



Board Report

File #: PC 18-005, **Version:** 1

REF130043 SHORT-TERM RENTAL ORDINANCES

- a. Conduct a public workshop to obtain input on developing regulations of short-term rentals for overnight accommodations in residential areas in the unincorporated area of the Big Sur Land Use Plan Area;
 - b. Provide direction to staff relative to draft regulations and process.
- (Big Sur Land Use Plan Area - Coastal)

Proposed CEQA Action: CEQA review to be conducted based on regulations developed.

RECOMMENDATION

It is recommended that the Planning Commission:

- a. Conduct a public workshop to obtain input on developing regulations of short-term rentals for overnight accommodations in residential areas in the unincorporated area of the Big Sur Land Use Plan Area;
- b. Provide direction to staff relative to draft regulations and process.

SUMMARY

On May 10, 2017, the Planning Commission voted that the issues of Short Term Rental in the Big Sur Land Use Planning Area be addressed with the Big Sur Land Use Plan (BSLUP) update as soon as possible, after reasonable access has been restored. On October 13, 2017, the Pfeiffer Canyon Bridge opened to the public, reconnecting the Big Sur community to the south with the north. Staff requests the Planning Commission conduct a public workshop to obtain input on developing regulations for short-term for overnight accommodations in residential areas in the unincorporated area of the Big Sur Land Use Plan Area and provide direction to staff relative to draft regulations and process.

Now that access is restored for the Big Sur coast via the Pfeiffer Canyon Bridge and the BSLUP update process is on hold for the foreseeable future, staff desires input from the Big Sur community and direction from the Planning Commission on how it wishes to advance the discussion of STR regulations in the Big Sur planning area. Below are some alternatives that are meant to help frame the discussion for the meeting:

- Postpone discussion of STRs in Big Sur indefinitely until the BSLUP can move forward.
- Due to the tensions within that community, County could consider placing a moratorium on STRs in Big Sur until regulations for Big Sur are adopted.
- Develop STR regulations in Title 20 for the Big Sur Land Use Planning Area, subject to review for consistency with the BSLUP, yet allowing the discussion of STRs in Big Sur to proceed outside the land use plan update process.
 - Conduct a parallel short-term rental ordinance development process for Big Sur with discussion starting at the point where Big Sur was pulled out of the ordinance on May 1, 2017.
 - Begin the short-term rental ordinance development process over for the Coastal Zone, starting at the point where Big Sur was pulled out of the ordinance on May 1, 2017.

- Develop separate regulations for STRs in Big Sur.

Should the BSLUP update process yield an adopted BSLUP with regulations for STRs that differ from an adopted STR ordinance for Big Sur, the STR ordinance could then be amended to align with the updated BSLUP. However, an option requiring amendment of a Land Use Plan will take a long time.

Staff requests the Planning Commission provide direction whether to include the Big Sur Land Use Planning Area in the proposed regulations for short-term rentals, and provide direction to staff as appropriate.

STR and events are separate issues, so the STR regulations specifically exclude events. Ordinances for events will be developed after staff has completed ordinances for STR.

DISCUSSION

Background

In 1997, Monterey County adopted regulations for “Transient Use of Residential Properties” (aka short term rentals) in both coastal and inland areas. Inland regulations were codified in Chapter 21.64.280, which allows short term rentals with an Administrative Permit. Coastal regulations were submitted to the Coastal Commission (CCC) for certification. CCC returned the draft ordinance with comments/changes for the County to consider; however, the county never addressed the CCC comments/changes. As such, the regulations were not certified for use in the coastal areas.

Staff began working to develop regulations for Short Term Rentals in 2013, in large part due to concerns raised within the Big Sur community. Multiple community meetings were held in Big Sur and the issue gained momentum in other areas besides Big Sur. Concurrently, the Big Sur and South Coast Land Use Advisory Committees began working on updating the Big Sur Coast Land Use Plan. At the LUACs request, county staff attended various meetings to provide input and guidance. The LUAC submitted a draft plan dated November 28, 2016 for review by county staff.

In 2015, District 5 Supervisor established a working group with representatives from various areas to discuss how to address STRs, presuming they were to be allowed. The issue of prohibiting STR in any area was excluded from that discussion. This working group included representatives from the Big Sur community.

The 2016 Soberanes fire and heavy rains during the winter 2017 created challenges for access to/from Big Sur. Most significantly, the Pfeiffer Canyon Bridge was closed in February 2017. A foot path was created and opened in late March to allow limited access. However, community members residing south of Pfeiffer Canyon had only intermittent road access to Salinas using Nacimiento-Fergusson Road or driving down through Paso Robles, until October 13, 2017 when the Pfeiffer Canyon Bridge opened, reconnecting the Big Sur community to the south with the north.

