

# Attachment A

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# DRAFT RESOLUTION

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

In the matter of the application of:

**ROSSEEL GEERT & POWELL TRACY TRS (PLN220054)**

**RESOLUTION NO. ---**

Resolution by the County of Monterey Board of Supervisors:

- 1) Granting an Appeal by Geert Rosseel challenging the Planning Commission's denial of an Administrative Permit;
- 2) Finding that the project, allowing transient use for remuneration at an existing residential property, qualifies for Class 1 categorical exemption pursuant to CEQA Guidelines sections 15301, and that none of the exceptions in section 15300.2 apply; and
- 3) Approving an Administrative Permit to allow transient use of a residential property for remuneration.

[PLN220054 ROSSEEL GEERT & POWELL TRACY TRS, 282 Corral De Tierra, Toro Area Plan (APN: 416-351-005-000)]

**The ROSSEEL GEERT & POWELL TRACY TRS application (PLN220054) came on for a public hearing before the Monterey County Board of Supervisors on September 19, 2023. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented the County of Monterey Board of Supervisors finds and decides as follows:**

### FINDINGS

1. **FINDING:** **PROCESS** – The County has processed the subject Administrative Permit in compliance with all applicable procedural requirements.  
**EVIDENCE:**
  - a) An Administrative Permit to allow transient use for remuneration at an existing residential property was submitted on November 20, 2022, and deemed complete on December 22, 2022.
  - b) An administrative hearing to consider the application was scheduled for on March 15, 2023. A request for a public hearing on the project was received during the noticing period.
  - c) When a public hearing is requested pursuant to section 21.70.060, the Zoning Administrator is designated as the appropriate authority to consider the project. However, the Board of Supervisors has deemed short-term rental applications in supervisorial District 5 represent significant public policy concern, and in so doing, have elevated the hearing authority to the Planning Commission (MCC section

21.04.030.F). Therefore, the project was scheduled for a public hearing before the Planning Commission.

- d) The Planning Commission considered the application at a public hearing on April 12, 2023, and continued the matter to a date certain of May 31, 2023. At the May 31, 2023 hearing, the Planning Commission adopted a resolution denying the application, finding the project inconsistent with the applicable regulations for the transient use of residential property for remuneration; specifically an objection from the Alta Tierra Association, and alleged Home Owner's Association.
- e) The applicant filed a timely appeal of the denial on June 16, 2023, and the matter was scheduled for a de novo appeal hearing before the Board of Supervisors on September 19, 2023. As both the applicant and appellant, the applicant agreed to extend the 60 day timeline for the consideration of the appeal.

**2. FINDING: CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

- EVIDENCE:**
- a) Staff reviewed the project for consistency with the text, policies, and regulations in:
    - the 2010 Monterey County General Plan;
    - the Toro Area Plan;
    - the Monterey County Zoning Ordinance (Title 21); and
    - Regulations Relating to Applications Involving Use of Private Roads (Monterey County Code Chapter 16.80).

No conflicts were found.

- b) Allowed Use. The property is located at 282 Corral De Tierra, Toro Area Plan. The parcel is zoned Rural Density Residential with a density of 5.1 acres a unit and a Design Control Overlay or “RDR/5.1-D”, which principally allows the first single-family dwelling per lot, among other similar residential uses. The project proposes transient use for remuneration for an existing single-family dwelling. In accordance with Title 21, section 21.64.280.D.1, transient occupancy for remuneration is an allowable use subject to an administrative permit in all zoning districts which allow residential use. Therefore, the proposed use is allowable.
- c) Lot Legality. The property is depicted in its current configuration as Lot 1 of the Record of Survey “Parcels in the Easterly Half Sec. 15, T 16, R 2E, M.D.B. & M.” filed in Volume 6 Surveys Page 193. This Record of Survey depicted four properties 2.5 acres or more, and was recorded on August 15, 1963 (prior to March 2, 1964); therefore, the County recognizes the property as a legal lot of record.
- d) Minimum Rental Period. The rental period for transient occupancy for remuneration shall be no less than 7 days in accordance with Title 21, section 21.64.280.D.2.a, and as indicated in the rental period portion of the operations plan.
- e) Number of Occupants. Title 21, section 21.64.280.D.2.b requires that the number of occupants not exceed the limits set forth in the California Uniform Housing code, and that each Administrative Permit issued pursuant to Title 21 Chapter 21.64 specify the maximum number of

occupants. There are 6 bedrooms in the home, and applying the residential “two plus one” formula used as a shorthand for the Uniform Housing code of 2 occupants per bedroom plus 1 in the living area, the maximum occupancy would be 13. The operations plan limits the property’s occupancy to 10 during transient use. Therefore, the established 10 occupant limit is consistent with Title 21, section 21.64.280.D.2.b.

- f) No Onsite Signage. Title 21, section 21.64.280.D.2.c prohibits on-site advertising of the rental unit. As described in the operations plan there will be no signage advertising the transient occupancy for remuneration onsite.
- g) Designation of Contact Person. For any administrative permit for transient occupancy for remuneration where the owner does not reside within five miles of the property being rented, Title 21, section 21.64.280.D.2.d requires that the owner designate a contact permit located within 25 miles of the rental unit who will be available 24 hours a day to respond to tenant or neighborhood questions or concerns and to otherwise be responsible for ensuring the use complies with the permit, their conditions, and Title 21. The operations plan designates Manuel Martinez, who resides 15 miles from the property, for this purpose, and includes his contact information.
- h) Homeowners Association. A resolution of opposition to the project has been submitted by the “Alta Tierra Association.” Section 21.64.280.D.2.g of the Monterey County Code states: *“The use of a residential unit for a transient use shall not violate any applicable conditions, covenants, or other restrictions on real property. The applicant shall provide notice to any affected homeowners’ association in a manner consistent with the notice requirements for a use permit. In the event the homeowners’ association objects to the issuance of the permit, the permit shall not be approved until the homeowners’ association’s objection has been withdrawn or the right of the applicant to use the subject residential property for transient use has been validated, approved, or otherwise ordered by a Court, arbitrator, or other appropriate entity with the authority to review, approve, validate, or otherwise act on the proposed use of the action of the homeowners’ association.”* As it applies in this case, the Alta Tierra Association is not a homeowner’s association within the meaning of Title 21, section 21.64.280.D.2.g. Therefore, their objection does not require that the permit be denied.

The Alta Tierra Association governs the Alta Tierra mutual water system (System ID No. 2701412) and private road which serve the property, the “agreement”. The association was created by an agreement recorded on October 26, 1963 in County Recorder’s Reel 245 Page 326, which binds property owners, heirs, and their successors-in-interest of lots A-D of the Record of Survey recorded in Volume 6 Surveys Pg. 194 (“second party”), lots 1-4 of Volume 6 Surveys Pg. 193 (“first party”), and “*property conveyed by Harry L. Rhodes to Robert V. Antle and Sue M. Antle, his wife by deed dated August 8, 1962, recorded August 15 1962 in Reel 85 at page 282...*” excepting certain portions

thereof (“third party”). The language of the agreement entitles each owner to *“equal use of the road constructed on the easement for right of way across property...”* and *“water for domestic purposes, landscaping, swimming pools, and such additional uses as may be determined by the ownership of a majority of said parcels”*.

The zoning ordinance does not define a “homeowner’s association”. In the general provisions of Title 21, section 21.06.001.B., when a term, word, or phrase is not specifically defined in the zoning ordinance it shall be defined: *“firstly, in the light of the other Chapters of the Monterey County Code; secondly, state law, particularly the State Planning Act;...”* Monterey County Code Title 18 defines “association” in section 18.18.030.B, as *“a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.”* This is the same definition as in State law, in the Davis Stirling Common Interest Development Act, which is codified in the California Civil Code, and which provides this definition in Civil Code section 4080.

Civil Code section 4100 defines a Common Interest Development as a community apartment project, a condominium project, a planned development, a condominium, a planned development, or a stock cooperative. The property is not part of a community apartment project, a condominium, or a stock cooperative. Civil Code section 4175 defines a “Planned Development” as a real property development with one or both of the following features: *“(a) Common area that is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area. (b) Common area and an association that maintains the common area with the power to levy assessments that may become a lien upon the separate interests in accordance with Article 2 (commencing with Section 5650) of Chapter 8.”*

Civil Code section 4095(a) defines a common area as *“the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing. (b) Notwithstanding subdivision (a), in a planned development described in subdivision (b) of Section 4175, the common area may consist of mutual or reciprocal easement rights appurtenant to the separate interests.”*

The agreement establishing the road and water system does not create such a common area as described in subsection 4095(a). Section 4095(b) indicates that the common area may consist of reciprocal easement rights appurtenant to the separate interests, but only in planned developments as that term is defined by section 4175(b). Section 4175(b) requires that the association have the power to levy assessments that become a lien upon such common area. Even assuming such a common area were to exist, nothing in the agreement appears to give the Alta Tierra Association this authority.

Therefore, the road and water system are not a separate “common area”, making the development not a “common interest development”, meaning that the Alta Tierra Association is not a “homeowner’s association” as defined by the County code or governing state law.

