

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: PARKS AND RECREATION kmw

BOARD AGENDA # \*B-10

Urgent \_\_\_\_\_ Routine x

AGENDA DATE March 27, 2001

CEO Concurs with Recommendation YES pkc NO \_\_\_\_\_  
(Information Attached)

4/5 Vote Required YES \_\_\_\_\_ NO x

SUBJECT: AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE A REAL PROPERTY PURCHASE AGREEMENT TO PURCHASE PROPERTY ON "T" STREET IN EMPIRE, CALIFORNIA, TO EXPAND A NEIGHBORHOOD PARK

STAFF  
RECOMMEN-  
DATIONS:

1. AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE AGREEMENT AND ESCROW DOCUMENTS NECESSARY FOR THE PURCHASE OF PROPERTY LOCATED ON "T" STREET IN EMPIRE, CALIFORNIA
2. FIND THAT NOTICE OF INTENT TO PURCHASE REAL PROPERTY WAS PUBLISHED BY THE CLERK OF THE BOARD AS PER GOVERNMENT CODE SECTION 25350.

FISCAL  
IMPACT:

Funding for the proposed acquisition is \$61,500, plus actual closing costs. Funding would come from the Plant Acquisition Account

BOARD ACTION AS FOLLOWS:

No. 2001-226

On motion of Supervisor Blom, Seconded by Supervisor Mayfield  
and approved by the following vote,

Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

Motion:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

By: Deputy 

File No.

AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE A REAL PROPERTY PURCHASE AGREEMENT TO PURCHASE PROPERTY ON "I" STREET IN EMPIRE, CALIFORNIA, TO EXPAND A NEIGHBORHOOD PARK

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DISCUSSION: This report is written as a follow-up to the agenda item dated February 27, 2001, concerning the purchase of a parcel on "I" Street in Empire, California, to expand a neighborhood park.

To address the Stanislaus County Parks Master Plan goal of siting and developing a park in the community of Empire, the Board of Supervisors authorized the purchase of 5.5 acres at 5349 Yosemite Boulevard, Empire, on August 29, 2000. In order to provide water and sewer to this parcel, and to provide parking and access, staff is recommending the purchase of an additional parcel adjacent to, and contiguous with, the 5.5 acres.

Purchasing the parcel has many benefits, including potential savings in project costs. The parcel, APN #133-14-22, on I Street north of Yosemite Boulevard, is 23,919 square feet or about half an acre. This parcel is zoned R-3, and a park is a permitted use for such zoning. This parcel has access to sewer, water and electrical service. The parcel would provide access and egress from I Street. This may save the cost of developing a left turn lane on Yosemite Boulevard (which has an estimated cost of at least \$150,000). Currently there are turn lanes at I Street and Yosemite Boulevard, thus creating safer access to the park. In addition this parcel would provide for off-street parking, as well as the opportunity of a joint sharing agreement with the Teel Middle School.

The property owners, St Mary Holy Apostolic Catholic Church of the East, are willing to sell the property for the purchase price of \$61,500. The appraised value of the parcel was \$48,000. The difference between the appraised price and asking price may be made up from the savings of not having to install a turn lane on Yosemite Boulevard. In addition, there maybe a cost savings attributable to not having to install a sewer line extension east on Yosemite Boulevard.

In the event the property is purchased by the County , the Parks and Recreation Department intends to develop the park site in accordance with the Parks Master Plan when funding becomes available.

The Parks and Recreation Department is therefore requesting the Board to find: (1) that an acceptable environmental assessment was completed; and, (2) that an acceptable title report was submitted; and (3) that the Notice of Intent to purchase real property was published by the

**AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE A REAL PROPERTY PURCHASE AGREEMENT TO PURCHASE PROPERTY ON "I" STREET IN EMPIRE, CALIFORNIA, TO EXPAND A NEIGHBORHOOD PARK**

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Clerk of the Board as per Government Code Section 25350, on March 7, 2001, March 14, 2001 and March 21, 2001. Staff therefore recommends that the Board approve the staff recommendations.

