

Recorded at the request  
of and when recorded  
return to:  
Golden State Land Conservancy  
321 South Main Street #525  
Sebastopol, CA 95472

---

## CONSERVATION AND OPEN SPACE EASEMENT DECLARATION

THIS CONSERVATION AND OPEN SPACE EASEMENT DECLARATION ("Conservation Easement") is granted this \_\_\_\_ day of \_\_\_\_\_, 2018 by Moss Beach Associates, LLC, a California limited liability company ("Grantor") to Golden State Land Conservancy, Inc., a California nonprofit public benefit corporation ("Grantee").

### RECITALS

A. Grantor is the owner in fee simple of certain real property (the "Subject Property") in the County of San Mateo ("County"), California, described as Lots 1-4 of Tract No. \_\_\_\_\_, filed for record in the Office of the Recorder of the County of San Mateo, State of California, on \_\_\_\_\_, in Book \_\_\_\_ of Maps, page(s) \_\_\_\_ ("Map"), a portion of which shall be subject to the terms of this Conservation and Open Space Easement ("Easement Area").

B. The Conservation and Open Space Easement is to be conveyed by Grantor to the Grantee, and is to be operated, managed and maintained by the Vallemar Bluffs Maintenance Association ("Association") pursuant to the provisions of the Vallemar Bluffs Declaration of Covenants, Conditions and Restrictions, filed for record in the Official Records of the County on \_\_\_\_\_, as Instrument No. \_\_\_\_\_ ("Project Declaration").

C. The Easement Area possesses native plant habitat and open space values of great importance to Grantee and the people of the State of California. The Easement Area provides high quality habitat for native plant species such as coastal tufted hairgrass (*Deschampsia cespitosa ssp. holciformis*), California oatgrass (*Danthonia californica*), maritime brome (*Bromus maritimus*), sea thrift (*Armeria maritima ssp. californica*), and coast tarweed (*Madia sativa*) and contains coastal terrace prairie. Individually and collectively, these habitat values comprise the "Conservation Values" of the Easement Area. California Civil Code Section 815 states in relevant part that the Legislature finds and declares that the preservation of land in its natural, scenic or open-space condition is among the most important environmental assets of California. The Legislature further finds and declares it to be the public policy and in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations.

D. The preservation of the Easement Area as open space is consistent with the County General Plan's designation of Open Space and Resource Management District zoning.

E. The preservation of the Easement Area as open space is in the best interest of the County because the land is essentially undeveloped, has high scenic value to the public, and supports a significant area of coastal prairie, and a buffer.

F. The parties desire that the Easement Area be used as a conservation and open space area, operated, managed and maintained by the Association pursuant to this Conservation and Open Space Easement and the Project Declaration in a manner compatible with the Conservation Values of the Easement Area.

G. Grantor intends, as owner of the Subject Property to convey an easement to Grantee over the Conservation Property including the right to preserve and protect in perpetuity the Conservation Values of the Easement Area, subject to the restrictions contained herein.

H. Grantee warrants that it is a publicly-supported, tax-exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, and enhancement of natural, agricultural, ecologically significant, scenic and open-space areas for scientific, charitable and educational purposes. Grantee's Board of Directors has formally resolved to accept the grant of this Easement.

I. Grantee intends, in accepting this grant, to preserve and protect in perpetuity the Conservation Values of the Easement Area for the benefit of this generation and generations to come.

J. The intention of this Conservation and Open Space Easement is, among other things, to preclude future subdivision or development of the Easement Area, and to provide that it shall be used in perpetuity only as open space.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California (in particular, Sections 815 through 816 of the California Civil Code), Grantor hereby grants to Grantee a conservation easement (the "Conservation Easement") in perpetuity over the Easement Area as follows.

1. Definitions.

- (a) Association: The Vallemar Bluffs Maintenance Association.
- (b) Conservation Values: The conservation and open space values of the Easement Area.
- (c) Easement Area: The portion of the Subject Property described as "Conservation and Open Space Easement" on the Map.
- (d) Grantee: Golden State Land Conservancy, Inc., a California nonprofit public benefit corporation.
- (e) Grantor: Moss Beach Associates, LLC, a California limited liability company.
- (f) Subject Property: Lots 1-4 as shown on the Map.

