

Attachment B

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NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

RECEIVED
MONTEREY COUNTY

2017 NOV 14 AM 9:11

CLERK OF THE BOARD

[Signature]

DEPUTY

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before _____ (10 days after written notice of the decision has been mailed to the applicant). Date of decision November 2, 2017.

1. Please give the following information:

- a) Your name William R. and Duncan B. Lewis
- b) Phone Number c/o Mark A. O'Connor, attorney for appellants: (831) 250-7011
- c) Address 3384 17 Mile Drive City Pebble Beach Zip 93953
- d) Appellant's name (if different) _____

2. Indicate the appellant's interest in the decision by checking the appropriate box:

☒ Applicant

☐ Neighbor

Other (please state) _____

3. If you are not the applicant, please give the applicant's name: _____

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

- | | File Number | Type of Application | Area |
|---------------------------|------------------|--------------------------|---------------------|
| a) Planning Commission: | <u>PLN160746</u> | <u>Short term rental</u> | <u>Coastal Zone</u> |
| b) Zoning Administrator: | _____ | _____ | _____ |
| c) Subdivision Committee: | _____ | _____ | _____ |
| d) Administrative Permit: | _____ | _____ | _____ |

5. What is the nature of the appeal?

- a) Is the appellant appealing the approval ☐ or the denial ☒ of an application? (Check appropriate box)
- b) If the appellant is appealing one or more conditions of approval, list the condition number and state the condition(s) being appealed. (Attach extra sheets if necessary).

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for the appeal:

- ☒ There was a lack of fair or impartial hearing; or
- ☒ The findings or decision or conditions are not supported by the evidence; or
- ☒ The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will *not* accept an application for appeal that is stated in generalities, legal or otherwise. If the appellant is appealing specific conditions, you must list the number of each condition and the basis for the appeal. (Attach extra sheets if necessary).

The County of Monterey is imposing a blanket ban on vacation home rentals in the Coastal Zone while telling the Monterey County Superior Court and California Coastal Commission that vacation home rentals are permitted in the Coastal Zone. (See Attachment.)

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning). In order to file a valid appeal, you must give specific reasons why the appellant disagrees with the findings made. (Attach extra sheets if necessary).

The vacation home rental is a residential use, it is a use protected by the California Coastal Act and it is not a bed and breakfast. See further reasons in Attachment.

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning will provide you with a mailing list.

9. Your appeal is accepted when the Clerk of the Board's Office accepts the appeal as complete on its face, receives the filing fee (Refer to the most current adopted Monterey County Land Use Fees document posted on the RMA Planning website at http://www.co.monterey.ca.us/planning/fees/fee_plan.htm) and stamped addressed envelopes.

APPELLANT SIGNATURE



DATE 11/8/17

ACCEPTED

(Clerk to the Board)

DATE _____

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MONTEREY COUNTY

2017 NOV 14 AM 9:11

CLERK OF THE BOARD

DEPUTY

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



NOTICE OF APPEAL

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Title 20 (Zoning)
Title 21 (Zoning)

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2017 NOV -9 PM 3:38

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[Signature]

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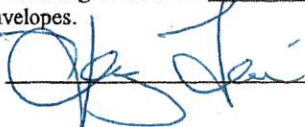
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APPELLANT SIGNATURE



DATE

11/6/17

ACCEPTED

DATE

(Clerk to the Board)

