

Mark Conner, Agent

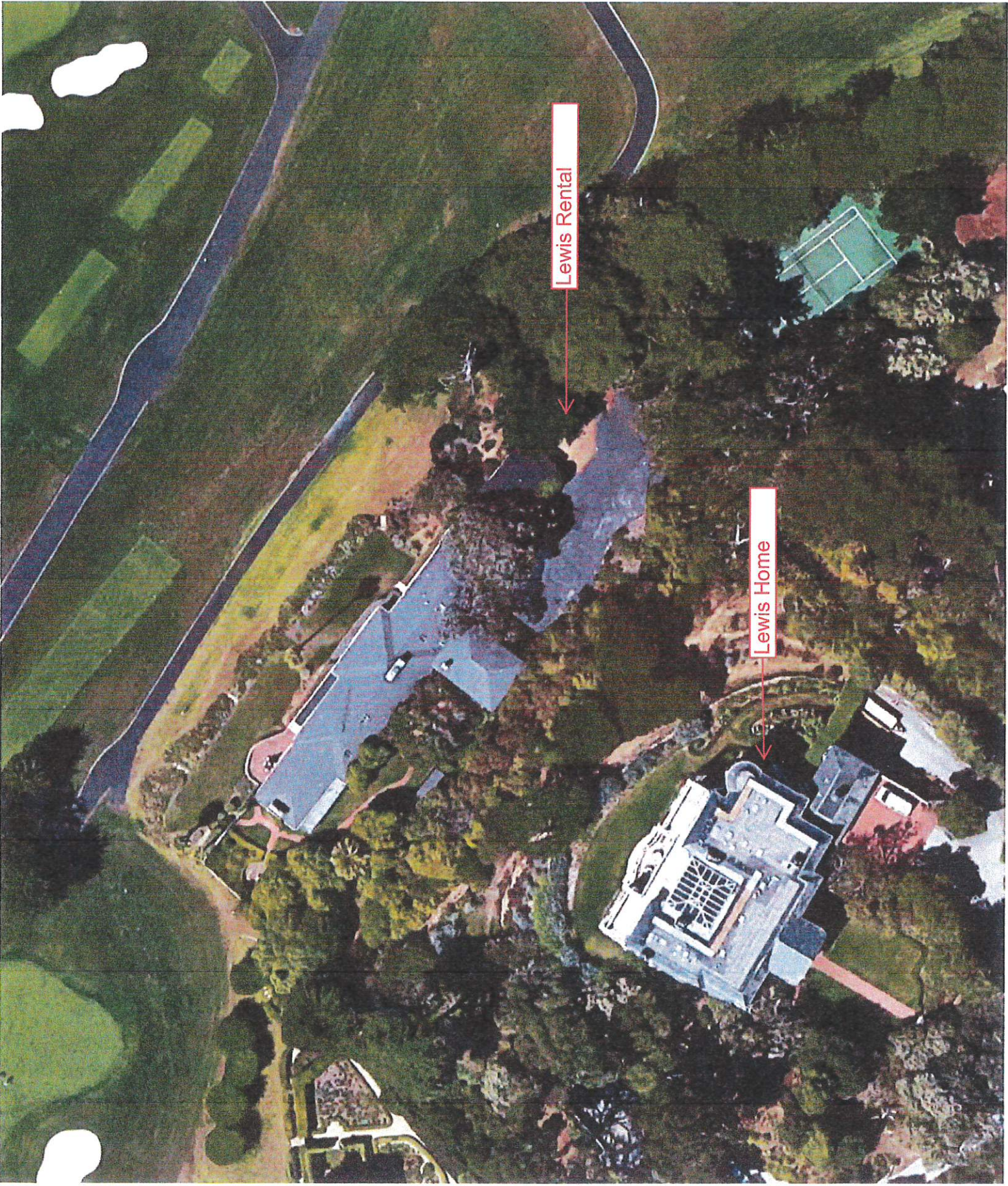
HEARING SUBMITTAL	
PROJECT NO./AGENDA	20160746 #3
DATE RECEIVED	9/13/17
SUBMITTED BY VIA	Public Hearing
DISTRIBUTION TO DATE	PC 9/13
DATE OF HEARING	9/13/17

Submitted by Agent.

