

# **Statement of Robert N. Danziger to the Monterey Planning Department and California Coastal Commission Regarding Short-Term Rentals**

July 8, 2016 BobDanziger@mac.com

## **Summary**

- Short Term Rentals as contemplated by the Coastal Commission will bring in between 10,000 and 26,000 visitors per day, and over 6,000 cars;
- There is no water available for the 500,000 to 2.6 million gallons of water per day (over 800 million gallons annually) these Short Term Rentals may use;
- A major Environmental Impact Statement is required before any ordinance allowing short-term rentals goes in to effect and the appropriate Lead Agency is the California Public Utilities Commission, not the Coastal Commission;
- Of the 17 areas examined in a Environmental Impact Report under CEQA, Short Term Rentals have a clearly negative impact in 15 of them;
- Coastal Zone roads, parking lots and parks already have more visitors than they are capable of safely and environmentally handling;
- Short Term Rentals will not increase public access, they will just replace one set of visitors with another;
- Short Term Rentals under these conditions are not permitted by the Carmel Area Land Use Plan, Local Coastal Program<sup>1</sup> and the Big Sur Local Coastal Plan;
- The Coastal Commission is exceeding its authority in pre-determining that Short Term Rentals housing multiple families and large groups be allowed in the Coastal Zone;
- Current traffic conditions are a threat to public safety and the idling, stop and go traffic conditions are the largest source of greenhouse gases and other air pollutants in Monterey except for Moss Landing powerplant – the largest fossil fired plant in the United States;
- Short Term Rentals have proven to be a “taking” requiring compensation because of actions and failure to control guests by Short Term Rentals owners and zoning laws. The Carmel Highlands is designated “low-density residential” in the Carmel Area Land Use Plan and people who purchased homes there have a right to expect that it will not become an area filled with hotel equivalent businesses;

- Short Term Rentals are a threat to neighborhood safety as new, unknown and anonymous visitors come in every few days to what were safe and stable residential neighborhoods;
- The noise levels contemplated in the Planning Commission “Committee” are louder than those permitted adjacent to a Los Angeles freeway and entirely incompatible with visitor or resident experience in the Coastal Zone;
- Monterey has a shortage of affordable housing, particularly long-term rentals. Dozens of cities around the world have banned or are moving to ban Short Term Rentals because of problems actually experienced in those areas, particularly the loss of affordable long-term rental units for the people who live and work in the area;
- Septic tank systems at residences in the Highlands are not built or maintained properly for the influx of visitors they would experience which can result in groundwater and coastal pollution;
- Short Term Rentals discriminate against the handicapped;
- Some Short Term Rentals owners have recently been identified as discriminating on the basis of race, and Air BnB requires its customers to waive key rights to sue for denial of their civil rights;
- Large-scale real estate, hedge fund, hotel chains and Silicon Valley companies who serve their shareholders and not the community have taken over the Short Term Rentals industry – it is not primarily somebody renting out a spare bedroom anymore.

***Short Term Rentals in the Coastal Zone will not increase accessibility, but will be a threat to public safety, will degrade the environment and enjoyment of the most beautiful coastline and public highway in the United States, and arguably the world.***

By UPS or U.S. Mail and/or Email

Addresses and distribution list are at the back of the document in Appendix A

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Dear Ms. Beretti, Ms. Craig, and Mr. Lewis;

It was reported in the local papers recently that the California Coastal Commission recommended that Monterey County allow short term, hotel equivalent rentals in “its coastal zone”, which includes Big Sur, Carmel Highlands and Carmel. The letter further noted that Short Term Rentals “offer low-cost overnight opportunities, especially for families and large groups.”<sup>2</sup>

The Monterey County Planning Commission of notice of a public workshop to be held July 13, 2016 on Short Term Rental Ordinances. The notice states in part :

“IF YOU CHALLENGE THIS MATTER IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS PUBLIC NOTICE OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE PLANNING COMMISSION AT OR BEFORE THE PUBLIC HEARING.” [emphasis copied from notice]

This document is intended to be written correspondence as required by the above notice, reserving to myself and other opponents of Short Term Rentals the right to raise these issues in Court.

