

396 HAYES STREET, SAN FRANCISCO, CA 94102 T: (415) 552-7272 F: (415) 552-5816 www.smwlaw.com

SARA A. CLARK
Attorney
Clark@smwlaw.com

August 2, 2022

Via Electronic Mail Only

Mary Adams Chair, Monterey County Board of Supervisors 168 West Alisal Street, 1st Floor Salinas, California 93901

E-Mail: RMAcomments@co.monterey.ca.us

Re: County Issuance of the Estoppel Letter Dated June 16, 2022

Dear Ms. Adams:

On behalf of the Big Sur Local Coastal Program Defense Committee ("BSDC"), we write regarding Monterey County's ("County") issuance of an estoppel letter preventing the County from taking enforcement action against "simple [short-term rental] activity" in the County Coastal Zones areas, including Big Sur. (Attachment A). As you know, the BSDC is a group of residents and business owners concerned with the preservation of the cultural and natural values of Big Sur and the land use plan that protects these values. Of particular concern to BSDC is the inevitable increase in traffic, noise, and public safety impacts, and decrease in affordable housing stock, that will occur as a result of the estoppel letter.

As a preliminary matter, BSDC was alarmed by the process that culminated in the release of the estoppel letter. As you know, BSDC has been heavily involved in the ongoing process to develop comprehensive short-term rental ("STR") regulations that both comply with the Big Sur Local Coastal Program and that sufficiently protect the area's sensitive natural and coastal resources. The community welcomed the increased enforcement actions to protect the County's current prohibition, as recommended by the Board in December 2021. Therefore, the issuance of the estoppel letter—once surfaced by diligent community members in late June 2022—brought both shock and concern. It effectively declares open season on STRs in Big Sur, a complete about face from the County's decades-long prohibition. And yet, the County held no public meeting, conducted no outreach, and completed no environmental review before making such a drastic change.

Supervisor Mary Adams August 2, 2022 Page 2

In addition, BSDC firmly believes the County's issuance of the letter violated California law. Specifically, issuing the letter without undergoing environmental review or obtaining a coastal development permit from the California Coastal Commission violated both the California Environmental Quality Act ("CEQA") and the Coastal Act, respectively. BSDC is seriously considering filing a lawsuit against the County on the grounds provided in this letter. However, BSDC would much prefer to reach an amicable solution with the County that aligns with BSDC's goals. To that effect, BSDC proposes that BSDC and the County enter into a tolling agreement in the next few weeks that allows sufficient time for BSDC, County staff, and the Board of Supervisors ("Board") to reach a workable solution. Indeed, we understand from review of the Planning Commission Meeting of July 13, 2022 that County Counsel may already be considering a revision to the letter.

I. The Estoppel Letter Effects a Drastic Change in Longstanding County Policy by Staying the Enforcement of "Simple STR Activity" and Providing a Pathway for the Operation of STRs within Big Sur.

From at least 1997 until issuance of the estoppel letter on June 16, 2022, the County had consistently asserted that STR operation within Big Sur was prohibited. This position is well supported: the Big Sur Land Use Plan clearly states that residential areas "are not well suited for visitor uses"; instead, residential areas should continue for residential use. LUP § 5.1.1. To that effect, the County took dozens of enforcement actions against violators. This longstanding policy was altered completely when the County issued its estoppel letter. Not only does the estoppel letter prevent the County from taking enforcement action against STR operators, but the letter also lays out a pathway for landowners to safely operate STRs in Big Sur. Therefore, contrary to assertions made by County staff, the estoppel letter effectuated a substantial change in County policy that existed for at least two decades.

A. The County has Repeatedly Taken the Position that Short Term Rentals are Prohibited in Big Sur and Taken Dozens of Enforcement Actions to that Effect.

County staff's assertion that the estoppel letter reflects a maintenance of "the status quo with respect to [the County's] code enforcement against ... simple STR activity" is simply erroneous. Since at least 1997, County staff repeatedly asserted that STR operation within Big Sur is prohibited. Perhaps the best synopsis of the County's position was provided by Mike Novo, Director of Planning of the County Resource



Supervisor Mary Adams August 2, 2022 Page 3

Management Agency, in a letter defending County staff's declaration¹ that STRs are not permitted in the Coastal Zone, including Big Sur:

The County has consistently interpreted and enforced the Zoning Ordinance on this matter: In fact, between 1997 and 2012, the County had eight code enforcement cases in the coastal zone that involved short term rentals. We had ten other cases where it was not clear the type of violation, but were clearly related to illegal rentals. . . .

You further contend that County enforcement has been sporadic since 2013. County's code enforcement is complaint-based, and County responded to nine alleged short term rental violations during the years 2013 and 2014. Six of those cases have been resolved (closed), one is scheduled for hearing before a hearing officer, and two others are currently open. The fact that County had code enforcement cases during the entire period, including during and immediately after the hearings in 1997-1999 when the issue was likely fresh in everyone's mind, supports the interpretation that short term rentals were and are not allowed by right as a type of single family dwelling use.

In addition, I have been with the County since 1999, around the time that the County and Coastal Commission were dealing with this issue. I was taught that short term rentals were not allowed in the Coastal Zone as part of my training.

(Attachment C)

In addition to the County's 2015 interpretation and Mr. Novo's subsequent letter, numerous records attached herein demonstrate that STRs have been consistently prohibited in Big Sur, including:

• A 2012 letter authored by Mike Novo providing "[t]ransient uses (not less than seven (7) days or more than thirty (30) consecutive calendar days) are not listed as uses allowed within the coastal zone and, therefore, are prohibited." (Attachment D).

¹ On July 9, 2015, County staff responded to an "Interpretation Request" pertaining to STR operation within the Coastal Zone. County staff provided, in relevant part, "[r]ental for 30 days or less (non-bed and breakfast) is not permitted in the Coastal Zone." (Attachment B)



- A 2015 e-mail authored by Joshua Bowling, Senior Code Compliance Inspector, providing "[t]he rental of a property for less than 30 days in the Coastal Zone is a violation of Monterey County Code." (Attachment E)
- A Referral Submittal Form submitted by former Supervisor Dave Potter, providing "the Monterey County Code currently only allows STRs (occupancy not less than 7 and not more than 30 days) in residential neighborhoods in the non-Coastal Zone area pursuant to a permit issued by the County." (Attachment F).

