

EXHIBIT C

PUBLIC ACCESS TRAIL EASEMENT **EXCEPTED AND RESERVED TO THE STATE OF CALIFORNIA**

APN No. **243-211-026-000**, Monterey County

The State of California ("State") expressly excepts and reserves to itself, through the State Coastal Conservancy ("Conservancy"), the following Public Access Trail Easement, from the grant of real property to [GRANTEE] ("Grantee" or "Property Owner"):

Pertinent Facts

- A. Grantee is acquiring from State the fee interest in the real property ("the Property") known as the Victorine Ranch in the County of Monterey, California. The property consists of approximately 74.7 unimproved acres, as described in **Exhibit A** to the Grant Deed to which this Public Access Trail Easement ("Easement") is attached and incorporated to the entirety of the property as an exception to title.
- B. This Easement retains limited public access along the trail alignment located approximately along the highest ridgeline of APN No. 243-211-026-000 and is depicted approximately in **Exhibit C-1**, which is incorporated by reference. The public access trail alignment connects Garrapata State Park to the South with Monterey County Open Space Land to the North.
- C. There are currently no public access trails that have been constructed on the property.
- D. The adjacent land to the south of the Property, identified in part as APN No. 243-211-005-000, is currently owned by the State of California and is managed by the California Department of Parks and Recreation as Garrapata State Park ("State Park"). Although the State Park maintains public access throughout the park, as of the time of the retention of this Easement no public access trails have been built in the State Park to connect with the Property on the ridgeline.
- E. The adjacent land to the north of the Property, identified in part as APN Nos. 243-211-019-000 and 243-211-018-000, is currently owned by the County of Monterey and is managed as open space land. As of the time of the retention of this Easement there is no public access on the County's property and no trails for public access have been built to connect with the Property on the ridgeline.
- F. The retention of this Easement by Grantor on the property will serve clearly delineated local and state governmental access policies, including, without limitation:
 - 1. Chapter 9 of Division 21 of the Public Resources Code, which directs the Conservancy to have a principal role in the implementation of a system of public access ways to and along the state's coastline.

EXHIBIT C

2. Section 20.145.150 of the Monterey County Coastal Implementation Plan, which requires public access as a condition of development.
3. Section 6 of the Big Sur Coast Land Use Plan, which describes and encourages public access in Big Sur, California.

THE STATE DECLARES AS FOLLOWS, in light of the pertinent facts, above:

1. Grant. Pursuant to the common and statutory law of the State of California, the State, retains a perpetual trail easement and right-of-way over the Property as described in Paragraph B of the Pertinent Facts section and **Exhibit C-1**. (“Easement”) This retained Easement includes the perpetual right to design, construct and maintain the trail identified below; to enter the area of the Easement, to construct, install, maintain and repair any one or more of the items described in Section 3, below. The rights retained and associated with the right to construct the Easement are subject to the conditions of Section 4, below.

2. Purpose. The purpose of this Easement (hereinafter referred to as the “Public Access Purpose”) is to assure that the Trail Facilities, as defined in Section 3, will be established and made available to the public in perpetuity for low-intensity public outdoor recreational and educational purposes, defined as nonexclusive, and non-motorized activities that do not adversely impact the natural resources or agriculture on the Property.

3. Trail Facilities.

- a) The Area of the Easement shall not to exceed forty (40) feet in total width (including steps, railings, and other surface structures which, may include bridges and culverts) and the tread width of the Trail located therein shall not exceed six (6) feet in width (collectively, the “Trail”).
- b) Signs and symbols to mark the Trail, to provide information related to the Trail, and for interpretive purposes.
- c) Fences, gates, and barriers to control access, provided that such facilities do not interfere with Property Owner’s use of the property for grazing or passive recreation.

4. Preconditions to Opening of the Easement and Trail Facilities. Opening of the Easement to public access and the exercise of those rights enumerated in Section 5 are subject to the following preconditions for the benefit and protection of the Property.

- a) The Conservancy shall ensure that it or another public agency with sufficient assets, management capability, and resources to carry out the obligations hereunder, has accepted full responsibility for the construction, operation and maintenance of the Easement and Trail Facilities.
- b) The Conservancy or another public agency shall obtain a Coastal Development Permit to construct the Trail and associated facilities.

EXHIBIT C

- c) Connecting trails in Garrapata State Park to the south and the Monterey County Open Space Land to the north have been constructed or are currently under construction.

5. Retained Rights. The Conservancy shall have the right to survey, design, construct, use, repair, manage, maintain and monitor the Trail within the Easement, including but not limited to the right to install, maintain, repair, and replace steps, trail surfacing, bridges, culverts, and other structures and improvements, in accordance with all laws and regulations. Once constructed, maintenance and upkeep of the Trail is the duty of the Conservancy. Trail maintenance shall include, but is not limited to clearing brush and removal of dead, dying or diseased vegetation within the Easement which pose a safety risk to Trail users.

6. Permitted Activities. Activities within the Easement shall be limited to non-motorized passive recreation and designated for foot, horse travel, and bicycle use only. Use of any motorized vehicle or similar mechanical means of locomotion, including automobiles, motorcycles, or other all-terrain vehicles shall be prohibited, except that the Conservancy may utilize reasonable motorized vehicle and equipment in the Easement for emergencies and for construction or maintenance purposes as appropriate. The Conservancy may permit motor-driven wheelchairs or all terrain vehicles for the use of handicapped persons within the Easement if consistent with the Purposes of this Easement.

