Exhibit B

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LAW OFFICE
RICHARD H. ROSENTHAL

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499.23.01.16.LTRLOOMIS

16 January, 2023

Mr. Craig Spencer
Chief of Planning
1441 Schilling Pl., South, 2nd Floor
Salinas, California 93901

Via Email

Re: Objection to Administrative Permit: 114 Story Rd. PLN220134

Dear Mr. Spencer or who it may concern:

Save Our Peninsula (SOP) objects to the issuance of open ended administrative permits for Short Term Rentals (STRs) until such time as the EIR for the revised STR Ordinance is certified and the revised Ordinance is adopted by the BOS. Because of the need for a global assessment of STR approvals on available housing stock, impacts to the character of residential neighborhoods and environmental impacts on the unincorporated areas of the County this application should be sent to the Planning Commission for further consideration.

The approval of each open ended STR administrative permit takes one residential housing unit off the rental housing market in perpetuity making affordable housing more limited and expensive for the citizens of the County. These actions create a current and immediate threat to the public health and safety by eliminating available housing. This impact is compounded by the fact that HCD estimated that there were over 600 advertised STRs in the unincorporated County, each one eliminating a rental opportunity for citizens of unincorporated Monterey County. The County's approval of STRs and permitting the 600 advertised units to continue will have to be addressed in the Housing Element update, that mandates approximately 3,326 units pursuant to the most recent Reginal Housing Needs Assessment (RHNA). Arguably each STR permit issued and the 600 advertised STRs will add to the County's RHNA assessment mandate. There is no discussion of this issue in the staff report.

Administrative permits for STRs are being approved pursuant to categorical exemptions. No environmental assessment undertaken. No cumulative impacts associated with other approved STR permits or the 600 advertised units noted above. Changing the residential character of neighborhoods to visitor accommodation is not considered. Categorical exemptions are inappropriate when special circumstances (loss of rental housing and changing character of residential neighborhoods) and cumulative impacts (increased noise and traffic from increase in people and cars) are present. Reliance on Title 21 is inappropriate because the adoption took place in 1997 subject to limited environmental review.

Cumulative impacts are potentially significant. By way of example, this application permits up to 8 adults a night along with a maximum of 12 persons for any event or gathering and up to 7 cars parked on the property. A recent STR Administrative Permit approval, PLN200102-103 Village Road, Carmel Valley, allowed up to 10 adults and 10 cars per night. The combination of the two permits adds 22 adults per night and 20 cars to Carmel Valley Village. There's no attempt to assess cumulative impacts of this permit request with those recently approved, pending or the short term rental housing advertised for Carmel Valley.

In addition, issuing open ended administrative permits provides incentives for investors to purchase residential housing and turn them into STRs thereby reducing available rental housing stock. Numerous web sites are offering residential housing for sale as investment vehicles for STRs. See Mashvisor.com

For the reasons stated above, this matter should be sent to the Planning Commission for consideration. If a permit is issued it should be for a specified period of time, not to exceed the adoption of the revised STP Ordinance.

I will briefly address certain site specific issues below:

1. The Application along with the modified Operating Plan requests the expanded use of the property from residential to visitor accommodation for up to 8 adults a night along with a maximum of 12 persons for any event or gathering and up to 7 cars parked on the property. This is a substantial change from a residential single family residence creating increase environmental impacts to noise and traffic. These impacts were not discussed in the Staff Report. Visitor accommodation units should not be permitted in residential neighborhoods without environmental review. Title 21, 21.64.280 was adopted in 1997 without extensive environmental review, if any. The environmental assessment for the adoption of the STR zoning ordinance should be reviewed.
2. The Application along with the modified Operating Plan indicates that the property will be rented out for no less than a 7 night stay. However, the property is being offered for four (4) and two (2) nights. I have attached copies of the listings. This brings up the issue how these permits will be enforced. HCD is woefully understaffed to enforce the conditions of approval.

3. There is no cumulative impact assessment. Finding 4 (c), CEQA (Exempt) is not supported by the evidence. Unusual circumstances exist. HCD has indicated there are 600 unpermitted STRs in unincorporated Monterey County. There are numerous applications pending for administrative permits that were not considered when issuing the categorical exemption. There is no attempt to assess potential cumulative impacts with this permit in the vicinity of the project or the greater area of the valley. For instance, how many STRs are on the street or within a reasonable distance from 114 Story Rd. Maps are available depicting locations of STRs in the Village. A categorical exemption is not warranted with the stated increases to the use of the property and the attendant increases in environmental impacts. See recent case of

SAINT IGNATIUS NEIGHBORHOOD ASSOCIATION,v. CITY AND COUNTY OF SAN FRANCISCO (2022). This is a high school football field lighting project that was set aside because the categorical exemptions did not apply when there are potential significant increases in impacts associated with the project not withstanding no change in the underlying facility. In that case, the football field was not changing its footprint but the impacts from the lighting could be significant. In the instant case, it is the permitted uses, 8 adults, gatherings up to 12 and 7 cars parked on the property.