Also attached are numerous records demonstrating the County has repeatedly taken enforcement actions against STRs, including:

- A "Courtesy Notice" template providing that "[r]ental for 30 days or less (non-bed and breakfast) is not permitted in the Coastal Zone," and "the County will actively enforce violations to the existing code and continue to investigate any complaints that are received." (Attachment G)
- A 2013 Facebook post by a Big Sur STR operator providing that the County "red tagged" him for "renting out [his] house out short term." (Attachment H).
- A screenshot of a webpage displaying records of enforcement actions taken against an STR operator in Big Sur in 2016, 2018, and 2020. (Attachment I)

The County's longstanding policy was reinforced by the Board in 2021. On December 8, 2021, the Board voted unanimously to approve a "Pilot Program" that authorized aggressive enforcement actions to be taken against STRs in District 5, which includes Big Sur, based on the existing prohibitions in the Local Coastal Program. In part, the "Pilot Program" reclassified the priority level for enforcement of STR operations from the lowest to the highest level, and increased the fines the County could impose on violators.

County staff's declaration in 2016 that STRs "may be permitted in the Coastal Zone with an approved Coastal Development Permit" had no effect on the County's longstanding policy of prohibiting STRs. (Attachment J). This is because the County has never issued a coastal development permit for STR operation within Big Sur. All of the STRs that have historically operated—and those that currently operate—are doing so without a coastal development permit. Thus, whether the County's policy is characterized as an outright prohibition of STRs, or only a prohibition of STRs without a coastal development permit, is a distinction without a difference. Regardless of the



Supervisor Mary Adams August 2, 2022 Page 5

characterization, it is clear that all STR operations that occurred in Big Sur between at least 1997 and June 16, 2022 were unlawful and subject to enforcement.

B. The Estoppel Letter Authorizes the Operation of STRs in all Coastal Zone Areas within the County's Jurisdiction.

The estoppel letter effectuated a significant change in County policy. Decades of County statements that such operation was prohibited and County enforcement actions to that effect had sent a clear message to property owners that STR operation came at significant legal risk. The estoppel letter effectively *authorizes* STR operation, by removing any risk of enforcement. In addition to staying enforcement of "simple STR activity," the letter lays out a clear and simple pathway under which STRs may operate, including (1) registering with the County, (2) obtaining a Transit Occupancy Tax ("TOT") registration certificate, (3) remitting all TOT payments, and (4) displaying their TOT registration number inside the premises. The County's assertion that the letter reflects the "status quo" is entirely unfounded. My clients and the community are aware of numerous property owners in Big Sur that intend to take advantage of this new pathway to "compliance."

II. The County's Stay of Enforcement Actions Against "Simple STR Activity" Constitutes a "Project" as Defined Under the California Environmental Quality Act.

The County did not appear to conduct any environmental review prior to issuing the estoppel letter. However, (1) the estoppel letter is an "activity directly undertaken by" the County, (2) the letter will cause either a direct or reasonably foreseeable indirect change in the environment, and (3) issuance of the letter was a discretionary action. The issuance of the estoppel letter is therefore a "project," and the County's failure to conduct proper environmental review is a violation of CEQA. Pub. Res. Code §§ 21001.1, 21080.

The term "project" is "given a broad interpretation in order to maximize protection of the environment." *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143. Whether agency action constitutes a "project" is a question of law and "thus presents no question of deference to agency discretion or review of substantiality of evidence." *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 470.



A. Issuance of The Estoppel Letter is an "Activity Directly Undertaken By" the County.

CEQA defines a "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency..." Pub. Res. Code § 21065. This requirement is satisfied as the estoppel letter was issued by County staff based on Board direction. Formal approval of the letter by the Board is unnecessary. Courts have refused to limit the scope of a "project" to those formally approved by an agency, and have repeatedly taken a literalist approach when deciding if an agency action constitutes an "activity directly undertaken by" that agency. It has been previously held that action on an interim code enforcement program falls within the definition of "project." *Apartment Ass'n of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1169.

B. The Estoppel Letter May Cause Either a Direct or Reasonably Foreseeable Indirect Change in the Physical Environment.

The potential traffic, noise, public safety, and water usage impacts that may occur as a result of the estoppel letter are sufficient to satisfy this requirement. Effectively authorizing STR operation, after decades of prohibiting such operation and taking dozens of enforcement actions against violators, is likely to cause an increase in the operation of STRs in Big Sur as property owners realize that operation will not draw enforcement action. An increase in STR operation will likely cause an increase in traffic impacts, particularly on Highway 1 and vehicle miles traveled. New STR uses will also increase noise impacts, as STRs frequently operate as places for parties, wedding, events, and other noise-causing activity. In addition, STR uses have brought public safety hazards, including increased risk of wildfire ignitions and traffic accidents on narrow and dangerous private roads; increased STR activity will increase this risk. Finally, as STRs are frequently operated from residences owned by investors or non-primary residences, increased STR use is likely to cause increased water use, which is of particular concern in this extreme drought.

Numerous courts—including the California Supreme Court—have found a direct or reasonably foreseeable indirect change in the environment where it was *plausible* that an agency's action could result in impacts. *See, e.g., Union of Medical Marijuana Patients*, 7 Cal.5th at 1199 (ordinance authorizing medical marijuana businesses satisfied this prong because the establishment of new business "could cause a citywide change in patterns of vehicle traffic"); *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1380 (transfer of students from one campus to two other campuses satisfied this



Supervisor Mary Adams August 2, 2022 Page 7

requirement because "[t]he transfer could increase traffic congestion and parking problems, with attendant environmental effects"). The community is not required to show *certain* environmental impacts to trigger the need for CEQA review; indeed, that is the purpose of the EIR or Negative Declaration.

