



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 23-176

September 19, 2023

Introduced: 9/13/2023

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

PLN220054 - ROSSEEL GEERT & POWELL TRACY TRS

Public hearing to consider an appeal of the Planning Commission's decision to deny an Administrative Permit for transient use of an existing residential property for remuneration, commonly known as a short-term rental.

Project Location: 282 Corral De Tierra, Salinas, CA 93908

Proposed CEQA action: 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 from section 15300.2 apply.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- 1) Grant an Appeal by Geert Rosseel challenging the Planning Commission's denial of an Administrative Permit;
- 2) Find 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 from section 15300.2 apply; and
- 3) Approve an Administrative Permit to allow transient use of a residential property for remuneration.

The attached draft resolution includes findings and evidence for consideration (**Attachment B**). Staff recommends granting the appeal and approving the project subject to 9 conditions of approval.

PROJECT INFORMATION:

Applicant: Geert Rosseel and Tracy Powell

APN: 416-351-005-000

Parcel Size: 2.5 acres

Zoning: Rural Density Residential, 5.1 acres per unit with a Design Control overlay district or "RDR/5.1-D"

Plan Area: Toro Area Plan

Flagged and Staked: No

SUMMARY:

An Administrative Permit for Transient Use for Remuneration (a short-term rental) was referred to the Planning Commission and denied by the Planning Commission on May 31, 2023. The project complies with the development standards applicable to transient use for remuneration permits. A timely appeal of the Planning Commissions denial was filed by the applicant, and after consideration of the

appeal contentions, staff believe that the permit should be granted, with a specific condition that the applicant provide proof that they have the water rights to use the shared water system for their proposed project.

DISCUSSION:

Much of the deliberation on the project to date focused on whether the property is subject to a homeowner's association. Whether a property is subject to a homeowner's association is relevant to transient use for remuneration applications, as there is a specific provision in the zoning ordinance which does not allow an administrative permit to be granted for a transient use for remuneration if a homeowner's association objects to the permit, unless that objection is withdrawn or invalidated by an entity with the authority to review actions of homeowners associations, such as a court or arbitrator (Title 21 section 21.64.280.D.2.g.).

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". Staff met with the applicant on site on March 13, 2023. Applicant represented that the property was not subject to a homeowner's association. Applicant acknowledged that the Alta Tierra Association is referenced in the recorded road and water agreement, but the applicant did not believe it either regularly met or had a formal organizational structure.

At the April 12, 2023 Planning Commission hearing, the commission heard staff's presentation, oral testimony from the applicant, and oral testimony from interested parties opposed to the project. The Commission continued the hearing to May 31, 2023 and directed staff to return with information on:

- Whether the property was subject to a homeowner's association; and
- Whether the project had been properly noticed.

The property is not within the Meadow Lark Association. Additionally, the project was properly noticed. Staff met with Scott Hennessey, representing the Alta Tierra Association, on May 11, 2023. The association provided a resolution of opposition to the project, specifically objecting to the use of water as not falling within the listed uses allowed in the water agreement, and financial records for several years with various expenses to maintain the shared roadway and water system which serves the properties. Staff's report to the May 31st Planning Commission hearing described this contention and the applicants' representatives counter claim that domestic water use is inclusive of commercial use, with the conclusion that the commission need not decide on the issue to act on the permit. Because this enters into broader conversations occurring about how to characterize short term rental land uses, the Planning Commission did not approach this topic and cautioned staff to be clear in how reports are phrased: often correspondence, staff reports, and other informational documents are misconstrued as County policy or regulation. Based on their objection, the recorded agreement on the property establishing a mutual road and water system, and the financial records, staff concluded the property was subject to a homeowner's association that objected to the project. Consequently, staff

recommended that the Planning Commission deny the project as inconsistent with Title 21, section 21.64.280.D.2.g.

