

Attachment A

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DATE: June 25, 2020
TO: Monterey County Board of Supervisors
FROM: Monterey County Planning Commission *af*
SUBJECT: Vacation Rental Ordinance Policy Questions

The Monterey County Planning Commission is taking the unusual step of writing a letter to you about the draft regulations for vacation (short-term) rentals to accompany your staff report. At our June 10 Planning Commission hearing, we were unable to provide a recommendation on the draft proposed ordinances until several fundamental policy questions are addressed and further detailed analysis is conducted. This letter outlines policy questions we believe the Board of Supervisors should address so we can proceed to an efficient and effective environmental review.

The draft ordinances represent county Staff's best effort at addressing a variety of issues and concerns that have been raised by both the Public and Planning Commissioners over the years. Many provisions specifically reflect direction from the Commission and the Board of Supervisors. However, in our most recent hearing, we still lack clarity about the basis for several underlying assumptions in key policy areas.

In order to make best use of the environmental review process, among many other requirements the following questions will need to be carefully considered:

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

Affordable Housing:

How do the proposed Vacation Rental ordinances affect affordable housing?

We have an affordable housing crisis. Every existing residence that does not house a permanent resident arguably contributes to the shortage. Neighborhoods where vacation rentals proliferate in Monterey County generally coincide with areas that also suffer from a particularly acute shortage of residential housing for the very work force that supports our visitor economy. Significant concerns about affordable housing stock were already identified in some of our local land use plans, despite being written in the early 80s. We are not aware of any area where this concern has lessened over time.

The 'similar use' determination discussed in detail below drives staff's conclusion that allowing a Limited Vacation Rental will not result in the loss of a residential unit from the market. The requirement that this classification of vacation rental is only available to the principal resident of the unit who must live there a significant part of the year and who may not claim more than one principal residence is intended to encourage owners to rent long term if they do not occupy the residence themselves and they wish to offer Limited Vacation Rentals on the property.

These provisions however do not seem to address the potential for a Commercial Vacation Rental to make a unit unavailable for long term residential use. The limitation of a permit to allow a total of three 5-year renewals rather than a permanent change of use is intended to remove the potential for a long term, permanent reduction in available residential housing. That said, the Planning Commission has heard public testimony that fifteen years is a long enough time to have significant social impacts. The Planning Commission has also heard from current vacation rental operators who have stated they would not rent long term if the option to rent short term was not available and that the long-term rental rates on their units would preclude moderate income tenants from renting them.

The Planning Commission feels the approach to affordability concerns in the draft ordinances, while hopeful, remains speculative until detailed analysis can be conducted. It must be determined whether the proposed provisions will increase the supply and reduce the cost of available long term residential rentals as has been suggested or reduce the supply and increase the cost as has also been suggested. Anecdotally, we have heard public testimony for years of instances where previous long-term rental units have transitioned to short term rentals, and where residences have been purchased and remodeled specifically for short term rentals because of the income potential of this activity, thus increasing already high property values. These concerns all need to be examined carefully, as this issue is of paramount importance.

Monitoring and Enforcement:

How will we effectively support, monitor and enforce new vacation rental ordinances?

Monterey County currently relies on existing Planning staff for permitting and on existing Building Services/Code Enforcement staff for a reactive complaint-based approach to enforcement. The proposed ordinances provide new enforcement tools but no corresponding plan to implement them. First and foremost, the ordinances must be supported by an ongoing, funded, effective, and proactive program that does not depend on neighbors reporting on one another for enforcement. Such a program could assist those wishing to undertake permitted activities, respond to and assist in resolving complaints or conflicts in real time (24-7), and provide required monitoring and enforcement to ensure the complicated limits and opportunities of these activities happen as intended. We have heard significant testimony that vacation rentals produce sufficient transient occupancy tax (TOT) revenue to support such a program and believe it would significantly reduce the conflicts we currently experience.

The Planning Commission is unable to recommend the draft ordinances if both a plan for support and enforcement and a corresponding funding mechanism are not included.

Character and Intensity:

Staff assumes vacation rental is a ‘similar use’ consistent with character and intensity of residential use. Is there sufficient evidence to support this assumption?

Staff has based many provisions of the current draft ordinances on the stated assumption that the activity of renting residential properties for vacation use as outlined in the draft ordinances is consistent with the character and intensity of a residential use. They propose that Limited Vacation Rentals are appropriate in most areas of the County because the effect of the use of a residence on the surrounding area is accounted for as part of the original analysis of the residence’s impacts, and that the new visitor use is similar in character and will add no further incompatible impacts. Staff additionally assumes that Commercial Vacation Rentals, a more intense level of use which could have additional impacts, will be managed through a discretionary use permit process so that these too will operate in a way that is fully compatible with the residential character and intensity of uses in the specific neighborhoods where they are to be located.

