

Attachment A

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ATTACHMENT A DRAFT RESOLUTION

In the matter of the application of:

WILLIAM R AND DUNCAN B LEWIS TRS (PLN160746)

RESOLUTION NO. ----

Resolution by the Monterey County Board of Supervisors:

- 1) Denying the appeal filed by William R. and Duncan B. Lewis from the Planning Commission's denial of a Coastal Development Permit to allow a short term rental at 3384 17 Mile Drive, Pebble Beach; and
- 2) Finding that denial of the project is statutorily exempt per Section 21080(b)(5) of the Public Resources Code and Section 15270 of CEQA Guidelines; and
- 3) Denying a Coastal Development Permit to allow a short term rental at 3384 17 Mile Drive, Pebble Beach.

[PLN160746, William R and Duncan B Lewis TRS, 3384 17 Mile Drive, Pebble Beach, Del Monte Forest Land Use Plan (APN: 008-393-006-000)]

The appeal by William R. and Duncan B. Lewis (“Applicants” or “Appellants”) from the Planning Commission’s denial of a Coastal Development Permit (PLN160746) came on for public hearing before the Monterey County Board of Supervisors on January 23, 2018. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

1. **FINDING:** **INCONSISTENT** – The Project is inconsistent with the requirements of the applicable zoning ordinance (Title 20), specifically Low Density Residential zoning regulations as set forth in Monterey County Code (MCC) Section 20.14.050.Z.
EVIDENCE:
 - a) The proposed project is an application for a Coastal Development Permit to allow for the short term rental (STR) of a single family dwelling (the “Project”) on property owned by William R. and Duncan B. Lewis (“Applicants” and “Appellants”).
 - b) 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 area, in the coastal zone of the unincorporated area of Monterey County. The property is located adjacent to the tee box of the 14th Hole at the Pebble Beach Golf Links. The parcel is zoned LDR/1.5-D (CZ)” (Low Density Residential/1.5 acres per unit-Design Control (Coastal Zone)).

The LDR portion of the zoning allows residential development. The site has existing residential development in the form of a house.

- c) The Applicants' property is within the LDR coastal zoning district, and as such, the regulations for the LDR zone set forth in Chapter 20.14 of Title 20 of the Monterey County Code apply. Chapter 20.14 does not explicitly address short term rentals. However, the LDR zone allows conditional uses, subject to a Coastal Development Permit, for "other residential use of a similar character, density and intensity to those uses listed in this Section [Section 20.14.050] determined by the Planning Commission to be consistent and compatible with the intent of this Chapter." (MCC Section 20.14.050.Z.) The list of conditional uses within the LDR zone includes: "Bed and Breakfast facilities, pursuant to Section 20.64.100." The only use that may be of similar character, density and intensity to a short term rental is a bed and breakfast. Section 20.64.100 prescribes the regulations for bed and breakfast facilities. Under those regulations, "a bed and breakfast facility may be allowed in all districts which allow residential use and where found to be consistent with the Monterey County Local Coastal Program on any lot in any zoning district that allows residential uses subject to a Coastal Development Permit," subject to certain specific requirements. These requirements are: (1) the property owners shall occupy and manage the bed and breakfast facility; (2) the facility shall not be affiliated with hotels or motels operating anywhere in the County of Monterey; (3) no more than 10 guest rooms may be allowed in one facility; (4) no long-term rental of rooms shall be permitted; (5) the maximum stay for guests shall not exceed 29 consecutive days in a 30 day period and no more than 60 days in a one year period; (6) the facility shall provide parking on site at the rate of one space per guestroom plus two spaces for the owners; (7) such facilities shall be subject to the transient occupancy tax. (MCC Chapter 5.40); and (8) any cooking facility must comply with State and County codes.
- d) The Board of Supervisors finds that the this proposed short term rental is not a residential use of similar character, density and intensity to a bed and breakfast facility. A defining characteristic of a bed and breakfast facility based on the bed and breakfast regulations set forth in Section 20.64.100, which are listed above, is that "the property owners shall occupy and manage the bed and breakfast facility." In addition, B&B facilities are further defined by serving meals to the renters, and renting individual rooms of the property to separate transient guests. Comparing this specific application against those requirements for a bed and breakfast, the following differences include:
- The owner will not occupy the home during visitor stay;
 - The owner will not provide any meals to the renters; and
 - The entire premises would be rented out, not just single rooms.
- e) The Board of Supervisors finds that having a home on the parcel adjacent to the subject property, which is occupied year-round by a member of the Applicants' family, does not qualify as owner-occupied in this case. The owner-occupation is a key element of a B&B, and

without the owner occupying the subject property, the Project does not meet the requirements for a B&B set forth in MCC Section 20.64.100.C.1. For these reasons, the Project is not consistent with zoning.