- i) Water Use. The property is subject to an agreement recorded on October 29, 1963, which established an “Alta Tierra Association” to manage the shared roadway that connects the property to Corral de Tierra and the shared water system that serves the property. The language of the agreement entitles each owner to “*equal use of the road constructed on the easement for right of way across property...*” and “*water for domestic purposes, landscaping, swimming pools, and such additional uses as may be determined by the ownership of a majority of said parcels*”. There is a substantive dispute regarding the applicant’s right to use the water source for the proposed use, as evidenced by the Alta Tierra Association’s objection resolution. The road and water agreement is a private agreement between respective property owners, and as such it would not be appropriate for the County to decide how this private agreement should be interpreted. Therefore Condition No. 9 is

incorporated, which requires the owner to demonstrate either that a Court, arbitrator, or other appropriate entity with the authority to review, approve, validate, or otherwise act on the proposed use has found that applicant has the right to use the water for the purposes set forth in this Resolution or that the Association has withdrawn its objections.

Evidence of such a right shall include, but not be limited to:

- A writing from the Alta Tierra Association withdrawing its objections;
- An agreement with the Alta Tierra Association reached via mediation;
- An award from an arbitrator affirming the right of the applicant to use the water for the proposed project; or
- A decision of a court with the authority to decide on the relevant issues affirming the right of the applicant to use the water for the proposed project.

The dispute regarding the nature of the proposed water use also creates a potential inconsistency with Title 21 section 21.64.280.D.2.g, the first sentence of which requires that transient use for remuneration not “*violate any applicable conditions, covenants, or other restrictions on real property.*” The water agreement is a covenant running with the land, and while the County is not making a finding on the nature of the water use, Condition No. 9 also ensures that the project would be consistent with this section by requiring that applicant provide appropriate evidence that the water use is allowed for the project.

- j) On-going Conformance. To ensure on-going conformance with County requirements for transient uses, Condition No. 4 is incorporated. Condition No. 4 requires applicant to execute and record a deed restriction specifying that applicant’s use shall follow the requirements in Title 21, section 21.64.280.
- k) Permit Expiration. As indicated here and in Condition No. 6, to provide adequate on-going review of approved transient uses of residential property, approval of this administrative permit is limited to three years from its issuance, to September 19, 2026. At least 30 days prior to the

expiration of the permit, the applicant must file an extension request in accordance with Title 21, section 21.70.120. If granted, this extension will ensure that the use complies with the standards of Title 21, whatever they may be at the time of the extension request; that the nature and character of the area has not changed to cause the transient use to be detrimental to the area; and provide an opportunity to review on-going compliance with the Administrative Permit's conditions of approval. The appropriate authority to consider this extension is the Chief of Planning.

- l) Access. The property has access through an unnamed private roadway which connects into Corral de Tierra Road. The road is subject to a private road maintenance agreement, commencing in Monterey County Recorder's Reel 245 Page 326. This agreement entitles each of the property owners of nine parcels, Parcels A-D as shown on the Record of Survey in Book 6 Surveys Page 194, Parcel 1-4 as shown on the Record of Survey in Book 6 Surveys page 193, and the property conveyed to Robert V. Antle and Sue M. Antle in the deed recorded August 15, 1962, in Reel 85 Page 282. The owners of each of the described parcels are entitled to *equal use of the road constructed on the easement for right of way across property of First Party and Second Party herein,*". The agreement requires that the purchasers of each parcel shall, at the time of purchase, deposit \$50 with the Alta Tierra Association, to be placed in a fund to be used if and when the maintenance of the roadway or water system is necessary. As the property has an existing road agreement, the project falls under Tier 4 of the proof of access requirements in Chapter 16.80 of the Monterey County Code, which indicates, "*the Appropriate Authority shall rely on the plain language of the private road agreement and private road maintenance agreement regarding rights of access and proportionate costs for repair and maintenance. Unless a project proposes a use that is clearly inconsistent with the plain language of the agreements, the Appropriate Authority may approve a project without applying conditions to the project outlined in this Chapter.*"
- m) Land Use Advisory Committee (LUAC) Review. The project is in the Toro LUAC review area; however, it was not referred to the LUAC as it does not fit within the Board of Supervisors adopted guidelines for projects requiring referral to a LUAC.
- n) Staff conducted a site inspection on March 13, 2023, to ensure the project was in conformance to the plans and regulations referenced above.
- o) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN220054.

**3. FINDING: SITE SUITABILITY** – The site is physically suitable for the proposed development and/or use.

**EVIDENCE:** a) The project has been reviewed for site suitability by the following departments and agencies: HCD-Planning, HCD-Engineering Services, HCD-Environmental Services, Environmental Health Bureau, and Monterey County Regional Fire Protection District. County staff



reviewed the application materials and plans to verify that the project on the subject site conforms to the applicable plans and regulations, and there has been no indication from these departments/agencies that the site is not suitable for the development. Conditions recommended have been incorporated.

- b) The site is a developed residential property which contains an existing 2,500 square foot single-family residence and is served by existing infrastructure, as discussed in subsequent Finding No. 3. There are no physical constraints on the site that would render it unsuitable for the proposed use.
- c) Staff conducted a site visit on March 13, 2023, and did not identify any constraints indicating that the site was not suitable for the proposed use.
- d) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN220054.

**4. FINDING: HEALTH AND SAFETY** – The establishment, maintenance, or operation of the project 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 project was reviewed by HCD-Planning, HCD-Engineering Services, HCD-Environmental Services, Environmental Health Bureau (EHB), and the Monterey County Regional Fire Protection District. These agencies have recommended conditions to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
  - b) Necessary infrastructure is in place to serve the use, as discussed in subsequent Evidence “c” through “f”.
  - c) The property has road access through an existing private driveway that connects into a 60-foot-wide private road easement. No alterations to this driveway or access are required for the use.
  - d) The residence is connected to an existing Onsite Wastewater Treatment System (OWTS). A performance evaluation on the OWTS was completed by Peter Dew in October 2022. Mr. Dew which concluded that the septic tank and dispersal system are currently functioning properly.
  - e) Solid waste (garbage) collection service is and will continue to be provided by Waste Management.
  - f) The property receives potable water from the Alta Tierra mutual water system (System ID No. 2701412). The applicant submitted water quality analyses for Nitrate and Bacteria which were reviewed by EHB and adhere to current standards. The system, however, does not currently meet the primary drinking water standards for arsenic. A sample was collected on November 3, 2021, with a resultant concentration of 13 ug/L (micrograms per liter), exceeding the maximum contaminant level of 10 ug/L. Health concerns associated with arsenic are from long term exposure, and EHB indicated that no special precautions are necessary

for guests who have access to or use drinking water during a vacation rental stay. However, Condition No. 8 has been incorporated which requires the applicant to disclose this water quality exceedance to guests/tenants.

- g) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN220054.

- 5. FINDING:** **VIOLATIONS** – The subject property is not in compliance with all rules and regulations pertaining to zoning, however, granting of the permit will be the administrative remedy to cure said violations.
- EVIDENCE:**
- a) Staff reviewed County of Monterey HCD-Planning and HCD-Building Services records and did not identify any violations existing on subject property.
  - b) Correspondence was received from the public indicating the use had commenced prior to securing a permit. The applicant verified this at a site visit on March 13, 2023. Commencement of the use without first securing an administrative permit violation the zoning ordinance. However, approval of the permit resolves this, as it effectively acts as an administrative remedy for the violation.
  - c) The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN220054.
- 6. FINDING:** **CEQA (Exempt)** – The project qualifies for a Class 1 categorical exemption pursuant to California Environmental Quality Act (CEQA) Guidelines section 15301. Staff has found no unusual circumstances for the proposed project.
- EVIDENCE:**
- a) CEQA Guidelines section 15301 categorically exempts the leasing of existing private structures, involving negligible or no expansion of existing or former use.
  - b) The project proposes transient occupancy of an existing residence for remuneration, which would allow leasing of the residential property for shorter stays (between 7-30 days). The project would expand the residence or allow additional occupancy beyond what would be allowed for the existing residence. Therefore, the project fits the criteria of the exemption.
  - c) None of the exceptions under CEQA Guidelines section 15300.2 apply to this project, as discussed in subsequent Evidence “d” through “i”.
  - d) Class 1 exemptions are not qualified by their location.
  - e) The County’s regulatory process of Administrative Permits for transient occupancy for remuneration allows the County to regulate such uses in a way that would prevent adverse cumulative impacts to the surrounding environment, consistent with the Finding and Declaration in Title 21, section 21.64.280.A.6. The project is consistent with the criteria of Title 21, section 21.64.280, and therefore would not contribute to a cumulative effect. In the Toro Area Plan There are currently no permits to operate short term rentals and 33 advertised operating short term rentals.

- f) The project would not damage scenic resources within view of a State Scenic Highway. The nearest designated State Scenic Highway is Highway 68, which is approximately 2.3 miles north of the property. However, the property is not visible from Highway 68 due to distance, topography, intervening vegetation, and structures. Moreover, the project does not propose any physical changes that would damage scenic resources: no construction, exterior alterations to structures, land alteration, or vegetation (or tree) removal proposed.
- g) The project is not located on a hazardous waste site included on any list compiled pursuant to Government Code section 65962.5.
- h) The project would not damage any historical resources.
- i) Staff conducted a site inspection on March 13, 2023, and did not identify any potential environmental impacts.
- j) See supporting Finding Nos. 1 and 2. The application, project plans, and related support materials submitted by the project applicant to County of Monterey HCD-Planning found in Project File PLN220054.

