

Attachment G

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MINUTES
Del Monte Forest Land Use Advisory Committee
Thursday, May 18, 2017

1. Meeting called to order by Lori Lietzke at 3 pm

2. Roll Call

Members Present: Sandy Getren, Lori Lietzke, Kim Caneer,
June Stock, Rod Dewar

Members Absent: ~~Ned Ongaro~~, Rick Verbanec, Ned Van Rockel

3. **Public Comments:** The Committee will receive public comment on non-agenda items that are within the purview of the Committee at this time. The length of individual presentations may be limited by the Chair.

none

5. Scheduled Item(s)

6. Other Items:

A) Preliminary Courtesy Presentations by Applicants Regarding Potential Projects

none

B) Announcements

Approval of Minutes with corrections to April 6, 2017
(per Cheryl Burrell PBCo.) minutes to reflect usage for
annual AT+T and U.S. Open events

June - moved to approval with corrections above
Rod - seconded
Kim - abstained (not present at meeting)

7. Meeting Adjourned: 4:10 pm

Minutes taken by: Kim Caneer, Secretary

Action by Land Use Advisory Committee Project Referral Sheet

Monterey County RMA Planning
168 W Alisal St 2nd Floor
Salinas CA 93901
(831) 755-5025

Advisory Committee: **Del Monte Forest**

Please submit your recommendations for this application by: May 23, 2017

1. **Project Name:** LEWIS WILLIAM R MD & DUNCAN B LEWIS TRS
 File Number: PLN160746
Project Location: 3384 17 MILE DRIVE, PEBBLE BEACH
Project Planner: LIZ GONZALES
Area Plan: Del Monte Forest Land Use Plan, Coastal Zone.
Project Description: Coastal Development Permit to allow other residential uses of a similar character, density and intensity to a Bed and Breakfast as determined by the Planning Commission to be consistent and compatible with the intent of the Low Density Residential Zoning District and the Del Monte Forest Land use Plan. The property is located at 3384 17 Mile Drive, Pebble Beach (Assessor's Parcel Number 008-393-006-000), Del Monte Forest Land Use Plan, Coastal Zone.

Was the Owner/Applicant/Representative Present at Meeting? Yes X, No _____

*Owners Dr. William Lewis, Harry Lewis
attorney for owners, Mark O'Connor*

Was a County Staff/Representative present at meeting? Liz Gonzales (Name)

PUBLIC COMMENT:

Name	Site Neighbor?		Issues / Concerns (suggested changes)
	YES	NO	
<i>Cheryl Burrell, P.B.Co.</i>		<i>X</i>	<i>Presented letter from P.B.Co. legal dept. recommending denial of STR/B & B application</i>
<i>Dale Ellis-Lombard Associates, representing neighbor</i>		<i>X</i>	<i>Neighbors need clearer specifics of STR policies</i>

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LUAC AREAS OF CONCERN

Concerns / Issues (e.g. site layout, neighborhood compatibility; visual impact, etc)	Policy/Ordinance Reference (If Known)	Suggested Changes - to address concerns (e.g. relocate; reduce height; move road access, etc)
All applications of STR in the past were in MPCG area were denied.	This STR request is in Coastal Zone	

ADDITIONAL LUAC COMMENTS (motion)

Rod Dewar made a motion to deny the STR request without prejudice but DMP LUAC asks County Planning to consider interim relief for the Lewis's until STR ordinances/policies are established.

RECOMMENDATION:

Motion by Rod Dewar (LUAC Member's Name) see above

Second by June Stock (LUAC Member's Name)

☐ Support Project as proposed

☒ Support Project with changes

☐ Continue the Item

Reason for Continuance: _____

Continued to what date: _____

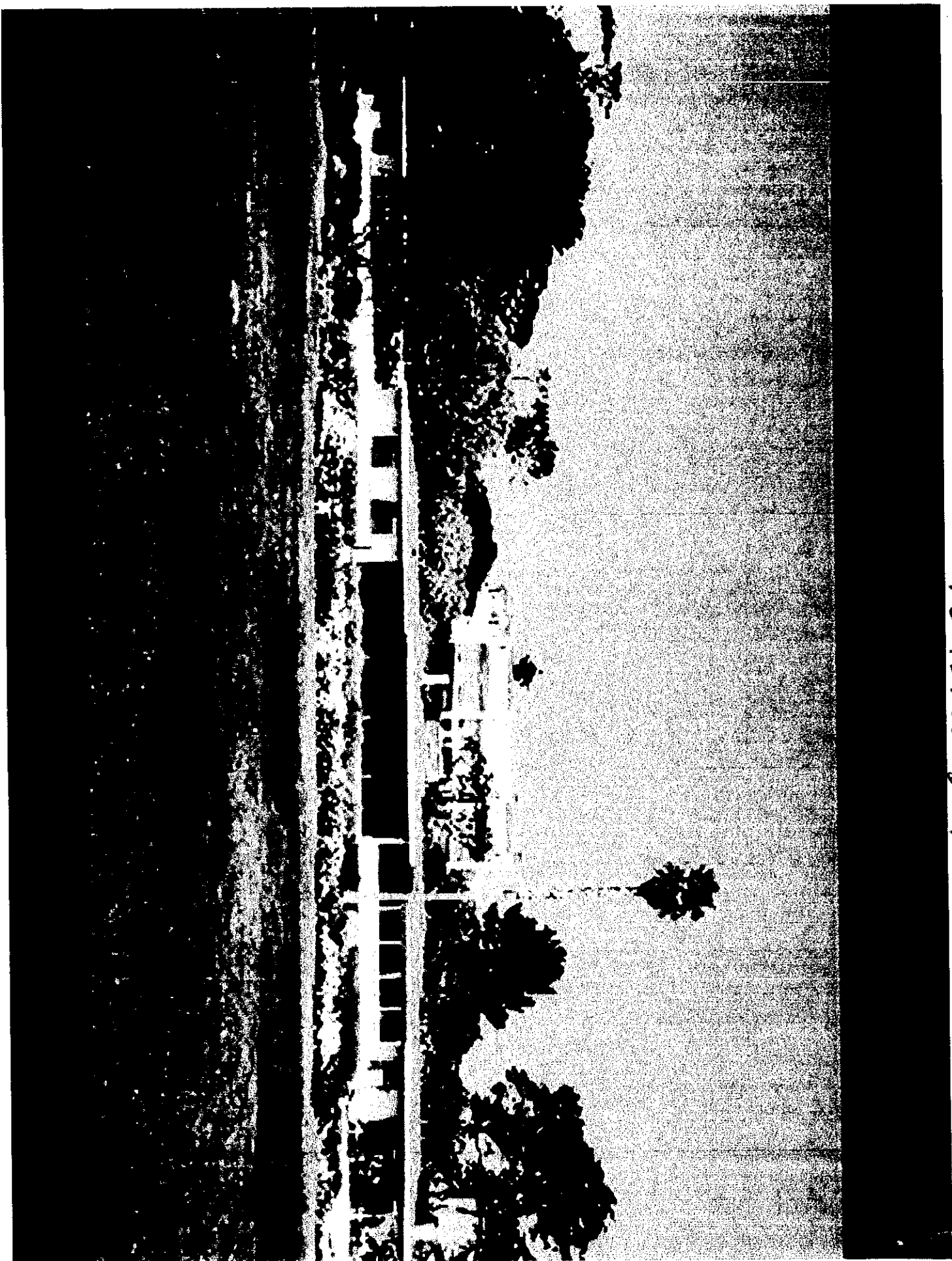
AYES: Stock, Getreu, Dewar, Lietzke (4)

NOES: 0

ABSENT: Verbanec, Van Roekle (2)

ABSTAIN: Caneer (1)

Received DMF LOAC 5/18/17



Received by DMF LUAC 5/18/17

16001 La Tijera Avenue, Suite 100, San Diego, CA 92131
CALIFORNIA COASTAL COMMISSION
444 North Harbor Drive
P.O. Box 35000, San Diego, CA 92163-0000
619-444-2800
www.calcoast.org

FORM CDP-1 (2015) - 1/15/16



ATTACHMENT C

(Sent Individually via US Mail)

December 6, 2016

TO: Coastal Planning/Community Development Directors

SUBJECT: Short-Term/Vacation Rentals in the California Coastal Zone

Dear Planning/Community Development Director:

Your community and others state and nationwide are grappling with the use of private residential areas for short-term overnight accommodations. This practice, commonly referred to as vacation rentals (or short-term rentals), has recently elicited significant controversy over the proper use of private residential stock within residential areas. Although vacation rentals have historically been part of our beach communities for many decades, the more recent introduction of online booking sites has resulted in a surge of vacation rental activity, and has led to an increased focus on how best to regulate these rentals.

The Commission has heard a variety of viewpoints on this topic. Some argue that private residences should remain solely for the exclusive use of those who reside there in order to foster neighborhood stability and residential character, as well as to ensure adequate housing stock in the community. Others argue that vacation rentals should be encouraged because they often provide more affordable options for families and other coastal visitors of a wide range of economic backgrounds to enjoy the California coastline. In addition, vacation rentals allow property owners an avenue to use their residence as a source of supplemental income. There are no easy answers to the vexing issues and questions of how best to regulate short-term/vacation rentals. The purpose of this letter is to provide guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal zone areas moving forward.

