RESOLUTION - ACTION REQUESTED 2021-484

MEETING: August 17, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Mariposa Creek Parkway Restoration/6Th Street Parking Lot Right to Enter

RECOMMENDATION AND JUSTIFICATION:
Approve Two Agreements for Right of Entry and Hold Harmless with the Owners of the Parking Lot Along 6th Street Between Stroming Road and State Route-140/49 for the Mariposa Creek Parkway Restoration Project; and Authorize the Board of Supervisors Chair to Sign the Agreements.

The Mariposa County Planning Department has been awarded assistance through the Wildlife Conservation Board (WCB) Riparian Restoration grant program to remove invasive species, including tree of heaven, from the Phase II and Phase III segments of the Mariposa Creek corridor. Located at APN 012-143-0010, APN 013-130-0770, APN 013-130-0780, APN 012-143-0040, and APN 013-130-0060 these parcels are all county-owned property.

However, adjacent non-county owned parcels feature significant specimens of tree of heaven which, though technically outside of the project area, have a direct impact on it. In particular, the parking lot adjacent to the 6th Street bridge over Mariposa Creek (APN 013-182-0040) and contiguous with the restoration area has several mature trees of heaven that threaten to seed in the project area. The restoration will struggle to be successful if neighboring invasive species are able to spread into the newly restored area.

The property owners of the parking lot have authorized the restoration project team to remove the trees of heaven from this site, which helps ensure an effective restoration.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
In June 2020, the Planning Department submitted a pre-application to the WCB Riparian Restoration grant program. After the success of that pre-application, the County was invited to submit a formal application, which included a variety of supporting materials such as a formal resolution. This application was successful, and on February 25, 2021 the Wildlife Conservation Board voted to provide the Planning Department with $415,000 to complete this project. RES-21-172 approved an agreement with Sierra Foothill Conservancy to complete the Mariposa Creek Parkway Restoration.

REF ID# 12031
Additionally, the Board and Local Transportation Commission (LTC) have taken a number of actions related to establishing the Mariposa Creek Parkway and restoring environmental conditions within the project alignment, including:

- Pollinator Habitat Enhancement: RES No. 2020-18
- Mariposa Creek Parkway Master Plan Adoption: LTC No. 2020-3
- Mariposa Creek Parkway/Statewide Parks Program: LTC No. 2019-13
- Noxious Weed Grant Program: RES No. 2019-20
- Mariposa Creek Parkway Phase III Concept Plan Adoption: LTC No. 2017-14

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**
Negative action will jeopardize the effectiveness of the Mariposa Creek Parkway restoration project, and may cause the County to be out of compliance with the terms of its grant agreement with WCB.

**FINANCIAL IMPACT:**
None

**ATTACHMENTS:**
200714 Signed Agreement_GARBER  (PDF)
200713 Signed Agreement_SMITH   (PDF)
210720 Project Area_8.5x11    (PDF)

**RESULT:**   ADOPTED [UNANIMOUS]
**MOVER:**   Wayne Forsythe, District IV Supervisor
**SECONDER:** Tom Sweeney, District II Supervisors
**AYES:** Smallcombe, Sweeney, Long, Forsythe, Menetrey
AGREEMENT FOR RIGHT OF ENTRY AND HOLD HARMLESS

THIS AGREEMENT (“Agreement”) is made and entered into this __ day of __________, 2021, by and between the County of Mariposa, a political subdivision of the State of California, (“County”) and Kirk Garber, (“Owner”), pursuant to the following terms and conditions.

Recitals

A. WHEREAS, Owner’s property has a proliferation of invasive vegetation species, including large specimens of Tree of Heaven (Ailanthus altissima); and

B. WHEREAS, County desires to restore the Mariposa Creek corridor adjacent to Owner’s property by removing invasive species (including Tree of Heaven) and revegetating with native riparian species; and

C. WHEREAS, the parties desire to allow the County to enter and perform vegetation management work on the property for the purpose of implementing a successful riparian restoration.

Now, therefore, the parties agree as follows:

RIGHT OF ENTRY

1. Owner grants to County the right to enter the property identified as APN 013-182-0040 for the purpose of conducting vegetation management activities, which may include mechanical or chemical tree removal work and revegetation work. Entry onto the property will be the minimum necessary to perform these activities. County personnel or its agents may need to enter at various times throughout the duration of the restoration project.

RELEASE, WAIVER OF DAMAGES AND HOLD HARMLESS

2. Pursuant to the provisions of Government Code Section 53069, County shall indemnify and hold harmless Owner, its agents, employees, and lessees or sub lessees occupying the premises from and against all liability, cost, and expenses for loss or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party hereto) proximately caused by reason of the uses authorized by this right of entry, or from County’s breach of the provisions hereof.

