

Exhibit A

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**EXHIBIT A
DRAFT RESOLUTION**

**Before the Planning Commission
in and for the County of Monterey, State of California**

In the matter of the application of:

12 PASADERA LP (PC-07704-AMD1)

RESOLUTION NO. 19 -

Resolution by the Monterey County Planning Commission recommending that the Board of Supervisors:

- 1) Find the project statutorily exempt from CEQA per Section 15270 of the CEQA Guidelines; and
- 2) Deny an Amendment of a previously-approved Combined Development Permit (Board of Supervisors Resolution No. 95-574; RMA-Planning File No. PC07704) for the Bishop Ranch Subdivision (aka the Rancho Monterey Subdivision) to allow the modification of Condition No. 136 (Mitigation Measure No. 56) to change the term of the affordability restriction of the twelve (12) affordable rental units on Parcel A-2 in the subdivision from Low-Income to Moderate-Income.

504 Estrella De Oro Avenue, Monterey, Greater Monterey Peninsula Area Plan (APN: 173-074-074-000)

The 12 Pasadera LP application (PC07704-AMD1) came on for a public hearing before the Monterey County Planning Commission on July 10, 2019. 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:** **INCONSISTENT / NO VIOLATIONS** – The proposed amendment is inconsistent with the policies of the applicable plans, and other County health, safety, and welfare ordinances related to land use development. No violations exist on the subject property.
EVIDENCE: a) The proposed amendment would allow the modification of Condition No. 136 (Mitigation Measure No. 56) to change the term of the affordability restriction of the twelve (12) affordable rental units on Parcel A-2 in the Bishop Ranch Subdivision from Low-Income to Moderate-Income.

As originally approved by the Board of Supervisors, Condition No. 136 required the applicant to comply with the requirements of the Inclusionary Housing Ordinance by agreeing to build 26 moderate

income household units and 12 low income household units prior to filing the final map.

- b) On September 12, 1995, the Board of Supervisors approved the Bishop Ranch Subdivision project (Resolution No. 95-415), which included area plan amendments, zoning reclassifications, standard subdivision vesting tentative map, and use permits. On December 5, 1995, the Board of Supervisors approved corrections to Resolution No. 95-415 (Resolution No. 95-574; see **Exhibit E** of the Planning Commission staff report for July 10, 2019, for the full text of Board Resolution No. 95-574).

The corrected resolution approved a subdivision to allow 253 residential units; including 160 single-family dwelling lots, 55 townhomes, and 38 inclusionary or affordable housing units. At the time of project approval in 1995, the County's Housing Element and Inclusionary Housing Ordinance (Monterey County Code Section 18.40) required 15 percent affordable units. The number of units used to calculate the requirement would be 250; therefore, 15 percent of 250 units equaled 37.50 units, which the County rounded up to 38 units. Additionally, 30 percent of the 38 affordable units were required to be designated for low income households; therefore, 30 percent of 38 units equaled 11.25 units, which the County rounded up to 12 units. The 26 moderate income units were constructed and sold as separate units on individual parcels (Assessor's Parcel Numbers 173-131-001 through 026-000; 101 – 126 Circulo de Casitas). The 12 low income units were constructed as rental units.

The corrected resolution included the following findings, evidence, and conditions of approval:

- *Finding No. 13: The Bishop Ranch vesting tentative subdivision map is consistent with applicable policies of the Monterey County General Plan, including the following: ...; 58.1.4.*
 - o *58.1.4 (Housing): The project includes 253 housing units, of which 15 percent (37.95 units) are required to be inclusionary. The project contains 38 inclusionary housing units, of which no less than 30% shall be provided for low income housing units.*
- *Finding No. 14: The Bishop Ranch Monterey County vesting tentative map for the project is consistent with applicable policies of the Greater Monterey Peninsula Area Plan including the following: ...; 62.1.14,*
 - o *62.1.14 (Housing): See consistency discussion for policy 58.1.4 of the Monterey County General Plan.*
[Note: Greater Monterey Peninsula Area Plan Supplemental Policy 62.1.14 states: All development proposals shall make provision for low or moderate income housing in accordance with the Inclusionary Housing Ordinance.]
- *Finding No 21: The applicant is required to comply with provisions of Monterey County Inclusionary Housing*

Ordinance. The Board of Supervisors has considered low and moderate income inclusionary housing requirements and the housing needs of the County's residents and has balanced those housing needs of its residents and environmental resources.

