6103

FILED
SAN MATEO COUNTY

OCT 09 2018

Clerk of the Superior Court
By  DEPUTY CLERK

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN MATEO

13 CITY OF PACIFICA,

14 Plaintiff,

15 v.

16 MILLARD W. TONG AND ALICIA W.
17 TONG, TRUSTEES, U.D.T APRIL 30,
18 1990; EAST WEST INVESTMENT INC.,
19 A CALIFORNIA CORPORATION; EAST
20 WEST BANK; MILLARD W. TONG
21 AND ALICIA W. TONG, REVOCABLE
22 LIVING TRUST; ENGINEERED SOIL
23 REPAIRS, INC; STATE OF
24 CALIFORNIA; LUKE BISI; ALL
25 PERSONS UNKNOWN AND
26 CLAIMING AN INTEREST IN THE
27 PROPERTY; and DOES 1 through 50,
28 inclusive,

Defendants.

Case No.

18 CIV 05455

COMPLAINT IN EMINENT DOMAIN

APNs: 009-413-010 and 009-413-020

18 - CIV - 05455
CMP
Complaint
1425183



Pursuant to Code of Civil Procedure section 1250.310, Plaintiff CITY OF PACIFICA (the "City") alleges:

1. This proceeding is being instituted, and the lands and interests described below are being taken and condemned, for public uses pursuant to the California Constitution, Article 1,

1 Section 19; the California Eminent Domain Law, Code of Civil Procedure Section 1230.010 et
2 seq., Government Code sections 37350.5, 40401, and 40404, and other provisions of law.

3 2. The City is vested by the California Constitution and laws of the State of
4 California with the power of eminent domain for the public purpose set forth in this Complaint in
5 Eminent Domain. The City brings this action on its own behalf and on behalf of the community it
6 serves, the citizens of the City of Pacifica.

7 3. The City seeks to acquire Assessor Parcel Nos. 009-413-010 and 009-413-020,
8 also known as 310 and 320 Esplanade Avenue, Pacifica, California (the "Subject Property"). The
9 Subject Property consists of approximately 74,670 gross square feet. The Subject Property is
10 currently vacant land, and is more particularly described and depicted in **Exhibit 1**, which is
11 attached hereto and incorporated herein by reference.

12 4. The City seeks to take the Subject Property for public use and for the purpose of
13 the 310-330 Esplanade Infrastructure Preservation Project (the "Project"). The purpose of the
14 Project is to design and, after the California Coastal Commission completes the review required
15 by the California Environmental Quality Act ("CEQA") and approves the consolidated
16 development permit, build a shoreline protection structure on the Subject Property that will
17 prevent further coastal erosion and damage to Esplanade Avenue and public infrastructure.

18 5. The Subject Property is located in the City of Pacifica, County of San Mateo, State
19 of California.

20 6. Each Defendant named in this Complaint, appears of record or is believed by the
21 City to have or claim a right, title, estate, lien or interest in, on, to or against the Subject Property,
22 or a portion of it, sought to be condemned in this action. For the convenience of the Court and
23 parties, and not as allegations to which the City intends to be bound, the City has set forth below a
24 statement of the respective record or claimed interest of each Defendant in the Subject Property.
25 It is the legal responsibility of each such Defendant to plead any interest in the real property being
26 condemned under Code of Civil Procedure section 1250.320. The City is informed and believes,
27 and thereon alleges, that the following Defendants claim a fee interest in the Subject Property:

28 a. MILLARD W. TONG AND ALICIA W. TONG, TRUSTEES, U.D.T. APRIL 30,

1 1990.

2 b. EAST WEST INVESTMENT, INC., A CALIFORNIA CORPORATION

3 c. EAST WEST BANK

4 d. ENGINEERED SOIL REPAIRS, INC.

5 e. STATE OF CALIFORNIA

6 f. LUKE BISI

7 7. Defendants DOES 1 through 50, inclusive, have, or claim to have, an interest in
8 the land being acquired herein, the exact nature of which is unknown to the City. Their true
9 names or capacities, whether individual, partnership, corporate, associate, or otherwise, are
10 unknown to the City, who therefore sues said defendants by such fictitious names, and will ask
11 leave to amend this Complaint to show their true names and capacities and state of incorporation
12 when same have been ascertained.

13 8. The City also names as Defendants all persons unknown and claiming an interest
14 in the property described and identified in this Complaint. (See Code Civ. Proc., § 1250.220(c).)

15 9. Prior to commencement of this action, and after notice was provided pursuant to
16 Code of Civil Procedure section 1245.235, the City Council of the CITY OF PACIFICA passed
17 and adopted Resolution No. 39-2018 (the "Resolution of Necessity") by a vote of five (5) in
18 favor, none (0) opposed, none (0) abstained, none (0) absent, on September 10, 2018. The
19 Resolution of Necessity is attached hereto as **Exhibit 2** and incorporated herein by reference.

