



# **TOWN OF FAIRFAX**

## **SPECIAL MEETING #2**

### **STAFF REPORT**

#### **December 15, 2021**

**TO:** Mayor and Town Council

**FROM:** Jonathon Goldman, Interim Public Works Director

**SUBJECT:** Adopt a Resolution Declaring the Existence of a Local Emergency at or Near 2378 Sir Francis Drake Boulevard, Fairfax, and Authorizing the Emergency Procurement of Materials and Labor without Competitive Bidding

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### **RECOMMENDATION**

Adopt Resolution.

### **BACKGROUND**

On the morning of Monday, December 13, 2021 the Town was advised by an alert pedestrian of the potential for a hazardous condition along the Fairfax-creekside opposite 2378 Sir Francis Drake Boulevard. The on-duty Fairfax Police Watch Commander and Building Official investigated and found that a sinkhole had developed beneath the sidewalk at that location. The sidewalk on the creek-side of Sir Francis Drake Boulevard was closed to public access at that time between Oak Manor and Marin Road. The Interim Public Works Director was advised of the appearance of a failed retaining wall and the sinkhole and arrived on scene at approximately 9:10 AM. At the Interim Public Works Director's direction, the Town's consulting Town Engineer, Miller-Pacific was contacted, advised of the situation and requested to inspect the situation on the Town's behalf. Similarly, Maggiora & Ghilotti, Inc., a San Rafael-based general engineering contractor that has historically provided good service to the Town of Fairfax was contacted and asked to inspect and advise as well. Initial traffic warnings were deployed to warn eastbound motor vehicle and bicycle traffic of work on the shoulder.

Miller-Pacific's Associate Geologist Michael Jewett, Scott Ghilotti (Vice President of Maggiora & Ghilotti) and the Town's Interim Public Works director concurred that an apparent failure of a retaining wall intended to separate the Fairfax Creek from the subgrade soil materials supporting the roadway of Sir Francis Drake Boulevard had occurred, and that a void underlying some distance of the sidewalk and extending an unknown distance under Sir Francis Drake Boulevard existed. Gary Ghilotti, President of Maggiora & Ghilotti, arrived on scene later in the morning.

On the basis of the collective initial inspection, Miller-Pacific reported the following:

“(a)t the site, the left bank of the creek is supported by an approximately 100-foot long concrete retaining wall. The concrete wall has a vertical cold joint near the midpoint which effectively forms 2 sections. Both sections are about 15-feet high

(exposed above water). Both sections have 1-inch steel Dywidag<sup>1</sup> bars, installed about 12-feet below top of wall, which apparently serve as tiebacks. Per Gary Ghilotti verbal communication, Dywidag bars are apparently tied to 36-inch drilled pier “deadmen” located near the centerline of SFD and which were installed sometime in the late 1990’s. Above the wall, level grades extend about 6-feet to the back of sidewalk along SFD. Natural creekbank bounds the upstream end of the wall, and the downstream end abuts and existing steel bin wall.

During my visit, I observed that the downstream half of the concrete wall has failed. The top of wall is level with the adjoining upstream section, but a series of 3- to 6-inch wide (open) horizontal cracks in the downstream panel suggests significant historic vertical settlement of the wall. Horizontal separations were noted between the asphalt/gutter pan and between the curb/sidewalk panels along an approximate 60-foot zone above the downstream concrete wall panel. Near the center of this zone, sidewalk panels have subsided a couple inches, and a large void beneath the sidewalk appears to extend several feet into the eastbound lane of SFD.”

On the basis of those observations, and the forecast for rain with the potential to swell the creek and exacerbate the already hazardous undermining of the roadway, the Interim Public Works Director and the consulting Town Engineer concluded that conditions of extreme peril to persons and property exist including the imminent potential for roadway collapse and the loss of all access to and egress from that portion of Sir Francis Drake Boulevard in both directions. On that basis, the Interim Public Works director authorized Maggiora & Ghilotti to mobilize immediately to establish traffic control for the closure of the creek-side lane of eastbound Sir Francis Drake Boulevard, and to make preparations for restoration of the roadway support with all due haste such that traffic operations can be returned to safe and normal as expeditiously as possible. Similarly, Miller-Pacificc was authorized to provide engineering support to those efforts. The Interim Public Works Director advised the Interim Town Manager and the Chief of Police of those decisions and requested assistance in notifying other public safety organizations and the public of the emergency and need for the lane closure.

## **DISCUSSION**

Sections 22035 and 22050 of the California Public Contract Code<sup>2</sup> authorize the Town of Fairfax to proceed with awarding a public works contract to perform emergency work upon adoption by the Town Council by a four-fifths vote of a resolution declaring that the public interest and necessity demand the immediate expenditure of public funds to safeguard life, health, or property.

Public Contract Code Section 22050 also provides that the Town Council may, by resolution, delegate the authority to order any action required by the emergency and to procure the necessary equipment, services, and supplies for those purposes, without

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<sup>1</sup> <https://dywidag.com/en-US> a company that manufactures anchor systems for ground and infrastructure stabilization.

<sup>2</sup>

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PCC&sectionNum=22050](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC&sectionNum=22050)

giving notice for bids to let the contracts, to the Town Manager, his designee, or any other officer.

The Town may exercise its emergency powers under Section 22050 by making a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the Town's action is necessary to respond to the emergency.