On April 4, 2017 staff distributed the Preliminary Draft Ordinance for regulating short-term rentals (STR) for overnight accommodations in the unincorporated area of Monterey County.

On May 10, 2017, the Planning Commission held a hearing on Short-Term Rentals. The Commission expressed desire to hold off on STR discussion specific to Big Sur until reasonable access was restored and staff could review the Big Sur Land Use Plan update submitted by the LUACs. The result of this action is that staff continued to develop the short-term rental regulations for unincorporated Monterey County with exception of the Big Sur Coast Land Use Planning Area.

Since May, the BSLUP has been on hold because RMA Planning has eight (8) vacant positions: Planning Services Manager; Supervising Planner; two (s) Senior Planner; and three (3) Associate Planners. In addition, priorities changed with staff being tasked to develop regulations for cannabis and Measure Z to meet critical timelines. At the Planning Commission and Land Use Advisory Committees Joint Annual Meeting on October 25, 2017, this topic was discussed. The Big Sur LUP update is part of the Long-Range Planning Workplan and was identified as a priority task in 2016, but it was not identified as one of the top priority projects adopted by the Board of Supervisors for 2017 (Exhibit A). As such, circumstances have changed resulting in the BSLUP being on hold for the foreseeable future.

Pfeiffer Canyon Bridge re-opened on October 13, 2017. Therefore, a public notice and staff report for the November 29, 2017 Planning Commission hearing for STR ordinances included an action and discussion item to provide direction whether to include the Big Sur Coast Land Use Planning Area in the proposed regulations for short-term rentals. On November 27, 2017 staff submitted a memo to the Planning Commission providing further clarification regarding development of STR regulations for the Big Sur Land Use Planning Area, which included a recommendation to continue the discussion from the November 29, 2017 hearing to a Planning Commission Workshop on January 10, 2018.

Now that access is restored for the Big Sur coast via the Pfeiffer Canyon Bridge and the BSLUP update process is on hold for the foreseeable future, staff desires input from the Big Sur community and direction from the Planning Commission on how it wishes to advance the discussion of STR regulations in the Big Sur planning area.

Exhibit D - Correspondence - includes correspondence received to date for the January 10, 2018 Workshop. For convenience, staff is re-submitting its memo and Big Sur-specific correspondence that was previously submitted for the November 29, 2017 hearing. Please note that staff has made every effort to identify and provide Big Sur-specific correspondence from the November hearing record, however, due to the volume and nature of the public comment staff may have inadvertently left out some correspondence. The full November 29, 2017 hearing record can be accessed at <https://monterey.legistar.com/LegislationDetail.aspx?ID=3209756&GUID=60506954-FC00-4F3C-80BB-77A57D533195&Options=&Search=>.

Big Sur Land Use Plan

Monterey County adopted a comprehensive General Plan Update in 1982 that applied to the entire unincorporated county. Subsequently, area plans were prepared and adopted for coastal and non-coastal areas. Big Sur Land Use Plan (BSLUP) was adopted in 1984 and certified by the California Coastal Commission (CCC) in 1986. The Big Sur planning area is served by two Land Use Advisory Committees (LUAC): 1) Big Sur LUAC, generally ranging from Mal Paso (the northern Big Sur boundary) to Anderson Canyon; and 2) South Coast LUAC, general ranging from Anderson Canyon to the southern County boundary.

In 1999, Monterey County embarked on a General Plan Update (GPU). As part of that process, in 2002, the Big Sur and South Coast Land Use Advisory Committees (LUACs) began a series of public meetings with the intent of providing language for the Big Sur section of the draft GPU, which at that time included coastal planning areas. Ultimately, it was decided that the GPU would only apply to the inland areas of the County, and that updating the County's Local Coastal Program would wait until after the GPU was completed. The GPU took another eight years and was not finalized until 2010 (2010 General Plan).

In 2013, the LUACs returned to the task of updating the 1986 LUP. The work preparing the draft LUP update was based largely on the 1986 LUP, while acknowledging that such factors as changed conditions, lessons learned, and new concerns necessitate that the 1986 LUP be updated to meet current needs. The BSLUP update is being prepared to carry out the requirements of the California Coastal Act of 1976 while recognizing the historic and current importance of the resident Big Sur community's support for the protection and vitality of Big Sur. This LUP hopes to achieve a balance between ensuring the survivability of the Big Sur community and its neighborhoods and the Coastal Act's emphasis on protecting coastal resources.

