

Attachment A

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DRAFT RESOLUTION

Before the Board of Supervisors in and for the County of Monterey, State of California

In the matter of the application of:

**Martin William H & Simona H TRS (formerly
Werner Nase Jr. Trust) (PLN150669-AMD1)**

RESOLUTION NO. 22 -

Resolution by the Monterey Board of Supervisors to:

- a) Consider the previously adopted Mitigated Negative Declaration (MND) for the construction of the Werner Nase Jr. Trust residence (PLN150669);
- b) Terminate the Conservation and Scenic Easement on the Martin William H & Simona H TRS (Formerly Nase Werner Jr. Trust) property
- c) Authorize the Chair to execute the Termination Agreement and Quitclaim Deed; and
- d) Direct the Clerk of the Board to submit the Termination Agreement and Quitclaim Deed to the County Recorder for recording with all applicable recording fees paid by the applicant.

[PLN150669-AMD1, 1412 Lisbon Lane, Pebble Beach, Del Monte Forest Land Use Plan (APN: 008-232-003-000)]

The Martin William H & Simona H TRS (formerly Werner Nase Jr. Trust) application (PLN150669-AMD1) came on for public hearing before the Monterey County Board of Supervisors on August 23, 2022. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

- 1. FINDING:** **PROCESS** - The County has received and processed an amendment to PLN150669-AMD1 to remove Condition No. 5 from PLN150669 (Resolution No. 17-035). Removal of this condition allows for termination of a Conservation and Scenic Easement.
EVIDENCE: a) On August 30, 2017, the Monterey County Planning Commission approved PLN150669 (Resolution No. 17-035) for a Combined Development Permit consisting of 1) Coastal Administrative and Design Approval for the construction of a 5,385 square foot one-story single family dwelling with an attached garage and covered porch; 2) Coastal Development Permit for the removal of 44 Monterey pine trees; and 3)

Coastal Development Permit for development within 100 feet of Environmentally Sensitive Habitat (ESHA- Yadon's Piperia and Monterey pine forest). Approval of this project also included the adoption of a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program. The entitlement incorporated 20 conditions of approval (not including the mitigation measures). All conditions of approval and mitigation measures have been "Met" except for Mitigation Measures 1f and 2c, which are applied as Condition Nos. 26 and 28. These two mitigations are "Partially Met" and will be met upon submittal of the 5th annual monitoring report for the transplanting Yadon's Piperia and the replanted Monterey pines.

- b) Condition No. 5 of the previously approved project required the Applicant/Owner to convey a 21,600 square foot Conservation and Scenic Easement over the established Enhancement/Restoration area to the Del Monte Forest Conservancy. The Monterey County Board of Supervisors approved and accepted this easement on September 15, 2020. This easement was recorded as Document No. 2020051385.
- c) On October 13, 2021, an application for an Amendment to remove Condition No. 5 from the previously approved Combined Development Permit (PLN150669) was submitted to HCD-Planning staff (PLN150669-AMD1).
- d) On June 29, 2022, the Monterey County Planning Commission adopted a resolution (Resolution No. 22-017) finding that removal of Condition No. 5 is consistent with the previously adopted Mitigated Negative Declaration prepared for the Werner Nase Jr. Trust residence; approving removal of Condition No. 5 from the previously approved Combined Development Permit (Resolution No. 17-035); and recommending the Board of Supervisors terminate the Conservation and Scenic Easement from the subject property.
- e) None of the conditions of approval or mitigations measures applied to PLN150669 have been carried forward to this permit, PLN150669-AMD1. Condition Nos. 26 and 28 (Mitigation Measures 1f and 2c) of PLN150669 are "Partially Met" and shall be met under the original permit, PLN150669.
- f) The findings and evidence from PLN150669 (Resolution No. 17-035) and PLN15066-AMD1 (Resolution No. 22-017) have been carried forward to this permit (PLN150669-AMD1) and incorporated by reference.
- g) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project File No(s). PLN150669 and PLN150669-AMD1.

- 2. FINDING: CONSISTENCY / DESIGN / NO VIOLATIONS** – The proposed easement termination does not change the project (a single-family residence) analyzed in Planning Commission Resolution No. 17-035. With removal of Condition No. 5, the proposed easement termination is consistent with the policies of the Monterey County 1982 General Plan, Del Monte Forest Land Use Plan, Del Monte Forest Coastal

Implementation Plan, Monterey County Zoning Ordinance (Title 20), and other County health, safety, and welfare ordinances related to land use development. No violations exist on the property.