C. Issuance of the Estoppel Letter was a Discretionary Action.

Issuance of the estoppel letter—a unilateral action taken by the County even though it was under no legal obligation to do so—was a quintessential "discretionary" decision. CEQA only requires environmental review of "discretionary" projects, defined as those "which require[] the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity." 14 C.C.R. § 15357. By contrast, "ministerial" projects involve "little or no personal judgment by the public official as to the wisdom or manner of carrying out the project." *Id.* The key test is whether the agency has the authority to change the project in a way that would lessen its environmental impacts. *Mission Peak Conservancy v. State Water Resources Control Bd.* (2021) 72 Cal.App.5th 873, 881.

Here, County staff acted unilaterally, issuing the estoppel letter even though it was under no legal obligation to make any decision pertaining to its enforcement authority. Further, no legal authority guided the County in making its decision. Because the County was not constrained in its decision-making, it retained the ability to make changes to the estoppel letter that would have lessened its environmental effects. This includes, for example, excepting Big Sur from the stay of enforcement activity.

The County's issuance of the estoppel letter resembles the "discretionary decisions" to increase college enrollment at the heart of *Save Berkeley's Neighborhoods v. Regents of University of California*, which, like the decision to issue the estoppel letter, were not made pursuant to any legal obligation and not guided by any legal authority. 51 Cal. App.5th 226, 232. Thus, the County's issuance of the estoppel letter fits squarely within the definition of a "discretionary" project.

In sum, the County's issuance of the estoppel letter triggered CEQA compliance obligations. Yet, we have found no evidence that the County even considered the environmental impacts of its action. The estoppel letter must be withdrawn until the County can understand such impacts on the sensitive environment of Big Sur.



III. Issuance of the Estoppel Letter Constitutes "Development" as Defined by the Coastal Act.

We are aware that the County issued the estoppel letter because of a lawsuit alleging that the County's enforcement program constituted "development" under the Coastal Act. However, this argument is premised on the erroneous assertion that the County previously *allowed* STRs in Big Sur. As explained above, the County has consistently stated that STRs are not permitted in Big Sur, in part because they are inconsistent with the Big Sur Local Coastal Program. In fact, rather than eliminate the County's Coastal Act problem, the estoppel letter has created a new one. It is and will continue to cause an increase in the occupancy of residential buildings in the Coastal Zone – the quintessential change in intensity of use. Moreover, the estoppel letter authorizes use that is prohibited by the Big Sur Land Use Plan, in direct contravention of the Coastal Act.

Before the County can undertake any "development" within the Coastal Zone, it must obtain a coastal development permit from the California Coastal Commission. Pub. Res. Code § 30600(a). In relevant part, "development" is defined as a "change in the density or intensity of use of land" or a "change in the intensity of use of water, or of access thereto." Pub. Res. Code. § 30106. Development is only authorized if compliant with the jurisdiction's certified Local Coastal Program.

The term "development" has been interpreted very broadly to encompass a much wider range of activities than what is colloquially considered development. *See*, *e.g. Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.4th 238, 248-50 (closing and locking a gate that is usually open to allow public access to a beach is "development"); *LT-WR*, *L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 779 (posting "no trespassing" signs on a large parcel used to access a beach is "development").

County staff's issuance of the estoppel letter fits squarely within the definition of "development." By effectively authorizing STR operation within Big Sur, the estoppel letter will inevitably cause an increase in the occupancy of residential buildings and congestion on Highway One, the primary coastal access point in the area. Therefore, issuance of the estoppel letter constitutes both a "change in the ... intensity of use of land" and a "change in the intensity of use of water, or access thereto." Pub. Res. Code. § 30106.

The County's issuance of the estoppel letter is analogous to the multiple cases where courts held that the imposition of a prohibition on STRs—in jurisdictions where STRs were previously allowed—constitutes development. *Greenfield v. Mandalay Shores*



Supervisor Mary Adams August 2, 2022 Page 9

Community Assn. (2018) 21 Cal.App.5th 896; Keen v. City of Manhattan Beach (2022) 77 Cal.App.5th 142; Kracke v. City of Santa Barbara (2021) 63 Cal.App.5th 1089. Specifically, the courts held these prohibitions constitute a "change in the density or intensity of use of land" because they decreased public coastal access. As a prohibition of STR activity that causes a decrease in coastal access constitutes a "change in the intensity" of access to water, so does an authorization of STR activity that causes an increase in the intensity of the use of land.

Interpreting the Coastal Act broadly to include issuance of the estoppel letter within the definition of "development" furthers the Act's goal of protecting the coastal zone environment. Pub. Res. Code. § 30001.5(a). The additional STR operation that will result from issuance of the estoppel letter will cause a significant increase in the number of people interacting with—and potentially damaging—the coastal environment. Thus, preventing issuance of the estoppel letter until the County has undergone the coastal development permit process—including Commission approval—furthers the goals of the Coastal Act.

IV. Conclusion

BSDC reiterates its opposition to the County's issuance of the estoppel letter, and its readiness to file suit against the County to protect the natural and cultural values of Big Sur. However, BSDC would prefer to solve its differences with the County amicably, in a way that avoids timely and costly litigation. To that end, BSDC requests that it and the County enter into a tolling agreement that will allow BSDC sufficient time to meet with County staff and members of the Board, in hopes a workable solution may be reached.

