

Attachment B

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When recorded return to:
COUNTY OF MONTEREY HOUSING
AND COMMUNITY DEVELOPMENT
DEPARTMENT - PLANNING
Attn: **FIONNA JENSEN**
1441 Schilling Pl, South 2nd Floor
Salinas, CA 93901
(831) 755-4800

Space above for Recorder's Use

Owner Name: The Martin Family Living Trust
Permit No.: PLN150669-AMD1
Resolution No.: 22-017
APN: 008-232-003-000
Project Planner: Fionna Jensen

The Undersigned Grantor(s) Declare(s):
DOCUMENTARY TRANSFER TAX OF \$ 0
☐ computed on the consideration or full value of
property conveyed, OR
☐ computed on the consideration or full value less
value of liens and/or encumbrances remaining at
time of sale,
☐ unincorporated area; and
☒ Exempt from transfer tax,
Reason: Termination of Government interest (Govt.
Code, § 6103(a).)

Signature of Declarant or Agent

AGREEMENT

This Agreement to Terminate a Conservation and Scenic Easement for Assessor's
Parcel No. 008-232-003-000 is made this ____ day of _____, _____ by and
between the **Martin Family Living Trust** (Grantor) and the *Del Monte Forest*
Conservancy, a California non-profit corporation (Grantee), on behalf of the *County of*
Monterey (the County) (collectively, the Parties)

WITNESSETH:

WHEREAS, Grantor is the owner in fee of the real property at 1412 Lisbon
Lane, Pebble Beach, more particularly described in Exhibit "A" attached hereto and
made a part hereof, situated in Monterey County, California (the Property); and

WHEREAS, the California Coastal Act of 1976, (the Act) requires that any coastal development permit approved by the County must be consistent with the provisions of the certified Local Coastal Program (LCP); and

WHEREAS, pursuant to the Act, and the LCP, Grantor applied to the County for a permit to undertake development as defined in the LCP; and

WHEREAS, on August 30, 2017, the Monterey County Planning Commission granted the application, adopting Resolution No. 17-035, in which it certified a Mitigated Negative Declaration under the California Environmental Quality Act and approved a Combined Development Permit (File Number PLN150669) consisting of 1) a Coastal Administrative and Design Approval to construct a 5,385 square foot one-story single family dwelling with attached garage and covered porch; 2) a Coastal Development Permit for the removal of 44 Monterey pine trees; and 3) a Coastal Development Permit for development within 100 feet of Environmentally Sensitive Habitat (ESHA); and

WHEREAS, the Planning Commission's approval was subject to several conditions, including Condition No. 5 which required the Grantor to convey a conservation and scenic easement over the 21,600 square foot Enhancement/Restoration Area on the eastern side of the subject Property, consisting of Monterey Pine Forest and associated understory, to the Del Monte Forest Conservancy as required by the procedures set forth in Monterey County Code section 20.64.280.A; and

WHEREAS, Condition No. 5 was imposed, in part, based on a Biological Survey conducted in November 2015 by Pat Regan (Library No.LIB160031), on file with the County of Monterey Housing and Community Development – Planning; and

WHEREAS, Grantor complied with Condition No. 5 by executing a Conservation and Scenic Easement (the Easement) conveying the Enhancement/Restoration Area to the Del Monte Forest Conservancy on behalf of the County of Monterey affecting the eastern 21,600 square foot portion of Property and hereby incorporated by reference (the Conservation and Scenic Easement Area), and agreed to restrict development on and use of the Property so as to preserve the open space, scenic, and/or natural resource values present on the Property and so as to prevent the adverse direct and cumulative effects on coastal resources and public access to the coast which could occur if the Property were not restricted in accordance with this easement; and

