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January 4, 2016

Charles Lester, Executive Director
California Coastal Commission
45 Fremont Street #2000
San Francisco, CA 94105

RE: Short-Term Rentals In The Monterey County Coastal Zone

Dear Mr. Lester:

I am writing on behalf of the Monterey County Vacation Rental Alliance (MCVRA). Several members of the Board of Directors of MCVRA addressed the Commission during its December meeting, held in Monterey, and I have been asked to follow up on their communication.

MCVRA feels very strongly that the Commission should be playing an affirmative role in Monterey County, to ensure that the important Coastal Act policies dedicated to providing and maintaining public and visitor access to the coast are actually implemented in Monterey County, with respect to the short-term rental of residential properties that can provide affordable access to coastal visitors, and thus make it possible for more members of the public to have a visitor experience, on the coast, in Monterey County.

As you and members of the Commission know, both Santa Cruz County and San Luis Obispo County have adopted ordinances governing short-term rentals of residential properties in the Coastal Zone. Both of the ordinances in these neighboring counties have been reviewed by, and have been approved by, the Commission. In both counties, the approved ordinances establish a permit mechanism for property owners to rent their residential properties on a short-term basis, and both ordinances also provide for various "neighborhood protection" measures in connection with the regulatory program that the Commission has approved.

There is no comparable program in Monterey County for the Coastal Zone.

In fact, Monterey County has taken the position that affordable short-term rentals of residential properties will NOT BE PERMITTED IN THE COASTAL ZONE, WHILE SUCH SHORT-TERM RENTALS IN THE NON-COASTAL AREAS OF MONTEREY COUNTY CAN BE APPROVED.

To put this another way, Monterey County has chosen to DISCRIMINATE AGAINST VISITORS TO THE COASTAL ZONE, with respect to whether or not such visitors to Monterey County may be given the option of renting a

residential property on a short-term basis. Such short-term rentals often provide an economical way for visitors to be able to experience the California coast. This is an experience that is denied to visitors seeking a short-term rental in the Coastal Zone in Monterey County, while short-term rentals may be permitted in non-coastal areas.

As indicated in the attached "Interpretation" by the County Planning Director, the County WILL ALLOW short-term rentals in areas outside the Coastal Zone. Inside the Coastal Zone, short-term rentals are absolutely and totally prohibited, and the County has been zealous in prosecuting any property owner who may undertake a short-term rental of a property in the Coastal Zone, with fines of up to $100,000 routinely threatened, and in some cases imposed. In addition, the County's position, as articulated in the County's "Interpretation" memo, issued on July 9, 2015, has stimulated various "vigilante" type actions by persons who object to short-term rentals. The Clear Ridge area in Big Sur has had several incidents, and such incidents have been reported in other areas, as well.

It is the current DISCRIMINTATION AGAINST VISITORS TO THE COASTAL ZONE that MCVRA believes should be of particular and great concern to the Commission.

> **Public Resources Code Section 30213 states that "lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided... (emphasis added).**

Clearly, Monterey County thinks it is "feasible" to provide a system that will allow short-term rentals *outside* the Coastal Zone. INSIDE the Coastal Zone, though, the County has neither "protected" nor "encouraged" short-term rentals. MCVRA urges the Commission take affirmative action to insist that the County follow through on its abandoned commitment to establish a system that will allow short-term rentals in the Coastal Zone, on the same basis that it allows them in non-coastal areas.

Attached to this letter is a 1997 letter from you (then District Manager for the Commission's Central Coast Area Office) touching on this exact issue. Your letter was addressed to the then-Chair of the Monterey County Board of Supervisors, and commented on the ordinance that the Board adopted in 1997. That ordinance was intended to provide for a uniform permit system, allowing short-term rentals on a non-discriminatory basis in both the inland and coastal areas of Monterey County.

Your 1997 letter to the Board pointed out some technical problems with the County's ordinance for the Coastal Zone, and offered the County an opportunity to work with the Commission's staff, to craft an ordinance that the Commission could approve.

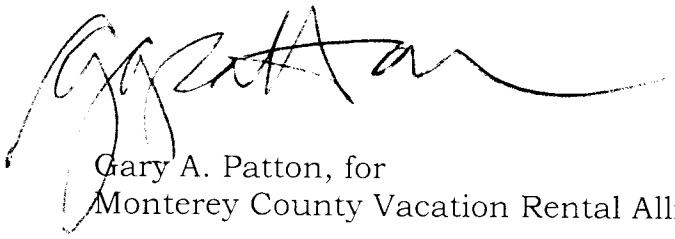
Instead of following up with the Commission, the County simply abandoned any effort to treat the Coastal Zone equitably with respect to short-term rentals. The upshot of the County's protracted and continued non-action, in response to the Commission's 1997 letter, has been the current system of discrimination against visitors to the Coastal Zone.

Frankly, there was very little enforcement of the ban on short-term rentals in the Coastal Zone until relatively recently. Now, however, as evidenced by the recent "Interpretation" of the Planning Director, dated, July 9, 2015, the County is aggressively responding against any such short-term rental that comes to the County's attention, with very severe and draconian penalties threatened and imposed, as noted above.

MCVRA believes that the Commission should take affirmative action, to insist that the County establish a system that will permit short-term rentals of residential properties in the Coastal Zone. MCVRA does not believe that the County should be allowed simply to disregard the Commission's counsel and advice (which the County has been doing since 1997), if the effect of that approach is to discriminate against visitors to the Coastal Zone, and to defy the public access policy specified in Section 30213 of the Public Resources Code.