We ask for a response via email or telephone at the contact information above no later than August 8, 2022. Thank you for your consideration.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Aura Canh

Sara A. Clark

Supervisor Mary Adams August 2, 2022 Page 10

cc: Supervisor Luis Alejo, District 1

Supervisor John M. Phillips, District 2 Supervisor Chris Lopez, District 3

Supervisor Wendy Root-Askew, District 4

Attachments:

- A Estoppel Letter (June 16, 2022)
- B County Response to Interpretation Request (July 9, 2015)
- C Mike Novo Letter Defending County Interpretation (August 18, 2015)
- D Mike Novo Letter Regarding STRs (May 11, 2012)
- E Joshua Bowling E-mail Regarding STRs (December 15, 2015)
- F Former Supervisor Dave Potter Referral Submittal Form
- G Courtesy Notice Template for STR Violations
- H Facebook Post Regarding STR Violation (October 25, 2013)
- I Screenshot of Webpage Showing Enforcement Against Violator
- J County letter revising its 2015 interpretation (September20, 2016)

1540721.3

ATTACHMENT A

MONTEREY COUNTY

OFFICE OF THE COUNTY COUNSEL

168 WEST ALISAL STREET, 3RD FLOOR, SALINAS, CALIFORNIA 93901-2439 (831) 755-5045 FAX: (831) 755-5283

LESLIE J. GIRARD COUNTY COUNSEL



MICHAEL J. WHILDEN
DEPUTY COUNTY COUNSEL

June 16, 2022

Shaun M. Murphy Slovak Baron Empey Murphy & Pinkney, LLP

Via email only: murphy@sbelawyers.com,

Re: Committee For Fair And Affordable Housing On The Central Coast v. County of Monterey; Monterey County Superior Court Case No. 22CV000070.

Dear Counsel:

This estoppel letter is given in recognition of the County's belief that the above-referenced lawsuit may present issues not yet ripe for litigation and adjudication, and that it is therefore in both parties' interest for plaintiff to dismiss the litigation at this time without prejudice to the refiling of litigation at a later date should plaintiff so choose. In return for such dismissal, the County of Monterey ("County") affirms that it shall maintain the status quo with respect to its code enforcement against short-term rental ("STR") in the coastal zone as follows:

- 1. All STR owners/operators must register with the County and obtain a Transit Occupancy Tax ("TOT") registration certificate/number to pay TOT on all rentals.
- 2. All STR owners/operators must timely remit all TOT payments.
- 3. All STR owners/operators must display their TOT registration number inside in a visible location at the premises.
- 4. The County may take enforcement action, including the issuance of fines, against any STR owner/operator for any verified nuisance or Code violation pursuant to Monterey County Code. However, enforcement action for simple STR activity alone shall be stayed absent at least three verified nuisance (e.g., noise, trash, parking) violations occurring within any 12-month period.
- 5. The County shall refrain from treatment of alleged code violations based upon STR activity and/or unverified nuisance complaints as open violation cases negatively impacting a property owner's future permit application, whether such application is related to short-term rentals or not.

The above assurances to maintain status quo shall remain in effect until such time that the County amends its existing zoning ordinance to modify the regulation of STR in the coastal zone pursuant to applicable Coastal Act procedures. In the event litigation is re-initiated, the parties shall be estopped from asserting any claims, counterclaims or defenses based upon timeliness

Shaun M. Murphy Slovak Baron Empey Murphy & Pinkney, LLP June 16, 2022 Page 2

due to the passage of time between the filing of the initial lawsuit referenced above and the reinitiated lawsuit.

This letter serves as conclusive evidence that the County and Plaintiff are estopped from contradicting its terms, and shall be effective upon the County's dismissal from this action with no further writings required. In the event a new lawsuit is filed against the County involving the plaintiff and subject matter significantly consistent with the referenced lawsuit, this estoppel letter shall no longer be effective.

Sincerely,

LESLIE J. GIRARD County Counsel

By:

Michael J. Whilden
Deputy County Counsel

ATTACHMENT B

INTERPRETATION REQUEST

County-wide

<u>Current Regulations Relative to the Short-Term Rental (30 Days or Less) for Overnight</u> Accommodations

Monterey County Code Sections:

- Title 21 Inland Areas: 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: 20.64.100 (Regulations for Bed and Breakfast Facilities)
- Chapter 5.40 (Uniform Transient Occupancy Tax Ordinance)

Date: July 9, 2015

Requested by: Mike Novo

Subject: Monterey County Current Regulations Relative to the Short-Term Rental (30 days or

less) for Overnight Accommodations

What is the Question?

Which Monterey County Codes apply to the short-term rental (30 days or less) for overnight accommodations?

Short Answer:

Short-term rental (30 days or less) for overnight accommodation may be permitted with an approved discretionary permit, in certain designated zoning districts in the County. Discretionary permits 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 may be permitted in designated zoning districts in both Inland Areas and the Coastal Zone with an approved Use Permit/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 (non-bed and breakfast) is not permitted in the Coastal Zone.

Rental for 30 days or less requires payment of transient occupancy tax (Monterey County Code Chapter 5.40).

Events require a Use Permit or Coastal Development Permit as an assemblage of people, separate from short-term rental or B&B permit.

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 it became apparent that Monterey County needed 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.

A transient use ordinance that was adopted for the Coastal Zone (Title 20 Zoning) was not certified by the Coastal Commission and never went into effect. With the exception of permitted B&Bs, short-term rental (30 days or less) for overnight accommodations is not allowed in the Coastal Zone.

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

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) is not permitted in the Coastal Zone.

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 be considered for public hearing. Discretionary permits may or may not be granted. With permits and clear conditions of approval, enforcement is easier.

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

Bed and Breakfast facilities may be permitted in designated zoning districts in the Inland Areas and Coastal Zone with an approved Use Permit/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 is not permitted, except as a permitted B&B.

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.

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 not subject to transient occupancy tax.

Events require a Use Permit or Coastal Development Permit as an assemblage of people, separate from a short-term rental or B&B permit.

Interpretation Prepared By: Melanie Beretti and Brandon Swanson

Interpretation/Opinion Confirmed by Managers All Min

ATTACHMENT C

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Acting Director John Guertin, Acting Deputy Director

Daniel Dobrilovic, Acting Building Official Michael Novo, AICP, Director of Planning Robert K. Murdoch, P.E., Director of Public Works



168 W. Alisal Street, 2nd Floor Salinas, CA 93901 http://www.co.monterey.ca.us/rma

August 18, 2015

Gary A. Patton, Attorney at Law P.O. Box 1038 Santa Cruz, CA 95061

SUBJECT: Short Term Rental Interpretation by Monterey County

Dear Mr. Patton,

This letter responds to your email dated July 16, 2015 and your document entitled "Formal Response to Interpretation Request by Mike Novo" (Formal Response) of the same date which you sent to me, as Director of Planning, as well as to several County officials and staff, on behalf of the Monterey County Vacation Rental Alliance. This letter provides further explanation in response to your contentions. In summary, after consultation with County Counsel, the County Resource Management Agency-Planning stands by its interpretation that the County's coastal zoning ordinance (Title 20 of the Monterey County Code) prohibits short term rentals in the County's Coastal Zone for the reasons explained below.

