

BOARD OF SUPERVISORS

G 53929

EL SUR RANCH
DEDICATION AND DEVELOPMENT AGREEMENT

between

THE COUNTY OF MONTEREY
STATE OF CALIFORNIA

and

JAMES J. HILL, III

Approved by Monterey County Ordinance No. 3030
Adopted NOV. 13, 1984
Executed _____, 1984

5

~~RR~~
Dev Agr

REEL 1788 PAGE 664

RECORDED AT REQUEST OF

BOARD OF SUPERVISORS

NOV 21 4 25 PM '84

OFFICE OF RECORDER
COUNTY OF MONTEREY
SALINAS, CALIFORNIA

75

I N D E X

	<u>Page</u>
I. RECITALS OF PREMISES, PURPOSE AND INTENT	1-2
1.01 The Property and the Project.	2-3
1.01(a) Description of the Major Components of the Project.	3
1.01(a)(1) Preservation and Protection of Ranching and Agricultural Operations	3
1.01(a)(2) Comprehensive Open Space/ Recreation Program	3
1.01(a)(2)(a) State Parks Purchase	3-4
1.01(a)(2)(b) Permanent Preservation of Major Stands of Redwoods	4
1.01(a)(2)(c) Recordation of Open Space/Conservation Easements.	4
1.01(a)(3) Future Development Options	4
1.01(a)(4) Cypress Grove Restoration Program	5
1.02 Public Objectives Served by the Agreement	5
1.02(a) Comprehensive Planning Objectives	5-7
1.02(b) Public Benefits in Return for Assurance of Completion.	7-9
1.03 Objectives of Ranch	9
1.03(a) Risks and Uncertainties that Would Deter or Prevent Ranch's Commitment to this Project Absent this Agreement	9-10
1.03(b) Incentives To Ranch Carrying Out the Project	10-11
1.04 Scope of Environmental Impact Review.	11
1.04(a) EIR	11-13

1.04(b) Environmental Review. 14

1.05 Reasonable Assurances of Completion 14

1.06 Enabling Statute. 15

1.07 County Procedures 16

II. AGREEMENT AND ASSURANCES 17

2.01 Agreement and Assurances on the Part of Ranch . . . 17

2.01(a) Implementation of the Open Space Program. . 17

2.01(b) Limitation of Future Development to Defined
Development Zones 17-18

2.01(c) Cypress Grove Restoration Program 18-19

2.01(d) Mitigation Measures Required Pursuant to
the EIR for this Agreement. 19

2.02 Agreement and Assurances on the Part of County. . . 19

2.02(a) Entitlement to Development; Exercise of
Present Discretion. 19-23

2.02(b) Subsequent Development Review; Exercise of
Discretion in the Future. 23-24

2.02(c) Public Access 25

2.02(d) Subsequent Environmental Review 25-27

2.02(e) Development Conditions. 27-28

2.02(f) Taxes and Assessments 28

2.02(g) Justifiable Reliance. 29

2.02(h) Consistency with Laws in Force. 29

2.02(i) Integrated Project. 29-30

III. GENERAL PROVISIONS 31

3.01 Execution, Recordation and Effectiveness of
Agreement 31

3.02 Duration of Agreement 31

3.03 Implementation. 32

	<u>Page</u>
3.04 Remedies	32-33
3.05 Amendment, Cancellation and Enforcement	33
3.05(a)	33-34
3.05(b)	34
3.05(c)	34
3.05(d)	34
3.06 Periodic Review	35-36
3.07 Assignment	36
3.08 Relationship of Parties	36
3.09 Notices	37
3.10 Severability	37-38
3.11 Time of Essence	38
3.12 Modification	38
3.13 Waiver	38-39
3.14 Successors and Assigns	39
3.15 Benefit of Changes in Law	39
3.16 Attorneys' Fees and Costs	39
3.17 Approval and Execution	40

EXHIBITS

- Exhibit "A" (5 pgs.)
- Exhibit "B" (2 pgs.)
- Exhibit "C" (17 pgs.)
- Exhibit "D"
- Exhibit "E" (3 pgs.)

EL SUR RANCH

DEDICATION AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is executed this 21st day of December, 1984, by and between the County of Monterey (hereinafter referred to as "County") and James J. Hill, III, Owner of the El Sur Ranch (hereinafter referred to as "Ranch"). Unless otherwise indicated herein, all exhibits and attachments referred to are to be incorporated by reference into the Development Agreement (hereinafter referred to as "Agreement"). The Environmental Impact Report is to be used as a source of additional detail on the plan for the property.

I. RECITALS OF PREMISES, PURPOSE AND INTENT

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties.

Pursuant to Government Code Section 65865, County has adopted Resolution 84-21, which approves the concept of such Agreement.

The Ranch is located within the area covered by the Big Sur Local Coastal Plan which was certified by the California Coastal Commission on September 13, 1984. The Big Sur Local Coastal Plan allows the Ranch to develop up to 73 residential units exclusive of the application of the Transfer of Development Credits and 100 visitor-serving inn units with a restaurant and accessory uses. The Ranch has the carrying capacity, based on the constraints of the Big Sur Local Coastal Plan, of 98 residential units. Pursuant to agreements with the State of California Department of Parks and Recreation, the California Coastal Conservancy and Save the Redwoods League, the Ranch has agreed to transfer of real property rights described herein carrying with such rights twelve (12) residential

development credits and transfer by way of bargain sale the right to develop twenty (20) residential units, leaving Ranch the right to develop forty-one (41) residential units and one hundred (100) commercial recreation visitor-serving units with a restaurant and accessory uses all in reliance upon County entering into this Agreement.

