

Attachment D

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FEE SIMPLE PURCHASE AGREEMENT

In consideration of the terms and conditions set forth in this Fee Simple Purchase Agreement ("Agreement"), and in consideration and furtherance of that certain Carmel River Floodplain Restoration and Environmental Enhancement Project Construction Memorandum Of Understanding ("2022 MOU") to which Grantor and Grantee are parties and which is incorporated herein by reference, Big Sur Land Trust, a California nonprofit public benefit corporation, and its successors and assigns ("GRANTOR") hereby grants and delivers this Agreement to the County of Monterey, a political subdivision of the State of California, ("GRANTEE"), and GRANTEE accepts said grant, to convey a Fee Simple ("Fee") interest of an approximately "0.85" acre portion of certain real property owned by GRANTOR and identified as Monterey County Assessor's Parcel Number (APN) 243-071-007, which portion is also referred to herein as "Cal Trans Property No. 12557", and as further described and set forth herein as Exhibit "A", attached and incorporated by this reference. The term, "GRANTOR" shall include the plural as well as the singular.

In consideration of which, and the other consideration hereinafter set forth, it is mutually agreed as follows:

1. AGREEMENT TO PURCHASE AND SELL:

- A. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Fee and shall relieve GRANTEE of all further obligations or claims on this account.
- B. Grantor hereby agrees to grant to Grantee, and Grantee hereby agrees to purchase from Grantor, the Fee, located in the County of Monterey, California, as described in the Grant Deed substantially in the form and content as set forth in Exhibit "B" attached hereto and incorporated by this reference.

GRANTEE acknowledges and agrees that the conveyance contemplated herein does not include, and GRANTOR expressly reserves, the following rights:

- a. Water rights, whether riparian, appropriative, overlying or otherwise, and expressly excepts and excludes, any and all water rights licensed to GRANTOR by the California State Water Resources Control Board.
- C. Notwithstanding anything to the contrary contained herein, but subject to GRANTOR's representations and warranties expressly set forth in this Agreement, GRANTEE shall acquire the Fee from GRANTOR at the close of escrow in its then "AS-IS, WHERE IS" condition, without any representations or warranties from GRANTOR, express or implied, including any warranty of merchantability, habitability or fitness for a particular purpose.

2. DONATION – NO PAYMENT BY GRANTEE:

- A. It is agreed that the Fee conveyed by Grant Deed is being donated to GRANTEE by the undersigned GRANTOR. GRANTOR, having initiated this donation, has been informed of the right to compensation for the property donated and hereby waives such right to compensation.
- B. GRANTEE shall accept delivery of the Fee conveyed by Grant Deed and record same when title can be vested in the GRANTEE free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except for any exceptions to title which are acceptable to GRANTEE. GRANTOR shall have no obligation or responsibility for clearing of any title exceptions not acceptable to the GRANTEE.
- D. GRANTEE shall pay all escrow, recording and title insurance charges, if any, incurred in this transaction.

3. NO LEASES:

GRANTOR warrants that there are no oral or written leases on all or any portion of the Fee exceeding a period of one month and GRANTOR further agrees to hold the GRANTEE harmless and reimburse the GRANTEE for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of owner for a period exceeding one month.

4. QUITCLAIMS, RELEASES, AND WAIVERS:

For any tenant interests in the Fee, as a condition precedent to approval of this Agreement by GRANTEE, quitclaim deeds or similar releases, and tenant waivers of claims to compensation will be required. GRANTOR agrees to assist GRANTEE in securing said quitclaim deeds or similar releases, and tenant waivers.

5. ESCROW INSTRUCTIONS:

Escrow Holder shall be _____. GRANTOR authorizes GRANTEE to prepare and file mutually approved escrow instructions with escrow holder in accordance with this Agreement on behalf of both parties.

6. HAZARDOUS WASTE:

GRANTOR hereby represents and warrants to the best of GRANTOR's actual knowledge that during the period of GRANTOR'S ownership of the Fee, there have been no disposals, releases or threatened releases of hazardous substances or hazardous waste on, from, or under the Fee. GRANTOR further represents and warrants that to the best of GRANTOR's actual knowledge GRANTOR has no knowledge of any disposal, release, or threatened release of hazardous substances or hazardous waste, on, from, or under the Fee which may have occurred prior to GRANTOR taking title to the Fee.

7. RIGHT OF POSSESSION AND USE:

GRANTEE'S right of possession and use of the Fee, including the right to remove and dispose of improvements, and install and connect utilities, shall commence on the date the Grant Deed is recorded.

