

# Exhibit B

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## **EXHIBIT B**

### **DISCUSSION**

#### Project Description:

This is an Administrative Permit to allow the transient use of residential property for remuneration (short term rental) with Conditions of Approval limiting the use to no more than 5 guestrooms of an existing 10,394 square foot, 8 bedroom/8 bathroom two-story single family dwelling (as confirmed by the original construction permit and the Monterey Peninsula Water Management District) located on a 5.3 acre parcel.

The property is located at 583 Viejo Road, Carmel in the Greater Monterey Peninsula Area Plan. The parcel is zoned "RDR/5.1-UR-D-S "Rural Density Residential/5.1 acres per unit-Urban Reserve-Design Control-Site Plan Review, which allows transient use (short-term rental) of an existing single-family dwelling, subject to conditions of approval. Therefore, the project is an allowed land use for this site.

#### Consistency:

Transient use of residential property for remuneration is allowed in all inland zoning districts which allow residential use upon the issuance of an Administrative Permit pursuant Section 21.64.280 of Monterey County Code (Title 21 Zoning Regulations), provided that adequate services and facilities exist to support such development and there are no adverse impacts on surrounding residential uses including, but not limited to, vehicle traffic, parking demand, light and glare and noise detrimental to the surrounding neighborhood.

"Transient Use of Residential Property" means the use, by any person, of residential property for bed and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging uses where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession, or tenancy is, except as provided in the code, for not less than seven nor more than thirty (30) consecutive calendar days.

The intent of the short term rental ordinance is to provide an administrative procedure to legalize existing visitor serving opportunities while preserving the residential character of the zoning district and the sense of security and safety in stable neighborhoods of owner-occupied residences.

Pursuant to Section 21.64.280.2.g of Monterey County Code, if a residential unit for a transient use has a Homeowners Association, the applicant shall provide notice to the HOA. In the event the Homeowners Association objects to the issuance of the permit, the permit shall not be approved until the HOA's objection has been withdrawn or the right of the applicant have the use has been validated. There is an Aguajito Property Owners Association (APOA) for this subdivision. The APOA was formed in 1958, however their association does not have anything in its bylaws that allows them to require CC&R's from its members. In 2014, the APOA took a vote of its members on whether or not to require/enforce CC&R's. The outcome of that vote was a "no". The APOA also determined it would not seek recognition from Monterey County as a HOA for the purposes of Title 21 short term rentals. Therefore, staff set the project for the Greater Monterey Peninsula Land Use Advisory Committee for their review and recommendation.

Determination of non-intensification of use:

The number of occupants in any residential unit for transient use shall not exceed the limits set forth in the California Uniform House Code and other applicable State and County housing regulations for residential structures based on the number of bedrooms within the unit. Each permit shall specify the maximum number of occupants (Section 21.64.280.B.5.b MCC). Due to the number of guestrooms in the single-family dwelling, there were two paths that were presented to the applicant to allow permitting the use of this property as a short-term rental based on the section above and specifically California Building Code.

**1. Obtain an Administrative Permit for Transient Use of Residential Property for Remuneration with Conditions of Approval limiting the use to no more than 5 guestrooms.**

- a. Monterey County Code 21.64.280 allows for the transient use of residential property for remuneration subject to an Administrative Permit in the Zoning District associated with this property.
- b. Section 21.64.280.D.2.b states: *The number of occupants in any residential unit for transient use shall not exceed the limits set forth in the California Uniform Housing Code and other applicable State and County housing regulations for residential structures based on the number of bedrooms within the unit.*
- c. According to current California Building Code Section 310.5.2, the maximum number of guestrooms that can be permitted for 'Lodging Houses' in accordance with the California Residential Code in dwellings with the R-3 Building (occupancy) Classification is five (5).
- d. To comply with Section 21.64.280.D.2.b of Monterey County Code, Staff would include a Condition of Approval limiting the Administrative Permit to no more than five (5) guestrooms for transient rental so that this use would not exceed the limits set forth in the Building Code.
- e. Based on letters of concern submitted by the public regarding this project, this Administrative Permit would be set for a public hearing at the Zoning Administrator.
- f. Limiting the operation to five guestrooms would not result in an intensification of use. As such, the Private Road Ordinance would not apply.

**2. Obtain a Use Permit for a use of a similar character, density and intensity to a Bed and Breakfast to utilize all eight (8) guestrooms.**

- a. Monterey County Code 21.64.100 allows for the use of a property as a Bed and Breakfast subject to a Use Permit in the Zoning District associated with this property.
- b. In an Administrative Guideline Memo dated September 20, 2016, the Director of the RMA made the interpretation that applications could be made for uses of a similar character, density and intensity to that of a Bed and Breakfast.
- c. More than five (5) guestrooms changes the building occupancy from R-3 to R-1, which changes the nature of use from residential to commercial in nature (e.g.; hotel/motel/bed & breakfast). As such, Planning Staff has interpreted that use of more than five (5) guestrooms cannot be permitted with an Administrative Permit. However, you could apply for the Planning Commission to determine this would be of a similar character, density and

intensity to a Bed and Breakfast, which may be permitted with a Use Permit subject to similar regulations contained in County Code 21.64.100.