Your July 16, 2015 submissions generally object to my interpretation, as Director of Planning for the County, that short term rentals are prohibited in the coastal zone. Specifically, you object to the Resource Management Agency (RMA) July 9, 2015 Interpretation, that "[i]n the Coastal Zone (Title 20 Zoning Ordinance), short term rental for overnight accommodations for 30 days or less is not permitted, except as a permitted B&B." To summarize your argument, you contend that because Title 20 contains no explicit prohibition related to short-term rentals of residential properties, there is no restriction of short term rentals of a residential property inside the Coastal Zone. Your letter requests that the County "cease and desist" from trying to prevent property owners from undertaking short term rentals within the Coastal Zone unless and until the Board of Supervisors has adopted affirmative provisions for this type of use. You also request that I consult with RMA administration and County Counsel and amend the Interpretation memo. Below is the County's response to the issues you raised.

1) You contend that because the County has not taken any affirmative action in the Zoning Ordinance to prohibit or regulate short term rentals within the Coastal Zone, no restriction applies.

We do not agree. Title 20, the County's Coastal Zoning Ordinance, contains lists of uses in each zoning district. Each zoning district includes a list of uses and the type of permit needed to establish such a use. In some zoning districts, in addition to the enumerated uses, the list includes a category for uses of "a similar character, density, and intensity." For example, in the Low Density Residential Zoning District, conditional uses for which a coastal development permit is required include specifically listed uses and "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" (Monterey County Code, Title 20, section 20.14.050.Z). If a use is not included in the list, (or if there is a similar use category, if the use is not of similar character, density and intensity to listed uses), the use is not allowed. For example, commercial or industrial uses would not be allowed in residential districts, except as specifically listed in that district.

Your Formal Response argues that County's coastal zoning "contains absolutely no prohibition or restriction related to short term rentals of residential properties" and that therefore the County is without legal authority to prohibit this use in the coastal zone. Your argument misunderstands permissive zoning, under which uses not specifically enumerated are presumed prohibited. The County's zoning code explicitly adopts this interpretation of the code. Title 20 provides, in pertinent part:

"The coastal zoning districts list the uses which are allowed or may be allowed subject to discretionary permit processes. Those listed uses and other uses which are consistent with the Monterey County Local Coastal Program may be allowed subject to appropriate permits. Other uses are prohibited." (Monterey County Code, section 20.02.040.)

This permissive form of zoning is well established and within County's police power. <u>City of Corona v. Naulls</u>, 166 Cal. App. 4th 418 (2008) (upholding city's determination that medical marijuana dispensary was prohibited use because city zoning did not explicitly permit the use). "[W]here a particular use of land is not expressly enumerated in a city's municipal code as constituting a *permissible* use, it follows that such use is *impermissible*." *City of Corona*, 164 Cal App 4th at 433. The determination that the zoning code prohibits uses not listed is supported by "the rule of statutory construction known as *expressio unius est exclusio alterius*, which means " 'the expression of certain things in a statute necessarily involves exclusion of other things not expressed." *Ibid*.

Coastal zoning does not specifically designate short term rentals as a use in any district. You urge that we interpret Title 20's absence of mention of short term rentals as making them allowable, but to do so would be inconsistent with County's interpretation of its zoning ordinance in the past.

As we explain below, our interpretation is that short term rentals are a distinctly different use than a single family dwelling use. To come within the land use category of single family dwelling, the use must be a non-transient residential use, whether occupied by an owner or by a tenant renting long term.

The Coastal Zoning Ordinance lists "Single Family Dwellings" as uses allowed with appropriate permits in many zoning districts; however, short term rentals are not subsumed under the category "single family dwelling" nor are they similar in character, intensity or density to a single family dwelling. "Single Family Dwellings" are defined in section 20.06.420 as "... a detached structure, including a mobile home or manufactured dwelling unit, containing only one kitchen and used to house not more than one family." Further, the definition of "Dwelling" in the Coastal Zoning Ordinance (section 20.06.360) is as follows:

"Dwelling means 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.*" [emphasis added]

As stated correctly by your letter, short term rentals are considered to be transient use of property and subject to transient occupancy tax (County Code Chapter 5.40). They, therefore, do not qualify as nor are they similar to a single family dwelling under our Coastal Zoning Ordinance. The transient nature of the use clearly distinguishes short term rentals from long term rentals. As explained more fully below, the County's interpretation of its zoning ordinance is consistent.

2) You contend that many activities are not listed as specifically permitted yet are not prohibited by the County. Your example is long term rentals, which are not listed as specifically permitted or allowed within the zoning ordinance, yet the interpretation recognizes that long term rentals are allowed while short term rentals are not.

Long term rentals are within the category of a single family dwelling use, which is a use enumerated in the zoning ordinance, while short term rentals are not a single family dwelling use or similar to other listed uses.

The distinction between short term rentals and single family dwellings is clear. First, the Board of Supervisors took specific action in 1997 to distinguish short term rentals from the listed "single family dwelling" use. The County adopted ordinances that distinguish short term rentals as a use that requires additional regulation from single family dwellings. The ordinance adopted by the Board of Supervisors was never certified by the Coastal Commission for the coastal zone, so we agree that those regulations are not currently in place in the coastal zone. However, the staff reports and actions by the Board in 1997 are a clear indication that the County determined that short term rentals are different than single family dwellings. The County's Inland Zoning Ordinance continues to make that distinction, so the County clearly has regulations that distinguish a short term rental as distinct and recognize that the short term rental use functions differently than a single family dwelling.

