SUMMARY OF RESPONSE TO THE ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING SECTION 7.02.060 OF THE MONTEREY COUNTY CODE AND ADDING CHAPTER 7.110 RELATING TO VACATION RENTAL ACTIVITIES

Priscilla Helm Walton, Carmel Valley Association

The proposed ordinance is fundamentally inconsistent with the Carmel Valley Master Plan. The allowances outlined in the Ordinance do not adequately restrict the number and operational parameters of vacation rentals for Carmel Valley.

***• Staff did not follow direction received during the last public hearing* *from the Commission itself***  based on consensus votes on various aspects of the Ordinance.

• The process is inefficient because it requires the public to review a document that has not been assessed for legal accuracy and consistency. The time allowed for review is insufficient.

• The assumption that Limited Vacation Rental uses are similar in character, density, and intensity to residential use is **not supported by any evidence.**

• The staff contention that “as a matter of land use policy Limited Vacation Rentals should not be counted against visitor-serving unit counts**.” This is contrary to Planning Commission direction. The attempt to provide differing values to equate vacation rentals is based on an incorrect assumption.**

• The Ordinance allows for a total duration of sixty (60) days of NO PRINCIPAL RESIDENT and a total one-hundred forty (140) days of rentals. **This does not reflect the clear direction of the Planning Commission during the last working session,** which stated no more than four contracts per year, with a limit of 90 total days.

**•** Staff makes the erroneous assumption that Limited Vacation Rentals, as defined and restricted in the May Draft Ordinances, are consistent with the intensity of a residential use (water use, traffic, etc.) and do not result in the loss of a residential unit from the market. No supportive data presented

• There is a concern that the county has overstepped its authority as a public agency by including in Public Policy that they are in the business of “allowing for a reasonable amortization of investment for existing vacation rentals.”

**• There is fundamentally no difference** between a “limited and a Commercial Vacation Rental. A financial transaction with money being exchanged between the resident and a visitor is a commercial transaction in both instances.

**•** The Ordinance does not provide a verifiable count of existing Visitor-Serving Units and those existing at the time of the Carmel Valley Master Plan. Those numbers need to be compared and deducted from the CAP numbers of Visitor- Serving Units for Carmel Valley.

• Enforcement lacks any serious plan for monitoring. What is presented is confusing, lacks clarity, and is of dubious quality. This lack of clarity will compound the serious lack of enforcement in general and the perception by the public that no enforcement exists.

Date: June 8, 2020

To: Planning Commissioners

Paul C. Getzelman, Chair

Amy D. Roberts, Vice-Chair

Ernesto Gonzalez

Ana Ambriz

Rich Coffelt

Francisco Mendoza

Melissa Duflock

Kate Daniels

Etna Monsalve

Martha Diehl

Re: AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING SECTION 7.02.060 OF THE MONTEREY COUNTY CODE AND ADDING CHAPTER 7.110 RELATING TO VACATION RENTAL ACTIVITIES

Staff: Carl Holm, John Dugan, Brandon Swanson, Melanie Beretti

From: Priscilla Walton, President, Carmel Valley Association (CVA)

CVA appreciates the opportunity to review the newly released vacation rental ordinance. While the staff report has incorporated several recommendations from various parties and public entities since the July 24, 2019, presentation before the Planning Commission, there are still *key areas of major concern* and mistakes that must be rectified. In particular, ***staff did not follow direction received during the last public hearing* *from the Commission itself*** based on consensus votes on various aspects of the Ordinance.

From a public process standpoint, the release of the documents and timing of the hearing have not allowed for adequate review time and public response. Over one hundred pages of text were released on Thursday, June 4, and the scheduled hearing before the decision makers is on June 10, without the benefit of a County Counsel summary (“forthcoming”). It is inefficient process-wise to require the public to review a document that has not been assessed for legal accuracy and consistency. Additionally, scheduling a hearing a few working days after the release of complex information is unacceptable and appears to be intentionally undermining the ability of the public to provide meaningful comments, especially during the COVID19 pandemic and the challenges it presents. The errata sheet that contains numerous comments from persons presented on June 5th was also not appropriate for a late release. Were portions of the community able to see the draft ordinance before others? CVA notes that several of the comments contained in the errata were dated prior to the official release of the Ordinances on the County website. We request a continuance of the hearing date pending further review of the documentation.

