RESOLUTION - ACTION REQUESTED 2020-539

MEETING: September 1, 2020

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Agreement to Purchase the Pfemmer Property

RECOMMENDATION AND JUSTIFICATION:
Public Hearing: Approve a vacant land purchase agreement of real property identified as Assessor’s Parcel Numbers 012-340-005, 012-140-062, 012-140-065, 012-140-064, 012-140-017, 012-140-063, 012-140-016, 012-140-022, and 012-140-023; find that this action is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3), Section 15307, Section 15308 and Section 15316 and directing staff to file a Notice of Exemption; and authorize the Board Chair to sign all documents necessary to execute the purchase (Last Continued from August 25, 2020).

The nine Assessor Parcel Numbers (APNs) represent approximately 187 acres along the Mariposa Creek between the Mariposa County Adult Detention Facility (Jail) and Fournier Road. This property, colloquially known as the Pfemmer property, is critical to the extension of the Mariposa Creek Parkway from its current terminus at 8th Street through the north side of Mariposa. The land is vacant except for a shop building which straddles APNs 012-140-016 and 012-140-063.

The original vision for the Mariposa Creek Parkway, which is now a priority in the Mariposa County Strategic Plan, was a trail from the Mariposa County Fairgrounds to the jail. This acquisition could also allow for connection to the so-called Field of Dreams, a County property designated for recreational use, and beyond. It may also be beneficial for economic development, mosaic fuel breaks and other uses related to conservation, recreation and fire prevention.

This acquisition has been evaluated by County staff in partnership with the Sierra Foothill Conservancy (SFC). Several reports are attached for Board review and public scrutiny, including a title report, environmental hazards reports for each APN, an appraisal, and a California Environmental Quality Act (CEQA) notice of exemption for the acquisition of vacant land. Staff is grateful for additional time given by the sellers to allow for a more thorough analysis.

The County has agreed to pay the asking price of $699,000 for the Pfemmer property. All funds for this purchase will come from the Merced Irrigation District (MID) Settlement Fund, which does not impact the County General Fund or operating expenses in any way.
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Staff finds this action to be in harmony with the County strategic plan, general plan and Mariposa Creek Parkway Master Plan. With gratitude to the sellers, SFC, and other stakeholders that have worked diligently on this acquisition, staff recommends approval of the attached agreement to purchase the subject property.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On December 17, 2019, the Board approved an agreement with Sierra Foothill Conservancy to acquire this and three additional properties for the Mariposa Creek Parkway.

On March 10 and April 7, 2020, the Board held closed sessions to discuss the acquisition of this property including negotiating the terms of purchase. The Board directed staff to submit an offer and counter offer on the property.

On April 10, 2020, the County and sellers agreed to an escrow extension until July 12, 2020.

On May 5, 2020, the Board approved a budget action moving dollars within the MID Settlement Fund to facilitate a purchase.

On May 19, 2020, the Board approved a resolution of intention to purchase this property (Resolution 2020-260). This resolution was not effectively communicated to the newspaper of record, requiring a new resolution to be approved and advertised.

On June 23rd, 2020, the Board approved a resolution of intention to purchase the aforementioned property (Resolution 2020-360) that was appropriately noticed.

Only July 14th, 2020, the County and sellers agreed to an escrow extension until September 11, 2020.

The public hearing for this purchase was opened on July 21, 2020. Consideration of the item was continued to August 18, 2020, and weekly thereafter to allow for due diligence and analysis of financial options to be completed.

A closed session was held on August 25, 2020, to discuss the terms of the agreement, including findings from the due diligence process.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
The County would miss an opportunity to purchase this property for the expressed purposes. Another means would be needed to develop the Mariposa Creek Parkway or the project would need to be abandoned.

ATTACHMENTS:
M30987 Map (PDF)
190626_Mariposa_ConnectivityStrategy (PDF)
01 Vacant Land Purchase Agreement (PDF)
RESOLUTION - ACTION REQUESTED 2020-539

02 VLPA Additional Signatures #1 (PDF)
03 VLPA Additional Signatures #2 (PDF)
04 Seller Counter Offer (PDF)
07 Buyer Counter Offer (PDF)
10 Extension of Time Addendum #1 (PDF)
11 Extension of Time Addendum #2 (PDF)
12 Increased Deposit Addendum (PDF)
13 Preliminary Site Concepts (PDF)
16 Pfremmer PM 9-46 Easements (PDF)
17 Right to Agricultural Activity Disclosure (PDF)
27 Notice of Exemption (PDF)
28 Escrow Instructions (PDF)
30 Closing Documents (PDF)