3. Owner shall indemnify, defend, release and hold harmless, County, its successors, assigns, employees, officers, supervisors, elected and appointed officials, agents, special districts and their representatives in connection with any liability, expense, damages, costs, response, remediation, removal, fines, interest, charges, penalties, claims, suits, administrative, civil, or criminal proceedings, actions, defense costs or attorneys’ or experts’ fees and costs (collectively “Claims”), arising directly or indirectly out of the entry on the property and vegetation management activities. This indemnity, defense, release and hold harmless obligations include, without limitation, any claims resulting from pollution or environmental liability of any nature whatsoever including but not
limited to any and all claims, expenses, damages, costs, response, remediation, removal, fines, interest, charges, penalties, lawsuits, administrative proceedings, actions, defense costs or attorneys’ fees arising from or related to the threatened, actual or alleged disposal, discharge, dispersal, release or escape of any substance into or upon any person, thing or place including the land, soil, atmosphere, man-made structure and any above or below ground watercourse or body of water or under the Comprehensive Environmental Response, Compensation Liability Act 42 U.S.C. Section 9600, et seq. or the Carpenter Presley-Tanner Hazardous Substance Account Act, Health and Safety Code section 25300, et seq. or any rules or regulations thereunder or any related laws or their equivalents and are freely entered into notwithstanding the provisions of California Civil Code 1542, the rights under which are hereby waived, and which states: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. This entire Section 3 shall survive the termination of this Agreement.

4. Nothing is this agreement commits the County to Purchase the property.

5. This agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF MARIPOSA

[Signature]
Marshall Long, Chair
Mariposa County Board of Supervisors

OWNER

[Signature]
Kirk Garber, Owner

ATTEST:

[Signature]
Rene Laroche
Clerk of the Board

APPROVED AS TO FORM:

[Signature]
Steven W. Dahlem
County Counsel
AGREEMENT FOR RIGHT OF ENTRY AND HOLD HARMLESS

THIS AGREEMENT ("Agreement") is made and entered into this ___ day of ___ 2021, by and between the County of Mariposa, a political subdivision of the State of California, ("County") and George Smith, ("Owner"), pursuant to the following terms and conditions.

Recitals

A. WHEREAS, Owner’s property has a proliferation of invasive vegetation species, including large specimens of Tree of Heaven (Ailanthus altissima); and
B. WHEREAS, County desires to restore the Mariposa Creek corridor adjacent to Owner’s property by removing invasive species (including Tree of Heaven) and revegetating with native riparian species; and
C. WHEREAS, the parties desire to allow the County to enter and perform vegetation management work on the property for the purpose of implementing a successful riparian restoration.

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RELEASE, WAIVER OF DAMAGES AND HOLD HARMLESS

2. Pursuant to the provisions of Government Code Section 53069, County shall indemnify and hold harmless Owner, its agents, employees, and lessees or sub lessees occupying the premises from and against all liability, cost, and expenses for loss or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party hereto) proximately caused by reason of the uses authorized by this right of entry, or from County’s breach of the provisions hereof.

3. Owner shall indemnify, defend, release and hold harmless, County, its successors, assigns, employees, officers, supervisors, elected and appointed officials, agents, special districts and their representatives in connection with any liability, expense, damages, costs, response, remediation, removal, fines, interest, charges, penalties, claims, suits, administrative, civil, or criminal proceedings, actions, defense costs or attorneys’ or experts’ fees and costs (collectively “Claims”), arising directly or indirectly out of the entry on the property and vegetation management activities. This indemnity, defense, release and hold harmless obligations include, without limitation, any claims resulting from pollution or environmental liability of any nature whatsoever including but not
limited to any and all claims, expenses, damages, costs, response, remediation, removal, fines, interest, charges, penalties, lawsuits, administrative proceedings, actions, defense costs or attorneys’ fees arising from or related to the threatened, actual or alleged disposal, discharge, dispersal, release or escape of any substance into or upon any person, thing or place including the land, soil, atmosphere, man-made structure and any above or below ground watercourse or body of water or under the Comprehensive Environmental Response, Compensation Liability Act 42 U.S.C. Section 9600, et seq. or the Carpenter Presley-Tanner Hazardous Substance Account Act, Health and Safety Code section 25300, et seq. or any rules or regulations thereunder or any related laws or their equivalents and are freely entered into notwithstanding the provisions of California Civil Code 1542, the rights under which are hereby waived, and which states: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. This entire Section 3 shall survive the termination of this Agreement.

4. Nothing is this agreement commits the County to Purchase the property.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF MARIPOSA

[Signature] Marshall Long, Chair
Marijoposa County Board of Supervisors

OWNER

[Signature] George Smith, Owner

ATTEST:

[Signature] Rene Laroche
Clerk of the Board

APPROVED AS TO FORM:

[Signature] Steven W. Dahlem
County Counsel