The Monterey Planning Commission has held periodic meetings with a group of citizens (the Committee) to examine policy with respect to Short Term Rentals. I obtained the documents from the County through a Public Records Access Request. These comments are based in part on the focus group results, agendas and other documents supplied pursuant to that request.<sup>3</sup>

1. The analysis in the letter from the Coastal Commission is deeply flawed, and exceeds the Coastal Commissions authority.<sup>1</sup>
2. There are over 600 illegal Short Term Rentals in the Monterey area already, and both the Planning Commission and Coastal Commission are required to include realistic growth projections for part of their reviews, and worst-case conditions for a number of areas to determine CEQA compliance.<sup>4</sup>

3. For example, according to an article in Monterey County NOW, March 13, 2014 *Land Lords*; “Blake and Erika Matheson started doing short-term rentals in Pacific Grove in August of 2010, just months after the city passed the ordinance. They decided to fix up an in-law unit on their property. These days, it’s nearly always booked. “What started off being a few weekends became what it is today, where we have about three days off per month,” Erika says. They are not struggling to pay their mortgage, he says, it just seemed like a good idea, and it’s now something they enjoy doing. “It has significantly changed our cashflow, and our lives,” he says. “It’s appreciable.”
  - a. It is therefore appropriate to use this example to determine reasonably foreseeable occupancy factors. This is a 90% occupancy factor.
  - b. The example also is consistent with a history of Short-Term Rental owners increasing the number of bedrooms available for rental, the percentage of days of the year that the units are rented, and the size of the groups that are rented to.
  - c. Short Term Rentals are often rented to multiple and extended families who share the cost.
4. The California Public Utilities Commission (CPUC) and not the Coastal Commission is the appropriate Lead Agency for any environmental review because the CPUC is the Lead Agency for the Regional Desalination Project and other critical water projects intended to serve Monterey.
5. Large-scale real estate, hedge fund, hotel chains and Silicon Valley companies are already in the Short-Term Rentals industry, and many more are expected. This is no longer a cottage industry of folks renting out a spare bedroom from time to time.
6. Using data from around the United States, and local experiences as well, it is reasonable to expect that the number of dwellings that will be part of the Short-Term Rentals industry will exceed 1,000 in the relatively near term, and in the worst case upwards of 2,600 over the longer term, and arguably more.
  - a. Each dwelling has an average of four bedrooms.
  - b. The Focus Group effort as part of the Committee process appears to favor 2 persons per bedroom plus 2 more, equaling 10 persons per dwelling.
  - c. The Committee similarly settled on around 6 cars per dwelling.
7. Ten persons per dwelling will add between 10,000 and 26,000 visitors into an area with already saturated access to the coast.
8. This is a realistic number. A Short-Term Rental at 101 Lower Walden near my home rented to 22 people one weekend, and had many multi-family and wedding groups with many more than 6 cars for over two years, and despite dozens of complaints by over 17 neighbors within ½ mile from the Short Term Rental.

## Water

9. Each visitor uses between 45 and 101 gallons of water per day, mostly for bathing.
10. At a minimum Short-Term Rentals will, and probably are already, using 450,000 gallons per day of water, and may use, even in the middle of a drought, and in the face of a cutback order from the State Water Commission, more than 2.6 million gallons per day.
  - a. At a 90% occupancy factor annual use is between 147 million and 804 million gallons per year.

**11. There is NO water for the portion of the Coastal Zone served by Cal-Am for Short-Term Rentals. None has ever been requested and none has been allocated. Required procedures for intensification of residential use for short-term rental purposes have not been initiated, let alone followed.**

- a. The Planning and Coastal Commissions do not have the authority to divert up to 2.6 million gallons of water per day from existing homes and businesses in Monterey County. Coastal Commission and Committee positions are in direct conflict with the “Water Availability” provisions of the Carmel Land Use Plan, Local Coastal Plan which states<sup>5</sup>:

New development shall be approved only where it can be demonstrated by the applicant that adequate water is available from a water utility or community system or an acceptable surface water diversion, spring, or well. At the County's discretion, applicants may be required to submit a hydrologic report certifying sustained yield of the water source to serve new development outside of existing water utility service areas.

As part of the permit process, the applicant must also demonstrate that the proposed new water use or use intensification will not adversely affect both the natural supply necessary to maintain the environment, including wildlife, fish, and plant communities, and the supply available to meet the minimum needs of existing users during the driest year. At the County's discretion, the applicant may be required to support his application through certification by a consultant deemed qualified by the County to make such determinations. The County will request that the Department of Fish and Game provide a written recommendation on each application

12. The properties in the Carmel Highlands are largely on septic tank systems that have not been constructed, designed, or maintained for the number of visitors likely to stay in Short-Term Rentals. This poses a real threat to groundwater supplies and coastal ecology.
13. Allowing Short-Term Rentals in the Coastal Zone is inconsistent with other rulings of the Coastal Commission, is in direct conflict with the Carmel River cutback order of the State Water Board, and the Lead Agency role of the California Public Utilities

Commissions conducting the CEQA/Environmental Review of the Regional Desalination Project.

