

# Attachment C

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## **EXHIBIT "D"**

### **TERMS AND CONDITIONS**

**1.** Grantee shall indemnify, defend, protect and hold Grantor harmless from all claims for damage to, or loss of, property, including the Property, or injury or death of any person occurring as a result of any use, condition or maintenance, or lack thereof of the Easement. Provided, Grantee shall not be required to assume responsibility with respect to damages caused directly by the directors, employees, seminarians, and other invited guests of Grantor. And, provided, these terms: a) shall not, as to third party claimants, diminish any recreational use immunities that may be available to Grantor or Grantee including, without limitation, those provided under Civil Code Section 846, and b) may, with the consent of Grantor, be modified, supplemented or supplanted pursuant to the terms of a specific legal agreement between the State Coastal Conservancy and Grantee, as provided in Government Code Section 831.5.

**2.** Grantee shall demonstrate to the satisfaction of Grantor the ongoing ability of Grantee to indemnify, defend, protect, reimburse, and hold harmless, Grantor as described in paragraph 1 above and to satisfy all claims or actions of any kind whatsoever which may arise due to the opening of the Easement to or use of the Easement by the public.

**3.** Grantor agrees to allow the following uses within the Easement: public access and passive noncommercial recreational uses.

**4.** Subject to Grantor's written approval of specific plans, which approval shall not be unreasonably withheld, the following access improvements may be allowed within the Easement: trails, landscaping, fences, signs, gates, benches, trash receptacles, retaining walls, drainage improvements, and similar features. Except as otherwise specified herein, all such improvements shall be generally consistent with the 3-17-2003 Roadside Path Treatments attached as Appendix 1 to this Exhibit D, and with the Coast Highway Management Plan, and shall be paid for and maintained by Grantee. Grantor's sole maintenance responsibility shall be for periodic litter removal within the Easement.

**5.** Grantee, in accepting the Easements, agrees to prohibit the following uses and activities:

**A.** Parking on any driveway or private road on or providing access to the Property.

**B.** Trespass outside the Easement or any other access or encroachment on to the Property.

**C.** All unleashed animals including pets and livestock (except as may be used by Grantee's management personnel for trail patrol).

**D.** Littering or the accumulation of any refuse or garbage, including without limitation, paper, glass, cans, and the like. Grantee shall also prohibit the placement of any unsanitary waste, human or animal, within the Easement or on any portion of the Property.

**E.** Any nighttime use, including without limitation, overnight camping (nighttime is defined for these purposes as before sunrise or after sunset).

**F.** Open fires of any kind and smoking.

**G.** Firearms of any type, except as may be carried by law enforcement personnel.

**H.** The operation of radios, public address systems, or other equipment with the potential of disturbing the solitude of the Property and development thereon.

**I.** Behavior that constitutes a public nuisance or has the potential to disturb the solitude of the Property and development thereon. Grantee agrees to enforce these prohibitions through the posting of signs, periodic patrols and other measures as needed.

**6.** There is expressly excluded from the Offer and the Easement any right, express or implied, to cross or use other real property owned by Grantor or in which Grantor has any interest, in order to gain access to or from the Property or the Pacific Ocean. No rights are granted to Grantee or to members of the public, nor shall any such rights be implied, by virtue of this Offer or the granting of the Easement, to cross or use other real property owned by Grantor, or in which Grantor has any interest, in order to obtain access to or from the Property or the Pacific Ocean.

**7.** The Easement is expressly subject and subordinate to all existing easements, covenants, conditions, restrictions, reservations, limitations or other rights and interests of persons in the Property and to all existing development on the Property and future development approved by the Permit.

**8.** Grantee shall be responsible to close the Easement at all times when any unusual hazard exists, including without limitation, potential landslide conditions, or unusual fire danger, and all other times when in the reasonable judgment of the Grantee it is unsafe for the public to use the Easement.

**9.** Prior to the opening to the general public of any portion of the Easement, Grantee shall completely fence off and/or shall provide a landscape barrier along the Easement separating the remainder of the Property in order to prevent the public from entering private land. This requirement does not apply to trail segments developed solely within the Highway 1 right-of-way. Grantee shall install gates at locations necessary for vehicles and/or equipment to cross or pass over the Easement in order to access the remainder of the Property. No fence or gate shall be installed by Grantee until its design, materials, and method of construction have been approved in writing by Grantor. Approval of the fence and gate design shall not be unreasonably withheld. Grantee agrees to maintain all improvements in good, safe, and attractive condition to the reasonable satisfaction of Grantor. Alternatively, Grantor, at its discretion, may install such fencing and/or landscape barrier, in consultation with Grantee regarding materials and location.

**10.** Prior to the opening to the general public of any portion of the Easement, Grantee shall post and shall subsequently maintain in good condition signs describing the restrictions on use at the north and south entrances to the Easement (as said entrances are described in paragraph 5.A of this Exhibit D). During any period of closure, Grantee shall post and maintain signs that the Easement is closed to the public.

**11.** Grantee shall make ongoing good faith efforts to work with the California Department of Transportation to provide, consistent with Appendix 1, and to the extent feasible, landscape intervention between the highway and the Easement to visually screen the Easement from the highway and any highway pull-outs with the objectives being to a) preclude access from the highway except at those locations mutually agreeable to Grantor and Grantee; b) provide the trail user with a more natural experience; and c) protect, preserve, and enhance the serenity and solitude of the Property and all uses thereon.

**12.** Grantor reserves the right to use the Easement for ingress and egress to and from the remainder of the Property over existing roads and access ways and over such future roads and access ways as may become necessary or convenient to the use of the remainder of the Property. Grantor's use of the Easement shall not be subject to the restrictions on public use over the Easement as set forth in these Conditions or in the Offer provided such use shall not unreasonably impair or impede the use of the Easement by the public.

**13.** No provision of the Offer or the Easement shall exempt the Grantor or Grantee from the requirement to secure governmental permits or approvals for any development, use or activity as required, including coastal development permits. Grantee shall be solely responsible for obtaining all said permits or approvals required for the improvement and/or use of the Easement.

**14.** Prior to the opening to the general public of any portion of the Easement, Grantee shall reach agreement, which agreement shall not be unreasonably withheld, with Grantor and Caltrans regarding the final trail alignment and all access improvements. In negotiating such agreement, the following criteria shall be adhered to: a) the final trail alignment shall be no closer than 10 feet to any existing building on the Property or building approved by the Permit; b) the serenity and solitude of the Property and all uses thereon shall not be compromised; c) to extent feasible continuous and consistent access shall be provided from the South Coast Center area of the Property to the southern boundary of the main campus area of the Property; d) the final trail alignment and design should reflect the access principles of this Ex. D and Appendix 1 ; and e) the trail design will be in keeping with the rustic, informal character of its Big Sur coastal setting. Such design can be described as follows: the average improved trail tread width will generally range from 2 to 4 feet but will consciously never be uniform, and never be perfectly straight; trail vegetation clearance will correspondingly be maintained 1 to 2 feet on either side of the trail tread above knee height; gradient will generally be less than 10%, except where stairs are needed; and, the trail alignment will follow the contour of the land as gracefully as it can, avoiding substantial excavations and unnecessary vegetation removal. In order to minimize grading and soil disturbance, "user-formed" trail establishment techniques will be utilized when feasible. User-formed trails are those that are established primarily through vegetatively defining the desired route, and then forming a compacted, outsloped tread by means of multiple passes by a supervised pedestrian group.

**15.** Grantor expressly reserves the right to grant consent or easement or other rights to other persons over the Easement provided such other rights shall not unreasonably impair or impede the use of the Easement by the public for the purposes permitted herein and to encumber the Property subject to the Easement.