First, please note that vacation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and/or access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.

The Commission has experience in this arena, and has helped several communities develop successful LCP vacation rental rules and programs (e.g., certified programs in San Luis Obispo and

Santa Cruz Counties going back over a decade; see a summary of such LCP ordinances on our website at:

https://documents.coastal.ca.gov/assets/Sample_of_Commission_Actions_on_Short_Term_Rentals.pdf). We suggest that you pay particular attention to the extent to which any such regulations are susceptible to monitoring and enforcement since these programs present some challenges in those regards. I encourage you to contact your local district Coastal Commission office for help in such efforts.

Second, the Commission has not historically supported blanket vacation rental bans under the Coastal Act, and has found such programs in the past not to be consistent with the Coastal Act. In such cases the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act. However, in situations where a community already provides an ample supply of vacation rentals and where further proliferation of vacation rentals would impair community character or other coastal resources, restrictions may be appropriate. In any case, we strongly support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for vacation rentals, while providing appropriate regulation to ensure consistency with applicable laws. We believe that appropriate rules and regulations can address issues and avoid potential problems, and that the end result can be an appropriate balancing of various viewpoints and interests. For example, the Commission has historically supported vacation rental regulations that provide for all of the following:

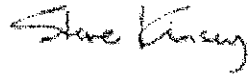
- Limits on the total number of vacation rentals allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a vacation rental (e.g., disallowing vacation rentals in affordable housing contexts, etc.).
- Limits on maximum vacation rental occupancies.
- Limits on the amount of time a residential unit can be used as a vacation rental during a given time period.
- Requirements for 24-hour management and/or response, whether onsite or within a certain distance of the vacation rental.
- Requirements regarding onsite parking, garbage, and noise.
- Signage requirements, including posting 24-hour contact information, posting requirements and restrictions within units, and incorporating operational requirements and violation consequences (e.g., forfeit of deposits, etc.) in rental agreements.
- Payment of transient occupancy tax (TOT).
- Enforcement protocols, including requirements for responding to complaints and enforcing against violations of vacation rental requirements, including providing for revocation of vacation rental permits in certain circumstances.

These and/or other provisions may be applicable in your community. We believe that vacation rentals provide an important source of visitor accommodations in the coastal zone, especially for larger

families and groups and for people of a wide range of economic backgrounds. At the same time we also recognize and understand legitimate community concerns associated with the potential adverse impacts associated with vacation rentals, including with respect to community character and noise and traffic impacts. We also recognize concerns regarding the impact of vacation rentals on local housing stock and affordability. Thus, in our view it is not an 'all or none' proposition. Rather, the Commission's obligation is to work with local governments to accommodate vacation rentals in a way that respects local context. Through application of reasonable enforceable LCP regulations on such rentals, Coastal Act provisions requiring that public recreational access opportunities be maximized can be achieved while also addressing potential concerns and issues.

We look forward to working with you and your community to regulate vacation rentals through your LCP in a balanced way that allows for them in a manner that is compatible with community character, including to avoid oversaturation of vacation rentals in any one neighborhood or locale, and that provides these important overnight options for visitors to our coastal areas. These types of LCP programs have proven successful in other communities, and we would suggest that their approach can serve as a model and starting place for your community moving forward. Please contact your local district Coastal Commission office for help in such efforts.

Sincerely,



STEVE KINSEY, Chair
California Coastal Commission

Received by DMF LUAC
5/18/17

MONTEREY COUNTY

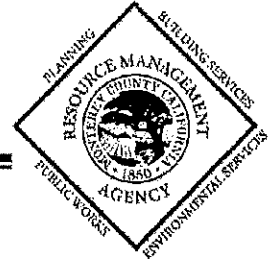
RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director

Building Services / Environmental Services / Planning Services / Public Works & Facilities
168 W. Alisal Street, 2nd Floor
Salinas, California 93901

(831) 755-4800

www.co.monterey.ca.us/rma



ADMINISTRATIVE GUIDELINE

Please note that this memorandum is issued solely for informational purposes, and does not constitute an interpretation or decision from which an appeal may be taken. If an interpretation is desired, the regulations provided in Sections 20.88.040 or 21.82.040 must be followed.

Date: July 9, 2015- Revised September 20, 2016

By: Mike Novo, AICP, RMA Director of Planning
amended by Carl P. Holm, AICP, RMA Director

Subject: Current Regulations Relative to the Transient Use of Residential Property
(Short-Term Rental of Residential Property) (30 Days or Less)

Application: County-wide

What is the Question?

Which Monterey County Codes apply to the Transient Use of Residential Property (short-term rental) (30 days or less)?

Applicable Monterey County Policy/Regulation:

- Title 21 -Inland Areas: Sections 21.64.280 (Administrative Permits for Transient Use of Residential Property for Remuneration); 21.64.100 (Regulations for Bed and Breakfast Facilities)
- Title 20 - Coastal Zone: Sections 20.10.050W, 20.12.050U, 20.14.050Z, and 20.16.050NN (similar use as determined by the Planning Commission); 20.64.100 (Regulations for Bed and Breakfast Facilities)
- Chapter 5.40 (Uniform Transient Occupancy Tax Ordinance)

Short Answer:

Short-term rental (30 days or less) may be permitted with an approved discretionary permit, in certain designated zoning districts in the County. Discretionary permits require review and approval by a decision making body and may or may not be granted. Specific short-term rentals that may be permitted with an approved discretionary permit include:

- Bed and breakfast (B&B) facilities – a specific type of short-term rental as defined in Sections 21.06.110 and 20.06.110– may be permitted in designated zoning districts in both Inland Areas with an approved Use Permit and the Coastal Zone with an approved Coastal Development Permit (Monterey County Code sections 21.64.100 and 20.64.100, respectively).
- Rental for between 7-30 days may be permitted in the Inland Areas with an approved Administrative Permit (Monterey County Code Section 21.64.280).

- Rental for 30 days or less may be permitted in the Coastal Zone with an approved Coastal Development Permit based on a determination by the Planning Commission that the proposed use is of a similar character, density and intensity to those listed in the applicable zoning code sections if determined to be consistent and compatible with the intent of the applicable Chapter of the zoning code and the applicable land use plans. (Sections 20.10.050W, 20.12.050U, 20.14.050Z, and 20.16.050NN)

Rental for 30 days or less requires payment of transient occupancy tax (Monterey County Code Chapter 5.40). Each operator renting occupancy to transients are required to register with the Tax Collector and obtain from the Tax Collector a transient occupancy registration certificate, to be at all times posted in a conspicuous place on the premises. Payment of taxes does not otherwise permit a use that is not otherwise allowed.

Many events, such as weddings, may require a Use Permit or Coastal Development Permit as an assemblage of people, separate from short-term rental or B&B permit. Requirements for assemblages of people or special events is not addressed in this memorandum, but is mentioned here due to the frequent interconnection between short term rentals and special event use of property. The intent is to maintain a residential function.

Discussion:

Since the 1980's, Monterey County has allowed bed and breakfast facilities in certain residential areas of the County in both the Inland Areas and Coastal Zone (Monterey County Code sections 21.64.100 and 20.64.100, respectively). Bed and breakfast facilities (B&Bs) are a type of short-term rental in which the property owner occupies and manages the facility.

In the late 1990's, Monterey County determined the need to define and regulate a broader category of short-term rental uses (or transient occupancy) of residential properties, separate from B&Bs. In 1997, the County adopted an ordinance in the Inland Areas (Non-Coastal Zone), that regulates transient use for remuneration (short-term rental) of single and multiple family dwelling units, duplexes, guesthouses, caretaker units, and other structures normally occupied for residential purposes (Monterey County Code Section 21.64.280). The existing transient use ordinance provides a discretionary permit procedure in the Inland Areas to allow, or legalize existing, visitor serving opportunities. Establishing land use regulations for events was not part of the purpose of this ordinance.

The transient use ordinance adopted by the Board of Supervisors for the Coastal Zone (Title 20 Zoning) was not certified by the Coastal Commission and therefore never went into effect. A Coastal Development Permit may be applied for if the proposed use is similar to the listed uses allowed for the specific zoning district in which the property is located. This is a discretionary permit subject to approval by the Planning Commission.

In recent years, Monterey County has experienced an increase in the number of residential properties being used for short-term rentals. In response to this growing trend, Monterey County has begun work to update the zoning ordinances in the Inland Areas and draft a new ordinance to specifically regulate short-term residential rentals in the Coastal Zone.

During the redraft of the short-term residential rental ordinance, the existing ordinances remain in force:

- In the Inland Areas, Transient Use of Residential Properties and B&Bs in designated zoning districts may be permitted with the approval of a discretionary permit.
- In the Coastal Zone, B&Bs may be permitted in designated zoning districts with the approval of a Coastal Development Permit.
- Rental for 30 days or less (non-bed and breakfast) may be permitted in the Coastal Zone as a similar use with a Coastal Development Permit.

Events require a separate permit for assemblages of people. The County will actively enforce violations to the existing code and continue to investigate any complaints that are received.