14. The Regional Desalination Project is designed to create replacement, not additional water to the peninsula, and is crucial to the future of Monterey County. Without it, many businesses may be forced to close and severe water conservation will be required of homeowners. There is no additional water allocated for Short-Term Rentals in the Regional Desalination Project.
15. For example, according to Monterey County NOW (April 2, 2009)

### Sand Castle

Monterey Bay Shores Ecoresort is buried to the neck in drama.

For the past 16 years, Sonoma-based developer Ed Ghandour of Security National Guaranty has poured a fortune into planning, litigation and wheel-greasing in an effort to secure permits for Monterey Bay Shores, a 341-room, \$225 million mixed-use resort on a 32-acre former sand mine in Sand City. . . . Almost a decade ago, the Monterey Peninsula Regional Water Management District denied Ghandour’s water distribution permit and the California Coastal Commission quashed the coastal development permit. For the next nine years Ghandour fought back with failed appeals and dead-end design revisions. . . . But last May, Ghandour regained his advantage: The appellate court overturned the Coastal Commission’s decision and ordered it to reconsider the development application based on Sand City’s Local Coastal Plan, an easier standard than the state’s. . . . The water board issued Ghandour a setback last month by denying his water distribution permit, questioning the environmental impacts of a water supply delivered by California American Water. . . . “The Coastal Commission has denied any and all new developments using new water in North County for years, based on the fact that that area has an inadequate water supply. Ghandour has a right to use that water, but he can’t do it without an analysis of the impacts of that use

16. There is essentially no water for the portion of the Coastal Zone served by Cal-Am for short-term rentals. We are operating under a cutback order by the State Water Commission that requires building a Regional Desalination Project, maintaining strict water conservation practices, allows no new water using connections, and just recently lowered the amount of water Monterey can divert from the Carmel River, “arguing that amount represented Cal Am’s six-year pumping average during the entire cutback order period.” Since short-term rentals have been illegal for the whole of that time, there is simply no water at all for new uses that have not previously applied for water now or in the future. No short-term rental groups has ever applied for water with Cal-Am or asked that it be included in the Regional Desalination Project. The Coastal Commission does not have the authority to divert water from the uses it is being built for, and for which

many have been waiting decades, to a visitor's use that will not increase access to the coast (because it is already used beyond capacity by visitors).

17. The Coastal Commission and Committee positions are in direct conflict with the "Water Availability" provisions of the Carmel Land Use Plan, Local Coastal Plan.<sup>6</sup>
18. Some have taken the position that Short-Term Rentals will not increase water use. Short Term Rentals is already increasing water use and this will increase more as occupancy rates in Short Term Rentals go up. Please note the view that water use will not go up is a physical impossibility and will be laughed out of any court. Short Term Rentals visitors will use up to 800 million gallons per year taking it directly and illegally from "supply available to meet the minimum needs of existing users during the driest year." (Carmel Land Use Plan)
19. If the Short Term Rental property is owner-occupied, all additional people are additional water users. If the Short Term Rental is not owner-occupied (in other words it is just a plain old hotel), then the owner is off somewhere else consuming water while the guests are consuming water at the Short Term Rental.
20. The Coastal Commission positions are entirely inconsistent with the Coastal Commission's positions on the Desalination and other water supply projects going through the permitting process right now, as well as hotel projects that have been proposed for the Monterey area.

### **Visitors Already Saturate Existing Infrastructure: Traffic, Gridlock, Coastal Access, Public Safety and Air Pollution**

21. The 6 vehicles per Short-Term Rental will add between 6,000 and 15,600 vehicles to an area already experiencing gridlock.
  - a. This violates both the Carmel Highlands and Big Sur Local Coastal Plans.
22. The gridlock is being experienced on an increasing number of days and times each year.
23. Average speeds during gridlock have been 4 miles per hour in 55 mph zones. Between Yankee Point and Rio Road there are over 700 cars and trucks in this stop and go traffic. The traffic gridlock already being experienced represents a current threat to public safety because emergency vehicles are hindered, and persons needing to get to medical aid in their personal cars are virtually stopped.
24. The traffic gridlock is now the largest air pollution and greenhouse gas emissions source in the Monterey area since the permitting of the Moss Landing Powerplant – the largest fossil powerplant in the United States. This is because gridlock slows traffic to 4 miles an hour in a 45 to 55 mph zone, resulting in 700 cars emitting carbon dioxide, methane,

carbon monoxide, nitrogen oxides, formaldehyde, benzene and other pollutants because most catalytic converters require higher speeds (and temperatures to operate properly).<sup>7</sup>