Second, the County Code (Chapter 5.40) recognizes the existence of transient use of property and requires that transient occupancy tax be collected for such uses. That provision includes short term rental uses. Single family dwellings, whether owner occupied or rented to long term tenants, are not subject to such taxes, a clear distinction found in the County Code. This is

further support for the interpretation that short term rental use is distinct from the long term occupancy of a single family dwelling.

Lastly, the use of a home as a short term rental is more similar to a hotel or bed and breakfast than a single family dwelling. Some factors that distinguish short term rentals from long term rentals include the following: tenants utilize the site for less than thirty days; they do not have children that attend local public schools; they do not utilize the property as their primary residence for purposes of filing taxes or participating in elections or jury duty: they do not register payment of utilities in their name: vehicles are not registered associated with the property: they do not collect mail there: they do not retain the keys or dictate who can occupy the property: and they do not occupy the property as their exclusive right to use. Long term renters or owner occupied dwellings are distinctly different in this sense. These distinctions further lead the County to determine that short term rentals are a different type of use than long term rentals. It is for these reasons that the County has interpreted that a long term rental is a single family dwelling from a land use standpoint. Whether a single family dwelling is owner occupied or a long term rental, the residents behave essentially the same in the community.

3) You contend that the County has made no efforts to try to penalize persons who were renting residential properties in the Coastal Zone on a short-term basis and that we have sporadically taken the position that short term rentals are a violation of County Code.

The County has consistently interpreted and enforced the Zoning Ordinance on this matter: In fact, between 1997 and 2012, the County had eight code enforcement cases in the coastal zone that involved short term rentals; we had ten other cases where it was not clear the type of violation, but were clearly related to illegal rentals, and six other cases that appeared to be short term rentals under code enforcement not in the coastal zone.

You further contend that County enforcement has been sporadic since 2013. County's code enforcement is complaint-based, and County responded to nine alleged short term rental violations during the years 2013 and 2014. Six of those cases have been resolved (closed), one is scheduled for hearing before a hearing officer, and two others are currently open. The fact that County had code enforcement cases during the entire period, including during and immediately after the hearings in 1997-1999 when the issue was likely fresh in everyone's mind, supports the interpretation that short term rentals were and are not allowed by right as a type of single family dwelling use.

Your letter refers to correspondence between you and Mr. Michael Rodriguez that is consistent with the interpretation in question. Your letter contains no reference to correspondence with the County to the contrary. In addition, I have been with the County since 1999, around the time that the County and Coastal Commission were dealing with this issue. I was taught that short term rentals were not allowed in the Coastal Zone as part of my training.

Zoning Ordinances must deal with a broad range of land uses, and cannot foresee changes in types of land uses that may occur in the future. Necessarily, it is a living document that requires constant interpretation. Interpretation of County zoning ordinances is reserved to the County. An agency's interpretation of its ordinances is entitled to great deference by the Court and cannot be overturned unless it is arbitrary, capricious, lacks any rational basis or disregards the plain meaning of the ordinance. See, e.g., *Robinson v. City of Yucaipa*, 28 Cal.App.4th 1506, 1516 (1994). In *Robinson*, 28 Cal.App.4th at 1516, the court stated the well-established standard of review as follows:

"When an administrative agency is charged with administering a statute or ordinance, the administrative agency's interpretation of the applicable law is given great deference by the reviewing court. The administrative agency's construction of the law need not be the only reasonable interpretation and its application of the law will be upheld unless it is arbitrary, capricious, lacks any rational basis, or disregards the plain meaning of the ordinance."

When agencies interpret and apply their own land use policies and regulations in determining whether to issue a permit or grant a project approval, courts will overturn the local agency's interpretation only if "a reasonable person could not have reached the same conclusion." *No Oil, Inc. v. City of Los Angeles*, 196 Cal.App.3d 223, 243 (1987). For the reasons stated above, the County's position remains the same; short term rentals are not an allowable use in the Coastal Zone.

The July 9 interpretation was issued for guidance to provide consistent application of the ordinance and clarity to the public. This letter further explains our interpretation in response to your July 16, 2015 submissions. If you desire a formal administrative interpretation, however, you are advised that Chapter 20.88 of the County Code establishes the procedure for the public to request an interpretation by the Director of Planning. This chapter of the Zoning Ordinance also provides for appeal of the Director of Planning's interpretation to the Planning Commission. If you desire to avail yourself of this process, you must submit a written request to RMA-Planning pursuant to Monterey County Code section 20.88.040.B. As we have discussed, this letter does not constitute an interpretation under Chapter 20.88.

As you know, County staff is also in the process of developing regulations to govern short term rentals. On this matter, we hope to have affirmative regulations in place by 2016, with hearings anticipated in the fall on new regulations for short term rentals. Your client has been participating in the development of these regulations and, we hope, will continue to participate throughout the public hearing process. We do appreciate their participation and their views on this matter.

Should you have any specific questions relating to this letter, please feel free to call me at 831.755.5192 or email me at novom@co.monterey.ca.us.

Sincerely,

Mike Novo, AICP Planning Director

cc: Board of Supervisors

County Counsel Lew Bauman, CAO

Carl Holm, Acting RMA Director

Melanie Beretti, RMA Services Manager

ATTACHMENT D

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

PLANNING DEPARTMENT, Mike Novo, Director

168 W. Alisal St., 2nd Floor Salinas, CA 93901 (831) 755-5025 FAX (831) 757-9516



May 11, 2012

Pam Silkwood Horan Lloyd Law Offices P.O. Box 3350 Monterey, CA 93942

RE: OTTER COVE HOME OWNER'S ASSOCIATION INQUIRY

Dear Ms. Silkwood:

This letter is in response to your letter dated May 7, 2012 regarding the transient use of a residential property within the Otter Cove Subdivision. The assessment of the existing Local Coastal Plan regulations you outlined in your letter is correct. Further, transient use of residential property for remuneration (short-term rentals) is allowed within the non-coastal areas of Monterey County pursuant to first obtaining an Administrative Permit (MCC §21.64.280). However, such provision does not exist within the Coastal Zoning Ordinance (Title 20). The nature of the Coastal Zoning Ordinance is to list various uses allowed or uses that may be allowed subject to discretionary permit processes. If the use is not listed or otherwise consistent with the Local Coastal Program, it is prohibited (Section 20.02.040, second paragraph). Transient uses (not less than seven (7) days or more that thirty (30) consecutive calendar days) are not listed as uses allowed within the coastal zone and, therefore, are prohibited.

http://www.co.monterey.ca.us/planning/

A short-term rental ordinance was pursued back in 1997 as an LCP amendment. The Coastal Commission staff asked the County for additional information or to redraft the proposed ordinance in a different manner. The County chose not to pursue the ordinance any further.

