

Attachment C

This page intentionally left blank.

**Memorandum of Agreement
Between the County of Monterey and Big Sur Land Trust
Regarding the Carmel River Floodplain Restoration and Environmental Enhancement
Project**

This Memorandum of Agreement (“MOA”) is made and entered into this ____ day of _____, 2022 by and among the County of Monterey (“County”), a political subdivision of the State of California, and Big Sur Land Trust (“BSLT”), a 501(c)(3) nonprofit corporation. County and BSLT are hereinafter referred to collectively as the “Parties.”

RECITALS

- A. Big Sur Land Trust (“BSLT”) and the County of Monterey (“County”) are co-sponsors of the Carmel River Floodplain Restoration and Environmental Enhancement Project (“Project”).
- B. The purpose of the Project is to improve the natural and historic functions and values of the lower Carmel River and Carmel Lagoon through the hydraulic reconnection of the Carmel River, its southern floodplain, and the lagoon while addressing the long-standing problems of flood management and floodplain habitat loss within the lower Carmel River Basin.
- C. On November 10, 2014, the County, BSLT, the Monterey County Water Resources Agency, the Monterey Peninsula Water Management District, and the California State Department of Parks and Recreation entered into a Memorandum of Understanding (“MOU”) for the purpose of coordinating planning activity for the Project.
- D. An amendment and restatement of the MOU is under development and is expected to be in place prior to the initiation of Project construction. The purpose of the amendment and restatement of the MOU (“2022 MOU”) is to add the Monterey Peninsula Regional Park District as an additional party, coordinate planning and construction activity, and clarify the parties’ roles for the Project.
- E. Work also has begun on a separate long-term management agreement to address responsibilities under the Project’s permits and grants. The long-term management agreement will include, but is not limited to, post-construction, long-term maintenance of the Project site, management of public access to the site, and compliance with permit conditions of approval that require post-construction, long-term maintenance, or monitoring actions.
- F. On January 28, 2020, the County of Monterey Board of Supervisors certified the Project’s Final Environmental Impact Report/Environmental Assessment (Board of Supervisors Resolution No. 20-015) (“Final EIR/EA”).
- G. On June 15, 2021, the County Board of Supervisors approved the Project, which is the Preferred Alternative described in the Final EIR/EA and authorized County staff to apply for and obtain permits and entitlements for the Project.

- H. The County is serving as the lead agency for the purpose of CEQA compliance. BSLT is a 501(c)(3) nonprofit corporation and owns real property sometimes referred to as “Odello East” (128 acres) (APNs 243-071-005, 243-071-006, 243-071-007) a 108-acre portion of which is included in the Project area. As more fully described in the 2022 MOU, BSLT also will have long-term habitat management responsibility and coordinate restoration design and implementation actions (i.e., restoration not related to compensatory mitigation) for the Project on Odello East.
- I. The purpose of this MOA between the County and BSLT is to state the understanding and intention of BSLT to comply with mitigation measure CUL-10 (Exhibit 1) in the Final EIR/EA.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. County and BSLT will comply to the Mitigation Monitoring and Reporting Plan (MMRP) approved June 15, 2021, by the Monterey County Board of Supervisors in a public hearing. The MMRP includes Cultural and Tribal Mitigation measures CUL -1 to CUL-10, attached as Exhibit A.
2. As described in CUL-2, CUL-3, CUL-4, and CUL-6, all potentially significant cultural materials, archaeological resources, or human remains that may be uncovered during project excavations will be evaluated by the Project archaeologist and the Native American monitor(s).
3. It is the intention of BSLT to work with the two Native American tribes that have indicated their interest in the Project area, the Ohlone Costanoan Esselen Nation (“OCEN”) and the Esselen Tribe of Monterey County (“ETMC”). To this end, cultural mitigation measure CUL-10 has been restated and modified below to include both ETMC and OCEN:
 - i. BSLT will provide County with documented confirmation that BSLT has offered a location on BSLT-owned property to representatives from the OCEN and the ETMC for reinterment of Native American human remains, should any be found during construction of the Project and a determination made as described in CUL-6.
 - ii. Documented confirmation that BSLT has offered a mechanism to provide post-construction access to OCEN and ETMC members to collect native materials for cultural purposes on BSLT property included in the Project site. Said mechanism will be in place to be operational at the time construction for the entire Project is completed, anticipated to occur in 2026.
 - iii. Documented confirmation of BSLT’s intent to work with OCEN and ETMC to develop interpretive information and materials about the history of OCEN and ETMC people at the Project site.

