CARMEL RIVER FLOOD PLAIN RESTORATION AND ENVIRONMENTAL ENHANCEMENT PROJECT

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter "**MOU**") is entered into by and between the COUNTY OF MONTEREY, a political subdivision of the State of California, the MONTEREY COUNTY WATER RESOURCES AGENCY, a political subdivision of the State of California , the MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, a political subdivision of the State of California, the CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION, and the BIG SUR LAND TRUST, a California non-profit public benefit corporation, as of the last date of signature by all parties (the "**Effective Date**"), for the purpose of coordinating planning activity for the proposed Carmel River Flood Plain Restoration Project as hereinafter described.

RECITALS

A. The lower reach of the Carmel River Basin was the site of multiple expensive and severe flooding incidents in 1995 and 1998. Developed areas around the northerly edge of the Carmel River Lagoon are subject to repetitive flooding nearly every year.

B. In 1998 the Coastal Conservancy provided funding to the Big Sur Land Trust to develop a restoration concept for the Carmel River Basin floodplain east of Highway 1. The resulting plan is named the Carmel River Flood Plain Restoration and Environmental Enhancement Project (hereinafter the "**Project**"). A schematic map of the area and the Project as currently contemplated is attached as **Exhibit A** and incorporated by reference. The Project includes creating a connection under Highway 1 between the Odello East property and the Carmel River Lagoon, removing the south bank levee, and reconnecting the Odello East floodplain with the Carmel River.

C. It is contemplated that additional public agencies and private entities and individuals, including, but not limited to the Carmel Area Wastewater District, may have an interest and desire to participate in the Project.

D. If implemented, the parties anticipate that the Project would be completed in two phases (hereinafter "Phase" or "Phases"): (i) Phase One would be the creation and construction of a connection under Highway 1 from the Odello East property to the Carmel River Lagoon; (ii) Phase Two would be the flood plain restoration and environmental enhancement element which will include removing the south bank levee and reconnecting the Odello East flood plain with the Carmel River. Other future phases could include improving flood protection and improving habitat enhancement.

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E. Parties to the MOU:

Monterey County ("County"). Monterey County is a general law county that provides services for the benefit of all Monterey County residents while developing, maintaining and enhancing the resources of the region.

Monterey County Water Resources Agency. Monterey County Water Resources Agency (MCWRA) is a special agency of Monterey County that has authority for managing, protecting, and enhancing water supply and water quality, as well as providing flood protection, in the County of Monterey.

Monterey Peninsula Water Management District. Monterey Peninsula Water Management District (MPWMD) is a special district whose legislative function includes fostering the scenic values, environmental quality, native vegetation, fish and wildlife, and recreation on the Monterey Peninsula and the Carmel River basin. The MPWMD also has legislative function for water supply management and water conservation.

California State Department of Parks and Recreation. California State Department of Parks and Recreation owns and operates Carmel River State Beach the property adjacent to Odello East on the west side of Highway One.

Big Sur Land Trust. The Big Sur Land Trust (BSLT) is a 501(c)(3) nonprofit corporation whose mission is to conserve the significant lands and waters of the Central Coast. BSLT owns a portion of the Odello East property (APN 243-071-005) and has a conservation easement over additional lands on the property (APN 243-071-004).

F. The parties to this MOU support a collaborative institutional and political approach to analyse the environmental, technical, and financial feasibility of the Project in order to protect, conserve, restore, and enhance the Project area in a manner consistent with the goals of habitat protection and restoration and flood protection.

G. The parties wish to provide a common planning framework to conduct planning level analyses for the Project. Accordingly, this MOU is intended as a preliminary agreement for planning level activities. This MOU is not intended to, and shall not be interpreted to, constitute, directly or indirectly, a commitment by the parties to undertake or commence the Project prior to the completion of all necessary environmental reviews. The parties acknowledge and agree that no commitment to undertake the Project, or any Phase of the Project, may occur until environmental review has been completed in accordance with CEQA. The parties specifically intend to avoid any commitments or actions that would, in light of all surrounding circumstances, commit the parties to the Project, or any Phase or element of the Project, prior to the completion of environmental analysis in accordance with CEQA.