7. **FINDING:** **APPEAL** – Upon consideration of the documentary evidence, the staff report, the oral and written testimony, and all other evidence in the record, the Board responds as follows to the Appellant’s contentions:

- EVIDENCE:**
- a) In accordance with Title 21, section 21.80.040.D, the Board of Supervisors is the appropriate authority to consider appeals from discretionary decisions of the Planning Commission.
  - b) On June 16, 2023, Geert Rosseel timely appealed the Planning Commission’s decision. Mr. Rosseel contends both that the findings or decision is not supported by the evidence and that the decision was contrary to law, primarily because the Alta Tierra Association is not a homeowner’s association under the Davis Sterling Act.
  - c) Applicant’s appeal arguments begin on page 4 of a letter from Melissa H.D. Balough of Scale LLP representing the applicant dated June 16, 2023. Through page 5 and the sentence ending on page 6, Ms. Balough argues that the Alta Tierra Association should not be considered a homeowner’s association. While the underlying argument differs, staff ultimately agree with this conclusion, as detailed in Finding No. 2 evidence “h”.
  - d) In page 6, paragraphs 1 through 3, applicant all claims that the Alta Tierra Association has not complied with various provisions of the California Civil Code, including disclosures, filing statements of information on the California Secretary of State’s website, and distributing annual budget reports. None of these arguments are relevant to this appeal, and hence, none were considered.
  - e) Page 6 paragraph 4 states *“The Alta Tierra Association is not, and has not acted as, a homeowners association. Moreover, even if it were, this resolution objecting to the Appellants’ application is far outside of the scope of its powers. As I noted above, while the Planning Commission made its intent to “stay out of it” clear, the County is not “staying out of it” by putting its imprimatur on the actions of an out-of-control group of neighbors, manipulating the provisions of the code to their benefit. The Agreement provides the Alta Tierra Association with a very limited purpose as noted above. It cannot repurpose itself simply*

*for the purpose of killing a neighbor's short-term rental permit application. Indeed, by making this finding that is contrary to law and not grounded in the evidence, the County is calling into question the property rights of all of its constituents who may live in a neighborhood with an agreement like the Agreement here, who do not know they may be subject to the whims of a neighborhood group who need only lobby the appropriate people to exert unlawful authority with the blessing of the County.*" The Alta Tierra association is not a homeowner's association. If a property is subject to a homeowner's association that objects to the issuance of a transient use for remuneration permit, the County cannot approve a permit for transient use until that objection has been addressed by an appropriate decisionmaker, such as a court, mediator, or arbitrator. Here, the property is not subject to a homeowner's association, so this provision does not apply.

- f) Page 6 paragraph 5 states *"As a homeowners association or not, the Association owes its members, which includes Appellants, certain fiduciary duties. This includes not acting in bad faith. The resolution objecting to the permit application is fully outside the scope of the Association's authority, and the Association passed it anyway. This is not an honest mistake made by the Association. The Association is operating with "furtive design or ill will." They should not be rewarded with getting exactly what they want. Their failure to properly inform their members of what they consider their scope of power, their failure to make the lawful disclosures to new purchasers, and their failure to conform to any of the laws that govern common interest developments and associations, must prevent the County from acceding to their wishes here.*" The Board has concluded that the Association is not a "homeowner's association" within the meaning of Davis Sterling. Additionally matters of the Association's corporate governance are, and would be irrelevant to the County's decision on this permit.
- g) Page 7 paragraph 1 states that the short-term rental permit terms have been "arbitrarily and capriciously shortened", from in perpetuity, to seven years, to three years. The County has consistently applied a three-year time limitation to this type of project recently. Title 21, section 21.70.070.D allows the application of conditions of approval the appropriate authority "deems necessary to secure the purposes of this Title," and specifically lists monitoring and time limits as potential conditions. As short-term rentals continue to be a topic of major public controversy in the County, a time limit has become a standard recommended condition to assure compliance with conditions and allow ongoing review of the land use. The first recent short-term rental where a time limitation was applied was PLN220134 "Loomis" on March 8, 2023. Staff initially recommended a seven-year time limit. The Planning Commission shortened the duration of that time limit to three years at the hearing. Since then, a three-year period has been applied to all transient use for remuneration permits, in keeping with the Planning Commission's decision on that project. The applicant's agent correctly point out that, on May 10, 2023, PLN210352 "Whisler" was

approved with a seven-year time limit condition. However, the context of PLN210352 is different. That property is zoned Visitor Serving Commercial, with a Design Control and Special Treatment zoning overlay, within the Coastal Zone, or “VSC/D-SpTr (CZ)”. With a visitor serving designation, many of the concerns regarding on-going enforcement of conditions required to ensure compatibility with the surrounding residential neighborhood are less pronounced.

- h) Page 7, paragraph 2 summarized the points made by the appeal. There are no new arguments in this paragraph not addressed above.

**DECISION**

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

1. Grant an Appeal by Geert Rosseel challenging the Planning Commission’s denial of an Administrative Permit;
2. Find that the project, allowing transient occupancy for remuneration at an existing residential property, qualifies for a Class 1 categorical exemption pursuant to CEQA Guidelines section 15301, and that none of the exceptions in section 15300.2 apply; and
3. Approve an Administrative Permit to allow transient use of a residential property for remuneration.

All of which are in general conformance with the attached plans and subject to the attached conditions, all being attached hereto and incorporated herein by reference.

**PASSED AND ADOPTED** this 19th day of September, 2023, upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Valerie Ralph, Clerk of the Board of Supervisors

COPY OF THIS DECISION MAILED TO APPLICANT ON DATE

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.

**NOTES**

1. Any construction would require a building permit and you must comply Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Planning Commission in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from County of Monterey HCD-Planning and HCD-Building Services Department office in Salinas.

2. This permit will expire 3 years from the date of issuance in accordance with this resolution and the attached conditions of approval, unless a request for an extension is approved.

Form Rev. 1-27-2021

# County of Monterey HCD Planning

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

PLN220054

### 1. PD001 - SPECIFIC USES ONLY

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** This Administrative permit (PLN220054) allows transient use of a residential property for remuneration. The property is located at 282 Corral De Tierra (Assessor's Parcel Number 416-351-005-000), Toro Area Plan. 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:** Planning

**Condition/Mitigation Monitoring Measure:** The applicant shall record a Permit Approval Notice. This notice shall state:  
"An Administrative Permit (Resolution Number \_\_\_\_\_) was approved by the Board of Supervisors for Assessor's Parcel Number 416-351-005-000 on September 19, 2023. The permit was granted subject to 9 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. PD006(A) - CONDITION COMPLIANCE FEE

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** The Owner/Applicant shall pay the Condition Compliance fee, as set forth in the fee schedule adopted by the Board of Supervisors, for the staff time required to satisfy conditions of approval. The fee in effect at the time of payment shall be paid prior to clearing any conditions of approval.

**Compliance or Monitoring Action to be Performed:** Prior to clearance of conditions, the Owner/Applicant shall pay the Condition Compliance fee, as set forth in the fee schedule adopted by the Board of Supervisors.

### 4. PD017 - DEED RESTRICTION-USE

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** Prior to commencement of the use, the applicant shall record a deed restriction as a condition of project approval stating the regulations applicable to the requested transient use as specified in Section 21.64.280 of Monterey County Code, Title 21, Including, but not limited to:

- 1) The minimum rental period for all transient use of residential property shall be greater than seven consecutive calendar days up to the maximum of 30 days;
- 2) The maximum number of allowed overnight guests shall not exceed the limit of 10;
- 3) No advertising on site;
- 4) An owner/applicant who does not reside within a five-mile radius of the residence shall designate a person located within a twenty-five (25) mile radius of the rental unit, as a local contact person who will be available twenty -four (24) hours a day;
- 5) A copy of any administrative permit shall be furnished by the Chief of Planning to the Treasurer of the County of Monterey and the Sheriff of the County of Monterey;
- 6) The administrative permit holder and/or registrant shall collect and remit to the Treasurer of the County of Monterey, the transient occupancy tax for each rental unit;
- 7) The property shall only be rented for residential-related use; No corporate or private events; and
- 8) Compliance with the requirements of this Section shall be considered conditions of approval, the violation of which may result in a revocation of any administrative permit by the Chief of Planning. (HCD - Planning)

**Compliance or Monitoring Action to be Performed:** Prior to commencement of the use, the Owner/Applicant shall submit the signed and notarized document to the Director of HCD-Planning for review and signature by the County.

Prior to occupancy or commencement of use, the Owner/Applicant shall submit proof of recordation of the document to HCD-Planning.



## 5. PDSP001 - TRANSIENT OCCUPANCY TAX (TOT) REGISTRATION (NON-STANDARD)

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** Pursuant to Monterey County Code Chapter 5.40.070- Registration-Certification: "Within thirty (30) days after commencing business, each operator of any establishment renting occupancy to transients shall register said establishment with the tax collector and obtain the Tax Collector occupancy registration certificate, to be at all time posted in a conspicuous place on the premises."