The Ranch desires to obtain the binding agreement of the County that County will permit the Ranch to construct and develop the Ranch according to the plan attached hereto as Exhibit "A" and incorporated by reference herein (a full size map [1" = 800'] is available at the Monterey County Planning Department) in accordance with the County rules, regulations and official policies concerning permitted land uses, density, design, improvement, and construction standards and specifications in force on the date of adoption of the ordinance approving this Agreement, and without requiring the Ranch to dedicate property, or construct public improvements except as expressly set forth in this Agreement.

The Ranch has applied to County pursuant to Government Code Sections 65864-65869.5 and County's Resolution 84-21 for approval of a development agreement providing for the binding agreements desired by the parties hereto. The County Planning Commission and the Board of Supervisors have given notice of intention to adopt the proposed Agreement, have conducted Public hearings thereon pursuant to Government Code Section 65867 and County Resolution 84-21 and have found that the provisions of said Agreement are consistent with the County General Plan and the Big Sur Local Coastal Plan.

1.01 The Property and the Project.

Ranch is and has been the owner of approximately 7,000 undeveloped acres located in that portion of the County of Monterey

commonly referred to as Big Sur and more specifically in the immediate vicinity of the Little Sur River, as shown on the Location Map attached as Exhibit "B." The legal description of the property to which this Agreement applies is attached as Exhibit "C."

1.01(a) Description of the Major Components of the Project.

Ranch seeks to implement an integrated "Project" (all references herein to "Project" shall mean all the specific components set forth in this section) comprised of the following components:

1.01(a)(1) Preservation and Protection of Ranching and Agricultural Operations.

The existing ranching operation shall be supported and protected through the careful delineation of future public recreational areas in such a way as to minimize intrusion on the ranching operation and through a land exchange of grazing lands with the State Department of Parks and Recreation (hereinafter referred to as "State Parks"). Revenues obtained from the sale of portions of the Ranch as outlined herein and from future development and/or sale of development credits will also benefit the ranching operation.

1.01(a)(2) Comprehensive Open Space/Recreation Program.

Implementation of this Agreement will result in a comprehensive open space/recreation program in conjunction with the preservation of the ranching and agricultural operations. Each part of this program is interrelated with the other.

1.01(a)(2)(a) State Parks Purchase.

State Parks shall purchase the fee interest in the beaches and bluffs lying north of Point Sur and west of Highway One including

the mouth of the Little Sur River and certain easements for access and state park purposes as shown on Exhibit "A."

1.01(a)(2)(b) Permanent Preservation of Major Stands of Redwoods.

Major stands of old growth Redwood trees found along the south fork of the Little Sur River, as shown on Exhibit "A," shall be permanently preserved by means of a sale funded by Save the Redwoods League (hereinafter referred to as "League").

1.01(a)(2)(c) Recordation of Open Space/Conservation Easements.

The California Coastal Conservancy (hereinafter referred to as "Conservancy") will acquire by bargain sale development credits for the equivalent of twenty (20) residential units, allocated to the Ranch under the Big Sur Local Coastal Program slope density formula, which will result in the recordation of conservation easements by Ranch over the area shown on Exhibit "A." Said easements will allow, among other things, continuation of the ranching operation, placement of access roads and utility systems, but will not allow any public access.

1.01(a)(3) Future Development Options.

Ranch shall be entitled to develop or transfer development credits and to acquire development credits for the number of residential units as defined in 2.02(a) and develop visitor units as defined in 2.02(a) in the "development zones" shown in Exhibit "A." As each such residential unit is either developed, transferred or otherwise committed, Ranch shall record a corresponding open space or conservation easement over the number of acres required for each residential unit as specified in 2.01(b).

A program for restoring the self generation of the oceanfront Cypress Grove and adjacent areas shall be carried out in the area shown on Exhibit "A" as Site 8 when the 100-unit inn complex is developed to protect the view from Highway One and to reestablish the forest around the inn complex.

1.02 Public Objectives Served by the Agreement.

In accordance with the findings set forth in Government Code Section 65864, County wishes to attain certain public objectives that will be furthered by this Agreement. These objectives are set forth in subsections 1.02(a) and (b) below.

1.02(a) Comprehensive Planning Objectives.

County seeks to facilitate and assure the implementation of the Land Use Plan for the Big Sur Local Coastal Program adopted by the Monterey County Board of Supervisors on April 10, 1984 (hereinafter referred to as "LUP") and certified with modification by the California Coastal Commission on September 13, 1984. In the event that this Agreement is completed prior to the certification of the implementation portion of the LUP, this Agreement shall retain its validity and the uses, density, design, improvement and construction standards and specifications provided for herein shall not be affected by any subsequently adopted County General Plan or Land Use Plan or amendments thereto with the exception that the modifications by the California Coastal Commission on September 13, 1984 shall apply to the extent they are approved by the County.

The El Sur Ranch area contains some of the most significant scenic, natural and recreational resources of Monterey County and of the entire California coast and is the largest property in private ownership in the Big Sur Coast planning area. County desires to

provide incentive to Ranch to participate in the implementation of a comprehensive regional program directed toward assuring the preservation and integrated use of the potential recreational, habitat and scenic resources contained within the watershed of the Little Sur River and adjoining areas as well as preservation of the ranching operation. To be able to prepare and carry out a comprehensive regional recreational, scenic resource and habitat protection program for Big Sur, County must be assured that the El Sur Ranch Open Space Recreation Program as defined in Section 1.01 will in fact be implemented and, accordingly, this Agreement serves as the necessary vehicle for providing the incentives and assurances for the implementation of the entirety of the Project. Without the assurances provided in this Agreement, and authorized pursuant to Government Code Section 65864, et seq., County would not under current law be able to provide the legally binding commitment for completion of the development plan that Ranch believes to be the essential prerequisite for carrying out the Project.