Condition No. 136 requires the subdivider to comply with the provisions of the inclusionary housing ordinance.

- *Condition No. 136: Applicant shall comply with the requirements of the Inclusionary Housing Ordinance by agreeing to build 26 affordable to moderate income household units and 12 affordable to low income household units prior to filing of final map. (Planning and Building Inspection) (mm 56)*

- *Attachment A to Resolution Nos. 95-415 and 95-574, CEQA Certification and Findings*
 - o *Finding No. 5.A.1: The "No Project Alternative" is infeasible because it is inconsistent with the goal of the County to increase the supply of housing units, including low income and moderate income units in the local housing market....*
 - o *Finding No. 6.C: Given the constraints of the site, the Project will provide the maximum amount of affordable housing feasible through the construction of 38 units of inclusionary housing on the Project site. This will have a beneficial impact of the shortage of affordable housing which currently exists in Monterey County. In addition, the project will result in an increase in the supply of housing, including affordable housing, which is from 65% to 70% greater than that which would result from development consistent with the existing area plan.*

The Inclusionary Housing Agreement (Document No. 9877554; recorded November 6, 1998; for the full text, see **Exhibit F** of the Planning Commission staff report for July 10, 2019) also states the following:

- *Recital C. County has designated thirty-eight (38) lots within the Development to be "Inclusionary Units for Moderate and Low Income Households" as defined in Subsection 18.40.030 of the COUNTY CODE. Developer shall provide twenty-six (26) units for Moderate Income households on Parcel A-1, and twelve (12) units for Low Income households on Parcel A-2.*
- c) In 2005, the Pasadera developer began renting the 12 units to low-income households. The owner is responsible for maintaining the units as Inclusionary Rental Units in perpetuity. The applicant is requesting an amendment to the affordability level of the rental units because they claim to have experienced high vacancy rates and difficulty in finding qualifying renters, and believe the units would

better serve moderate income households given that the location of the units (at the northern edge of the Pasadera subdivision) results in limited access to services and facilities, including transportation and shopping in the area. The Housing Advisory Committee (HAC) requested the applicant submit additional information to support their claims; however, the applicant did not provide any information responsive to the HAC's requests (see Finding No. 1, Evidence k below). Additionally, under the terms of the developer's Inclusionary Housing Agreement, the owner is responsible for identifying potential renters and referring them to Economic Development and Housing for income and asset certification.

- d) Current General Plan and Affordable Housing Requirements. The proposed amendment is subject to the current rules in place including the policies of the 2010 General Plan. The 2010 General Plan Policy LU-2.13 requires consistent application of an affordable housing ordinance that requires 25 percent of new housing units to be affordable to very low, low, moderate, and workforce income households at the following levels:
- 1) 6% of the units affordable to very low-income households
 - 2) 6% of the units affordable to low-income households
 - 3) 8% of the units affordable to moderate -income households
 - 4) 5% of the units affordable to Workforce I income households

If the original project were approved under the current General Plan including the 2015 – 2023 Housing Element and the current Inclusionary Housing Ordinance, the percentage of affordable units required would be 25 percent, which would equate to 62.50 total affordable units. The current element and ordinance would also require 6 percent of the total number of units to be designated for low income households, which would equate to 15.00 low income units. See also Finding Nos. 2 and 3, and supporting evidences.