Refer to County's website for Transient Occupancy Tax (TOT) FAQ's, forms, and ordinance: [www.co.monterey.ca.us/taxcollector](http://www.co.monterey.ca.us/taxcollector). (HCD-PLANNING)

**Compliance or Monitoring Action to be Performed:** Within 30 days of commencement of use, the Owner/Applicant shall provide proof that the property and transient use has been registered with the Monterey County Tax Collector.

## 6. PDSP001 - PERMIT LIMITATION OF THE TRANSIENT USE OF A RESIDENTIAL PROPERTY (NON-STANDARD)

**Responsible Department:** Planning

**Condition/Mitigation Monitoring Measure:** Approval of this Administrative Permit is limited to 3 years to provide adequate on-going review of the approved transient use of the residential property for remuneration.

Prior to its expiration, the owner/applicant shall file an extension in accordance with Title 21 Section 21.70.120. The appropriate authority to consider this extension shall be the Chief of Planning. This subsequent review will ensure: 1) the use continues to meet the standards of Title 21; 2) that the nature and character of the area has not changed so to cause the transient use to be detrimental to the area; and 3) an opportunity for Planning staff's review for ongoing compliance the Administrative Permit's conditions of approval.

**Compliance or Monitoring Action to be Performed:** The applicant shall commence and operate the authorized use to the satisfaction of the HCD-Chief of Planning. Any request for extension must be received by HCD-Planning at least 30 days prior to the expiration date.

## 7. 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

## 8. EHSP01 – WATER QUALITY DISCLOSURE (Non-Standard)

**Responsible Department:** Health Department

**Condition/Mitigation Monitoring Measure:** The subject property currently receives water service from Alta Tierra WA (System ID No. 2701412). The water system does not currently meet the primary drinking water standard for Arsenic.

Health concerns associated with Arsenic are from long term exposure. No special precautions are necessary for guests who will have access to, use or drink the water during a transient use, such as vacation rental stay. However, the EHB is requiring disclosure of the water quality exceedance in both the visitor welcome book/ guidebook and lease/ rental agreements to inform future guests of the water quality exceedance.

**Compliance or Monitoring Action to be Performed:** Prior to commencement of operations, the applicant shall submit a template of the lease/ rental agreement and welcome book/visitor guidebook to EHB. These documents shall include language consistent with the following:

This residence receives domestic water from Alta Tierra Water Association. This water system does not currently provide water that meets the drinking water standard for Arsenic. Health concerns associated with the low levels of Arsenic in drinking water are limited to long term exposure (over many years), therefore, no special precautions are necessary for vacation rental guests.

Treatment devices that may currently be installed in the home are not regulated by the Monterey County Health Department, Environmental Health Bureau, therefore no guarantees can be made regarding the performance or maintenance of such systems.

**9. PDSP002 - PROOF OF RIGHTS TO WATER FOR PROPOSED PROJECT**

**Responsible Department:** Planning

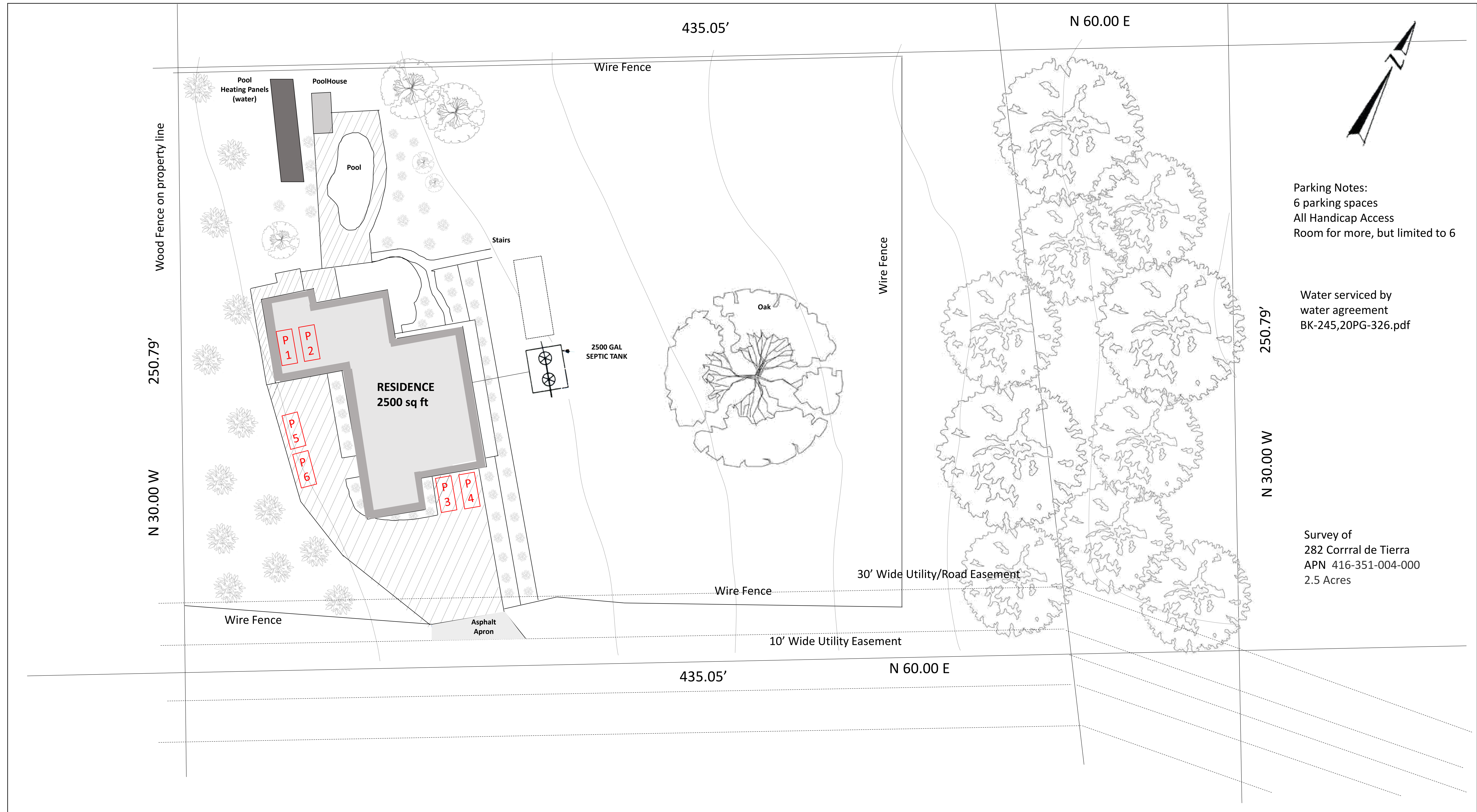
**Condition/Mitigation Monitoring Measure:** There is a substantive dispute regarding the applicant's right to use the water source for the proposed use, therefore prior to commencement of the use the owner shall demonstrate either that a Court, arbitrator, or other appropriate entity with the authority to review, approve, validate, or otherwise act on the proposed use has found that applicant has the right to use the water for the purposes set forth in this Resolution or that the Association has withdrawn its objections. Evidence of such a right shall include, but not be limited to:

- A writing from the Alta Tierra Association withdrawing its objections;
- An agreement with the Alta Tierra Association reached via mediation;
- An award from an arbitrator affirming the right of the applicant to use the water for the proposed project; or
- A decision of a court with the authority to decide on the relevant issues affirming the right of the applicant to use the water for the proposed project.

**Compliance or Monitoring Action to be Performed:** Prior to commencement of the use, the applicant shall provide evidence that they possess the right to use the shared water system subject to an agreement recorded on October 29, 1963 for the proposed use. Evidence of such a right shall include, but not be limited to:

- A writing from the Alta Tierra Association withdrawing its objections;
- An agreement with the Alta Tierra Association reached via mediation;
- An award from an arbitrator affirming the right of the applicant to use the water for the proposed project; or
- A decision of a court with the authority to decide on the relevant issues affirming the right of the applicant to use the water for the proposed project.