The certainty provided by this Agreement is essential to attaining the comprehensive planning objectives pursued by state agencies and nonprofit organizations for additional reasons. All entities committed to expending funds in connection with this Agreement--State Parks, League and Conservancy--have indicated to County that their funding commitments are joined together and that, accordingly, the various purchase areas have been planned as an integrated whole. Moreover, the definition of the acquisition areas has resulted from extensive discussion with Ranch aimed at fulfilling the Coastal Act's agricultural protection requirements (Public Resources Code Sections 30212, 30241 and 30242) by maintaining the operational viability of Ranch's cattle ranching activities, which

operational viability could not be assured without the certainty provided by this Agreement. Finally, planning for future public recreational use of the acquisition areas identified in Section 1.01 would be severely hindered if the location of future private development uses were not specifically mapped and defined as provided herein.

Thus, this Agreement is necessary and essential for the County to be able to plan and implement a comprehensive program intended to serve recreational, educational, scientific and agricultural needs of the County as a whole in an area considered to be of regional, statewide and national significance.

1.02(b) Public Benefits in Return for Assurance of Completion.

The means of attaining the aforementioned objectives and the public benefits to be received as a result of the implementation of the Project through this Agreement include the following, among others:

- (1) Fee acquisition by the State (a) of beach and bluff areas extending from the northwesterly corner of the El Sur Ranch to the vicinity of Point Sur and (b) of the watershed areas located along the south fork of the Little Sur River, which areas include extensive stands of old growth Redwood trees as shown on Exhibits "A" and "E."
- (2) Acquisition by the State of a management easement for State park purposes and certain other easements tying the beach and bluff acquisition to the south fork of the Little Sur acquisition and providing for

surveillance and management as shown as Exhibits "A" and "E."

- (3) Permanent protection of the scenic and watershed qualities of the El Sur Ranch by means of: (a) the aforementioned land sales, (b) the recordation of conservation easements in conjunction with the present and any future sale of development credits to Conservancy, and (c) the dedication of open space or conservation easements in conjunction with future development and/or transfer of residential development credits.
- (4) Protection and furtherance of the agricultural capability of the Ranch by means of: (a) a clear delineation of public use areas so as to prevent intrusion by the public into agricultural areas and areas encompassed by the recordation of conservation easements or open space easements, (b) facilitating the transfer of high value agricultural lands, currently part of the State Parks purchase, (c) the infusion of funds into the ranching operation that will be made possible as a result of the purchases summarized above, (d) the potential for future infusion(s) of funds into the ranching operation resulting from the development and/or transfer of residential units and development of visitor units

assured through this Agreement, and (e) facilitating long-term agricultural planning by the Ranch as a result of the delineation of public use and private development areas on the Ranch.

- (5) Facilitating the provision of visitor serving facilities as set forth in Exhibit "A," specifically a one hundred (100) unit Inn complex including a restaurant open to the public and accessory uses at Site 8 in and around the Cypress Grove near False Point Sur, in furtherance of the recreational policies of the California Coastal Act of 1976 and the LUP, by delineating specific geographical areas and sizing of facilities where such facilities will be allowed by this Agreement.
- (6) Provision of incentives to the Ranch, by means of the assurances set forth in this Agreement, such that Ranch (or the developer) will commence the restoration program for the oceanfront Cypress Grove around the Inn complex at Site 8 when the Inn complex is developed to protect the view from Highway One and to reestablish the forest around the inn complex.

1.03 Objectives of Ranch.

1.03(a) Risks and Uncertainties that Would Deter or Prevent Ranch's Commitment to this Project Absent this Agreement.

- (1) Absent this Agreement there would be no assurances that certain ancillary sources of income necessary

to preserve the existing ranching operation would be forthcoming and realized by the Ranch.

- (2) Absent this Agreement and in light of the present limits on the ultimate buildout of residential and visitor serving units in Big Sur as expressed in the LUP, the Ranch would be faced with the option of losing property rights or engaging in "premature development posture" for visitor serving uses as well as residential uses.
- (3) Absent this Agreement there would be no voluntary sales of fee interests to State Parks and the League nor would there be a voluntary sale of development rights and/or credits to the Conservancy.

1.03(b) Incentives to Ranch Carrying Out the Project.

- (1) The knowledge that the physical integrity of the Ranch and ranching operation will be maintained.
- (2) That the Project represents a long-term solution for the Ranch and the State Parks and Monterey County.
- (3) A determination of the allowable number of residential and visitor serving units (Inn units) (restaurant(s)) to be allocated to the Ranch as a matter of right.
- (4) A determination of the zones where development will be sited and the range of uses and types of development allowed within each development zone.
- (5) The delineation of the regulatory conditions and requirements applicable to the contemplated types

of development and uses to the extent feasible and lawful.

- (6) If a Transfer Density Credits (TDC's) system is adopted, the right to transfer and/or receive such TDC's (Transfer Density Credits) shall vest pursuant to the formula defined in the adopted Transfer Density Credits (TDC's) plan.
- (7) Acquisition of additional grazing land to enhance the overall ranching operation.

1.04 Scope of Environmental Impact Review.

1.04(a) EIR.