WILLIAM AND DUNCAN LEWIS  
3384 17 MILE DRIVE  
PEBBLE BEACH  
Monterey County File No. PLN160746

# COASTAL DEVELOPMENT PERMIT FOR RENTAL OF A VACANT HOME

- Purchased with community consent to rentals
- Purchased without deed restrictions on rental
- Invited by Pebble Beach Company to rent it short term

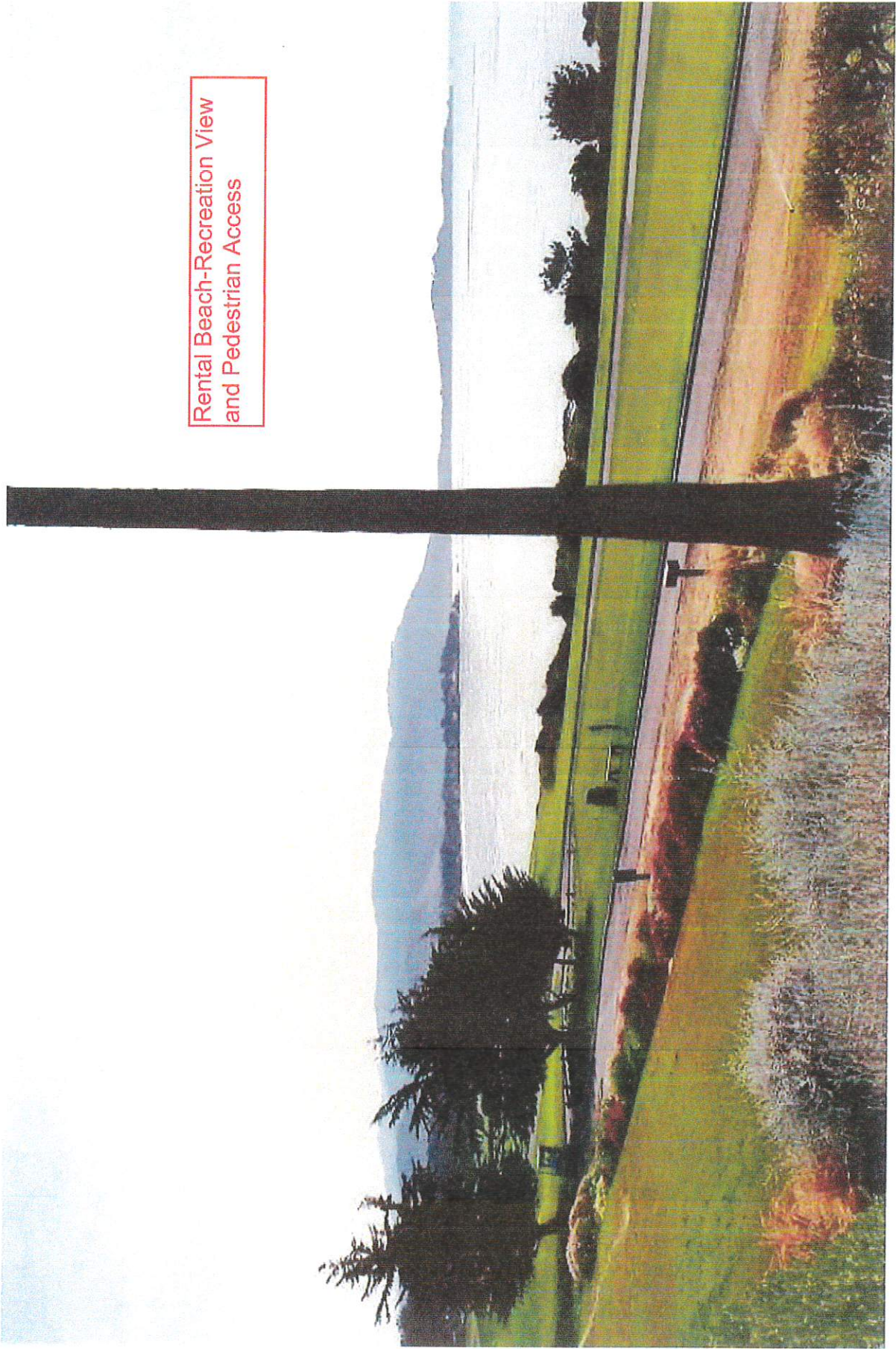




Lewis Home

Lewis Rental

Rental Beach-Recreation View  
and Pedestrian Access



## **NOT A BED AND BREAKFAST FACILITY**

Dr. and Mrs. Lewis are not renting rooms or providing meals.

"Bed and breakfast facility means an establishment providing overnight accommodations and a morning meal by people who provide rental rooms in their homes."

--MCC § 20.06.110

"The property owners shall occupy and manage the bed and breakfast facility."

--MCC § 20.64.100

"Clearly, the Bed and Breakfast use does not apply here."

--Monterey County Superior Court Judgment,  
Ex. A, p. 3:21-22.

## **SHORT TERM RENTALS**

Allowed Inland with an Administrative Permit

Title 21 governs Inland but not the Coastal Zone.

No Administrative Permit in the Coastal Zone

Title 20 governs Coastal Zone and it is silent.

Transient Use Ordinance 3911 for the Coastal Zone never went into effect.

--Staff Report

Allowed in the Coastal Zone with a Coastal Development Permit.