8. RELEASE OF ALL CLAIMS:

Subject to the agreements of GRANTOR and GRANTEE in the 2022 MOU, in respect to the Fee this is intended as a full and complete release of all or any claims that either party has against the other and is in full settlement of any and all such claims and intends to and does hereby release all of said persons, firms, associations and corporations of and from any and all liability of any nature whatsoever for all claims or causes of action including those for all consequences, effects and results of any loss, injury or damage, whether the same are now known or unknown to the undersigned, expected or unexpected by the undersigned, or have already appeared or developed or may now be latent or may in the future appear or develop. GRANTOR hereby acknowledges that the donation and waiver of just compensation by GRANTOR through this Agreement constitutes the full and complete settlement of any and all claims against the GRANTEE, by reason of GRANTEE'S acquisition of the Fee, specifically including, but not limited to, any and all rights and claims that GRANTOR has, may have, or may in the future have under Article 1, Section 19 of the California Constitution, the California Eminent Domain Law, Code of Civil Procedure section 1230.010 et seq., or any other law or regulation.

The parties acknowledge that they each have been informed of and are familiar with the provisions of California Civil Code Section 1542 which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Further, the parties mutually waive the provisions of California Civil Code Section 1542, and further waive any right they might have to voice said provisions now or in the future with respect to the releases set out in this Agreement. The parties recognize and acknowledge that factors which have induced them to enter into this compromise and release may turn out to be incorrect or different to what they have previously anticipated, and the parties expressly assume the risks and further expressly assume the risk of this waiver of California Civil Code section 1542.

If this Agreement is terminated, this Section shall have no force and effect.

9. **AMENDMENT:**

This Agreement may not be amended, except as agreed to in writing by both GRANTOR and GRANTEE.

10. **SUCCESSORS ASSIGNS:**

This Agreement shall be binding upon, and inure to the benefit of, the parties to this Agreement and their respective successors, heirs, administrators and assigns.

11. **COUNTERPART SIGNATURE:**

This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one Agreement.

12. **SEVERABILITY:**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect.

13. **GOVERNING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue of any action concerning this Agreement shall be in the Superior Court of the State of California, County of Monterey.

14. **PUBLIC PURPOSE:**

GRANTEE requires the Fee for the Carmel River Floodplain Restoration and Environmental Enhancement ("CRFREE") Project, a comprehensive effort to improve flood control and restore native riparian habitat, floodplain habitat, and hydrologic function to a portion of the lower floodplain along the Carmel River. GRANTEE has the right to acquire the Fee through the exercise of its power of eminent domain and has so notified GRANTOR.

15. **NO RECORDING:**

It is agreed that this Agreement shall not be placed on the public record with the Recorder of any county in the State of California.

16. **TITLE VI COMPLIANCE:**

A. The parties to this Agreement shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-

Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3.

- B. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this Agreement.

17. EXECUTION OF AGREEMENT; INTEGRATED AGREEMENT:

This Agreement shall first be executed by GRANTOR and shall be valid only when executed by both GRANTOR and GRANTEE.

This Agreement, including all recitals and documents specifically referenced herein and all exhibits and attachments hereto, constitutes the complete understanding of the parties hereto regarding the subject matter to which it pertains. It supersedes any prior oral or written agreements. Amendments hereto shall be in writing, signed by both parties.

18. NOTICE

All notices, demands, requests, or other communications that may be or are required to be given, served, or sent by one party to the other party pursuant to this Agreement shall be in writing and shall be delivered in person, mailed by registered or certified mail, return receipt requested, or delivered by a commercial courier guaranteeing overnight delivery, addressed as follows:

If to Grantor:

Big Sur Land Trust
Attn: Rachel Saunders, Director of Conservation
509 Hartnell Street,
Monterey, CA 93940
Phone: 831- 625-5523 x109
Email: rsaunders@bigsurlandtrust.org

If to Grantee:

County of Monterey
Public Works, Facilities and Parks
c/o Real Property Specialist
1441 Schilling Place, South Bldg., 2nd Floor
Salinas, California 93901
Phone: 831-755-4859
Email: salcidog@co.monterey.ca.us

19. CAPTIONS

Titles or captions of sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of it.

20. CONSENT TO USE OF ELECTRONIC SIGNATURES

The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et. seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement and any and all Exhibits to this Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF) which may be delivered by mail, E-Mail, or Facsimile.

SIGNATURES APPEAR ON THE NEXT PAGE

GRANTOR: BIG SUR LAND TRUST
GRANTEE: COUNTY OF MONTEREY
APN: 243-071-007 (PORTION)
PROJECT NAME: CARMEL RIVER FLOOD PLAIN RESTORATION AND
ENVIRONMENTAL ENHANCEMENT PROJECT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date opposite the signatures below ("Effective Date").