20 10. A statement of the City's right to take the Subject Property by eminent domain is
21 set forth in the Resolution of Necessity, which provides:

22 a. The public interest and necessity require the Project.

23 b. The Project is planned or located in the manner that will be most compatible with
24 the greatest public good and the least private injury.

25 c. The Subject Property is necessary for the Project.

26 d. The City has complied with all conditions and statutory requirements necessary to
27 exercise the power of eminent domain to acquire the Subject Property. The offer required by
28 Government Code section 7267.2 was made to the owners of record.

1 11. To the extent the Subject Property lying within streets or other public easements is
2 subject to an easement or prescriptive easement, the City claims an interest to the extent that the
3 public has an interest therein.

4 12. If any of the area of the Subject Property has been appropriated to some public
5 use, the public uses to which they are to be applied by The City, as described above, are more
6 necessary and paramount public uses, pursuant to Code of Civil Procedure Section 1240.610, or
7 at the very least will not unreasonably interfere with or impair the continuance of the public use
8 as it exists or may reasonably be expected to exist in the future pursuant to Code of Civil
9 Procedure, Section 1240.510.

10 WHEREFORE, The City prays for judgment:

11 1. That the Subject Property be condemned for the City's use for the purposes set
12 forth in the Resolution of Necessity and this Complaint, and that the judgment decree that the
13 Subject Property is condemned for necessary public uses of the City as authorized by law, and
14 that all of the Subject Property is necessary and suitable therefor;

15 2. That the Defendants, and each of them, be required to set forth the nature,
16 character, extent and value of their several estates and interests in the said property;

17 3. That just compensation be ascertained, assessed, awarded, and apportioned as
18 provided by law, and the amount of the award for the Subject Property be first determined
19 between the City and all Defendants claiming any interest therein pursuant to Code of Civil
20 Procedure section 1260.220;

21 4. That the Assessor and/or Tax Collector of the County of San Mateo be directed to
22 provide the required information as to any taxes owing on the Subject Property and that all liens
23 and encumbrances against the Subject Property, including any liens for unpaid taxes, penalties
24 and costs, be deducted pursuant to Code of Civil Procedure section 1260.250(e) against said
25 judgment or judgments;

26 5. That the City be granted possession of the Subject Property; and

27 6. For such other and further relief the Court shall deem proper and just.

28

1 Dated: October 9, 2018

BURKE, WILLIAMS & SORENSEN, LLP

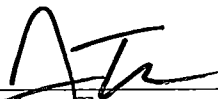
2
3 By: 
4 Albert Tong
5 Attorneys for Plaintiff
6 CITY OF PACIFICA
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EXHIBIT 1
to Complaint

310 Esplanade Avenue

PARCEL ONE:

Lot 6 in Block 2, as shown on that certain map entitled "SURF SIDE MANOR NO. 1 PACIFICA, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California on April 28, 1961 in Book 54 of Maps at page 40.

PARCEL TWO:

Those certain parking privileges provided for in the Declaration of Parking Covenants recorded October 4, 1971 in Book 6024, page 102, Official, Records (File No. 51401-AE), Records of San Mateo County, California. Said privileges are appurtenant to and for the benefit of Parcel 1 above and were created by that certain Deed recorded October 4, 1971 in Volume 6024 of Official, Records at page 191 (File No. 51428-AE), Records of San Mateo County, California.

APN: 009-413-010

320 Esplanade Avenue

PARCEL ONE:

Lot 5 in Block 2, as shown on that certain map entitled "SURF SIDE MANOR NO. 1, PACIFICA, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California on April 28, 1961 in Book 54 of Maps at Page 40.

Excepting any portion of the land below the ordinary high water where it was located prior to any artificial or avulsive changes in the location of the shoreline.

PARCEL TWO:

Those certain parking privileges provided for in the Declaration of Parking Covenants recorded October 4, 1971, in Book 6024, Page 110, Official Records (File No. 51402-AE), Records of San Mateo County, California.

Said privileges are appurtenant to and for the benefit of Parcel 1 above and were created by that certain Deed recorded October 4, 1971 in Volume 6024 of Official Record at Page 185 (File No. 51402-AE), Records of San Mateo County, California.

APN: 009-413-020

EXHIBIT 2
to Complaint

RESOLUTION NO. 39-2018

A RESOLUTION OF NECESSITY BY THE CITY COUNCIL OF THE CITY OF PACIFICA,
CALIFORNIA, AUTHORIZING THE ACQUISITION OF PROPERTY BY EMINENT DOMAIN
FOR THE 310-330 ESPLANADE INFRASTRUCTURE PRESERVATION PROJECT

WHEREAS, the City of Pacifica ("City") proposes to acquire approximately 74,670 square feet of property (the "Property"), commonly known as 310 and 320 Esplanade Avenue, Pacifica, CA 94044, and as more fully described and depicted in **Exhibits A and B** attached hereto and incorporated herein by this reference for the 310-330 Esplanade Infrastructure Preservation Project ("the Project"); and

WHEREAS, pursuant to section 1245.235 of the Code of Civil Procedure, the City scheduled a hearing for 7:00 p.m. on September 10, 2018 at City Council Chambers, 2212 Beach Blvd., Pacifica, CA 94044, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters set forth herein; and

WHEREAS, said hearing has been held by the City and each affected property owner was afforded an opportunity to be heard on said matters.

