

# Exhibit B

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## **DISCUSSION**

### **APRIL 2019 DRAFT ORDINANCES**

On April 22, 2019, the RMA released three proposed draft ordinances (draft ordinances) that if adopted would amend the Monterey County Code (MCC) and establish regulations, standards, and circumstances under which Vacation Rentals (also known as short-term rentals) would be allowed. The associated environmental analysis for the draft ordinances was also made available for public review.

The April draft ordinances modify Monterey County Code (MCC) as follows:

- Amend Title 7, including amending Section 7.02.060 (Business Licenses), and adding Chapter 7.110 (Vacation Rental Operation Permit)s;
- Amend Title 20 (Coastal Zoning), including adding Section 20.64.290 (Regulations for Vacation Rentals), and amending other sections of Title 20 in relation to vacation rentals; and
- Amend Title 21 (Inland Zoning) including amending Section 21.64.280 (Administrative permits for transient use of residential property for remuneration), adding Section 21.64.290 (Regulations for Vacation Rentals), and amending other sections of Title 21 in relation to vacation rentals.

The April draft ordinances sought to establish what type of vacation rental operations are consistent with an existing single-family or multi-family dwelling use as to character, density, and intensity and thus may be allowed or permitted ministerially, as compared to ones that are anticipated to have land-use impacts similar to other recreational/visitor-serving uses and deserve similar discretionary evaluation to establish.

### **PLANNING COMMISSION JULY 24, 2019 OUTCOMES AND RECOMMENDATIONS**

At the July 24, 2019 Planning Commission hearing, the Commission were presented with the April draft ordinances and public comment received. Staff presented policy options in response to public comment for the Commission's consideration. Below is a summary of the Planning Commission discussion and consensus direction provided to staff. In response to the Commission's direction, below summarizes the proposed modifications to the draft ordinances . The proposed modifications described below have been incorporated into the draft ordinances. In instances where staff's position differs from the Planning Commissions direction, staff's position is summarized for consideration.

#### **Defining Principal Residence/Resident**

The Commission supported with an 8:1 consensus vote that Principal Residence requires that a natural person reside in the dwelling not less than 275 days per year and that language be included to specify that the principal resident must be a natural person or human being.

*Planning Commission Recommendation Outcome:* Amend the definition of "Principal Residence" to incorporate these changes.

#### **Proof of Residence**

The Commission supported with an 8:1 consensus vote requiring evidence of Principal Residence/Resident in addition to an affidavit by the applicant claiming they are the principal resident.

*Planning Commission Recommendation Outcome:* Add a definition of Principal Residence Documentation.

*Planning Commission Recommendation Outcome:* Amend Application and Renewal Process to include provision of two forms of Principal Residence Documentation as approved by the Appropriate Authority.

*Planning Commission Recommendation Outcome:* Proposed list of acceptable Principal Residence Documentation includes:

- Rental or lease agreement with the signature of the owner/landlord and the tenant/resident.
- Deed or title to residential real property
- Mortgage bill
- Home utility bills (including cellular phone)
- School documents
- Employment documents
- Insurance documents, including medical, dental, vision, life, home, rental, and vehicle
- Internal Revenue Service or California Franchise Tax Board tax return
- California Certificate of Vehicle or Vessel Title or Registration
- Change of Address Confirmation by the U.S. Postal Service (Form CNL107)
- Record of any state or national banks, state or federal savings associations, trust companies, industrial loan companies, state or federal credit unions, and any institution or entity that has issued a credit card
- An acceptable No Fee Identification Card Eligibility Verification (DL933) form
- Voter registration confirmation letter or postcard issued by the California Secretary of State or a Monterey County Elections Officer
- An original copy of an approved Claim for Homeowners' Property Tax Exemption (BOE-266) form filed with the Monterey County Assessor
- An original copy of an approved Claim for Homeowners' Property Tax

#### *Ministerial Vacation Rentals – Homestays and Limited Short-Term Rentals*

The Commission supported with an 8:1 consensus vote limiting Homestays allowed with a ministerial permit to one contract per week to limit turnover, limiting maximum rental occupancy to four (4) persons renting at a time. The Commission also supported with a 9:0 consensus vote establishing clear limits on homestays allowed with a ministerial permit while being as permissive as possible and appropriate with the ministerial approval process, specifically with regards to the total maximum days per year the Homestay could be rented with a ministerial permit.