RECEIVED
MONTEREY COUNTY

2017 NOV -9 AM 8:24

CLERK OF THE BOARD

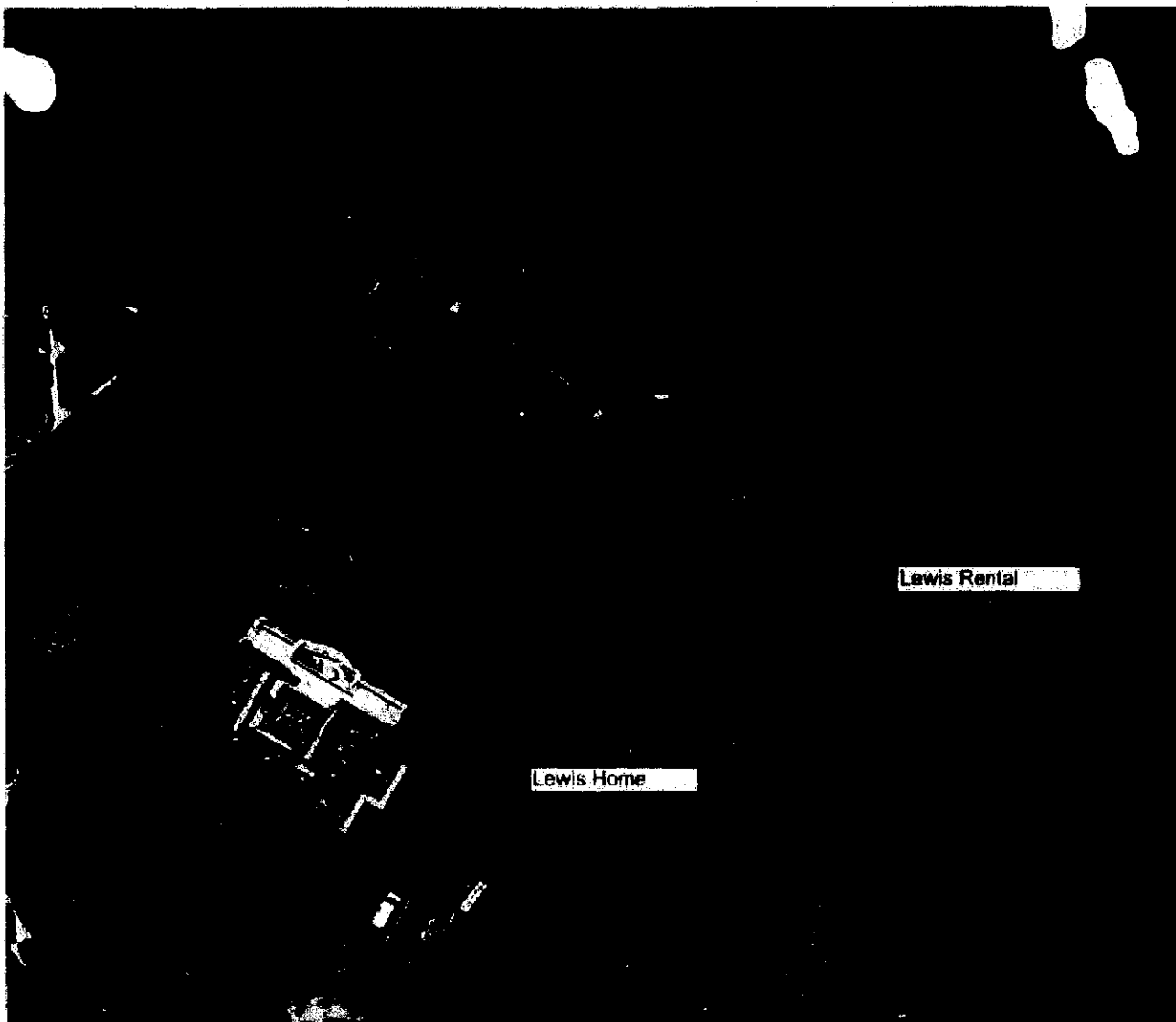


DEPUTY

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

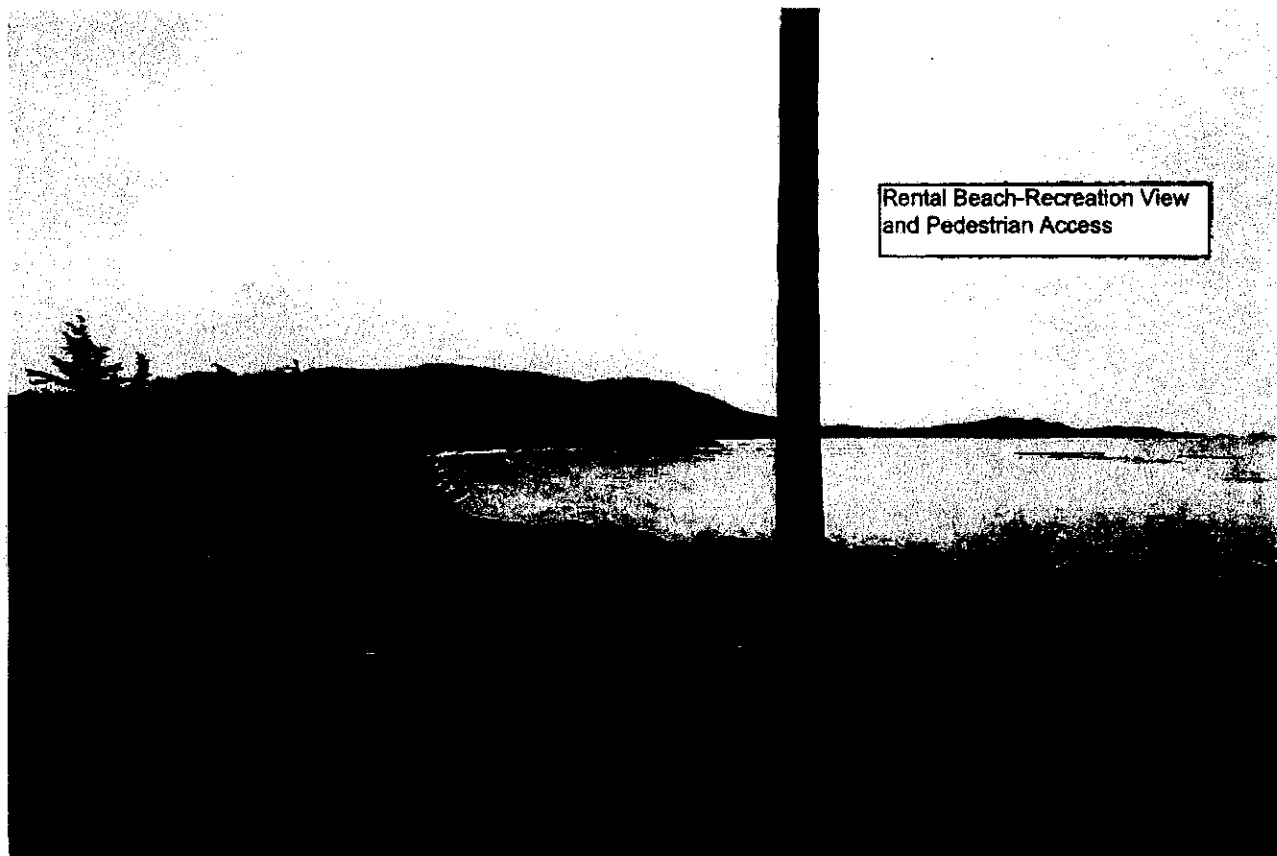
COASTAL DEVELOPMENT PERMIT
FOR
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Lewis Home

