



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: PC 17-076, Version: 1

PLN160746 - LEWIS WILLIAM R MD & DUNCAN B LEWIS TRS

Public hearing to consider a Short Term Rental as an *other residential uses of a similar character, density and intensity* to a Bed and Breakfast in the coastal zone.

Project Location: 3384 17 Mile Drive, Pebble Beach (Assessor's Parcel Number 008-393-006-000), Del Monte Forest Land Use Plan, Coastal Zone.

CEQA Action: Action to deny a project is Statutorily Exempt from per Section 15270 of CEQA Guidelines
RECOMMENDATION:

It is recommended that the Planning Commission:

- Determine that a Short Term Rental can be considered as an “*other residential uses of a similar character, density and intensity*” to a Bed and Breakfast in the coastal zone, and
- Find that denial of the project is Statutorily Exempt per Section 15270 of CEQA Guidelines; and
- Deny a Coastal Development Permit to allow a Short Term Rental at 3384 17 Mile Drive, Pebble Beach (Assessor's Parcel Number 008-393-006-000).

A draft resolution with findings and evidence supporting this recommendation is attached for consideration (**Exhibit B**). Staff recommends that the Planning Commission adopt the resolution denying this application.

PROJECT INFORMATION:

Property Owners: William R and Duncan B Lewis TRS

APN: 008-393-006-000

Parcel Size: 5.3 acres

Zoning: “LDR/1.5-D (CZ)” Low Density Residential/1.5 acres per unit-Design Control (Coastal Zone)

Plan Area: Del Monte Forest Land Use Plan

Flagged and Staked: No

SUMMARY/DISCUSSION:

This is an application for a short term rental (STR). Currently, there is no specific use listed under Title 20 for “short term rentals”. However, under Section 20.14.050.Z, of Monterey County Code, one may apply for a Coastal Development Permit (CDP) to allow “*Other residential uses 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.*” Staff finds that that an applicable residential use could be as a Bed and Breakfast (B&B), which is the path that this application is following.

There are no policies within the Del Monte Forest Land Use Plan that would expressly prohibit a Short Term Rental (STR) use, or that restrict the number of Bed and Breakfast (B&B) permits allowed. However, in order to consider a CDP for STR, the Planning Commission must first determine that the subject application for a STR is similar enough in character, density and intensity to a B&B in order to qualify as a similar use. If the Commission finds this as a similar use, then we evaluate the CDP against the applicable standards. Staff recommends that the Planning Commission find that that STR is a similar use to B&B in the coastal zone.

According to the regulations for a B&B facility under section 20.64.100.C.1, one of the requirements is that “*The property owners shall occupy and manage the bed and breakfast facility.*” In the case of this application,

the owner will not occupy the home during visitor stays. However, the applicant does own a home on the parcel adjacent to the subject property and has stated that it is occupied year-round by a member of the applicant's family. The question pondered by staff, is whether this application for a 'similar use' and the specific circumstances surrounding it meet the required standards of a B&B close enough in order to recommend approval. Staff's opinion is that owner occupation is a key element of a B&B, and without the owner occupying the subject property, the proposed use does not sufficiently meet the requirements of a B&B to recommend approval of the application.

Additionally, a draft Transient Use Ordinance was approved and adopted by the Board of Supervisors in 1997, for the Coastal Zone (Title 20) at approximately the same time that the Transient Use Ordinance was adopted for the Inland Zone (Title 21). The Title 20 Ordinance was not certified by the Coastal Commission and ultimately never went into effect. However, that Title 20 draft ordinance, as adopted by the Board, had the same regulatory language as the Inland ordinance with regard to the impact of the affected Homeowner's Association. The language from Section 21.64.280.D.2.g reads: *"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 transient 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."* Since that language was part of the coastal regulations, a question for the Planning Commissions is if it should be applied as a regulation in cases like this?

In addition to considering if the proposed use is similar enough to a Bed and Breakfast, Staff also needed to contemplate the Pebble Beach Company's role as the de facto Home Owner's Association in the Del Monte Forest, and what impact their position has on this application. In prior Planning Commission hearings on STRs in the Inland Zone, (ie; PLN160233 - "Hill") The Pebble Beach Company submitted substantial evidence demonstrating that PBC is the de facto affected homeowners' association for the Del Monte Forest (DMF) area, and was recognized as such by the County.

The Pebble Beach Company has submitted a letter from their legal department opposing approval of 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 states in Paragraph 1, under the heading, "Covenants and Restrictions" 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 whatsoever except solely and exclusively for the construction and maintenance of not more than one private single family residence. The Pebble Beach Company insists in their letter 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". 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.

If the 1997 version of Chapter 20.64.280 (Transient Use of Residential Property for Remuneration) was certified in the Coastal Zone, this project would not be able to move forward because the PBC objects to this residential property being used for transient occupancy. Staff believes that approval by the Board of Supervisors of the draft language in Title 20 regarding the authority of the affected Home Owner's Association represents the direction of the County on this matter and provides further reason to recommend denial of this

application. However, it should be noted that the currently certified version of the Title 20 Ordinance is silent on the role of the affected Home Owner's Association with regard to B&B applications.

If the Planning Commission wishes to approve this application, the Commission could find that HOA objection should not apply to uses of similar character, density and intensity to a B&B and that having a home on the parcel adjacent to the subject property, which is occupied year-round by a member of the applicant's family, qualifies as owner occupation in this case and meets the requirements for a B&B set forth in Section 20.64.100.C.1 of the County Code.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- ✓ Environmental Health Bureau
- ✓ RMA-Public Works
- ✓ RMA-Environmental Services
- ✓ Water Resources Agency
- ✓ Pebble Beach Community Services District

The project was heard by the Del Monte Forest Land Use Advisory Committee on May 18, 2017. They noted that all past STR applications in the Inland area were denied. However, this STR request is in the Coastal Zone. They recommended (vote 4-2) to deny the STR request without prejudice but they ask the County to consider interim relief for the Lewis' until the Short Term Rental ordinances/policies are established.

Two comments were received at the meeting:

- A neighbors' 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 (CC&Rs).

This report address those questions.

ENVIRONMENTAL REVIEW:

California Environmental Quality Act (CEQA) Guidelines Section 15270 statutorily exempts project which a public agency rejects or disapproves.

Prepared by: Elizabeth Gonzales, Associate Planner x5102

Reviewed by: Brandon Swanson, RMA Planning Services Manager x5334

Approved by: Carl Holm, AICP, RMA Director

The following attachments are on file with the RMA:

Exhibit A - Draft Resolution including:

- Exhibit A1 - Site Plan

Exhibit B - Vicinity Map

Exhibit C - LUAC Minutes (5/17/17) with attachments submitted at the meeting

cc: Front Counter Copy; Planning Commission; Pebble Beach Community Services District; RMA-Public Works Department; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency;

Jacqueline R. Onciano, Chief of RMA-Planning; Brandon Swanson, RMA Services Manager; Elizabeth Gonzales, Project Planner; William R and Duncan B Lewis TRS, Owners; The Open Monterey Project; LandWatch; Dale Ellis, interested party; Planning File PLN160746.