NOW, THEREFORE BE IT RESOLVED, the City Council hereby finds, based upon the substantial evidence contained in the record, including the written and oral staff reports presented to the City Council with respect to the proposed acquisition of the Property for the Project, as well as all other written and oral testimony submitted at the September 10, 2018 hearing, as follows:

- A. That the interests to be acquired by the City consist of approximately 74,670 square feet of property (the "Property") as more fully described and depicted in **Exhibits A and B** attached hereto and incorporated herein by this reference.
- B. That the public interest, convenience and necessity require the Project and all public uses and purposes appurtenant thereto. These public uses and purposes are further described in the City of Pacifica's Staff Report, attached as **Exhibit C** and incorporated herein by this reference.
- C. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- D. The Property is necessary for the Project and such taking is authorized by Section 19, of Article I of the California Constitution, Sections 37350.5 and 40401 *et seq.* and 40404 of the California Government Code, Sections 1230.010 *et seq.* of the California Code of Civil Procedure, and other applicable law.

- E. That all conditions and statutory requirements to exercise the power of eminent domain to acquire the Property described herein have been complied with by the City.
- F. That the offer required by section 7267.2 of the Government Code was made to the owner or owners of record.
- G. That the City of Pacifica has complied with Code of Civil Procedure section 1245.235 regarding the provision of necessary notice of the hearing on this Resolution.

BE IT FURTHER RESOLVED that, based upon the forgoing facts, findings and conclusions, the City Council hereby declares its intention to acquire the Property in accordance with all applicable laws of the State of California governing proceedings in eminent domain with actual acquisition and use of the Property conditioned on compliance with the California Environmental Quality Act.

BE IT FURTHER RESOLVED that the law firm of Burke, Williams & Sorensen, LLP, is authorized and directed to bring an action in the Superior Court of the State of California, County of San Mateo, against all owners and claimants of the Property described herein for the purpose of acquiring the Property for the public use of the Project and to do all things necessary to prosecute such an action to its final determination in accordance with applicable law. The authorized attorneys are instructed to make an application to the court for an order fixing the amount of security by way of money deposits as the court may direct and for an order permitting the City to take possession and use of the Property for the use and purposes herein described.

BE IT FURTHER RESOLVED that the City Manager is authorized to engage the services of any consultant deemed necessary to complete the acquisition of the Property and to sign and verify any and all complaints or other instruments necessary to maintain and complete an action in eminent domain.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon its adoption.

BE IT FURTHER RESOLVED that the City Clerk shall certify to the adoption of this Resolution.

List of Exhibits:

- A. Legal Description of the Property
- B. Legal Description of the Property
- C. Staff Report
- D. Notice

* * * * *


Passed and adopted at a regular meeting of the City Council of the City of Pacifica, California, held on the 10th day of September 2018.

AYES, Councilmembers: Keener, Vatterlaus, Digre, O'Neill, Martin

NOES, Councilmembers: None

ABSENT, Councilmembers: None

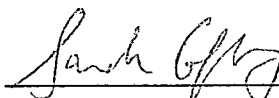
ABSTAIN, Councilmembers: None



John Keener, Mayor

ATTEST:

APPROVED AS TO FORM:



Sarah Coffey, City Clerk



For Michelle Marchetta-Kenyon, City Attorney

EXHIBIT A

EXHIBIT "A"

310 Esplanade Avenue

PARCEL ONE:

Lot 6 in Block 2, as shown on that certain map entitled "SURF SIDE MANOR NO. 1 PACIFICA, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California on April 28, 1961 in Book 54 of Maps at page 40.

PARCEL TWO:

Those certain parking privileges provided for in the Declaration of Parking Covenants recorded October 4, 1971 in Book 6024, page 102, Official, Records (File No. 51401-AE), Records of San Mateo County, California. Said privileges are appurtenant to and for the benefit of Parcel 1 above and were created by that certain Deed recorded October 4, 1971 in Volume 6024 of Official, Records at page 191 (File No. 51428-AE), Records of San Mateo County, California.

APN: 009-413-010

EXHIBIT B

EXHIBIT "B"

320 Esplanade Avenue

PARCEL ONE:

Lot 5 in Block 2, as shown on that certain map entitled "SURF SIDE MANOR NO. 1, PACIFICA, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California on April 28, 1961 in Book 54 of Maps at Page 40.