**POLICY  
ISSUES:**

The purchase of this property, if approved, would be consistent with the Board's priority of ensuring a safe and healthy community. Approval of the recommendations would be consistent with the implementation of the Parks Master Plan, which was adopted by the Board in 1999.

**STAFFING  
IMPACT:**

None associated with this request.

## AGREEMENT TO SELL AND PURCHASE REAL PROPERTY

This AGREEMENT TO SELL AND PURCHASE REAL PROPERTY is made and entered into by and between the COUNTY OF STANISLAUS ("County") and ST. MARY HOLY APOSTOLIC CATHOLIC CHURCH OF THE EAST ("Owner") on April 16<sup>th</sup>, 2001 (the "Agreement").

### RECITALS

WHEREAS, the Owner owns fee title to real property in the unincorporated area of Stanislaus County, California described as Assessor's Parcel Number 133-14-22, located north of Yosemite Boulevard on "I" Street in the Community of Empire, which contains 23,919 square feet, more or less (the "Property"); and

WHEREAS, the Owner desires to sell and the County desires to acquire the Property; and

Whereas, the County has published a notice of intention to purchase real property in compliance with section 25350 of the Government Code.

NOW, THEREFORE, the Owner agrees to sell and convey and the County agrees to purchase the Property on the following terms and conditions:

#### 1. PURCHASE PRICE AND TERMS OF PAYMENT

1.1 Purchase Price. The purchase price of the Property shall be the sum of \$61,500.00.

1.2 Terms of Payment. The entire purchase price shall be payable at the close of escrow.

1.3 Entire Price. The purchase price set forth in Paragraph 1.1 above is full and complete compensation for the entire Property, including, but not limited to, all incidental rights of fee ownership.

#### 2. ESCROW

2.1 Opening of Escrow. An escrow shall be opened to consummate the sale of the Property according to the terms of this Agreement at the a mutually agreeable company title insurance company (the "escrow holder"). The escrow shall be opened within ten (10) days after the date of this Agreement. Written escrow instructions shall be prepared jointly and the instructions shall be signed by the parties and delivered to the escrow holder within 30 days from the date of this Agreement. The Owner and the County

shall also deposit with the escrow holder all instruments, documents and other items identified in the escrow instructions or reasonably required by the escrow holder to close the sale on the closing date specified below.

2.2 Close of Escrow. The escrow shall be closed on the date the deed is recorded. The escrow must be closed no later than July 1, 2001, unless the closing date is extended upon the mutual consent of the parties.

2.3 Closing Costs. The County shall pay the cost of recording the grant deed and any other instruments required to convey title to the County. The Owner shall pay all other closing costs, including, but not limited to, real estate broker's commissions, transfer taxes and the cost of a title insurance policy.

### 3. PRELIMINARY TITLE REPORT

The County, at its expense, shall obtain a preliminary California Land Title Association report of the title to the Property and each document shown as an exception or encumbrance in the report. Within ten (10) days after the delivery of the title report and related documents to the County, the County shall notify the Owner in writing of any objection to any exception in the report. If the County makes a timely objection to any exception and either the exception is not eliminated or the objection is not withdrawn within 30 days of the Owner's receipt of the objection, the County, at its option and without penalty, may terminate this Agreement. The County's failure to object in this manner to any exception shall be an approval by the County of that exception.

### 4. CONDITIONS PRECEDENT TO CLOSE OF ESCROW

The close of escrow opened pursuant to Paragraph 2 above, and the County's obligation to purchase the Property pursuant to this Agreement, are contingent on the satisfaction of the following conditions, which are solely for the benefit of the County.

4.1 Marketable Title. The conveyance to the County of good and marketable title to the Property, as evidenced by a California Land Title Association standard coverage title insurance policy in the full of the purchase price insuring that title to the Property is vested in the County free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions and other adverse interests of record or known to the Owner, subject only to those exceptions approved by the County under Paragraph 3 above.

4.2 Inspections and Investigations. The correction or removal of any unsatisfactory item identified by the County during an inspection of the Property as set forth in Paragraph 5 below.