- iv. A commitment by BSLT to consider requests from OCEN, ETMC, and other tribes for cultural education activities at the Project site.
4. BSLT also may consider requests from other tribes related to activities identified in the aforementioned measures.
5. Exhibits attached to this MOA include:
 - i. Exhibit A: Approved Cultural and Tribal Mitigation Measures
6. This MOA shall continue in force from the date of execution. Should the Project not be permitted or not be constructed, this Agreement may be terminated upon mutual agreement of the County and BSLT.
7. Notices required under this Agreement shall be delivered to the addresses listed below. Delivery of notice shall be by personal delivery or by certified mail or other mail delivery service that enables tracking and acknowledgement of receipt. E-mail may be used for informal communications. Each party shall provide prompt written notification to the other party of any change to the contact information and address listed below.

For County of Monterey:

The County of Monterey
Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas CA 93901
Tel: (831) 755-5025
Fax: (831) 755-4958

For Big Sur Land Trust:

Big Sur Land Trust
PO Box 4071
Monterey CA 93940
Tel: 831-625-5523
Fax: 831-658-0716

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year written below.

COUNTY OF MONTEREY

BIG SUR LAND TRUST

By: _____
Erik V. Lundquist, AICP, Director
Housing and Community Development

DocuSigned by:
Jeannette Tuitele-Lewis
By: _____
E08550056F204FA...
Jeannette Tuitele-Lewis
President/CEO

Date: _____

Date: 6/14/2022

By: _____
Randell Ishii, Director
Public Work, Facilities, and Parks

Approved as to form:

Date: _____

DocuSigned by:
Robin Jepsen
By: _____
C0C3BFC7818D434...
Robin Jepsen
Counsel for BSLT

Approved as to form:

Date: 6/14/2022

DocuSigned by:
Kristi A. Markey
By: _____
C21D52A9D63041C...
Kristi A. Markey
Deputy County Counsel

Date: 6/13/2022

Exhibit A: Approved Cultural and Tribal Mitigation Measures

SUMMARY OF CULTURAL AND TRIBAL MITIGATION MEASURES

Carmel River Floodplain Restoration and Environmental Enhancement

CUL-1

The final grading plan for activities shall be prepared in consultation with a qualified archaeologist, an OCEN representative, and an ETMC representative. The Monterey District State Parks archaeologist shall review the final grading plan for activities on State Parks property.

CUL-2

Cultural resource sensitivity training will be provided for grading crews prior to the initiation of construction with the Project Archaeologist and Native American monitor(s). Native American monitor(s) means a reasonably trained or otherwise qualified monitor who is also a descendant of OCEN or ETMC. Cultural resource sensitivity training shall be provided by the State Parks archeologist for grading activities on State Parks property. During this training, the construction contractor, Project Archaeologist, State Parks archeologist, and Native American monitor(s) will agree on a communication plan and initial steps to implement Mitigation CUL-4 if potentially significant cultural resources are encountered.

CUL-3

A professional archaeologist shall be on call to quickly assess any potentially significant cultural materials, archaeological resources, or human remains that might be uncovered during project excavations. At least one Native American monitor, and up to one Native American monitor per excavation activity, shall be on site during excavation west of SR 1. Additionally, at OCEN's and ETMC's discretion, up to one Native American monitor per excavation activity is optional east of SR 1. The Project Archeologist shall communicate and coordinate with the Native American monitor(s) in regard to all data collection and the evaluation of all artifacts. Prior to the issuance of any grading permit for the Floodplain Restoration Component, the Project Applicants shall submit evidence to the County demonstrating that an on-call professional archaeologist and the Native American monitor(s) have been retained. The Project Archeologist and the Native American monitor(s) shall be provided contact, access, and schedule information sufficient to facilitate their monitoring efforts.