Development allowed pursuant to the LUP and along with corresponding increments of dedication of conservation easements or open space easements will be phased over a long time period and will involve lands that are extensive in area and extremely significant in terms of scenic, natural and visual resources. County has, in conjunction with the approval of this Agreement, prepared and certified an "EIR" intended to address in as comprehensive a manner as possible both the direct impact and cumulative impact issues raised by County's approval of the implementation program for the long-term development provided for in Section 2.02 of this Agreement. In furtherance of the objectives set forth in Government Code Section 65864 and of the California Environmental Quality Act, the EIR is directed toward the following objectives:

- (1) The presentation of a more exhaustive consideration of effects and alternatives than would be practical in an EIR directed toward a specific project such as a subdivision;

- (2) A comprehensive assessment of cumulative impacts that might not be analyzed as thoroughly in a phase-by-phase analysis;
- (3) An overall assessment of this project in the light of the basic policy considerations involved in carrying out the land uses provided for in the LUP rather than a fragmented assessment of this project on a phase-by-phase basis;
- (4) The consideration of broad policy alternatives for the implementation phases of the approved LUP as applied to the El Sur Ranch and program-wide mitigation measures at an early time when County has greater flexibility to deal with basic problems and/or cumulative impacts; and
- (5) The reduction of paperwork and redundant EIR reviews as specific projects may be submitted for approval in the future.

In order to carry out the objectives outlined above, the EIR has been prepared and certified in conjunction with the approval of this Agreement pursuant to Title 14 California Administrative Code. The EIR is referred to and incorporated herein by reference and the mitigation measures contained in it shall be applied wherever feasible as development occurs to minimize adverse impacts, assure the preservation of scenic and natural resources and foster long-term agricultural uses.

Ranch's commitment to the total open space program described in Section 2.01 upon the finalization of this Agreement is intended

to further County's objective of preserving large, contiguous areas containing major natural and recreational resources. In this context, Ranch's commitment to the open space program must be viewed in terms of the totality of the open space program rather than as the sum of individual actions relating to specific components of the Project. Both County and the California Coastal Commission have recognized that the preservation of habitat protection, scenic resource, agricultural use and recreational use can be more effectively achieved, in the context of countywide resources, through the long-term protection of resource areas contained in large blocks of land. If County and Ranch were to proceed solely on a phase-by-phase basis, and in so doing treat each individual development area in terms of on-site mitigation measures only for that area, there would be no certainty that County's strategy of protecting resource values in large contiguous areas, particularly in relation to sensitive water courses such as the Little Sur River, would be achieved. In contrast, by assessing at this time the totality of potential adverse impacts and by mitigating such impacts through defined mitigation measures and through the open space program, County is able to obtain from Ranch assurances regarding the conveyance of major resource areas to public agencies. It is only County's commitment to assess the totality of impacts with respect to the totality of the open space program and restoration program in the EIR that provides the inducement for the Ranch to commit to these programs set forth in Section II of this Agreement, resulting in the aforementioned public benefits.

1.04(b) Environmental Review.

The Environmental Impact Report prepared on this Project comprehensively analyzed environmental impacts. No further environmental review shall be necessary unless it would be required by the more liberal of the provisions of Public Resources Code Section 21083.3(a) or the provisions of Section 2.02(c) of this Agreement. The use of the standards of 21083.3(a) is not intended to imply that this Agreement creates a "community plan."

1.05 Reasonable Assurances of Completion.

The entire Project has been designed to be carried out in an environmentally responsible manner with the provision of major public benefits, including those set forth in Section 1.02 above. Because of a) the type and extent of environmental restoration measures, b) the commitment to the Conservancy and/or County TDC sale and/or right of first refusal that the Ranch will provide as part of the implementation of the Project, and c) the infusion of funds to the ranching operation derived from the sale of portion of the Ranch (as set forth in Section 1.02), Ranch shall have the right to avail itself of options to develop or to transfer development credits for a long period of time, up to twenty-five (25) years. Ranch cannot prudently commit to the aforementioned public benefits without reasonable assurance that it will be able to complete the Project, and it is only the assurance of the ability to complete the Project that provides the inducement to Ranch to agree to commit the land and financial resources necessary to provide said public benefits.

Government Code Sections 65864, et seq., authorize and provide that an Agreement such as the one herein is a means by which to obtain such assurances, as summarized in Sections 1.03(b) and 1.05, above, and Section 65864 of the Government Code itself expressly provides as follows:

"The Legislature finds and declares that:

- (a) "The lack of certainty in the approval of development Projects can result in waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public;
- (b) "Assurance to the applicant for a development Project that upon approval of the Project, the applicant may proceed with the Project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

This Agreement is a means of assuring the implementation of the policies of the California Coastal Act of 1976 and, in particular, scenic resource, agricultural protection and access and recreational policies of the Coastal Act as applied through the LUP (Exhibit "D").

1.07 County Procedures.

Pursuant to the authorization set forth in California Government Code Sections 65864, et seq., County adopted Resolution No. 84-21 on January 17, 1984, establishing procedures and requirements for consideration of Development Agreements in the Big Sur coastal zone. In accordance with rules and regulations for the adoption of County ordinances and/or resolutions, County has undertaken the necessary proceedings, has found and determined that this Agreement is consistent with the Monterey County General Plan and the LUP and has adopted Ordinance No. 3030 approving this Agreement which ordinance becomes effective in accordance with paragraph 3.01 hereof.

2.01 Agreement and Assurances on the Part of Ranch.

In consideration of the premises, purposes, and intentions set forth in Section I (Sections 1.01-1.01(a)(4)) above, and in consideration of the assurances for completion of the Project pursuant to the terms and conditions of County assurances set forth in Section 2.02 below, Ranch in entering into this Agreement, hereby agrees and acknowledges that:

2.01(a) Implementation of the Open Space Program.

The open space program shall be implemented following the adoption of the ordinance approving and the execution of this Agreement as provided by Government Code Section 65864, et seq. This Agreement shall be implemented by Ranch, Conservancy, League, and State Parks through the opening of an escrow in a manner acceptable to County, in which escrow the transactions set forth in Exhibit "E" attached hereto shall occur. Said escrow shall be opened not later than thirty (30) days after the approval and execution of this Agreement.