2. Purpose. The purpose of this Conservation Easement is to assure that the Easement Area will be retained in perpetuity as open space and to prevent any unauthorized uses or activities of the Easement Area that will significantly and materially impair or interfere with its Conservation Values. Accordingly, this Conservation Easement restricts the use and activities of the Easement Area to uses and activities that are consistent with its open space nature and this Conservation Easement.

3. Rights of Grantee. To accomplish the purposes of this Conservation Easement, Grantor conveys to Grantee the right:

(a) To preserve and protect the Conservation Values of the Easement Area.

(b) To enter upon the Easement Area, at reasonable times, subject to 72 hours prior written notice, in order to monitor Grantor's compliance with the terms of this Conservation Easement and to enforce such terms; provided, that such entry shall be upon reasonable prior notice to Grantor and occupants of the Subject Property and that Grantee shall not unreasonably interfere with the use and quiet enjoyment of the Subject Property by the Grantor or its successors in interest or by any persons Grantor has authorized or permitted as occupants of the Subject Property.

(c) Pursuant to paragraph 7 hereof ("Disputes and Remedies"), to prevent any activity on or use of the Easement Area which is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use.

4. Prohibited Uses. Any use of the Easement Area which is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Unseasonable watering. There shall be no unseasonable watering, use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agents except as provided in the Habitat Management Plan approved by Grantee; weed abatement activities except as provided in the Habitat Management Plan approved by Grantee; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Conservation Values of the Easement Area or otherwise interfere with the purposes of this Conservation Easement;

(b) Construction. There shall be no building, construction, or other improvements in the Easement Area, including fencing, other than storm water quality facilities, drainage facilities, utility facilities, and fencing that exist thereon as of the date of this Conservation Easement or that have been approved by the County (if any) in conjunction with the Vallemar Bluffs development project. The Easement Area shall not be further subdivided. No residential, commercial or industrial development or use of the Easement Area shall be permitted or allowed. No agricultural use or farming of the Easement Area shall be permitted or allowed. Recreational pedestrian and hiking trails shall be permitted within the Easement Area as approved by County. Altering the surface or general topography of the Easement Area, including building roads or trails (excepting the repair, relocation, and reconstruction of the existing coastal bluff pedestrian trail, consistent with the Habitat Management Plan approved by Grantee), or paving or otherwise covering any portion of the Easement Area;

(c) Soil Erosion or Degradation. There shall be no knowing and intentional use or activity which causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters;

(d) Dumping. There shall be no dumping or other disposal of wastes, refuse, debris, inoperable vehicles or equipment on the Easement Area;

(e) Exotic Species. There shall be no planting, introduction, or dispersion of non-native or exotic plant or animal species;

(f) No Use or Storage of Motor Vehicles or Equipment. There shall be no use or storage of motor vehicles including but not limited to off-road vehicles and boats, bicycles or other equipment on the Easement Area, other than vehicles and equipment used by the Grantor or the Association, or their designated representatives or contractors, for maintenance of the Easement Area. Modular buildings are not permitted within the Easement Area;

(g) Removing, disturbing, altering, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in conformance with the Habitat Management Plan approved by Grantee for (1) fire breaks, (2) maintenance of existing foot trails, or (3) prevention or treatment of disease;

(h) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters;

(i) Recreational activities, except such activities as are consistent with the purposes of this Conservation Easement and carried out in accordance with the Habitat Management Plan approved by Grantee;

(j) Any activity or use that may violate or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Easement Area, or the activity or use in question;

5. Maintenance of Easement Area. The Association shall maintain the Easement Area as Open Space Areas in accordance with the provisions of the Conservation Easement and Habitat Management Plan and in particular, the Association shall:

(a) Easement Area: Monitor, maintain, and repair the Easement Area consistent with the Conservation Easement as permanent open space;

(b) Native Plants: Monitor and maintain and enhance the native plants and coastal prairie habitat in Easement Area;

(c) Improvements: The Association shall be entitled to make and undertake future improvements or enhancements to the Easement Area, consistent with the Habitat Management Plan approved by Grantee, and as reasonable and necessary for good maintenance and management of the Easement Area, including in response to such events or issues as drainage, geotechnical problems, or native landscape maintenance and replanting.

