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Via E-Mail and U.S. Mail

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Re: Comments of the Big Sur Defense Committee on the Draft Vacation Rental Ordinances (REF130043 and REF100042)

Dear Ms. Beretti:

On behalf of this firm's client, the Big Sur Local Coastal Program Defense Committee ("BSDC"), I submit the following comments on the proposed regulations for vacation rental uses in the unincorporated areas of Monterey County ("the Ordinance"), which allow both homestays and limited short-term rentals in the Big Sur Area.

The BSDC is a group of residents and business owners concerned about the protection of the natural and cultural values of Big Sur. Currently, over 250 members of the Big Sur community are supporters of the Defense Committee. There are few places in the world that have been subject to more thoughtful and passionate efforts directed towards preservation of its natural and cultural values than Big Sur. The BSDC has been concerned about vacation rentals since their rise in popularity, as demonstrated in the overview letter attached as Exhibit A.

This letter describes why the County's current proposal to allow vacation rentals in Big Sur would severely undermine the existing policies protecting Big Sur in the Big Sur Land Use Plan ("the BSLUP" or "Plan") and erode the community that defines Big Sur as a unique place. As demonstrated below, allowing *any type* of vacation rentals in Big Sur would be inconsistent with the protections currently in place in the BSLUP. The issues we focus on include the following:

- The historical context of how and why these types of uses have not been legal in Big Sur;
- An overview of policies from the BSLUP and the inconsistencies the Ordinance would present;
- Why the Ordinance would essentially remove the remaining long-term affordable and/or employee housing stock from the extremely limited available units in Big Sur;
- Why vacationers would generate additional Vehicle Miles Traveled (VMT) as compared with the traffic behavior of actual Big Sur residents;
- Public Safety hazards that would be increased with the allowance of vacation rentals in remote residential neighborhoods; and
- The inappropriate use of a California Environmental Quality Act, Pub. Resources Code § 21000 et seq. ("CEQA") exemption for the Ordinance.

Given the legal and policy issues identified in this letter, we urge the County to revise the Ordinance to fully exclude vacation rentals within the BSLUP area, prior to bringing the Ordinance to the Planning Commission.

I. The BSLUP and Its History Provides Important Context for Why Vacation Rentals Should Be Banned in Big Sur.

The BSLUP was adopted in the mid-1980's because the community recognized that pressures for new residential and commercial development, as well as increased use of the area by visitors, required a land use plan that would implement a sustainable future for Big Sur. For this reason, the community as a whole agreed to accept a significant downzoning of private lands in the BSLUP area, in exchange for the belief that the BSLUP would best protect the community.

A. The Plan Relies on Three Central Tenets to Promote Long-Term Sustainability.

The BSLUP incorporates three central tenets that are threatened by the proposed Ordinance. First, the Plan recognized the County's responsibility to maintain the Highway 1 corridor as a *recreational* route, not as means of accommodating access to residences, businesses, commercial activity, or overnight lodging. Specifically, the Plan notes that Highway 1 "was built by the public primarily for scenic travel and recreational enjoyment and over the years has been managed with this purpose always in mind. In light of the public's great need for

recreational opportunities, this original objective has become even more important. . . . The County's purpose will be to maintain and enhance the highway's aesthetic beauty and to protect its primary function as a recreational route." BSLUP, Section 2.2.3.

Second, the Plan recognizes that increased visitation and overuse may have a negative impact on the community that must be managed. For instance, in 1986, the Plan noted that "Use of Highway 1 has grown beyond expectation. Pressures for new residential and commercial development, as well as increased public acquisitions and access, are now being felt along with a steady increase in recreational development and use." BSLUP, Section 1.3.

Third, the BSLUP recognizes that the *people* who live in Big Sur are central to its ongoing success. The BSLUP recognizes that the scenic beauty of the Big Sur coast, and the opportunity to escape urban patterns, are prime attractions for residents and visitors alike . . . and that quality should have precedence over quantity of any permitted uses, whether residential, recreational, or commercial. The *community itself and its traditional way of life* are resources that can help to protect the environment and enhance the visitor experience." BSLUP, Section 2.1 (emphasis added); *See also* BSLUP, Section 2.2.4 ("The County's primary land use planning objective is to minimize development of the Big Sur coast in order to preserve the coast as a scenic rural area *where residents' individual lifestyles can flourish*, traditional ranching uses can continue, and the public can come to enjoy nature and find refuge from the pace of urban life.").

The Ordinance would undermine and erode the important community that is Big Sur. It would replace its hearty residents with visitors and commercialize the small pockets of residential neighborhoods that exist. In the following text, numerous sections of the BSLUP are taken verbatim to illustrate that the existing plan fully recognized the threats to Big Sur from outside influences, and the potential for the loss of its culture and residents.

The BSLUP, like the community itself, is a true reflection of why the place is absolutely unique. The Plan does not read like a typical Land Use Plan, and instead describes Big Sur's rarity. For instance:

> The rugged mountainous terrain of the Big Sur coast has had a profound effect on historical use of the area and will continue to serve as a *limitation on the kinds of activities that can be carried on and the scale of development*. Natural constraints to development include

> *availability of water, difficult access, unstable soils on steep slopes, and dangers of fire and flood*.
>
> The scenic qualities and the natural grandeur of the coast which result from the imposing geography, the rich vegetative compositions, and the dramatic meeting of land and sea are the area's greatest single attraction to the public. Big Sur has attained a worldwide reputation for spectacular beauty; *sightseeing and scenic driving are the major recreational activities*.
>
> Although it has remained a rural area where sturdy pioneering families still carry on ranching, Big Sur's residents have also achieved acclaim for their cultural contributions. Many well-known writers, artists, and artisans have been inspired by the coast's dramatic vistas and timeless solitude. *A strong community identity continues to attract new residents and contributes to tourism.*

BSLUP, Section 1.2 (emphasis added). The above excerpts set the stage for understanding the uniqueness of Big Sur's limitations for allowing vacation rentals. Not only are there physical challenges, but *the Plan highlights the need to retain its eclectic community as part of its identity* and as an attraction to those visiting it.

Likewise, Section 2.2.5 states that "care must be taken that while providing public access, that the beauty of the coast, its tranquility, and the health of its environment, are not marred by public overuse or carelessness. Visual access should be emphasized throughout Big Sur as an appropriate response to the needs of visitors. Visual access to the shoreline should be maintained by directing future development out of the viewshed."