Excepting any portion of the land below the ordinary high water where it was located prior to any artificial or avulsive changes in the location of the shoreline.

PARCEL TWO:

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Said privileges are appurtenant to and for the benefit of Parcel 1 above and were created by that certain Deed recorded October 4, 1971 in Volume 6024 of Official Record at Page 185 (File No. 51402-AE), Records of San Mateo County, California.

APN: 009-413-020

EXHIBIT C



**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

9/10/18

SUBJECT:

Consideration of Resolution No. _____, Adopting Resolution Of Necessity Authorizing The Acquisition Of 310 and 320 Esplanade (APNs 009-413-010 and 009-413-020) By Eminent Domain For The 310-330 Esplanade Infrastructure Preservation Project (the "Resolution").

RECOMMENDED ACTION:

Staff recommends the City Council open the hearing on the Resolution, take testimony, close the hearing, and adopt Resolution No. _____.

STAFF CONTACT:

Van Ocampo, Public Works Director (650) 738-3760
ocampov@ci.pacificaca.us

Ryan Marquez, Assistant Civil Engineer (650) 738-3760
marquezzr@ci.pacificaca.us

BACKGROUND/DISCUSSION:

I. Summary

Coastal storms and bluff erosion threaten public infrastructure located in and around the section of Esplanade Avenue between Beaumont Avenue and Monterey Road, including the roadway and underground utilities.

The adoption of the "Resolution will allow the City to:

- (1) Initiate condemnation of 310 and 320 Esplanade Avenue, (collectively, the "Property") for the 310-330 Esplanade Infrastructure Preservation Project (the "Project");
- (2) Authorize commencement of litigation to acquire property by eminent domain with actual acquisition and use of the Property conditioned on compliance with the California Environmental Quality Act ("CEQA");
- (3) Consent to a consolidated coastal development permit application under Public Resources Code section 30601.3 which grants sole authority to the California Coastal Commission (the "Commission") to process and act upon a consolidated coastal development permit application for the Project; and
- (4) Deposit the probable amount of just compensation (\$76,500) with the State Treasurer and seek an order of possession of the Property.

The purpose of the Project is to design and, after the Commission completes CEQA review and approves the consolidated coastal development permit, build a shoreline protection device in order to protect Esplanade Avenue and public infrastructure.

If adopted, this Resolution will allow the City to initiate eminent domain proceedings so Staff and its engineering and geotechnical consultant, Cotton Shires & Associates (“CSA”), can finalize the design and secure funding for the Project and prepare/submit a consolidated coastal development permit application to the Commission. This Resolution will not influence or control the final design, which must be approved by the Commission in its sole authority.

Staff recommends that the City Council adopt the Resolution to allow the City to initiate eminent domain proceedings to acquire the Property with any use conditioned on CEQA compliance. A copy of the Resolution is attached hereto as **Attachment 1**.

II. Background

A. Bluff Conditions

Esplanade Avenue is located on top of a 70- to 90-foot high coastal bluff.

CSA has periodically monitored local bluff conditions since 1997. CSA compiled an extensive collection of earth material properties and research data regarding the bluff. It maintains a large photographic archive of local bluff conditions from 1997 to the present. CSA prepared formal assessments of bluff instability conditions in 2010, the summer of 2015, and in February 2016. CSA also completed observations of the bluff under the Property in July 2015, August 2016, and October 2016.

Based on its research and observations, CSA made the following findings:

- The bluff is composed of marine terrace deposits that are poorly to moderately cemented and highly susceptible to erosion from wave attack.
- Beginning in 2015, the bluff experienced extremely rapid eastward retreat as a result of wave-induced and seepage-induced landslides.
- On average, the bluff retreats at a rate of 2.5 feet per year. However, because bluff retreat is episodic, it is not unusual to lose 10 feet or more during a single severe storm season. For example, in February 2016, the bluff top retreated approximately 7 feet.
- The bluff is critically over-steepened and the bluff face displays large cavities and failures.
- If the toe is stabilized, the bluff will eventually recline to a 50 to 70 degree inclination over the next few years.
- Accelerated failure and retreat at the bluff top should be anticipated when the unprotected bluff toe is struck by high winter waves or when seasonal rainfall causes elevated moisture contents within the bluff.

CSA estimates that at the recent rate of retreat, if left unprotected, only 15 feet of the bluff top will remain after 4 years. If this occurs, Esplanade Avenue will likely be undermined and unstable and present a threat to public health and safety. In addition, underground utilities risk significant damage.

CSA's assumed bluff retreats are based on recent static conditions. An earthquake or severe storm season(s) will likely accelerate the rate of retreat at the bluff top, and/or trigger a

catastrophic collapse of the bluff face.