As the Carmel Valley Association indicated in our response to the last iteration of the inland ordinance, it is still fundamentally inconsistent with the Carmel Valley Master Plan and as such will be more than likely subject to litigation. The allowances outlined in the Ordinance do not adequately restrict the number and operational parameters of vacation rentals for Carmel Valley. CVA maintains that the Ordinance, as written, would be fundamentally harmful to the intent of the Carmel Valley Master Plan because it will further degrade the rural character of the Carmel Valley.

We urge you to address the following issues prior to moving forward with the ordinance:

* The assumption that Limited Vacation Rental uses are similar in character, density, and intensity to residential use is not supported by any evidence. This is exactly the reason they are so controversial. In the area of Carmel Valley, they introduce a hotel-type use into rural neighborhoods that does not support the underlying intent of the zoning or community character. (Page 1, Section 1 Paragraph C).
* Any entity renting a room to outside people should have all individual rooms counted as one VSU for each room. The Commission supported with an 8:0 (one Commissioner had to leave toward the end of the meeting) consensus vote that all Vacation Rentals count against visitor-serving unit/facility counts in land use plans that include maximum counts. In the area plans that include counts for visitor-serving facilities/units/etc., referred to collectively as Visitor-Serving Unit (or VSU), each hotel/motel **room** is counted as one VSU. A different standard should not apply for Vacation Rentals. Staff contends (**CONTRARY TO PLANNING COMMISSION DIRECTION**) that “as a matter of land use policy Limited Vacation Rentals should not be counted against visitor-serving unit counts”.
* The **Planning Commission suggested** utilizing an equation to calculate Visitor-Serving Unit (VSU) equivalency for vacation rentals. They stated that two key factors should be considered in this equation:1) the maximum occupancy per room (or unit) and 2) the total days per year the room (or unit) is available to be rented. However, the equation that staff used in response to this direction is nothing less than a disaster. It results in less than one percent VSU counts for rooms, a confusing and unenforceable mess. This “equation” is also based on the incorrect assumption thatfour4 persons normally occupy a standard hotel/motel room. VSUs are all about accommodating guests per room, not per building, as the guest count is connected to car parking, trips on CV and neighborhood roads, water use, sewer use, etc. One room rented out for a vacation rental is equivalent to one hotel room. The calculation provided for partial value of a VSU is capricious, ridiculous, and not based on any evidence presented. This attempt to provide differing values will increase the difficulty of enforcement and will result in an artificial increase of allowed VSUs in Carmel Valley.
* (**CONTRARY TO PLANNING COMMISSION DIRECTION**) The Planning Commission also previously supported the limits of one (1) contract per week to limit turnover and no more than four (4) contracts per year for Limited STRs. However, this is not reflected in the current draft of the Ordinance, which allows up to ***20*** *contracts per year for a Limited STR*. The Commission recommended restricting Limited STRs to Principal Residences, a restriction that was unique to Homestays in the April draft ordinances. The Commission supported with a 7:2 consensus vote that a Limited Short-Term Rental (Limited STR) be allowed to rent for **not more than 90 total days per year**. In response, staff has combined Homestays and Limited STRs into a single vacation rental category without proper restrictions that would require the owner to be present. Not only could the home be rented more often than what the Planning commission directed staff to do, the Principal Resident will not be required to be present for three of those 20 rentals per year. The current Ordinance allows for a total duration of sixty (60) days of NO PRINCIPAL RESIDENT and a total one-hundred forty (140) days of rentals. This does not reflect the clear direction of the Planning Commission during the last working session, which stated no more than four contracts per year, with a limit of 90 total days.
* Staff makes the erroneous assumption that Limited Vacation Rentals (formerly referred to as Limited STRs and now combined with Homestays), as defined and restricted in the May Draft Ordinances, are consistent with the intensity of a residential use (water use, traffic, etc.) and do not result in the loss of a residential unit from the market. This is simply incorrect and unsubstantiated. Data support that Vacation Rentals diminish the housing supply for long-term rentals. RMA has provided no evidence to support this assertion. Please provide documentation. (Page 1, Section, Paragraph C).
* We believe that a CEQA Analysis is required. Advertised Platforms constitute “Projects” even though they are not new developments. A CEQA assessment of their impact (adding up the totals for each platform site) on traffic generation, water use, etc., needs to be examined for the Carmel Valley Master Plan. Our attorney provided comments addressing this issue in our prior comment letter from 2019, which were apparently ignored. These comments still apply to the current proposed CEQA exemption.
* There is a concern that the county has overstepped its authority as a public agency by including in Public Policy that they are in the business of “allowing for a reasonable amortization of investment for existing vacation rentals” (See page 1, Paragraph F).The Ordinance provides an initial time period during which a vacation rental may continue to operate, provided the vacation rental activity was established prior to the effective date of the Ordinance. What if they operate in areas that have already exceeded allowed VSUs? No one ever guaranteed anyone a reasonable return on an investment of a single family residence, as it is not supposed to be a commercial investment.

• CVA believes that **there is fundamentally no difference** between a “limited and a Commercial Vacation Rental. A financial transaction with money being exchanged between the resident and a visitor is a commercial transaction in both instances. They both must pay the TOT. We believe that this may be indefensible in a court of law.

* The county must provide a verifiable count of the existing Visitor- Serving Units in Carmel Valley. CVA undertook a detailed investigation of existing Visitor-Serving Units in the spring of 2020. This was done to determine the baseline number or existing VSUs. (See attachment A) This needs to be compared to the actual Number of VSUs existing at the time of the 2010 Carmel Valley Master Plan.  Those numbers need to be deducted from the CAP numbers of visitor-serving units east of Majorca and the CAP west of Majorca in the Carmel Valley Master Plan.
* Without the baseline numbers and the units built since 2010 and their subtraction from the VSU numbers, this ordinance will discriminate against Carmel Valley by over-loading an area that is already suffering from over-tourism. In Carmel Valley, no vacation rentals should be allowed until the existing VSU count has been completed by the County and agreeable to all affected parties, such as CVA.
* Given the uncertainty of the existing number of rentals already in operation that could come forward with permit requests (based on the caveat in the Ordinance they can come forward and they do so) and the lack of documentation of the remaining available VSUs in Carmel Valley, *all Vacation Rentals should be required to stop operations (currently required under Health Officer orders regardless as part of COVID19 except for essential travel), until such availability is definitively assessed and agreed upon.* Section7.110.080 Phasing Out Unpermitted Operations - how would this apply to the CV cap, with permitted operators that already exceed the CAP limits. How will this be addressed?
* 7.110.090 Enforcement – There is no provision made for how this would be monitored, only what would happen if someone is caught. There is one enforcement officer and one hearing officer. There should be a projection as to how many County personnel are needed to process a specific number of vacation rentals. Two enforcement personnel will not be sufficient if the number required is not based on the number of ads for vacation rentals. What is the County’s formula for enforcement personnel needs? If someone was renting a six- bedroom house, why would they only rent out two bedrooms? Additionally, the Ordinance states that “the maximum overnight occupancy while being rented as a Limited Vacation Rental shall be calculated and limited to a not-to-exceed count of two (2) persons per bedroom and shall not exceed a total count of six (6) persons per unit, no matter how many bedrooms.” However, in other places in the Ordinance, the limit is four persons per rental. The Commission supported with an 8:1 consensus vote limiting Homestays allowed with a ministerial permit to one contract per week to limit turnover, limiting maximum rental occupancy to four (4) persons renting at a time. Mistakes like these are pervasive throughout the Ordinance and impossible to follow. This should have been reviewed prior to public release.
* Individuals who have been reported renting Vacation Rentals, especially those doing so during the pandemic, should not be allowed to rent. At minimum, they should go to the back of the line and not be rewarded for scoffing at the laws. Priority should be given to “good citizens.”
* Also missing is the provision that no one person may hold a license to more than one vacation rental at any one time.
* We request that the nomenclature for all rooms for Commercial and Limited STRs be changed to Urban Vacation Rentals and Rural Vacation Rentals. All rooms rented out are visito- serving units. Each room in a motel or hotel is counted as a VSU, so why not the same for Vacation Rentals? This would allow for a determination of density as to how many Visitor-Serving Units are allowed in an urban area versus a rural area.
* The firm position of the CVA that has been repeatedly stated throughout the public process is that the community in Carmel Valley categorically opposes all non-owner hosted Vacation Rentals. The current Ordinance allows for three rentals *without the concurrent occupancy of the Principal Resident for up to, but not more than three (3) times of the twenty (20) times per 12-month period.* Not only is this unenforceable, it is non-sensical. This giant loophole could be used to justify absences of the Principal Resident for much more than three times per year. Who would be monitoring this? Even when egregious complaints are lodged with the County, there are no staff available to immediately address a problem, and the sheriff won’t respond unless there is a health and safety issue to address.

Again, the request is to modify the Ordinance to address the following:

* The owner must be a natural person or living trust for a natural person who is a permanent year-round resident, and the home must be his or her primary residence.
* No absentee owners, property management companies, corporations, LLCs, or other forms of ownership would be permitted.
* The owner must be required to live in and be present on site during the entire vacation rental period, with NO EXCEPTIONS.

To reiterate, in order for the CVA to support Limited Vacation Rentals in Carmel Valley, the owner must be present at all times, and the rental must also count toward the visitor-serving unit cap as stated in the Carmel Valley Land Use Plan, with a strong enforcement system, close supervision, and accountability.

We sincerely hope that the Commission is able to take a step back and consider staff’s lack of response to clear direction, and the input from the public.

**Attachment A:**

**Carmel Valley 2020 VSU Count Report**

**Survey completed by the Carmel Valley Association Land Use Committee – Feb 2020**

**Total CVMP Area Rooms Counted  =  753\*  \*\***

**Count East of Via Mallorca    =       588 Total**

 Quail Lodge                 =         93

 Saddle Mountain        =           7 +

 Folktale Winery           =          1

 Holly Farm                    =          3

 Carmel Valley Ranch  =      181

Waldrup B&B              =           1

 Bernardus Lodge        =         73

Los Laureles Lodge     =         31

 Portofino Inn               =         22

 Carmel Valley Lodge  =         31

 Hidden Valley Inn       =         21

 Hidden Valley Music  =           6

Old World Inn              =        10

Contenta Inn                =        19

 Blue Sky Lodge             =        16

 Holman Ranch             =        14

 Robles Del Rio Lodge  =        59

**Count West of Via Mallorca   =       165 Total**

 Carmel Mission Inn    =        165

\*These counts do not include The Cottages, Hacienda Carmel, Del Mesa Carmel, Tehama, or The CV Manor as their guest rooms are only open to member guests and not to the general public.

\*\*Stonepine is beyond Los Tulares HOA, the eastern boundary of the CV Master Plan

**Attachment B:** Letter to Brian Swanson from CVA Land Use Committee:

March 4, 2020

Brandon Swanson

Interim RMA Chief of Planning

Monterey County Resource Management Agency

1441 Schilling Place

Salinas, CA  93901

Dear Mr. Swanson:

At the last CVA/RMA meeting, you requested a letter on the methodology for how the CVA Land Use Committee arrived at our final figures for the VSU count within the Carmel Valley Master Plan and especially east of Via Mallorca to the CVMP eastern boundary.

At the CVA LUC October 2019 meeting, we made a list of the Carmel Valley commercial hotels, lodges, inns, B&Bs, events centers with lodging, retirement communities and camps that rent rooms/cabins. We eliminated any properties that were west of Highway 1 and east of Los Tulares HOA passed the CV Village. We did not include any known STRs in this count. This process eliminated Carmel River Inn and Stonepine Estate Resort. Once we had a complete list, each Committee member was assigned 2-6 properties to visit onsite and or call to determine how many rooms on which they were collecting TOT. As a proof device, we ordered and paid for a list of all TOT collection permits in zip codes 93923 and 93924. The six-page (416 entries) TOT list arrived on January 23, 2020.

At one of our last CVA/RMA meetings in 2019, two key factors were determined:

1. Retirement community rented rooms were not public and only for the use of member guests which eliminated The Cottages, Hacienda Carmel, Del Mesa Carmel, Tahama and The Manor.
2. Properties that formerly rented but were not renting rooms at this time still retained there VSU counts which added the Portofino Inn & Spa and Robles Del Rio Lodge. It took contacting the property owner or online research to determine their VSUs still vested with the properties.

One example of fact checking the numbers was that Jeff emailed the General Manager of Carmel Valley Ranch, whom he knew personally, and asked him what the CVR official VSU count was. He immediately emailed back 181. To double check, Jeff called the front desk clerk at CVR and was told 181, the same.

There were some interesting factors that came up such as The Holly Farm has 28 beds, but they are contained in only three rooms and 3 is the VSU count for The Holly Farm. Also, the Waldrup B&B in Miramonte only has a one room VSU. Folktale is another event location that rents a house on property only to event people during their events equaling 1 VSU. We discovered that Saddle Mountain has 7 tent cabins it has built to rent out commercially.

The last double-check device we used was to go through the 416 TOT permit holders to locate all the properties on our list. All were there except the Portofino Inn and Robles Del Rio Lodge which makes sense as they are not operating at the moment although I did see contractors at Portofino in Nov 2019.

Sincerely,

Jeff Wood and Lesley Nall, Co-Chairs, CVA Land Use Committee