The Commission supported with a 7:2 consensus vote that a Limited Short-Term Rental (Limited STR) be allowed to rent for not more than 90 total days per year. The Commission was open to staff feedback and recommendation on the total maximum rental days per year allowed with a

ministerial permit. The Commission also supported the limits of one (1) contract per week to limit turnover and no more than four (4) contracts per year.

To refine the limits for vacation-rental uses that are consistent with a residential use, appropriately allowed with a ministerial permit, and are clearly not commercial enterprises, staff looked to the average and range of hotel/motel occupancy rates in Monterey County. The Monterey County three-year average (over the last three years) hotel/motel occupancy rate is 73%, ranging from 55% to 87%. November, December, January, February, March have below average occupancy rates whereas April through October experience average or above average rates, reflecting the seasonal shifts in visitors coming to the area. Staff recommends that vacation rentals allowed with a ministerial permit should be rented for fifty percent (50%) of the year or less to ensure the occupancy remains below typical hotel/motel occupancy rates. However, vacation rentals could impact the existing hospitality industry during their slower periods.

While competition is expected, there could be an imbalance with allowing ministerial permits for residences when hotels/motels require discretionary permits to add rooms. Based on that, the Commission recommended restricting Limited STRs to Principal Residences, a restriction that was unique to Homestays in the April draft ordinances. In response, staff has combined Homestays and Limited STRs into a single vacation rental category. This adds both clarity and simplicity to the ordinances, while achieving the Commission's goal of setting clear, appropriate limits on ministerially permitted operations. Staff simplified the definitions to the extent feasible while remaining consistent with staff's understanding of PC direction, however, further revision may be necessary to avoid confusion.

Enforcement or verification of the number of days per year rented could be accomplished by coordinating with the Monterey County Treasurer/Tax Collector and comparing Transient Occupancy Tax receipts against approved land use permit records.

*Planning Commission Recommendation Outcome:*  
Delete the Homestay category from the ordinances.

Amend the term "Short-Term Rental" throughout the ordinances to be "Vacation Rental," for simplicity and consistency.

Amend the definition of Limited STR as follows:

Limited Vacation Rental means a Residential Property rented as Vacation Rental by the Principal Resident that meets all the following criteria:

- 1) concurrently occupied by the Principal Resident; and
- 2) rented as a vacation rental for not more than twenty (20) times per 12-month period; and
- 3) rented as a vacation rental for not more than a total of one hundred forty (140) days per 12-month period.

Exception:

- a. The Residential Property may be rented as a Vacation Rental without concurrent occupancy of the Principal Resident for up to, but not more than three (3) times of the twenty (20) times per 12-month period.

Amend the definition of Commercial STR as follows:

Commercial Vacation Rental means a Residential Property rented as Vacation Rental that meets one or more of the following criteria:

- 1) rented as a vacation rental more than three (3) times per 12-month period while not concurrently occupied by the Principal Resident;
- 2) rented as a vacation rental for more than twenty (20) times per 12-month period while concurrently occupied by the Principal Resident;
- 3) rented as a vacation rental for more than a total of one hundred forty (140) days per 12-month period;
- 4) makes three (3) or more bedrooms available for rent as a vacation rental.

Amend the regulations for Limited Vacation Rentals to include the following limits:

-Not more than one (1) contract per week to limit turnover.

-Limit the total days the unit may be rented to not more than one-hundred forty (140) in a 12-month period.

-The Principal Resident must concurrently occupy the dwelling while it is rented, except the Principal Resident may rent the unit not more than three (3) of the total twenty (20) times allowed for a total duration of not more than sixty (60) of the total one-hundred forty (140) days allowed per 12-month period while the Principal Resident is not concurrently occupying the dwelling.

-Add that no more than two (2) bedrooms may be rented , regardless of the total number of bedrooms in the dwelling.

Amend the Application and Renewal Process for Limited Vacation Rentals to require that the Principal Resident designate which bedrooms will be rented as part of the Limited STR.