- f) The Pebble Beach Company submitted a letter opposing this application for the equivalent of a Bed and Breakfast facility/operation on the Applicants' parcel in the coastal zone of the Del Monte Forest. Pebble Beach contends that the use is prohibited by their covenants, conditions, and restrictions (CC&Rs) applicable to the parcel and cannot be allowed. A copy of the original deed to the parcel in Paragraph 1, under the heading, "Covenants and Restrictions" clearly states that "no 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". The Pebble Beach Company contends that "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." PBC contends that the 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. Enforcement of the CC&R's is a matter between PBC and the Applicants.
- g) The County is in the process of developing specific regulations for short term rentals in both the inland and coastal zones of the County. In 1997, the County adopted regulations for short term rentals in the inland area, and those went into effect. The County adopted coastal regulations and submitted them to the California Coastal Commission for certification as part of County's Local Coastal Program, but the proposed regulations were never certified by the California Coastal Commission. Hence, the 1997 coastal regulations related to short term rentals did not become final. As such, the County's coastal regulations do not specifically address short term rentals, and the County applies the regulations for the particular zoning district, as done in this case. The County has applied the regulations currently in effect to the application for a short term rental. County staff is in the process of developing draft ordinances that would amend the inland short term rental regulations and establish short term rental regulations in the coastal zone; if and when the County adopts regulations specifically for short term rentals, the Applicants would be free to apply under the new regulations. Denial of the current project application under the current regulations would not preclude a future application.
- h) The application, project plans, and related support materials submitted by the project applicants to Monterey County RMA-Planning for the proposed development found in Project File PLN160746.

2. **FINDING: CEQA (Exempt):** - The project is statutorily exempt from environmental review.

EVIDENCE: a) Public Resources Code Section 21080(b)(5) and California Environmental Quality Act (CEQA) Guidelines Section 15270 statutorily exempts projects which a public agency rejects or disapproves.

3. **FINDING:** **VIOLATION** - The subject property is currently in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. Currently, no violations exist on the property; however, there is pending litigation concerning County's finding of a prior violation.

EVIDENCE: a) County records show a previous Code Enforcement case (11CE00327) for short term rentals on the subject property. The code enforcement case was closed on December 22, 2015.

b) In June 2015, the County issued a code enforcement compliance order to Lewis for the rental of their home for less than 30 days, and the rental of their home for events in the LDR zoning district without proper permit approval. The code enforcement case went to administrative hearing in October 2015, and in December 2015 an administrative hearing officer found that Lewis violated the Monterey County Code by allowing short term vacation rentals and assemblages of people to use their property for weddings without the proper County permits. The hearing officer also imposed a fine for the violations. Lewis then appealed the hearing officer's decision to the Monterey Superior Court. Among other things, Lewis argued their use of their property is a residential use and does not require a permit. By its Statement of Decision dated September 7, 2016, the court upheld the hearing officer's decision. In summary, the court concluded that short term rentals and wedding events in the coastal zone are prohibited without a permit. Lewis has appealed the Superior Court's decision, and that decision is currently before the California Court of Appeal.

4. **FINDING:** **PROCEDURAL BACKGROUND** – The Project application has been processed in compliance with County regulations, and due process has been afforded to the Applicants and the public.

EVIDENCE: a) On April 21, 2017, Applicants filed an application for a Coastal Development Permit to allow for the short term rental (STR) of a single family dwelling on property they own located at 3384 17 Mile Drive.

b) The Coastal Development Permit application (PLN160746) was deemed complete on May 19, 2017.

c) The project was heard by the Del Monte Forest Land Use Advisory Committee (LUAC) on May 18, 2017. The LUAC recommended (vote 4-2) to deny the STR request without prejudice, but they asked the County to consider interim relief for the Applicants until the short term rental ordinances/policies are established.

Two comments were received at the meeting:

- A neighbor's representative needed clearer specifics on how the County would handle short term rentals in the Coastal zone in the absence of an adopted ordinance; and

The Pebble Beach Company presented the letter from their legal department opposing approval of this application for the similar use to a Bed and Breakfast facility/operation due to the fact the use is prohibited by their covenants, conditions, and restrictions.