Lewis Rental



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

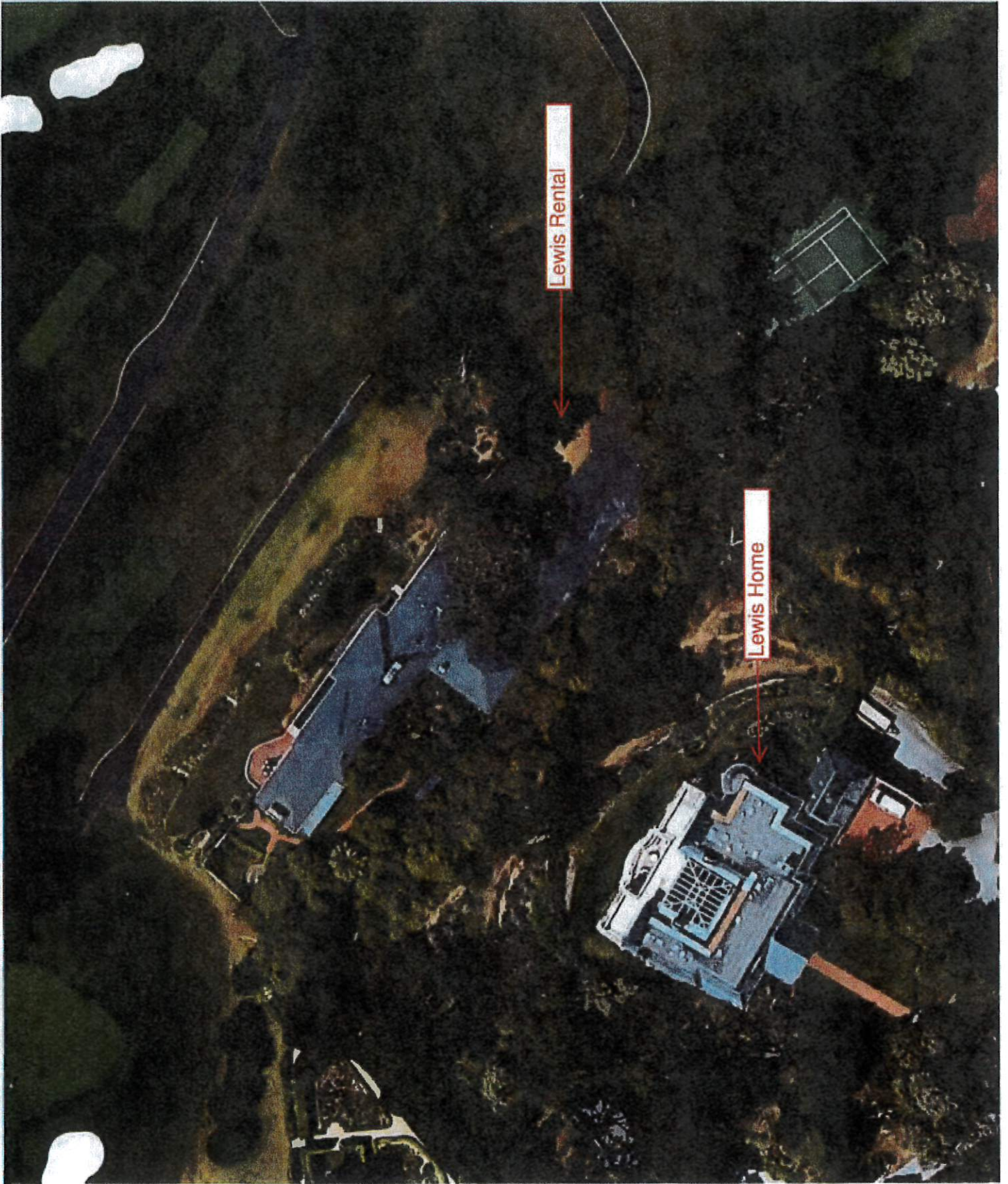
-or-