RESULT:     ADOPTED [UNANIMOUS]
MOVER:      Miles Menetrey, District V Supervisor
SECONDER:   Rosemarie Smallcombe, District I Supervisor
AYES:       Rosemarie Smallcombe, Merlin Jones, Marshall Long, Miles Menetrey
EXCUSED:    Kevin Cann
Certificate of Acceptance
Government Code 27281

This is to certify that the interest in the real property described in the within document and conveyed by this Deed in favor of Mariposa County, a governmental agency, is hereby accepted by Mariposa County and the grantee consents to the recordation of this document.

Date: September 1st, 2020

Mariposa County

By

Marshall Long, Vice-Chair
Board of Supervisors

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL
Escrow Instructions

Date: August 26, 2020
Escrow No.: M30987
Property Address:
Unassigned
Mariposa
CA 95338

APN: MULTIPLE

To: Inter-County Title Co., Escrow Holder

SECTION I

The Pfremmer Family Trust, The Penman Living Trust, Jaime Engstrom, Kheli Sears, and Sheyna Ochs Seller(s) herein, hand you a deed conveying the property described herein to the vestee named below:

County of Mariposa

Buyer(s) herein

(X) have handed either escrow holder or seller a deposit in the amount of: $ 20,000.00

(X) and prior to the escrow time limit of: September 11th, 2020

Buyer shall deposit the balance of the purchase price and required closing costs
To complete a purchase price of: $ 699,000.00

Except for ELECTRONIC PAYMENT or WIRE TRANSFERS, funds remitted to this escrow are subject to availability requirements imposed by California Insurance Code Section 12413.1 (Chapter 598, Statutes of 1989), effective January 1, 1990.

CASHIERS, CERTIFIED or TELLER'S CHECKS, payable to Inter-County Title Co. are generally available for disbursement on the next business day following the date of deposit. Other forms of payment may cause extended delays in closing of your transaction. Inter-County Title Co. will not be responsible for accruals of interest or other charges resulting from compliance with the disbursement restrictions imposed by State Law. Funds received shall be deposited into an escrow trust account and disbursed by escrow trust account checks. WIRE TRANSFER INFORMATION IS AVAILABLE UPON REQUEST

**VERY IMPORTANT - Email hacking and fraud are on the rise to fraudulently misdirect funds. Prior to sending any funds by wire, please call your escrow officer to verify any wiring instructions received. Escrow holder is not responsible for any wires sent by you to an incorrect bank account**

SECTION II

You are authorized and instructed to deliver and/or record all documents and disburse all funds, when you will issue your current form of CLTA Owners policy of title insurance with regional exceptions (and lender's policy as required by lender, if any), with a liability in the amount of the purchase price covering the real property described in your Preliminary Title Report No. M30987 prepared for this transaction; and SHOWING TITLE VESTED IN:

County of Mariposa

Prior to close of escrow buyer shall provide escrow holder with the desired method of ownership (Vesting) pursuant to separate instructions. Vesting shall be added to the deed prior to recording.

Note: The manner of holding title may have tax consequences. You are advised to seek advice from legal counsel or your accountant. Acquiring title as married as your sole and separate property will require a notarized conveyance deed from your spouse.
Escrow Instructions - Page 2
(Escrow No. M30987)

SUBJECT TO:

(1) Real property general and special taxes for the current fiscal year, including reassessments if any, and special district assessments, bond assessments and personal property assessments included therein.

(2) The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.

(3) Covenants, conditions, restrictions, rights of ways, easements, reservations and other encumbrances of record, all of which, if any, are set forth on the preliminary title report. Additional encumbrances created through this escrow with buyers consent shall also be shown. Deeds of Trusts and other monetary liens being paid through escrow shall be deleted.

The matters set forth on the preliminary title report which are to remain of record are as follows: 1 through 24. The following items shall also be shown on the policy.

SECTION III

Seller and buyer instruct escrow holder to disburse funds as appropriate for the following items:

1. Taxes are to be paid current and prorated based upon the close of escrow. Depending upon the time of year, taxes may be coming due for which the buyer is responsible and has been credited with seller’s portion. These taxes are due whether buyer has received a tax bill or not. Seller shall attempt to deliver to buyer any tax bills received after close of escrow.

2. Escrow holder shall obtain payoff demand statements from any existing lenders, which demands shall be paid from sellers proceeds at close of escrow.