These three tenets—that Highway 1 must be managed as a recreational resource, that over tourism will lead to environmental and community degradation and must be addressed, and that the Plan must work to preserve the human community of Big Sur—undergird the entire Plan. They are the reason the Plan has been successful in protecting the Big Sur area. But they are also the explanation for why vacation rentals are so incompatible with the Plan and its policies, as described further below.

B. Elected Officials Recognize the Inconsistency.

The fundamental inconsistency between vacation rentals and the BSLUP has been recognized not only by the BSDC and other individuals concerned about Big Sur, but also by various elected and appointed officials.

During the 2016 hearings on vacation rentals, an unusual thing occurred: Both Monterey County's then-Congressman (Sam Farr) *and* a sitting Board of Supervisor (Dave Potter) expressed that **vacation rentals should be banned in Big Sur**. Congressman Farr testified that "the intent of the BSLUP was never, never to allow STRs . . . short-term renters are never, never a part of the community-they're just a business." Exhibit B. And Supervisor Dave Potter testified that:

> There is no greater threat to the vibrancy of the Big Sur Community than the issue of Short-term Rentals . . . . I strongly urge you to include a prohibition of Short-term Rentals in the Big Sur Planning Area . . . there is a need to retain affordable housing stock, allowing employees to live close to their jobs, reducing trips on the constrained Highway One and ensuring that Big Sur remains a community of locals to provide stewardship of the coast for future generations and visitors.

Exhibit B. The BSDC took comfort in the fact that its representatives recognized Big Sur's unique nature and the problems that would be posed by legalizing vacation rentals.

The BSDC also sought the opinion of Charles Lester, ex-Executive Director of the Coastal Commission. As shown in Exhibit C, Dr. Lester evaluated the consistency between vacation rentals and the Plan, and determined that the Plan "does not contemplate certain visitor-servicing overnight use in areas zoned specifically for residential use" and that it specifically "seeks to protect existing affordable housing in Big Sur, particular for workers in the visitor economy." He urged the County to complete an "updated evaluation [of] the supply and demand for visitor-serving use and the capacity of Highway 1 to continue providing adequate public access to and along Big Sur" prior to adopting any ordinance allowing vacation rentals. The County has not even attempted to complete this task.

Finally, the California Coastal Commission has also indicated a wariness toward categorizing vacation rentals as akin to residential use. When the issue of vacation rentals was first proposed in 1997, the CCC noted in its response to the

County that Section 20.06.360 of the certified LCP 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." Exhibit D. In other words, the Coastal Commission has previously recognized that dwelling units are distinct from transient uses.

II. The County's Assumption that Homestays and Limited Short-Term Rentals Are Sufficiently Similar to Residential Uses Is Incorrect and Unsupported.

The proposed Vacation Rental Ordinance allows for both Homestays and Limited Short-term Rentals in Big Sur. The County attempts to support this decision by arguing that such use is "considered residential." Categorical Exemption Report, at 6. Specifically, the County's analysis states that:

> "The regulations have been crafted based on the principle that when a vacation rental use is established, it shall not be discernable from existing residential use of the dwelling. This use is *considered residential because it is similar in character, density and intensity to a residential dwelling* and would only be allowed in a legally permitted single family dwelling, duplex dwelling, or a multiple family dwelling. *The structure used as a homestay (or Limited STR) would continue to function as a primary residence and would not likely result in the conversion or loss of long-term housing stock and would not be subject to any applicable visitor serving caps in the respective area they would be located*.

Id. (emphasis added); *see also* Ordinance, Recital C. This analysis is both incorrect, as a matter of County code and state law, and unsupported by the facts.

A. The County's Code Recognizes that Residential Use Is Non-Transient.

First, the County's own code recognizes that residential use and transient occupancy are incompatible. Specifically, and as stated above, Section 20.06.030 defines "Dwelling" as "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). Inherent in the code is the

idea that a residential dwelling must be used *exclusively* for *long-term use*; transient occupancy of any kind is prohibited, even if residential use continues in part.

B. Courts Have Recognized the Difference Between Vacation Rentals and Residential Use.

The County's imposition of a Transient Occupancy Tax also demonstrates that vacation rentals are *not* the same as residential uses. Chapter 5.40 states that transient occupancy tax is not to be imposed on "any private dwelling, house, or other individually owned single-family dwelling unit rented only occasionally and incidentally to *the normal occupancy* by the owner or family." Section 5.40.020(A) (emphasis added). Yet, the proposed Ordinance states that all vacation rentals must obtain a transient occupancy tax registration certificate (e.g., Section 20.64.290(D)(8), (E)(8), (F)(9)). In other words, the County acknowledges that vacation rentals are something other than *normal occupancy* of a dwelling unit – they cross over into commercial use and require additional taxation as such.

This issue has also been considered and rejected by numerous courts. In *Ewing v. City of Carmel-By-The-Sea*, the California Court of Appeal upheld a short-term rental ban in Carmel against a constitutional challenge brought by a homeowner. (1991) 234 Cal.App.3d 1579. The Court approved of the City's chief purpose in adopting the ban: "to provide an appropriately zoned land area within the City for *permanent single-family residential uses and structures* and to enhance and maintain the residential character of the City." *Id.* at 1590. Significantly, the Court independently found that short-term rentals have an erosive effect on residential areas, finding that:

> It stands to reason that the "residential character" of a neighborhood is threatened when a significant number of homes . . . are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, or even 29 days. Whether or not transient rentals have the other "unmitigatable, adverse impacts" cited by the Council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.

Id. at 1591.

And in *Greenfield v. Mandalay Shores Community Association*, the California Court of Appeal considered whether a Homeowner Association ban on short-term rentals required a coastal development permit under the Coastal Act. (2018) 21 Cal.App.5th 896. In unequivocal terms, the court determined that a CDP was required, because short-term rentals "change[] the intensity of use and access to single family residences." *Id.* at 901. Short-term rentals are *not* the same as residential use; they represent a different intensity and type of use and must be studied accordingly.

