

# Attachment E

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## Detailed Background and Discussion

### BACKGROUND

Monterey County is an international visitor destination where rental of private properties for short periods of time (not more than 30 days) due to online host platforms such as Airbnb, VRBO and others. These vacation rentals, also known as “short term rentals,” have raised a number of issues not specifically addressed through current land use regulations in Monterey County. Between 2014 and 2020, RMA staff collaborated with members of the public and Planning Commission to develop proposed Vacation (also known as Short-Term) Rental ordinances. The Planning Commission held public workshops on development of the proposed vacation rental regulations on the following dates:

- July 13<sup>th</sup> and November 9<sup>th</sup> of 2016
- May 10<sup>th</sup> and 31<sup>st</sup>, June 28<sup>th</sup> and November 29<sup>th</sup> of 2017
- January 10<sup>th</sup> and July 11<sup>th</sup> of 2018
- July 24<sup>th</sup> and November 13<sup>th</sup> of 2019
- June 10<sup>th</sup> and July 8<sup>th</sup> of 2020

Staff facilitated a Short-Term Rental Workgroup, convened by former District 5 Supervisor Dave Potter, which met nine times between March 2015 and May 2016. Staff also conducted two rounds of outreach to the Land Use Advisory Committees between November 2016 and March 2017 and again between March 2018 and May 2018. Staff presented to the Agricultural Advisory Committee in February and July 2018.

Upon their request, staff met with various industry groups, companies and community organizations including Monterey County Hospitality Association (MCHA), Monterey County Vacation Rental Alliance (MCVRA), Carmel Valley Association (CVA), Big Sur Local Coastal Plan Defense Committee (BSLCPDC), and the Pebble Beach Company (PBC).

### OVERVIEW OF ORDINANCES

The ordinances propose to modify Monterey County Code (MCC) as follows:

- Amend Title 7, including amending Section 7.02.060 (Business Licenses) and adding Chapter 7.110 (Vacation Rental Operation Permits) to establish requirements for a business license and operation permit for vacation rentals;
- Amend Title 20 (Coastal Zoning), including adding Section 20.64.290 (Regulations for Vacation Rentals) and amending other sections of Title 20 to establish vacation rental regulations in the County’s unincorporated coastal zone; and
- Amend Title 21 (Inland Zoning) including amending Section 21.64.280 (Administrative permits for transient use of residential property for remuneration), adding Section 21.64.290 (Regulations for Vacation Rentals), and amending other sections of Title 21, to replace existing regulations with new vacation rental regulations in the inland unincorporated area of the County.

The ordinances include regulations for phasing out of unpermitted uses which provides a 1-year grace period to allow operators the ability to obtain the necessary licenses and permits. As

proposed, a Vacation Rental Operation Permit (to be renewed yearly) and business license is required for every Vacation Rental. In addition, Commercial Vacation Rentals, as defined below, require a discretionary permit. To ensure these operators remain in good standing, the regulations limit the initial discretionary permit to 5 years. If in good standing, two (2) 5-year extensions of the permit are allowed, resulting in a maximum permitted use of 15 years.

County's inland zoning currently contains regulations for short term rentals (Section 21.64.280--Administrative permits for transient use of residential property for remuneration). The draft ordinance for the inland area replaces those regulations with new regulations for vacation rentals and would render Section 21.64.280 inoperative as of the date the ordinance takes effect. Administrative Permits issued under Section 21.64.280 prior to the effective date of Section 21.64.290 will be considered legal nonconforming. The ordinances distinguish between two types of vacation rentals: Limited Vacation Rentals and Commercial Vacation Rentals, which are defined in the ordinances as follows:

*“Limited Vacation Rental”* means a Residential Property rented as a Vacation Rental by the Principal Resident that meets all the following criteria:

1. Concurrently occupied by the Principal Resident;
2. Rented as a Vacation Rental for not more than twenty (20) times per 12-month period;
3. Rented as a Vacation Rental for not more than a total of one hundred forty (140) days per 12-month period; and
4. Makes not more than two (2) bedrooms available for rent as a Vacation Rental.
5. Exception: Except as outlined in Section 21.64.290.D.11, the Residential Property may be rented as a Limited Vacation Rental without concurrent occupancy of the Principal Resident for up to, but not more than, three (3) times of the twenty (20) times per 12-month period.