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AGREEMENT

In consideration of the mutual covenants set forth herein, the parties agree as follows:

1.1 PHASE ONE - THE COUNTY OF MONTEREY

1.1.0 It is understood by all parties that the County of Monterey (the "County") has no funds allocated or available to implement this MOU or the Project, if approved. All activities and obligations of the County set forth below are expressly conditioned on the availability of funding through grants or other non-County sources. Nevertheless, to accomplish the purposes of this MOU, and to allow the review and approval of the Project Study Report prepared by the BSLT, the County will allocate a limited amount of staff time to implement this MOU, not to exceed 60 hours through October, 2010.

1.1.1 The County shall be the lead agency for the purposes of CEQA compliance and shall review, monitor, and assemble environmental studies and documents prepared by BSLT and, to the extent necessary, prepare, or contract for the preparation of, all additional environmental studies, reviews, plans, including mitigation plans, and other documents as may be required for compliance with all State and Federal environmental laws for approval of Phase One.

1.1.2 The County shall obtain all environmental permits required to proceed with Phase One. Those permits include, but may not be limited to, the following:

a. An Army Corps of Engineers Nationwide Permit;
b. A Streambed Alteration Agreement;
c. A Regional Water Quality Control Board Section 401 Permit;
d. A Coastal Development Permit, if applicable.

1.1.3 Should the Project be approved, the County, in concert with the BSLT, shall be the Implementing Agency for Phase One for the purpose of applying for grants and program planning, development and coordination and the County shall negotiate with the California State Department of Transportation for a cooperative agreement to allow joint funding, permitting, planning and construction of Phase One to proceed.

1.1.4 The County, in cooperation with the other parties to this MOU, will apply for additional grants as necessary toward funding all design, construction, and other costs associated with the planning and completion of Phase One should the Project be approved.

1.1.5 If the project is approved, the County will coordinate all planning, development, permitting, and construction activities with the California State Department of Transportation, the parties to this MOU, and other property owners, individuals, and entities as necessary for completion of Phase One.

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1.1.6 Upon completion of all necessary environmental reviews and permitting, the County, as the Implementing Agency for Phase One, may enter into such contracts and agreements with private entities, individuals and public agencies as may be necessary to accomplish the purposes of this MOU and cause the completion of Phase One.

1.1.7 In the event the Project proceeds after completion of all necessary environmental reviews and permitting, the County, to the extent feasible without the use of eminent domain, will secure such property rights as necessary to complete Phase One from property owners within the project area. Every property owner that is a party to this MOU agrees to cooperate and to assist the County with respect to Phase One. Nevertheless, except as specifically set forth herein or as may be agreed to separately, it is understood that the parties are not herein agreeing to assume any financial or other liability, or to encumber title to their respective properties, financially or otherwise, as any such action would require the prior consideration of the specific proposal and formal approval of the governing body of each party in its sole discretion. If the County is unable to obtain necessary property rights without the use of eminent domain this MOU shall terminate.

1.1.8 If the Project is approved, the County shall monitor, review and direct the preparation of plans and specifications for Phase One in accordance with its practices and procedures. Except as specifically set forth herein, the County shall have no obligation to undertake any obligation or activity until such time as funding is available to reimburse the County for the costs, including labor, contracting, and consulting, associated with that obligation or activity.

1.2 PHASE ONE - THE BIG SUR LAND TRUST

1.2.0 BSLT shall prepare grant applications as necessary to proceed with the Project and shall work with the County to apply for and obtain such grants.

1.2.1 BSLT shall provide those environmental and engineering studies it has had prepared, or has contracted to be prepared, to the County to be used to apply for all necessary environmental permits.