# 282 Corral de Tierra, Salinas, CA 93908 APN 416-351-004-000



Parking Notes:  
6 parking spaces  
All Handicap Access  
Room for more, but limited to 6

Water serviced by  
water agreement  
BK-245,20PG-326.pdf

Survey of  
282 Corral de Tierra  
APN 416-351-004-000  
2.5 Acres

**282 Corral de Tierra,**

**Salinas, CA 93908**

**PLN220054**

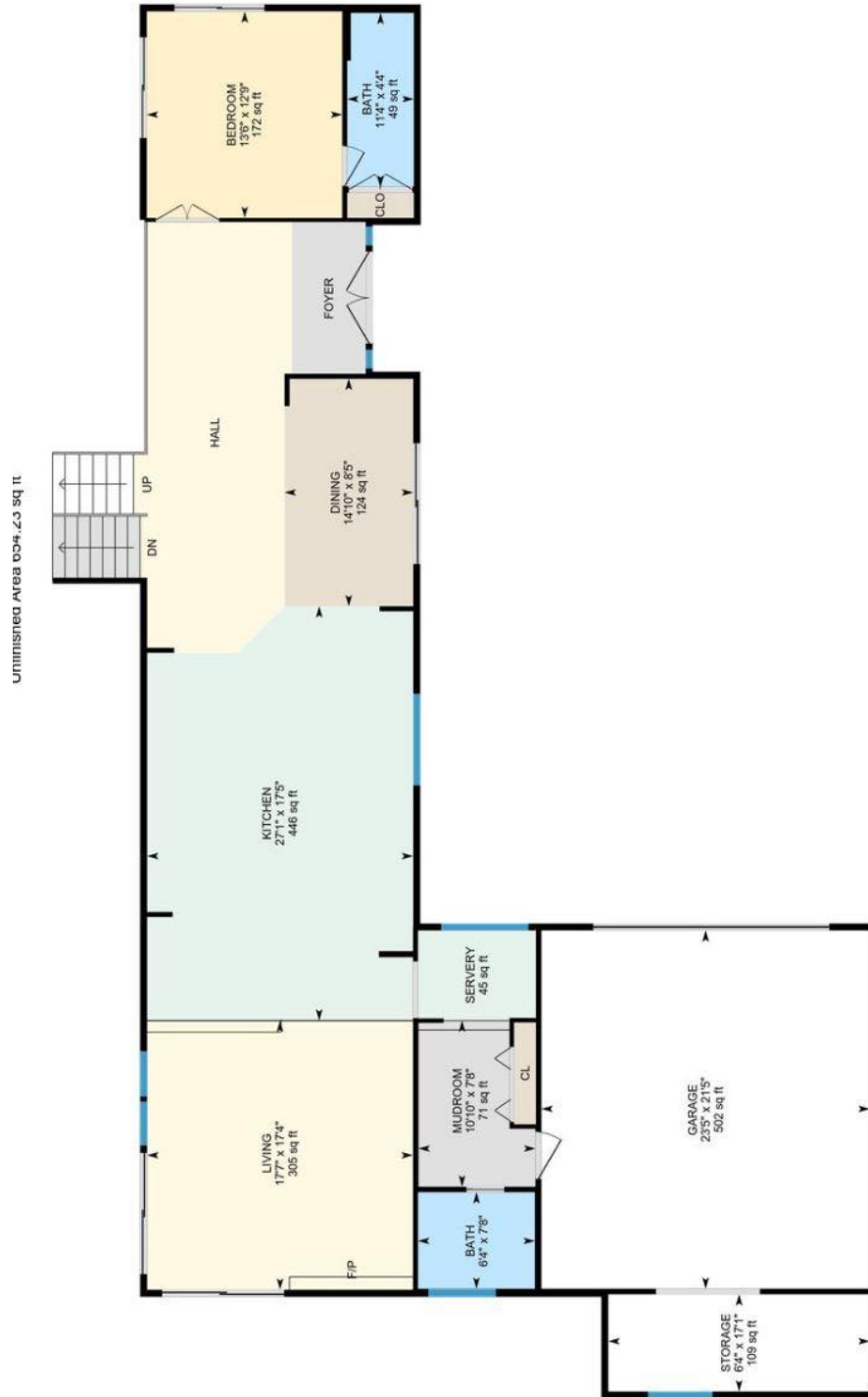
**FloorPlans**

## Overview

The property is a 2.5 level house. The floorplans are included below. First, to scale, and further, in detail



**Main Level:**



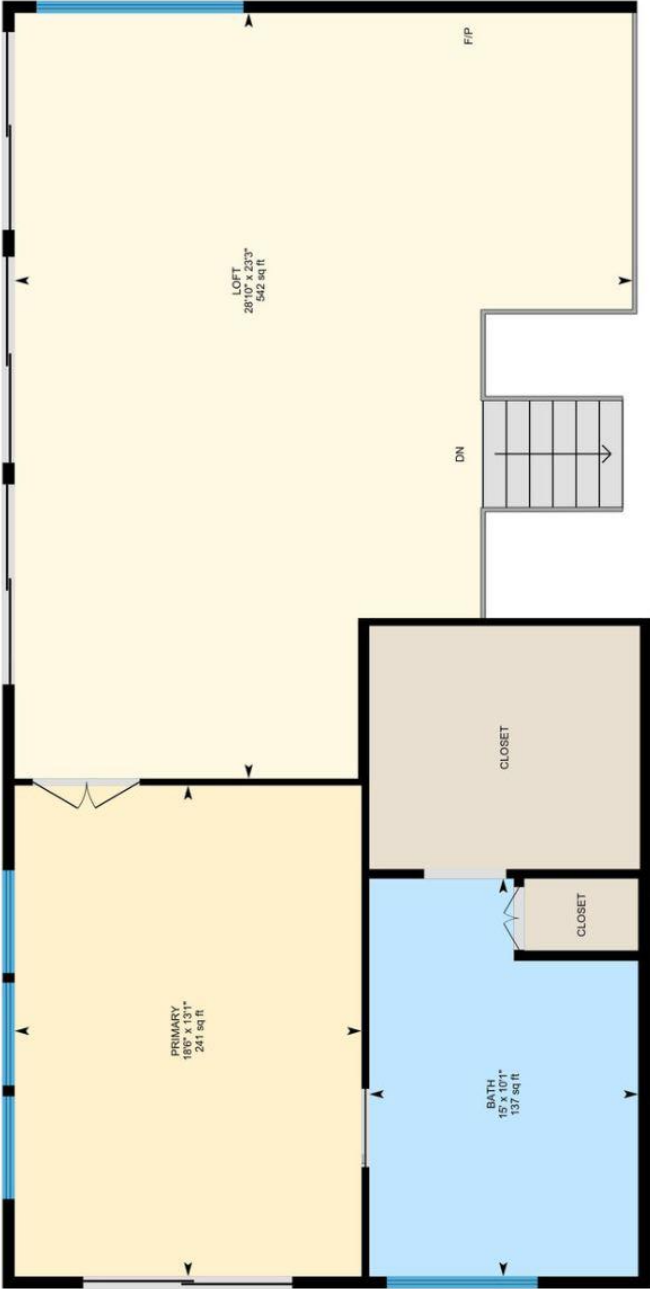


**Lower Level:**



C 4 0

**Upper Level:**



**282 Corral de Tierra,  
Salinas, CA 93908  
PLN220054  
Elevation Plans**

**View from West**



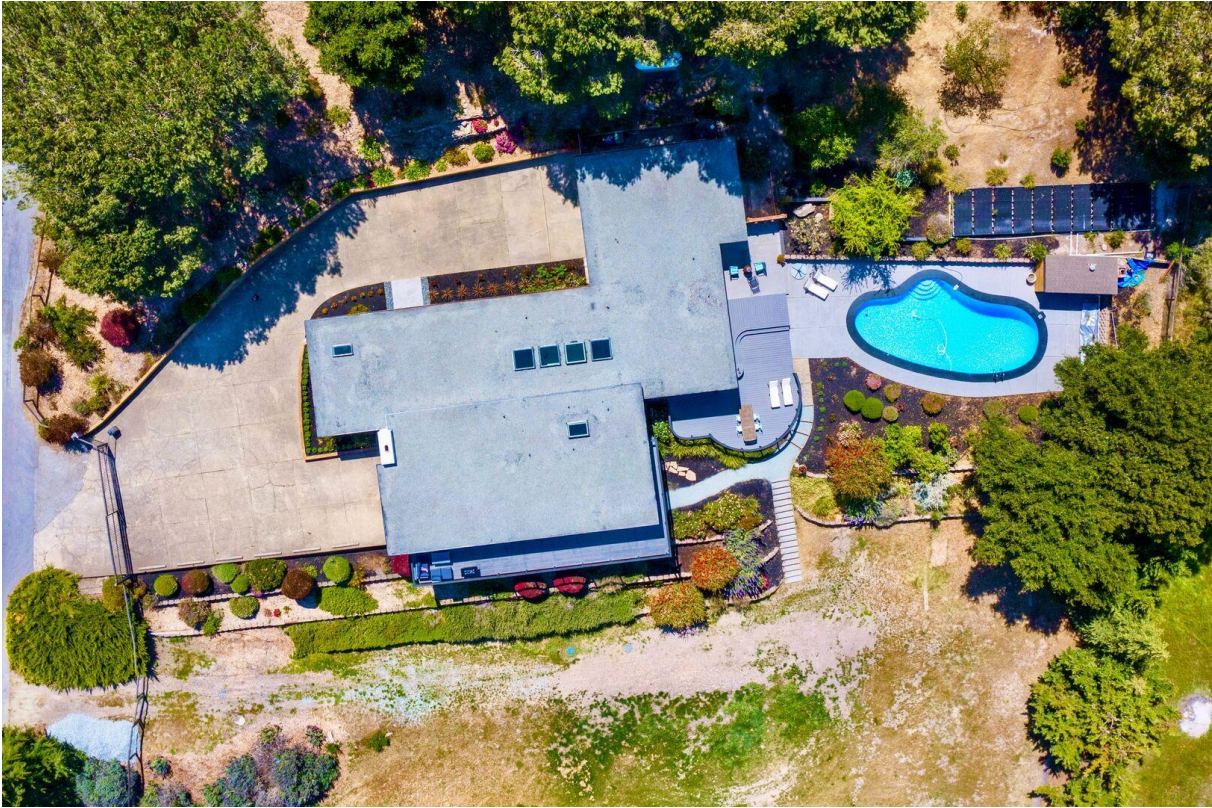
**View from North**



View from South-East



**View from Top**



**282 Corral de Tierra,  
Salinas 93908  
PLN220054**

**Operations Plan – V2**



## **Occupancy and Rental Periods:**

### **Maximum Occupancy:**

There are 6 Bedrooms in the house and 5.5 baths.