- d) On September 13, 2017, the Planning Commission held a duly noticed public hearing on the project. The Planning Commission denied the application for a Coastal Development Permit. with a 6-2 vote (2 absent). (PC Resolution No. 17-043.) The Planning Commission determined that a short term rental can be analyzed as an “other residential use of a similar character, density and intensity” to a bed and breakfast. However, in the case of this specific application, the Planning Commission made the determination that the proposed project was not sufficiently similar to a bed and breakfast and denied the application due to inconsistency with zoning.
- e) An appeal from the Planning Commission’s denial of the Coastal Development Permit was timely filed by Lewis on November 14, 2017. The hearing is *de novo* before the Board of Supervisors.
- f) Lewis timely appealed the Planning Commission’s decision. Lewis requested a hearing date of January 23, 2017, rather than January 9, 2017, which would have been within 60 days of receipt of the appeal.
- g) The Board of Supervisors held a public hearing on the appeal on January 23, 2018. At least 10 days prior to the public hearing on January 9, 2018, notices of the public hearing were published in the *Monterey County Weekly* and were posted on and near the property and mailed to the property owners within 300 feet of the subject property as well as interested parties.
- h) Staff Report, minutes of the Planning Commission and Board of Supervisors, information and documents in Planning file PLN160746, and documents on file with the Clerk of the Board.

5. **FINDING:** **APPEAL AND APPELLANT CONTENTIONS** – The Appellants request that the Board of Supervisors grant the appeal and approve the Coastal Development Permit (PLN160746). The appeal alleges: there was a lack of fair or impartial hearing, the findings or decision or conditions are not supported by the evidence, and the decision was contrary to law. The contentions are listed below with responses. The Board of Supervisors denies the appeal based on the following findings regarding the appellant’s contentions and the findings and evidence set forth above.

Contention 1 – *Appellants contend that the County is imposing a blanket ban on vacation home rentals in the coastal zone while County is telling the Monterey County Superior Court and California Coastal Commission that vacation home rentals are permitted in the Coastal Zone. Appellants contend that the blanket ban in the Coastal Zone while permitting them inland violates the Coastal Act and is unlawful discrimination under the Equal Protection Clause.*

- **Response:** The County is not imposing a blanket ban on short term rentals in the coastal zone. Rather, pursuant to MCC Section 20.14.050.Z, a person can apply for a Coastal

Development Permit for a short term rental if the use is of a similar character, density and intensity to those other uses listed in Section 20.14.050. (Other zoning districts also contain a similar catch-all provision.) Besides a bed and breakfast facility, none of the other uses apply (e.g., farm worker housing, caretaker units, etc.) Whether a particular short term rental is allowable under the similar use provision depends on the particular facts of the project. If the short term rental on its facts is similar in character, density and intensity to a bed and breakfast, it could be approved under this section. In this particular case, the proposed short term rental is not similar in character, density and intensity to a bed and breakfast. A bed and breakfast facility means an establishment providing overnight accommodations and a morning meal by people who provide rental rooms in their homes. The Planning Commission correctly determined that owner occupation is a key element of a B&B, and without the owner occupying the subject property, the proposed use is a commercial use in a residential zone and not similar in character, density and intensity to a B&B.

- There is a rational basis for the difference in the County's regulations in the coastal zone and inland areas of the County, and the fact that different regulations apply in the inland and coastal zones does not violate equal protection. The Coastal Act recognizes that the coastal zone is a distinct resource and establishes a specific framework for regulation of land use in the coastal zone. Pursuant to the Coastal Act, local governments must prepare and submit a Local Coastal Program to the California Coastal Commission for certification for consistency with the Coastal Act. Once the local agency's Local Coastal Program is certified, authority to hear and decide most land use entitlement applications is delegated to the local government, with the Coastal Commission retaining appeal authority. In this case, in 1997, the County adopted regulations for short term rentals in the coastal zone, but the Coastal Commission did not certify the regulations and hence those regulations did not go into effect. Accordingly, the County's regulations for the Low Density Residential zone, which have been certified by the California Coastal Commission, govern this particular application. Under those regulations, this particular short term rental does not meet the standards required for issuance of a Coastal Development Permit for the reasons described in the Planning Commission resolution and in this resolution.

