

Returned

STATE OF NOR1H CAROLINA  
ONSLOW COUNTY

DECLARATION OF CONSERVATION RESTRICTIONS AND EASEMENT

IBIS DECLARATION OF CONSERVATION RE CTIONS AND EASEMENT  
("Conservation Declaration") made this 4 day of Sept. 11, 2017 by Natural  
Land Alliance, Inc., 1036 Peninsula Drive, Belmont, North Carolina 28012, facsimile: 336-217-  
8464 ("Declarant").

The designation Declarant as used herein shall include, except as specified otherwise: A. Natural Land Alliance, Inc.; B. successors of Natural Land Alliance, Inc. or another Declarant by operation of law; and C. assignees of any or all of a Declarant's rights by written instrument executed by the assignor Declarant and recorded in the land records for Onslow County, North Carolina.

RECITALS

WHEREAS, Declarant owns in fee simple that certain real property called Topsail Bluff Subdivision situated, lying and being in Onslow County, North Carolina, which includes the area subject to this Conservation Declaration as more particularly described Map Book 7\_4 -- Pages 25 Slide \_\_\_\_\_all of the Onslow County Registry and incorporated herein (as shown on the above Surveys as "Preservation Area"containing approx 39.719 acres);

WHEREAS, Declarant is a nonprofit corporation having a tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose purpose is the conservation of real property of scenic, natural or aesthetic value, and is qualified to be the Declarant of conservation restrictions and easement pursuant to N.C. Gen. Stat. § 121-35:

WHEREAS, Declarant recognizes the conservation, scenic, natural, and aesthetic value of the Preservation Area in its natural state, which includes the following natural elements or communities: coastal wetlands, estuarine waters, tidal creeks and canals, and riparian and associated buffers;

WHEREAS, the purpose of this Conservation Declaration is to maintain the wetland and/or riparian resources and other natural values of the Preservation Area, and prevent the use or development of the Preservation Area for any purpose or in any manner that would conflict with the maintenance of the Preservation Area in its natural condition except for the uses set forth herein which are restricted so as to avoid or minimize conflict with the natural values of the Preservation Area;

WHEREAS, conservation of the Preservation Area shall serve the following purposes which are consistent with and promote Declarant's charitable purposes (the "Conservation Purposes"):

providing open space which, if preserved, will advance Federal, State or local governmental conservation policy and will yield a significant public benefit; and

providing limited access to and enjoyment of adjacent waters for recreational purposes consistent with public rights in those waters and with minimal impacts on the conservation, scenic, natural, and aesthetic values of the Conservation Area;

WHEREAS, Declarant wishes to perpetually conserve the open space and natural resources of the Preservation Area and to accomplish such conservation purposes Declarant wishes to impose this Conservation Declaration in addition to any other declaration and or restrictions applicable to the Topsail Bluff Subdivision and/or the Easement Area.

WHEREAS, Declarant intends that this document be a "conservation agreement" as defined in Chapter 21, Article 4, Section 121-34 *et seq.* of the General Statutes of North Carolina, known as the Historic Preservation and Conservation Agreement Act, as amended (the "Act").

NOW, THEREFORE, for and in consideration of the covenants and representations contained herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Declarant hereby unconditionally and irrevocably declares that the Preservation Area described on Exhibit A, shall be held subject to the following restrictions, covenants and conditions as set out herein, to run with the subject real property and be binding on all parties that have or shall have any right, title or interest in said property.

#### ARTICLE I. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Preservation Area inconsistent with the purpose of this Conservation Declaration is prohibited. The Preservation Area shall be preserved predominantly in its natural condition and restricted from any development as set out herein that would impair or interfere with the conservation values of the Preservation Area.

Without limiting the generality of the foregoing, and subject to the provisions of Article II, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

A. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Preservation Area or any introduction of non-native plants and/or animal species is prohibited, except to the limited extent necessary in connection with the construction permitted herein.

B. Construction. There shall be no construction or placement of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or any other temporary or permanent structure or facility on or above the Preservation Area except as specifically permitted herein.

C. Industrial, Commercial and Residential Use. Industrial, residential and/or commercial activities, including any right of passage for such purposes, are prohibited except as specifically permitted herein.

D. Roads and Trails. There shall be no construction of roads, trails or walkways on the Preservation Area, nor enlargement or modification of existing roads, trails or walkways, except that roads, trails or walkways existing at the time of execution of this easement may be maintained and repaired and/or replaced as necessary. Declarant shall have no obligation to maintain, repair or replace any roads, trails or walkways on the Preservation Area.

E. Signage. No signs shall be permitted on or over the Preservation Area, except the posting of "no trespassing" signs, signs identifying the conservation values of the Preservation Area, signs giving directions or prescribing rules and regulations for the use of the Preservation Area, signs identifying the Declarant as owner of the Preservation Area, and/or signs or other typical markers of Preservation Area boundaries; provided, however, signs otherwise prohibited by this paragraph E. may be permitted upon obtaining prior approval from Declarant.

F. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Preservation Area is prohibited.

G. Excavation, Dredging or Mineral Use. There shall be no grading, filling, excavation, dredging, mining or drilling, no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Preservation Area, except to restore natural topography or drainage patterns or as necessary for any uses specifically allowed herein and in such cases only to the minimum extent required for such uses.

H. Water Quality and Drainage Pattern. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns, provided that limited site grading shall be permitted to the minimum extent required for any uses permitted hereby. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Preservation Area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited, except as necessary for any uses specifically allowed herein and in such cases only to the minimum extent required for such uses.

I. Development Rights. No development rights that have been restricted, encumbered or extinguished by this Preservation Declaration shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

J. Vehicles. The operation of mechanized vehicles, including, but not limited to, motorcycles, dirt bikes, all-terrain vehicles, cars and trucks is prohibited except on roads existing at the time of execution of this Preservation Declaration, also known as the "Conservation Area".

K. Other Prohibitions. Any other use of, or activity on, the Conservation Area which is or may become inconsistent with the purposes of this Declaration, the preservation of the Conservation Area predominantly in its natural condition or the protection of its environmental systems as provided herein, is prohibited.

## ARTICLE II. RIGHTS RESERVED TO DECLARANT AND PROPERTY OWNERS

The foregoing restrictions notwithstanding, Declarant expressly reserves for itself, the right to the use of the Conservation Area for all purposes not inconsistent with this Conservation Declaration, including, but not limited to, the right to quiet enjoyment of the Conservation Area, the rights of ingress and egress, the right to hunt, fish, and hike on the Conservation Area, the right to sell, transfer, gift or otherwise convey the Conservation Area or property within the Conservation Area, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of, and shall specifically reference, this Conservation Declaration.

In addition to the activities and uses described above, the following activities and uses are expressly reserved to owners of property within the Conservation Area, subject to applicable regulations, restrictions and rights of other owners and public rights (collectively, the "Reserved Rights"):

A. The right to develop and/or sell lots (the "Lots") for residential use in the shoreline area adjacent to the Conservation Area, provided that the area extending from the normal high water level for a distance of 75 feet landward shall be subject to the following standards and restrictions.

1. All development shall comply with the following sedimentation control standards.
  - (a) No development project shall allow visible siltation into the Conservation Area. All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within the 25 percent portion of the buffer zone lying parallel to and along the boundary of the nearest land disturbing development.
  - (b) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.

- (c) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading.
- 2. Development shall not have a significant adverse impact on estuarine resources. Significant adverse impacts include development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (**SAV**), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- 3. Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- 4. Development shall not cause irreversible damage to valuable historic, architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources (or its successor).

B. Subject to the standards and restrictions in A. above and the specific standards below, the right to construct, maintain and repair one pier or docking facility on and adjacent to each of fifteen (15) lots on the estuarine shoreline, those lots being numbered 17, 18, 19, 20, 21, 28, 29, 30, 31, 48, 72, 73, 74, 75 and 76, on Exhibit A. Such piers or docking facilities shall be subject to the following standards and restrictions. For purposes of these standards, docks or docking facilities refers to structures or portions of structures to which boats are docked and piers refers to structures for only pedestrian use or the portion of a structure providing access to a dock or docks.

- 1. Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted with prior written approval of Declarant only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
- 2. The total square footage of shaded impact for docks (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this restriction shall be permitted with prior written approval of Declarant only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
- 3. Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;

4. A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls from the normal water level and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline;
5. The total area enclosed by an individual boat lift shall not exceed 400 square feet except with prior written approval of Declarant to accommodate a documented need for a larger boat lift;
6. Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
7. Pier and docking facility length shall be limited by:
  - (a) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
  - (b) not extending into the channel portion of the water body; and
  - (c) not extending more than one-fourth the width of Turkey Creek. Measurements to determine the width of Turkey Creek shall be made from the waterward edge of any coastal wetland vegetation that borders Turkey Creek. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line.
8. Piers and docking facilities shall not interfere with the access to any riparian Conservation Area and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the riparian access of the owner of any adjacent property within the Conservation Area. The minimum setback provided in the rule may be waived with prior written agreement of the Declarant that the setback causes undue hardship for the property owner seeking the waiver. A waiver shall be in the sole discretion of the Declarant.

C. The right to develop, maintain, repair and use a marina substantially as shown on Exhibit A attached hereto.

ARTICLE III.  
RIGHTS RESERVED TO DECLARANT

The foregoing restrictions notwithstanding, Declarant expressly reserves the following rights regarding care and management of the Conservation Area.

A. Construction of Restoration. The exclusive right to construct wetland and stream restoration or other types of mitigation on the Conservation Area where necessary in accordance with applicable requirements and plans approved by appropriate authorities regarding such mitigation.

B. Right of Entry. The right to enter the Conservation Area including the right of ingress and egress over Declarant's adjacent property at all reasonable times for the purpose of inspecting the Conservation Area to determine if Declarant and Declarant's representatives or assigns are complying with the terms, conditions, restrictions, and purposes of this Conservation Declaration. The Declarant shall also have the right to enter and go upon the Conservation Area for purposes of making scientific or educational observations and studies, and taking samples. The rights granted herein do not include public access rights.

C. Requests for Exceptions to Standards. Any Owner seeking permission for development that does not comply with any standard or restriction set out herein and requires approval or agreement from Declarant may submit an application to Declarant. The application shall include plans describing the proposed development. The Declarant shall approve or disapprove the application within ninety (90) days of receiving the application. If Declarant fails to approve or disapprove the application within ninety (90) days, the application shall be deemed approved. Approval or disapproval shall be in the sole discretion of the Declarant.

ARTICLE IV.  
ENFORCEMENT AND REMEDIES

A. To accomplish the purposes of this Conservation Declaration, Declarant, is allowed to prohibit and take any action necessary to prevent any activity on or use of the Conservation Area that is inconsistent with the purposes of this Conservation Declaration and to require the restoration of such areas or features of the Conservation Area that may be damaged by such activity or use. Upon any breach of the terms of this Conservation Declaration that comes to the attention of the Declarant, the Declarant shall notify the owner of the property on which such activity or use is located ("Owner) in writing of such breach. The Owner shall have 30 days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after 30 days, the Declarant may enforce this Conservation Declaration by appropriate legal proceedings including damages, injunctive and other relief. Notwithstanding the foregoing, the Declarant reserves the immediate right, without notice, to obtain a temporary restraining order, injunction or other appropriate relief if the breach of the term of this Conservation Declaration is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Declaration. The Declarant acknowledges that under such circumstances

damage to the Declarant would be irreparable and remedies at law will be inadequate. The rights and remedies of the Declarant provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Declarant in connection with this Conservation Declaration. The costs of a breach, correction or restoration, including the Declarant's expenses, court costs, and attorneys' fees, shall be paid by Owner, provided Owner is determined to be responsible for the breach.

B. No failure on the part of the Declarant to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Declarant to enforce the same in the event of a subsequent breach or default.

C. Nothing contained in this Conservation Declaration shall be construed to entitle any person to bring any action against Declarant for any injury or change in the Conservation Area resulting from causes beyond the Declarant's control, including, without limitation, fire, flood, storm, war, acts of God or third parties, other than Declarant's lessees or invitees; or from any prudent action taken in good faith by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to life, damage or harm of any nature to the Conservation Area resulting from such causes.

#### ARTICLE V. MISCELLANEOUS

A. Title. Declarant warrants, covenants and represents that it owns the Conservation Area in fee simple, and that Declarant either owns all interests in the Conservation Area which may be impaired by this Conservation Declaration or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Conservation Area which have not been expressly subordinated to this Conservation Declaration.

B. Conservation Property Condition. The Declarant represents and acknowledges that the Conservation Area is currently undeveloped with no improvements other than existing utility lines and related facilities.

C. Assignment. The benefits of this Conservation Declaration are in gross and assignable by Declarant provided, however that the Declarant hereby covenants and agrees, that in the event it transfers or assigns its rights under this Conservation Declaration, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the Declarant further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

D. Obligations of Ownership. Declarant is responsible for any real estate taxes, assessments, fees, or charges ("Taxes") levied upon the Conservation Area, except that the owner of any Lot that includes a portion of the Conservation Area or any other property within the Conservation Area shall be responsible for the taxes upon such Lot or property. Declarant

and owners of property within the Conservation Area shall keep the Conservation Area free of any liens or other encumbrances for obligations incurred by Declarant except those consistent with or subordinate to this Declaration. Nothing herein shall relieve the Declarant and owners of property within the Conservation Area of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.

E. Extinguishment. In the event that changed conditions render impossible the continued use of the Conservation Area for the conservation purposes, this Conservation Declaration may be extinguished, in whole or in part, by judicial proceeding instituted in the General Court of Justice of North Carolina in compliance with all rules of procedure, including without limitation notice to Declarant.

F. Notification. Any notice, request for approval, or other communication required under this Conservation Declaration shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Declarant:

Natural Land Alliance, Inc.  
4030 Wake Forest Road, STE 349  
Raleigh, North Carolina 27609  
Facsimile: 336-217-8464

Notice to the owner of any property within the Conservation Area shall be given at the address for such owner set forth in the deed from Declarant to the owner. Either Declarant or any property owner shall have the right to change its notice address by filing a notice of change of address in the Onslow County Registry specifically referring to this Conservation Declaration and this Notification provision.

G. Failure of Declarant. If at any time Declarant is unable or fails to enforce this Conservation Declaration, or if Declarant ceases to be qualified, and if within a reasonable period of time after the occurrence of one of these events Declarant fails to make an assignment pursuant to this Conservation Declaration, then the Declarant's interest shall become vested in another qualified entity in accordance with an appropriate proceeding in a court of competent jurisdiction.

H. Amendment. This Conservation Declaration may be amended by Declarant, without consent of any other owner of property in the Conservation Area provided such amendment: (i) does not affect the qualification of this Conservation Declaration or the status of the Declarant under any applicable laws; (ii) is consistent with the conservation purposes of this Declaration; and (iii) has no material effect on the substantive rights of any other owner of property within the Conservation Area. No amendment required by any governmental authority, or to correct typographical or drafting areas or inconsistencies shall be deemed material.

**IN WITNESS WHEREOF**, Declarant has hereunto set his hand and seal, as of the day and year first above written.

NATURAL LAND ALLIANCE

By: L 6---  
Name: Larry Bragg  
Title: President

NORTH CAROLINA  
MECKLENBURG COUNTY

I, the undersigned, a Notary Public of the aforesaid county and state do hereby certify that before me this day personally appeared bee-' \_\_\_\_\_, Declarant, and after being first duly sworn, knowledged the due execution<( the foregoing and annexed instrument for the purposes ajld intents therein expressed. Witness my hand and official seal or stamp, this the 1\ day of !eC-C'... Mr, 2011.

Michelle Bluhm  
\_\_\_\_\_  
Notary Public  
Stamp/Seal

My Commission Expires: Ct r ;;l, d-D \


<p><b>Michelle Bluhm</b> NOTARY PUBLIC Mecklenburg County North Carolina My Commission Expires on October 2, 2021</p>
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SUBORDINATION OF DEED OF TRUST


The undersigned Topsail Bluffs, LLC ("**Lender**"), holder of a deed of trust on the Conservation Area hereby subordinates the lien of its deed of trust to the terms and conditions of the Conservation Declaration to which this Subordination is annexed and acknowledges that it is subject to the terms and conditions of the Conservation Declaration.

WITNESSES:

**LENDER:**

  
(Print Name): Debra E Taylor

TOPSAIL BLUFFS, LLC  
By: A-S Management, Inc.,  
its Managing Partner


  
(Print Name): Sean Sarsano

**By:**  
S - 4  
President, A-S Management, Inc.

STATE OF IJ 6.in.\1:".1?  
COUNTY OF Mc.c \i:4

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose state therein and in the capacity indicated: Bartow S. Shaw, Jr.

Date: to11sli1

Official Signature of Notary: k.....,:.,1-1   
Notary's Printed or Typed Name: Skeh; .c.. -S.)\S, Notary Public

My Commission Expires: ..J=-11-"1 12.. 1  
(Official Seal)