CUL-4

If, at any time during Project construction, potentially significant cultural resources are encountered, work shall cease within 50 feet of the find until the Project Archaeologist, Native American monitor(s), and the State Parks archeologist (for discoveries within State Parks property) can evaluate the discovery. If the find is determined to be significant, steps shall be taken to protect the find from further damage or disruption. The Service's Regional Historic Preservation Officer (RHPO) and the County will be notified. Additionally, an appropriate mitigation plan shall be developed and implemented with the concurrence of the Lead Agencies and in consultation with an OCEN representative and an ETMC representative.

CUL-5

The Project Archaeological and Native American monitor(s) shall closely coordinate the recovery of any significant cultural materials that may be found in the excavated soil. If determined appropriate and necessary by the monitors, they shall selectively screen soil samples through 1/8" mesh to facilitate data recovery. The property owner, in consultation with the County, shall determine how best to proceed with all materials remaining in the screen and recovered artifacts of interest. Removal of any/all cultural deposits or features on State Parks property shall not occur unless the State Parks archaeologist has been contacted and has been on site to determine how best to proceed.

CUL-6

In accordance with California PRC Sections 5097 and 7050.5, if, at any time, human remains are discovered, the Monterey County Coroner and Service's RHPO must be notified. For discoveries of human remains within State Parks property, the State Parks archeologist shall also be notified. If the Coroner determines that the remains are likely to be Native American, the Native American Heritage Commission will be notified and will appoint a Most Likely Descendent (MLD) to provide recommendations for the disposition of the remains and work will not resume until they have made a recommendation to the landowner or the person responsible for

SUMMARY OF CULTURAL AND TRIBAL MITIGATION MEASURES Carmel River Floodplain Restoration and Environmental Enhancement

the excavation work, for means of treating and disposing of, with appropriate dignity, the human remains and any associated grave goods, as provided in California PRC 5097.98.

CUL-7

A Final Technical Report detailing the results of all analyses shall be completed within six months following the completion of monitoring work. This report shall be submitted to the Lead Agencies, the Northwest Information Center, Sonoma State University, the Chairperson of the OCEN and the Chairperson of the ETMC. The report shall also be submitted to the State Parks archaeologist for any and all findings on the State Parks portion of the Project.

CUL-8

Installation of exclusionary fencing around the Fish Ranch Adobe shall be installed prior to the initiation of construction by the contractor under the supervision of the Project Archeologist. The purpose of the exclusionary fencing is to ensure construction activities avoid all impacts to this historic resource. Documentation of the installation of the fencing will be provided to the County prior to construction. Construction-phase monitoring will be conducted on weekly basis to ensure the exclusionary fencing is maintained during construction of the Project. The County will be notified immediately in the case that the fences are not being properly maintained.

CUL-9

The Creamery and Blacksmith Shop will be raised and placed on concrete foundations prior to the levee plugs being removed (approximately three to five years following construction). It is anticipated that the buildings will be elevated between six to eight inches and then placed on concrete perimeter or pier foundations. Existing engineering plans, which were originally prepared by State Parks, shall be updated prior to implementation of this measure to reflect any changed conditions or changes in building codes since the original preparation. The State Parks historian shall be contacted prior to construction work on the Creamery and Blacksmith Shop. The County intends to enter into a MOU with State Parks prior to the initiation of construction that outlines the details of this effort, including cost sharing. The MOU shall include the minimum experience requirements of the contractor(s) who bid for the lifting, cribbing, and moving of the structures and the foundation repair. The MOU shall have concurrence by the State Parks historian with regard to writing specifications for qualified contractor to raise each building, prior to executing a contract. Additionally, any required consultation with SHPO for raising of the buildings shall be conducted prior to construction.

CUL-10

Prior to issuance of the grading permit for the project, BSLT, project co-applicant, shall enter into an agreement with the County that provides the following:

- Documented evidence that BSLT has offered a location on BSLT property to OCEN for reinternment of Native American human remains, should any be found at the during construction of the Project;
- BSLT statement of intent to provide post-project construction access at the Project site to OCEN members to collect native materials for cultural purposes, and a date-certain by which BSLT will provide documented evidence that BSLT has offered a mechanism to provide said access to OCEN;
- BSLT statement of intent to work with OCEN to collaboratively develop interpretive information and materials about the history of the OCEN people at the Project site; and
- A provision indicating that the BSLT will consider requests from OCEN, ETMC, and other tribes for cultural educational activities at the Project site.

This page intentionally left blank