WHEREAS, the parties executed the Easement on May 30, 2020 and the County

recorded the Easement on September 28, 2020 (Document No. 2020051385); and

WHEREAS, on September 6, 2021 and January 22, 2022, project biologist Pat Regan, in a letter to the County, detailed his belief why the easement should be terminated, namely that, because the ESHA plant population the easement was intended to protect, *Piperia yadonii*, was entirely removed in accordance with Mitigation Measure 2 of the certified Mitigated Negative Declaration (PLN150669; Resolution No. 17-035; SCH# 2017071011) from the project site in November 2017 and moved to a location more appropriate for the continued sustaining of said plants, Area H of the Pebble Beach Company's preservation property (the Receiver site); and

WHEREAS, Mr. Regan, Archaeologist Gary Breschini and Esselen Nation Tribal Monitor Joseph Kavanagh monitored the transplantation activities conducted by Mighty Tree Movers and Native Coast Landscapes; and

WHEREAS, Mr. Regan confirmed that the transplanting of the entire *Piperia yadonii* population, including roots, soil, and companion plants, has since been successful through three years of monitoring of the Property and Receiver Site, which concluded that the transplanted population is thriving at the Receiver site and that no *Piperia yadonii*, and hence, no ESHA, has been found on the Property in that time; and

WHEREAS, the parties agree that there is no other suitable conservation use for the Enhancement/Restoration Area; and

WHEREAS, the parties wish to terminate the Easement; and agree that Condition No. 5 and the Easement are no longer necessary to protect the ESHA, which has been transplanted off site. Planning Commission Resolution No. 22-017 (PLN150669-AMD1) approved removal of Condition No. 5 from the previous permit (PLN150669); and

WHEREAS, the parties recognize and agree both that the facts motivating this Agreement are extremely rare and that this Agreement should not be construed as precedent for any future such requests to the Del Monte Forest Conservancy or the County of Monterey; and

WHEREAS, the parties understand that terminating the Easement may have local, state, and/or federal tax consequences and Grantor agrees that it is solely responsible for any such consequences; and

WHEREAS, on _____, at _____ the County executed and recorded a Quitclaim deed disclaiming all title and interest to the Conservation and Scenic Easement Area.

NOW, THEREFORE, Grantor, the County, and the Del Monte Forest Conservancy agree as follows:

A. TERMINATION OF EASEMENT. The Conservation and Scenic Easement Deed made between Grantor and the Del Monte Forest Conservancy, on behalf of the County, on May 30, 2020, and recorded as Instrument No. 2020051385 is hereby terminated. Grantor, the County, and the Del Monte Forest Conservancy are released from any and all rights and obligations provided for in the Conservation and Scenic Easement Deed with respect to its applicability to the Property.

B. POTENTIAL TAX LIABILITY. Grantor, the County, and the Del Monte Forest Conservancy recognize that termination of the Easement may have local, state, and/or federal tax consequences for Grantor. By executing this Agreement, Grantor agrees that any such consequences are solely Grantor's responsibility.

C. INDEMNIFICATION: Grantor as a condition and in consideration of this termination of the Easement agrees that it will defend, indemnify, and hold harmless the County of Monterey and/or its agents, officers, employees, and/or contractors from any claim, actions, and/or proceeding against the County and/or its agents, officers, employees, and/or contractors (including attorneys' fees and cost awards) arising out of and/or in connection with the execution of this Agreement including, but not limited to, claims related to local, state, and/or federal tax liability.

Executed this ____ day of _____, ____, at _____, California.

The Martin Family Living Trust

By: _____
(Signature)

(Print or Type Name and Title)

NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons, signing on behalf of a corporation, partnership, trust, etc., please use the correct notary jurat (acknowledgment) as explained in your Notary Public Law Book.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

[illegible]

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the Agreement terminating the County's interest in real property conveyed by the deed dated _____, 2022, from the Martin Family Living Trust to the County of Monterey, a political corporation and/or governmental agency is hereby accepted by order of the Board of Supervisors on _____, (or by the undersigned officer or agent on behalf of the County of Monterey pursuant to authority conferred by resolution of the Board of Supervisors adopted on _____,) and the grantee consents to recordation thereof by its duly authorized officer.

DATED: _____.

Mary Adams

Chair, Monterey County Board of Supervisors

ATTEST:

DATED: _____.