Finally, the Supreme Court of Pennsylvania recently held that short-term rentals were fundamentally incompatible with single-family residential uses. The Court noted that the definition of a single-family dwelling unit or "single housekeeping unit" "unambiguously excluded . . . purely transient uses of property," which lack the necessary stability and continuity. *Slice of Life, LLC v. Hamilton Township Zoning Hearing Board* (Pa., Apr. 26, 2019, No. 7 MAP 2018) 2019 WL 1870562, at *11. The Court further highlighted that such "permanence and stability . . . creates a sense of community, cultivates and fosters relationships, and provides an overall quality of place where people are invested and engaged in their neighborhood and care about each other." *Id.* at *12. While this case is not binding on Monterey County, it offers persuasive reasoning for why vacation rentals cannot be properly categorized as a "residential use."

C. The County's Assertion that Vacation Rentals are Similar to Residential Uses Is Wholly Unsupported.

The County claims that vacation rentals are "similar in character, density and intensity to residential dwelling[s]." *E.g.*, Categorical Exemption Report, at 10. Even if the County had discretion to make that determination—which it does not—the County has utterly failed to provide any evidentiary support for this position. The County has offered no analysis of the number of residences that will be used for Homestays or Limited STRs. The County has not determined the number of overnight visits that are likely in the Big Sur area. The County has conducted no traffic analyses, even though the staff materials admit that the trip generation rates for vacation rentals are unknown. Categorical Exemption Report, at 13. And the County has conducted no economic analysis to determine to what extent vacation rentals will displace long-term renters or result in conversion of affordable

housing units.[1] Without any of this information, the County's entire analysis is unsupported, and the proposed Ordinance cannot move forward. *See Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs* (1998) 62 Cal.App.4th 1332, 1338 (finding of consistency with land use plan must be supported by substantial evidence).

Indeed, there have been many studies and articles on how vacation rentals have changed the fundamental character of residential neighborhoods in other areas. Some examples of these are contained in Exhibit E. The BSDC urges the County to actually conduct the required analysis before proceeding with this ill-informed policy.

D. The County Has No Realistic Proposal to Address Enforcement.

The County's analysis is predicated, in part, on the assumption that all property owners and guests will readily comply with the new ordinance. However, the County has very limited enforcement staff available to address violations that are not considered high priority issues (such as public safety and health issues). The remoteness of Big Sur would make any immediate enforcement issues nearly impossible to address. Further, the imposition of fines for violations of the restrictions on vacation rentals would not address neighborhood compatibility issues as they arise; until they accrue and can be enforced, such fines are unlikely to discourage operators who make hundreds or thousands of dollars per night.

III. The Proposed Ordinance is Inconsistent with the BSLUP.

The BSDC's primary concern is the proposed Ordinance is inconsistent with the BSLUP, an award-winning document that has appropriately guided growth and development in the Big Sur area since its adoption in 1986. As outlined above, the main tenets of the BSLUP are the protection of Highway 1 as a recreational resource, the need to protect the fragile environment from over tourism and overuse, and the desire to retain the culture and community of Big Sur's residents. As explained further below, each of these core tenets is threatened by the proposed Ordinance. Moreover, the proposed Ordinance is clearly inconsistent with numerous

[1] Given the lack of information provided by the County, BSDC is considering engaging additional experts to help assess these issues. BSDC expressly reserves the right to submit these studies as the proposed Ordinance is considered by the Planning Commission and the Board of Supervisors.

mandatory and clear requirements. For this reason, the proposed Ordinance must be revised to prohibit vacation rentals in the BSLUP area before moving forward.

A. State Law Mandates Consistency.

The State Planning and Zoning Law and the California Coastal Act requires that development decisions, including zoning amendments, be consistent with the jurisdiction's local coastal program or general plan. As reiterated by the courts, "[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, "[t]he consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 (citations and internal quotations omitted).

General plans establish long-term goals and policies to guide future land use decisions, thus acting as a "constitution" for future development. *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540. Specific plans then ensure implementation of the general plan. Gov. Code § 65450. To promote coordinated land use policies and practices, state law requires local governments not just to formulate theoretical land use plans, but also to conform their development and land use projects and approvals with those duly certified plans. *Citizens of Goleta Valley,* 52 Cal.3d at 570; *see also* Gov. Code § 65860 (requiring consistency of zoning to general plan). The project need not present an "outright conflict" with a general plan provision to be considered inconsistent; the determining question is instead whether the project "is compatible with and will not frustrate the General Plan's goals and policies." *Napa Citizens*, 91 Cal.App.4th at 357, 379.

B. The Proposed Ordinance Is Inconsistent with Policies that Promote Separation of Residential and Visitor Service Uses.

The BSLUP repeatedly emphasizes that residential uses and visitor-serving uses should remain separated. For instance, in Residential Land Use section, the Plan notes that residential areas are "not well suited for . . . visitor uses." BSLUP, Section 5.1.1. Consequently, the Plan states that "use of these areas, to the extent consistent with resource protection, should continue to be for **residential purposes**." *Id.* (emphasis added). *See also* BSLUP, Policy 5.4.3.G.2 ("Development in designated rural residential areas shall continue to be limited to residential uses

in order to protect residents from unwanted intrusion by other incompatible activities and because neither available vacant land, water, nor roads are adequate to support more intensive uses.") (emphasis added).

The commercial section of the Plan likewise recognizes the potential land use conflicts between visitor-serving uses and residential neighborhoods. It states that "visitor-serving uses will be protected from encroachment by incompatible uses (such as residences). BSLUP, Policy 5.4.3.E.11. The Plan also requires deed restrictions to be recorded to preclude rental or subdivision of inn units as separate residential dwelling units. BSLUP, Policy 5.4.3.C.7.b.

These policies recognize that visitor-serving and residential uses are different and highly incompatible. The proposed Ordinance, however, proposes to *add* unlimited visitor-serving accommodations in the heart of Big Sur's rural residential areas. While the County asserts that vacation rental are akin to residential uses, and therefore are not inconsistent with these policies, this position is both incorrect and unsupported, as described in Section II. The County provides no other explanation for how the proposed Ordinance is compatible with these policies.