1.2.2 BSLT shall direct the engineers, and any other professionals, individuals, or entities it has contracted with, to work directly with the County throughout the planning, design, and permitting elements of Phase One and to comply with all directives and requests of the County to accomplish the planning of Phase One.

1.2.3 Nothing herein shall be intended or construed to constitute an assignment of any responsibilities of BSLT under the terms of any grant it has or will receive. All such responsibilities and obligations are expressly retained and affirmed by BSLT.

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1.3 PHASE ONE - CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

1.3.0 The California Department of Parks and Recreation (hereinafter "State Parks") will cooperate with the planning and design of Phase One and will provide access to property owned by State Parks as necessary for planning and design. Except as provided in this paragraph, State Parks shall have no responsibility for project planning, design, construction, or implementation.

2.1 PHASE TWO - THE MONTEREY COUNTY RESOURCES AGENCY

2.1.0 It is understood by all parties that the Monterey County Water Resources Agency (the "Agency") has no funds allocated or available to implement this MOU or the Project, if approved. All activities and obligations of the Agency set forth below are expressly conditioned on the availability of funding through grants or other non-Agency sources. Nevertheless, to accomplish the purposes of this MOU, and to allow the review and approval of the Project Study Report prepared by the BSLT, the Agency will allocate a limited amount of staff time to implement this MOU, not to exceed 60 hours through February, 2011.

2.1.1 The Agency shall be the lead agency for the purposes of CEQA compliance and shall review, monitor, and assemble environmental studies and documents prepared by BSLT and, to the extent necessary, prepare, or contract for the preparation of, all additional environmental studies, reviews, plans, including mitigation plans, and other documents as may be required for compliance with all State and Federal environmental laws for approval of Phase Two.

2.1.2 The Agency shall obtain all environmental permits required to proceed with Phase Two. Those permits include, but may not be limited to, the following:

a. An Army Corps of Engineers Nationwide Permit;
b. A Streambed Alteration Agreement;
c. A Regional Water Quality Control Board Section 401 Permit;
d. A Coastal Development Permit, if applicable.

2.1.3 Should the Project be approved, the Agency, in concert with the BSLT, shall be the Implementing Agency for Phase Two for the purpose of applying for grants and program planning, development and coordination.

2.1.4 The Agency, in cooperation with the other parties to this MOU, will apply for additional grants as necessary toward funding all design, construction, and other costs associated with the planning and completion of Phase Two should the Project be approved.

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2.1.5 If the project is approved, the Agency will coordinate all planning, development, permitting, and construction activities associated with Phase Two with the parties to this MOU, and other property owners, individuals, and entities as necessary.

2.1.6 Upon completion of all necessary environmental reviews and permitting, the Agency, as the Implementing Agency for Phase Two, may enter into such contracts and agreements with private entities, individuals and public agencies as may be necessary to accomplish the purposes of this MOU and cause the completion of Phase Two.

2.1.7 In the event the Project proceeds after completion of all necessary environmental reviews and permitting, the Agency, to the extent feasible without the use of eminent domain, will secure such property rights as necessary to complete Phase Two from property owners within the project area. Every property owner that is a party to this MOU agrees to cooperate and to assist the Agency with respect to Phase Two. Nevertheless, except as specifically set forth herein or as may be agreed to separately, it is understood that the parties are not herein agreeing to assume any financial or other liability, or to encumber title to their respective properties, financially or otherwise, as any such action would require the prior consideration of the specific proposal and formal approval of the governing body of each party in its sole discretion. If the Agency is unable to obtain necessary property rights without the use of eminent domain this MOU shall terminate.

2.1.8 If the Project is approved, the Agency shall monitor, review and direct the preparation of plans and specifications for Phase Two in accordance with its practices and procedures. Except as specifically set forth herein, the Agency shall have no obligation to undertake any obligation or activity until such time as funding is available to reimburse the Agency for the costs, including labor, contracting, and consulting, associated with that obligation or activity.