Facts of the situation:

Administrative Permits, Coastal Administrative Permits, Use Permits and Coastal Development Permits are discretionary type permits. Discretionary permits require public notice, conditions of approval, and may require a public hearing. Discretionary permits may or may not be granted. With permits and clear conditions of approval, enforcement is easier. Additionally, the permit process allows the County to address any potential adverse impacts of such use.

The Monterey County Resource Management Agency processes permits and enforces the County's land use regulations.

Bed and Breakfast facilities may be permitted in designated zoning districts in the Inland Areas with an approved Use Permit and in the Coastal Zone with an approved Coastal Development Permit (Monterey County Code Sections 21.64.100 and 20.64.100, respectively). Use Permits and Coastal Development Permits are processed through the Monterey County Resource Management Agency.

In Inland Areas (Title 21 Zoning Ordinance) short-term rental for overnight accommodations for 7-30 days may be permitted in all zoning districts that allow a residential use with an approved Administrative Permit (Monterey County Code Section 21.64.280). Administrative Permits are processed through the Monterey County Resource Management Agency.

In the Coastal Zone (Title 20 Zoning Ordinance), short-term rental for overnight accommodations for 30 days or less may be permitted as a B&B, or as a similar use.

Renting a home or property for 30 days or less is also subject to Transient Occupancy Tax (TOT), which is a part of the County Code and State Tax Code that is applied and enforced through the County Tax Collector's office, separate from land use regulations. Paying TOT does not imply or alleviate obligation for land use compliance nor legalize the use. Owners found to be renting homes without proper land use permits, regardless if TOT is paid, are subject to penalties and fines in accordance with the land use regulations. Failure to pay TOT may be subject to separate enforcement and collection.

Long-term rentals (greater than 30 consecutive days) are not regulated under the Monterey County Zoning Codes. Therefore, long-term rentals are all allowed without a permit and are not subject to transient occupancy tax.

External functions such as residential property used for corporate gatherings, rented out for weddings, or rented and used for parties during events (e.g. AT&T, UP Open, Concourse de Elegance, etc) will be viewed as events. Events require a Use Permit or Coastal Development Permit as an assemblage of people, separate from a short-term rental or B&B permit.

Received by DMF LOAC

5/18/17

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



SENT VIA REGULAR AND CERTIFIED MAIL

August 26, 2016

Mandalay Shores Community Association
Attn: Deirdre Frank, President
1237 S Victoria Ave. #252
Oxnard, CA 93035-1292

Subject: Rule to Prohibit Short Term Vacation Rentals

Dear Ms. Frank:

As you may know, the California Coastal Act was enacted by the state legislature to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to provide maximum public access to the sea.

The Commission has long considered overnight accommodations to be facilities that are critical to providing coastal access. In some instances, short term vacation rentals may provide a lower cost alternative to renting hotel or motel rooms for large families or groups of individuals. In all instances, short term vacation rentals increase the range of options available to coastal visitors. Under the Coastal Act, these types of rentals constitute a high-priority visitor-serving use that provide important overnight accommodations for members of the public in coastal communities and support increased coastal access opportunities. Specifically, the pertinent Coastal Act sections state¹:

Section 30213:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over

¹ The Commission certified a Local Coastal Program ("LCP") for the City of Oxnard, which enables the City to issue coastal development permits for development within the City's Coastal Zone, pursuant to the implementation and resource protection policies of the LCP. The policies of the Coastal Act, such as those noted herein, remain a standard of review of coastal development permits appealed to the Commission.

private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

A prohibition, such as the rule adopted by the Board of Directors of the Mandalay Shores Community Association on June 26, 2016 ("STVR Ban"), of an entire class of accommodation that provides widespread lodging opportunities that are varied in cost, is especially problematic in terms of consistency with the Coastal Act. Moreover, Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations...[underlining added for emphasis].

The STVR Ban constitutes "development" under the Coastal Act, as the rule would change access to the coast by diminishing the pool of visitor serving accommodations, and, therefore, requires a coastal development permit. Staff is not aware of any coastal development permit that has been issued for this development by the City of Oxnard or Commission, nor of an application for a coastal development permit. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

Public Access Violation

As already stated, Section 30213 and 30222 generally provide for the protection of lower cost visitor serving facilities. The Association's rule to purportedly prohibit short term vacation rentals does not protect lower cost visitor facilities, and, in fact, may result in the loss of lower cost facilities, in contravention of Coastal Act Sections 30213 and 30222.

In cases involving violations of the public access provisions of the Coastal Act, which is the case here, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation. In this case, as described above, there are significant violations of the public access provisions of the Coastal Act; therefore, the criterion of Section 30821 has been satisfied.

Mandalay Shores Community Association

August 26, 2016

Page 3 of 4

Please consider this letter to be written notification of our intent to consider pursuit of remedies, including administrative penalties pursuant to Section 30821. In order to avoid the accrual of monetary penalties, please immediately cease any activity that interferes with public access to the coast, including by taking the following actions: 1) rescind the rule described herein prohibiting short term vacation rentals, and 2) cease enforcement of said rule. Please send written confirmation within 15 days of the date of this letter that you have taken the actions listed above and ceased to interfere with public access to the coast.

Coastal Act Remedies

Furthermore, please be advised that the Coastal Act also provides for alternative imposition of civil liability (variously described as fines, penalties, and damages) by the courts for violations of the Coastal Act. Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit, in an amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP, when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists.

In addition, Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a coastal development permit without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. Cease and desist orders may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act.

Mutually Agreeable Resolution

This agency also understands and appreciates that short term vacation rentals may raise neighborhood character and operational issues, such as site management, number of occupants, special events, parking, litter, and noise limits. Therefore, the Coastal Commission has endorsed certain regulations to require on-site management, enforcement protocols, occupancy limits, required parking, and other use provisions. For example, the Commission recently certified an amendment to the certified LCP for the City of Dana Point at its April 2016 hearing that provided for new regulations for short-term vacation rentals, including limitations on parking and number of allowable guests in order to minimize the impact of short term vacation rentals on beach users and neighbors.

In this situation, while it is not likely that staff would support a prohibition on short term vacation rentals due to the inconsistency of such a ban with the public access provisions of the Coastal Act, we believe that through the coastal development permit process, the Commission, City, and interested parties can work together to develop regulations for short term vacation rentals that address the Association's concerns while ensuring consistency with the Coastal Act and Oxnard LCP and avoiding the costs of litigation, and we are committed to working with the

Mandalay Shores Community Association

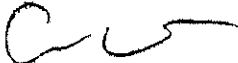
August 26, 2016

Page 4 of 4

City and Association towards that end. Therefore, we request that the Association first work with Commission and City staff to develop suitable regulations before taking action in the future related to short term vacation rentals in the community, excepting the actions listed above that are necessary to resolve this issue.

Thank you for your attention to this matter. If you have any questions about this letter, please do not hesitate to contact me at (562) 590-5071, and we look forward to receiving, by the deadline noted above, confirmation from the Association that the steps detailed above have been taken.

Sincerely,



Andrew Willis

Enforcement Supervisor

cc: Stephen Fischer, City Attorney, Oxnard
 Steve Hudson, Deputy Director, CCC
 Barbara Carey, Planning Manager, CCC
 Molly Troup, Enforcement Analyst, CCC



PEBBLE BEACH
COMPANY

Received by DMF LUAC
5/18/17

May 17, 2017

Ms. Lori Lietzke, Chair
Del Monte Forest Land Use Advisory Committee
3101 Forest Lake Road
Pebble Beach, CA 93953

Re: Application PLN160746 (Lewis)
- DMF Land Use Advisory Committee Meeting 5/18/2017 - Agenda Item No. 1

Dear Ms. Lietzke:

Pebble Beach Company wishes to inform your committee that we oppose approval of Application No. PLN160746 for the equivalent of a Bed and Breakfast facility/operation on the applicants' parcel in the coastal zone of Del Monte Forest. Irrespective of what the county zoning may provide (and we believe that the applicants' proposal is clearly not a "residential use" regardless of how it is defined), the use is prohibited by the covenants, conditions, and restrictions ("CCRs") applicable to the parcel and cannot be implemented.

A copy of the original deed to the parcel from Del Monte Properties Company is enclosed. Paragraph 1 under the heading "Covenants and Restrictions" clearly states that "[n]o trade, business or profession of any description shall be conducted on said premises," and that the "premises shall not be used for any purpose whatever except solely and exclusively for the construction and maintenance of not more than one private single family residence" with certain appurtenant facilities.

Running the equivalent of a "Bed and Breakfast" is operating a "business" at the parcel, and is not consistent with the parcel's use for a "one private single family residence." We would like to emphasize that a principal purpose of these restrictions, which were imposed many years ago on the residential lots in Del Monte Forest and which purpose remains valid today, was to preclude facilities on the residential lots competing with the hotel units and operations of Pebble Beach Company. It is easy to see how permitting "Bed and Breakfast" operations in Del Monte Forest could defeat this purpose, and indeed the purpose of the single family residence zoning.

Sincerely,

Pebble Beach Company

Diane Goldman
Associate General Counsel

enclosures

c: David Stivers
Cheryl Burrell
Thomas Jamison/Fenton & Keller
Elizabeth Gonzales/Monterey County RMA
Dr. William Lewis
Mark O'Connor, esq.