4. The property is zoned for low density residential with design review. The proposed use changes to visitor accommodation is in conflict with the Carmel Valley Master Plan. CVMP calls for the following: CV-1.15 b. Visitor accommodation projects must be designed so that they respect the privacy and rural residential character of adjoining properties.

5. This property has been rented out as early as July 20, 2017. The property started to pay TOT in or around June of 2022. The application is unclear whether back TOT taxes have been paid or if there is an accounting of such sum. In any event, the citizens of Monterey County are entitled to that money if it has not been paid.

The application should be forwarded to the Planning Commission to consider important planning issues at issue here and STRs in general.

Sincerely,

LAW OFFICE OF RICHARD H. ROSENTHAL

BY:_____/S/_____
RICHARD H. ROSENTHAL

Cc: Erik Lundquist, Zoe Zepp, Armida Estrada
Enclosures as noted

SBEMP ATTORNEYS

SHAUN M. MURPHY, ESQ.
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ADMITTED IN CA, MI, TX, NY
AND THE U.S. SUPREME COURT

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February 2, 2023

VIA ELECTRONIC TRANSMISSION TO: SPENCERC@ CO.MONTEREY.CA.US

Craig Spencer
Chief of Planning
Monterey County Housing and Community Development
1441 Schilling Place, South, 2nd Floor
Salinas, California 93901

RE: Administrative Permits PLN220134 and PLN220014

Dear Mr. Spencer:

I represent the Monterey County Vacation Rental Association (***"MCVRA"***) and am writing to address the recent correspondence from Richard H. Rosenthal who represents *Save Our Peninsula*. Mr. Rosenthal is objecting to the above-referenced permit applications and his letters make a lot of assertions, but they contain very little evidentiary or legal support.

CEQA establishes a tiered approach to environmental review. The first step is jurisdictional and requires a public agency to determine whether a proposed activity is a project. (*Bottini v. City of San Diego* (2018) 27 Cal.App.5th 281, 291; see also Pub. Res. Code § 21065.) If a proposed activity is a project, the agency proceeds to the second step of the CEQA process. At the second step, the agency must decide whether the project is exempt from the CEQA review process under either a statutory exemption or a categorical exemption set forth in the CEQA Guidelines. (*Ibid.*)

The Guidelines contain 33 classes of categorical exemptions. (See 14 CCR §§ 15301-15333.) Each class embodies a finding by the Resources Agency that the project will not have a significant environmental impact. Categorical exemptions are also subject to exceptions. (See Guidelines, § 15300.2.) Among other things, a "categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (*Id.*, subd. (c).) "If a project is categorically exempt and does not fall within an exception, it is not subject to CEQA requirements and may be implemented without any CEQA compliance

whatsoever." (*Bottini*, *supra*, 27 Cal.App.5th at pp. 291–292.) It goes without saying that if an activity is not a project, it is exempt from CEQA review.

First, there is nothing in Title 21, section 21.64.280 that requires an environmental impact report on a permit-by-permit basis. Such a requirement would be cost prohibitive and effectively eliminate the permitting process. Mr. Rosenthal is asking the County to add a layer of regulation that is not required by Title 21 or any other law.

Second, Public Resources Code section 21065 defines "project" to mean "an activity which may cause either a direct physical change in the environment, or a reasonably indirect physical change in the environment. Mr. Rosenthal's letters fail to make any factual showing that either of the referenced permit applications involve a project as defined by section 21065. A short-term rental permit does not qualify as a "project" under CEQA because there is no evidence that it will result in either a direct or indirect physical change in the environment. Issuing an administrative permit for short-term renting results in no physical change in the environment, direct or otherwise. Short-term rentals are an environmentally friendly option for lodging visitors. Existing dwellings and infrastructure serve these visitors. No new development of any kind is contemplated or needed.

Mr. Rosenthal further makes the naked assertion that there are unusual, or special circumstances arising from the approval of "open-ended STR administrative permits" because each permit takes one residential housing unit off the housing market thereby negatively affecting the availability of affordable housing and changing the residential character of neigborhoods. Mr. Rosenthal's comments reveal an ignorance of the nature of the ownership of these properties. Whether the short-term rental unit is a primary residence or a second home, the owner(s) bought it for personal use. A survey asked short-term rental owners in Monterey County what they would do if short-term rentals were prohibited. Only 16% said they would sell their home, but not for an "affordable" price. Only 5.9% would list their home as a long-term rental and a mere 0.54% of owners would rent their houses for less than $2,000 per month. Short-term rentals therefore have negligible impact on housing stock, and NO impact on affordable housing. Mr. Rosenthal is simply repeating a stereotype that has no basis in fact or verifiable data.

Additionally, Mr. Rosenthal's argument that 600 advertised STR units results in special circumstances or changes the residential character of the community is not true. According to the Notice of Preparation of a Draft Environmental Impact Report in connection with the new ordinance the County is drafting, there are 34,626 residential dwelling units throughout the unincorporated areas of Monterey County. There are 609 currently advertised STRs. The number of advertised STR units represents 1.76% of all dwellings. That's roughly two units per hundred, which is hardly a number that will change the character of a community. The two subject permit applications to which Mr. Rosenthal and Save Our Peninsula object, are in the Carmel Valley planning area. This planning area has 5,033 dwelling units and 129 advertised STRs. Advertised STRs in this area represent only 2.56% of the dwelling units. Again, not a number that results in unusual or special circumstances.