Valerie Ralph

Clerk of Said Board

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

[illegible]

On _____ before me, _____, a
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

Document Form/Content Acceptable:
Leslie J. Girard, County Counsel

By: _____ DATED: _____

Type/Print Name: _____, Deputy County Counsel

**AGREEMENT TO TERMINATE CONSERVATION AND SCENIC
EASEMENT
SIGNATURE CONTINUATION PAGE**

GRANTEE:

Accepted and Authorized to be Recorded by the Del Monte Forest Conservancy:

DEL MONTE FOREST CONSERVANCY, INC.

A Nonprofit California Corporation

By: _____

Dated: _____

Print Name: _____

NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons, signing on behalf of a corporation, partnership, trust, etc., please use the correct notary jurat (acknowledgment) as explained in your Notary Public Law Book.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF MONTEREY)

On _____ before me, _____, a
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBITS TO BE ATTACHED TO:

CONSERVATION AND SCENIC EASEMENT DEED

1. ***EXHIBIT "A":*** Full legal description of the entire property for which a Development Permit was granted. The legal description may be obtained from a grant deed or title report for the property. A parcel number will not be accepted as a legal description.
2. ***EXHIBIT "B":*** A copy of Monterey County Resolution No. 22-017 terminating the Easement.

Exhibit "A"

the following described property in the unincorporated area of the County of **Monterey**, State of **California**:

BEGINNING AT "CORNER 30" AS SAID CORNER IS SHOWN AND SO DESIGNATED ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY OF A PORTION OF RANCHO EL PESCADERO, MONTEREY COUNTY, CALIFORNIA", ETC., FILED FEBRUARY 5, 1952 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, IN MAP BOOK 4 OF SURVEYS AT PAGE 95 AND RUNNING THENCE:

(1) SOUTH 14° 50' WEST 182.01 FEET; THENCE

(2) NORTH 73° 00' WEST, 245.18 FEET; THENCE

(3) NORTH 14° 50' EAST, 172.75 FEET; THENCE

(4) SOUTH 75° 10' EAST, 245.00 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF RANCHO EL PESCADERO, MONTEREY COUNTY, CALIFORNIA.

**Before the Planning Commission 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 - 017

Resolution by the Monterey County Planning
Commission to:

- a) Consider the previously adopted Mitigated Negative Declaration (MND) for the construction of the Werner Nase Jr. Trust residence (PLN150669);
- b) Approve an Amendment to a previously approved Combined Development Permit (PLN150669; Planning Commission Resolution No. 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; and
- c) Recommend the Board of Supervisors terminate the Conservation and Scenic Easement Deed from The Werner Nase, Jr. Trust.

[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 Planning Commission on June 29, 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.
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) 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).
- c) 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.
- d) None of the conditions of approval or mitigations measures applied to PLN150669 have been carried forward to this permit, PLN150669-AMD1. This amendment is not the operating permit and only proposes removal of one condition of approval previously applied to PLN150669. Condition Nos. 26 and 28 (Mitigation Measures 1f and 2c) of PLN150669 are “Partially Met” and shall be met under the original permit, PLN150669.
- e) The findings and evidence from PLN150669 (Resolution No. 017-035) have been carried forward to this permit (PLN150669-AMD1 and incorporated by reference.
- f) 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 amendment does not change the analysis contained in Resolution No. 17-035. The proposed amendment to remove Condition No. 5 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. As approved and amended, permit number PLN150669-AMD1 will become and be referred to as the approved operating permit.

EVIDENCE: a) The proposed project involves an Amendment to 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 findings and evidence contained in Resolution No. 17-

035 for the previously approved development are incorporated herein by reference.

- b) No conflicts with the proposed amendment were found to exist. No communications were received during review of the amendment 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 project does not propose any development but includes the removal of Condition No. 5. In accordance with MCC Section 20.70.105 (Amendments to Coastal Development Permits), the proposed amendment has been referred back to the original decision-making body (Planning Commission) because the project involves the removal of a previously adopted condition. Removal of Condition No. 5 terminates the need for a Conservation and Scenic Easement. The Board of Supervisors is the appropriate authority to terminate the easement. Therefore, the Planning Commission is making a recommendation to the Board of Supervisors.
- 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. As it exists now, 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. 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 have or support ESHA. Therefore, the proposed project includes deletion of Condition No. 5 which will allow the termination of the recorded

Conservation and Scenic Easement (Document No. 2020051385).