In doing so, the Town Council shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the work so ordered is completed and the emergency terminated sufficiently that any additional work may be awarded on the basis of bidding. Such review shall be for the purpose of determining, by a four-fifths vote, that there is a need to continue the work. Said review may be conducted as a consent calendar item.

The Town's Interim Public Works Director and its consulting Town Engineer recommend that the Town Council find that — in order to stabilize the roadway to prevent and mitigate loss or impairment of life, health, property, and reopen the roads to the public — the Town must act in an expeditious manner. Further, the Town's Interim Public Works Director and consulting Town Engineer concur that time does not permit the preparation of specifications and the solicitation of competitive bids before commencement of the emergency stabilization and road re-opening and recommend the Town Council find accordingly.

Staff therefore respectfully recommends that the Town Council:

- Find, by a four-fifths majority, that the recitals in the attached Emergency Resolution are true and correct.
- Find and determine, based on substantial evidence in this Staff Report and oral testimony, the existence of a local emergency at or in the vicinity of 2378 Sir Francis Drake Boulevard, Fairfax, Marin County, California.
- Order and authorize the Interim Town Manager to provide for the emergency repair or replacement of those public facilities necessary to stabilize conditions and reopen the roadway in the vicinity of 2378 Sir Francis Drake Boulevard, to take any directly related and immediate action required by those emergency conditions, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts pursuant to Public Contract Code Sections 22035 and 22050. Said contract(s) may exceed the Town Manager's purchasing authority, but shall not exceed \$250,000 for construction and \$25,000 for design/construction management costs without further approval by the Town Council.

### **FISCAL IMPACT**

To the extent funding is required to be spent from the Town's general fund, such amounts are hereby deemed budgeted and appropriated for such improvements.

### **ATTACHMENT**

Resolution

## EMERGENCY RESOLUTION 21-\_\_

### A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DECLARING THE EXISTENCE OF A LOCAL EMERGENCY AT OR NEAR 2378 SIR FRANCIS DRAKE BOULEVARD, FAIRFAX, AND AUTHORIZING THE EMERGENCY PROCUREMENT OF MATERIALS AND LABOR WITHOUT COMPETITIVE BIDDING

**WHEREAS**, Sections 22035 and 22050 of the Public Contracts Code authorize the Town of Fairfax to proceed with awarding a public works contract to perform emergency work upon adoption by the Town Council by a four-fifths vote of a resolution declaring that the public interest and necessity demand the immediate expenditure of public funds to safeguard life, health, or property; and

**WHEREAS**, Public Contract Code Section 22050 also provides that the Town Council may, by resolution, delegate the authority to order any action required by the emergency and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let the contracts to the Town Manager, his designee, or any other officer; and

**WHEREAS**, the Town may exercise its emergency powers under Section 22050 by making a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the Town's action is necessary to respond to the emergency; and

**WHEREAS**, the Town of Fairfax has had severe rainstorms during the Fall of 2021 which has resulted in a portion of the roadway located at or near 2378 Sir Francis Drake Boulevard, Fairfax, to become unstable, causing conditions of extreme peril to persons and property, including potential roadway failure; and

**WHEREAS**, the Town was forced to close a portion of the roadway at or near 2378 Sir Francis Drake Boulevard on December 13, 2021 and limit travel to one-way traffic in order to protect persons and property; and

**WHEREAS**, the Town finds that in order to stabilize the roadway at the above listed site, to prevent and mitigate loss or impairment of life, health, property, and reopen the road to the public, it must act in an expeditious manner; and

**WHEREAS**, the roadway condition at the above listed location on Sir Francis Drake Boulevard poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, and essential public services; and

**WHEREAS**, time does not permit the preparation of specifications and the solicitation of competitive bids before commencement of the emergency stabilization and road re-opening; and

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Fairfax hereby declares and orders as follows:

**SECTION 1.** The Town Council hereby finds, by a four-fifths majority, that the recitals in this Emergency Resolution are true and correct. The Town Council finds and determines based on substantial evidence in the staff report and oral testimony the existence of a local emergency at or in the vicinity of 2378 Sir Francis Drake Boulevard, Fairfax. These emergency findings shall be deemed to be entered into the minutes of the meeting at which this Emergency Resolution is passed.

**SECTION 2.** The Town Manager is hereby ordered and authorized to provide for the emergency repair or replacement of those public facilities necessary to stabilize the roadway condition and reopen the roadway located at or near 2378 Sir Francis Drake Boulevard, Fairfax to take any directly related and immediate action required by those emergency conditions, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts pursuant to Public Contract Code Sections 22035 and 22050. Said contract(s) may exceed the Town Manager's purchasing authority, but shall not exceed \$250,000 for construction and \$25,000 for design/construction management costs without further approval by the Town Council. To the extent said funding is required to be spent from the Town's general fund, such amounts are hereby deemed budgeted and appropriated for such improvements.

**SECTION 3.** The Town Council shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the work ordered hereby is terminated. Such review shall be for the purpose of determining, by a four-fifths vote, that there is a need to continue the work. Said review may be conducted as a consent calendar item.

**SECTION 4.** This resolution shall be effective immediately upon adoption by four affirmative votes of the Town Council of the Town of Fairfax.

The foregoing resolution was duly passed and adopted at a special meeting of the Town Council of the Town of Fairfax held in said Town on the 15<sup>th</sup> day of December 2021 by the following vote:

AYES:  
NOES:  
ABSENT:

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Stephanie Hellman, Mayor

Attest: \_\_\_\_\_  
Michele Gardner, Town Clerk