3. Escrow holder shall pay a real estate commission, if brokers are involved, pursuant to any Listing Agreement or Broker Compensation Agreement provided to escrow as set forth on the responsible party’s settlement statement attached hereto.

4. These instructions shall remain in full force and effect until the escrow time limit set forth herein. After the expiration of the time limit, you may proceed with the closing only if you are not in receipt of conflicting written instructions or demand for cancellation.

5. If after the expiration of the time limit set forth herein, written demand for cancellation is submitted to you by either seller and/or buyer, you are to notify each of the other parties and act in accordance with mutual written instructions with the respect to the disbursement of deposits and return of documents or other provisions in the purchase contract.

6. Buyer shall pay for any hazard insurance desired or required by any lender. If not required, buyer is advised to obtain insurance if property is improved.
SECTION IV
(Contingencies, conditions and other disbursements)

1. Buyer and Seller shall split the cost of the Escrow fee and the Owner’s Title Insurance premium.

2. Seller shall pay for the County Transfer fees and a Natural Hazard Disclosure report.

3. Buyer shall pay for a Phase 1 Environmental report.

Deposit into escrow of all funds and recording documents required to close escrow shall be deemed satisfaction of the above conditions and full release of all of the above contingencies and shall constitute authorization for Escrow Holder to close escrow without further need of contingency release documents.

SECTION V
(Tax Reform Act of 1986 Requirement)

In accordance with the Tax Reform Act of 1986, which requires settlement agents to disclose Seller’s Social Security or Tax Payor Identification Number, Seller (s) shall provide escrow holder with a completed and signed Substitute 1099-S form.

If this sale or exchange involves the seller’s principal residence, it may be exempt from reporting to the seller and to the Internal Revenue Service on form 1099-S. To determine if this transaction is exempt from reporting, a Certification For No Reporting must be requested, completed by the seller and submitted to escrow holder.

SALE PROCEEDS: Proceeds belong to the seller. If the seller is a Trust, the proceeds must be paid to the trust, in care of the trustee. Seller is advised to establish an account in the name of the trust, if not already established, prior to close of escrow. No exceptions.
SECTION VI
(Escrow Notices)

Trust Certification: If sellers or buyers are acting in the capacity of trustees under the terms of a trust, they hereby certify under penalty of perjury that they have the unrevoked power to execute all documents necessary to consummate this transaction without further authorization.

Instructions and other documents submitted to escrow holder by facsimile or other electronic transmission containing appropriate signatures acceptable to escrow holder, shall be deemed originals. Escrow holder is hereby appointed as agent for the purpose of submitting recordings to the County Recorder. If a mobilehome is included as part of this transaction, escrow holder is authorized to execute all documents necessary to transfer the mobile through the Department of Housing on behalf of the parties.

Settlement Statements attached hereto are hereby incorporated herein, as though fully set forth at length herein, by this reference. Some amounts may represent estimates only and shall be adjusted in escrow.

The Escrow Holder herein is Inter-County Title Co., Tuolumne-Mariopa Division, a California Corporation, licensed by the State of California Department of Insurance. Escrow holder shall have the absolute right to file an action in interpleader in any court to litigate any claims in the event of controversy between the parties hereto. In the event funds are retained in escrow after closing or after the designated escrow time limit, escrow holder shall be entitled to reasonable fees for maintaining, processing and accounting for said funds in escrow.

Sellers and buyers hereby acknowledge having read and approved all pages of these instructions, including the tax withholding notice and privacy policy notice attached hereto.

Seller’s proceeds shall be paid by one trust account check payable to all sellers unless specified otherwise in writing. If multiple sellers are involved, please make your request prior to close of escrow.

Dated: ________________________

Robert Dale Pfremmer and Cloys Pfremmer, as trustees of the Pfremmer Family Trust dated April 17, 1996, an undivided 1/3 interest;

BY: ________________________
Robert Dale Pfremmer, Trustee

BY: ________________________
Cloys Pfremmer, Trustee

Richard A. Penman and Jill G. Penman, as trustees of the Penman Living Trust dated October 19, 2005

BY: ________________________
Richard A. Penman, Trustee

BY: ________________________
Jill G. Penman, Trustee

Jaime Engstrom

Kheli Sears AKA Kheli Greenamyer

Dated: September 16, 2020

County of Mariposa

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL
Notification of Withholding Requirements

"In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to 3 1/3% (.0333) of the sale price, or an alternative withholding calculation amount certified by the seller in the case of a disposition of California real property interest by either:

* A seller who is an individual, trust, or estate, or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the sellers.
* A corporate or partnership seller that has no permanent place of business in California immediately after the transfer of title to the California property.