**Del Monte Forest
Land Use Advisory Committee
Agenda**

**Thursday, May 18, 2017
3:00 PM at Pebble Beach Community Services District
3101 Forest Lake Rd, Pebble Beach**

CALL TO ORDER

ROLL CALL

PUBLIC COMMENT

The Committee will receive public comment on non-agenda items that are within the purview of the Committee at this time. The length of individual presentations may be limited by the Chair.

SCHEDULED ITEMS

1. **Project Name:** LEWIS WILLIAM R MD & DUNCAN B LEWIS TRS
 File Number: PLN160746
 Project Location: 3384 17 MILE DRIVE, PEBBLE BEACH
 Project Planner: LIZ GONZALES
 Area Plan: Del Monte Forest Land Use Plan, Coastal Zone.
 Project Description: Coastal Development Permit to allow other residential
 **uses of a similar character, density and intensity to a Bed
 and Breakfast as determined by the Planning Commission**
 to be consistent and compatible with the intent of the Low
 Density Residential Zoning District and the Del Monte
 Forest Land use Plan. The property is located at 3384 17
 Mile Drive, Pebble Beach (Assessor's Parcel Number
 008-393-006-000), Del Monte Forest Land Use Plan,
 Coastal Zone.

OTHER ITEMS

- A. Preliminary Courtesy Presentations by Applicants Regarding Potential
Projects/Applications Announcements

ADJOURNMENT

ORIGINAL

1162 214

Deed No. 2074

V. C. L. T. CO. #25001

5898

Consideration less than \$100.00

DEL MONTE PROPERTIES COMPANY, a California corporation, hereinafter referred to as the Grantor, hereby grants to HERBERT DEAN and PATRICIA H. DEAN, his wife, of the County of Monterey, State of California, as joint tenants with the right of survivorship, hereinafter referred to as the Grantee, subject to taxes and assessments not delinquent, easements of record and to the reservations, covenants and conditions hereinafter set forth, the following described property in the County of Monterey, State of California, viz:

Beginning at a point distant 20 feet South $40^{\circ}36'$ West from Monument No. 1404, as said monument is shown and so designated on that certain map entitled, "Licensed Surveyor's Map of El Pescadero and Point Pinos Ranchos", etc., filed for record at Page 3 in Volume 3 of Surveys, Records of Monterey County, California, and running thence

- (1) North $49^{\circ}24'$ West 5.23 feet; thence tangentially
- (2) Northwestwardly and curving to the left 10.01 feet along the arc of a circle of 765.59 feet radius (long chord bears North $49^{\circ}46'28''$ West 10.01 feet); thence
- (3) South $42^{\circ}33'$ West 444.79 feet; thence
- (4) South $25^{\circ}15'$ East 10.80 feet; thence
- (5) Southeastwardly and curving to the left 302.00 feet along the arc of a circle of 1360 feet radius (long chord bears South $52^{\circ}53'36''$ East 301.40 feet); thence
- (6) North $42^{\circ}33'$ East 135.00 feet; thence
- (7) North $52^{\circ}54'$ West 295.38 feet; thence
- (8) North $42^{\circ}33'$ East 313.94 feet; thence
- (9) Northwestwardly and curving to the right 0.77 feet along the arc of a circle of 140 feet radius (long chord bears North $49^{\circ}33'30''$ West 0.77 feet) to the point of beginning, containing 1.114 acres, more or less, and being a portion of El Pescadero Rancho, Monterey County, California.

Saving and excepting therefrom a right-of-way for general purposes on, over, under and across the following described parcel of land:

Beginning at a point distant 20 feet South $40^{\circ}36'$ West from said Monument No. 1404, and running thence

- (1) North $49^{\circ}24'$ West 5.23 feet; thence tangentially
- (2) Northwestwardly and curving to the left 10.01 feet along the arc of a circle of 765.59 feet radius (long chord bears North $49^{\circ}46'28''$ West 10.01 feet); thence
- (3) South $42^{\circ}33'$ West 444.79 feet; thence
- (4) South $25^{\circ}15'$ East 10.80 feet; thence
- (5) Southeastwardly and curving to the left 6.00 feet along the arc of a circle of 1360 feet radius (long chord bears South $46^{\circ}39'28''$ East 6.00 feet); thence
- (6) North $42^{\circ}33'$ East 449.56 feet; thence
- (7) Northwestwardly and curving to the right 0.77 feet along the arc of a circle of 140 feet radius (long chord bears North $49^{\circ}33'30''$ West 0.77 feet) to the point of beginning.

1162 215

RESERVATIONS

Reserving for the Grantor and all public utilities an easement in and over the strip of land five feet in width along the rear and side lines of said premises, for the purpose of constructing, maintaining and operating (1) pole lines and pipe lines for the transmission of electricity, gas, water, sewer and telephone service and (2) open culverts for the conveyance of surface water at a rate not exceeding 1 cubic foot per second, with the right of free ingress to and egress from said strip.

MAINTENANCE OF ROAD

Grantee, his family and servants and his tenants and guests occupying or visiting said premises shall be entitled to the use of all roads and bridle paths now or hereafter owned by Grantor and to free access to Del Monte Forest. Grantor reserves the right to change,

RD 573

abandon or close any of said roads or bridle paths but agrees to leave open a road from said premises to the nearest public highway. As long as Grantor shall keep such a road in repair the owner of said premises shall be obligated to pay Grantor the sum of \$25.00 on each January 1st hereafter, which sum shall be a lien and charge on said premises.

COVENANTS AND CONDITIONS

This conveyance is made and accepted subject to the following express conditions and covenants:

1. No trade, business or profession of any description shall be conducted on said premises. Said premises shall not be used for any purpose whatever except solely and exclusively for the purpose of construction and maintenance of not more than one private single family residence with appurtenant detached guest and servants' cottages (without cooking facilities), greenhouse, garage, and, if approved in writing by Grantor, a stable for saddle horses.

2. No residence, septic tank, fence, access road or other structure of any kind shall be erected, constructed or maintained upon said premises unless erected or constructed at a location and in accordance with plans and specifications which have first been submitted to and approved by Grantor in writing. Said premises shall not be occupied until a suitable sewer is connected therewith and in operation or until a septic tank or other sanitary structure for the storage or disposal of sewage shall have been installed thereon. Grantor shall have the right to supervise the maintenance and operation of said septic tank.

3. No trees located upon said premises shall be cut or removed without the written consent of Grantor. Grantor shall have the right to trim or cut any trees at any time on said premises, whether or not planted by Grantee, to the extent necessary to prevent such trees from obstructing the view from other property.

4. Said premises shall not, nor shall any part thereof, or any improvements thereon, at any time be occupied or used by Asiatics, Negroes, or any person born in the Turkish Empire, nor any lineal descendant of such person, except that persons of said races may be employed as household servants.

5. All structures the plans and specifications for which have been approved by the Grantor shall be completed in accordance with said plans and specifications within one year of the date of such approval, or such additional time as shall be approved by the Grantor in writing; and said premises shall not be occupied until all said structures shall have been completed in accordance with said plans and specifications.

This conveyance is made without warranty expressed or implied and subject to all conditions, restrictions, reservations and encumbrances of record.

It is understood that the Grantor operates a golf course and hotel (where wines and other liquors are sold when permitted by law) in or adjacent to the area in which said premises are situated and may create a shopping district in said area and that the carrying on of such businesses and of business in such shopping district shall not be construed as a waiver of any of the conditions and covenants in this deed or as the creating of any monopoly but that the carrying on of said businesses is a benefit to those who have established homes and residences in said area and to the general public.

ENFORCEMENT OF COVENANTS AND CONDITIONS

(a) The foregoing covenants and conditions shall be construed as and be enforceable against Grantee and his successors in the ownership of said premises, both as covenants running with the land and as conditions.

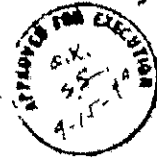
(b) Notice of any breach of any of said conditions may be given by recordation thereof in the office of the County Recorder of said County and by leaving a copy thereof on said premises. If Grantee or his successors in interest fail for thirty (30) days after any such notice to commence, and thereafter diligently proceed, to cure such breach all rights hereunder of the Grantee and his successors in interest shall terminate and said premises shall revert to and vest in Grantor. Grantor's right to enforce a forfeiture and right of reentry for condition broken is only transferable by instrument expressly transferring same.

(c) Said covenants are for the benefit not only of Grantor but also of all lands in the area hereinafter mentioned and are imposed in pursuance of a common plan for the develop-

ment of said area and shall be enforceable as covenants by injunction or action for damages or specific performance by Grantor and also every other owner of property in said area. The area above referred to in this paragraph (c) is the subdivision named in the description of said premises and if no subdivision is named therein said area is the property in the Del Monte Forest lying within a half mile of said premises.

(d) In any successful action for the enforcement of any of said covenants or conditions, whether for injunction, specific performance, damages or forfeiture, the plaintiff shall recover from the defendant a reasonable attorney's fee which shall be taxed by the Court as part of the costs. No such action brought or judgment rendered thereon shall be construed as a bar to any action for succeeding breaches.

EXECUTED the 16th day of August, 1949.



DEL MONTE PROPERTIES COMPANY

By C. S. Olmsted Vice President.