C. The Proposed Ordinance Violates the Plan's Mandatory Limits on Visitor-Serving Accommodations.

Underlying the BSLUP was an agreement among the community to limit future development—including residential, commercial, and visitor serving. For visitor serving units, the Plan incorporated density standards that allowed "up to 300 new visitor-serving lodge or inn units on the Big Sur Coast." BSLUP, Policy 5.4.2.9. This limit was intended to ensure "protection of the capacity of Highway One to accommodate recreational use, the avoidance of overuse of areas of the coast, and the need for development to respect the rural character of the Big Sur Coast and its many natural resources." *Id.*

The County has yet to provide an accurate list of what has been counted towards this cap. However, according to informal counts conducted and supplied to the County by the BSDC, Big Sur has likely exceeded the number of allowed visitor-serving lodge units beyond the 300 additional units permitted by the Plan.

Yet, the proposed Ordinance intends to allow dozens, if not hundreds, of additional "visitor-serving lodge or inn units" within the community's residential neighborhoods. While the County asserts that vacation rentals are a residential use, not a visitor-serving use, this claim is belied by the proposed collection of TOT tax and other factors. *See* Section II. Vacation rentals must be counted toward the

existing visitor-serving cap in the Plan. Each *room* should count as a Visitor Unit, in accordance with the definitions in the TOT Code. The proposed exceedance of the visitor-serving unit cap is a clear inconsistency with mandatory and specific language in the Plan.

D. The Proposed Ordinance Frustrates BSLUP Policies to Protect Affordable Housing.

Of great concern to the BSDC is the impact of vacation rentals on long-term housing stock. Since the at least the 1980s, the shortage of housing has been a primary concern to Big Sur residents. The BSLUP notes that "A serious housing shortage exists for employees in Big Sur, particularly in the visitor industry. Because there is little housing available, employees have at times been forced to camp-out, live in cars, or move in with friends. The shortage of affordable housing has also made recruitment of skilled employees difficult." BSLUP, Section 5.1.2.

Given this concern, the BSLUP contains strict protections for affordable housing: "The County shall protect existing affordable housing in the Big Sur coastal area from loss due to deterioration, conversion or any other reason." BSLUP Policy 5.4.3.I.1. This mandatory and broad policy requires the County to carefully consider potential impacts to affordable housing.

If anything, the concerns that drove the County to include this policy are even more heightened in 2019. Currently, most jobs in Big Sur are low-wage, service industry positions. As the President/CFO of Nepenthe Kirk Gafill attests, it remains a severe challenge to find and retain employees for these positions because of the lack of available rental housing in Big Sur:

> We have seen a steady and consistent increase in guest traffic since 2006 (Note: Facebook, as an indicator of social networking and use of cell phones to share information/images, etc., was founded in 2004), with 2015 being the highest year of overall guest visitation. While Nepenthe guest counts may not move in lockstep with total traffic levels associated with visitation to the Big Sur Coast, they are probably a pretty good indicator of the trends, peaks and dips. Guest counts increased by annualized rate of 5-6% from 2006 to 2015. It is important to note that 2008 and 2011 saw reductions in traffic, due to localized environmental impacts; the Basin Complex Fire and the Rocky Creek Highway 1 failure (where current viaduct is located) respectively.

Similarly, in 2016, guest traffic levels, which through June were tracking ahead of the first six months of 2015, then dropped significantly due to the Soberanes Fire, and precipitously in 2017 due to the Highway 1 closures associated with Mud Creek, the Pfeiffer Canyon Bridge failure, and other locations.

In terms of employment patterns, we have been consistently unable to hire a sufficient number of employees since 2013/2014 on more or less a year-round basis, in other words we have open positions all year long. To varying degrees, this is true for most of the hospitality industry businesses in Big Sur.

Primary drivers are the following:

- Lack of available affordable housing in local community (this has been true since we opened in 1949)
- Loss of additional housing stock due to 2013 Pfeiffer Fire (approx. 35 homes, of which only four have been rebuilt), 2016 Soberanes Fire (approx. 65 homes lost - none yet rebuilt to my knowledge), and conversion of anywhere from 60-100 long term rentals to illegal/non-permitted short term rentals. Total housing stock, pre-2013 is unknown, but I believe there are approximately 650 developable residential parcels in the Big Sur Planning Area, thus the multi-year and potentially long-term loss of 100 homes due to fire and 60-100 due to conversion to short term rentals is quite significant.
- Economic recovery from 2008/2010 "Great Recession" and greater competition for employees on the Monterey Peninsula
- Reduced inflow of immigrant labor since 2008

The above conditions matched with historically high visitation levels have forced employers to rely overwhelmingly on employees who commute from the Monterey Peninsula and as far as Santa Cruz to the north and Soledad to the south/east. This is particularly true during the summer season, when traffic levels are the highest and employers need additional seasonal employees.

Given these conditions, there is simply not enough housing in Big Sur to allow for any type of vacation rentals. Allowing **any** type of vacation rentals in Big Sur is taking away the last remaining potential affordable housing from employees and long-term renters and is inconsistent with the above policy.

The County's analysis of this issue is significantly flawed. First, the analysis claims that "the proposed regulations *limit* vacation rental use to ensure sustainability of existing long-term housing stock, avoiding impacts and displacement of affordable housing units." Categorical Exemption Report, at 13. But the proposed Ordinance includes a vast legalization of vacation rentals in Big Sur, by removing from the long-term rental market the types of rooms, cabins, caretakers' quarters, and other affordable units that have always been a crucial part of the affordable housing puzzle.

The County's report also concludes that "because homestays [and limited short-term rentals] . . . are similar in character, density, and intensity to a residential use, [they] would not likely remove long-term housing from the market." However, the County again has conducted no analysis or study to support this conclusion. The County cannot base its consistency finding on bare conclusions alone.

In addition, the County's report notes that "[s]pecial provisions are made requiring that the dwelling unit used as a limited short-term rental in Big Sur be the principal residence of the owner, resident, or rental operator. This is to ensure the use does not negatively impact the permanent housing stock in Big Sur." Categorical Exemption Report, at 10. The County's assertion that having a "operator" (not even an owner) present for half the year will somehow ensure that vacation rentals remain available as housing stock is misplaced. Big Sur residents have long relied on patchwork housing availability, piecing together caretaking jobs or other opportunities when property owners are not present. Limited STRs will likely reduce or eliminate the opportunities, as property owners opt to secure lucrative one-month rentals with wealthy vacationers for up to four months of the year, instead of keeping the property available for longer-term rentals.