--Monterey County Superior Court Judgment

Otherwise, property owners in the Coastal Zone suffer discrimination by loss of property rights enjoyed by Inland owners.

## **CALIFORNIA COASTAL ACT TAKES PRECEDENCE**

"In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government."

--City of Dana Point v. California Coastal Commission  
(2013) 217 Cal.App.4th 170, 186.

In the event of conflict or inconsistency, the Coastal Act shall prevail.

--Monterey County Code § 20.02.060.D.

"Coastal Act places a higher priority on the provision of visitor-serving uses, particularly overnight accommodations, over private residential uses because such visitor-serving uses offer a vehicle for the general public to access and recreate within the state's coastal zone."

--California Coastal Commission's June 23, 2016  
direction to Monterey County:

"vacation rentals are allowable in Monterey County's  
coastal zone" — — — — —

"The Commission has long considered overnight accommodations to be facilities that are critical to providing coastal access."

--California Coastal Commission's August 26, 2016  
direction to homeowners association:

Any short-term rental ban carries fines and penalties  
against the association.

**PEBBLE BEACH COMPANY**  
**COVENANTS AND RESTRICTIONS**

SILENT ON THE RENTAL OF PROPERTY

NO LIMIT ON THE DURATION OF RENTALS

ANY SHORT TERM RENTAL BAN WOULD BE CONTRARY TO LAW

California Coastal Act § 30222 places a high priority on visitor accommodations in the Coastal Zone with private residential uses much lower.

Homeowners' association who expresses prohibition on short-term rental or other use within the Coastal Act is in violation of law and subject to fines and penalties.

--Coastal Commission August 26, 2016

"No trade, business or profession of any description shall be conducted **on** said premises."

-Pebble Beach Company (emphasis added)

e.g., Daycare  
Artists and Photographers  
Counselors

Critical factor is whether the owner is conducting a business **on** the premises.

**Occupying a house for the purposes of sleeping, eating and other dwelling purposes is no trade, business or profession.**

Santa Monica Beach Property Owners Association, Incorporated v. Acord, 219 So.3d 111 (2017) (short-term vacation rentals is not prohibited by restrictive covenants limiting use to residential purposes and prohibiting business).

Houston v. Wilson Mesa Ranch Homeowners Ass'n., 360 P.3d 255, 256, 259-260 (Colo. Ct. App. 2015) (short-term rentals not prohibited by restriction stating subject lots "shall be residential tracts" and not occupied or used for any commercial or business purpose).

Slaby v. Mountain River Estates Residential Ass'n, 100 So.3d 569, 571, 580-582 (Ala. Civ.App. 2012) (short-term rentals not prohibited by restriction stating subject property is "restricted to single family residential purposes only" and "[n]o commercial, agricultural or industrial use shall be permitted").

Mason Family Trust v. Devaney, 207 P.3d 1176, 1177-79 (N.M. Ct. App. 2009) (short-term rentals not prohibited by restriction stating property "shall be used for dwelling purposes only" and "no part thereof shall at any time be used for business or commercial purposes").

Lowden v. Bosley, 909 A.2d 261, 267 (Md. 2006) ("The owners' receipt of rental income in no way detracts from the use of the properties as residences by the tenants.").

Pinehaven Planning Bd. v. Brooks, 70 P.3d 664, 668 (Id. 2003) ("[R]enting dwelling to people who use it for the purposes of eating, sleeping, and other residential purposes does not violate the prohibition on commercial and business activity as such terms are commonly understood.").

**HOMEOWNERS ASSOCIATION OBJECTION IS NOT A BAR TO SHORT TERM RENTALS UNDER TITLE 20 OR THE COASTAL ACT.**

## **RESIDENTIAL RENTAL OF LEWIS PROPERTY**

### **Residence**

Entire house is rented.

No increase in intensity or density of use by the occupation of an empty house.

No goods or services are sold and no business occurs on the premises.

Occupants rent a house they control as their own dwelling for sleeping, eating and other residential purposes.

### **Bed and Breakfast Facilities**

Separate rooms in the structure are rented.

Owners increase their own occupancy by selling rooms to unrelated strangers and serving them meals.

Owners make room reservations, collect payments, and serve unrelated guests with meals on the premises.

Owner occupant sells rooms and operates a bed and breakfast facility on the premises.

## **COASTAL DEVELOPMENT PERMIT**

### **TITLE 20 APPLIES TO COASTAL ZONE WITH NO APPLICATION OF TITLE 21**

"subsection Z of 20.14.050 requiring a CDP for 'other residential uses of a similar character, density and intensity to those uses listed in this Section' can apply--as County argues."

--Monterey County Superior Court Judgment

Test is whether the use proposed exceeds the bounds of those listed.

"uses" are not limited to "Bed and Breakfast facilities."  
"uses" listed include "housing" and "assemblages of people."