And Henry Tiedemann Assistant Secretary.

Patricia H. Dean (SEAL)

Herbert Dean (SEAL)

STATE OF CALIFORNIA }
County of Monterey

On this 15th day of September, 1949,
before me, Helene S. Eichaker, a Notary Public

in and for the County of Monterey, State of California, residing therein, duly commissioned and sworn, personally appeared
C. S. OLMSTED known to me to be the Vice President, and
HENRY TIEDEMANN known to me to be the Assistant Secretary,

respectively, of DEL MONTE PROPERTIES COMPANY, the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, in the County of Monterey, the day and year in this certificate first above written.

Helene S. Eichaker
Notary Public in and for the
County of Monterey, State of California
My commission expires June 15, 1953

STATE OF CALIFORNIA }
County of MONTEREY

On this 15th day of September, 1949, before me,
Helene S. Eichaker, a Notary Public in and for the

County of Monterey, State of California, residing therein, duly commissioned and sworn,
personally appeared HERBERT DEAN and PATRICIA H. DEAN, his wife

known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, in the County of Monterey, the day and year in this certificate first above written.

Helene S. Eichaker
Notary Public in and for the
County of Monterey, State of California
My commission expires June 15, 1953

Recorded at request of COAST COUNTIES LAND TITLE COMPANY, Sep. 22, 1949, at 40 min. past 1 P.M. Fee \$3.00

Heedy Hale

Recording Requested By and
When Recorded Mail to:

Anthony T. Karachale
Horan, Lloyd, Karachale, Dyer
P.O. Box 3350
Monterey, CA 93942

Stephen J. Vagnini
Monterey County Recorder
Recorded at the request of
Attorney

ORLISA
11/04/2003
10:42:05

DOCUMENT: 2003135993



Titles: 1/ Pages: 3

Fees.... 14.00

Taxes...

Other...

AMT PAID \$14.00

GRANT DEED

The undersigned grantors declare: Documentary Transfer tax is NONE. No consideration given, change in formal title only. See Notes below.

For no consideration, WILLIAM R. LEWIS, M.D. and DUNCAN B. LEWIS, husband and wife as community property

hereby GRANT to WILLIAM R. LEWIS, M.D. and DUNCAN B. LEWIS, Co-Trustees of the LEWIS FAMILY TRUST Under Trust Dated September 23, 1982

that property in Monterey County, State of California, described as:

SEE EXHIBIT "A" ATTACHED TO AND MADE A PART HEREOF

NOTE #1: This conveyance transfers the Grantors' interest into their revocable living trust which is not pursuant to a sale under California Rev. & Tax Code Section 11911.

NOTE #2: Grantor William R. Lewis, M.D. is the same person as Trustee William R. Lewis, M.D., and Grantor Duncan B. Lewis is the same person as Trustee Duncan B. Lewis. This conveyance is to a revocable trust and, pursuant to California Rev. & Tax Code Section 62(d)(2), does not constitute a change in ownership and does not subject the property to reassessment.

Mail tax statements to: Dr. and Mrs. William R. Lewis, Co-Trustees of the Lewis Family Trust, P.O. Box 1483, Pebble Beach, CA 93953

Dated: October 30, 2003

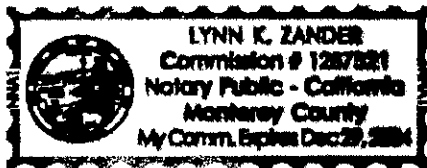
William R. Lewis, M.D.
William R. Lewis, M.D.

Duncan B. Lewis
Duncan B. Lewis

STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

On October 30, 2003, before me, Lynn K. Zander, a Notary Public, State of California, personally appeared William R. Lewis, M.D., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

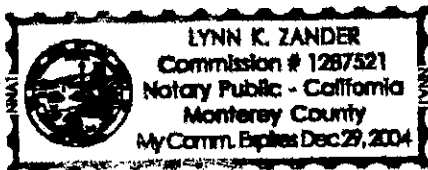


Lynn K. Zander
Notary Public, State of California

STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

On October 30, 2003, before me, Lynn K. Zander, a Notary Public, State of California, personally appeared Duncan B. Lewis, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Lynn K. Zander
Notary Public, State of California

EXHIBIT "A"

The land referred to is situated in the State of California, County of Monterey, in the unincorporated area, and is described as follows:

Beginning at a point distant 20 feet S. 40° 36' W., from Monument No. 1404, as said monument is shown and so designated on that certain map entitled, "Licensed Surveyor's Map of El Pescadero and Point Pinos Ranchos", etc., filed for record at Page 3 in Volume 3 of Surveys, Records of Monterey County, California; and running thence

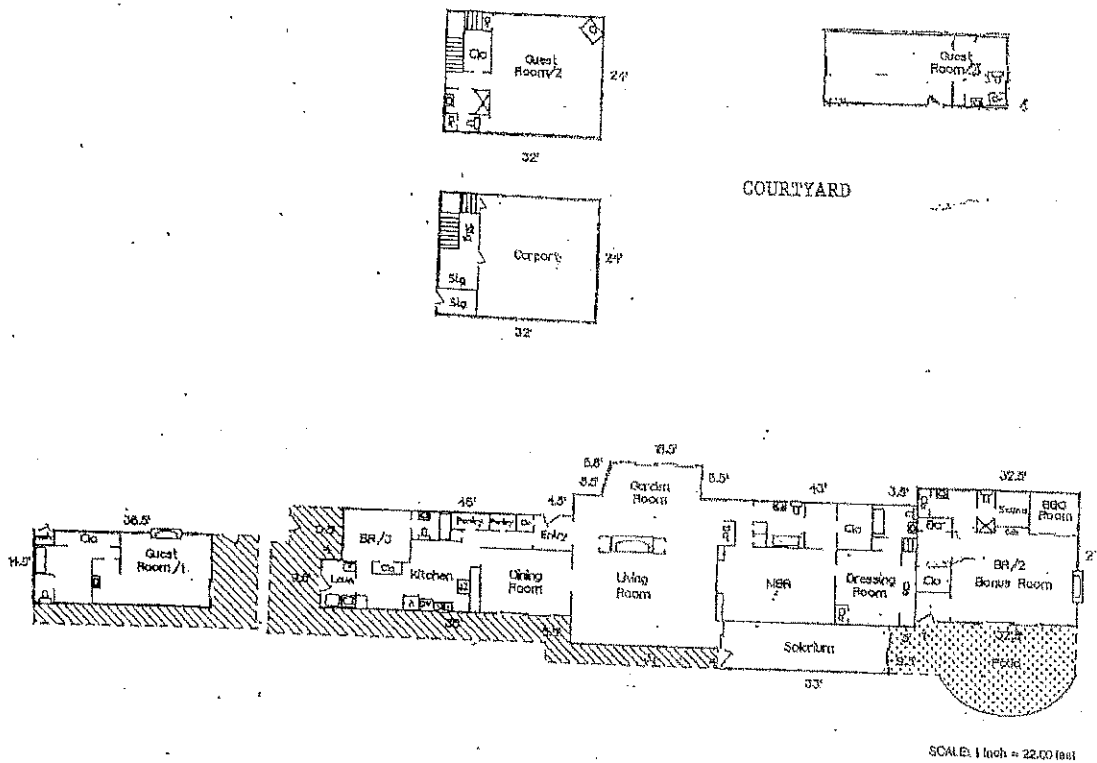
- (1) N. 49° 24' W., 5.23 feet; thence tangentially
- (2) Northwesterly and curving to the left 10.01 feet along the arc of a circle of 765.59 feet radius (long chord bears N. 49° 46' 28" W., 10.01 feet); thence
- (3) S. 42° 33' W., 444.79 feet; thence
- (4) S. 25° 15' E., 10.80 feet; thence
- (5) Southeasterly and curving to the left, 302.00 feet along the arc of a circle of 1360 feet radius (long chord bears S. 52° 53' 36" E., 301.40 feet); thence
- (6) N. 42° 33' E., 135.00 feet; thence
- (7) N. 52° 54' W., 295.38 feet; thence
- (8) N. 42° 33' E., 313.94 feet; thence
- (9) Northwesterly and curving to the right, 0.77 feet along the arc of a circle of 140 feet radius (long chord bears N. 49° 33' 30" W., 0.77 feet) to the point of beginning, and being a portion of El Pescadero Rancho, Monterey County, California.

Assessor's Parcel Number: 008-393-06

END OF DOCUMENT

SKETCH/AREA TABLE ADDENDUM

Property Address	3384 17-Mile Drive	File No.	
City	Pebble Beach	State	CA
Borrower	Harry Lawls	County	Monterey
Lender/Client	Broadway Investments	Zip Code	93955



Comments: Placement and orientation of interior walls and appliances is approximate but essentially correct. Square foot calculations based on dimensions from an exterior perimeter inspection.