The Maximum Occupancy shall be 10 people, including both adults and children ( no more than 10 people in total, ever. This may consist of a combination of one and or two persons per bedroom/guest cottage depending on the guest's preferences however instructions to guests will indicate the maximum.

TOTAL MAXIMUM OCCUPANTS: 10 persons, including adults and children.

### **Owner Occupancy:**

During a rental period, the owners will not be staying at the property. During a rental, the property available for guest use. (except for some owner secured cabinets)

### **Rental Period:**

Guest rental periods shall be no less than a 7-night stay and limited to no greater than a 30-night stay.

### **Rental Weeks:**

There is no stated upper limit on the number of rental weeks, but the expectation is that the property will not be rented out for more than 26 weeks of the year, due to the owners' desire to use the property for personal use.

### **Signage:**

Signage advertising house as a Short-Term-Rental shall not be permitted at any time onsite.

### **Advertising:**

The property will be advertised on professional rental-property sites such as AirBnB and VRBO.

## **Vacation Rental Rules / Guest Instructions:**

***All Vacation Rental Rules are documented in the "282 Corral de Tierra Guest Guide" which is left prominently visible on the kitchen counter.***

### **Access Instructions:**

Guests shall be provided a unique digital combination on the day of arrival. For guest security, this unique combination is changed for every new arrival.

### **Parking Instructions:**

Guest parking is only allowed on-property. No parking on the street is allowed. The property is fully fenced and gated and no parking outside the gated area is allowed. There is ample parking space on the concrete entry/drive-way. There is a garage structure on the property and one inside parking bay is available for the guests to use. No more than 6 vehicles are allowed.

Should guest(s) park a larger than normal vehicle, guest shall reduce the total number of cars so as to not block access by emergency vehicles. Parking and/or blocking the common access road/driveway are not permitted and violators will be subject cars being towed at guest's expense

### **Noise Restrictions:**

Guests shall be made aware of, and be responsible for knowing and following the Monterey County noise ordinance Code 10.60 which reads as follows; "It is prohibited within the unincorporated area of the County of Monterey to make, assist in making, allow, continue, create, or cause to be made any loud and unreasonable sound any day of the week from 10:00 p.m. to 7:00 a.m. the following morning." Surrounding neighbors have both Manuel's and the owners cell phone numbers and have been asked to call to report any excessive noise issues. Any such calls shall be taken seriously with actions taken immediately to resolve rectify the occurrence.

Moreover, **internet connected noise detection systems** are placed within the property and on the outside deck. The noise-level is monitored 24 hours/day and the property manager is alerted immediately when noise-levels are excessive.

Below is a picture of the installed Netatmo noise detection system



**Parties and Events:**

No parties and/or special events are allowed on this property.

**Illegal Activities:**

Illegal activities (such as fireworks) are forbidden on this property. Guests shall be required to sign an agreement that (1) they are aware of the local, state and federal laws and regulations governing this property and (2) they will abide with any such law and regulation.

**Garbage Disposal:**

Guests shall be required to separate garbage waste from recycling waste and properly dispose of the waste in the designated bins.

## On-site Parking Plan

There is ample room for parking within the gated property. **No more than 6 cars are allowed.** There are two indoor parking spots in the garage. The picture below shows how, conceptually, 6 cars can be parked without using the location in the garage. Only the left side of the gate (looking in from the outside) is electrically controlled.

**No parking is allowed on the street, or outside the gated property.**



## **Property Manager and Maintenance Teams**

### **Local Property Manager**

Manuel, our local property manager representative, resides approximately 15 miles from property: Should the guests have any questions, or encounter any problems during their stay, Manuel will be the first point of contact day or night. In the event he cannot be reached, the owner will be your back-up point of contact. Manuel will also be the point person responding should a neighbor call with any issues especially pertaining to noise or improperly parked cars.

Manuel Martinez

2722 4<sup>th</sup> Avenue, Marina. CA 93933

(831) 998- 3057 (available 24 hours a day)

Owners reside only about 80 miles North:

Geert and Tracy Rosseel-Powell

9110 La Honda Road

La Honda, CA 94020

(408) 857-1574 cell (available 24 hours a day)

(650) 722-1383 cell (available 24 hours a day)

### **Cleaning Team**

A professional cleaning team will clean and disinfect the property between all guests and owners stays at this property.

### **Landscaping**

A professional landscaping team is maintaining the landscaping across the whole property. This includes plant and vegetation maintenance, and implementation of Fire Safety Rules as required by the Monterey/Salinas Fire Departments.

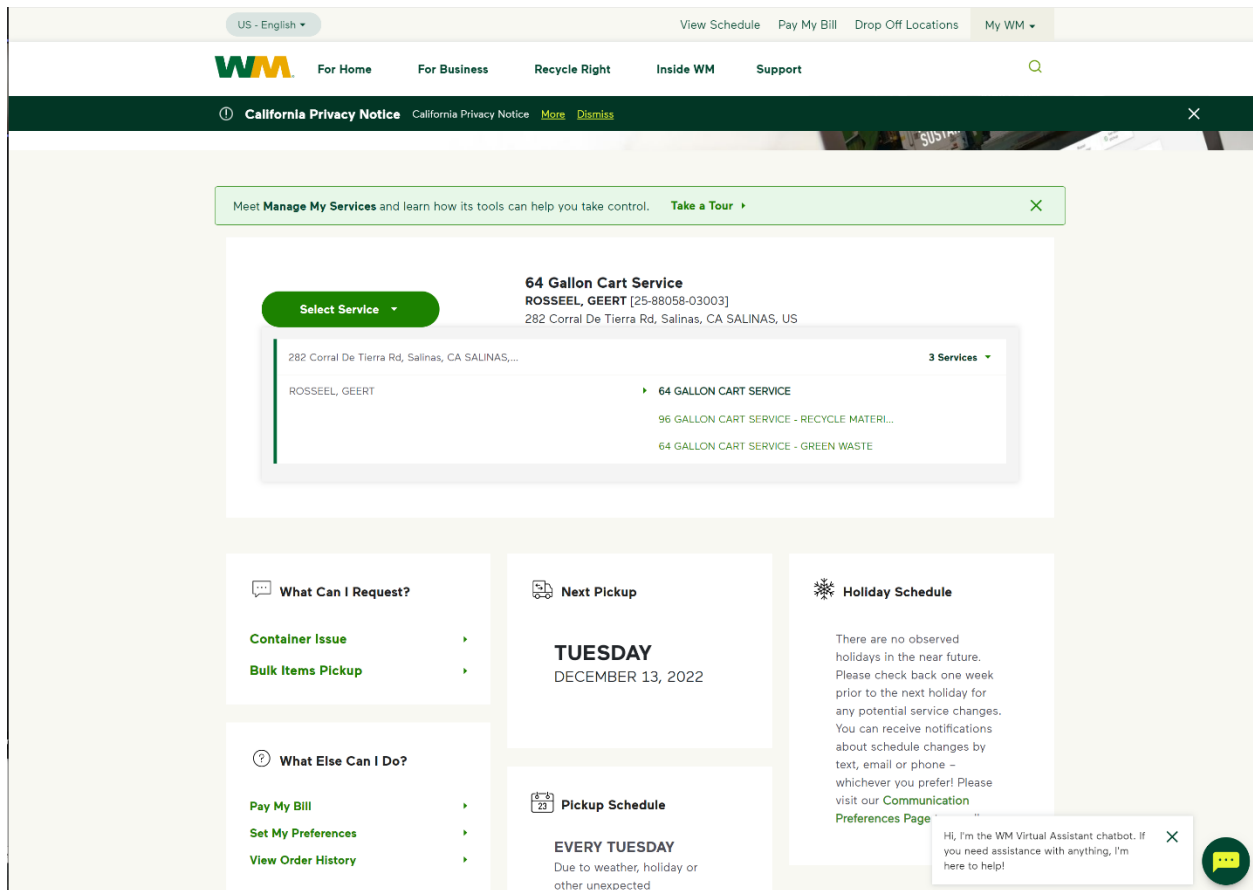
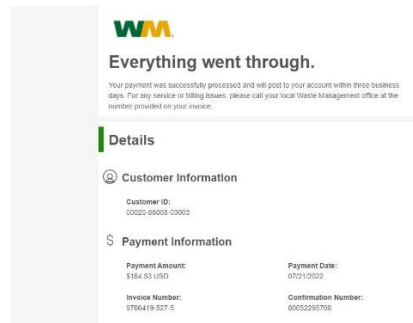
### **Pool Maintenance**

The property manager company will be managing the pool maintenance. The pool will be serviced weekly and between all guests and owner stays at this property.