2.01(b) Limitation of Future Development to Defined Development Zones.

Ranch shall limit all future development to those areas depicted on Exhibit "A" as "development zones" unless otherwise provided herein, and further agrees to limit any and all future development on Ranch to the types and intensities of development shown for each development zone, all as set forth in Exhibit "A." Cumulatively, Ranch agrees to limit its entitlement to subdivide or Transfer Development Credits to a maximum of one hundred (100) visitor-serving units and ninety-eight (98) residential units.

In order to achieve this maximum number of ninety-eight (98) development credits for the maximum number of residential units, fifty-seven (57) residential credits would have to be acquired from other parcels in the LUP area through the acquisition of Transfer Development Credits.

At the time of the approval of the application for development of each phase of residential development as set out in paragraph 3.03 of this Agreement, a conservation easement shall be granted to the County of Monterey and the State of California. These easements are in addition to the conservation easements required to be conveyed by this Agreement. (See 3.01(b), 1.02(b)(3), Exhibit "E.") The number of acres to be covered by each conservation easement shall bear the same proportionate relationship to the total number of acres of the El Sur Ranch not covered by conservation easements at the time of application for the first phase (excluding development zones including Site 4 on Exhibit "A") as the number of units to be developed in the phase bear to the total number of residential development units authorized to be developed by this Agreement. For example, assuming 41 residential development rights and 1,000 acres to be covered by conservation easements, if 10 residential units are to be developed in the first phase, the number of acres to be made subject to a conservation easement shall be 243.9. Ranch shall determine the location of the acreage to which the conservation easements shall apply.

2.01(c) Cypress Grove Restoration Program.

Concurrently with the development of the Inn complex in the Cypress Grove near False Point Sur, Ranch shall commence restoration of the Cypress Grove and nearly adjacent areas in the area referred to as Site 8 on Exhibit "A" to the extent needed to protect the view

from Highway One and to reestablish the forest around the inn complex.

2.01(d) Mitigation Measures Required Pursuant to the EIR for this Agreement.

Ranch will mitigate avoidable environmental impacts wherever feasible through the mitigation measures set forth in the EIR certified for this Agreement.

2.02 Agreement and Assurances on the Part of County.

In order to effectuate the premises, purposes and intentions set forth in Section I (Sections 1.01 to 1.01(a)(4)) above, and as an inducement for Ranch to obligate itself to carry out the covenants and conditions set forth in the preceding Section 2.01 of this Agreement, and as an inducement for Ranch to carry out said covenants and conditions, and in consideration for the Ranch doing so, County hereby agrees and assures to Ranch that Ranch will be permitted to carry out and complete the entire Project, as specifically described and set forth in subsection 2.01(b). In furtherance of such agreement and assurance, and pursuant to the authority and provisions set forth in California Government Code Sections 65864, et seq., County in entering into this Agreement, hereby agrees and acknowledges that:

2.02(a) Entitlement to Development; Exercise of Present Discretion.

County agrees that Ranch has the right to develop all phases of the Project as set forth in this Agreement. This Agreement constitutes the exercise by the County of present discretion

a) permitting Ranch to develop 41 to 98 residential units, depending

on the number of transferred development credits which are acquired, b) permitting Ranch to transfer any or all of the residential development credits initially allowed by this Agreement or subsequently acquired, and c) permitting Ranch to develop a 100-unit visitor serving inn complex with a restaurant and accessory uses. Present discretion involves the exercise of discretion through application of the County rules, regulations and policies in existence on the date of adoption of the ordinance approving this Agreement. The modifications of the Big Sur Coast Land Use Plan approved by the California Coastal Commission on September 13, 1984 shall be deemed to be, and for the purposes of this Agreement are, included in the rules, regulations and policies in existence on the date of the adoption of the ordinance approving this Agreement and shall apply to this Agreement to the extent they are approved by the County Board of Supervisors.

Pursuant to this Agreement and County's exercise of present discretion, Ranch shall have the following rights, in addition to any other rights established elsewhere in this Agreement:

A. To develop or transfer (depending on County's establishment of the program) 41 residential units or credits to which Ranch is entitled without acquisition of further development credits.

B. To acquire transferred development credits (depending on County's establishment of the program) for residential units and to develop residential units in the development zones designated in Exhibit "A" on the El Sur Ranch so long as the total number of residential units developed does not exceed 98 units.

C. To develop uses accessory to residential development including, but not limited to, recreational facilities provided such accessory uses are located within one or more of the development zones designated in Exhibit "A."

D. To sell development credits for residential development units (depending on County's establishment of the program).

E. To develop a 100-unit visitor serving inn complex.

F. To develop a restaurant in conjunction with and as part of the 100-unit visitor serving inn complex with two customer seats per inn unit or more if need can be shown for a greater number of seats.

G. To develop uses accessory to the 100-unit visitor serving inn complex at reasonable locations (according to future exercise of discretion) on the Ranch, which accessory uses may include, at Ranch's option, but are not limited to:

- (1) Sewage treatment facilities;
- (2) Storage areas for maintenance and operations equipment customarily used in connection with inn complex;
- (3) Meeting rooms;
- (4) Water system facilities;
- (5) Heating system facilities;
- (6) Energy generating facilities;
- (7) Recreational facilities;
- (8) Other accessory uses reasonably included in a 100-unit visitor serving inn complex.

H. To participate in a program for transfer of development credits for visitor serving inn units should such a program be established by County.

I. To have a different location established (according to future exercise of discretion) for residential unit development or development of the 100 visitor serving units if the designated zones are not feasibly usable due to health or safety reasons, such as unforeseen soil movement or other similar conditions.