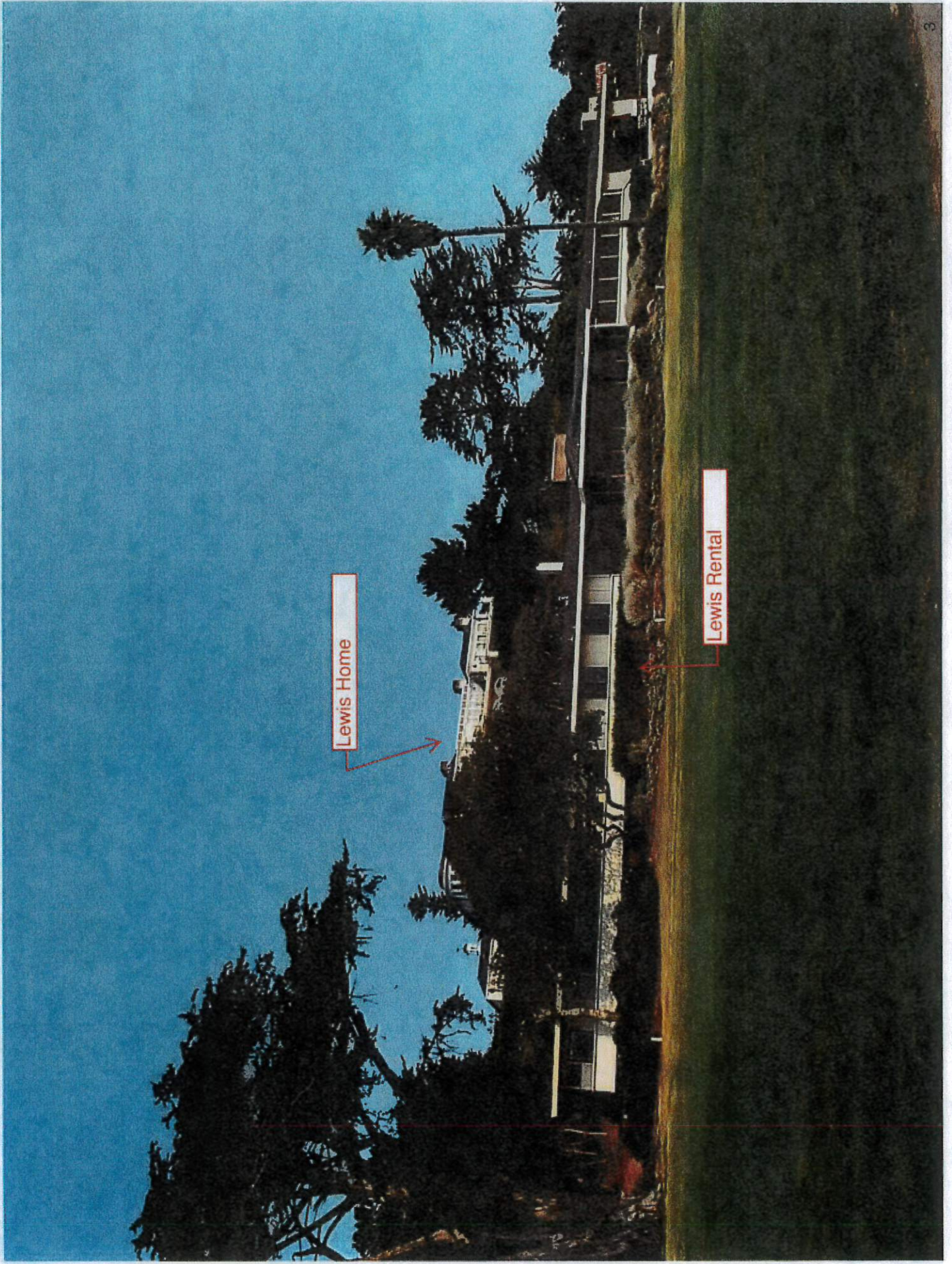
find the short term rental of an otherwise empty house requires no permit.