B. Past Unsuccessful Efforts to Protect Against Bluff Erosion

The Property's current owners previously installed two ineffective shore protection devices, including:

(1) Rip Rap

In 2009, approximately 6,000 tons of rock rip rap were placed at the bluff toe. Most of the rip rap has since been washed away by wave erosion and less than 1,000 tons presently remain.

(2) Soil-Nail and Shotcrete Wall

In 2011, a soil-nail and shotcrete wall was constructed on the bluff face. The wall consisted of reinforced shotcrete secured with 30- to 50-foot long soil nails embedded in the bluff. Most of the wall has since fallen off of the bluff.

III. Proposed Project

A. Project Purpose

The purpose of the Project is to design and, after the Commission completes CEQA review and approves the consolidated coastal development permit, build a shoreline protection structure that will prevent further coastal erosion and damage to Esplanade Avenue and public infrastructure. We understand a seawall is preferred by the Commission from a coastal resources protection standpoint because it leaves a greater area of beach open for recreational use and may be designed to mimic the color and texture of native bluffs thus reducing visual impacts.

Staff and CSA will work with the Commission to ensure that the Project complies with its design criteria, including mitigating adverse impact on visual resources, public access, and shoreline supply as required by Public Resources Code section 30235.

B. Project Location

The shoreline protection device will be located at the base of the bluff at the Property.

Because the Project is located in both the Commission and the City's coastal development permit jurisdictions, Staff seeks authority to consent to a consolidated permit action under Public Resources Code section 30601.3. This section grants sole authority to the Commission to process and act upon a consolidated coastal development permit application.

IV. Discussion

The City is authorized to acquire the Property and to exercise the power of eminent domain for public use in accordance with Article 1, Section 19 of the Constitution of the State of California, Sections 37350.5, 40401, 40404 of the Government Code, Section 10102 of the Streets and Highway Code, and Sections 1240.140 and 1230.010 et seq. of the Code of Civil Procedure.

A hearing on a resolution of necessity must be held and the resolution approved by a two-thirds (2/3) vote of all the members of the City Council prior to the City moving forward with the eminent domain process. Since there are five City Council members, a two-thirds (2/3) vote requires four out of five members (4/5) to vote to adopt the Resolution. Adoption of the

Resolution authorizes the City to deposit the probable amount of just compensation with the State Treasurer, file a Complaint in Eminent Domain, and seek an order for prejudgment possession of the Property. The purpose of the hearing on the Resolution is to provide the property owners with an opportunity to address the City Council on this matter. However, the amount of compensation owed for the acquisitions will be decided by a court of law or through negotiations, and is not a proper matter to be discussed at the public hearing.

A. Findings for Adoption of Resolution of Necessity

State law requires that the City Council make certain findings with respect to the adoption of the Resolution. Below is a list of findings necessary for the adoption of the Resolution at the hearing of the City.

(1) The Public Interest and Necessity Require the Project

As discussed above, Esplanade Avenue and public infrastructure will likely be undermined and damaged by ongoing wave attack and erosion unless the shoreline is protected. Esplanade Avenue will become structurally unstable and present a threat to public health and safety. The underground utilities will also be damaged as a result.

(2) The Property Sought to be Acquired is Necessary for the Project

Acquisition of the Property is necessary because it is located where the shoreline protection structure needs to be installed to be effective. It cannot be installed without the Property interests sought to be acquired by eminent domain. After the shoreline protection structure is constructed (most likely a seawall), it is estimated that only 15 feet of level bluff top will remain west of the sidewalk.

(3) Greatest Public Good and Least Private Injury

As discussed below under Alternative Actions, Staff considered four alternatives to the proposed shoreline protection structure, none of which would be feasible or satisfactorily stabilize Esplanade Avenue and buried utilities. Moreover, the Property is currently undeveloped, so no residents or business will be displaced as a result of the acquisition of the Project. As such, the Project will achieve an important public good with very little private injury.

(4) Government Code Offer

On September 27, 2017, the City obtained a final appraisal of the Property, placing the value at \$76,500.

On October 5, 2017, the City extended a purchase offer in conformance with Government Code section 7267.2(a) to the Property owner of record. A copy of the Government Code Offer is attached hereto as **Attachment 2**. Subsequent negotiations did not result in an agreement as to the fair market value for the Property.

Accordingly, on August 20, 2018 the owner was provided with a Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain ("Notice") at its regular meeting of September 10, 2018. A copy of the Notice is attached hereto as **Attachment 3**.