7. Rights of Property Owner.

- a) Property Owner Improvements. Property Owner shall not construct, install or maintain any facility or improvement within the Easement except the following (collectively, “Property Owner Improvements”): (i) fencing along the boundary of the Easement Area not impeding access to the Easement right-of-ways for the purposes described in Sections 2 through 8; and (ii) items to which the Conservancy, without any obligation to do so, gives its consent in writing.
- b) Property Owner Uses and Activities. Property Owner has the rights accorded to the general public to use the Trail Facilities as well as to exercise any one or more of the following rights with such notice to Conservancy as is reasonable under the circumstances and consistent with all applicable governmental laws, regulations, approvals and permits:
 - i. Mitigating Risk. Cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Easement right-of-way.
 - ii. Resource Management. Mow, cut or remove vegetation, or plant vegetation, within the Easement with prior approval by the Conservancy in writing.
- c) Enforcement Rights. Property Owner has the right to remove or exclude from the Property any Persons who are (i) in locations other than the Trail or (ii) not engaged in Permitted Activities.

EXHIBIT C

8. Enforcement. The Conservancy may, in addition to other remedies available at law or in equity, compel Property Owner to make the Easement available for the purposes set forth in this Reserved Easement by exercising any one or more of the following remedies, without any need to show that a civil action for damages is not available to furnish compensation:

- a) Injunctive Relief. Seek injunctive relief to specifically enforce the terms of this Agreement; to restrain present or future violations of this Agreement; and/or to compel restoration of Trail Facilities or other resources destroyed or altered as a result of the violation.
- b) Self Help. Enter the Property to remove any barrier to the access provided under this reserved Easement and do such other things as are reasonably necessary to protect and preserve the rights of the State under this Reserved Easement.

9. Liability.

- a) Immunity under Applicable Law. Nothing in this Agreement limits the ability of Property Owner and the State to avail themselves of the protections offered by any applicable law affording immunity to Property Owner and the State.
- b) Public Enters at Own Risk. Use of any portion of the Easement by members of the general public is at their own risk. Neither Conservancy, nor its successors or assigns by retaining this Easement assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance or repair of the Trail Facilities; for any unsafe conditions within the Easement; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present. The Conservancy or its successors or assigns will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until the Conservancy receives actual notice of the need to repair an unreasonably dangerous condition.
- c) Costs and Expenses. All costs and expenses associated with Trail Facilities are to be borne by the Conservancy or its successors and assigns.

10. Indemnification. The Conservancy or its successors and assigns shall indemnify, protect, defend and holds harmless the Property Owner and its successors and assigns from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of or in any way proximately connected with or relating to the authorized use of the Easement or Trail Facilities. The Conservancy or its successors and assigns shall be solely liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement, regardless of cause, unless due to the negligence or willful misconduct of the Property Owner.

EXHIBIT C

The Property Owner shall have no responsibility for the operation of the Easement, monitoring of hazardous conditions on it or the protection of the public or any third parties from risks relating to conditions on the Easement. Without limiting the foregoing, neither the Conservancy, nor its successors and assigns shall be liable to the Property Owner or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Easement or Trail Facilities occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against the Property Owner or any other person or entity, except as the claim, liability, damage, or expense is the result of the gross negligence or intentional misconduct of the Conservancy or successors and assigns.

11. Amendment. If circumstances arise under which an amendment or modification of this Easement would be appropriate, Property Owner and the Conservancy shall be free to jointly amend this Easement, provided that any amendment shall be consistent with the Public Access Purpose of this Easement, and shall not affect the Easement's perpetual duration. Any such amendment shall be in writing, executed by Property Owner and the Conservancy or their successors and assignees, and recorded in the Office of the Monterey County Recorder.

12. Assignment. The Conservancy may assign this Easement in whole or in part to any public agency as defined by sections 31010 and 31017 of the Public Resources Code.

13. Interpretation.

- a) This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Public Access Purpose.
- b) Unless specifically stated and attached to this Easement, references to specific authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this Easement becomes effective.
- c) No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

14. Merger. No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to the Conservancy, or its successors or assigns. It is the express intent of the Conservancy that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by the Conservancy or its successors or assigns.

15. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

EXHIBIT C

To Grantee: [ADDRESS]

To the Conservancy: Executive Officer
Coastal Conservancy
1330 Broadway, 13th Floor
Oakland, California 94612-2530

or to a later address specified in written notice to the other party. Notice, if mailed, shall be deemed to have been given upon the day following the day shown on the postmark of the envelope in which the notice is mailed.

16. Successors and Assigns. The terms "Grantee" or "Property Owner" and "Conservancy" or "State," wherever used in this easement, and any pronouns used in place of those terms, mean Grantee or Property Owner and their successors, assigns, and lessees; and the Conservancy or State and their successors and assigns, respectively.

17. Severability. If any term, provision, covenant, condition, or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective, the remainder of this Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

18. Entire Agreement. This Easement is the final and complete expression of the agreement between the parties with respect to the subject matter contained herein. Any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into and superseded by this written instrument.

19. Recordation. This easement shall be recorded in the official records of the County of Monterey.