## Waste Disposal

Garbage disposal is every Tuesday morning and serviced by “Waste Management”. If additional services are needed, the Property Management Company will be arranging for extra pick-ups.

The agreement specifies service at 64 gallon Garbage and 96 gallon Recyclables.



## **Safety Rules and Emergency Information**

***All Safety and Emergency information is documented in the “282 Corral de Tierra Guest Guide” which is left prominently visible on the kitchen counter.***

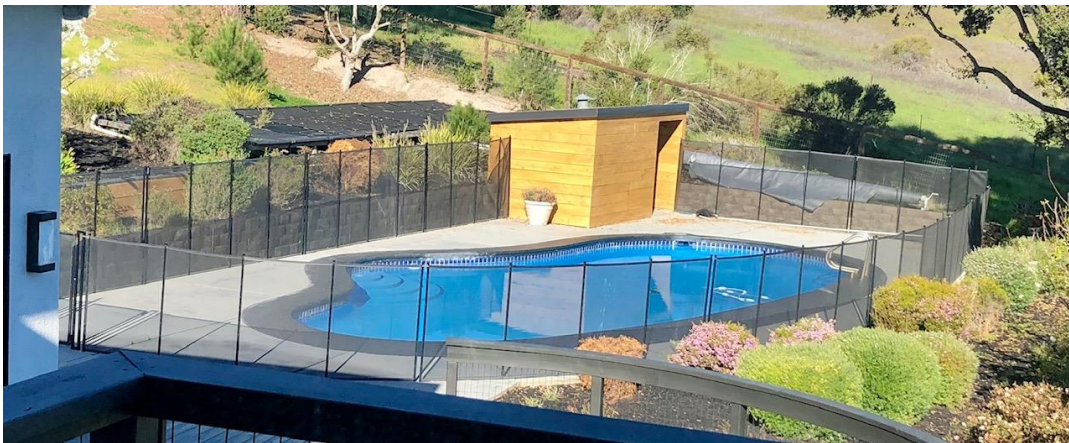
This Section covers:

- Pool Safety Information
- Water Shut-off valves
- Outside Fire Extinguishers
- Inside Fire/Carbon Monoxide alarms, breaker boxes and fire extinguishers
- Emergency contacts

## Pool Safety Information

The pool has several levels of safety:

1. The pool is completely fenced with a child safety fence gate. When a rental party will include children, the fence will be installed. Instructions are left for the guests not to remove the fence. Picture of fenced pool:



2. A PoolGuard is available. The PoolGuard is “NSF Certified to the ASTM Safety Specification F 2208”. The PoolGuard is left in a visible location in the main kitchen area, with an instruction manual. Instructions are also left in the “282 Corral de Tierra Guest Guide”. The PoolGuard is connected to an indoor remote receiver. When the pool is disturbed, an alarm sounds, both at the installed PoolGuard at the pool and from the indoor receiver. The indoor receiver alarm is audible throughout the house.

Picture of installed PoolGuard



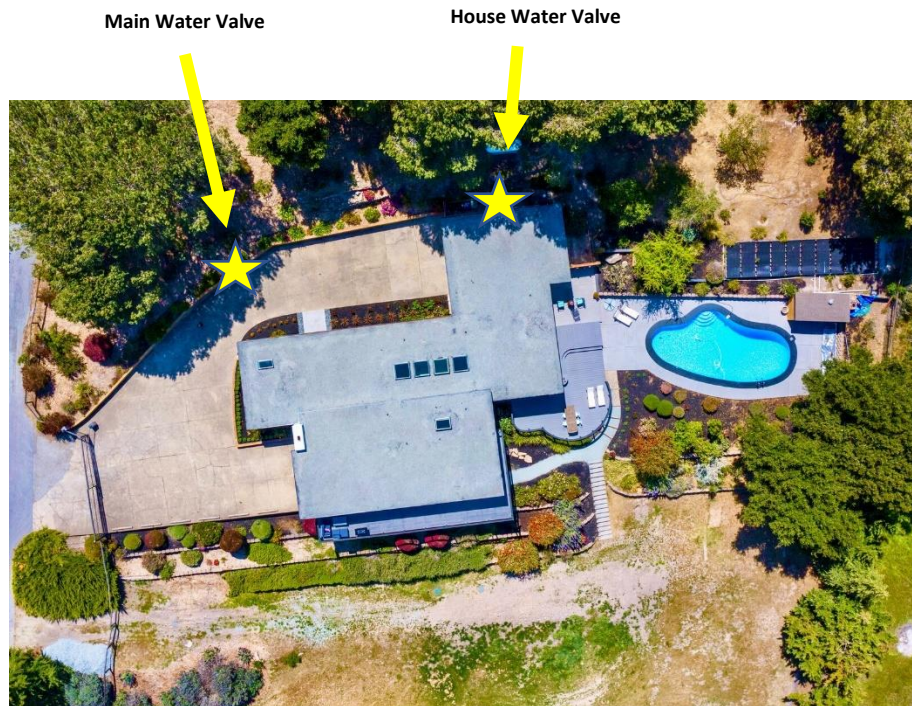
3. The property itself is completely fenced and gated.



## Water Shut-off Valves

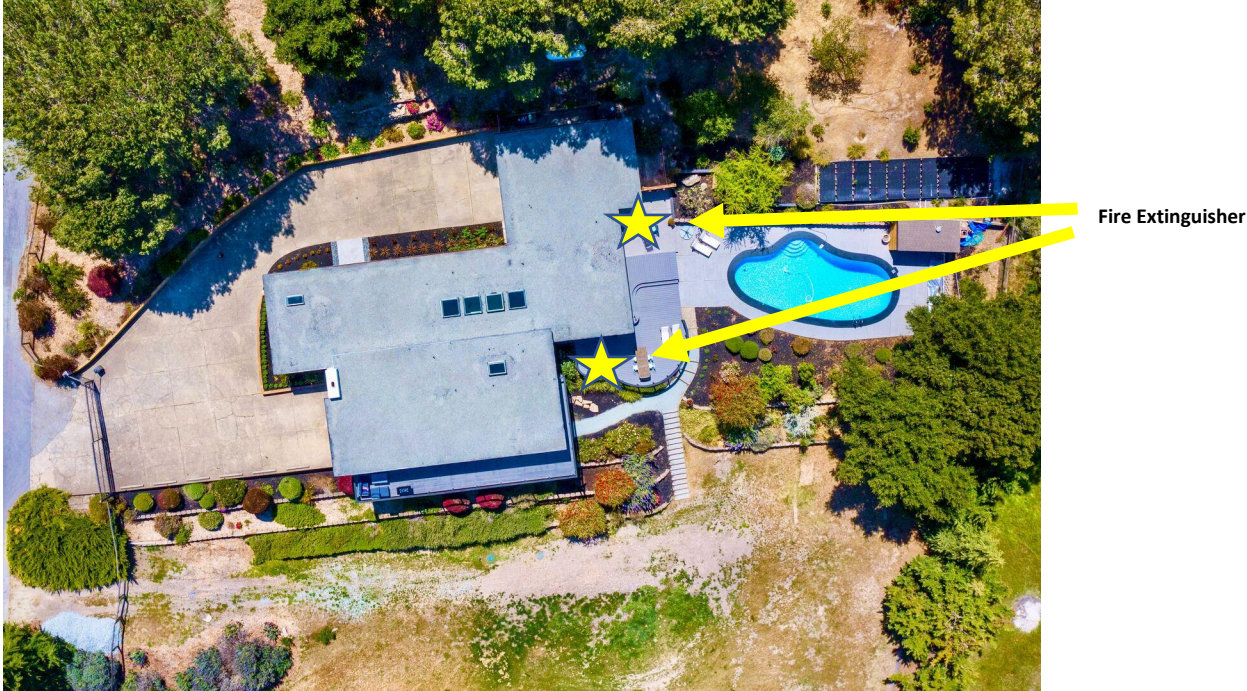
There are several shut-off valves. The main water valve is near the entrance and easily accessible. This controls all water to the property.

An additional valve is located on the side of the house. This controls the water into the house. This valve is easily accessible.