GRANTOR:

Big Sur Land Trust,
a California nonprofit public benefit corporation

By: _____
Jeannette Tuitele-Lewis
President/CEO
Big Sur Land Trust

Date: _____

Approved as to Form:
Robin Jepsen
Counsel for Big Sur Land Trust

Date: _____

GRANTEE:

County of Monterey, a political subdivision of the
State of California

By: _____

Craig Spencer
Director of Housing &
Community Development

Date: _____

Approved as to Form:
Office of the County Counsel
Susan K. Blitch
County Counsel

By: _____

Mary Grace Perry
Deputy County Counsel

Date: _____

Approved as to Fiscal Provisions:
Rupa Shah, Auditor-Controller

By: _____

Name: _____

Title: _____

Date: _____

GRANTOR: BIG SUR LAND TRUST
GRANTEE: COUNTY OF MONTEREY
APN: 243-071-007 (PORTION)
PROJECT NAME: CARMEL RIVER FLOOD PLAIN RESTORATION AND
ENVIRONMENTAL ENHANCEMENT PROJECT

Exhibit "A"
Legal Description of the Fee

**LEGAL DESCRIPTION
PARCEL 12557-1**

Certain real property situate in the County of Monterey, State of California, described as follows:

Being a portion of that certain real property described as "Adjusted Parcel O" in the deed recorded January 14, 2016, as Document Number 2016002231 of the Official Records of said County, more particularly described as follows:

Beginning at the most westerly corner of said Parcel, said corner being a point on the southeasterly right-of-way line of State Highway 1; thence along said right-of-way line,

- 1) North 37°17'22" East, 388.40 feet; thence
- 2) North 36°04'57" East, 99.19 feet to a point that bears South 53°55'03" East, 97.50 feet from a point on the northwesterly right-of-way line of said Highway identified as number 4084-1 at Station 478+00 on that certain map filed in Volume 24 of Surveys at Page 77 in the Records of said County; thence
- 3) North 36°04'57" East, 291.54 feet, thence
- 4) North 42°01'46" East, 317.27 feet; thence departing said right-of-way line
- 5) South 36°28'02" West, 230.94 feet; thence
- 6) South 53°31'58" East, 35.00 feet; thence
- 7) South 36°28'02" West, 128.27 feet; thence
- 8) North 53°31'58" West, 35.00 feet; thence
- 9) South 36°28'02" West, 233.20 feet; thence
- 10) South 53°31'58" East, 35.00 feet; thence
- 11) South 36°28'02" West, 128.27 feet; thence
- 12) North 53°31'58" West, 35.00 feet; thence
- 13) South 36°28'02" West, 352.25 feet, more or less, to a point on the southerly boundary of said Adjusted Parcel O; thence along said southerly boundary
- 14) North 86°35'26" West, 40.21 feet to the POINT OF BEGINNING.

Containing 0.849 acres, more or less.

Attached hereto is a plat to accompany legal description, and by this reference made a part hereof.

The bearings and distances contained in this description are based on the California Coordinate System of 1983, Zone 4. To obtain ground level distances, multiply by 1.00006707.

END OF DESCRIPTION

PREPARED BY:
WHITSON ENGINEERS



RICHARD P. WEBER P.L.S.
L.S. NO. 8002
Job No.: 2172

09/13/2022
DATE



120 0 60 120

SCALE: 1" = 120'

THE BEARINGS AND DISTANCES SHOWN
HEREON ARE BASED ON CCS 1983,
ZONE 4. TO OBTAIN GROUND LEVEL
DISTANCES, MULTIPLY BY 1.00006707

PARCEL 12558-1
PER SEPARATE
INSTRUMENT

REEL 931, O.R., PAGE 524

STATION 478+00,
#4084-1, VOL. 24,
SURVEYS, PG. 77

EXISTING
RIGHT OF WAY
LINES

STATE HIGHWAY NO. 1

NEW RIGHT
OF WAY LINE

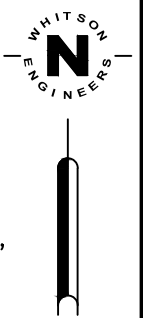
ADJUSTED PARCEL O
DOC. #2016002231, O.R.

DESCRIBED AREA:
PARCEL 12557-1
±0.849 ACRE

ADJUSTED PARCEL P
DOC. #2016002232, O.R.

PARCEL A
VOL. 20, SURVEYS,
PG. 66

POINT OF BEGINNING
MOST WESTERLY CORNER
ADJUSTED PARCEL O



PLAT TO ACCOMPANY DESCRIPTION RIGHT-OF-WAY ACQUISITION

PARCEL 12557-1

MONTEREY COUNTY, CALIFORNIA
SEPTEMBER, 2022



Civil Engineering +
Land Surveying
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

GRANTOR: BIG SUR LAND TRUST
GRANTEE: COUNTY OF MONTEREY
APN: 243-071-007 (PORTION)
PROJECT NAME: CARMEL RIVER FLOOD PLAIN RESTORATION AND
ENVIRONMENTAL ENHANCEMENT PROJECT

Exhibit "B"
Draft Grant Deed

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO

County of Monterey
Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4527

APN: 243-071-007 (portion); Cal Trans Parcel
No. 12557-1

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103, and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Big Sur Land Trust, a California nonprofit public benefit corporation,

hereby grants to

County of Monterey, a political subdivision of the State of California,

all its rights, title and interest in the real property more particularly described in Exhibit "A" and depicted in Exhibit "B", attached hereto and made a part hereof.