- EVIDENCE:**
- a) The proposed easement termination (PLN150669-AMD1) amends a previously approved Combined Development Permit (PLN150669; Planning Commission 17-035) to remove Condition No. 5 which required conveyance of a 21,600 square foot Conservation and Scenic Easement area to the Del Monte Forest Conservancy. No development is proposed with this amendment. The single family home has already been constructed.
 - b) No conflicts with the proposed easement termination were found to exist. No communications were received during staff's review indicating inconsistencies with the text, policies, and regulations in the applicable plans and Monterey County Code (MCC).
 - c) The property is located at 1412 Lisbon Lane, Pebble Beach (Assessor's Parcel Number 008-232-003-000), Del Monte Forest Land Use Plan, Coastal Zone. The parcel is zoned Low Density Residential, 1.5 acres per unit, with a Design Control Overlay (Coastal Zone) [LDR/1.5-D (CZ)]. The previously approved Amendment included the removal of Condition No. 5. In accordance with MCC Section 20.70.105 (Amendments to Coastal Development Permits), the Amendment was referred back to the original decision-making body (Planning Commission) because the project involved the removal of a previously adopted condition. On June 29, 2022, the Monterey County Planning Commission adopted a resolution (Resolution No. 22-017) approving removal of Condition No. 5 from the previously approved Combined Development Permit (Resolution No. 17-035) and recommending the Board of Supervisors terminate the Conservation and Scenic Easement from the subject property. Removal of Condition No. 5 removes the condition applied to the original permit that required granting of a Conservation and Scenic Easement. The Board of Supervisors is the appropriate authority to terminate the easement.
 - d) Environmentally Sensitive Habitat Areas (ESHA). The previously approved permit, PLN150669, included a Coastal Development Permit to allow development within 100 feet of mapped or field identified environmentally sensitive habitats. As part of the review of that project, biological studies for the residence identified *Piperia yadonii* (Yadon's piperia) and Monterey pine forest as ESHA. Monterey pines are protected due to their status as a native tree. If Monterey pines or their understory support special status species, they are then considered ESHA. In this case, the subject property's Monterey pines supported Yadon's Piperia, a federally listed endangered species prior to the approved development. At that time, development of the proposed dwelling was found to have impacts on ESHA. Mitigations and conditions were applied to that development. Since that time, circumstances and biological conditions have changed, primarily as a result of the implementation of a mitigation that required moving the Yadon's piperia plants to a receiver site. With the execution of the transplanting mitigation, the site still supports Monterey Pine Forest

but not Yadon's piperia.

- e) Conservation and Scenic Easement. In accordance with Policy 13 of the Del Monte Forest Land Use Plan, Condition No. 5 was applied to the previous project, PLN150669. This condition required the Applicant/Owner convey a 21,600 square foot Conservation and Scenic Easement over the established Enhancement/Restoration area to the Del Monte Forest Conservancy. At the time of the previous project was processed, ESHA did occur on the property and therefore this policy was applicable. As a result, the Monterey County Board of Supervisors approved and accepted the easement on September 15, 2020. This easement was recorded as Document No. 2020051385. However, successful implementation of Mitigation Measure No. 2 (transplanting of Yadon's Piperia, see below Evidence "h," "i," and "j") resulted in site conditions which do not support ESHA. As approved under Resolution No. 22-017, Condition No. 5 has been removed from the previously approved Combined Development Permit. Therefore, the applicant is requesting termination of the property's conservation and easement as there is no longer a nexus requiring the easement to continue to exist.
- f) Monterey Pines. The previously approved Combined Development Permit included the removal of 44 Monterey pines, 4 of which were landmark sized Monterey pines. The Tree Resource Assessment Management Plan prepared for the previously approved identified the project site as having an overstock of Monterey pines; 200 trees on a parcel of under one acre in size. In order to mitigate for the loss of approximately 10,800 square feet of Monterey pine woodland and 44 Monterey pine trees, Mitigation Measure No. 1 required the Applicant/Owner to restore and enhance on a 2:1 ratio (a total of 21,600 square feet). Restoration and enhancement activities include but were not limited to on-site replacement on a 1:1 of 44 Monterey pines at five-gallon each and 5-year monitoring to ensure successful growth. Although the tree replanting has been completed, only 3 of the 5 years of monitoring has occurred and therefore this mitigation measure is only partially satisfied. This mitigation measure will be satisfied upon submittal of a 5th year monitoring report.
- g) Yadon's Piperia. Yadon's piperia is an endangered orchid, federally listed Endangered species, State Rare plant rank 1B.1 (Rare, threatened, or endangered in California and elsewhere; Seriously endangered in California). This is a wildflower that may be dormant and not emerge above the soil surface until the spring, where it would leaf producing flowers on erect spikes. The Biological Assessment prepared by Pat Regan in 2015 (LIB160031) confirmed that there were 5 individual separate areas of Yadon's piperia habitat containing a total of approximately 437 (at minimum) individual Piperia plants, or 5,824 square feet, within the Nase property and a section of Pebble Beach right-of-way along the southern side of Lisbon Lane. Approximately 3,108 square feet of Yadon's Piperia was slated to be impacted by the construction of the single-family dwelling. Due to the presence of the special status species, the project Biologist proposed three alternative mitigation measures to minimize and/or avoid impacts to the Yadon's