The LUACs proposed and submitted a draft BSLUP amendment dated November 28, 2016 to staff, which addresses how the LUACs recommend handling STRs going forward. The proposed draft BSLUP amendments prohibit short term rentals in the Big Sur LUP area. The proposed draft BSLUP would limit any visitor accommodations outside of the Visitor and Community Serving Commercial (VCSC) land use designation to Bed and Breakfast Facilities (B&Bs) so long as they are not detrimental to the health, safety and welfare of the people residing in the area. Specifically, B&Bs are proposed to be allowed in Rural Residential (RR), Watershed and Scenic Conservation (WSC), and VCSC areas, on parcels that have unshared direct access to State Route 1 (SR1). For RR & WSC, the parcel must have unshared direct access to SR1, not using Palo Colorado Road or Sycamore Canyon. B&B facilities are further proposed to be restricted to four (4) units per facility, and not to exceed fifty (50) units maximum total.

The BSLUP update requires approval by Monterey County (Planning Commission, Board of Supervisors) and certification by the California Coastal Commission (Coastal Commission). Planning staff attended multiple LUAC meetings as they were developing the draft BSLUP, and has received the November 2016 draft BSLUP update for review.

Since May, the BSLUP has been on hold because RMA Planning has eight (8) vacant positions: Planning Services Manager; Supervising Planner; two (s) Senior Planner; and three (3) Associate Planners. In addition, priorities changed with staff being tasked to develop regulations for cannabis and Measure Z to meet critical timelines. As such, circumstances have changed resulting in the BSLUP being on hold for the foreseeable future.

Given the nature and complexity of the LUP development process in Big Sur, it is important for the lead planner to have experience with and knowledge of Big Sur and its planning history. There are two people in the RMA that have the experience necessary for this task: 1) Chief of Planning; and 2) RMA Director. Staff has evaluated the staffing, workload and priorities for Long-Range Planning, and there are no alternatives in the short-term (e.g. hiring consultants) that will free up the Chief or Director's time to work on the BSLUP. As such, until key planning staff vacancies can be filled and new staff trained, the BSLUP is not able to move forward and will likely be on hold for at least six (6) to twelve (12) months. Once County completes its review, County must complete CEQA review and process the amendments through the Planning Commission, Board of Supervisors, and Coastal Commission.

STR Regulations

On May 31, 2017 and June 28, 2017, the Planning Commission continued the hearing regarding the preliminary draft regulations for STRs for unincorporated Monterey County with the exception of the Big Sur Coast Land Use Planning Area. The primary direction provided to staff during these hearings included:

1. Simplify the types of short-term rentals;
2. Structure the ordinance so that a primary or principal resident (owner or lessee) can do a short-term rental subject to a relatively simple permit/license process; STRs being operated at properties that are not a primary or principal residences should be permitted using a Use Permit process, similar to cottage

- industry or other business endeavors taking place in residential areas;
3. Return with recommendations and discussion regarding frequency limitations;
4. Do not support requiring two functioning disposal fields for sites on septic or on-site wastewater treatment systems (OWTS);
5. Do not support establishing a new water system permit category for short-term rentals, since we don't have regulations for rentals (e.g. permit category for long-term rentals); and
6. Return to the Planning Commission in the fall 2017 (within 3-4 months) with a Draft Ordinance.

On November 29, 2017 staff returned to the Planning Commission with a revised Preliminary Draft STR Ordinance for the unincorporated areas of Monterey County except the Big Sur Land Use Planning Area, integrating and building upon Commission direction, public comment, and discussions during the May and June 2017 hearings (Exhibit A). The updated preliminary draft ordinance seeks to establish regulations, standards and circumstances under which a STR business of a limited scale and impact may be established in zoning districts where residential uses are allowed. It further provides standards, review processes and periods, and code compliance provisions to assure that such uses are not detrimental to the residential area in which a STR may operate.

Updates, revisions and additions have been made to the draft ordinance including, but not limited to the following key provisions:

- Revised STR types and permitting process based on the following criteria: STR operator's principal residence; number of bedrooms; if resident is present or not during STR rental period; and rental frequency limitations (based on number of contracts). See Exhibit C for permit process flow chart.
- All STRs require business license, and prior to issuance of the license must obtain either a Zoning Clearance or Use Permit (Coastal Development Permit in the Coastal Zone)
- Added size-based occupancy standards for bedrooms
- OWTS require performance evaluations only
- Added a definition for Home Stays
- Added recommended zoning districts where STRs allowed
- Added code compliance, enforcement and fines sections
- Developed application criteria and draft samples of key application documents

Alternatives and Next Steps

Now that access is restored for the Big Sur coast via the Pfeiffer Canyon Bridge and the BSLUP update process is on hold for the foreseeable future, staff desires input from the Big Sur community and direction from the Planning Commission on how it wishes to advance the discussion of STR regulations in the Big Sur planning area.