The Planning Commission denied the permit on this basis on May 31, 2023. Applicant timely appealed on June 16, 2023. On review of the relevant state laws governing homeowner's associations, particularly the Davis-Stirling Common Interest Development Act, staff concluded that the Alta Tierra Association does not qualify as a homeowner's association. The Davis Sterling Common Interest Development Act requires that a homeowner's association have a separate common area independent of the individual owner's properties, or a covenant which conveys the association the power to levy assessments that become a lien upon the separate property owner's properties, neither of which are present in this case. As the Alta Tierra Association's objection was the basis for the Planning Commission's denial, and the project appears otherwise consistent with our current regulations related to short term rental uses, staff recommends that the Board of Supervisors grant the appeal and permit.

However, as the Appeal Authority, the Board of Supervisors considers the entire project de novo, and may consider "*all such testimony and evidence on the entirety of the application...*" (Title 21 section 21.80.090.B.), and is not limited in their consideration to the Planning Commission's grounds of denial. The Planning Commission determined it was not appropriate for the County to decide on the nature of the proposed water use. 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 staff are recommending that a specific condition be added that requires the owner to demonstrate that they have the right to use the water for the proposed use prior to commencement of the use. This could be in the form of approval from the Alta Tierra Association, an agreement reached as the result of a mediation process, an award of an arbitrator, or a Court order. 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.

This approach would approve an administrative permit that meets our current transient use for remuneration development standards while removing the County from a position of interpreting a private agreement between individual owners that the County is not party to.

FINANCING:

Funding for staff time associated with this project is included in the FY2023-24 Adopted Budget for Housing and Community Development Appropriation Unit HCD002, Unit 8543.

OTHER DEPARTMENT/AGENCY INVOLVEMENT:

The following County departments and other agencies have reviewed the project, with the Environmental Bureau and HCD-Planning recommending conditions:

Environmental Health Bureau
Monterey County Regional Fire Protection District.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

California Environmental Quality Act (CEQA) Guidelines section 15301 categorically exempts the leasing of existing private structures with negligible or no expansion of existing or former use. 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 not 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.

None of the exceptions under CEQA Guidelines section 15300.2 apply to this project:

- Class 1 exemptions are not qualified for an exception by their location.
- 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 all 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.
- There are no unusual circumstances related to the project that would create the reasonable possibility of a significant effect.
- The project would not result to damage to scenic resources within view of 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, and intervening vegetation and structures. The project also does not propose any physical changes that would damage scenic resources: no construction, exterior alterations to structures, land alteration, or vegetation (or tree) removal are proposed.
- The project is not located on a hazardous waste site included on any list compiled pursuant to Section 65962.5 of the Government code.
- The project would not damage any historical resources.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:


This action represents effective response to our HCD customers. Processing this Appeal in accordance with all applicable policies and regulations also provides both applicants and interested parties the opportunity to ensure that land use decisions are given appropriate consideration by decision-makers.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure

__ Public Safety

Prepared by: Phil Angelo, Associate Planner, x5731

Reviewed and approved by: Craig Spencer, Acting HCD Director 

The following attachments are on file with the Clerk of the Board:

Attachment A - Draft Resolution including:

- Recommended Conditions of Approval
- Site Plan, Floor Plans, and Exterior Photos
- Operations Plan

Attachment B - Notice of Appeal, Rosseel, filed June 16, 2023

Attachment C - Comments from the public, applicant's representative, and objecting parties representative

Attachment D - Water and Road Agreement

Attachment E - Compiled Alta Tierra Association Records

Attachment F - Vicinity Map

cc: Front Counter Copy; Monterey County Regional Fire Protection District; HCD-Environmental Services; HCD-Engineering Services; Environmental Health Bureau; Phil Angelo, Associate Planner, x5731; Anna Quenga, AICP, Principal Planner; Geert Rosseel and Tracy Powell, Property Owners/Applicants; The Open Monterey Project; Susan Brownlie, Interested Party; Wendy Fields, Interested Party; Catherine Goode, Interested Party; Scott Hennessy, Interested Party; Kevin Kennedy, Interested Party; Janine Lewis, Interested Party; David W. Balch, Interested Party; Robin Aeschilman, Interested Party; Lozeau Drury LLP, on behalf of the Laborers International Union of North America; LandWatch (Executive Director); Planning File PLN220054