If you have any questions, please e-mail Laura Lawrence at lawrence@co.monterey.ca.us or call her at (831) 755-5148.

Sincerely,

Mike Novo

Director of Planning

ATTACHMENT E

Orran Balagopalan

From: sur1954janet@aol.com

Sent: Monday, July 18, 2022 7:41 AM

To: Sara A. Clark

Subject: Fwd: Short Term Rentals - December 15, 2015 - Code Enforcement - Josh Bowling

December 15, 2015

Rental of a property for less than 30 days is a violation ...

----Original Message-----

From: Bowling, Joshua x5227 <BowlingJ@co.monterey.ca.us>

To: 'sur1954janet@aol.com' <sur1954janet@aol.com>

Sent: Tue, Dec 15, 2015 3:44 pm Subject: Short Term Rentals

Janet,

Tim has asked that I respond to your question concerning Short Term Rentals....

The rental of a property for less than 30 days in the Coastal Zone is a violation of Monterey County Code. If you would like the County to open a case you can provide me with the address and I will make contact with the owner.

Thank you

Joshua Bowling

Senior Code Compliance Inspector

County of Monterey

Resource Management Agency - Building Services

168 West Alisal Street, 2nd Floor

Salinas, CA 93901

Phone: (831)755-5227 Fax (831)757-9516

bowlingi@co.monterey.ca.us

ATTACHMENT F

Monterey County Board of Supervisors Referral Submittal Form

Referral No.
Assignment Date:
(Completed by CAO's Office)

SUBMITTAL - Completed by referring Board office and returned to CAO no later th	an noon on
Thursday prior to Board meeting:	

Date: Submitted By: Super	rican Danie Battan			
Date: Submitted By: Super- Referral Title: Short Term Rental Ordinance			District # : 5	
			Cul	
Referral Purpose: To request that the Resource Management Agency prioritize completion of the short term rental ordinance by scheduling a final meeting of the Short Term Rental Working group within 30 days, and				
further request that DMA staff present a con-	ng of the Short Term Ke	ntai working group w	othin 30 days, and	
further request that RMA staff present a con	ipiele snort term rental (ordinance to the Plann	ing Commission in the	
near future. Request that County Counsel a	iso provide a response to	the Board of Supervi	sors as to the question	
raised in recent correspondence requesting t	nat the County not enga	ge in code violation ci	tations while the short	
term rental ordinance is being developed.		1 1 1 0		
Brief Referral Description (attach additional	sneet as required): Al	hough the County is c	urrently working on a	
new Short Term Rental ("STR") ordinance,	the Monterey County C	ode currently only allo	ows STRs (occupancy	
for not less than 7 and not more than 30 day	s) in residential neighbo	rhoods in the non-Coa	stal Zone area pursuant	
to a permit issued by the County. Resource	Management Agency st	att has engaged in a m	umber of Working	
Group Meetings on development of the ordi				
preparation for El Nino impacts and the urg				
Via this referral, it is requested that a final n	neeting of the working g	roup be scheduled wit	hin 30 days, and that a	
final draft ordinance be presented to the Plan				
also provide a response to the Board of Sup				
that the County not engage in code violation	citations while the shor			
Classification - Implication		Mode of Res	ponse	
Ministerial / Minor	Memo	x Board Report	Presentation	
X Land Use Policy		Requested Respons	se Timeline	
Social Policy	2 weeks		6 weeks	
Budget Policy	12.868.83 a	reports until completed		
Other:				
WS	Other.	Spec	eific Date:	
ASSICNMENT Dravida Ass. CAO at D	and Massine Carial	- D1 Of	T	
ASSIGNMENT – Provided by CAO at B	baru Meening. Copied	o Board Offices and	Department Head(s)	
Completed by CAO's Office : Department(s): RMA – Planning, County	Deferred Leads Cort He	Im DMA Dec	rd Date:	
Counsel	Referral Lead: Carl Ho Director	IIII, KIVIA Boa	rd Date:	
		d D d YY	(1(·) C 1 1 1 1	
REASSIGNMENT – Provided by CAO. Copied to Board Offices and Department Head(s). Completed by CAO's Office:				
Department(s):	Referral Lead:	Det		
Department(s).	Referrat Lead.	Date	ᡛ:	
ANALYSIS - Completed by Department	and copied to Board O	ffices and CAO:		
ANALYSIS - Completed by Department Department analysis of resources required/i			inlete referral:	
ANALYSIS - Completed by Department Department analysis of resources required/in			plete referral:	
	mpact on existing depar	ment priorities to com		
Department analysis of resources required/i	mpact on existing depar Departm	ment priorities to com		
Department analysis of resources required/i	mpact on existing depar Departm By request	ment priorities to com ent's Recommended ed date	Response Timeline	
Department analysis of resources required/i	mpact on existing depar Departm By request 2 weeks	ent's Recommended ed date 1 month 6 we	Response Timeline eeks 6 months	
Department analysis of resources required/i	mpact on existing depar Departm By request	ment priorities to com ent's Recommended ed date	Response Timeline eeks 6 months	

ATTACHMENT G

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director John Guertin, Acting Deputy Director

Daniel Dobrilovic, Acting Building Official
Michael Novo, AICP, Director of Planning
Benny J. Young, Interim Director of Public Works & Facilities



168 W. Alisal Street, 2nd Floor Salinas, CA 93901 www.co.monterey.ca.us/rma

Date

PROPERTY OWNER ADDRESS ADDRESS

COURTESY NOTICE SHORT TERM RENTAL-COASTAL

Violation Location:

APN:

Zoning:

Case Number:

Assigned:

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

During the redraft of the short-term residential rental ordinance, the existing ordinances remain in force. In the Coastal Zone, Bed and Breakfast Inns 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) is not permitted in the Coastal Zone.