The right to transfer development credits is dependent on the establishment of the program by County.

The LUP, as certified with modifications, did not allow Ranch a restaurant or visitor serving use at the Little Sur entrance to the State Park as shown on Exhibit "A." Should allowance of recreational and/or visitor serving facilities, either on sale or off-sale, be considered in the future in the area so designated as Site 4 on Exhibit "A" at the mouth of the Little Sur River or at any other location next to the El Sur Ranch, whether on private property or State Park property, Ranch shall have the first right to establish such uses.

Although not designated for recreational or visitor serving facilities in the LUP, Site 4 on Exhibit "A" is identified as a location for potential future recreational or visitor serving uses upon exercise of future discretion. "First right to establish" recreational or visitor serving uses shall mean that El Sur Ranch property shall be rezoned to permit recreational or visitor serving uses before other property in the same area including State Park property provided the Ranch property can provide the uses equally as well as other properties subject to future exercise of discretion.

Further exercising present discretion, County funds this Agreement and the Project consistent with the LUP, the Monterey

County General Plan and the applicable zoning regulations. County agrees that the zoning ordinances to be adopted to implement the LUP shall be consistent with and allow for the development specified in this Agreement.

2.02(b) Subsequent Development Review; Exercise of Discretion in the Future.

All subsequent review of development within the scope of the Project shall be subject to the terms and conditions of this Agreement and the provisions of Government Code Sections 65865.2, 65865.4 and 65866. All future discretionary decisions regarding exercise of the development rights established by this Agreement shall fall into two categories. Category one discretion includes those decisions which require application of County rules, regulations and policies in existence on the date this Agreement was approved by ordinance but which cannot be applied until an application for development is filed. Category two discretion includes those decisions which require or allow for application of County rules, regulations and policies becoming effective after the date of adoption of the ordinance approving this Agreement. Except as necessary to protect the health and safety of the community, no exercise of category one or category two discretion and no conditions, terms, restrictions and requirements for such discretionary actions by the County, shall prevent development of the land for the uses and to the maximum intensity of development set forth in this Agreement.

As provided in Government Code Section 65855, category one discretion arises only under the rules, regulations, and official policies governing permitted uses of the land, governing density,

and governing design, improvement, and construction standards and specifications applicable to development of Ranch as of the date of the adoption of the ordinance approving this Agreement. However, rules, regulations and policies adopted after the date of approval of this Agreement which do not conflict with and/or are not more restrictive or burdensome than those in force as of the date of approval of this Agreement may be applied when exercising category one discretion. Further, it is agreed that Ranch shall have the right to benefit from any changes in the law favorable to Ranch. Changes in the law allowing for more development and/or less stringent development standards than provided for in this Agreement shall apply to Ranch because it is not the purpose of this Agreement to require Ranch to develop pursuant to more stringent standards than would apply if this Agreement did not exist.

This subsection shall not be construed to limit in any way County's authority to make category two decisions. Category two decisions involve the exercise of reasonable discretion with respect to health and safety regulations including but not limited to potable water, sewage disposal, seismic safety, fire protection, and the electrical and building codes, which may be revised for health or safety reasons and that are applicable to the County as a whole, provided, except as necessary to protect the health and safety of the community, Ranch will, in any event, be allowed to build for the uses and to the maximum intensity set forth in this Agreement within the land areas specified for development by the Plan or in different locations established pursuant to paragraph 2.02(a)I which entitles the Ranch to have a different location established.

2.02(c) Public Access

Vertical public access to the shoreline shall not be required along Swiss Canyon to the False Point Sur area or elsewhere on the Ranch. Lateral access shall be considered in the form of a link in the shoreline trail to extend from Point Lobos to the Big Sur, which consideration shall be made at the time of application to develop the 100-unit inn complex with restaurant and accessory uses, at which time all policies of the LUP shall apply.

2.02(d) Subsequent Environmental Review(1) EIR

In exercising its legislative discretion to enter into this Agreement and commit County to the completion of the Project, County has reviewed and considered the potential adverse environmental impacts related to the implementation of the Project in the El Sur Ranch EIR and has identified therein all mitigation measures for any such adverse impacts. Therefore, County agrees, consistent with Public Resources Code Section 21166, that no subsequent or supplemental environmental impact report shall be required by the County for subsequent discretionary approvals implementing the Project unless: (a) substantial changes are proposed by Ranch in the Project which will require major revisions of the environmental impact report prepared and certified for the approval of this Agreement, or (b) substantial changes occur with respect to the

circumstances under which the Project will be undertaken which would require major revisions in that environmental impact report, or (c) new information, which was not known and could not have been known at the time that this Development Agreement was approved and the environmental impact report was certified as complete, becomes available. It is the understanding of County that "new information" does not mean discovery that probabilities considered in the approval of this Agreement are becoming or have become realities, but instead that the actual quantitative extent of those impacts was not considered in the environmental analysis associated with the approval of this Agreement. Otherwise, County understands that "new information" and subsequent environmental review will be limited to effects upon the environment that are particular to the parcel(s) proposed for development or to the Project and that were not addressed as significant effects in the environmental impact report certified for the approval of this Dedication and Agreement.

- (2) Subject to the provisions of subsection (1) above, subsequent discretionary review of development applications for purposes of environmental review shall be undertaken solely to determine that mitigation measures proposed to mitigate avoidable impacts

are: (a) consistent with the environmental mitigation measures set forth in this Agreement, (b) required to mitigate potential impacts within development zones that are identified as a result of information obtained in conjunction with a specific development application, or (c) that potential development impacts are within the category(ies) of unavoidable impacts to be offset by the benefit of the Project. Future reviews of residential development projects shall, in addition to the provisions of this Agreement, be governed by the provisions of Public Resources Code Section 21083.3.