The County has provided no adequate explanation for how the proposed Ordinance is consistent with the mandatory policy to protect existing affordable housing. Until this fundamental and important inconsistency is resolved, the proposed Ordinance cannot move forward.

E. The Proposed Ordinance Will Frustrate Plan Policies to Prevent Visitor-Serving Accommodations from Interfering with Recreational Driving.

The BSLUP recognizes the crucial importance of Highway 1 to the Big Sur community. *See* BSLUP, Section 4.1 ("The limited capacity of Highway 1 to accommodate local and recreation traffic at a level that reserves reasonable service

and emergency use and also allows motorists to enjoy the beauty of Big Sur's scenic coast is a major concern."). The Plan's drafters spent significant time analyzing the existing conditions on Highway 1, weighing how to prioritize its many users, and contemplating how to ensure that the Highway continued to meet the needs of these users as growth continued. *See* BSLUP, Section 4.1 ("how capacity is allocated between visitor and local use is a major challenge"). Even in the 1980s, the County was concerned about overuse of this critical resource, noting that "at peak summer periods, *Highway 1 is approaching maximum carrying capacity* and some recreational facilities are overused." BSLUP, Section 3.1 (emphasis added).

To address these issues, the Plan allocates highway capacity among various users. The Plan states that "the major recreational pursuit is pleasure driving and sightseeing along Highway 1. The coastal area north of the Big Sur Valley is intensely traveled by visitors passing through or sightseeing. People stop at numerous turnoffs to view panoramas of the coastline." BSLUP, Section 5.1.3; *see also* BSLUP, Section 2.2.3 ("the County's purpose will be to . . . protect its primary function as a recreational route"). To that end, the Plan allocates 85 percent of the capacity of Highway 1 to "serve recreational travel, service trips to public and private recreation and visitor-serving facilities, use by military vehicles, and coastal-dependent agriculture." BSLUP, Policy 4.1.3.C.1.[2] It likewise limits residential development to a level that will use "not more than 15 percent of highway capacity." *Id.*

As these policies highlight, the *recreational driving experience* is prioritized for visitors to the Big Sur area. The Plan does not anticipate or allow for significant overnight stopovers, instead reserving highway capacity for day-trippers. This was by design, to help address the known limitations of the area, including the constraints of capacity along Highway 1, the need to retain housing for those who actually live and work in Big Sur, and to minimize public safety hazards from the presence of visitors in rural remote areas who do not understand the hazards found in Big Sur.

To help protect these uses, the Plan includes one specific policy related to traffic generated by visitor-serving uses: "Proposed new or expanded public or private recreation and *visitor-serving uses shall be required to submit with their application, a traffic component which evaluates the anticipated impact to Highway 1 service capacity* and makes recommendations on how conflicts can be overcome or

[2] The County claims it complies with this requirement because "traffic associated with the rental use would be consistent with that of a typical residential dwelling." Attachment D, at 7. As described further below, this assertion is incorrect.

mitigated." BSLUP, Policy 4.1.3.C.2 (emphasis added). Yet, while the proposed Ordinance proposes to significantly increase the number of visitor-serving uses in Big Sur, the County's report contains *no* analysis of the anticipated impact to Highway 1 service capacity. This lack of analysis is a fundamental violation of the BSLUP.

Instead, the environmental analysis claims, without adequate support, that vacation rentals will result in no net increase in traffic when compared to the existing residential traffic. Categorical Exemption Report, Attachment D, at 7. This claim is again based on the dubious believe that vacation rentals are indistinguishable from residential uses. But this claim has been debunked. *See* Section II.

The County also notes that the Institute of Transportation Engineers ("ITE") trip generation report suggests that single-family detached housing generates 10 single trips per day, hotels generate 9 trips per room, and motels generate 6 trips per room. Categorical Exemption Report, at 13. Based on these generic assumptions, the County also claims that vacation rentals would not result in a net increase in trips. *Id.*

As the Plan notes (BSLUP, Section 5.1.4), however, residents must travel to the Monterey Peninsula to obtain most goods and services. Given the length of this trip, Big Sur residents typically plan their "trips to town," to obtain supplies and groceries as needed, usually 1-2 times per week. Based on the significant familiarity of the BSDC with the local community, Big Sur residents are *not* generating anywhere near 10 single trips per day.

The movement of vacation rental customers, however, is dramatically different. They behave as they would for a hotel/motel, going to see sights, out to meals, and so on. And as for hotel/motel rooms, trips are likely generated on a per bedroom basis—couples generally travel separately from one another, adding even more congestion.

The proposed Ordinance allows for Homestays and Limited STRs, with no limit on the number of days for Homestays. This would mean that Homestays could have up to 10 overnight visitors, and up to 15 persons during the day, 365 days/year. The allowance for Limited STRs would mean the residence could be rented four times per year, up to 30 days each time, for a total of 120 days per year of potential rental. These figures represent substantial use. When the realistic baseline of approximately one trip per day for Big Sur residents is compared to the trip generation rates for a hotel (9 trips **per room**), it is clear that short-term

rentals are likely to result in a significant net traffic increase that must be studied and mitigated before the proposed Ordinance can be approved.

In addition to the direct traffic impact, vacation rentals are also likely to cause a significant *indirect* traffic impact. As discussed above, the proposed Ordinance is likely to exacerbate the affordable housing shortage in Big Sur. Employees will be forced to commute from areas as far away as Salinas and Santa Cruz, adding congestion to Highway 1 and increasing vehicle miles traveled. This indirect increase in traffic must also be studied and mitigated before the proposed Ordinance can be approved.

Finally, the lack of recent available data on the levels of service in Big Sur and traffic congestion is unacceptable and does not provide a baseline for conducting environmental analysis of the proposed Ordinance.

F. The Proposed Ordinance Conflicts with Policies Requiring Careful Study of Public Safety Hazards.

As the County is well aware, the Big Sur area faces an unusually high concentration of potential public safety hazards. BSLUP, Section 1.2 (citing concerns over flooding, washouts, fire hazard, and road hazards). To address these concerns, the BSLUP requires that development proposals include a written assessment of the adequacy of access and fire protection. BSLUP, Policy 3.7.3.C.6.