*“Commercial Vacation Rental”* means a Residential Property rented as a Vacation Rental that meets one or more of the following criteria:

1. Rented as a vacation rental more than three (3) times per 12-month period while not concurrently occupied by the Principal Resident; or
2. Rented as a vacation rental for more than twenty (20) times per 12-month period while concurrently occupied by the Principal Resident; or
3. Rented as a vacation rental for more than a total of one hundred forty (140) days per 12-month period; or
4. makes three (3) or more bedrooms available for rent as a vacation rental.

#### *POLICY ISSUES IDENTIFIED BY STAFF*

Staff has identified two questions on which it seeks direction, each of which are discussed below:

1. *Are the definition and limitations for Limited Vacation Rentals sufficient to consider the use to have an equivalent impact on the neighborhood or infrastructure as an existing residential unit, such that Limited Vacation*

*Rentals do not require a discretionary approval and would be subject only to a ministerial Vacation Rental Operation Permit?*

The draft vacation rental zoning ordinances seek to establish a category of vacation rental operation that is similar to an existing single or multi-family dwelling use in character, density and intensity and thus is an allowed use without a discretionary permit, as compared to a category of vacation rental operation that has the potential for land use and environmental impacts due to similarities to commercial recreational/visitor serving uses and thus requires discretionary evaluation and a discretionary Use Permit or Coastal Development Permit. The first category, called a “Limited Vacation Rental” is proposed as an allowed use under zoning. The latter category, called “Commercial Vacation Rental,” is proposed as a use allowed with a Use Permit (inland) or Coastal Development Permit (coastal) in zoning districts where single family dwellings and/or multiple family dwellings are allowed uses, including certain agricultural zones. As defined, this use allows renting of the property without the requirement of a Principal resident onsite and/or for a greater duration and frequency.

Limited Vacation Rental operations would be established in existing Principal Residences occupied by a Principal Resident. This would ensure the residential use of the property remains primary. This is further ensured as the proposed regulations control the duration and frequency of the transient use. Due to these limitations, Limited Vacation Rentals would not involve a risk of environmental impacts. As such, it is proposed that Limited Vacation Rentals do not require a discretionary permit. In the coastal zone, the definition of development includes the change in density or intensity of use of land. Limited Vacation Rentals would not be considered development due the proposed limitations in the ordinance. Therefore, an exemption process is also proposed. Although exempt from a discretionary permit, development standards of the applicable land use plan and ordinances still apply pursuant to Section 20.70.120.F of the Monterey County Code.

This is especially important to note because the proposed ordinances require Limited Vacation Rentals, as well as Commercial Vacation Rentals, to obtain an annual Vacation Rental Operation Permit and register for an annual Business License. The Vacation Rental Operation Permit requires Vacation Rental operators to adhere to specific rules for operating the Vacation Rental, such as providing a property manager, use limitations consistent with the inland and coastal vacation rental ordinances, review and approval by Environmental Health for water use and wastewater, and posting notices so occupants are aware of the applicable rules. For these reasons, staff recommends the Board consider the ministerial permit process for Limited Vacation Rentals proposed in the draft ordinances.

*2. Should both Limited and Commercial Vacation Rentals be counted against visitor serving/accommodation units maximum counts (where applicable), or should only Commercial Vacation Rentals count?*

The zoning ordinances also establish areas or zones in which further limitation is necessary to ensure consistency with the local plans and policies. These areas include the following:

- Big Sur Land Use Plan Area – Commercial Vacation Rentals are not allowed, and Limited Vacation Rentals are allowed and subject to maximum visitor unit limitations.
- Carmel Area Land Use Plan – Commercial Vacation Rentals are not allowed in low-density residential zones, which encompass primarily the Carmel Highlands area.
- Carmel Valley Master Plan Area – Limited and Commercial Vacation Rentals are subject to visitor accommodation unit maximum limits.
- Del Monte Land Use Plan Area – Limited and Commercial Vacation Rentals are not allowed.
- North County Land Use Plan, Moss Landing Community Plan Area – Commercial Vacation Rentals are subject to maximum visitor unit limitations.