- e) The property is located at 504 Estrella De Oro Avenue, Monterey (Assessor's Parcel Number 173-074-074-000), Greater Monterey Peninsula Area Plan. The property is zoned Medium Density Residential, with Building Site 6 and Design Control overlays (MDR/B-6-D). Existing development on the parcel includes twelve (12) rental housing units and associated carports. The existing development was approved under Board Resolution No. 95-574 (RMA-Planning File No. PC07704) as part of the Bishop Ranch Subdivision (aka the Rancho Monterey Subdivision). The proposed amendment of Condition No. 136 would not result in any changes in the use or physical alteration of the subject property and/or structures; therefore, they would remain consistent with the current zoning designation.
- f) The approximately 3.606-acre (157,069 square feet) property is identified as Parcel A-2 on the Rancho Monterey Subdivision final map, recorded November 4, 1998, in Volume 20, Cities & Towns, Page 7. Therefore, the County recognizes the parcel as a legal lot of record.
- g) The project has been reviewed for consistency with the text, policies, and regulations in the:

- 1982 and 2010 Monterey County General Plans, including the 1992 - 1997 and 2015 – 2023 Housing Elements;
 - 1982 and 2010 Greater Monterey Peninsula Area Plans;
 - Monterey County Subdivision Ordinance – Inland (Title 19); and
 - Monterey County Zoning Ordinance – Inland (Title 21).
- h) No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and/or regulations of the applicable Monterey County Code (MCC); however, conflicts or inconsistencies were found to exist with applicable plans and MCC. See also Finding Nos. 2 and 3, and supporting evidence.
- i) Monterey County RMA-Planning and RMA-Building Services records were reviewed, and the County is not aware of any current or active violations existing on the subject property.
- j) The project was referred to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review. The LUAC reviewed the proposed amendment at a duly-noticed public meeting on October 4, 2017, at which all persons had the opportunity to be heard, and provided comments to the County regarding the proposal. The LUAC did not vote on a recommendation because they believed they did not have sufficient information to make a recommendation to the appropriate authority.

The LUAC made the following comments:

- The applicant should pay an in-lieu fee to develop off-site inclusionary housing at a level to offset the proposed change in affordability level of the on-site units.
 - The applicant should prepare a transition plan for current residents of the units, including a provision for right of first refusal.
 - The LUAC members concurred that the existing location is not suitable for low-income affordable housing because of the distance to services and public transportation.
- k) The project was referred to the Housing Advisory Committee (HAC) for review. The HAC reviewed the proposed amendment at duly-noticed public meetings on September 27, 2017; March 14, 2018; and January 9, 2019; at which all persons had the opportunity to be heard. On January 9, 2019, the HAC voted 6 – 0 to adopt a recommendation to the Planning Commission and the Board of Supervisors that Condition of Approval No. 136 for the Pasadera/Bishop Ranch Subdivision (RMA-Planning File No. PC07704) not be amended to allow the conversion of 12 low-income rental properties to moderate income rental properties.

The HAC requested the applicant submit additional information; however, the applicant did not provide any information responsive to the HAC's requests. The HAC requested a marketing plan or strategy; documentation to support anecdotal statements made by the applicant regarding access to schools, jobs, and services; information regarding how the applicant selects and pre-qualifies tenants before

sending the information over to the County for income certification; and any other information and/or documentation supporting the proposed amendment.

At the HAC meeting on January 9, 2019, the applicant's agent informed the HAC that: 1) the applicant did not have a marketing program for the units; and 2) the proposed increase in the affordability requirement would accommodate Pasadera employees whose incomes currently exceed the allowed income level for low-income affordable units. The agent also stated that 11 of the 12 units are currently occupied, that the remaining unit has been vacant for one month, and that typical turnover is 1 – 2 vacant units on a recurring basis.

- 1) The application, plans, and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in project files PC07704 and PC07704-AMD1.