#### Temporary Structures

A question arose regarding rental of Yurts as vacation rentals. The Commission supported that vacation rentals be allowed in permitted structures, but not in temporary structures or vehicles. This would include yurts, RVs and trailers.

*Planning Commission Recommendation Outcome:* Amend the ordinances to clarify that vacation rentals are allowed in legally permitted residential structures and are not allowed in structures intended for temporary occupancy or vehicles.

#### Visitor-Serving Unit Counts

The Commission supported with an 8:0 (one Commissioner had to leave toward the end of the meeting) consensus vote that all Vacation Rentals count against visitor-serving unit/facility counts in land use plans that include maximum counts. The Commission suggested utilizing an equation to calculate Visitor-Serving Unit (VSU) equivalency for vacation rentals. Two key factors should be considered in this equation: 1) the maximum occupancy per room (or unit) and 2) the total days per year the room (or unit) is available to be rented.

In the area plans that include counts for visitor-serving facilities/units/etc., referred to collectively as Visitor-Serving Unit (or VSU), each hotel/motel room is counted as 1 VSU. Specific data was not available regarding average hotel/motel room occupancy, staff utilized a hotel maximum occupancy of four persons per room. Hotels/motels and other traditional hospitality venues are available to serve visitors 365 days per year, or one hundred percent (100%) of the year. The base calculation for 1 VSU = an allowed impact of 4 guests per unit times 365 days per year.

*Planning Commission Recommendation Outcome:* Limited Vacation Rentals (formerly referred to as Limited STRs and now combined with Homestays) and Commercial Vacation Rentals (formerly referred to Commercial STRs), as proposed in the Draft Ordinances, are counted against visitor-serving unit counts.

*Planning Commission Recommendation Outcome:* Add a Visitor-Serving Unit-Equivalent calculation to the vacation rental ordinances. The ordinances propose that vacation rental categories serve visitors for only a portion of the year up to 365 days out of the year. All vacation rentals in the ordinances are limited to a maximum overnight occupancy of no more than two persons per room. Therefore, the proposed VSU-equivalent formula is the *(Number of Days Available to Rent per year Divided By 365 days per year) Multiplied By (Maximum Overnight Occupancy Divided by Four (4) Persons)*.

VSU-equivalent calculation examples:

Commercial Vacation Rental with five (5) rental bedrooms =  $(365 \text{ rental days per year} / 365 \text{ days per year}) \times [(2 \text{ persons per room} \times 5 \text{ rooms}) / 4 \text{ persons}] = \underline{2.5 \text{ VSU-equivalents}}$

Commercial Vacation Rental with two (2) rental bedrooms =  $(365 \text{ rental days per year} / 365 \text{ days per year}) \times [(2 \text{ persons per room} \times 2 \text{ rooms}) / 4 \text{ persons}] = \underline{1.0 \text{ VSU-equivalents}}$

Limited Vacation Rental with two (2) rental bedrooms =  $(140 \text{ rental days per year} / 365 \text{ days per year}) \times [(2 \text{ persons per room} \times 2 \text{ rooms}) / 4 \text{ persons}] = 0.38 \text{ VSU-equivalents}$

*Staff Position:* Staff contends that as a matter of land use policy Limited Vacation Rentals should not be counted against visitor-serving unit counts. Limited Vacation Rentals (formerly referred to as Limited STRs and now combined with Homestays), as defined and restricted in the May Draft Ordinances, are consistent with the intensity of a residential use (water use, traffic, etc.) and do not result in the loss of a residential unit from the market.

*Staff Position:* Staff contends that as a matter of land use policy a Commercial Vacation Rental should count as one (1) visitor-serving unit, regardless of number of bedrooms. Across all land use plans hotel/motel units are counted as one (1) visitor-serving unit regardless of the number of bedrooms or maximum occupants. Each hotel/motel unit is rented to a single “family” or group. For consistency and simplicity, staff recommends that a Commercial Vacation Rental be counted as one (1) visitor-serving unit regardless of number of rooms.

#### Homeowner Associations and Conditions, Covenants & Restrictions (CC&Rs)

Public has made comments about vacation rentals being inconsistent with owner associations’ conditions, rules, or agreements. County does not enforce CC&Rs or other private agreements. As an option, staff presented a concept for the PC to consider whereby a homeowner association (HOA) would need to provide documentation of the use being allowed under their CC&Rs. The Commission expressed concern of a HOA that does not engage possibly holding up the process. Current regulations (Section 21.64.280.D.2.g MCC) require an applicant to provide notice to any affected HOA and requires denial of the permit if the HOA objects.