The visitor-serving unit (VSU) limitations summarized above were based on the County’s 1979 Growth Management Policy. The intent of this policy is to promote orderly development that is in line with protection of resources and the availability of services and infrastructure while also supporting appropriate uses which utilizes an area’s unique characteristics. Based on the Planning Commission’s direction, the ordinances propose to count both Limited and Commercial Vacation Rentals against visitor-serving/accommodation unit counts, where applicable. As proposed in the draft regulations, Limited Vacation Rentals would be subtracted at a rate 0.19 units per rental and Commercial Vacation Rentals would be subtracted at a rate of 0.5 units per bedroom. The discussion below identifies potential issues relative to applying VSU limitations to Vacation Rentals and staff’s alternative options for the Board to consider.

Determining the Appropriate VSU Count

Staff made several attempts to devise an equation that achieves the purpose of unit counts and includes an assumption that fairly quantifies the uses. Several calculations were developed to account for the number of days used as a Vacation Rental and the maximum allowed overnight occupancy. Each of these attempts led to a complex accounting and tracking system.

For example, the definition of a Commercial Vacation Rental sets a minimum day per year limit, but not a maximum. Assuming full use, the unit could be rented for a total of 365 days. Chapter 7.110 limits the maximum overnight occupancy for Commercial Vacation Rentals to 2 persons per bedroom with a maximum of 10 persons total, regardless of the number of bedrooms in the residence. The formula also considers the current accounting of subtracting units which identifies relative equivalency. Hotel rooms have a 365-day rental availability and a typical maximum occupancy of 4 persons per room. Hotel rooms are subtracted at a 1-unit rate (1 hotel room = 1 unit).

To compare Vacation Rentals to hotel rooms, the following Visitor Serving Unit (VSU) equivalent formula was developed:

$$\frac{\text{Maximum Rental Days}}{\text{Total Day per Year}} \times \frac{\text{Maximum Occupancy}}{\text{Maximum Hotel Room Occupancy}}$$

Using the figures from the paragraph above, the formula was used to determine the maximum VSU equivalent for a Commercial Vacation Rental:

$$\frac{365 \text{ days}}{365 \text{ days}} \times \frac{10 \text{ people}}{4 \text{ people}} = 2.5$$

The regulations limit occupancy per room to 2 people. So, to accommodate the maximum of 10 people, the residence would have to have at least 5 bedrooms. Using the maximum of 2.5 units above, the per room VSU equivalent is 0.5 units.

The formula was then used to determine the maximum VSU equivalent for Limited Vacation Rentals:

$$\frac{140 \text{ days}}{365 \text{ days}} \times \frac{4 \text{ people}}{4 \text{ people}} = 0.38$$

Based on the 2-room maximum allowed for Limited Vacation Rentals, the per room VSU equivalent is 0.19 units. As illustrated above, accurate tracking using this system will be complicated and time consuming, especially for Limited Vacation Rentals. With efficiency and feasibility in mind, staff has provided alternative options for the Board to consider.

**LVR Option: Limited Vacation Rentals should not be counted against visitor-serving unit counts.**

As defined and restricted in the draft ordinances and illustrated in the discussion above, regulations for Limited Vacation Rentals were drafted with the intention to prevent the loss of a residential unit from the market. Limited Vacation Rentals are further limited to minimize the number of vacation renters (not more than 4 per stay), to limit the frequency of rental (not more than 20 times and 140 days per year), and the Principal Resident must reside concurrently at the unit while rented (with minor exception) to help ensure they are consistent with the intensity of a residential use (water use, traffic, etc.). Therefore, if the primary use of the subject property remains residential, counting it against a commercial-related use limitation should not be appropriate. In cases for Limited Vacation Rentals in the Carmel Valley Master Plan area, uses could theoretically be double counted as there is a unit cap for residences *and* a unit cap for VSUs. As the Planning Commission points out in the attached letter, there are concerns with successful monitoring and enforcement of Vacation Rentals. Based on the annual permit requirement, VSU counts will need to be reduced and increased based on the amount of permitted Limited Vacation Rentals in operation at any given time. Accurately tracking available units that require only ministerial approval adds an additional complex layer to the enforcement component.