--Monterey County Code § 20.14.050

If "uses" are limited to "Bed and Breakfast facilities," then the County has imposed a blanket ban on short term rentals in the Coastal Zone.

Banning short term rentals in the Coastal Zone while permitting them inland is a violation of the California Coastal Act and a violation of the Equal Protection Clause: i.e., Unlawful Discrimination.

Since any conflict between the County Code and the Coastal Act is resolved with deference to the Coastal Act, the answer is either:

**grant the short term rental permit**

**-or-**

**find the short term rental of an otherwise empty house requires no permit.**

The short-term rental of an entire house that is otherwise vacant is not "development"

--Monterey County Code § 20.06.310

There is no increase in the intensity and density of a single family residence when a family occupies that empty house.

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
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September 12, 2017

Elizabeth Gonzales  
Monterey County Resource Management Agency  
1441 Schilling Place  
Salinas, CA 93901

**Subject: Agenda Item No. 3, PLN160746 Lewis William R MD & Duncan B Lewis TRS**

Dear Ms. Gonzales:

Thank you for forwarding the Staff Report for the proposed Monterey County Planning Commission action on Coastal Development Permit application PLN160746. The proposed project would allow for a short-term rental at 3384 17-Mile Drive, Pebble Beach in the Del Monte Forest. County staff has recommended denial of the application for two reasons. First, that the proposed use is not substantially similar to a bed and breakfast (B&B) because the applicant does not live at the subject residence. Second, the Pebble Beach Company is the de facto Home Owner's Association (HOA) in the Del Monte Forest and has objected to the proposed short-term rental use. We have the following comments about the project regarding the County staff's reasons for denial.

First, as the staff report states, short-term rentals are allowed within the County's coastal zone as a residential use *similar* to B&Bs. County staff correctly recognizes that there are clear differences between short-term rentals and B&Bs. Thus, because short-term rentals are similar and not equivalent B&B facilities, short-term rentals need not meet every requirement of the B&B regulations found in section 20.64.100 of the County's LCP. We would like to clearly state that we agree that short-term rentals do not need to meet all B&B facility regulations to be found consistent with the LCP.

Second, the staff report raises the question whether the objection of an HOA, such as the Pebble Beach Company, is sufficient to deny an application for a short-term rental in the coastal zone. We do not believe that objections from a private HOA are an appropriate standard of review to determine whether an application is consistent with the County's LCP. There are no similar provisions within the County's LCP that would allow an HOA to determine whether the County can approve a discretionary permit. This would allow an HOA to become the de facto decision-maker on coastal permits. If the Pebble Beach Company believes that a homeowner's actions violate a privately agreed upon covenant, condition, or restriction; that disagreement should be settled privately outside of the LCP context. Thus we recommend that the County not rely upon the Pebble Beach Company's objection to deny the current application.

Thank you for considering our comments. If you have any questions or would like to discuss this issue further, please contact me at (831) 427-4863 or [Brian.O'Neill@coastal.ca.gov](mailto:Brian.O'Neill@coastal.ca.gov).

Elizabeth Gonzales  
Agenda Item No. 3, PLN160746  
September 12, 2017  
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Sincerely,

A handwritten signature in black ink, appearing to read "B. O'Neill", written in a cursive style.

Brian O'Neill  
Coastal Planner

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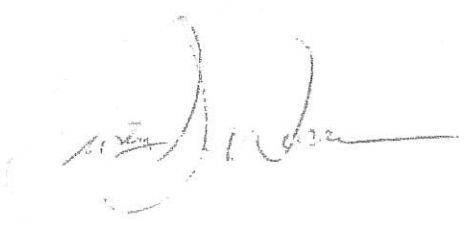
Dear County of Monterey and Planning Commissioners:

I am a home owner in the Del Monte Forest and I support the application of William and Duncan Lewis for a short term rental permit. It is our understanding that they have paid the County the nearly \$9,000 fee the County required for the permit application. The property, 3384 17 Mile Drive, is an empty home bordering the Pebble Beach Golf Course that they seek to rent. They are not renting rooms, offering meals or adding to the population of an already occupied house. The home is not a bed and breakfast facility or business. Those looking to rent the property are doing so because they want a place to live near the coast, even if they only live there temporarily.

A discrete number of short term rentals in Pebble Beach complement the community. They do not compete with the Pebble Beach Company which rents hotel rooms and not homes or estates.

Often families have special needs which are better suited by a private home. It is necessary for us to afford these families, whether from other cities, states or countries without this same coastal beauty, the access to beaches and amenities offered by homes of this nature. Otherwise, we become a closed, off-limits community which excludes others who may not be as fortunate as those of us who own homes in the Pebble Beach community.

Please grant the permit being requested by Dr. and Mrs. Lewis. Thank you.



Dustin S. Warren  
Home Owner – Del Monte Forest