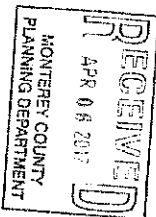
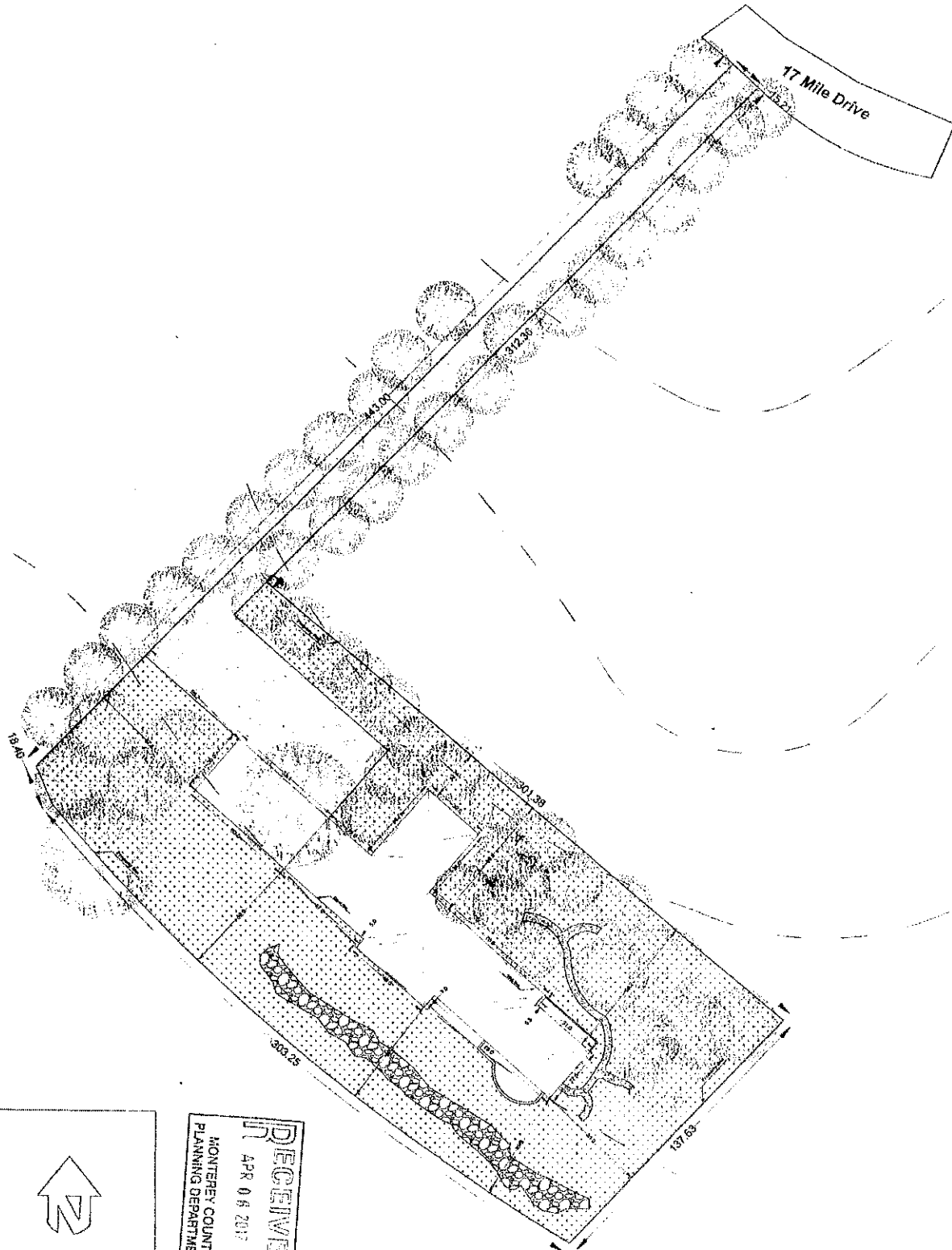
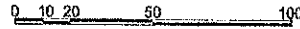
AREA CALCULATIONS SUMMARY			
Area	Name of Area	Size	Totals
GLA1	Main House	4126.75	4126.75
GLA2	Guest Room/1	529.25	
GLA3	Guest Room/2	768.00	517.25
P/P	Deck/Patio	689.75	768.00
P/P	Deck/Patio	346.30	
P/P	Deck/Patio	312.50	1548.55
GAR	Garport	768.00	768.00
GLA4	Guest Rm. 4	360.0	360.0
TOTAL LIVABLE (rounded)			5,782

Living Room	30 X 18.5
Dining Room	18.5 X 13
Garden Room	25 X 15
MBR	22 X 15
BR/2	
Bonus Room	25.5 X 18
BR/3	13.5 X 10.5
Kitchen	19.5 X 14
Solarium	33 X 9.5



ADDRESS: 3384 17 MILE DRIVE
CITY, STATE, ZIP: PEBBLE BEACH, CA 93953
COUNTY: MONTEREY
PURPOSE OF SITE PLAN: PERMIT

SCALE:



1 CHARLES J. McKEE (SBN 152458)
County Counsel
2 CYNTHIA L. HASSON (SBN 193733)
Deputy County Counsel
3 Office of the County Counsel
County of Monterey
4 168 W. Alisal Street, Third Floor
Salinas, California 93901-2653
5
6 Telephone: (831) 755-5045
Facsimile: (831) 755-5283
E-Mail: HassonCL@co.monterey.ca.us

7
8 Attorneys for Respondent,
County of Monterey

FILED

11/10/2016

TERESA A. RISI
CLERK OF THE SUPERIOR COURT
L. Cummings DEPUTY
Lorielle Cummings

Filing fee exempt: Gov. Code § 6103

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MONTEREY

12 WILLIAM R. LEWIS and DUNCAN B.
13 LEWIS, Co-Trustees of the WILLIAM
LEWIS & DUNCAN LEWIS TRUST,

14 Petitioners,

15 vs.

16 COUNTY OF MONTEREY; and DOES 1
17 THROUGH 10, inclusive,

18 Respondents,

CASE NO. 15CV000782

inv. ~~PROPOSED~~ JUDGMENT
DENYING APPEAL OF THE
ADMINISTRATIVE HEARING
DECISION AND ORDER

Action Filed: December 22, 2015

19 The complaint and appeal from an administrative decision and order came on for hearing
20 on July 18, 2016 in Department 14, the Honorable Thomas W. Wills presiding. Mark A.
21 O'Connor appeared on behalf of the Petitioners also known herein as Plaintiffs. Deputy County
22 Counsel Cynthia L. Hasson appeared for the Respondent County of Monterey, also known herein
23 as Defendant.

24 On July 21, 2016, the Court requested additional briefing. Petitioners submitted a brief
25 on July 27, 2016. Respondent County of Monterey submitted a brief on August 2, 2016. After
26 considering the evidence and exhibits presented and admitted during the hearing, the arguments
27 made in the briefs and other pleadings submitted by the parties, and having heard oral argument,
28 the Court filed and served its Statement of Decision dated September 7, 2016 attached hereto as

1 Exhibit A. After reviewing Petitioners' Objections to the Statement of Decision, the Court, on
2 September 29, 2016, ordered that the September 7, 2016 Statement of Decision remains without
3 modification and is the Final Statement of Decision.

4
5 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the complaint
6 and appeal filed by Petitioners is denied.

7
8 Dated: 11/10/16



Hon. Thomas W. Wills
Judge of the Superior Court

10
11 APPROVED AS TO FORM:

12
13 Dated:

14
15 Mark A. O'Connor, Esq.
16 Attorney for Petitioners
17
18
19
20
21

PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 years and not a party to the within action. My business address is 168 W. Alisal Street, 3rd Floor, Salinas, California.

On November 10, 2016, I served a true copy of the following document(s):

**[PROPOSED] JUDGMENT DENYING APPEAL OF THE ADMINSTRATIVE HEARING
DECISION AND ORDER**

on the interested parties to said action by the following means:

- ☐ **BY HAND-DELIVERY:** By causing a true copy thereof, enclosed in a sealed envelope, to be hand-delivered.
- ☒ **BY MAIL:** By placing a true copy thereof, enclosed in a sealed envelope, for collection and mailing on that date following ordinary business practices, in the United States Mail at the Office of the County Counsel, 168 W. Alisal Street, 3rd Floor, Salinas, California, addressed as shown below. I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing.
- ☐ **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy thereof by facsimile transmission from facsimile number (831) 755-8283 OR 784-5978 to the interested parties to said action at the facsimile number(s) shown below:
- ☐ **BY ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 10, 2016, at Salinas, California.


Dolores Villa

NAMES AND ADDRESSES OF EACH PARTY SERVED:

Mark A. O'Connor, Esq.
LAW OFFICES OF MARK A. O'CONNOR
100 Clock Tower Place, Suite 110
P.O. Box 221190
Carmel, CA 93922-1190
Facsimile: (831)886-1688

Attorney for Appellants

EXHIBIT A

FILED

SUPERIOR COURT OF CALIFORNIA

SEP 07 2016

COUNTY OF MONTEREY

TERESA A. RISI
CLERK OF THE SUPERIOR COURT
DEPUTY

Case No.: 15CV000782

Alina Oliver

William Lewis, et al,

Plaintiff,

vs.

County of Monterey, et al,

Defendant.

Statement of Decision

This matter came on for hearing 7/18/16 on Petitioners' administrative appeal of administrative hearing officer's finding that Petitioners had committed a nuisance by virtue of violation of Monterey County ("County") Ordinances. Petitioners also seek a judicial determination by declaratory relief that they need not obtain a permit to rent out a residence, which they own but in which they do not live, on a short term basis.

