



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 22-151

August 23, 2022

Introduced: 8/1/2022

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

PLN150669-AMD1 - MARTIN WILLIAM H & SIMONA H TRS (FORMERLY NASE WERNER JR. TRUST)

Public hearing to consider:

- a. Terminating the Conservation and Scenic Easement on the Martin William H & Simona H TRS (Formerly Nase Werner Jr. Trust) property;
- b. Finding that termination of the Conservation and Scenic Easement does not require additional environmental review under CEQA Guidelines section 15162.
- c. Authorizing the Chair to execute the Termination Agreement and Quitclaim Deed; and
- d. Directing 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.

Project Location: 1412 Lisbon Lane, Pebble Beach

Proposed CEQA action: Finding that termination of the Conservation and Scenic Easement does not require additional environmental review under CEQA Guidelines section 15162.

RECOMMENDATION:

It is recommended that the Monterey County Board of Supervisors:

- a. Consider the previously adopted Mitigated Negative Declaration (MND) prepared for the construction of the Werner Nase Jr. Trust residence (PLN150669); and
- b. Terminate the Conservation and Scenic Easement on the Martin William H & Simona H TRS (Formerly Nase Werner Jr. Trust) property; and
- 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.

A draft resolution is attached for consideration (**Attachment A**). The agreement terminating the Conservation and Scenic Easement is attached to this Board Report as **Attachment B**. The Quitclaim deed is attached to this Board Report as **Attachment C**.

PROJECT INFORMATION:

Agent: Joel Panzer

Owner: Simona & William Martin

APN: 008-232-003-000

Parcel Size: 1 acre

Plan Area: Del Monte Forest Land Use Plan

SUMMARY:

On August 30, 2017, the Monterey County Planning Commission approved 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 (Resolution No. 17-035) (**Attachment F**). Approval of this project also included the adoption of a Mitigated Negative Declaration (**Attachment G**) and a Mitigation Monitoring and Reporting Program (**Attachment H**). Twenty conditions of approval (not including mitigation measures) were applied to the permit. One of the conditions (Condition No. 5) required the property owner to grant an easement over portions of the property that contained sensitive habitat. The Monterey County Board of Supervisors approved and accepted an easement on September 15, 2020 (Document No. 2020051385) satisfying Condition No. 5 and a 21,600 square foot Conservation and Scenic Easement was granted to the Del Monte Forest Conservancy. This easement encumbers nearly the entire property surrounding the approved dwelling and driveway.

On June 29, 2022, the Monterey County Planning Commission adopted a resolution (Resolution No. 22-017; included as Exhibit B of **Attachment B**) approving 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 are to the Del Monterey Forest Conservancy and recommending the Board of Supervisors terminate the Conservation and Scenic Easement from the subject property. This resolution contains a finding that removal of Condition No. 5 is consistent with the previously adopted Mitigated Negative Declaration prepared for the Werner Nase Jr. Trust residence.

The reason that the property owner would like to terminate the easement is that the easement precludes the use of their yard for private residential enjoyment and because the Yadon's Piperia that had existed on the site was mitigated for by moving the plants to a receiver site so that the project site no longer contains the habitat that was the reason for the easement. The Del Monte Forest Conservancy has consented to the termination of the easement in this case.

DISCUSSION:

A previously approved permit, PLN150669, included a Coastal Development Permit to allow development within 100 feet of mapped or field identified environmentally sensitive habitats. Biological studies for the residence identified *Piperia yadonii* (Yadon's piperia) and Monterey pine forest as Environmentally Sensitive Habitat Area (ESHA). Monterey pines are typically not considered ESHA, and thus are only protected due to their status as a native tree. However, if the Monterey pines or their understory support special status species, then they too are considered ESHA. Prior to the approved residential development, the subject property's Monterey pines supported Yadon's Piperia; a federally listed endangered plant species.