B. CEQA Compliance

The City Council is not required to make any formal CEQA findings in connection with the Resolution as adoption of the Resolution is not approval of a project subject to CEQA and/or is

exempt from CEQA. Nonetheless, Staff provides this CEQA compliance discussion to inform the public and make clear that adoption of the Resolution will not result in any changes to the physical environment and that the Commission will ensure all potential impacts of the underlying Project are avoided or mitigated as part of its review and before approving the consolidated coastal development permit application for the Project. Both CEQA itself and case law permit a public agency to initiate land acquisition agreements and/or condemnation proceedings before CEQA compliance so long as the acquisition and/or future use of the site is conditioned on CEQA compliance. The Resolution complies with this authority for the following reasons:

- Adoption of the Resolution only starts the condemnation proceedings of 310 and 320 Esplanade Avenue and the actual acquisition and use of the Property will be expressly conditioned on CEQA compliance;
- Adoption of the Resolution does not influence or control the final design of the Project, which is subject to the Commission's approval authority pursuant to the consolidated coastal development permit application process under Public Resources Code section 30601.3;
- Adoption of the Resolution will not have a significant effect on the environment because the Project cannot proceed until the Commission has performed its environmental review of the consolidated coastal development permit application as a certified regulatory agency under CEQA, and issued a coastal development permit;
- The Resolution will not limit the Coastal Commission's consideration of shoreline protection structures or other feasible mitigation measures and/or alternatives; and
- It is premature at this stage of the design process to engage in environmental analysis because there is no meaningful information concerning project design for environmental assessment at this time.

V. Public Contact

The City Council agenda was posted as required by statute. Notice of the Resolution of Necessity hearing was sent to the record owners of the Property in accordance with Code of Civil Procedure section 1245.235. The notice of hearing was posted and mailed in accordance with the law.

ALTERNATIVE ACTION:

Staff has evaluated the following four alternative concept approaches:

(1) Grading of Bluff

If the faces of local bluffs were graded at 45 to 50 degree inclinations, then relatively stable slopes would be created under static conditions. However, given the highly erodible nature of the bluff materials, both the face and toe of the bluff would erode due to direct rainfall and wave run-up. Face and toe erosion would cause retreat of the bluff crest and undermine the street and utilities. Furthermore, a 45 degree slope would place the top of the graded slope within 0 to 10 feet laterally from the edge of the street.

This approach would reduce failure of blocks/slabs of bluff material onto the beach below but would not provide needed protection of Esplanade Avenue and utilities.

(2) Sand Replenishment

The potential for sand replenishment to build up to the beach and prevent continued wave erosion of the toe of bluff was explored. However, sand is rapidly removed from the beach under winter storm conditions and maintenance of an adequate beach to prevent wave run-up from reaching the toe of bluff under high tide and high swell conditions (combined with future sea level rise) is not deemed sustainable. Sand replenishment will also not provide similar lateral support to the bluff that would be provided from by a shoreline protection structure. Furthermore, sufficient understanding about the local sand transport direction and rates are not currently available to estimate the annual volume of sand required to protect the bluff. The probable long term economic commitment required to continuously (or seasonally) support sand replenishment does not appear feasible for the City.

(3) Rock Revetment

Local weakly cemented terrace deposits are underlain, at depth, by competent bedrock materials of the Franciscan Complex. However, previous borings advanced immediately north of the site did not encounter Franciscan bedrock to the maximum depth explored (40 feet). A rock revetment founded in the weak terrace materials would be much more susceptible to rip rap evacuation and erosional damage than one founded on competent bedrock. Rock revetments also require a relatively wide footprint and have been deemed to adversely impact beach width and recreational uses. Rock revetments are also considered to detract from the aesthetic qualities of the coastline and do not blend with natural land forms. We understand that installation of rock revetments are not favored by the Commission along the shoreline of the City.

(4) No Project

The no project alternative would allow continued unimpeded retreat of the coastal bluff towards Esplanade Avenue. The time frame for eventual undermining of Esplanade Avenue would be highly dependent on winter swells (duration, heights and direction) and rainfall intensities and amounts. We estimate that current critically over-steepened slopes will lay themselves back to more stable inclinations forming a top of bluff (approximately 70 feet in height) located 20 to 30 feet from the edge of roadway. This 20 to 30-foot "buffer" of ground left to the west of Esplanade Avenue would be vulnerable to loss from one significant storm season (up to 30 feet of bluff retreat was documented adjacent to 320 Esplanade Avenue from December 2009 to May 2010 by RJR Engineering Group).

At this point in time, a shoreline protection structure, like a seawall, could be constructed to mitigate the rapid retreat of the coastal bluff. If measures to protect the roadway were implemented several years in the future, then much higher retaining structures with greater overall coastal impacts would be required.

FISCAL IMPACT:

The amount to be deposited as probable compensation is \$76,500. The budget will come from excess ERAF funding.

The current estimate for the Project, outside of the acquisition costs, is \$5.2 million. The City has already received \$3 million in Hazard Mitigation Grant Program monies and had \$2 million excess ERAF money earmarked in early 2016 for this project. Additionally, staff will continue to pursue additional possible funding opportunities.

ORIGINATED BY:

Public Works

ATTACHMENT LIST:

Attachment No. 1 – Resolution No. _____.