During its consideration of the most recent draft ordinance, the Board of Supervisors set a limit of 6% of STRs in each planning area. Using the Board's proposal, the number of allowable STR permits would be 302 in the Carmel Valley planning area. The current number of 129 is well below that limit (less than 50% of the allowable units). The Board of Supervisors proposed for the entire county a limit of 2,074 STR permits. The current number of 609 advertised units is only 29% of the allowable total. There is absolutely no justification, factual, legal, or otherwise, to support Mr. Rosenthal's demand to cease issuing STR permits.

Assuming the issuance of short-term rental permits qualifies as a "project" under CEQA, the County's determination that they are exempt from environmental review is correct. A short-term permit for single-family residences is an "existing facility" under Title 14, section 15301. It involves no or negligible expansion of an existing or former use. Significantly, section 15301 lists as an example of an exempt use the conversion or use of a single-family residence as a small family day care home, as defined in section 1596.78 of the Health & Safety Code. (14 CCR § 15301(p).) Section 1596.78 of the Health & Safety Code defines a "small family day care home" as a home that regularly provides care for up to 14 children. Up to 14 children is a greater use than allowing up to 12 adults in a residence. A day care with up to 14 children will involve 14 cars back and forth from the residence every as the children will not be driving themselves or carpooling. That is a more intensive vehicle use than the traffic allowed with a short-term permit.

Mr. Rosenthal asserts that the County's reliance on Title 21, specifically section 21.64.280, to issue administrative permits for short-term rental use is improper. Mr. Rosenthal's primary complaint seems to be that the County should not be relying on Title 21 because the ordinance is old. Title 21 is the law in the County. Unless and until the Board of Supervisors amends or replaces Title 21, it must be followed and applied. His argument that Housing and Community Development should ignore Title 21 because it was adopted 25 years ago has no legal basis and Mr. Rosenthal does not cite any authority to justify the County ignoring the law. Moreover, in connection with the Board of Supervisors' adoption of Title 21, it made a specific finding of no adverse impact: "The Board of Supervisors finds that the adoption of this ordinance has the effect of regulating a previously illegal use; however, the use permitted pursuant to this ordinance, as regulated, will not constitute a substantial adverse physical change to the environment or any substantive change in the intensity of use of existing single family dwellings." Nothing has changed since that finding was made.

Mr. Rosenthal also complains about cumulative impacts, but he has not cited any legal authority requiring the County to consider cumulative impacts in connection with the issuance of short-term rental permits. Consideration of cumulative impacts is required only when an environmental impact report is required. (See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 928 [an EIR is required to discuss cumulative impacts of a project].) Where, as here, the permit applications are exempt from CEQA, and no environmental review is required; thus, the concept of cumulative impacts has no application. Mr. Rosenthal also claims that short-term rental permits are changing the residential character of neighborhoods. As with his other

contentions, this is nothing more than an unsubstantiated assertion lacking any factual support.

Mr. Rosenthal's citation to *Saint Ignatius Neighborhood Association v. City And County Of San Francisco* (2022) 85 Cal.App.5th 1063 is misplaced because the circumstances are not analogous. In *Saint Ignatius*, an urban school proposed to install four permanent 90-foot outdoor light standards at its athletic field in a residential neighborhood. The City approved the application and determined that it was categorically exempt from review under CEQA. The court reversed finding that the stadium lighting was likely to significantly expand existing nighttime use, and the small structure exemption was inapplicable because the light standards would be significantly taller than other structures in the neighborhood. Those issues have nothing to do with the subject applications.

Along with being contrary to law, Mr. Rosenthal's demand that STR permitting cease until an environmental impact review is conducted in connection with the new ordinance would have a disastrous impact on Monterey County as a tourist destination.[1] Monterey County is a tourist destination and hundreds of short-term rentals would no longer be available to lodge thousands of visitors to the county. And many local jobs that support the short-term rental market would be lost.

The subject applications should be approved as they clearly qualify for the issuance of short-term permits. In particular, the permit application for 114 Story Rd., Carmel Valley should not be referred to the Planning Commission. Planning Department review is all that is required. There is no policy issue requiring Planning Commission review. Also, during its consideration of and adoption of a resolution to launch a "Pilot Program," the Board of Supervisors has approved enforcement of the existing ordinance under the premise that short-term rental operators ***can get a permit***. Were the County to follow Mr. Rosenthal's demands, it would result in a de facto ban on non-coastal STRs.

Sincerely,
SBEMP LLP

BY: Shaun M. Murphy

SMM: DY

[1] The EIR to which Mr. Rosenthal refers is the review related to the new ordinance that is being drafted. There is no basis in law for holding up permit applications under an existing and valid ordinance while the County considers revisions to or replacement of an existing ordinance.

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