The Commission supported with an 8:0 consensus vote staff’s proposal to have applicants acknowledge that they have investigated and to their knowledge are not subject to homeowner association (HOA) rules, CC&Rs, or other rules that prohibit the vacation rental use of the property.

*Planning Commission Recommendation Outcome:* Amend Application and Renewal Process to include a requirement that the application shall contain an acknowledgement by the applicant attesting that they have researched and verified that vacation rental use of the residential unit does not violate any applicable conditions, covenants, or other restrictions on the real property proposed for the vacation rental use.

*Staff Position:* If staff receives notification after a permit is issued/approved, and it is determined the permit was granted on false material information (willful or negligent), the permit could be subject to revocation or modification.

#### Agriculture and Grazing Zones

The Commission supported with an 8:0 consensus vote to include agricultural zoned properties and/or a type of “Farmstay” in the ordinances.

*Planning Commission Recommendation Outcome:* Amend draft ordinances to include appropriate agricultural zones for both Limited and Commercial Vacation Rentals and include verbiage to ensure that a Property Manager or Principal Resident will concurrently reside on the property during Vacation Rentals on properties with agricultural operations.

Title 20 agricultural zones added: Coastal Agriculture Preserve (CAP (CZ)) and Agricultural Conservation (AG (CZ))

Title 21 agricultural zones added: Farmland (F), Rural Grazing (RG), Permanent Grazing (PG)

#### Area-Specific Modifications – Big Sur



The Commission supported with an 8:0 consensus vote that the Big Sur Land Use Plan (BSLUP) strictly limits visitor-serving facilities and requested that staff provide an analysis that demonstrates how vacation rentals of any kind are compatible with BSLUP. The Commission also requested that staff present a summary of camping and other affordable accommodation types that are allowed in Big Sur, including a count of remaining units available.

*Planning Commission Recommendation Outcome:* Limited Vacation Rentals, as defined and restricted in the draft ordinances, are allowed in Big Sur. Based on the data pulled from Accela, there were 40 inn units (Post Ranch Inn) approved after adoption of the plan on April 10, 1986. Verification regarding the number of campsites and/or RV sites is underway.

#### Area-Specific Modifications - Carmel Area

The Commission supported with an 8:0 consensus vote to prohibit Commercial Vacation Rentals (formerly referred to as Commercial STRs) in the Carmel Area. The Commission discussion focused primarily on concerns pertaining to the Carmel Highlands area such as restricted parking and septic system impacts.

*Planning Commission Recommendation Outcome:* Prohibit Commercial Vacation Rentals in the low-density residential zones in the Carmel Area Land Use Plan, which encompass primarily the Carmel Highlands area.

#### Area-Specific Modifications – Coastal and Inland Del Monte Forest Properties

The Commission supported that the County substantially respond to comments submitted by the Pebble Beach Company (PBC). See Attachment B-1 for detailed response.

*Planning Commission Recommendation Outcome:* No specific ordinance modifications in response to PBC comments, beyond those made in response to other direction by the Commission.

*Staff Position:* To respond to PBC's desire, one that has likewise been expressed by other HOAs, to be have a permissive role (or alternatively an ability to object) during the permitting of vacation rentals subject to deed restriction and CC&Rs, staff suggests that Titles 20, 21 and 7 be amended to include the following language from the Title 21.64.280 - Administrative Permits for the Transient Use of Residential Property for Remuneration: "The use of a residential unit for a vacation rental shall not violate any applicable conditions, covenants, or other restrictions on real property. The applicant shall provide notice to any affected homeowners' association in a manner consistent with the notice requirements for a use permit. In the event the homeowners' association objects to the issuance of the permit, the permit shall not be approved until the homeowners' association's objection has been withdrawn or the right of the applicant to use the subject residential property for vacation rental use has been validated, approved, or otherwise ordered by a Court, arbitrator, or other appropriate entity with the authority to review, approve, validate, or otherwise act on the proposed use of the action of the homeowners' association."

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