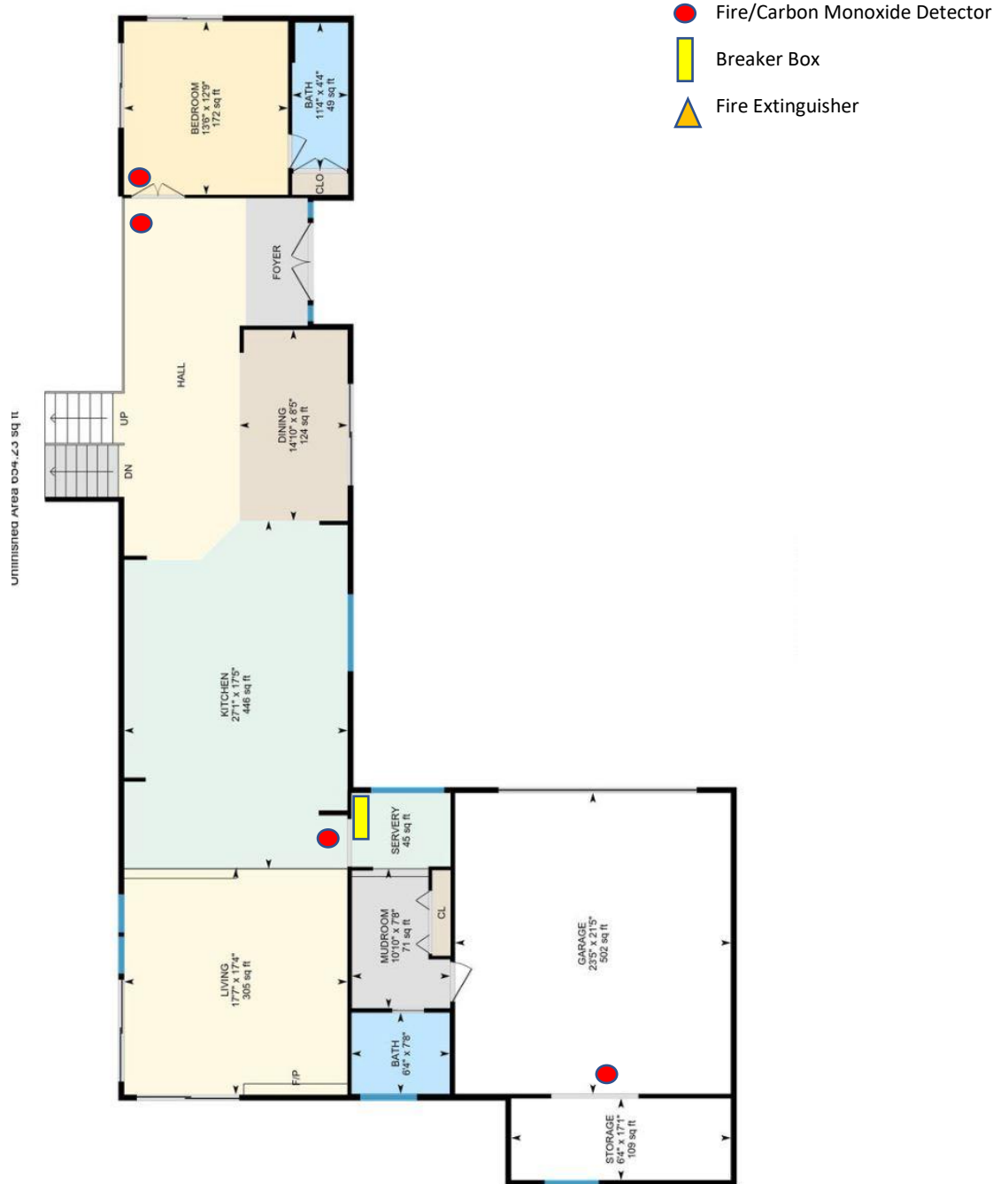
**Outside Fire Extinguishers**

Two fire extinguishers are located near the outside deck at the pool area. The locations are identified in the picture below. The Fire extinguishers are standard-issue certified fire extinguishers with pressure detection valves.

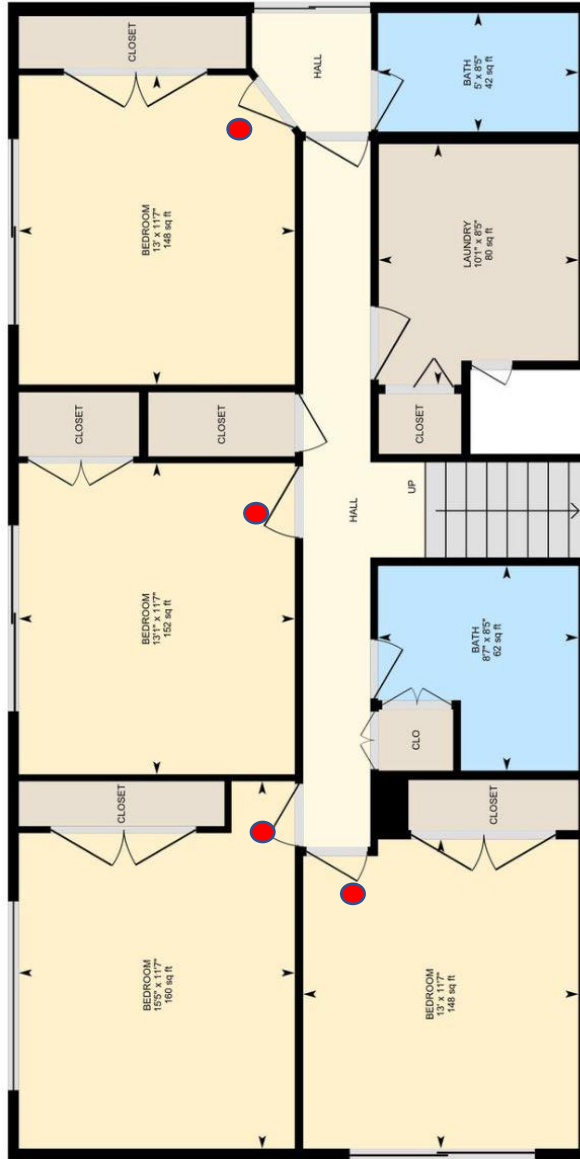


# Fire Alarms and Breaker Box Locations:

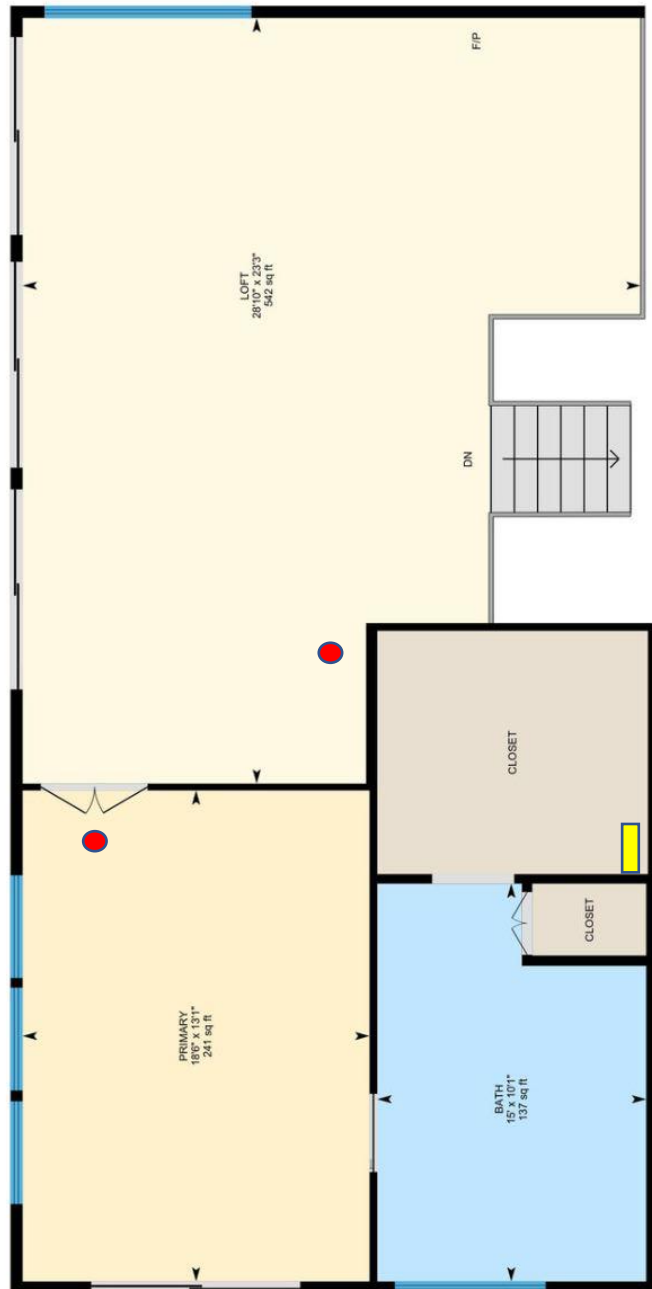
## Upper Level:



**Lower Level:**



Upper Level:



## **Emergency Contacts**

### **Property Manager**

Manuel Martinez

Manuel Martinez

2722 4<sup>th</sup> Avenue, Marina. CA 93933

(831) 998- 3057 (available 24 hours a day)

### **Fire Department**

Salinas Fire Department

65 W Alisal St Suite 210, Salinas, CA 93901 - **3.7 miles**

+18317587261

### **24 Hour Emergency Room / Hospital**

Salinas Valley Memorial Hospital – **3.2 miles**

450 E Romie Ln, Salinas, CA 93901

+18317574333

### **Police Station**

Salinas Police Department – **3.1 miles**

222 Lincoln Ave, Salinas, CA 93901

+18317587090

### **Veterinary Hospital 24 hr Emergency**

Monterey Peninsula Vet – **4.3 miles**

20 Lower Ragsdale Dr #150, Monterey, CA 93940

+18313737374