2.2 PHASE TWO - THE BIG SUR LAND TRUST

2.2.0 BSLT shall prepare grant applications as necessary to proceed with Phase Two of the Project and shall work with the Agency to apply for and obtain such grants.

2.2.1 BSLT shall provide those environmental and engineering studies it has had prepared, or has contracted to be prepared, to the Agency to be used to apply for all necessary environmental permits.

2.2.2 BSLT shall direct the engineers, and any other professionals, individuals, or entities it has contracted with, to work directly with the Agency throughout the planning, design, and permitting elements of Phase Two and to comply with all directives and requests of the Agency to accomplish the planning of Phase Two.

2.2.3 Nothing herein shall be intended or construed to constitute an assignment of any responsibilities of BSLT under the terms of any grant it has or will receive. All such responsibilities and obligations are expressly retained and affirmed by BSLT.

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2.3 PHASE TWO - CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

2.3.0 State Parks will cooperate with the planning, design, and construction of Phase Two and will provide access to property owned by State Parks as necessary for planning, design, and construction. Except as provided in this paragraph, State Parks shall have no responsibility for project planning, design, construction, or implementation.

3. TECHNICAL ADVISORY COMMITTEE

3.0 Each party to this MOU shall designate one individual to participate in the Technical Advisory Committee. The Technical Advisory Committee shall meet monthly for the purpose of reviewing and advising the administration of grants for the Project and providing such other technical recommendations as may be required by the parties. The Technical Advisory Committee shall elect one of its members to act as Chair and another member to act as Secretary. Meetings shall be conducted in accordance with the procedures set forth in Roberts Rules of Order. Minutes shall be kept of each meeting and approved by further action of the Technical Advisory Committee.

4. MANAGEMENT COMMITTEE

4.0 The Management Committee shall be composed of the Monterey County Director of Public Works, or his/her designee, the General Manager of the Monterey County Water Resources Agency, or his/her designee, and the Executive Director of the Big Sur Land Trust, or his/her designee.

4.1 The Management Committee shall review the recommendations of the Technical Advisory Committee and shall approve or provide guidance regarding those recommendations. In the event of any dispute regarding the Project, the administration of grants, design and/or engineering issues, or any other matter arising out of this MOU, the Management Committee shall provide final resolution of that dispute.

4.2 The Management Committee shall meet as frequently as it may, in its sole discretion, deem appropriate.

5. REIMBURSEMENT OF COSTS AND EXPENSES.

5.0 The Parties intend that the Project shall be fully grant funded and, except as otherwise specifically provided herein, parties shall not be obligated to fund any portion of the costs associated with the Project. Should the Project be approved, each party to this MOU shall be reimbursed from available grant funding for all project costs, including, but not limited to, materials, overhead, labor, contracts, and incidentals for the Project. In the event the Project is approved and grant proceeds are unavailable or exhausted, the

Implementing Agency for each Phase may, at its sole discretion, elect to apply the its own funds, and such additional funds as may be made available by other parties to this MOU, to proceed with the Project or it may elect to cease all work on the Project until such time as further grants are obtained and funded.

6. INDEMNITY

6.0 Each party agrees that it will be responsible for its own acts and the results thereof, and shall not be responsible for the acts of the other parties hereto or the results thereof. Each party ("Indemnifying Party") to this MOU shall indemnify, defend, and hold harmless the each and every other party, its officers, agents, and employees ("Indemnified Party"), from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this MOU, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Indemnifying Party's performance pursuant to this MOU, but only to the extent such claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) are caused by or result from the negligent or intentional acts or omissions of the Indemnifying Party, it officers, employees, and agents. "Performance pursuant to this MOU" includes action or inaction of either the Indemnifying Party or the action or inaction of the Indemnifying Party's officers, employees, agents, contractors, and subcontractors.

