

ORDINANCE NO. 630

**ORDINANCE OF THE BOROUGH OF MANTOLOKING,
COUNTY OF OCEAN, STATE OF NEW JERSEY,
AUTHORIZING THE ACQUISITION OF CERTAIN INTERESTS IN REAL
PROPERTIES BY NEGOTIATION, PURCHASE, CONDEMNATION OR EMINENT
DOMAIN, SAID PROPERTIES BEING IDENTIFIED ON THE ANNEXED
EXHIBIT A**

WHEREAS, Superstorm Sandy caused significant and widespread damages to public and private property along the oceanfront and has greatly diminished the dune and beach system, making the entire Borough extremely vulnerable to future storms; and

WHEREAS, on October 27, 2012 the Governor issued Executive Order No. 104, wherein he declared a state of emergency because of Superstorm Sandy; and

WHEREAS, on September 25, 2013 the Governor issued Executive Order No. 140, wherein he declared that the construction of flood hazard risk reduction measures along New Jersey's coastline, including in the Borough, is necessary to protect the public health, safety, and welfare from future natural disasters, and that reliance on certain statutory authority for the acquisition of property, including but not limited to N.J.S.A. 20:3-1, et seq. and N.J.S.A. App. A:9-51.5, is necessary for such efforts; and

WHEREAS, the State of New Jersey recognizes and supports public acquisition of certain interests in storm-damaged and storm-prone property as a priority hazard mitigation strategy to promote the public health, safety, and welfare; and

WHEREAS, the Mayor and Council of the Borough of Mantoloking have concluded that it is necessary, desirable, and appropriate for the Borough to undertake a beach replenishment, maintenance, revetment, and dune construction project; and

WHEREAS, there is currently private ownership of certain portions of the lands where said beach replenishment, maintenance, revetment, and dune construction project shall be undertaken; and

WHEREAS, by adoption of this Ordinance the Borough of Mantoloking authorizes the taking of perpetual easements in a portion of each identified privately owned property by condemnation/eminent domain so that the Borough and other entities or agents acting on behalf of the Borough of Mantoloking shall have access onto, over, and through said privately owned real property for the purpose of taking any and all actions necessary for completing said beach replenishment, maintenance, revetment, and dune construction project; and

WHEREAS, the Mayor and Council of the Borough further find that a public use and purpose would be served for the benefit of Borough of Mantoloking and the

communities that the barrier island protects by acquiring certain property interests in the aforesaid property, including, but not limited to, the promotion, protection, and preservation of the public health, safety, and welfare of the Borough of Mantoloking and its inhabitants by the acquisition of certain interests in said real property for storm damage and flood area mitigation through conducting the said beach replenishment, maintenance, revetment, and dune construction project, to protect public infrastructure located with the Borough of Mantoloking, to mitigate future storm damage and associated public recovery expenditures, and for the protection, preservation, and conservation of precious natural resources; and

WHEREAS, the Mayor and Council of the Borough of Mantoloking are authorized by the New Jersey State Constitution, N.J.S.A. 40A:12-5(a), N.J.S.A. 20:3-1 et seq., and/or any other provision of applicable law to proceed with acquiring certain property interests by condemnation/ eminent domain as long as just compensation is paid for the same;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mantoloking in the County of Ocean and State of New Jersey as follows:

1. **RECITALS INCORPORATED**: The above recitals are incorporated into this section of the Ordinance as if specifically set forth at length herein.
2. **SPECIFIC FINDINGS**: The Mayor and Council of the Borough of Mantoloking find that the beach replenishment, maintenance, revetment, and dune construction project will promote and protect the health, safety, and welfare of residents of the Borough of Mantoloking, and will prevent property damage and loss due to flooding, and further find that any purchase or taking by eminent domain of any and all property interests necessary for the same are all in the furtherance of a public use and purpose.
3. **AUTHORIZE CONDEMNATION**: The Mayor and Council of the Borough of Mantoloking specially authorize any and all necessary and appropriate actions by Borough officials including the Mayor, Borough Clerk, Borough Attorney, and/or Special Condemnation Attorney, in conjunction with the Office of Flood Hazard Risk Reduction Measures within the New Jersey Department of Environmental Protection and/or any other appropriate State or Federal entity, for the taking and obtaining of certain property interests in the properties as set forth herein through negotiation, purchase, or condemnation/ eminent domain, including, but not limited to, the hiring of any experts, engaging the services of land surveyors, title insurance companies, appraisers, and any other professional whose services are necessary or appropriate to implement the purposes of this Ordinance, the making of any offer by the Borough to the property owner(s) in the full amount of the appraised value of the property interest that the Borough seeks to acquire in said property, and to negotiate in good faith with the record owner(s) of the property for its voluntary acquisition in accordance with N.J.S.A. 20:3-6, and

in the event that the negotiations for the voluntary acquisition of the property interest are unsuccessful for any reason to commence a condemnation action by the filing of a Verified Complaint and Declaration of Taking, depositing the estimated just compensation with the Clerk of the Superior Court, filing a Lis Pendens, and taking any and all other actions of any administrative or other nature necessary to complete the process contemplated by this Ordinance.

4. **IDENTIFICATION OF PROPERTY**: The properties for which a taking of property interests is authorized by negotiation, purchase, or condemnation/eminent domain pursuant to this Ordinance are located in the Borough of Mantoloking and listed on the Borough of Mantoloking tax map, the legal descriptions of which are attached as Exhibit A to this Ordinance and specifically incorporated into this Ordinance by reference. The property interests to be acquired are irrevocable, perpetual, permanent easements in the properties identified herein.
5. **OFFICIALS AUTHORIZED**: All appropriate officials of the Borough of Mantoloking, including, but not limited, to the Mayor, Borough Clerk, Borough Attorney, Special Condemnation Attorney, and any and all experts or others acting on behalf of the Borough of Mantoloking are authorized by this Ordinance to sign any and all documentation and take any and all action necessary to effectuate the purposes and intention of this Ordinance.
6. **PURCHASE OF PROPERTY**: If a determination is made by a majority vote of the governing body of the Borough of Mantoloking that the purchase of an easement is more appropriate than the obtaining said property interest through condemnation/eminent domain, then all appropriate officials of the Borough of Mantoloking, including, but not limited to, the Mayor, Borough Clerk, Borough Attorney, and Special Condemnation Attorney are authorized by this Ordinance to sign any and all documentation to effectuate the purchase of the property interests by the Borough of Mantoloking.
7. **REPEALER**: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.
8. **SEVERABILITY**: If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.
9. **EFFECTIVE DATE**: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

EXHIBIT A A
IDENTIFICATION OF PROPERTY
ORDINANCE NO. 630

Texiera: Block 23, Lot 22

Maltese: Block 23, Lot 26

Calabrese: Block 23, Lot 37

Roberts/Gusmer: Block 23, Lot 52

Levin/Meyer: Block 26, Lot 4

Hartzband: Block 26, Lot 5

Walsh: Block 41, Lots 3 &4

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed upon first reading at a special meeting of the Mayor and Council of the Borough of Mantoloking, in the County of Ocean and State of New Jersey held on the 8th day of October, 2013, and said Ordinance will be considered for final passage at the Mantoloking Yacht Club, 1224 Bay Avenue, Mantoloking, New Jersey at 4:30 p.m. on the 22nd day of October, 2013, or as soon thereafter as said matter may be reached, at which time and place all persons interested will be given an opportunity to be heard.

IRENE H. RYAN, R.M.C.