Piperia: 1) “complete avoidance with a significant additional buffer barrier around [the species, which would require a redesign of the residence], or [2)] transplant [the Yadon’s Piperia population] to a single area on the project site and protect with an easement and development restrictions, or [3)] removal from the site altogether and extended monitoring and maintenance activities to ensure their survival.”

- h) Mitigation Measure No. 2. In consultation with the USFWS, CDFW, members of the Del Monte Forest Conservancy, the Del Monte Forest Open Space Advisory Committee the Pebble Beach Company, and local biologist, transplanting the entirety of the Yadon’s Piperia population to a receiver site was determined to provide the species the best chance for survival and the potential to reproduce and spread. This decision was primarily made because the Yadon’s Piperia population was noncontiguous as it was surrounded by ornamental plantings, development, and a roadway. As stated by the project biologist, “Given the development surrounding the lot at 1412 Lisbon Lane...it became clear that this was an island isolated from any natural interface of suitable habitat for the species, even if the plants remained in situ and the lot undeveloped. It was essentially a dead end for the continuation of this population.” Therefore, the adopted Mitigated Negative Declaration included Mitigation Measure No. 2 which required the Applicant/Owner to transplant the entirety of the identified Yadon’s Piperia to a receiver site (Area H, owned by the Pebble Beach Company and set aside as open space and for purposes of conservation). A location along Spruance Road in Area H was chosen for transplanting due to its accessibility, proximity to another Yadon’s Piperia population for monitoring and comparison purposes, and similar conditions to the Nase property. This mitigation was developed by the project’s biologist in consultation with the USFWS, CDFW, members of the Del Monte Forest Conservancy, the Del Monte Forest Open Space Advisory Committee and the Pebble Beach Company. This mitigation measure, which has been proven to be successful through four years of monitoring by the project biologist, effectively removed the property’s isolated populations of Yadon’s Piperia. With relocation of the Yadon’s Piperia, the Monterey pines were no longer considered ESHA. A letter from the project biologist, Pat Regan, dated September 6, 2021 states, “The ESHA classification that came with the Piperia plants has been effectively transferred off the site... [and] [t]here is no environmentally sensitive habitat area remaining on the property, because there is no longer any Piperia yadonii on the lot.” No Yadon’s piperia foliage or flowers have been found on the subject lot since the day the plants were removed in November 2017.
- i) Condition No. 5, requiring the Conservation and Scenic Easement, was not identified or analyzed in the adopted Mitigated Negative Declaration and is separate from the mitigation measure applied to Yadon’s Piperia to reduce potential impacts to less than significant. Therefore, although not anticipated, if the 5th annual monitoring report of the transplanted Yadon’s Piperia population determines that the population is not

thriving and did not meet the five-year success criteria (100% survival), Mitigation Measure 2 and the adopted Mitigation Monitoring and Reporting Plan have contingencies which require additional mitigation measures to be prepared and implemented. Termination of the property's easement will not change the environmental analysis contained in the Mitigated Negative Declaration.