Attachment No. 2 – Government Code Offer

Attachment No. 3 – Notice of Intention to Consider Adoption of Resolution of Necessity

ATTACHMENT 1

RESOLUTION NO. ____

**A RESOLUTION OF NECESSITY BY THE CITY COUNCIL OF THE CITY OF
PACIFICA, CALIFORNIA, AUTHORIZING THE ACQUISITION OF
PROPERTY BY EMINENT DOMAIN FOR THE 310-330 ESPLANADE
INFRASTRUCTURE PRESERVATION PROJECT**

WHEREAS, the City of Pacifica (“City”) proposes to acquire approximately 74,670 square feet of property (the “Property”), commonly known as 310 and 320 Esplanade Avenue, Pacifica, CA 94044, and as more fully described and depicted in **Exhibits A and B** attached hereto and incorporated herein by this reference for the 310-330 Esplanade Infrastructure Preservation Project (“the Project”); and

WHEREAS, pursuant to section 1245.235 of the Code of Civil Procedure, the City scheduled a hearing for 7:00 p.m. on September 10, 2018 at City Council Chambers, 2212 Beach Blvd., Pacifica, CA 94044, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters set forth herein; and

WHEREAS, said hearing has been held by the City and each affected property owner was afforded an opportunity to be heard on said matters.

NOW, THEREFORE BE IT RESOLVED, the City Council hereby finds, based upon the substantial evidence contained in the record, including the written and oral staff reports presented to the City Council with respect to the proposed acquisition of the Property for the Project, as well as all other written and oral testimony submitted at the September 10, 2018 hearing, as follows:

A. That the interests to be acquired by the City consist of approximately 74,670 square feet of property (the “Property”) as more fully described and depicted in **Exhibits A and B** attached hereto and incorporated herein by this reference.

B. That the public interest, convenience and necessity require the Project and all public uses and purposes appurtenant thereto. These public uses and purposes are further described in the City of Pacifica’s Staff Report, attached as **Exhibit C** and incorporated herein by this reference.

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

D. The Property is necessary for the Project and such taking is authorized by Section 19, of Article I of the California Constitution, Sections 37350.5 and 40401 *et seq.* and 40404 of the California Government Code, Sections 1230.010 *et. seq.* of the California Code of Civil Procedure, and other applicable law.

E. That all conditions and statutory requirements to exercise the power of eminent domain to acquire the Property described herein have been complied with by the City.

G. That the offer required by section 7267.2 of the Government Code was made to the owner or owners of record.

F. That the City of Pacifica has complied with Code of Civil Procedure section 1245.235 regarding the provision of necessary notice of the hearing on this Resolution.

BE IT FURTHER RESOLVED that, based upon the forgoing facts, findings and conclusions, the City Council hereby declares its intention to acquire the Property in accordance with all applicable laws of the State of California governing proceedings in eminent domain with actual acquisition and use of the Property conditioned on compliance with the California Environmental Quality Act.

BE IT FURTHER RESOLVED that the law firm of Burke, Williams & Sorensen, LLP, is authorized and directed to bring an action in the Superior Court of the State of California, County of San Mateo, against all owners and claimants of the Property described herein for the purpose of acquiring the Property for the public use of the Project and to do all things necessary to prosecute such an action to its final determination in accordance with applicable law. The authorized attorneys are instructed to make an application to the court for an order fixing the amount of security by way of money deposits as the court may direct and for an order permitting the City to take possession and use of the Property for the use and purposes herein described.

BE IT FURTHER RESOLVED that the City Manager is authorized to engage the services of any consultant deemed necessary to complete the acquisition of the Property and to sign and verify any and all complaints or other instruments necessary to maintain and complete an action in eminent domain.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon its adoption.

BE IT FURTHER RESOLVED that the City Clerk shall certify to the adoption of this Resolution.

List of Exhibits:

- A. Legal Description of the Property
- B. Legal Description of the Property
- C. Staff Report
- D. Notice

* * * * *

Passed and adopted at a regular meeting of the City Council of the City of Pacifica, California, held on the 10th day of September 2018.

AYES, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

John Keener, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah Coffey, City Clerk

Michelle Marchetta-Kenyon, City Attorney

ATTACHMENT 2

BURKE, WILLIAMS & SORENSEN, LLP

1901 Harrison Street - Suite 900
Oakland, California 94612-3501
voice 510.273.8780 - fax 510.839.9104
www.bwslaw.com

Direct No.: 510.803.8802
Our File No.: 05620-0192
atong@bwslaw.com

October 5, 2017

VIA CERTIFIED & U.S. MAIL RETURN RECEIPT REQUESTED

Millard W. Tong and Alicia W. Tong
1499A Terra Nova Blvd.
Pacifica, CA 94044

Millard W. Tong and Alicia W. Tong
1 Picardo Ranch Rd
Pacifica, CA 94044

Re: Offer Pursuant to California Government Code § 7267.2 to acquire
Appraisal Parcel Nos. 009-413- 010 and 009-413-020

