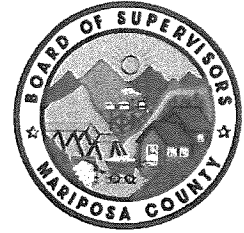


MARIPOSA COUNTY

Planning · 209-966-5151



RESOLUTION - ACTION REQUESTED 2021-662

MEETING: December 7, 2021
TO: The Board of Supervisors
FROM: Sarah Williams, Planning Director
RE: Merced River Trail/Miller Gulch Right to Enter Update

RECOMMENDATION AND JUSTIFICATION:

Approve Agreement for Right of Entry and Hold Harmless with Hillary Lester from the Transition Mountain Properties Ownership Group to Conduct Environmental Assessments of Miller Gulch Property in Support of the Merced River Trail; and Authorize the Board of Supervisors Chair to Sign the Agreement.

The Mariposa County Planning Department has been awarded assistance through the Environmental Protection Agency's (EPA) Targeted Brownfield Assessment program to conduct a Phase I and Phase II environmental assessment of the property owned and currently for sale by Transition Mountain Properties, Inc., located at APN 006-010-024, APN 006-020-001 and APN 006-020-007. These parcels, also known as the Miller Gulch site, are essential for providing public access throughout the Merced River canyon along the historic Yosemite Valley Railroad route. This concept, known as the Merced River Trail, has been a community priority for some time and has recently received significant Board support.

The EPA program will provide technical services free of charge that would be part of a larger due diligence process which would be necessary should the county have the funding to acquire the parcels for the purposes of completing the trail. This agreement has been developed to grant access for county contractors (provided by the EPA) to the parcel for the purposes of conducting the Phase I and Phase II environmental assessments. It is a necessary step in implementing the EPA program, and advancing the Merced River Trail project.

In June 2020, each member of the Transition Mountain Properties ownership group signed this agreement. Since that time, Hillary Lester became a member of the ownership group, so the current item is for the Board to enter into an identical agreement with the new owner as the agreement the Board has entered into with the existing owners.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On June 23, 2020, the Board adopted RES-2020-358, which approved identical agreements with the members of the ownership group at that time.

The Board and LTC has taken a number of actions related to the Merced River Trail

and Miller Gulch property acquisition, including:

- Ratify Letter Requesting Support for the Merced River Trail: RES 2020-101
- Merced River Trail Right of Way Acquisition: LTC 2019-22
- Merced River Trail Implementation Funding: LTC 2019-3
- Merced River Trail Master Plan: LTC 2018-8

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Negative action will result in the county not being able to participate in the EPA program.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Vicinity Map - Miller Gulch Site (PDF)
Agreement (PDF)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

AGREEMENT FOR RIGHT OF ENTRY AND HOLD HARMLESS

THIS AGREEMENT ("Agreement") is made and entered into this 7th day of December 2021, by and between the County of Mariposa, a political subdivision of the State of California, ("County") and Transition Mountain, a partnership, ("Owner"), pursuant to the following terms and conditions.

Recitals

- A. WHEREAS, Owner has offered for sale certain real property located at 8871 Highway 140, Mariposa CA 95338 and identified as APN 006-010-0240, APN 006-020-001, and APN 006-020-007; and
- B. WHEREAS, County desires to inform itself of the condition of the property before considering any purchase of the property by conducting a Phase I and Phase II environmental assessment;
- C. WHEREAS, the parties desire to allow the County to enter the property for the purpose of conducting a Phase I and Phase II environmental assessment.

Now, therefore, the parties agree as follows:

RIGHT OF ENTRY

1. Owner, through its partners, grants to County the right to enter the property identified as APN 006-010-0240, APN 006-020-001, and APN 006-020-007 for the purpose of conducting a Phase I and Phase II environmental assessment, which may include engineering studies, topographic surveys, and environmental studies. Entry onto the property will be the minimum necessary to perform these surveys/studies. County personnel or its agents may need to enter at various times throughout the duration of the surveys/ studies.

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 of 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, through its partners, 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 preparation of the Phase I and II environmental assessment.

This indemnity, defense, release and hold harmless obligations include, without limitation, any claims alleging diminution in value of the property resulting from the preparation, presentation, or publication of the Phase I and Phase II environmental assessment. 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

TRANSITION MOUNTAIN




Marshall Long, Chair
Mariposa County Board of Supervisors



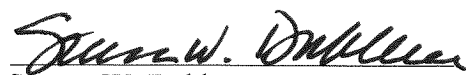
Hillary Lester, Partner

ATTEST:

APPROVED AS TO FORM:



Rene LaRoche
Clerk of the Board



Steven W. Dahlem
County Counsel