The buyer may become subject to penalty for failure to withhold. The penalty is an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

* The sale price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000).
* The seller executes a written certificate under the penalty of perjury certifying that the seller is a corporation or a partnership with a permanent place of business in California.

* The seller, who is an individual, trust, estate, partnership or a corporation without a permanent place of business in California, executes a written certificate under the penalty of perjury of any of the following:

  * The California real property being conveyed is the seller's or decedent's principal residence (within the meaning of Section 121 of the Internal Revenue Code (IRC)).
  * The last use of the property being conveyed was by the transferor as the transferor's principal residence (within the meaning of IRC Section 121).
  * The California real property being conveyed is, or will be, exchanged for property of like kind (within the meaning of IRC Section 1031), but only to the extent of the amount of gain not required to be recognized for California income tax purposes under IRC Section 1031.
  * The California real property has been compulsorily or involuntarily converted (within the meaning of IRC Section 1033) and the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under IRC Section 1033.
  * The California real property transaction will result in a loss or net gain not required to be recognized for California income tax purposes."

The Seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis for corporations or other entities.

Additionally, under the federal "Foreign Investment in Real Property Tax Act", as amended (FIRPTA) and related laws, a buyer may be required to withhold, and could be liable for, an additional tax equal to 15 percent (15%) of the sales price of the real property being conveyed (10% if closed prior to Feb. 16, 2016), in the case of a non-exempt seller who may also be classified as a "foreign person" under Section 1445 of the Internal Revenue Code.

Due to the complexity of these tax laws, and the penalty provisions for failure to withhold, the parties hereto are advised to consult with their respective attorneys or financial advisors as to their obligations, if any, prior to close of escrow. All parties hereby acknowledge receipt of this notice and also that no representation or recommendation has been made by Escrow Holder concerning the above referenced withholding requirements.

If the Purchase Price exceeds $100,000.00, Seller shall complete and sign REAL ESTATE WITHHOLDING STATEMENT FORM 593. If the Purchase Price exceeds $100,000.00 and is an Installment Sale, Buyer shall complete Part V of the REAL ESTATE WITHHOLDING STATEMENT FORM 593 and sign. Escrow holder shall withhold the appropriate amount determined by said form and remit to the Franchise Tax Board along with said form. Withholding is the buyer's responsibility and in consideration of Escrow Holder's assistance in complying with this withholding remittance, escrow holder may charge the sum of $45.00 for this service. Initials below by the sellers and buyer represent acknowledgement of the above notice and withholding requirements.

initial __________ initial __________
Stewart Title - Available Discounts

Stewart Title is pleased to inform you that upon property qualification, there are premium discounts available upon the purchase of title insurance covering improved property with a one to four family residential dwelling.

Such discounts apply to and include:
* Property located within an area proclaimed as a state or federal disaster area;
* Property purchased from a foreclosing beneficiary or successful bidder at a foreclosure sale;
* Property being refinanced.

Please talk with your escrow or title officer to determine your qualification for any of these discounts.
**Inter-County Title Co., Tuolumne-Mariposa Division**  
**ALTA Universal ID**  
P.O. Box 838 / 5160 Bullion Street  
Mariposa, CA 95338

**File No./Escrow No.:** M30987  
**Print Date & Time:** August 26, 2020 at 05:13:PM  
**Officer/Escrow Officer:** Tonya Lindsey  
**Settlement Location:** 5160 Bullion St.  
Mariposa, CA 95338  

**Property Address:** Unassigned  
Mariposa, CA 95338  
**Borrower:** County of Mariposa  
**Seller:** The Pfremmer Family Trust, The Penman Living Trust, Jaime Engstrom, Kheli Sears, and Sheyna Ochs  
**Lender:**  
**Settlement Date:** September 11, 2020  
**Disbursement Date:** September 11, 2020  
**Recording Date:** September 11, 2020

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**Acknowledgement**

We/We have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my behalf or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/We authorize Inter-County Title Co., Tuolumne-Mariposa Division to cause the funds to be disbursed in accordance with this statement.

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County of Mariposa

Tonya Lindsey, Escrow Officer

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**APPROVED AS TO FORM:**

STEVEN W. DAHLEM
COUNTY COUNSEL