In accordance with Policy 13 of the Del Monte Forest Land Use Plan, Condition No. 5 was applied to the previous project, requiring 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. However, the Mitigated Negative Declaration included Mitigation Measure No. 2 which

resulted in transplanting the entirety of the identified Yadon's Piperia habitat to a receiver site (Area H, owned by the Pebble Beach Company and set aside as open space and for purposes of conservation). This mitigation was developed by the project's biologist in consultation with the United States Fish and Wildlife Service (USFWS), 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 4 years of annual monitoring by the project biologist, effectively removed the property's isolated populations of Yadon's Piperia. Due to the successful implementation of Mitigation Measure No. 2, no Yadon's Piperia foliage or flowers have been found on the subject lot since the day the plants were removed in November 2017. With relocation of the Yadon's Piperia, the property's Monterey pines are no longer considered ESHA. The majority of the property's Monterey pines are located within a 21,600 square foot restoration and enhancement area and are further protected by applicable Del Monte Forest Land Use Plan and Coastal Implementation Plan policies.

As the grantee of the Conservation and Scenic Easement, the Del Monte Forest Conservancy has commented on the project. 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; 2) the habitat that was on the property at the time of the granting of the easement has been successfully moved to another location; 3) that the sensitive habitat is flourishing at its new location; 4) the County has verified the accuracy of the consultant's report containing these representations; and 5) this termination request 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.

A letter from the project biologist (**Attachment E**), Pat Regan, dated September 6, 2021, and January 22, 2022, confirms that no environmentally sensitive habitat exists on the property. Monitoring of the transplanted population confirms that the entirety of 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 and is thriving at the new location (Area H). County staff independently reviewed the biological reports and concur with their conclusions. On December 15, 2022, California Coastal Commission staff expressed their support for the project due to the specifics of the case being that the transplanting of the special status species was a result of a mitigation measure, and the subsequent monitoring has proven the transplanting to be successful. Monterey County Conservation and Scenic Easements are irrevocable. The proposed termination of the Conservation and Scenic Easement is specific to this project and 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.

Therefore, Staff recommends the Board of Supervisors terminate of the subject easement. A Draft Termination Agreement (**Attachment B**) and Quitclaim Deed (**Attachment C**) have been prepared and signed by appropriate parties and are subject to the Board of Supervisor's acceptance and recordation.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

A Mitigated Negative Declaration (MND) was adopted prior to approving the construction of the Werner Nase Jr. Trust residence. The proposed termination of the easement does not require subsequent environmental review pursuant to CEQA Guidelines Section 15162. The condition requiring the Conservation and Scenic Easement (Condition No. 5) 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. 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; termination of the easement does not affect the previously adopted mitigation measures. Therefore, as proposed, termination of the property’s Conservation and Scenic Easement is consistent with the previously adopted Mitigated Negative Declaration.

OTHER AGENCY INVOLVEMENT

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Environmental Health Bureau
- Pebble Beach Community Services District (Fire)
- Del Monte Forest Conservancy
- California Coastal Commission

LUAC

The proposed amendment was not referred to the Del Monte Forest LUAC for review based on the LUAC Guidelines.

FINANCING:

Funding for staff time associated with this project is included in the FY2022-23 Adopted Budget within Community Development General Fund 001, Appropriation Unit HCD002, Unit 8543.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our HCD customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- Administration
- Economic Development
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Fionna Jensen, Associate Planner
Reviewed by: Craig Spencer, Chief of Planning
Reviewed by: Lori Woodle, Finance Manager I

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Approved by: Erik Lundquist, AICP, Director of Housing and Community Development

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The following attachments are on file with the Clerk of the Board:

Attachment A - Draft Resolution

Attachment B - Draft Termination Agreement

- Exhibit A - Legal Description of Property
- Exhibit B - Planning Commission Resolution No. 22-017

Attachment C - Quitclaim deed

Attachment D - Vicinity Map

Attachment E - Biological letter prepared by Pat Regan (September 6, 2021, and January 22, 2022)

Attachment F - Planning Commission Resolution No. 17-035

Attachment G - Initial Study/Mitigated Negative Declaration for the Werner Nase Jr. Trust Residence (Resolution No. 17-035)

Attachment H - Mitigation Monitoring Plan adopted with Resolution No. 17-035

cc: Front Counter Copy; Coastal Commission; Pebble Beach Community Services District; HCD-Engineering Services; HCD-Environmental Services; Environmental Health Bureau; Fionna Jensen, Associate Planner; Anna Quenga, AICP, Principal Planner; Craig Spencer, HCD Chief of Planning; Simona and William Martin, Property Owners; Joel Panzer, Agent; Werner Nase, Interested Party; Del Monte Forest Conservancy c/o Laura Paxton, Interested Party; The Open Monterey Project (Molly Erickson); LandWatch; Project File PLN150669-AMD1