However, the proposed Ordinance and accompanying report do not even address potential public safety issues, in violation of the BSLUP and its policies. This lack of analysis is surprising, given the very real public safety threats posed by increased intensity of use, particularly by visitors unfamiliar with the area. Narrow, windy roads with limited turnouts and unsafe widths and/or railings and the like are not suited for the traveling public. The safety hazards that vacation rentals would cause in areas unsuited for visitors increases the risks for death and inaccessibility of emergency vehicles during times of extreme need.

The BSLUP also designates certain areas—namely Otter Cove, Palo Colorado Canyon, Bixby Canyon, Sycamore Canyon, Pfeiffer Ridge, Coastlands, and Partington Ridge—as rural residential use. These areas are designated as such because they contain numerous comparatively small parcels, generally unsuitable for other kinds of development. BSLUP, Policy 5.4.3.G.2 (rural residential areas shall be protected from incompatible activities). These areas cannot safely support additional visitor traffic and are not designed for such use. Given the amount of natural disasters Big Sur has experienced in the past several years, from the

Soberanes Fire and subsequent landslides and road failures, this point cannot be overstated.

Big Sur is not meant for this type of visitation from persons not familiar with its terrain or hazards. There is often no additional parking available in areas where residences are located. Palo Colorado is a perfect example of this, and the road can easily be impassable during certain conditions. The locals who know how to properly pull out and watch for oncoming traffic have a difficult time as it is navigating the road's issues and intermittent visitor traffic, let alone the addition of numerous persons and vehicles who have no idea where they are stemming from vacation rentals. The hazards from adding vacation rentals will ultimately be increased for the long-term residents who actually live there year-round.

Finally, the BSDC is particularly concerned about the Ordinance's explicit allowance of "outdoor fire areas" associated with vacation rentals. E.g., Ordinance, § 7.110.040(C)(19). While the Ordinance includes some restrictions on their use, BSDC is concerned that this provision is inviting risky behavior by visitors that may be unfamiliar with the extreme fire hazards posed in Big Sur. The community is still recovering from the devastating Soberanes Fire, which was started by a visitor attempting to create a campfire. *See* https://www.latimes.com/local/lanow/la-me-ln-soberanes-fire-cause-campfire-20160802-snap-story.html. To the extent the Ordinance continues to allow vacation rentals in Big Sur at all, outdoor fire areas should be completely prohibited in this sensitive landscape.

IV. The County Incorrectly Proposes to Rely on Various CEQA Exemptions.

"CEQA embodies a central state policy to require state and local governmental entities to perform their duties 'so that major consideration is given to preventing environmental damage.'" *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 711 (citing Pub. Resources Code § 21000(g)). As stated by the California Supreme Court, CEQA therefore requires an EIR "whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390. The term "project" is broadly defined 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 includes activities "directly undertaken by any public agency." Pub. Resources Code § 21065.

Consequently, the County is obligated to comply with CEQA before it approves any proposed Ordinance. As the Ordinance certainly may have significant, adverse effects on the environment – including significant impacts related to traffic, public safety, and land use planning – CEQA requires the County to prepare an EIR for public review and comment. The fundamental purpose of this document will be to "provide [the County] and the public in general with detailed information about the effect which a proposed project is likely to have on the environment." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428. This crucial report is necessary for the County to make an informed decision about the future of vacation rentals in the Big Sur area.

The County has thus far relied on three excuses to avoid completing any CEQA analysis. First, the County claims that the proposed Ordinance is not a "project" under CEQA Guidelines section 15060(c)(3) and 15378(A). Second, the County claims that the proposed Ordinance is covered by the commonsense exemption, alleging that there is "no possibility that the project may have a significant effect on the environment." CEQA Guidelines § 15061(b)(3). Finally, the County claims that the proposed Ordinance is categorically exempt pursuant to the existing facilities exemption (CEQA Guidelines section 15301). As explained further below, none of these exemptions have merit.

A. The Proposed Ordinance is a Project under CEQA.

The County claims that it need not complete any CEQA analysis because the proposed Ordinance is "not a project pursuant to Section 15060(c)(3) and 15378" and is therefore statutorily exempt. Categorical Exemption Report, at 8. The County's only explanation for the application of this exemption is that the proposed Ordinance allegedly "would not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." *Id.* at 8.

As demonstrated above, the proposed Ordinance is more than likely to result in both direct physical changes and reasonably foreseeable indirect physical changes in the environment. The easiest example is the proposed Ordinance's potential to increase congestion and traffic hazards on both Highway 1 and Big Sur's network of narrow, winding, and often private roads, as well as to increase the associated vehicle miles traveled, greenhouse gas emissions, and air pollution. As explained above, the County incorrectly relies on the ITE manual's generic assumption that single-family residential dwellings produce *ten* trips per day. But in Big Sur, where amenities are located far away and many residents are either

retired or work in their homes, the average trip generation rate for existing residences is far lower.

Thus, even if we assume that the County is correct that each vacation rental produces 6-9 trips per day (and not each *room* in the vacation rental), the proposed Ordinance will result in a significant increase in net trips that must be studied under CEQA.

The proposed Ordinance is also likely to result in a "reasonably foreseeable indirect impact" on traffic, congestion, and associated vehicle miles traveled, greenhouse gas emissions, and air pollution. As explained above, the proposed Ordinance is likely to result in conversion of existing affordable housing to short-term housing, despite the County's unsupported claim to the contrary. This will further exacerbate the housing crisis for Big Sur's hospitality workers, causing more and more of them to commute from the Monterey peninsula, Salinas, and even as far as Santa Cruz. This indirect impact—to both traffic and housing[3]—is again likely to be significant and must be studied under CEQA.

In addition, the proposed Ordinance is likely to result in increased public safety risks. Specifically, the proposed Ordinance will bring visitors unfamiliar with the Big Sur area and its hazards into rural, residential neighborhoods. Such visitors are more likely be inexperienced with the risks posed by wildland fire and are therefore more likely to inadvertently cause a fire to start. Exhibit F (stating that ninety-five percent of California's fires are caused by human activities). Visitors are also unfamiliar with the area and may put first responders and other community members at risk should the need to evacuate arise—either from fire, flood, or severe storms. Finally, visitors are not generally familiar with the network of narrow, winding, and occasionally ill-maintained private roads that must be traveled to reach vacation rentals; increased visitation poses traffic safety hazards that must be studied under CEQA. *See* CEQA Guidelines, App. G, § XVII(c), (d) (requiring study of hazards due to incompatible uses and emergency access).