Some members of the public testified that they experience negative impacts to both infrastructure and neighborhood character from existing permitted and unpermitted vacation rentals. A quick analysis suggests that residences in neighborhoods where vacation rentals are most prevalent are currently occupied in an amount less than the

County average, or significantly less than full capacity of a limited vacation rental¹. Additionally, we have little detailed data on the vacation rentals' specific activities, as they are almost all unpermitted.

Without a factual basis or at least a credible analysis that incorporates the information we do have, Planning Commissioners and the Public, especially in more rural areas such as Big Sur, are left with unanswered questions. The Planning Commission's consideration of many different aspects of the draft ordinance is speculative at best until we have analyzed visitor behavior versus residential behavior and used that analysis to determine compatibility with the variety of residential neighborhoods that exist in our different areas.

Visitor Serving Unit Caps:

How do Limited Vacation Rentals affect Visitor Serving Unit (VSUs) counts in areas with VSU caps, if at all?

Some areas of the County have adopted caps to visitor serving units. These caps are generally considered to reflect infrastructure limitations specific to those areas and attempts to balance residential and visitor serving uses appropriately within given areas. The current draft ordinances propose that Limited Vacation Rentals count as 0.19 VSU per bedroom, while Commercial Vacation Rentals count as 0.5 VSU per bedroom, based on a formula that takes into consideration maximum occupancy and percentage of the year a unit is permitted to operate.

Both the Public and Planning Commissioners raised the point that any unit that serves visitors for hire is in fact a visitor serving unit, and stress that the method for determining the allocation of such units where they are limited should be fair to all including the operators of existing hospitality businesses. Additionally, VSU caps are designed to mitigate impacts at peak use during large events such as Car Week as well as ongoing use.

In order to proceed, we need to decide whether or not vacation rentals are to be counted as VSUs. If they are to be counted, which was the Planning Commission recommendation leading to these drafts, should the count reflect each vacation rental unit similarly to other hospitality uses or should they be reviewed according to some other measure like the ratios proposed in the draft ordinances²? Analysis should address how observed and identified infrastructure constraints will be addressed, whether solely through VSU limitations or through other mechanisms such as limiting vacation rentals to non-peak times or to areas not experiencing infrastructure constraints, or by some other method. Analysis should also carefully consider the

¹ *Monterey County as a whole averaged 3.3 persons per household for the period 2014-2018 according to the US Census.*

² *Should this alternative be chosen, it should be noted that the specific currently proposed formula and the assumptions leading to it warrant additional detailed discussion.*

potential impacts to commercial hospitality operations in these affected areas.

Unique Neighborhoods:

Some developments claim unique circumstances. Should developments such as this be provided with special rules?

During deliberations, the Planning Commission heard testimony from members of the public about specific development areas they feel present special situations that should be accounted for in the draft ordinances. One example, among many, is the Monterey Dunes Colony where homeowners have testified that the original intent of the development was for the purpose of vacation rentals rather than long-term residential use. While limited and commercial vacation rentals appear allowable in this area under the proposed ordinance, those testifying objected to both the “principal resident” requirement for a Limited Vacation Rental and the Coastal Development Permit requirement for a Commercial Vacation Rental. Their contention raises the question of whether the adopted ordinances should include special treatment areas or other area-specific policy provisions.

On a much larger scale, Pebble Beach Company (PBC) representatives have testified that they do not support Monterey County applying visitor serving unit counts for any vacation rentals. They are the sole provider of VSUs in their portion of the Del Monte Forest. Currently, VSUs available in this area are all allocated to the adopted PBC Concept Plan. However, PBC representatives explain that the PBC may wish to allow certain vacation rentals including commercial vacation rentals at their discretion. They also express a preference for a minimum stay of seven days. They propose to assume a very proactive role in managing vacation rentals through private agreement. How should a request like this be approached?

Several other unique situations with varied circumstances have been raised as well, so moving forward we request that the Board of Supervisors make a policy level determination whether or not the proposed ordinances should provide specific rules for individual developments. If so, it will be important to determine what justifies the difference. Fairness to both existing residents, some of whom have testified about concerns with existing vacation rental operations and with the potential for additional units and some of whom wish to engage in vacation rental activities, as well as to visitors must be considered. Additionally, such provisions may fall outside the policies of existing land use plans. Should provisions that would require changing a land use plan to become consistent be considered?

Conclusion

Staff has shared the difficulties they face providing information to help answer the questions above until further environmental analysis is conducted. However, this analysis requires a clear understanding of the goals of the proposed ordinances. It can be expected that all aspects of the proposed ordinances will be scrutinized from all perspectives, and that any conclusions may be challenged particularly if they are not

well supported with evidence and analysis that directly addresses known issues of concern. Therefore, once there is a clear policy direction with respect to the questions outlined above and any changes required by those decisions are made to the proposed draft ordinances, it is our hope that a rigorous and impartial environmental review process including carefully analyzing consistency with our adopted Land Use Plans will provide the best and swiftest path to completing this long process, including the important goal of successfully navigating the required California Coastal Commission review of the ordinances to be proposed for the Coastal Zone.