- (3) In making environmental review findings with respect to any recommendation or decision regarding any subsequent development application submitted by Ranch, County will consider the Project as a whole and with reference to the total open space, public access and environmental mitigation program provided by Ranch in consideration for Ranch's concurrence with and implementation of the Project.
- (4) Regardless of the application of the foregoing provisions of this Section 2.02(c), no further environmental review shall be required if none would be required under application of Public Resources Code Section 21083.3(a).

2.02(e) Development Conditions.

The only conditions, offsite and onsite, required of Ranch shall be those conditions set forth herein and those conditions

found to be necessary to carry out the Project as customarily and routinely applied by the County in reviewing development applications, provided that such requirements do not prevent development of the Project for the uses and to the density or intensity of development allowed by the Project and are not in conflict with the rules, regulations, and policies applicable to Ranch as set forth in this Agreement. Such offsite improvements shall be limited to these improvements generated by the development specified in this Agreement. Furthermore, the offsite improvements shall be assessed and defined in proportion to the size of the specific development in relationship to the overall Project. County further agrees that Ranch is entitled to a complete credit or exemption regarding all parkland fees (except Quimby fees) in the development areas.

2.02(f) Taxes and Assessments.

County agrees that it shall not impose any tax or assessment on the Project or any portion thereof, or impose any fees as a condition to implementation of the Project or any portion thereof, except such taxes, assessments and fees as may exist as of the date of this Agreement and be applicable thereto, or subsequently agreed to by Ranch. Notwithstanding the foregoing, County may impose such new taxes, assessments and fees on the implementation of the Project as then are also imposed on other land and projects within the jurisdiction of the County or special districts, provided that the impact thereof does not fall disproportionately on the Project vis-a-vis other land areas and projects within the County's or special districts' jurisdiction.

2.02(g) Justifiable Reliance.

County acknowledges that, in investing money and planning effort in and to the Project, and in undertaking completion of the Project, particularly with respect to the sale of interests in land to public agencies as provided in Section(s) 2.01(a)(1), (2) and (3), Ranch will be doing so in reliance upon County's covenants contained in this Agreement and upon the enforceability of this Agreement, and County agrees that Ranch may and will be reasonably and justifiably relying upon County's covenants contained in this Agreement and the enforceability hereof in so doing.

2.02(h) Consistency with Laws in Force.

County finds, based upon all information made available to the County prior to or concurrently with the execution of this Agreement, that there are no rules, regulations, ordinances, statutes, or official policies of, or applicable to, the County in force as of the date of execution of this Agreement that would prohibit or prevent the full completion and occupancy of both the residential and commercial recreation elements of the Project, at the uses, densities, designs and heights incorporated and agreed to herein. This is not an occupancy permit. Health and safety regulations applicable at the time of building or occupancy shall apply.

2.02(i) Integrated Project.

County acknowledges, by accepting the commitment to sale of land and the conservation easement program provided for in this Agreement, as well as the implementation of the Cypress Grove restoration program provided for herein, which is an integral part

of the development of the Inn complex in the Cypress Grove near False Point Sur (Site 8) and by executing this Agreement for the Project as a whole, that the Project is and shall be considered a single, integrated development project, and that each component of the Project is dependent upon the completion and occupancy of each other component, and that the viability of each component of the Project is and shall be dependent upon the completion and occupancy of each other component and the full performance of this Agreement.

III. GENERAL PROVISIONS

3.01 Execution, Recordation and Effectiveness of Agreement.

This Agreement shall be executed by the parties immediately following its approval by ordinance by the Board of Supervisors, shall be recorded in the Office of the Recorder for Monterey County pursuant to Government Code Section 65868.5 and shall be effective thirty (30) days after the date on which the ordinance is adopted, subject to the following conditions subsequent:

a) The owners of the El Sur Ranch must convey to the State of California the interests in real property described in the Development Agreement; and

b) The California Coastal Commission must approve the Development Agreement by formal Commission action. If the Coastal Commission recommends modification of or addition to the terms, covenants or conditions of this Agreement, the modifications or additions shall be referred back to the County and Ranch for further consideration and action by the Board of Supervisors. All terms, covenants and conditions of this Agreement not directly affected by the proposed modifications or additions shall be deemed approved by the California Coastal Commission and no longer subject to the condition subsequent of Coastal Commission approval. The further action by the Board of Supervisors shall consider only the modifications or additions recommended by the Coastal Commission.

3.02 Duration of Agreement.

This Agreement shall remain in effect for an initial term of twenty-five (25) years, subject to earlier termination upon the completion, performance and discharge of all obligations hereunder.

3.03 Implementation.

Ranch represents that it intends to pursue development of the residential and commercial components of the Project with reasonable diligence as it deems appropriate in its sound business judgment, in light of market conditions, ranching conditions and other similar factors influencing a business decision to commence development.

The first phase of the Project shall be the transfer of the real property interests for State park, conservation and ranching and agricultural purposes. The residential development shall proceed in the following order: the steer pasture area in which Zones 18, 19 and 20 are located, the zones west of the Old Coast Road in the Swiss Canyon area referred to as Zones 19a, 19b and 22, the zones in the Little River Hill area and then the remaining zones. The visitor-serving inn will be phased in pursuant to the general principles stated herein.