As detailed extensively above, the proposed Ordinance is also likely to result in significant, unmitigable inconsistencies with the BSLUP. CEQA requires that

[3] CEQA requires an analysis of whether a proposed project would cause a displacement of "substantial numbers of existing people . . . , necessitating the construction of housing elsewhere." CEQA Guidelines, App. G, § XIV. Given the existing housing crisis throughout Monterey County, it is clear that displacement of Big Sur residents into other areas is likely to necessitate the construction of housing for these individuals.

lead agencies analyze the consistency of a project with applicable local plans, including Coastal Commission Approved land use plans. *See Napa Citizens for Honest Gov. v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 386-87; CEQA Guidelines, Appendix G, § X (b). Inconsistencies with an LUP or other local plan goals and policies that were enacted in order to protect the environment are significant impacts in themselves. *See id.*; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 929. Consequently, the County is not permitted to rely on its faulty assumption that the proposed Ordinance is not a project—there is more than a reasonably possibility of both direct and indirect environmental impacts.

Even if the threatened environmental impacts were unclear, the County would still be incorrect in relying on a determination that the proposed zoning amendments are not a project. In *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (200) 41 Cal.4th 372, the California Supreme Court held "That the enactment or amendment of a general plan is subject to environmental review under CEQA is well established." (2007) 41 Cal.4th 372, 385. The Court held that in determining if an agency action is a project, the Court must evaluate "whether the activity is of a general kind with which CEQA is concerned, *without regard to whether the activity will actually have environmental impact.*" *Id.* at 381 (emphasis added). Much like a general plan amendment, a zoning amendment is the general kind of activity with which CEQA is concerned. *See Rominger v. Cnty. of Colusa* (2014) 229 Cal.App.4th 690; *Rosenthal v. Bd. of Supervisors* (1975) 44 Cal.App.3d 815; Pub. Resources Code § 21080(a), CEQA Guidelines § 15378(a) (both recognizing zoning amendments as CEQA projects). For this reason, the County erred in determining that its proposed zoning amendments, which are substantial, are not a project under CEQA.[4]

B. The Commonsense Exemption Clearly Does Not Apply.

The County also claims that the proposed Ordinance is covered by the commonsense exemption, alleging that there is "no possibility that the project may have a significant effect on the environment." Categorical Exemption Report, at 8 (citing CEQA Guidelines § 15061(b)(3)).

To rely on the commonsense exemption, the County must demonstrate, *based on record evidence*, that *it is certain* that the activity *cannot* have a significant effect

[4] This question is currently being considered by the Supreme Court in *Union of Med. Marijuana Patients, Inc. v. City of San Diego* (No. S238563). Oral argument is scheduled for June 4, 2019.

on the environment. *Muzzy Ranch*, 41 Cal.4th at 388. While courts have recognized that the record evidence may be "appropriate to the CEQA stage in issue" (*id.*), the lead agency must have *some* substantial evidence to support its conclusions.

Here, the County offers no such evidence. Instead, it offers only the unsupported assertion that all vacation rentals will be indistinguishable from existing residential uses. It cites to no studies, analysis, evidence, or reports to support this conclusion, claiming only that the presence of a resident or operator on the property during the course of the vacation rental, or the designation of a property as a "principal residence," somehow makes the rental akin to a "residential" use. *E.g.*, Categorical Exemption Report at 12-14. But as explained above, the proposed Ordinance is still likely to result in potentially significant impacts related to traffic, VMT, greenhouse gas emissions, air quality, land use and public safety. For this reason, the commonsense exemption does not apply.

C. The Existing Facilities Exemption Is Inapplicable to Expanded Uses.

Guidelines section 15301's exemption for "existing facilities" applies only to activities involving "negligible or no expansion of existing or former use." The Guidelines indicate that this is the *key* consideration for determining whether the exemption applies. *Id*; *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 867.

Two cases demonstrate the inapplicability of section 15301 to the proposed Ordinance. In *County of Amador v. El Dorado County Water Agency*, the court held that the exemption was inapplicable to an ownership transfer for a hydroelectric project where the transfer was intended to permit consumptive use of an additional 17,000 acre-feet of water. (1999) 76 Cal.App.4th 931, 967. Because the purpose of the agency action was to change the focus of the project to allow increased use, it was not a "negligible" expansion. *Id.*

Likewise, in *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster*, the court held that the alteration of a site to operate a landfill did not qualify for an exemption under section 15301. (1997) 52 Cal.App.4th 1165, 1194. The court focused on the proper scope of such an exemption, holding that it applies only where the proposed activities create no reasonable possibility of a significant environmental effect. *Id.* Because the alteration of the site to accommodate 3.2 million tons of municipal solid waste may have a significant environmental effect, it could not be considered a minor or negligible change. *Id.*

These cases clarify that the proposed Ordinance—which calls for a substantial expansion of permitted vacation rental activity—cannot qualify for an exemption under section 15301. While the County has altered its opinion on the issue over the last two decades, it is clear that vacation rentals are not currently a permitted use under the BSLUP and the implemental plan. The proposed Ordinance would explicitly allow such uses, encouraging property owners to engage in a lucrative, and now legal, opportunity. The change in both intensity and character of use caused by allowing vacation rentals has been well recognized by the Courts. *See Greenfield*, 21 Cal.App.5th at 901.

Accordingly, the change in use proposed by the County would represent much more than a "negligible" expansion of current use. It is thus similar in magnitude to the increased water consumption in *County of Amador* and the waste disposal in *Azusa* found to require environmental review. Consequently, section 15301's exemption cannot be used here.

D. The Project Is Subject to Exceptions to the Existing Facilities Exemption.

Even if the County correctly determined that the proposed Ordinance is subject to the Existing Facilities exemption, the application of certain "exceptions" to the exemption (found in CEQA Guidelines § 15300.2(c)) prevent the County from moving forward without CEQA review.

1. Unusual Circumstances

Under CEQA, "a categorical exemption *shall not be used* for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." CEQA Guidelines § 15300.2(c) (emphasis added). Under California Supreme Court precedent, the potentially significant effect must be "due to unusual circumstances" for the exception to apply. *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.