Contention 2 – *Appellants contend that the vacation home rental is a residential use that does not require a permit and is not a bed and breakfast, because the short term rental of an entire house that is otherwise vacant is not “development.”*

- **Response:** Appellants' contention that a Coastal Development Permit was never intended to apply to the short term rental of properties is incorrect. MCC Chapter 20.70 states that a Coastal Development Permit is required for all "development" with limited exceptions that do not apply here. In relevant part, "development" is defined in MCC Section 20.06.310 as a "change in the density or intensity of use of land." The short term rental of residential property is "development" because it is a change in the density or intensity of use compared to a single family dwelling.
- More particularly, MCC Section 20.06.290 defines the term "density" as "the measure of the ratio of population to the area of land occupied by that population, which may be expressed as dwelling units per acre, families per acre, persons per acre, or conversely as acres per dwelling unit or square feet per dwelling unit." The word "intensity" is not defined. Section 20.06.360 defines "dwelling" as "a structure or portion thereof designed for or occupied exclusively for non-transient residential purposes including one family and multiple family dwellings, but not including hotels, motels, boarding or lodging houses or other transient occupancy facilities." The definition of "family" in section 20.06.450 includes "one or more persons occupying a dwelling unit...and living as a single not-for-profit housekeeping unit." Section 20.06.1310 defines "transient occupancy" as "occupying for consideration a structure designed, intended or used for temporary dwelling, lodging or sleeping purposes by non-family members; any commercial use of a structure or portion."
- The totality of these definitions makes clear that short term rentals are considered "development" under the Monterey County Code because the intensity and density of the single-family use will increase with transient occupancy. For example, density could increase with renters pooling resources to afford a home resulting in more people per home, and intensity could increase with renters on vacation keeping longer hours and more traffic with increased trips to and from the rented home. Put simply, the short term rental of a single family dwelling is simply not the same as the non-transient occupancy for residential purposes.

Contention 3: *Appellant contends that the California Coastal Act Takes Precedence.*

- **Response:** The County is acting within its authority delegated to it under the Coastal Act. Pursuant to the Coastal Act, local governments must prepare and submit a Local Coastal Program to the California Coastal Commission for certification for consistency with the Coastal Act. Once the local agency's Local Coastal Program is certified, authority to hear and decide land use entitlement applications, with few exceptions, is delegated to the local

government, with the Coastal Commission retaining appeal authority. The County's regulations for the Low Density Residential zone, which have been certified by the California Coastal Commission, govern this particular application. Under those regulations, this particular short term rental does not meet the standards required for issuance of a Coastal Development Permit for the reasons described above. To the extent that Coastal Commission staff have stated support for allowing short term rentals, the CCC staff recognizes that the avenue required under the Coastal Act is to work the County to "develop regulations." (Letter of June 23, 2016.) A guidance memo from the Coastal Commission also recognizes that regulation "must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP)." (Memo of December 6, 2016.) These Coastal Commission documents appropriately recognize County's delegated authority under the Coastal Act. The County's action in this case is within its recognized authority, as the County is applying its current certified Local Coastal Program. Through an interpretation dated July 9, 2015 (revised September 20, 2016), Monterey County made the determination that there may be a path to permit a short term rental as a "*use of a similar character, density and intensity to those uses listed in this Section determined by the Planning Commission to be consistent and compatible with the intent of this Chapter and the applicable land use plan*", pursuant to section 20.14.050.Z, MCC, Title 20. In other words, it was determined that one could apply for a short term rental under the classification to which it is zoned. If and when different regulations are developed and certified, Applicants are free to reapply.

Contention 4: *Homeowners Association Objection is not a bar to Short Term Rentals Under Title 20 or the Coastal Act.*

- **Response:** The Pebble Beach Company, which functions as the Homeowners' Association in the subject area, submitted a letter objecting to the application as equivalent to a business and stating that the proposed use is prohibited by deed applicable to the subject property. The Planning Commission did not rely upon the PBC letter as an absolute bar to the project. Rather, the Planning Commission cited the letter as evidence of the nature of the proposed project as a commercial use. The prohibition by CC&R is a civil issue and would be between the Applicants and the Pebble Beach Company.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Board of Supervisors does hereby:

1. Deny the appeal filed by William R. and Duncan B. Lewis from the Planning Commission's denial of a Coastal Development Permit to allow a short term rental at 3384 17 Mile Drive, Pebble Beach; and
2. Find the denial of the project is statutorily exempt per Section 21080(b)(5) of the Public Resources Code and Section 15270 of CEQA Guidelines; and
3. Deny a Coastal Development Permit to allow a short term rental at 3384 17 Mile Drive, Pebble Beach.

PASSED AND ADOPTED this 23rd day of January 2018 upon motion of _____, seconded by _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book _____ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____

Deputy

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