3.04 Remedies.

Both parties agree and recognize that, due to the size and scope of the Project, including the major commitments that must be made in the initial phases of the Project, the design and placement of various discrete uses and structures, the functional and economic interrelationships of the various components of the Project, and the functional and economic relationships between the Project and the remainder of Ranch's land as a whole, as a practical matter it will not be possible physically, financially and as a matter of land use planning, to restore Ranch to its undeveloped natural state and/or to alter the Project's relationships to the development of the remainder of Ranch's land once any significant portion of the

Project is implemented. Moreover, the Ranch has invested approximately five (5) years in planning to arrive at the kind, location and intensity of uses, improvements, and structures, all as specified in the Project plan, and it may not be possible to determine a sum of money which would adequately compensate Ranch for the commitment of time and effort that could have been devoted to other needs of the Ranch.

For the above reasons, the parties agree that damages would not be an adequate remedy for Ranch if County fails to carry out its obligations under Section 2.02 of this Agreement. This is so because the real property which is the subject of this Agreement is unique and is uniquely suited to a mix of public recreational, commercial recreational, ranching, agricultural, residential and preservation uses unparalleled in Monterey County and it would not be possible to evaluate the amount of damages which could properly compensate Ranch in case of the County's failure to carry out its obligations. Accordingly, the parties further agree that specific performance shall be the remedy, rather than damages, in the event of County's failure to carry out its obligation(s) hereunder. County specifically agrees that County has no right or power hereunder whatsoever to specifically enforce the provisions of Section 2.02, nor in any way to compel Ranch to either start or complete the Project, nor to seek any damages from Ranch for Ranch's failure to start or complete the Project.

3.05 Amendment, Cancellation and Enforcement.

3.05(a) No modification, amendment or other change in this Agreement or any provision hereof shall be effective for any purpose

unless specifically set forth in writing which refers expressly to this section and is signed by duly-authorized representatives of both parties.

3.05(b) In view of the substantial commitment by both parties, this Agreement shall not be terminated or unilaterally modified pursuant to Section 65865.1 of the Government Code of the State of California and shall be modified solely pursuant to the provisions of Government Code Section 65868 and as further provided herein.

3.05(c) In the event of changes in State or Federal laws or regulations, acts of God, or other circumstances which substantially interfere with carrying out the Project, as the Project has been approved, or with the ability of either party to perform its obligations under this Agreement, the parties agree to bargain in good faith to modify such obligations to allow the Project to proceed as planned to the extent practicable.

3.05(d) This Agreement has been entered into in reliance on the provisions of the California statutes governing Agreements (Title 7, Division 1, Chapter 4, Article 2.5, Section 65864, et seq.), as those provisions existed at the date of execution of this Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement unless the parties mutually agree in writing which satisfies the requirements of this Section 3.05 to amend the Agreement to permit such applicability.

3.06 Periodic Review.

The annual review required by Section 65865.1 of the Government Code shall be conducted as provided herein. Annual review shall take place within thirty (30) days before the anniversary date of the effective date of the ordinance adopting this agreement and shall be scheduled by County before the Planning Commission. The date of the annual review shall be mutually agreed upon or scheduled by the County with sixty (60) days notice to Ranch, if the date cannot be mutually agreed upon after reasonable effort. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of the other party's position with respect to such matters. If either party concludes that the other party has not complied in good faith with the terms of this Agreement, then that party (not allegedly in default) may issue a written Notice of Noncompliance specifying the alleged default and all facts demonstrating the noncompliance. The party receiving a Notice of Noncompliance shall have thirty (30) days within which to respond in writing. Failure to respond within thirty (30) days after service of the Notice of Noncompliance shall be deemed admission of the noncompliance. If a written response is made timely (within 30 days), then the parties shall have sixty (60) days within which to arrive at a mutually-acceptable resolution of the matters occasioning the notice. If the parties are not able to arrive at a mutually acceptable resolution of the matter(s), the party alleging the noncompliance may elect to (1) enter into binding

arbitration provided that the other party to the Agreement consents to said arbitration, (2) pursue any available remedy at law or in equity, or (3) terminate the Agreement as provided in Section 3.10. If the party alleging defaults elects to terminate the Agreement, the other party to the Agreement may avail itself of any remedy at law or in equity.

The above provisions are subject to meeting the notice and hearing requirements of Government Code Section 65868.

3.07 Assignment.

Ranch shall have the right to convey all or portions of the property or to assign and transfer all or portions of the rights contained herein by an appropriate document, as long as the document also contains the assumption by the transferee or assignee of all of the obligations applicable to Ranch provided for herein. Ranch shall serve written notice upon County of such transfer or assignment, which notice shall state the name and address of the transferee or its assignee that the transferee or assignee has agreed to assume Ranch's obligations hereunder. Such notice shall be mailed to County fourteen (14) days prior to close of escrow. Absence of timely notice shall not affect the validity of a transfer or assignment but may affect the validity of permits given by the County until notice is given.

3.08 Relationship of Parties.

It is understood that the contractual relationship between the parties created hereunder is that Ranch is an independent contractor and not an agent of County.

3.09 Notices.

All notices under this Agreement shall be given to the following representatives of the parties at the addresses indicated below:

If to County: Planning Director
County of Monterey
240 Church Street
Salinas, California 93901

If to Ranch: James J. Hill, III
El Sur Ranch
Box 1588
Monterey, California 93942,

with copies of the notice to:

Mr. Thomas Asmus
Coast Route One
Monterey, California 93940

Walker, McClure, Bohnen & Brehmer
P. O. Box LAW
Monterey, California 93942

Either party may change its address by giving notice in writing to the other party.

3.10 Severability.

If any provision of this Agreement should be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to the terms of any law which becomes effective after the date of this Agreement, either party to the Agreement may declare that the determination of invalidity or unenforceability materially affects the consideration for the entire Agreement and may elect to declare subject to this Section that the Agreement shall become null and void as to all obligations then remaining unperformed and the Agreement shall be terminated, unless extended by the parties by