The threshold issue is whether the County Ordinances in fact prohibit the short term rental of the property for vacation and wedding events in the Coastal Zone where the property in question is located. Not a question simply answered,¹ but the court has concluded that such activities are prohibited without a permit.

The basic ordinance scheme upon which County relies to proscribe such rentals is found in Title 20, Monterey County Code, sections 20.02.040 et seq. This group of ordinances was enacted as part of the County's Local Coastal Plan, which first had to be vetted and approved by the California Coastal Commission ("Commission"). Public Resources Code sections 30513,

¹ this is in large part because Title 20 contains a byzantine collection of less-than-clear, ad hoc provisions apparently drafted or adopted with little regard for the ordinance scheme's internal consistency. Consequently, the Court has expended inordinate judicial resources divining the County's statutory intent. It is unnecessarily close to the brink of requiring persons of ordinary intelligence necessarily to guess at its meaning

EXHIBIT A

0514. Title 21 Monterey County Code regulates the inland (i.e., non-coastal) unincorporated areas of the County.

The introductory section of Title 20 states that:

"The coastal zoning districts list the uses which are allowed or may be allowed subject to discretionary permit approval processes. Those listed uses and other uses which are consistent with the Monterey County Local Program may be allowed subject to appropriate permits. Other uses are prohibited. ..." MCC 20.02.040. The effect is to prohibit any listed activity unless a permit is obtained, and to prohibit any activity not listed.

However, this introductory language is somewhat ambiguous, implying that there are some uses which may be allowed without the necessity of a permit, though it does not directly so state. Other sections do state that there are some uses for which no permit is required. They are not all readily found.

The lists of uses allowed with a permit are in two separate ordinance sections, MCC 20.14.040 ("Principal Uses Allowed, Coastal Administrative Permit ["CAP"] Required In Each Case") and MCC 20.14.050 ("Conditional Uses Allowed, Coastal Development Permit ["CDP"] Required In Each Case"). Both of these sections respectively reference that uses exempt under MCC 20.70.120 do not require either type of permit. None of the exempted uses in the latter section appear applicable here, and neither party has argued that any do. However, elsewhere there are other sections which exempt — from both CAPs and CDPs uses which are " ... not considered development, ..." MCC 20.76.020 [uses not considered development per MCC 20.06.310 do not require CAP], MCC 20.70.025 [uses not considered development shall not require a CDP].

County argues that the (1.) commercial rental of the premises for weddings constitutes an 'assemblage' expressly subject to a CDP requirement, and (2.) short term rentals constitute "development" and hence not allowed unless a CAP or CDP is first obtained.

EXHIBIT A

1 The only arguable allowable use under section 20.14.040 [CAP required] here would be
2 that under subsection A, "The first single family dwelling per legal lot of record." Both parties'
3 arguments assume that either a permit has been issued under this section or the existing residence
4 is deemed an allowable existing use under this section. But a permit under this section does not
5 permit the rental activities here, because of the definition of 'dwelling' in section 20.06.360,
6 which allows dwellings only if "... occupied exclusively for non-transient purposes ..." MCC
7 20.06.360.

8 Under section 20.14.050 (activities allowed, but only if CDP obtained), the only
9 potentially applicable uses by permit would be under subsection G ("Bed and Breakfast facilities,
10 pursuant to section 20.64.100"), subsection R ("Assemblages of people, such as carnivals,
11 festivals, races and circuses, not exceeding 10 days and not involving construction of permanent
12 facilities.") or subsection Z ("Other residential uses of a similar character, density and intensity
13 to those uses listed in this Section determined by the Planning Commission to be consistent and
14 compatible with the intent of this Chapter ... "). County has argued that weddings fall under the
15 'assemblage' category and short term rentals under the 'similar uses' category.

16 "Bed and Breakfast Facility", however, is defined at section 20.06.110 as "... an
17 establishment providing overnight accommodations and a morning meal by people who provide
18 rental rooms in their homes. ... " Here, the Lewises live in a home on an adjoining lot. Neither
19 party suggests that they provide a morning meal. And the entire premises are rented out, not just
20 single rooms. Furthermore, Title 20, Section 20.64.100, "Regulations for Bed and Breakfast

21 Facilities," requires that "[t]he property owners shall occupy and manage the facility." Clearly,
22 the Bed and Breakfast use does not apply here. Consequently, the Lewises did not fail to exhaust
23 their administrative remedies by failing to apply for such a permit.

24 The "assemblages" use allowed with a permit may be available to the Lewises, but no
25 permit for such use was sought or obtained. The commercial rental of the premises for weddings

EXHIBIT A

1 falls within the contemplation of the "assemblages" category of subsection R of 20.14.050.

2 Whether a blanket prohibition could be imposed on noncommercial wedding events for a relative
3 or family member of a property owner is not presently before the Court. As to weddings, then, a
4 permit was required. The commercial rental of the premises for wedding events would fall within
5 the Section 20.06.310 definition of 'development' ---- a change in the intensity of use of the land
6 as well as of water. MCC 20.06.310, sub-sections 4 and 5. The latter section consequently does
7 not exempt commercial rental for weddings from the permit requirement. Petitioners have
8 stipulated that they have allowed transient renters to hold weddings on the property.

9 County argues that short term rentals of the property other than weddings constitute
10 "development" and are therefore not immunized from the permit requirements by MCC sections
11 20.76.020 [CAP] or 20.70.025 [CDP]. In support of this position, County argues, but does not
12 elaborate, that the definitions within MCC 20.06.310 render short term rentals 'development' in
13 that they "change[] the density or intensity of the land" and "change the intensity of the use of
14 water." MCC 20.06.310.

15 The term "density" is defined in the ordinance scheme. "Intensity" is not. Density
16 "...means the measure of the ratio of population to the area of land *occupied by that population*,
17 which may be expressed as dwelling units per acre, families per acre, persons per acre, or
18 conversely as acres per dwelling unit or square feet per dwelling unit." MCC 20.06.290
19 [emphasis added]. Transient use may involve many different people using the property over
20 ~~time. There is nothing in the record which suggests that in the case of short term rentals there are~~
21 more people using the property at any given point in time than there would be during long term
22 occupancy, or that short term renters use more water. On the other hand, the County in enacting
23 these ordinances could (and did -- per the recitals in Ordinance 3911, Sections 3 and 4, which
24 though later enacted 'clarify, restate and ratify' existing law and thereby provide interpretive
25 assistance in ferreting out the intention of the original ordinances in Title 20) presume that

EXHIBIT A

1 transient rental in an area of geographic beauty and exclusive and expensive homes --- such as
2 the coastal zone here --- would generate more traffic and higher populate the rented property
3 because the expense of renting it would require the pooling of multiple individuals' resources. It
4 could presume that transient renters are largely vacationing renters and would keep different and
5 longer hours of activity than longer term residents. Such uses would be similar, but not identical,
6 to long term residential use. They could have a significant impact on a neighborhood. See
7 Ordinance 3911, Section 1, adding MCC 20.64.290, and in particular subsection A. 5, "Findings
8 and Declarations."

9 In this light, the category of subsection Z of 20.14.050 requiring a CDP for "other
10 residential uses of a similar character, density and intensity to those uses listed in this Section"
11 can apply --- as County argues (Supplemental Briefing at page 5, lines 22-23). Because it does, a
12 permit, namely a CDP, must be obtained. And since County has successfully argued here that
13 short term rental is a similar use whether similar to a single family dwelling under section
14 20.14.040 A, or similar to a Bed and Breakfast facility or Assemblage under section 20.14.050, it
15 must adhere in the future to that position.

16 This conclusion is not undercut by the position, taken in the July 9, 2015 interpretation of
17 the ordinance from County's Planning Department and its then-Planning Director Mike Novo,
18 stating that no short term rentals are allowed by the County in the Coastal District; that
19 interpretation is at page 80 of the administrative record lodged by County ("Rental for 30 days or
20 less (non-bed and breakfast) is not permitted in the coastal zone."). As County points out, there
21 was an avenue available for an 'official' interpretation which was not utilized here. The 7/9/15
22 position was to that extent not accurate, and may well have been the end product of confusion
23 generated by the patchwork ordinance scheme here.

24 This form of zoning prescription -- i.e., no use is permitted unless explicitly permitted --
25 has been held lawful, and effective to prohibit uses not expressly listed. City of Corona v. Naulls

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1 (2008) 166 Cal.App.4th 418, 433; City of Monterey v. Carmshimba (2013) 215 Cal.App.4th 1068,
2 1094-1096 [upholding nuisance finding based upon similar scheme].