Conversely, the regulations for transient use of a residential property require a rental period of greater than 7 days and limit occupancy based on the California Uniform Housing Code limitations relative to number of bedrooms. Limitations on frequency and Principal Resident requirements are not specified. As a result, it is possible for some of these existing uses to be similar to Commercial Vacation Rentals while others are similar to Limited Vacation Rentals. Each Administrative Permit for transient use of a residential property approved in the Carmel Valley Master Plan area is currently subtracted from the visitor-serving unit count as 1-unit rate, no matter the frequency, duration, or size. Although these uses would be legal non-conforming

once the ordinances are adopted, it complicates the assumptions because some might argue that the maximum occupancies and unit count between existing transient uses and Visitor Rentals subject to the ordinance would not be as equitable. Thus, staff recommends the Board consider this alternative option.

**CVR Option: A Commercial Vacation Rental should be counted as 1 visitor-serving unit.**

Not only is the unit count complex, but some could argue that applying a formula to Commercial Vacation Rentals as proposed that accounts for rooms and occupancy the regulations create a disparity between how units are counted for Commercial Vacation Rentals compared to other visitor-serving facilities. The draft Commercial Vacation Rental regulations only allows 1 rental contract at any given time. This is similar to hotel room rentals. Using a travel accommodation search engine, staff was able to find hotel resort accommodations in Monterey County that allowed 7 people (4 adults and 3 children under 18). These types of hotel accommodations would not be subject to the equivalent formula above and instead would count as 1 unit. Another example of bed and breakfast facilities. Similar to Limited Vacation Rentals, the bed and breakfast facility regulations require the property owner to occupy the facility and allows a maximum of 10 rental bedrooms. Although the typical maximum occupancy for such a room is 2 people, each rental bedroom in a bed and breakfast facility counts as 1 unit. Using the formula above, the per room rate would be 0.25 units instead of 1 unit. However, the key difference is the contract. At full use, a bed and breakfast could enter into 10 contracts at a given time, whereas Commercial Vacation Rentals and hotel accommodations with occupancies greater than 4 are limited to 1 contract at a time. Therefore, staff recommends the Board consider this alternative option to equate the unit count with the contract allowance.

*POLICY ISSUES IDENTIFIED BY THE PLANNING COMMISSION*

After numerous community meetings and Planning Commission workshops and hearings, a number of policy questions relative to vacation rentals remain. At its most recent hearings on the draft ordinances, the Planning Commission determined that a letter to the Board was the best vehicle to provide its input on the draft ordinances. (See **Attachment A** to this staff report.) In its letter, the Planning Commission identified the following fundamental policy questions on which additional analysis and Board direction is needed:

1. Affordable Housing: How will a new Vacation Rental ordinance affect affordable housing?
2. Support, Monitoring and Enforcement: How will we effectively support, monitor, and enforce new vacation rental ordinances?
3. Character and intensity: Staff assume vacation rental is a 'similar use' consistent with character and intensity of residential use. Is there sufficient evidence to support this assumption?
4. Visitor Serving Unit Caps: How do Vacation Rentals affect Visitor Serving Unit counts in areas with Visitor Serving Unit caps, if at all?
5. Unique Neighborhoods: Some developments claim unique circumstances. Should developments such as this be provided with special rules?



### Policy Issue 1. Affordable Housing

The Planning Commission has concern with the potential of Commercial Vacation Rentals affecting availability of long-term residential uses resulting in negative impacts to affordable housing availability in the County. Without supporting data, the Commission found potential effects to be speculative. Thus, the Commission suggests that an economic cost and benefit analysis should be conducted to determine if the short-term rental ordinances would increase the supply and reduce the cost of available long-term residential rentals, or vice versa.

### Policy Issue 2. Monitoring and Enforcement

The Commission has concern with inclusion of new enforcement tools in the draft ordinances without a corresponding plan to implement them. This concern is based on the County's reliance on a reactive complaint-based approach to enforcement. Thus, the Commission recommends a plan supported by an ongoing, funded, effective, and proactive program be included within the ordinances.