4.3 Authorization By the Board of Supervisors. Completion of the purchase of the real property under this option is subject to and conditioned upon the prior approval of the Board of Supervisors for the County of Stanislaus after publication of public notice pursuant to Government Code section 25350.

## 5. INSPECTIONS AND INVESTIGATIONS

5.1 Right of Entry. The Owner grants to the County and its officers, officials, employees, agents, contractors and volunteers the right, at any time and from time to time from within 30 days after the opening of the escrow, to enter onto the Property to conduct tests or investigations, provided that (a) the acts shall be conducted at the sole cost and expense of the County; (b) the acts do not unreasonably interfere with the Owner's possession; and (c) the County shall indemnify and hold the Owner harmless from any costs or liability resulting from the acts and, if the escrow is terminated or canceled for a reason that is not the fault of the Owner, for any damage to the Property resulting from the acts.

5.2 Disapproval. Within ten (10) days after the period for the County to conduct inspections, the County may disapprove, in writing, any items discovered during its inspection that it reasonably deems to be unsatisfactory, unsuitable or an impediment to the purposes for which the County desires to purchase the Property. Unless such unsatisfactory item or items are corrected as set forth below, the County, at its option and without penalty, may terminate this Agreement. If the County does not give the Owner written notice of items reasonably disapproved, the County shall be presumptively deemed to have: (a) completed all inspections and investigations of the Property; (b) elected to proceed with the purchase of the Property; and (c) except as provided in Paragraph 6 herein, assumed all liability, responsibility and expense for repairs or corrections other than for items which the Owner has otherwise agreed in writing to repair or correct.

5.3 Satisfaction of Contingency. The Owner shall have ten (10) days after receipt of any written disapprovals by the County to respond to such objections. If the Owner's response indicates that the Owner is unwilling or unable to repair or correct any items reasonably disapproved by the County, or if the Owner does not respond within the specified period, the County, at its option and without penalty, may terminate this Agreement.

## 6. WARRANTIES

The Owner makes the following representations and warranties:

6.1 Encumbrances. The Owner owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the Property from adjacent properties, encroachments by improvements on the Property onto adjacent properties, or rights-of-way of any nature except those listed as an exception to the title insurance policy described under Paragraph 4.1 above.

6.2 Pending Litigation. There is no pending litigation involving the Property.

6.3 Violations. The Owner has no knowledge of any violations of, or notices concerning defects or noncompliance with, any applicable code, statute, regulation ordinance, judicial order or judicial holding pertaining to the Property.

6.4 Default. The Owner is not in default under any contract, note, or encumbrance relating to the Property.

6.5 Condition of Property. The Owner will maintain the Property in the same condition as exists on the date of this Agreement. No warranties or representations are made regarding the adequacy, performance or suitability of the Property for the purposes that the County desires to purchase the Property. The owner specifically warrants that, to the best of the Owner's knowledge, there are no potential environmental hazards located on the Property, including asbestos, formaldehyde, radon, lead contamination, fuel or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, nuclear sources, and other similar substances, materials, products or conditions.

6.6 Subsequent Disclosures. In the event that the Owner, prior to the close of escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in any disclosures, information or representation previously made or provided to the County, the Owner shall promptly provide a supplemental or amended disclosure in, in writing, covering those items. If the County disapproves of any conditions so disclosed, the County, at its option and without penalty, may terminate this Agreement.

7. SURVIVAL OF WARRANTIES

Except as specifically excepted by the terms and conditions of this Agreement, all warranties, covenants and other obligations described in this Agreement shall survive the close of escrow and delivery of the deed to the Property, and shall remain a binding contract between the Owner and the County.