Dear Mr. and Mrs. Tong:

As discussed further herein, the purpose of this letter is to transmit an offer to purchase your property for the 310-330 Esplanade Infrastructure Preservation Project (the "Project")

With this offer, the City of Pacifica (the "City") proposes to acquire Assessor Parcel Nos. 009-413-010 and 009-413-020, commonly known as 310 and 320 Esplanade Avenue, in their entirety ("Subject Property"). Enclosed as Exhibit A are the legal description and plat map of the Subject Property. Public records indicate that you are the trustees of the owner of the Subject Property needed for the Project.

The City would prefer to resolve this matter by negotiated purchase. Section 7267.2 of the Government Code requires the City to make you an offer which represents the appraised fair market value of the property necessary for the Project. The City offers the sum of \$76,500 (Seventy Six Thousand And Five Hundred Dollars) for the Subject Property. Enclosed as Exhibit B is the Statement and Summary of the Basis for the Appraisal and the Amount Established as Just Compensation, which demonstrates the value of the Subject Property. As provided in Government Code section 7267.2, the offer is conditioned upon the City Council's ratification of the offer by either execution of a contract of acquisition or adoption of a Resolution of Necessity, or both.

Please note the offer is a gross figure from which deductions may be necessary to satisfy property taxes and assessment liens. Other interest claimants such as lessees and beneficiaries of trust deeds may also receive some of the proceeds. In the event that you decide to accept the offer, it is recommended that you contact directly the

Millard W. Tong and Alicia W. Tong
October 5, 2017
Page 2

persons, if any, to whom you may be making payments under trust deeds or other liens, and reach an agreement with them as to the amount of money they will demand, if any, in escrow to clear the property being acquired of these liens and encumbrances.

Furthermore, pursuant to Code of Civil Procedure section 1263.025(a), the City will pay the reasonable costs, not to exceed Five Thousand Dollars (\$5,000), of an independent appraisal of the Subject Property, ordered by you. To be eligible for reimbursement, the independent appraisal must be conducted by an appraiser licensed by the State Office of Real Estate Appraisers. In addition, pursuant to Code of Civil Procedure section 1263.615, the City is unable to offer to lease to you the Subject Property for your continued use after the City acquires the Subject Property, because the City will begin the Project within two years of the acquisition. Finally, enclosed as Exhibit C is an informational pamphlet describing the eminent domain process and your rights under the Eminent Domain Law.

Please respond to this offer in writing within thirty (30) days from the date of this letter. As indicated, the City would like to resolve this matter with you by agreement, as we believe a negotiated purchase best serves everyone's interests. If you do not accept the offer, you will shortly receive the City's notice of intent to consider the adoption of a Resolution of Necessity. However, this is merely a procedural step in the process, and the City would not be foreclosed from continuing negotiations by sending such a notice.

If you have any questions, please contact me at (510) 903-8802.

Sincerely,


Albert Tong

AT:AT
Attachments:

Exhibit A: Legal Description and Plat Map
Exhibit B: Statement and Summary of the Basis for the Appraisal
Exhibit C: Informational Pamphlet on Eminent Domain Law

cc: Client

**EXHIBIT A
LEGAL DESCRIPTIONS AND PLAT MAP**

310 Esplanade Avenue

PARCEL 1:

Lot 6 in Block 2, as shown on that certain map entitled "SURF SIDE MANOR NO. 1 PACIFICA, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California on April 28, 1961 in Book 54 of Maps at page 40.

PARCEL 2:

Those certain parking privileges provided for in the Declaration of Parking Covenants recorded October 4, 1971 in Book 6024, page 102, Official, Records (File No. 51401-AE), Records of San Mateo County, California. Said privileges are appurtenant to and for the benefit of Parcel 1 above and were created by that certain Deed recorded October 4, 1971 in Volume 6024 of Official, Records at page 191 (File No. 51428-AE), Records of San Mateo County, California.

A.P. No.: 009-413-010

320 Esplanade Avenue

PARCEL 1:

Lot 5 in Block 2, as shown on that certain map entitled "SURF SIDE MANOR NO. 1 PACIFICA, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California on April 28, 1961 in Book 54 of Maps at page 40. Excepting any portion of the land below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline.

PARCEL 2:

Those certain parking privileges provided for in the Declaration of Parking Covenants recorded October 4, 1971 in Book 6024, page 110, Official Records (File No. 51402-AE), Records of San Mateo County, California. Said privileges are appurtenant to and for the benefit of Parcel 1 above and were created by that certain Deed recorded October 4, 1971 in Volume 6024 of Official Records at page 185 (File No. 51425-AE), Records of San Mateo County, California.

A.P. No.: 009-413-020