6. Reserved Rights. The Association shall have the right to enter the Easement Area to maintain the Easement Area and the improvements and facilitates located on the Easement Area that the Association is required to maintain under the terms and provisions of the Project Declaration and this Conservation Easement.

7. Third Party Beneficiary. The County is a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all obligations of Grantor and all other rights and remedies of Grantee under this Conservation Easement.

8. Discretion of Grantee and County. Enforcement of the terms of this Conservation Easement by Grantee or County shall be at the discretion of the enforcing party, and any forbearance by Grantee or County to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee or County of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee or County under this Conservation Easement. No delay or omission by Grantee or County in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

9. Disputes and Remedies. If Grantee determines that Grantor, or Grantor's successors in interest of the Subject Property is conducting or allowing a use, activity, or condition in the Easement Area which is prohibited by the terms of this Conservation Easement, or that a violation is threatened, Grantee shall

give at least thirty (30)-days written notice to Grantor or Grantor's successor, including the Association, and to the County of such violation and demand corrective action sufficient to cure the violation, and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the portion of the Easement Area so injured within a reasonable period of time.

(a) Consultations Regarding Interpretation and Enforcement of Conservation Easement. When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to this Conservation Easement, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue within thirty (30) days without resorting to arbitration or legal action.

(b) Grantee's Remedies. If Grantor or its successor or Association fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot be cured within the thirty (30) day period or Grantor or its successor or the Association fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement, and to require the restoration of the Easement Area to the condition that existed prior to injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled. Grantee's remedies described in this paragraph 7 shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity.

(c) Costs of Enforcement. Should either party hereto institute any action or proceeding in court to enforce any provision hereof or for damages or for declaratory or other relief hereunder, the prevailing party shall be entitled to receive from the losing party, in addition to court costs, such amount as the court may adjudge to be reasonable as attorneys' fees, expert witness fees, and related costs, for services rendered to said prevailing party, and said amount may be made a part of the judgment against the losing party. The prevailing party shall be determined under Civil Code Section 1717(b)(1) or any successor statute.

(d) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor or its successors and assigns for any injury to or change in the Easement Area resulting from causes beyond Grantor's or Association's control, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor or the Association under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

8. Costs and Responsibilities. Grantor and its successor and assigns retain the responsibility for ownership, operation, upkeep, and maintenance of the Easement Area and shall do so as required under the provisions of this Conservation Easement and the Project Declaration.

9. Liability. To the fullest extent permitted by law, Grantor, its successors and assigns shall defend, indemnify and hold Grantee, its officers, agents, and employees harmless from and against any and all allegations, claims, damages, disabilities, or expenses, including attorneys' fees, experts' fees, and witness costs that may be asserted or incurred, as the case may be, by any person or entity, including liability for damages or claims for damage for personal injury, or death, as well as from claims for real or personal property damage arising out of or in connection with (i) the activities of Grantor, its successors and assigns in or on the Easement Area, (ii) Grantor's, its successors and assigns, performance or non-performance under

this Agreement, (iii) Grantor's, its successors and assigns, breaches of this Agreement, (iv) any soils subsidence, land slides or soil movement arising out of Grantor's or its successors and assigns activities hereunder; whether or not there is concurrent, passive negligence on the part of the Grantee, its elective and appointive boards, commissions, officers, agents, and employees. This indemnification clause also shall apply to any case where any work performed in or on the Easement Area is done under a contract entered into by the Grantee as agent of Grantor or its successors and assigns and such work is the proximate cause of any claim against Grantee. Grantor indemnifies the Grantee for any liability, cost, expense, including attorney's fees, incurred by the Grantee in enforcing this Section 9. This Section 9 shall survive termination of this Agreement for any reason.

10. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee may jointly amend this Conservation Easement; provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including Sections 815 et. seq. of the California Civil Code, as amended, and any amendment shall be consistent with the purposes of this Conservation Easement. Any such amendment shall be in writing, shall refer to this Conservation Easement by reference to its recordation data, and shall be recorded in the Official Records of the County.

11. Conveyance. Grantee may convey this Conservation Easement in whole but only to an entity that is a qualified entity at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Section 815.3 of the California Civil Code (or any successor provision then applicable). As a condition of such transfer, Grantee shall require the transferee to expressly agree in writing to assume Grantee's obligations hereunder in order that the purposes of this Conservation Easement will continue to be carried out. Grantee shall notify Grantor of the name, address, telephone number and name of principal contact person in writing at least 30 days before Grantee's transfer of this Conservation Easement.

12. Estoppel Certificates. Upon request by Grantor, Grantee shall within 21 days after receipt of such request execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be reasonably requested by Grantor. Grantee's failure to execute or deliver to Grantor an Estoppel Certificate within 21 days after receipt of Grantor's request, shall irrevocably and unconditionally constitute and appoint Grantor as Grantee's Special Attorney-in-Fact to complete, execute and deliver the Estoppel Certificate whose force and effect shall be conclusive upon Grantee that this Conservation Easement is full force and effect as may be represented in writing by Grantor on the Estoppel Certificate delivered to any third party.

13. Notices. Unless otherwise specified in this Conservation Easement, 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:

To Grantor: Moss Beach Associates, LLC  
P.O. Box 377  
Santa Cruz, CA 95061-0377  
Attn: Owen Lawlor, Managing Member

To Grantee: Golden State Land Conservancy  
321 South Main Street #525  
Sebastopol, CA 95472  
Attn: Director of Community Development

To County: SMC Planning and Building Department  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063  
Attn: Community Development Director

or to such other address as either party from time to time shall designate by written notice to the other.

14. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and County with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens (other than a security interest that is expressly subordinate to this Conservation Easement as provided in Section 22(j)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

15. Recordation. This instrument shall be recorded by Grantee in the Official Records of San Mateo County, California. Grantee may rerecord this Conservation Easement whenever rerecording is required to preserve Grantee's rights in this Conservation Easement.

16. Consideration for Agreement and Dedication of Easement. Grantor shall not receive any payment from County in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of the within Agreement is a substantial public benefit to be derived therefrom and the advantage which will accrue to the Grantor and its successors as a result of any reduction of the assessed value of the Subject Property due to the limitations on its use contained in this Agreement and in the Conservation Easement granted herein.

17. Condemnation. Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is "property appropriated to public use," as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, *only* as provided in Code of Civil Procedure section 1240.055.

18. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California.

(b) Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby so long as the purposes of this Conservation Easement can still be carried out.

(c) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 10.

(d) No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of Grantor's fee title in any respect. Grantor specifically reserves the right to convey fee title to the Subject Property subject to this Conservation Easement.

(e) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Subject Property. The covenants in this Conservation Easement benefitting Grantee shall also benefit the County as third party beneficiary.

(f) Termination of Rights and Obligations. Except as expressly provided otherwise in this instrument, a party's rights and obligations under this Conservation Easement shall terminate upon the transfer of the party's interest in this Conservation Easement or the fee title to the Subject Property, as the case may be, except that rights, obligations, and liability relating to this Conservation Easement and occurring prior to transfer shall survive transfer; provided, however, that any claim with respect to such rights that survive transfer shall only be enforceable against the transferring party if legal action respecting such claim is commenced by the filing of suit within two (2) years after the date of such transfer.

(g) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(h) Counterparts. Grantor may execute this instrument in two or more counterparts; each counterpart shall be deemed an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(j) Warranty. Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Property; that the Property is not subject to any other conservation easement; and there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, water and mineral interests) that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a written, recorded Subordination Agreement approved by Grantee.

IN WITNESS WHEREOF, each party has set their hand on the day and year first written above.

GRANTOR: Moss Beach Associates, LLC, a California limited liability company

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

GRANTEE: Golden State Land Conservancy, Inc., a California nonprofit public benefit corporation

By: \_\_\_\_\_

\_\_\_\_\_



Its: \_\_\_\_\_