- d. If granted, a Use Permit for a use of a similar character, density and intensity to a Bed and Breakfast would change the building classification from R-3 to R-1, which would require the building to conform to all the associated R-1 building standards (e.g.: ADA access, Fire Suppression, Parking, etc.).
- e. The Appropriate Authority to consider this Use Permit would be the Planning Commission.
- f. Changing the use from residential to commercial would result in an intensification that requires application of the Private Road Ordinance (Chapter 21.64.320 MCC).

The applicant has chosen to pursue option number one, and agrees to limiting the STR to no more than five guestrooms.

#### Regulations relating to applications involving use of private roads.

Section 21.64.320.D.4.e., of Monterey County Code states: Projects that, in the opinion of the Director of Planning, do not result in intensification of the use of a private road(s), shall be exempt from the regulations contained in the subsections E and F of that section. Under subsection E of that section, the project is subject to a private road agreement and a private road maintenance agreement, which states that “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 section.” Staff analyzed the potential for intensification of the shared private road. There is a recorded 30-foot wide right-of-way easement that provides access to only two parcels. The actual width of the driveway before it splits is approximately 12 feet wide. The applicant’s portion of the shared driveway splits to the subject property before there is a line of sight to the neighbor’s home and is easily identified with a gate at the entrance. The Road Agreement is a “non-exclusive easement” that has no limit on the number of people that the holder of the easement could invite to his home. There is also a Road Maintenance Agreement recorded in 1997 that requires both parcels to share the cost of maintaining the shared road. Staff has determined the subject property meets the exemption under (D)(4) of the Proof of Access Ordinance, for the first single family dwelling, and is not an intensification of use.

#### LUAC:

On May 17, 2017, staff sent the application back to the Greater Monterey Peninsula Area Land Use Advisory Committee to discuss the applicant’s option to apply for an Administrative Permit for Transient Use of Residential Property for Remuneration with Conditions of Approval limiting the use to no more than 5 guestrooms. Their recommendation was for denial of the project (3-0 vote). The LUACs concerns included:

- the actual number of people occupying all the rooms. For example, a couple may have 2 teenagers that would want their own room. There would be no way to enforce the use of only 5 bedrooms.
- The use of the driveway is a negative impact to the community because it is a shared driveway.
- The use is not conducive to traveling on this narrow, unfamiliar windy public road to the site (Viejo Road is a public road). This use is not consistent with the rural nature of the area.

The LUAC suggested, should the project get approved, possibly also conditioning the project to 10 people only, not 10 adults. It would be more reasonable to rent only to one family and not 5 individuals; no corporate retreats or special events; and have a local manager who could respond quickly should an issue arise with a neighbor.

Several letters were submitted to the LUAC, which were the same letters that were submitted in 2014. There were two neighbors that attended the recent LUAC meeting. One of them was the abutting neighbor with the shared driveway. Her concerns included: that no rentals have been approved in the County since 2014; there is impact on the value of the neighboring homes; this is her own driveway and access was granted to the applicant, but when granted, it did not consider this type of use; and the applicant would not abide by the rules and she would have to be calling the County to enforce them all the time. The other neighbor, who is located just above the applicant's residence, stated that she had no issues and never heard any noise or activities going on the Hugo property.

#### CEQA:

Section 15301 of the CEQA Guidelines categorically exempts leasing of existing private structures, involving negligible or no expansion of an existing use. The applicant proposes to use (lease) an existing residential single-family dwelling as a transient use (short-term rental) facility and does not propose any additional development and/or expansion of the existing structure. All facilities are existing and have been confirmed by other County departments to be adequate for this use. The applicant has a large family and has generally up to 15 immediate family members at the home, and up to 30 people during holidays. Limiting the number of guestrooms or even the number of people for an STR would not expand the existing use or negatively affect any of the existing facilities.

#### Recommendation:

Pursuant to Section 21.64.280, Title 21, a single family dwelling occupied for residential purposes, may be used as a short term rental as long as the use does not create adverse impacts on surrounding residential uses including, but not limited to, increased levels of commercial and residential vehicle traffic, parking demand, light and glare, and noise detrimental to surrounding residential uses and the general welfare of the County.

Staff has determined the three issues raised have been resolved. The private road agreements have been established and recorded, meeting the requirements relating to the applications involving private roads. The building code has established residential occupancy requirements limiting number of guestrooms and intensification of use. However, the LUAC recommended limiting the number of people as a better means of regulating the use.

Staff recommends the Zoning Administrator approve an Administrative Permit for Transient Use of Residential Property for Remuneration with Conditions of Approval limiting the use to no more than 5 guestrooms. Conditions of Approval include, limiting the number of guestrooms to 5, quiet hours, residential-related use (i.e., no corporate retreats or special events), off-street parking, and disposal of excess trash, limiting rentals to families; minimum rental period(s), on-site advertising, payment of transient occupancy taxes (TOT), and providing a designated person located within a 25-mile radius of the rental unit, as the local contact person who would be available 24 hours a day to respond to tenant and neighborhood questions or concerns.