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

--Monterey County Code § 20.06.310

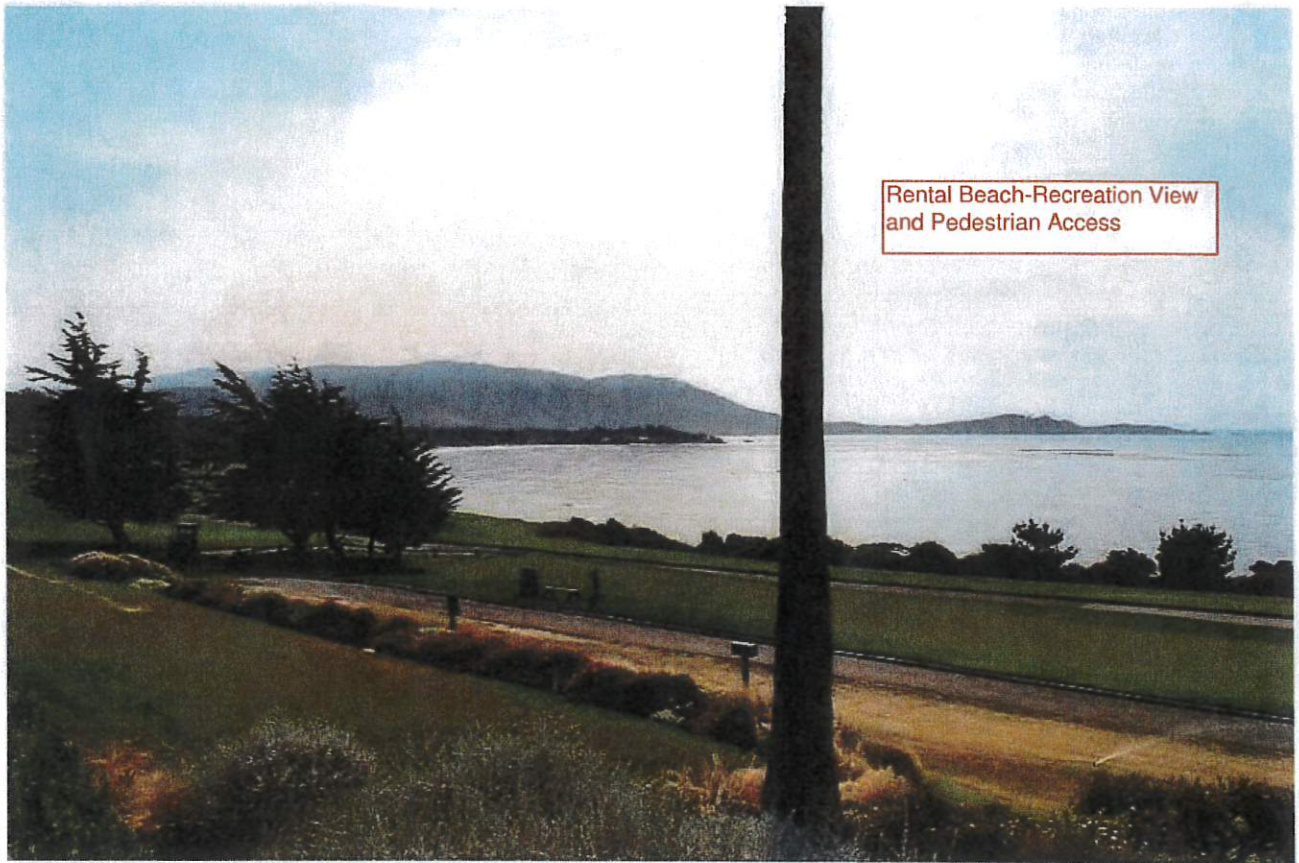
There is no increase in the intensity and density of a single family residence when a family occupies that empty house.





Lewis Home

Lewis Rental



Rental Beach-Recreation View
and Pedestrian Access

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