8. FAILURE OF CONDITIONS/BREACH OF OWNER'S WARRANTY

If any of the conditions set forth in this Agreement fails to occur, or if the County notifies the Owner in writing prior to the close of escrow of the Owner's breach of any of the Owner's warranties set forth in this Agreement, then the County may cancel the escrow, terminate this Agreement, and recover the amounts paid by the County to the escrow holder toward the purchase price of the Property. The County shall exercise this power to terminate by complying with any applicable notice requirements specified in the relevant condition and, in all other cases, by providing written notice to the Owner and the escrow holder within 14 days of discovery of the failure or breach by the County. The exercise of this power shall not waive any other rights the County may have against the Owner for breach of this Agreement. The Owner shall instruct the escrow holder, in the escrow instructions delivered pursuant to Paragraph 2.1, to refund to the County all money and instruments deposited in escrow by the County pursuant to this Agreement upon failure of a condition or conditions or breach of a warranty or warranties and receipt of a termination notice. This instruction shall be irrevocable. In the event of such a termination, the Owner shall bear any and all costs and expenses of the escrow.

9. LIQUIDATED DAMAGES

If the County defaults in the performance of this Agreement, the parties agree that the Owner shall be released from any obligation to sell the Property to the County and may

retain, as liquidated damages, the sum of One Thousand Dollars and No Cents (\$1,000.00), less any offsets or expenses incurred by the County agreed to be shared by the parties under this Agreement. The parties further agree that the amount of liquidated damages established by this provision is a reasonable estimate, under the circumstances existing on the date of execution of this Agreement, of what the Owner's damages would be in the event of a default by the County.

10. LOSS OR DESTRUCTION

The Uniform Vendor and Purchaser Risk Act, set forth in Civil Code section 1662, and its provisions governing the allocation of risk of loss, shall govern this transaction.

11. EMINENT DOMAIN

Although the County has not initiated eminent domain proceedings to acquire the Property, the parties acknowledge that the County has the power of eminent domain and the conditions for filing a condemnation action with regard to the Property have been met or could be met in the reasonably near future. Accordingly, the parties enter into this Agreement with the understanding that the purchase is under threat of condemnation.

12. ASSIGNMENT

The Owner shall not assign this Agreement without the express written consent of County. The valid assignment of this Agreement shall not relieve the Owner of liability under this Agreement.

13. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. AMENDMENT

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

15. ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which



are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

16. OTHER DOCUMENTS

The parties agree to act in good faith and to promptly execute and acknowledge any and all other agreements or other documents which are necessary, or may become necessary, to complete or effectuate this purposes of this Agreement.

17. SUCCESSORS AND ASSIGNS

This Agreement and the liability and obligations of the parties under this Agreement are binding upon the parties and their legal representatives, heirs, executors, administrators, trustees, successors and assigns.

18. NOTICE

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Owner or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus  
Department of Parks and Recreation  
Attention: Rosendo Verusco  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358

To Owner: Koshaba Danyal, President  
St. Mary Holy Apostolic Catholic Church of the East  
P.O. Box 1191  
Hughson, CA 95326

19. CONSTRUCTION

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

20. ADVICE OF ATTORNEY

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

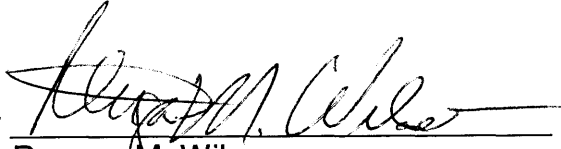
21. GOVERNING LAW AND VENUE

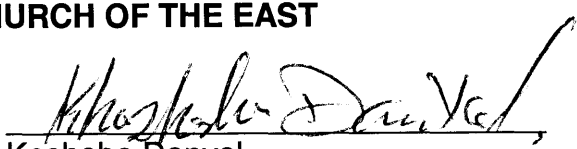
This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

**COUNTY OF STANISLAUS**

**ST. MARY HOLY APOSTOLIC CATHOLIC  
CHURCH OF THE EAST**

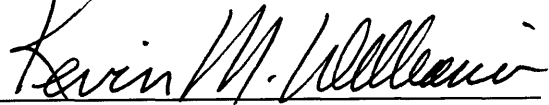
By:   
Reagan M. Wilson  
Chief Executive Officer

By:   
Koshaba Danyal  
President

"County"

"Owner"

APPROVED AS TO CONTENT:  
Department of Parks & Recreation

By:   
Kevin Williams  
Director

APPROVED AS TO FORM:  
Michael H. Krausnick  
County Counsel

By:   
John P. Doering  
Deputy County Counsel

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