2. **FINDING:** **INCONSISTENT – HOUSING ELEMENT** – The amendment of Condition No. 136 of the approved Bishop Ranch Subdivision is subject to the provisions of Goal H-1, and Policies H-1.2 and H-1.4 of the 2015 – 2023 Housing Element (adopted January 26, 2016; Board Resolution No. 16-011) regarding the preservation of affordable housing; and is subject to the provisions of Section 2.8 of the Housing Element regarding preservation of affordable housing.

EVIDENCE: The applicant proposes to change the term of the affordability restriction of the twelve (12) affordable rental units on Parcel A-2 in the Bishop Ranch Subdivision from Low-Income to Moderate-Income. The applicant has not provided any documentation to support the need for this proposed change to the affordability restriction. Contrary to the applicable Housing Element goals and policies, this proposed change would not preserve the existing affordable housing stock. See also Finding Nos. 1 and 3, and supporting evidence. Monterey County CAO Housing Office was consulted on this project.

3. **FINDING:** **INCONSISTENT – SUBDIVISION ORDINANCE** – The amendment of Condition No. 136 of the approved Bishop Ranch Subdivision to change the term of the affordability requirement from Low-Income to Moderate-Income is inconsistent with the provisions of Section 19.08.010.A, Modification(s) of conditions to an approved tentative map, of the Subdivision Ordinance.

EVIDENCE: a) Pursuant to Section 19.08.010.A, modifications to conditions to an approved tentative map may be considered by the appropriate decision making body provided that: 1. The final has not been filed for record; 2. No lots, units or building sites are added or deleted; 3. The changes are consistent with the applicable General Plan, Area Plan, Coastal Land Use Plan, Master Plan or Specific Plan; 4. There are no resulting violations of Monterey County Codes; and 5. There will be no new significant adverse environmental affect from the change.

- b) The amendment of Condition No. 136 to change the term of the affordability requirement would be inconsistent with two of the five listed provisions. The final map has already been recorded, and the proposed change is not consistent with applicable plans. See Finding Nos. 1 and 2, and supporting evidence.
 - c) The amendment of Condition No. 136 does not add or delete any lots, units, or building sites; would not result in any violation of Monterey County Codes; and would not result in any new significant adverse environmental affect. Modification to the affordability requirement does not involve further subdivision, site improvements, development intensification or change of use within the subdivision.
5. **FINDING:** **CEQA (Exempt)** – The project is statutorily exempt from environmental review.
- EVIDENCE:** California Environmental Quality Act (CEQA) Guidelines Section 15270 statutorily exempts projects which a public agency rejects or disapproves.
6. **FINDING:** **HEALTH AND SAFETY** – The amendment of Condition No. 136 to reduce the term of the affordability of the 12 subject rental units within the Bishop Ranch Subdivision 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:** The proposed amendment of Condition No. 136 constitutes solely modification to the affordability requirements of 12 of the 253 residences in the Subdivision, and does not involve further subdivision, site improvements, development intensification or change of use within the subdivision, nor a change in the character of the neighborhood that would be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood.
7. **FINDING:** **APPEALABILITY** – The decision of the Planning Commission on the proposed amendment of Condition No. 136 of the Bishop Ranch Subdivision project is a recommendation to the Board of Supervisors and is not appealable.

DECISION

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

- A. Find the project statutorily exempt from CEQA per Section 15270 of the CEQA Guidelines; and
- B. Deny an Amendment of a previously-approved Combined Development Permit (Board of Supervisors Resolution No. 95-574; RMA-Planning File No. PC07704) for the Bishop Ranch Subdivision (aka the Rancho Monterey Subdivision) to allow the modification of Condition No. 136 (Mitigation Measure No. 56) to change the term of

the affordability restriction of the twelve (12) affordable rental units on Parcel A-2 in the subdivision from Low-Income to Moderate-Income.

PASSED AND ADOPTED this 10th day of July, 2019.

Brandon Swanson, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON _____.

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.