TOGETHER with the tenements, hereditaments, appurtenances thereunto belonging or appertaining, and the revision and revisions, remaining and remainder, rents, issues, and profits thereof.

TOGETHER with all of Grantor's interest in and to oil, gas, geothermal, mineral rights, wells, appurtenant to said real property described on Exhibit "A" attached hereto, and all of Grantor's interest in any streets, alleys, public ways or railroad rights of way, and to any land lying in any body of water, waterway or public street, public road or public avenue in front of, adjacent to, or adjoining the land described in Exhibit "A".

RESERVING THEREFROM any and all water rights licensed to Grantor by the California State Water Resources Control Board, and any and all other water rights, whether riparian, appropriative, overlying or otherwise which may be held by Grantor.

TO HAVE AND TO HOLD the said premises, together with the appurtenance, unto Grantee, and to its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be executed as of the last date opposite the signatures below.

GRANTOR

Big Sur Land Trust,

a California nonprofit public benefit corporation

By: _____

Name: _____

Date: _____

By: _____

Name: _____

Date: _____

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of Monterey)

On _____ before me, _____ personally
(Insert Name of Notary Public and Title)

appeared _____

_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in he/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf on which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

SEAL

ACKNOWLEDGEMENT

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State of California)
)
County of Monterey)

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in he/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument
the person(s), or the entity upon behalf on which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

SEAL

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that pursuant to the provisions of California Government Code Section 27281, the interest in real property conveyed by the Grant Deed dated XXXXXXXXXXXX from the Big Sur Land Trust, a California nonprofit public benefit corporation, to the County of Monterey, a political subdivision of the State of California is hereby accepted by the undersigned officer on behalf of the County of Monterey pursuant to Board of Supervisors' Resolution No. (*insert Resolution No.) passed and adopted on (*insert date of adoption) which authorizes the Director of the Housing and Community Development Department to accept and consent to the recordation of the Grant Deed for 0.85 acres of APN 243-071-007 as described in Exhibit A and Exhibit B to said Grant Deed, on behalf of the County of Monterey, to said County for public purposes. Said officer consents to the recordation of said Grant Deed and this Certificate of Acceptance and Consent To Recordation.

APPROVED AS TO FORM:
Office of the County Counsel
SUSAN K. BLITCH, COUNTY COUNSEL

COUNTY OF MONTEREY

By: _____
Mary Grace Perry
Deputy County Counsel

By: _____
Craig Spencer - Director
Department of Housing and
Community Development

Date: _____

Date: _____

ACKNOWLEDGEMENT

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State of California)
) SS
County of Monterey)

On _____ before me, _____ personally
(Insert Name of Notary Public and Title)
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who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in he/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf on which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

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Signature_____

Signature of Notary Public

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Legal Description

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PREPARED BY:
WHITSON ENGINEERS



RICHARD P. WEBER P.L.S.
L.S. NO. 8002
Job No.: 2172

09/13/2022
DATE

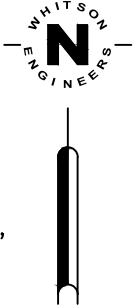


Exhibit “B”
Depiction

120 0 60 120

SCALE: 1" = 120'

THE BEARINGS AND DISTANCES SHOWN
HEREON ARE BASED ON CCS 1983,
ZONE 4. TO OBTAIN GROUND LEVEL
DISTANCES, MULTIPLY BY 1.00006707



REEL 931, O.R., PAGE 524

PARCEL 12558-1
PER SEPARATE
INSTRUMENT

STATION 478+00,
#4084-1, VOL. 24,
SURVEYS, PG. 77

EXISTING
RIGHT OF WAY
LINES

STATE HIGHWAY NO. 1

NEW RIGHT
OF WAY LINE

ADJUSTED PARCEL O
DOC. #2016002231, O.R.

DESCRIBED AREA:
PARCEL 12557-1
±0.849 ACRE

ADJUSTED PARCEL P
DOC. #2016002232, O.R.

PARCEL A
VOL. 20, SURVEYS,
PG. 66

POINT OF BEGINNING
MOST WESTERLY CORNER
ADJUSTED PARCEL O

PLAT TO ACCOMPANY DESCRIPTION RIGHT-OF-WAY ACQUISITION

PARCEL 12557-1

MONTEREY COUNTY, CALIFORNIA
SEPTEMBER, 2022



Civil Engineering +
Land Surveying
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

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