3 Complicating matters here is the fact that County enacted in 1997 an ordinance
4 authorizing, with a permit, transient rentals in the inland zone. Ordinance 3911. County had
5 apparently originally proposed a similar regulation for the Coastal Zone as well, but the District
6 Manager for the Coastal Commission advised that the Commission preferred that any such
7 permit process be conducted under a separate ordinance rather than under the Local Coastal Plan
8 Ordinance; he also stated that allowing such rentals within the Coastal Zone would first require
9 an amendment of the existing Coastal Zoning in Title 20 --- perhaps by revising the definition of
10 dwelling --- since transient rentals were not a permitted use under the definition of dwelling
11 contained in section 20.06.360. Such an amendment of the Coastal Zoning would in turn require
12 approval by the Coastal Commission. AR 133-134. This statement noting that amendment of the
13 Local Coastal Plan and its zoning ordinances under Title 20 require Coastal Commission
14 approval -- prior to allowing rentals within the coastal zone -- is congruent with the recent
15 6/13/16 letter, submitted by Petitioners, from the current Coastal Commission District Manager
16 ("We look forward to working with [County] on potential [Local Coastal Plan] language that
17 meets Monterey County's specific needs and Coastal contexts consistent with the Coastal Act.").
18 County has not opted to follow the Coastal Commission's suggestion that it and the Commission
19 collaborate in drafting an ordinance specifically dealing with short term rentals within the
20 Coastal Zone.

21 Accordingly, without first amending the Local Coastal Plan zoning under Title 20,
22 County could not and did not enact for the Coastal Zone a transient residential permit ordinance.
23 And such rentals were prohibited without such an enactment, by virtue of the rather indirect
24 language of sections 20.02.040, 20.14.040 and 20.14.050, unless by permit --- unavailable here
25 except under the 'assemblage' category for weddings and the /similar uses' category for short

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1 term rentals, but in any event not obtained. [The Court notes that although Ordinance 3911 was
2 cited by the County Planning Department at the administrative hearing in support of the
3 proposition that transient rentals were in fact prohibited in the Coastal Zone, the Ordinance
4 presumes that such rental was illegal ("...will legalize existing ..." such uses), rather than
5 providing an independent proscription. However, though Ordinance 3911 cannot, and by its
6 terms does not, institute a proscription against short term rentals ("...this ordinance does not
7 create, enhance or diminish any rights or obligations of any person holding any interest in real
8 property..."), it can -- and by its terms does --- provide evidence of the County's interpretation of
9 existing ordinances that short term rentals "may be allowed only upon the issuance of an
10 administrative [sic -- given County's position in this litigation, the term 'administrative' appears
11 to be used in a generic sense, and not to distinguish a CAP from a CDP] permit in the coastal
12 zone." Ordinance 3911.

13 Once it is determined that transient rental here without a permit was proscribed, there is
14 clearly evidence that there was a violation by Petitioners, and that evidence is substantial,
15 supporting the Hearing Officer's decision. *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144
16 (administrative hearing officer's decision must be supported by substantial evidence). Monterey
17 County Code section 20.90.030 declares any use contrary to Title 20 be a public nuisance, and
18 section 1.20.070 declares any condition existing in violation of the county code to be a nuisance.
19 Again, this is the same approach upheld in *City of Monterey v. Carrnshimba*, 215 Cal.App.4th at
20 p. 1087. Petitioners admit to the short term rental and use of the property for weddings. An act or
21 condition legislatively declared to be a public nuisance is a nuisance per se against which an
22 injunction may issue without allegation or proof of public injury. *Id.* at 1086-1087.

23 Petitioners also have argued that the differential treatment accorded the inland and coastal
24 districts violates the guarantee to equal protection under the law. Both parties apparently now
25 agree that the standard to be applied is that the classification must bear a rational relationship to a

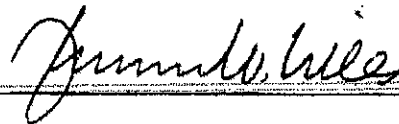
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1 conceivable legitimate stated purpose. It is a deferential standard of scrutiny. Under this test, the
2 courts must presume the constitutionality of government action if it is plausible that there were
3 legitimate reasons for the action. *Las Lomas Land Co. v. City of Los Angeles* (2009) 177
4 Cal.App.4th 837, 858. The County here has maintained that the law prohibiting short term rentals
5 in the coastal neighborhood is to preserve the residential character of the neighborhood and
6 prevent the increased levels of traffic, noise, and parking demand that would come with allowing
7 short-term rentals. The court in *Ewing v. City of Carmel-By-The-Sea* (1991) 234 Cal.App.3d
8 1579, 1596 has held that such a purpose is rationally related to a law prohibiting the same type of
9 short term rentals at issue here. Whether there exist cogent arguments that other desirable goals
10 might be served by allowing such rentals, or other ways that the County's goals here could be
11 served by allowing such rentals, does not justify overturning the earnest attempt to regulate them
12 as County has done here.

13 Consequently, the ordinances in question are valid, the administrative hearing officer's
14 decision that they were violated must be upheld, and Petitioners are not allowed to engage in
15 short term rentals or commercial use of the property for weddings without a permit under the
16 current statutory scheme. Petitioners are allowed to apply administratively for a permit under the
17 "assemblages" and "other similar uses" sections.

18 Respondent to prepare the judgment in this matter.

19
20 Dated: 9/7/16



Judge of the Superior Court

Thomas W. Wills

21 //

22 //

23 //

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CERTIFICATE OF MAILING (Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the Statement of Decision for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Salinas, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

Mark A. O'Connor
PO Box 221190
Carmel CA 93922-1190

Cynthia Hasson
Deputy County Counsel
168 West Alisal Street 3rd Floor
Salinas CA 93901-2653

Date: SEP 07 2016

TERESA A. RISI, Clerk of the Superior Court,

 Deputy Clerk

15cv000782

Alina Oliver

//

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



June 23, 2016

Carl Holm, Director
Monterey County Resource Management Agency
168 West Alisal Street, 2nd Floor
Salinas, CA 93901

Subject: Vacation Rentals

Dear Mr. Holm:

We understand that the County is grappling with the use of private residences serving at times as visitor-serving overnight accommodations. This practice, commonly referred to as vacation rentals (or short-term rentals) has recently elicited controversy, not just in Monterey County but state and nationwide, over the proper use of private residences within residential areas. Some argue that private residences should remain solely for the exclusive use of those who reside there because this helps to foster neighborhood stability and residential community character. Others argue the opposite approach, in that vacation rentals should be encouraged because using residential properties for visitor accommodations is an efficient use of land and allows the property owner an avenue to use his or her residence as a source of supplemental income. These are not easy debates, and different areas and different contexts will lead to different conclusions in this respect.

We offer the following observations on the vacation rental issue. The Coastal Act describes a hierarchy of encouraged land uses, with agriculture and coastal-dependent industry the highest priority uses to be accommodated within the state's coastal zone, followed by "private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation."¹ The lowest priority uses are private residential, general industrial, and general commercial. Thus, the 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. At the same time, however, the Coastal Act also places a high priority on the protection of sensitive coastal resources, including public views, agricultural lands, environmentally sensitive habitat areas, and wetlands and streams. The Act also protects certain special communities that are popular visitor destination points for recreational uses, including certain coastal residential communities near popular shoreline recreational areas and beaches. Thus, the allowance for visitor overnight accommodations must be balanced with the Act's other requirements, thereby requiring a nuanced approach to their regulation.

¹ Coastal Act Section 30222.

Thus, from our perspective, we continue to support allowing short-term vacation rentals within private residences as an important source of visitor accommodations in the coastal zone. These rentals can also offer lower-cost overnight opportunities, especially for larger families and groups. However, we also recognize and understand community concerns associated with the potential impacts of such vacation rentals, including with respect to community character and noise and traffic impacts. We also recognize concerns regarding vacation rentals within certain sensitive coastal resource areas, such as rural agricultural lands, which could result in uses incompatible with their location and surroundings.

At this juncture it is our opinion that vacation rentals are allowable in Monterey County's coastal zone under the LCP, and we highly recommend that instead of attempting to suggest they are prohibited or pursuing such prohibitions, that Monterey County instead work with us to develop regulations that serve to ensure Coastal Act-required protections are in place to address any potential concerns. I note that efforts along these lines were undertaken by the County back in 1997, but those efforts were apparently discontinued. We would suggest that now is an appropriate juncture to restart that effort. Commission staff has experience in working with local governments to draft and implement such regulations, including recent LCP requirements associated with vacation rentals for both Santa Cruz and San Luis Obispo Counties.² In place of prohibitions, which the Commission has historically not supported,³ these coastal communities instead were able to find a balanced middle ground that helps to ensure that vacation rentals are regulated, including for transient occupancy tax and rules and regulations purposes, and limited as necessary to avoid oversaturation of such rentals in any one neighborhood or locale. These programs have proven successful in Santa Cruz and San Luis Obispo Counties, and we would suggest that their approach can serve as a model for Monterey County moving forward. We look forward to working with you on potential LCP language that meets Monterey County's specific needs and coastal contexts consistent with the Coastal Act.

Thank you for the opportunity to comment on this important issue. Please feel free to contact me with any questions or concerns.

Sincerely,



Susan Craig
Central Coast District Manager
California Coastal Commission

² See, for example, Santa Cruz County LCP amendments SCO-1-11 Part 3 (approved by the Commission on July 13, 2011) and LCP-3-SCO-15-0008-1 Part A (approved by the Commission on May 14, 2015), and San Luis Obispo County LCP amendment SLO-1-12 (approved by the Commission on November 13, 2013).

³ See, for example, City of Pismo Beach LCP amendment PSB-1-10 Part 2 (denied by the Commission on December 8, 2011).