The County has a duty of evaluating "the entire record before it—including contrary evidence regarding significant environmental effects"—to determine "whether there is an usual circumstance that justifies removing the project from the exempt class." *Berkeley Hillside*, 60 Cal.4th at 1105. The County quickly dismissed the possibility of an unusual circumstance, noting only that vacation rentals would be in "existing, legally established residences" and subject to certain limitations to allegedly make them similar to residential uses.

However, the implementation of the proposed Ordinance in Big Sur presents numerous unusual circumstances that create the reasonable possibility of significant environmental effects. First, Big Sur already suffers from an unusual and extreme shortage of affordable housing. Local employees have long struggled to find adequate housing, and the loss of a significant number of residential units in the Basin Complex, Pfeiffer, and Soberanes fires have exacerbated the problem. The fragile environment and protective land use plan make construction of new residential units difficult, if not impossible. Because of these unusual circumstances, the proposed Ordinance is likely to lead to the significant displacement of existing Big Sur residents and the concomitant environmental impacts caused by longer commutes and additional congestion. This unusual circumstance prohibits the County from relying on the existing facilities exemption.

In addition, the limited and overtaxed transportation infrastructure in Big Sur is another unusual circumstance that creates the reasonable possibility of environmental harm. With the advent of social media and extreme popularity of Big Sur as a destination spot, this has been exacerbated tremendously. The following is a current description of Big Sur from the popular information source "Wikipedia":

> Redwood forests, hiking, beaches, and other recreational opportunities have made Big Sur a popular destination for about 7 million people who live within a day's drive and visitors from across the world. *The region receives about the same number of visitors as Yosemite National Park, but offers extremely limited bus service, few restrooms, and a narrow two-lane highway with few places to park alongside the road.* North-bound traffic during the peak summer season and holiday weekends is often backed up for about 20 miles (32 km) from Big Sur Village to Carmel.

(Sourced May 15, 2019, emphasis added). Highway 1 is already at its breaking point. Even if the proposed Ordinance generates only a modest increase in the number of trips generated at Big Sur residences, it is likely to result in significant congestion and traffic hazards. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 (noting that an impact is significant where a project adds additional stressors to an existing, serious problem).

Finally, the BSLUP itself is an unusual circumstance that creates the reasonable possibility of significant land use impacts. As described above, the BSLUP is unusually protective of affordable housing, transportation infrastructure, and rural residential uses. The presence of the restrictive "constitution" for future land use development makes it more likely that the proposed Ordinance creates a

conflict with existing land use plans. The Plan itself recognizes this issue, noting that "most projects will therefore not be eligible for the categorical exemption allowed under the California Environmental Quality Act." BSLUP, Policy 3.7.2.1.

For these reasons, the unusual circumstances exception to the exemption applies, and the County cannot proceed under the existing facilities exemption.

2. Scenic Highway Exemption

The CEQA Guidelines state that "a categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway." § 15300.2(d). Within the area covered by the BSLUP, Highway 1 is an officially designated state scenic highway. *See* http://www.dot.ca.gov/hq/LandArch/16_livability/scenic_highways/. As such, the County must carefully consider whether the proposed Ordinance will impact scenic resources within this corridor.

Instead, the County rotely states that the Ordinance will not impact scenic highways because vacation rentals are limited to one per existing residentially developed parcel. Categorical Exemption Report, at 9. The report does not consider, however, the likelihood that increased traffic generated by vacation rentals (especially when compared to existing Big Sur residents) will exacerbate the existing damage being caused by over tourism in the Highway 1 corridor. Too many cars and people, coupled with a lack of adequate facilities, are causing damage to sensitive ecological resources near pullouts, increased social trails, graffiti and trash, and traffic congestion, all of which mar the scenic resources associated with Highway 1. The impact of adding even more cars and visitors to the existing situation is significant and must be studied and mitigated in adequate environmental review.

V. Conclusion

The BSDC is mindful of the fact that the California Coastal Commission has been pushing coastal jurisdictions to allow short-term rentals as a means of creating low-cost visitor serving accommodations. *E.g.*, December 6, 2016 Coastal Commission Memo re Short-Term/Vacation Rentals in the California Coastal Zone. However, the County is well within its prerogative to adopt a narrow exception to the Ordinance prohibiting all vacation rentals in Big Sur, for at least two reasons.

First, the assertion that vacation rentals in Big Sur provide *low-cost* visitor serving accommodations is dubious at best. A review of existing, illegal short-term rental offerings in Big Sur indicate that most listings average more than $200 per night, with *many* more than $1,000. To the extent the County is pressured to allow vacation rentals in Big Sur for this reason, they should be required to meet the certain lower cost criteria, similar to those found in the Coastal Commission's Lower Cost Coastal Accommodations Program.

Second, Coastal Commission staff has previously recognized that while the Coastal Act encourages development of visitor-serving uses, these *must* be balanced with other Coastal Act priorities. The competing priorities of the Coastal Act therefore require a "nuanced approach" to short-term rentals. *Lewis v. County of Monterey* (Cal. Ct. App., Jan. 25, 2019, No. H044252) 2019 WL 323666, at *2 (discussing 2016 Coastal Commission staff letter to County of Monterey). Banning short-term rentals in one small area of the County based on clear inconsistencies with the Coastal Commission-approved BSLUP would easily be categorized as a "nuanced approach" responsive to competing Coastal Act priorities.

The analysis above demonstrates why **Big Sur must be excluded from allowing any type of vacation rentals**. There are multiple reasons for this:

- The loss of community and affordable long-term housing stock for workers and residents
- Public safety hazards
- Land Use Incompatibilities
- Impacts to Highway 1 capacity
- Inconsistencies with the BSLUP and the existing LCP definition of "dwelling"

We are extremely concerned with the proposed Vacation Rental Ordinance and look forward to a response to this letter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Sara A. Clark

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Exhibits:
A – Overview letter from BSDC
B – Transcript of Planning Commission Testimony
C – Memo from Dr. Charles Lester
D – Coastal Commission Letter to Monterey County Board of Supervisors, November 1997
E – Collection of Articles re Short-Term Rental Impacts
F – Human Influence on California Fire Regimes, Syphard, A. D., V. C. Radeloff, J. E. Keeley, T. J. Hawbaker, M. K. Clayton, S. I. Stewart, and R. B. Hammer, Ecological Application 17:1388–1402, 2007