Staff concurs with this concern as the intent of the ordinances is to allow transient uses in residential neighborhoods while employing regulations that protect and promote the public health, safety, and welfare of County residents. Without an effective program, these regulations would be cumbersome to enforce. In addition to the Commission's issue, staff recommends the Board consider how such a program would be funded and operated. License and tax revenue from transient uses would go to the County's General Fund. This does not guarantee allocation to an enforcement program. Additionally, based on existing Board directive, vacation rental complaints are addressed based on priority and available staffing and resources for the RMA code compliance team. Vacation rentals conducted in legal structures (homes) would generally be assigned Priority 3, unless there is some health or safety issue identified that would elevate it to a Priority 1 or Priority 2. Considering the current state of non-compliance in vacation rentals and the available enforcement resources, any enforcement program options would need to be paired with increased code compliance expenditures in order to have a measurable effect on the incidences of unpermitted vacation rentals.

### Policy Issue 3. Character and Intensity

The Commission received public testimony relative to negative impacts to infrastructure and neighborhood character from existing permitted and unpermitted vacation rentals. Opposite of this, the Commission also recognizes that there are studies demonstrating occupation of vacation (short-term) rental units have fewer impacts than a residence occupied by an average household. Due to these differences, the Commission suggests a behavioral analysis of visitors and residents be conducted to determine use compatibility with all the different areas and/or neighborhoods within unincorporated Monterey County.

In most cases, nuisances associated with vacation rentals were related to unpermitted uses. Staff is not aware of suspension or revocation of permitted vacation rentals. In those cases, responsible operators have been able to conduct vacation rentals without impacts to neighborhood character.

Further, implementation of a successful monitoring and enforcement program, as recommended by the Commission, would ensure uses would not impact the residential neighborhood.

#### Policy Issue 4. Visitor Serving Unit Caps

The Commission recommends the Board consider whether or not Vacation Rentals are applicable to unit caps. If so, should they be counted similar to other hospitality uses or utilize the ratios proposed in the draft ordinance. Further, if the unit counts proposed in the ordinance are used, the Commission recommends further discussion of the concept and analysis of potential infrastructure impacts resulting in implementation of the regulations be analyzed and how any constraints would be addressed.

As discussed in staff's policy issue 2 above, the accounting methodology is complex. Although potential options have been identified, further exploration of what and how to count may be warranted.

#### Policy Issue 5. Unique Neighborhoods

Unique neighborhoods are those that have historically rented residences as vacation rentals, Monterey Dunes Colony for example. The draft ordinances do not include provisions for unique neighborhood with historic vacation rental uses. If the Board directs, additional provisions can be added for specific areas. Staff would need to determine if such additional provisions are consistent with applicable Area Plans and Land Use Plans and regulations. If necessary, amendments to the General Plan and/or the Local Coastal Program would need to occur before adoption and implementation of the ordinances.

#### VACATION RENTAL ACTIVITY IN UNINCORPORATED MONTEREY COUNTY

Monterey County encompasses some of California's most stunning scenery including miles of beautiful beaches, mountain ranges, rolling foothills and scenic valleys. The County also boasts world-renowned attractions such as the Big Sur Coast, Monterey Bay Aquarium, Cannery Row, the Steinbeck Center, Laguna Seca, Pebble Beach and more. Monterey County's draw to visitors, the increasing popularity of whole house rentals as opposed to traditional lodging, and the rapid growth of on-line booking platforms such as Airbnb and VRBO, has resulted in the proliferation of hundreds unpermitted vacation (short-term) rentals in unincorporated Monterey County. Based on data available to the RMA from its third-party vendor that monitors on-line advertising platforms for vacation rental activity, an estimated 610 vacation rentals have been actively advertised in unincorporated Monterey County over the past 12 months: 207 in the coastal zone; and 340 inland. However, there are currently only 20 permitted vacation rentals (transient use of residential property) in unincorporated Monterey County: 18 in Del Monte Forest; 1 in Carmel Valley; and 1 in the Arroyo Seco/Central Salinas Valley.

The vacation rental opportunities in the County as well as resources necessary to support the permitting and compliance will depend largely on the final form of the regulations. The distribution of vacation rentals is largely concentrated in coastal areas of the County and inland areas of Carmel Valley, which also overlap with certain land use and master plan areas that include maximum counts for visitor serving units. Following is a summary of the plan areas that

include maximum counts for visitor serving units, remaining units, policy discussion, and estimated vacation rentals advertising within the area over the past 12 months.