- j) Yadon's Piperia Transplanting Process. On November 17, 2017, Biologist Pat Regan, Archaeologist Gary Breschini, and Esselen Nation Tribal Monitor Joseph Kavanagh monitored the transplanting of all known Yadon's piperia tubers from the project site to the receiver site. The transplanting process occurred as follows: a large tree spade would remove an approximate 8 feet deep by 8-foot-wide scoop of soil at the receiver site and carry it over to project site where it was placed on the ground near the Yadon's Piperia population. The tree spade would then remove an approximate 8 feet deep by 8-foot-wide scoop of Yadon's Piperia habitat (root ball intact) and place it in the previous hole created by the first tree spade. This process continued throughout the day, six more times, with the soil mass removed from each site being used to refill the hole remaining at the opposite site. This effort has been proven to be successful through four years of monitoring. The transplanted population has adapted to the receiver site and achieved new vegetative growth similar in quantity to those noted and flagged on the project site in 2015, 2016 and 2017.
- k) Regulatory approval. The Del Monte Forest Conservancy has stated via e-mail correspondence with Staff that the Conservancy consents to the termination of the easement based upon evidence from that:
1. *No environmentally sensitive habitat currently exists on the property site subject to the easement;* A letter from the project biologist, Pat Regan, dated September 6, 2021, and January 22, 2022, confirms that no environmentally sensitive habitat exists on the property.
 2. *The habitat that was on the property at the time of the granting of the easement has been successfully moved to another location;* Pat Regan's September 6, 2021 and January 22, 2022 letter, and subsequent monitoring of both Area H and the subject property confirms that the sensitive habitat that was on the property at the time of granting of the easement (Yadon's Piperia) has been moved to a new location.
 3. *That the sensitive habitat is flourishing at its new location;* The four years of annual reporting on the transplanted Yadon's Piperia population have confirmed that the species is thriving in their new location (Area H).
 4. *The County has verified the accuracy of the consultant's report containing these representations;* County staff independently reviewed the previously prepared biological reports and more recent biological letters and concur with their conclusions.
 5. *This revocation has received all necessary regulatory approvals from applicable County agencies and the California Coastal Commission and does not constitute any form of precedent for*

future projects or existing Conservation and Scenic Easements; Via email to staff on December 15, 2021, the California Coastal Commission staff expressed their support the project due to the specifics of the case (HCD-Planning File No. PLN15066 and PLN150669-AMD1) being that 1) the transplanting of the Yadon's Piperia was a result of Mitigation Measure No. 2 of the previously adopted Mitigated Negative Declaration (SCH#:2017071011), and 2) the subsequent monitoring, as required by the adopted Mitigation Monitoring and Reporting Plan, has proven the transplanting to be successful thus far. Monterey County Conservation and Scenic Easements are irrevocable. The proposed termination of the Conservation and Scenic Easement is specific to this project (HCD-Planning File PLN150669 and PLN150669-AMD1) and the subject property (APN: APN: 008-232-003-000) and is based solely on facts of this case. Termination of the Conservation and Scenic Easement on the subject property (APN: 008-232-003-000) does not apply to or effect other Conservation and Scenic Easements conveyed to the Del Monte Forest Conservancy or to the County of Monterey. Absent an adopted CEQA document which includes a mitigation measure detailing the need to transplant or relocate a special status species in order to reduce impacts to less than significant, the removal and relocation or transplanting of special status species and ESHA would be in violation of Monterey County Code, and the policies and regulation of applicable General Plans, Land Use Plans, Coastal Implementation Plans, and Area/Master Plans.

- l) Monterey County HCD-Planning and HCD-Building Services records were reviewed, and the County is not aware of any active violations existing on the subject property.
- m) The application, project plans, and related support materials submitted by the project applicant to the Monterey County HCD - Planning Department for the proposed development found in Project File PLN150669 and PLN150669-AMD1.

3. FINDING: SITE SUITABILITY – The site is physically suitable for the use proposed.

- EVIDENCE:**
- a) There is no new use proposed as part of this project. The previously approved Amendment has been reviewed for suitability by the following departments and agencies: HCD-Planning, Pebble Beach Community Services District (Fire Protection District), HCD-Engineering Services, HCD-Environmental Services, and the Environmental Health Bureau. There has been no indication from these departments/agencies that the site is not suitable for the existing use or that the site would become unsuitable for the existing use due to termination of the easement.
 - b) The following reports prepared:
 - “RE: Easement reduction or elimination”, prepared by Regan Biological & Horticultural Consulting, Carmel Valley, CA, September 6, 2021.