As part of the ordinance development process, the regulations must be found consistent with adopted policy. Developing regulations can either begin at the policy level (Land Use Plan) with the regulatory details (ordinance) to follow, or can begin with an ordinance subject to review for consistency with the LUP. In the case of Big Sur, consistency could be achieved by either:

- 1) Developing regulations consistent with the BSLUP; or
- 2) Developing regulations that require amending the BSLUP for consistency.

However, an option requiring amendment of an Area Plan - especially a coastal one (Land Use Plan) -- will

take a long time, so the consistency determination is key in all cases.

Below are some alternatives that are meant to help frame the discussion for the January 10, 2018 Workshop:

- Postpone discussion of STRs in Big Sur indefinitely until the BSLUP can move forward.
 - This alternative will significantly delay the development of STR regulations for Big Sur compared to the rest of the County, and will leave the community vulnerable to on-going tensions regarding this contentious issue. There is debate whether the existing policies would prohibit STRs in Big Sur or not.
- Due to the tensions within that community, County could consider placing a moratorium on STRs in Big Sur until regulations for Big Sur are adopted.
 - A moratorium can be established for a maximum of two years.
- Develop STR regulations in Title 20 for the Big Sur Land Use Planning Area, subject to review for consistency with the BSLUP, yet allowing the discussion of STRs in Big Sur to proceed outside the land use plan update process. There are differing opinions within the community whether short-term rentals are consistent with the current BSLUP. It is prudent to first determine whether or not STRs should be an allowed use in Big Sur, and if so under what circumstances. Once the desired policy is established it will be subject to review for consistency with the BSLUP.
 - Conduct a parallel short-term rental ordinance development process for Big Sur with discussion starting at the point where Big Sur was pulled out of the ordinance on May 1, 2017.
 - Based on the current status, staff would anticipate being able to fold Big Sur back into the Coastal Ordinance.
 - Begin the short-term rental ordinance development process over for the Coastal Zone, starting at the point where Big Sur was pulled out of the ordinance on May 1, 2017.
 - The 2010 General Plan has demonstrated that separating out coastal issues is not necessarily a preferred alternative. In addition, this alternative will delay the development of STR regulations for the unincorporated areas in the Coastal Zone, which is the area of most interest and concern. County has existing regulations for STRs in the non-coastal areas.
 - Develop separate regulations for STRs in Big Sur.
 - This alternative allows the ordinance development process to continue everywhere except Big Sur, while allowing Big Sur to begin the conversation of STRs. Depending on the outcome of the Big Sur regulatory discussions, the Big Sur regulations may be a separate and independent policy in Title 20 or may be able to be integrated into the STR policy in Title 20 with the other Coastal planning areas. The regulatory process is already very complex. Therefore, staff does not advocate for developing independent ordinances in different planning areas.

Should the BSLUP update process yield an adopted BSLUP with regulations for STRs that differ from an adopted STR ordinance for Big Sur, the STR ordinance could then be amended to align with the updated BSLUP. However, an option requiring amendment of a Land Use Plan will take a long time.

Staff requests the Planning Commission provide direction whether to include the Big Sur Land Use Planning Area in the proposed regulations for short-term rentals, and provide direction to staff as appropriate.

STR and events are separate issues, so the STR regulations specifically exclude events. Ordinances for events will be developed after staff has completed ordinances for STR.

OTHER AGENCY INVOLVEMENT

The following agencies and departments have been consulted in the preparation of the preliminary draft ordinance and this report included: Resource Management Agency; County Counsel; Environmental Health Bureau; Monterey Regional Fire; and the Treasurer-Tax Collector.

Prepared by: Melanie Beretti, Special Programs Manager (831) 755-5285

Reviewed by: Jacqueline R. Onciano, RMA Chief of Planning

Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the RMA:

Exhibit A - 2016 Annual Report for the General Plan and Housing Element

Exhibit B - Preliminary Draft Ordinance (Version: 2017.11.08)

Exhibit C - STR Draft Ordinance Permit Process Flow Chart

Exhibit D - Correspondence

cc: Front Counter Copy; Planning Commission; Environmental Health Bureau; Water Resources Agency; Katie Butler, California Coastal Commission; Josh Bowling, RMA-Code Compliance; David Spaur, Economic Development; Wendy Strimling and Brian Briggs, County Counsel; Mary Zeeb, Treasure/Tax Collector; Jacqueline R. Onciano, Chief of Planning; Neville Pereira, RMA Building Official, Dorothy Priolo, Monterey Regional Fire Deputy Fire Marshal; Monterey County Sheriff's Office; District 5, Supervisor Adams; STR Public Distribution List; Big Sur and South Coast Land Use Advisory Committees; Planning File REF100042 - Inland/REF130043 - Coastal