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 not subject to transient occupancy tax.

Frequently Special Events and Short Term Rentals are intertwined. 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.

The Monterey County Resource Management Agency Code Compliance Division receives and enforces the County's land use regulations.

The Code Compliance Division has received information that your property may be being used as a Short Term Rental in violation of one or more County of Monterey codes.

Failure to respond may result in additional enforcement action being taken to ensure that your property is in compliance. Additional action may include a citation, hearing, fines and penalties of up to \$2,500 per day that the violation(s) continue to occur.

Recording of a Notice of Violation

Failure to discontinue the violations noted in this notice will result in the recording of a Notice of Violation on the property in accordance with Section 1.22.035 of the County Code.

Administrative Costs

Any person, firm, or corporation, who creates or maintains a Code violation, shall be liable for the cost of enforcement which shall include, but not be limited to, the cost of investigation and inspection, costs to cure any violation or abate a nuisance, and costs of monitoring compliance.

Notification of Misdemeanor

Willful failure to take the necessary actions to correct any violation of the County Code is a misdemeanor.

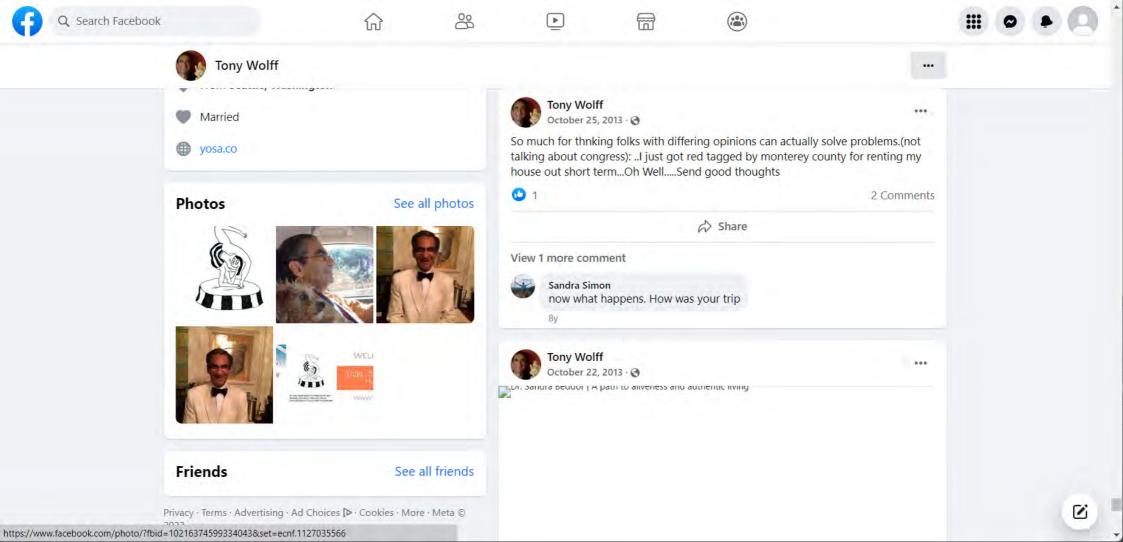
Further Enforcement Actions As Required

Chapter 1.22 provides the Enforcement Official the authority to issue a \$100.00 fine for the first violation, \$200.00 for a second violation of the same ordinance within one year; and a fine not exceeding \$500.00 for each additional violation of the same ordinance within one year of the first violation. A Hearing Officer may impose administrative penalties of \$2,500 per day. Each day that the violation remains is a separate violation subject to an additional administrative fine or penalty. Continued failure to correct the violation(s) by the compliance date given will result in fines or penalties in accordance with Sections 1.22.090 and 1.22.100 of the County Code.

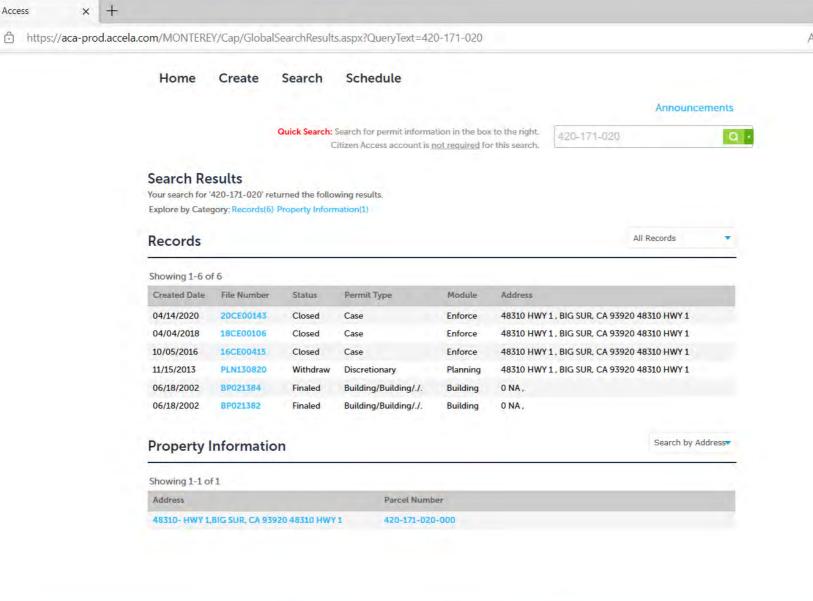
Please contact Senior Code Compliance Inspector Joshua Bowling at (831) 755-5227 regarding this correspondence by The County of Monterey is very interested in helping resolve this situation.
SINCERELY
Joshua Bowling Senior Code Compliance Inspector
CC: File, Automation/Documents

Case # Name Date Page 2

ATTACHMENT H



ATTACHMENT I



Accela Citizen Access

ATTACHMENT J

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 (831) 755-4800 Salinas, California 93901 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 pennit 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.