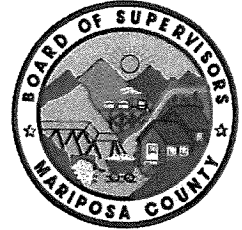


MARIPOSA COUNTY

Planning · 209-966-5151



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

2 Agreements

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.

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 19th day of July, 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.

RECEIVED

Now, therefore, the parties agree as follows:

AUG 6 2021

RIGHT OF ENTRY

Mariposa County Planning Department

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

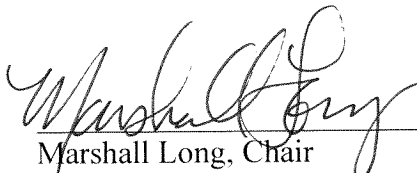
limited to any and all claims, expenses, damages, costs, response, remediation, removal, fines, interest, charges, penalties, lawsuits, administrative proceedings, actions, defense costs or attorneys' fees arising from or related to the threatened, actual or alleged disposal, discharge, dispersal, release 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 in 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

OWNER




Marshall Long, Chair
Mariposa County Board of Supervisors




Kirk Garber, Owner

ATTEST:

APPROVED AS TO FORM:



Rene Laroche
Clerk of the Board Deputy



Steven W. Dahlem
County Counsel

JUL 1 2 2021

AGREEMENT FOR RIGHT OF ENTRY AND HOLD HARMLESS Mariposa County Planning Department

THIS AGREEMENT ("Agreement") is made and entered into this 3 day of July, 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.

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

The first part of the paper discusses the importance of the research and the objectives of the study. It highlights the need for a comprehensive understanding of the current state of affairs and the potential for improvement. The second part of the paper focuses on the methodology used in the study, detailing the data collection and analysis processes. The third part of the paper presents the results of the study, showing the significant findings and their implications. The final part of the paper concludes with a summary of the key points and offers suggestions for future research.

The research was conducted using a mixed-methods approach, combining quantitative data analysis with qualitative interviews. The quantitative data was collected through a series of surveys and experiments, while the qualitative data was gathered through in-depth interviews with experts in the field. The analysis of the quantitative data revealed several key trends and patterns, while the qualitative data provided valuable insights into the underlying reasons for these trends.

The results of the study indicate that there is a significant need for more effective strategies and interventions. The findings suggest that a combination of targeted interventions and ongoing support is necessary to achieve the desired outcomes. The study also highlights the importance of involving stakeholders in the development and implementation of these strategies.

In conclusion, the study has provided a comprehensive overview of the current state of affairs and has identified several key areas for improvement. The findings have important implications for practice and policy, and the study has provided a solid foundation for further research in this area.

The authors would like to thank the funding agencies and the participants who made this study possible. We also would like to thank the reviewers for their helpful comments and suggestions.

This study was supported by the National Science Foundation (NSF) Grant #1234567. The authors would like to thank the participants who made this study possible.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

The authors would like to thank the reviewers for their helpful comments and suggestions. This study was supported by the National Science Foundation (NSF) Grant #1234567.

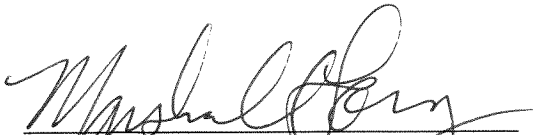
limited to any and all claims, expenses, damages, costs, response, remediation, removal, fines, interest, charges, penalties, lawsuits, administrative proceedings, actions, defense costs or attorneys' fees arising from or related to the threatened, actual or alleged disposal, discharge, dispersal, release 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.

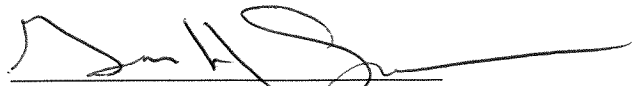
4. Nothing in this agreement commits the County to Purchase the property.
5. This agreement may be executed in counterparts.

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

COUNTY OF MARIPOSA


OWNER



Marshall Long, Chair
Mariposa County Board of Supervisors


George Smith, Owner

ATTEST:

APPROVED AS TO FORM:


Rene Laroche
Clerk of the Board
Deputy


Steven W. Dahlem
County Counsel