- f) Monterey Pines. The previously approved project 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) The condition 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.
- 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. PLN150666 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: 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) Land Use Advisory Committee. The previously approved project (PLN150669) was referred to the Del Monte Forest Land Use Advisory Committee (LUAC) for review. The proposed amendment was not referred to the Del Monte Forest LUAC as the project does not meet the Board of Supervisor's LUAC Guidelines.
- m) 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.
- n) 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 amendment. The 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 the amendment.
 - 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) Removal of Condition No. 5 and the subsequent 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 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) Removal of Condition No. 5 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) . This Amendment 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 involves an Amendment to 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.

- 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 does not affect the previously adopted mitigation measures. Therefore, as proposed and conditioned, this amendment 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 amendment are found in project file PLN150669 and PLN150669-AMD1.

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

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.

- b) Board of Supervisors. Pursuant to Title 21, Section 21.86.030, an appeal may be made to the Board of Supervisors by any public agency or person aggrieved by the discretionary decision of the Planning Commission.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

1. Consider the previously approved Mitigated Negative Declaration (MND) for the construction of the Werner Nase Jr. Trust residence (PLN150669) and finding the proposed Amendment consistent with the MND, therefore, not requiring an addendum pursuant to Section 15162 of the CEQA Guidelines;
2. Approve an Amendment to a previously approved Combined Development Permit (PLN150669; Planning Commission Resolution No. 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; and
3. Recommend the Board of Supervisors terminate the Conservation and Scenic Easement Deed from The Werner Nase, Jr. Trust.

PASSED AND ADOPTED this 29th day of June, 2022, upon motion of Commissioner Diehl, seconded by Commissioner Getzelman, by the following vote:

AYES: Daniels, Diehl, Getzelman, Gonzales, Work

NOES: Roberts, Monsalve

ABSENT: Carrillo, Mendoza, Coffelt

ABSTAIN: None

DocuSigned by:

Erik Lundquist

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for

Craig Spencer, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON **07/05/22**

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

Monterey County RMA Planning

Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN150669-AMD1

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Amendment to a previously approved Combined Development Permit (PLN150669; Planning Commission Resolution No.17-035) removes Condition No. 5 which required conveyance of a 21,600 square foot Conservation and Scenic Easement area to the Del Monte Forest Conservancy. 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. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of HCD - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (HCD - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

Condition/Mitigation The applicant shall record a Permit Approval Notice. This notice shall state:

Monitoring Measure:

"An Amendment to a previously approved Combined Development Permit (PLN150669) (Resolution Number 22-017) was approved by the Monterey County Planning Commission for Assessor's Parcel Number 008-232-003-000 on June 29, 2022. The permit was granted subject to 3 conditions of approval which run with the land. A copy of the permit is on file with Monterey County HCD - Planning."

Proof of recordation of this notice shall be furnished to the Director of HCD - Planning prior to issuance of grading and building permits, Certificates of Compliance, or commencement of use, whichever occurs first and as applicable. (HCD - Planning)

**Compliance or
Monitoring
Action to be
Performed:**

Prior to the issuance of grading and building permits, certificates of compliance, or commencement of use, whichever occurs first and as applicable, the Owner/Applicant shall provide proof of recordation of this notice to the HCD - Planning.

3. CC01 INDEMNIFICATION AGREEMENT

Responsible Department: County Counsel-Risk Management

**Condition/Mitigation
Monitoring Measure:**

The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (County Counsel-Risk Management)

**Compliance or
Monitoring
Action to be
Performed:**

Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, or recordation of Certificates of Compliance, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Office of County Counsel-Risk Management for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the Office of County Counsel-Risk Management

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