- “RE: Piperia yadonii mitigation measures”, prepared by Regan Biological & Horticultural Consulting, Carmel Valley, CA, January 22, 2022.
 - c) County staff independently reviewed the technical reports prepared for PLN150669 and recent biological letters (dated September 6, 2021, and January 22, 2022), prepared by Pat Regan, and concur with their conclusions.
 - d) Termination of the Conservation and Scenic Easement will not change the physical conditions of the site.
 - e) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project File PLN150669 and PLN150669-AMD1.
- 4. FINDING: HEALTH AND SAFETY** - The establishment, maintenance, or operation of the amendment applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.
- EVIDENCE:**
- a) The previously approved Amendment was reviewed by HCD-Planning, Pebble Beach Community Services District (Fire Protection District), HCD-Engineering Services, HCD-Environmental Services, and the Environmental Health Bureau. No conditions were recommended by the respective agencies. The project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - b) Termination of the conservation and scenic easement will not affect the availability of public facilities serving the property’s residence.
 - c) The application, project plans, and related support materials submitted by the project applicant to Monterey County HCD-Planning for the proposed development found in Project File PLN150669 and PLN150669-AMD1.
- 5. FINDING: CEQA (Consistent with Previously Adopted MND)** - A Mitigated Negative Declaration (MND) was adopted prior to approving the construction of the Werner Nase Jr. Trust residence (PLN150669). Termination of the property’s conservation and scenic easement does not require subsequent environmental review pursuant to CEQA Guidelines Section 15162.
- EVIDENCE:**
- a) A Draft Mitigated Negative Declaration (MND) was prepared in accordance with CEQA and circulated for public review from July 5, 2017 to August 4, 2017 (SCH#:2017071011). Issues that were analyzed in the Mitigated Negative Declaration include: Biological Resources and Cultural Resources.
 - b) On August 30, 2017, the Monterey County Planning Commission approved PLN150669 (Resolution No. 17-035) for a Combined Development Permit consisting of 1) Coastal Administrative and Design

Approval for the construction of a 5,385 square foot one-story single family dwelling with an attached garage and covered porch; 2) Coastal Development Permit for the removal of 44 Monterey pine trees; and 3) Coastal Development Permit for development within 100 feet of Environmentally Sensitive Habitat (ESHA- Yadon's Piperia and Monterey pine forest). Approval of this project also included the adoption of a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program. 20 conditions of approval (not including mitigation measures) were approved for PLN150669 under Resolution No. 17-035. All conditions of approval and mitigation measures applied to PLN150669 are "Met" except for Mitigation Measures 1f and 2c, which are applied as Condition Nos. 26 and 28. These two mitigations are "Partially Met" and will be met upon submittal of the 5th annual monitoring report for the transplanting Yadon's Piperia and the replanted Monterey Pines.

- c) The proposed project includes termination of a conservation and scenic easement which was required per Condition No. 5 of Resolution No. 17-035. On June 29, 2022, the Monterey County Planning Commission adopted a resolution (Resolution No. 22-017) approving removal of Condition No. 5 from the previously approved Combined Development Permit (Resolution No. 17-035).
- d) The condition requiring the Conservation and Scenic Easement was not identified or analyzed in the adopted Mitigated Negative Declaration and was not intended as mitigation. Condition No. 5 is separate from the mitigation measure applied to Yadon's Piperia to reduce potential impacts to less than significant.
- e) The project meets Section 15162 of the CEQA Guidelines because no substantial changes are proposed requiring major revisions of the MND; no substantial changes have occurred with respect to circumstances under which the project was undertaken that will require major revisions to the MND; removal of Condition No. 5 and termination of the resulting conservation and scenic easement will not affect the previously adopted mitigation measures. Therefore, as proposed, termination of the conservation and scenic easement is consistent with the previously adopted Mitigated Negative Declaration.
- f) The application, plans, and supporting materials submitted by the project applicant to Monterey County HCD-Planning for the proposed easement termination are found in project file PLN150669 and PLN150669-AMD1.

6. FINDING: **APPEALABILITY** – The decision on this project may be appealed to the Coastal Commission.

EVIDENCE: a) Coastal Commission. Pursuant to Title 20, Section 21.86.080, an appeal may be made to the California Coastal Commission because the project site is located between the sea and the first through public road paralleling the sea.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Board of Supervisors does hereby:

- a) Consider the previously adopted Mitigated Negative Declaration (MND) for the construction of the Werner Nase Jr. Trust residence (PLN150669);
- b) Terminate the Conservation and Scenic Easement on the Martin William H & Simona H TRS (Formerly Nase Werner Jr. Trust) property;
- c) Authorize the Chair to execute the Termination Agreement and Quitclaim Deed; and
- d) Direct the Clerk of the Board to submit the Termination Agreement and Quitclaim Deed to the County Recorder for recording with all applicable recording fees paid by the applicant.

PASSED AND ADOPTED upon motion of Supervisor _____, seconded by Supervisor _____, and carried this 23rd day of August, 2022, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book _____ for the meeting on May 5, 2020.

Date:

File Number:

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy