wittwer / parkin

May 24, 2019

VIA EMAIL

Ms. Melanie Beretti
Property Administration/Special Programs Manager
Monterey County Resources Management Agency
1441 Schilling Pl., 2nd Fl. South
Salinas, CA 93901
RMAcomments@co.monterey.ca.us
berettim@co.monterey.ca.us

Re: CEQA Exemption of Proposed Vacation Rental Regulations (REF 130043 and REF100042)

Dear Ms. Beretti:

This law firm represents the Carmel Valley Association (CVA) and submits these comments on the above referenced project. CVA is the oldest and largest civic association in Carmel Valley. CVA was established in 1949 and has hundreds of loyal members, and has a demonstrated, longstanding interest in addressing the environmental impacts of projects approved within and by the County of Monterey.

CVA is deeply concerned about the lack of environmental review conducted by the County of Monterey regarding its proposal to permit various types of short-term rentals within the County. In short, the County's proposed ordinances would permit "vacation" rentals in most zoning districts project. The County divides these rental types into three categories: "Homestay Short-Term Rental," "Limited Short-Term Rental," and "Commercial Short-Term Rental." Whereas Commercial Short-Term Rental permits would require further discretionary review, the County proposes to ministerially permit the other two categories. Only the Commercial Short-Term Rental category would be required to submit evidence, among other things, of adequate parking, and this form of short-term rental would only be prohibited in the Big Sur and Del Monte Forest areas. (Vacation Rental Ordinances – Categorical Exemption Report, p. 7.) Commercial Short-Term Rental permits would permit short-term rentals of "five times or more per 12-month period. (Vacation Rental Ordinances – Categorical Exemption Report, p. 7.) In contrast, the only real limitation placed on Homestay Short-Term Rentals is that the "dwelling unit is occupied by a resident concurrent with the vacation rental use." (Vacation Rental Ordinances – Categorical Exemption Report, p. 6.) This form of permit would be allowed in "single family dwelling[s], duplex dwelling[s], or a multiple family dwelling[s]" in most residential zones. (Vacation Rental Ordinances – Categorical Exemption Report, p. 6.) Limited Short-Term Rental permits would be limited to "four times or fewer within [a] 12-month period." (Vacation Rental Ordinances – Categorical Exemption Report, p. 7.)

The County determined the project is exempt from further environmental review under the following provisions of the California Environmental Quality Act (CEQA) Guidelines: "existing facilities pursuant to Section 15301; the 'Common sense exemption' . . . contained in Section 15061(b)(3); and/or statutorily exempt because not a project [*sic*] pursuant to Section 15060(c)(3) and 15378." (Notice of Public Availability of Proposed Vacation Rental Regulations, p. 1.) As discussed below, none of these exemptions apply to the project, and the County must conduct environmental review in order to comply with CEQA.

A. The Vacation Rental Ordinances Are a Project Subject to Environmental Review

First, the County's claim that the project is not a "project" pursuant to CEQA is specious at best. CEQA applies to discretionary projects. (§ 21080, subd. (a).) A *project* is an activity undertaken by a public agency which may cause a physical change in the environment. (§ 21065; Cal. Code Regs., tit. 14, § 15378.)" (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) "A determining factor as to whether a project is discretionary, and subject to CEQA, is whether the approving agency or official has the ability to mitigate impacts arising from the project." (*Ibid.* (citing *Friends of Westwood v. City of Los Angeles* (1987) 191 CalApp.3d 259, 272-273).)

Here, the enactment of an ordinance that would permit multiple forms of short-term rental uses is clearly a discretionary action that may have an effect on the environment. The County is by no means required to enact this ordinance; it is doing so to allow for increased intensity (and taxation) of commercial uses across various zoning districts. The County has the power to alter the project in numerous ways that would reduce the environmental impacts of the project, such as by prohibiting short-term rentals entirely, by strictly limiting the total number of permits that may be issued, or by prohibiting short-term rental uses in most, or all, residential zones.

Further, this project will cause several changes in the environment. While the County pays lip service to how "restrictive" its proposed ordinances are, this self-serving statement is unfounded and unsupported. For instance, there is almost no restriction on, or mitigation required for, Homestay Short-Term Rentals, which by their very nature require an intensification of use in the permitted dwelling. This form of short-term rental would permit an unlimited number of short-term rentals with an unlimited number of guests, with no consequent requirement to provide for parking for, or otherwise mitigate anticipated increases in traffic and noise. The same traffic, noise, and parking impacts will occur with the operation of Commercial Short-Term Rentals. Contrary to the County's arguments, the project bears no resemblance to currently existing residential uses. These uses will serve to multiply the intensity of use on most short-term rental properties, turning single-family dwellings into the equivalent of multi-family dwellings, and further intensifying the use of pre-existing multi-family dwellings. This will cause increased water demand on the County's already severely limited water supplies. Further, the project has the distinct potential to cause displacement by bringing existing long-term rental units offline to make room for more profitable short-term rental uses.

By no stretch of the imagination can the County claim that any of the above impacts have no potential to occur. The County's conclusions are completely divorced from reality, and the County's attempts to frame what is essentially a carte-blanche authorization for unlimited short-term rental uses throughout the County as "restrictive" is unsupportable.

B. The Project Does Not Qualify for the Common-Sense Exemption

Likewise, the County cannot rely on the "common-sense" exemption to avoid the required environmental review. The common-sense exemption only applies "[w]here it can be seen *with certainty* that there is *no possibility* that the activity in question may have a significant effect on the environment." (14 Cal. Code Regs. § 15061 (b)(3) (emphasis added).) The common-sense exemption can be used "only in those situations where its absolute and precise language clearly applies." (*Myers v. Board of Supervisors* (1976) 58 CalApp.3d 413,425.) "If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt." (*Davidon Homes v. City of San Jose* (1997) 54 CalApp.4th 106, 117.) Due to the very limited scope of this exemption, the burden placed on members of the public to show that the project does not qualify for this exemption is extremely light, as CEQA creates a strong preference in favor of environmental review.

As discussed, above, the project would allow for greatly intensified use of properties that receive short-term rental permits. These impacts will be felt across the environmental spectrum, including in the form of increased water use, traffic, air quality impacts, noise, and displacement of long-term rental housing, among others. Simply put, the common-sense exemption does not apply.

C. The Project Does Not Qualify for the Existing Facilities Exemption

The project also falls outside the scope of the County's final claimed exemption. The plain language of existing facilities exemption states this exemption is only permitted if it involves "negligible or no expansion of existing or former use." (14 Cal. Code Regs. § 15301.) The types of activities covered by this exemption include, "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features." (14 Cal. Code Regs. § 15301.)

Here, the project would change the use of the "existing facilities" (here, residential dwellings) from residential to commercial, which not only represents an expansion of an existing use (*e.g.*, greater intensity of use, increased traffic, noise, and water use) but a change to a new use, which is not covered by this exemption. Exempting the project, which envisions altering and intensifying the types of uses allowed in most zoning districts throughout the County "involves an alteration in the permanent use of land [and] is not 'consistent with both the letter and the intent expressed in the [exemption] classes.'" (*Myers v. Board of Supervisors* (1976) 58

Cal.App.3d 413, 423.) Superficially classifying commercial, hotel-like short-term rental uses as "residential" versus "commercial" does not alter this analysis, most notably because one aspect of the project, the "Commercial Short-Term Rental" permits, makes no secret of its commercial nature. However, any use that serves the same commercial purpose as a hotel, including residencies permitted as Homestay Short-Term Rental units, fundamentally changes and intensifies the nature of these uses from one that is primarily residential to one that is income-generating. As this involves an "alteration in the permanent use of land," the project clearly falls outside of the Class 1 exemption.

D. Conclusion

None of the County's claimed exemptions withstand scrutiny. Furthermore, claiming the project is exempt from environmental review eliminates any opportunity for further evaluation and discussion of the serious environmental impacts the project will generate.

For the above reasons, the County must comply with CEQA by conducting environmental review for the project.

Very truly yours,
WITTWER PARKIN LLP

William P. Parkin

cc: client