In the Carmel Area Land Use Plan an estimated 20 vacation rentals have been actively advertised in Low Density Residential zones over the past 12 months. To ensure consistency with the policy requirements of the Carmel Area Land Use Plan, the draft coastal ordinance specifies that Limited Vacation Rentals and Commercial Vacation rentals are subject to the specific policies governing and limiting such uses contained in Section 4.4.3.D (specific policies for visitor serving commercial uses) of the plan. In summary, this section contains 2 policies relative to evaluation of new and expanded existing visitor serving facilities which identifies the maximum number of visitor and employee housing units for 4 existing facilities, 3 policies that address low, moderate and high-cost facilities, 3 policies relative to special treatment areas, and 1 policy specific to development of the Carmel River Inn. In addition, Commercial Vacation Rentals are prohibited on properties within the Low Density Residential zoning districts of the plan.

Carmel Valley Master Plan Policy CV-1.15 limits new visitor accommodation units to 175 west of Via Mallorca and north of the Carmel River and 110 units east of Via Mallorca. There are 50 visitor serving units remaining east of Via Mallorca, and 175 units remaining west of Via Mallorca. Since adoption of the plan on October 26, 2010, 60 units have been approved east of Via Mallorca and zero approved west of Via Mallorca. This policy does not include counting of properties permitted as bed and breakfast facilities or transient use of residential properties for remuneration. Permit history for the plan area indicates that a Use Permit for a bed and breakfast was approved in 2004 but was subsequently relinquished. Two Administrative Permits for the transient use of a residential property have been approved, one in 1997 and the other this year. An estimated 141 vacation rentals have been actively advertised in Carmel Valley over the past 12 months, of which 123 are east of Via Mallorca and 18 are west of Via Mallorca.

The Big Sur Coast Land Use Plan, adopted April 10, 1986, limits the amount of new visitor-serving lodge or inn units to 300 pursuant to Policy 5.4.2.9. Based on the permits approved and issued since adoption of the plan, there are approximately 235 visitor serving units remaining in the plan area. An estimated 19 vacation rentals have been actively advertised in Big Sur over the past 12 months. Section 5.1.4, Commercial Uses and Private Visitor-Serving Facilities of the plan, provides a narrative illustrating “existing” visitor-serving facilities at the time the plan was adopted, which reads as follows:

*“At present, there are eight motels, lodges, or inns on the coast providing a total of 168 rooms. Prices range from about \$25.00 to \$175.00 a night. Rustic cabins are available at two of the campgrounds. The New Camaldoli Hermitage, run by a Benedictine Order, has 11 rooms which are available with the Hermitage's permission for use as a retreat. Esselen, a nationally known institution, offers accommodations for 90 people enrolled in education programs. Private campgrounds with about 350 units constitute over half of the vehicle access campsites in Big Sur. All of the private campgrounds except Limekiln Beach Redwood Campground are located in the Big Sur Valley.”*

However, Monterey County permit history between the 1950's through the 1980's indicates permitted rooms, cabins and tent cabins exceed the amount identified in the narrative above. In some cases, original permits establishing some of the facilities could not be located. Considering historical information available, this is likely due to the absence of permit requirements at the time the facilities were first established. Based on these factors, staff approximates that 319 rooms, 49 cabins and 19 tent cabins were in existence at the time of Plan adoption. Permit history after adoption of the plan shows that 7 additional New Camaldoli Hermitage units, 40 Post Ranch Inn units and 18 tent cabins at TreeBones Resort were approved.

The Big Sur Chamber of Commerce provided staff with results from a guest accommodations survey conducted December 2019. The total number of existing units identified were 464, whereas the County's count is 452, 12 units less than the chamber's count.

North County Land Use Plan Policy 4.3.6.E.4 and Moss Land Community Plan policy limits visitor serving units in Moss Landing to 150. Since adoption of the plan on February 10, 1981, 40 units were permitted resulting in 110 visitor serving units remaining. An estimated 4 vacation rentals have been actively advertised in the Moss Landing area over the past 12 months.

#### CEQA

The Board's policy direction will allow staff to continue to refine the draft ordinances and finalize the project description to be used for environmental analysis. In addition, the Planning Commission recommends analysis of potential social and economic effects resulting from implementation of the short-term rental ordinances. If the Board concurs with the Planning Commission's recommendation, such analysis would be conducted as part of the environmental review.