7. INSURANCE.

7.0 Each party shall, at its sole cost, insure its activities and indemnification obligations in connection with this MOU from its inception and shall keep in force and maintain insurance or self insurance as follows: general liability, business automobile liability, workers compensation and such other insurance as may be necessary to provide coverage for its performance under this MOU. Further, each party shall require its agents, contractors, subcontractors and/or assignees in connection with this MOU and the Project (i) to hold harmless and indemnify all parties to this MOU in respect to claims or liability which arise from the negligence or willful misconduct of said indemnifying agents, contractors, subcontractors and/or assignees and (ii) to carry insurance meeting the requirements of this section commensurate with the standards of the industry.

8. TERM; TERMINATION

8.0. This MOU shall continue in force from the Effective Date until terminated as set forth below.

8.1 Any party may unilaterally withdraw from this MOU upon 30 days written notice to the other parties to this MOU. This MOU shall terminate if parties have withdrawn such that only one party remains

8.2 Unless terminated earlier as set forth above, if the Project is approved and is implemented, this MOU shall terminate sixty days after both Phases have been completed and all work has been accepted by the appropriate authority.

9. MISCELLANEOUS.

9.0 Any notice or communication required by the MOU shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by overnight mail, or prepaid registered mail, or confirmed facsimile transmission, addressed to the other parties at the address set forth below, or such other address as such party hereto may hereafter specify in writing to the other parties:

The County of Monterey
Department of Public Works
168 W. Alisal St., Second Floor
Salinas CA 93901
Tel: (831) 755-4800
Fax: (831) 755-4958

The Monterey County Water Resources Agency
893 Blanco Circle
Salinas, CA 93901
Tel: (831) 755-4860
Fax: (831) 424-7935

The Monterey Peninsula Water Management District
5 Harris Court, Bldg. G
Post Office Box 85
Monterey, CA 93942
Tel: (831) 658-5600
Fax: (831) 644-9560

The California Department of Parks and Recreation
2211 Garden Road
Monterey, CA 93940
Tel: (831) 649-2836
Fax: (831) 647-6239

The Big Sur Land Trust
PO BOX
Carmel CA 93922
Tel: 831-625-5523
Fax:

9.1 This MOU may only be modified by written agreement of the parties.

9.2 This MOU shall be governed by the laws of the State of California.

9.3 Headings and captions in this MOU are to facilitate reference only and do not form a part of this MOU, and shall not affect the interpretation hereof.

9.4 Each party represents to the other that each has the full authority to perform its obligations under this MOU and that the person executing this MOU has the authority to bind it.

9.5 The MOU is not intended to create, nor shall it be construed to be, a joint venture, association, partnership, franchise or other form of business relation. None of the parties shall have, nor hold itself out as having, any right, power or authority to assume, create or incur any expenses, liability, or obligation on behalf of the other parties, except as expressly set forth herein.

9.6 Each party shall bear its own attorneys' fees and expenses in the preparation and review of this MOU. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this MOU, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this MOU, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

9.7 This MOU, together with all Exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes and replaces any and all prior understandings or agreements with respect thereto, including those understandings and agreements in letters, correspondence, memoranda or other expressions of intent from either party hereto or its agents that are prior to or contemporaneous in time to this MOU.

IN WITNESS WHEREOF, this MOU is executed on the dates set forth below by the duly authorized representatives identified below:

County of Monterey

By: _____

Title: Director of Public Works

Date: 8/23/10

Monterey County Water Resources Agency

By: _____

Title: General Manager

Date: 11/2d/10

Monterey Peninsula Water Management District

By: Darby Fuerst

Title: General Manager

Date: 9/30/2010

California Department of Parks and Recreation

By: _____

Title: SP Monterey District Supt.

Date: 11-8-10

The Big Sur Land Trust

By: _____

Title: Executive Director

Date: 9.23.2010