Thanks to you, and to the Commission, for your attention to this matter. The Monterey County Vacation Rental Alliance urges the Commission to take action, and to insist that the County of Monterey protect, encourage, and provide opportunities for lower-cost visitor opportunities in the Coastal Zone through short-term residential rentals.

Yours truly,



Gary A. Patton, for
Monterey County Vacation Rental Alliance

cc: Members, California Coastal Commission
Members, Monterey County Board of Supervisors
Monterey County Planning Director
Other Interested Persons

July 9, 2015

**INTERPRETATION REQUEST**

**County-wide**
**Current Regulations Relative to the Short-Term Rental (30 Days or Less) for Overnight 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** _____

STATE OF CALIFORNIA - THE RESOURCES AGENCY
PETE WILSON, Governor
CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED (415) 904-5200

November 17, 1997

Simon Salinas, Chair
Monterey County Board of Supervisors
P.O. Box 1728
Salinas, CA 93902

RE: ***Transient Rental Ordinance***

Dear Mr. Salinas,

As you know coastal staff has been reviewing Monterey County's submittal regarding "transient rentals." We thank your staff for providing our office with the requested responses to our questions and follow-up information. Based on the responses, we have concluded that the County should consider reformulating the proposed ordinance, possibly in a manner so that it will no longer be a local coastal program amendment. We would like to give you an opportunity to consider the points raised in this letter before we schedule this matter for Coastal Commission action. Our concerns are with the appropriateness of a coastal permit for transient uses, the appropriateness of placing transient rental provisions in the local coastal program, and the internal consistency among County Code provisions.

We concur with the County's response that "transient rental" is not a category of "new development," as defined in the Coastal Act. We have previously taken such a position for other jurisdictions (Town of Mendocino LCP Amendment #1-92 findings) and the factual situation in Monterey County is similar, with the caveats discussed below. "Transient rental" of dwellings is not a new category of use nor an intensification of use. As such, a coastal development permit (which is limited under the Coastal Act to be a device to regulate only new development) is not an appropriate mechanism for regulating transient rentals. Although we understand that the County does not currently have a non-coastal administrative permit procedure for use in the coastal zone, we would suggest that the County establish one, just as it has a separate design review process. An "administrative permit for transient rentals," for example, could operate under all the same procedures as a coastal administrative permit, except those involving notice or appeals to the Coastal Commission. It would be preferable for the County to devise such a non-coastal permit mechanism rather than for the Coastal Commission to suggest one in a specific modification to a local coastal program amendment.

Because the subject matter should not be regulated by a coastal development permit, it need not even be part of the local coastal program. A "transient rental" ordinance could be placed in a part of the Monterey County Code other than Title 20. Once a provision is placed in the local coastal program (which currently includes all of Title 20), any revision will constitute a local coastal program amendment that the Commission must approve, no matter how trivial. One option, if the County decides to retain this ordinance as a part of the local coastal program, would be to add a provision allowing the Board of Supervisors to adopt by resolution (i.e., without the need for further amendment) areas where permits for transient uses shall not be granted or may only be granted in defined circumstances. This is because we understand that there have been discussions and suggestions subsequent to the ordinance's passage

concerning geographic limitations for the ordinance; again, such determination would more appropriately fall under the Board's purview.

There is one caveat to the above points that may need to be resolved by a local coastal program amendment. Section 20.06.360 of the certified Local Coastal Program states that "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) This definition was approved as part of Local Coastal Program Major amendment # 1-95; the previously certified version did not contain the clause in bold. Therefore, if the County wanted to allow transient rentals of dwellings, it should propose a local coastal program amendment to revise this definition. An alternative, is to retain the definition and deem "dwellings designed for or occupied for transient use" as a separate use, although this approach is contrary to County's responses. If the County chooses this option, then not only would the submittal be a local coastal program amendment, it would have to be revised to list "dwellings designed for or occupied for transient use" as separate categories of allowed uses under each the zoning district regulation where it is desired to be allowed.

A related caveat is that "transient rental use of residential property" is proposed to be defined to include use "for bed and breakfast, hostel, hotel, inn, lodging, motel, or resort uses" (in addition to other transient lodging uses). These other types of uses are separately defined in the Code and would need to be separately permitted by a coastal development permit as new development; i.e., a bed and breakfast, for example, is distinct from a dwelling use. If the criteria contained in the proposed ordinance are also meant to apply to these other types of visitor uses, the ordinance should be revised to explicitly state this. However, a reading of the proposed regulations reveals that most should not be applicable to other visitor facilities (e.g., hotels should obviously not be required to have minimum seven day stays). Thus, the proposed definition should be reworded to distinguish transient rental use of dwellings from hotels, bed and breakfasts, etc.

In conclusion our review has uncovered problems with how the transient rental proposal has been structured. Were the subject matter totally and clearly in the Commission purview, then we could simply prepare a staff recommendation to deny the submittal and suggest modifications that would correct the deficiencies and result in approval. However, given the options we have identified to craft the ordinance in a different matter, we would like to offer you the opportunity to revisit the submittal before it is filed. We would like your response as to whether the County wishes to take this opportunity within the next two weeks. If the County answers affirmatively, we will hold the submittal pending further action on your part to either amend or withdraw it. We look forward to hearing from you. If you have any questions, please contact me or Rick Hyman, the planner assigned to this project.

Sincerely,

Charles Lester
District Manager
Central Coast Area Office

cc: Dan Chance, County Planning Department
Randy Meyenberg, Noland, Hamerly, Etienne & Hoss