25. The area is already saturated beyond capacity with visitors here to visit our State Parks and other coastal resources. There are no more parking spaces, bathrooms, or other amenities to accommodate an influx of new visitors in Short Term Rentals.
  - a. I have personally observed persons parked on Highway 1 going to the bathroom, and residents have found human feces and other human waste in sensitive areas that flow directly in to the ocean.
26. Short Term Rentals presence will increase the existing gridlock, and exacerbate the damage to the coastline. In particular Point Lobos, Pfeiffer Beach/Sycamore Canyon and other public parks are often dangerously overcrowded, particularly during periods when Short Term Rental and Hotel occupancy rates are highest.
27. Short Term Rentals will not increase visitor access, it will replace one group of visitors with another, while degrading the experience for everyone, all in violation of the Local Coastal Plans of both Carmel Highlands and Big Sur.
28. Short Term Rentals will not make use of unused public property, rather it will be competing for space already being overused by visitors.
29. Short Term Rentals will degrade visitor access to the Coast, while making the whole experience much less enjoyable as visitors compete for parking spaces, hiking trails, and view points are overcrowded.
30. Increased traffic from Short-Term Rentals is in direct contradiction with the Federal Department of Transportation National Scenic Byways Program.
  - a. The Big Sur Coast Highway was declared the first State Scenic Highway in 1965. In 1996 it was designated the first All American Road under the Federal Highway Administration National Scenic Byways Program. Its role in providing affordable, readily available coastal access to millions of annual visitors is recognized in the Big Sur and Carmel Highlands Land Use Plans. The mandate to protect the quality of the recreational driving experience is likewise addressed in the Big Sur and Carmel Highlands Land Use Plans. Management of the use and capacity of Highway I is essential to achieving the goals of the Big Sur and Carmel Highlands Land Use Plans to provide public access to the Big Sur Coast along this scenic route and the protection of the environment and quality of the visitor experience.<sup>8</sup>

## **CEQA, Coastal Commission Exceeding Authority, “Taking” Property Rights Without Compensation; Short-Term Rental Industry is Big Business**

31. The fact that the Coastal Commission now seems enamored of one form of hotel (i.e. Short Term Rentals) over other already-legal forms does not permit it to override these important provisions of the Local Coastal Program. This is particularly true where the Coastal Commission position will fundamentally change the nature and character of the area by permitting [multiple] “families and large groups.”
32. With respect to inconsistency in hotel permitting, the Coastal Commission opposed hotel projects in Sand City, Flanders Mansion in Carmel, and elsewhere that proposed less than 300 rooms. The STR potential in the Coastal Zone is over 1,000 homes, totaling over 4,000 rooms. **AT A VERY MINIMUM ANY HOTEL OR SHORT TERM RENTAL PROGRAM MUST GO THROUGH EXTENSIVE ENVIRONMENTAL REVIEW.** Using logic from Coastal Commission positions on other Hotel projects, there will be major environmental damage from adding more than 10,000 visitors and 6,000 cars in to the Coastal Zone.
33. The Coastal Commission position usurps land use authority reserved to local governments in order to privilege one form of visitor accommodation over another.
34. **NEIGHBORS PROPERTY VALUES DECLINE.** Sort-term rental abuses have gotten sufficiently onerous that Realtors now must disclose the presence of such rentals when selling nearby homes and property values go down as a result. This is a taking within the meaning of the various eminent domain statutes, and the government has enormous potential liability, and appropriately so, for forcing short term hotel equivalent businesses into residential areas.
35. Carmel Highlands is designated as a low density residential area. Allowing hotel equivalents in Carmel Highlands in the form of Short Term Rentals, particularly for multiple “families and large groups” that change every week sufficiently “re-zones” the area to constitute a taking that will require considerable compensation to homeowners.
36. The Coastal Commission position fails to take in to account the evolution of the Short Term Rental industry which has asserted its right to openly violate local laws regulating it, and developed a business infrastructure to circumvent all reasonable rules governing its operation.
37. The Coastal Commission position is largely unchanged since the 2013 and does not take in to account the large body of experience and change in the Short Term Rental industry since that time.

38. The Coastal Commission does not have the authority to ignore these facts in making its determinations, and needs to thoroughly re-examine its position and policies with respect to Short Term Rentals.

## **Noise, Trespassing, Discrimination, Security and Enforcement**

### **39. Noise levels contemplated by the Committee exceed those permitted for areas adjacent to freeways in Los Angeles.**

- a. Residents of Carmel Highlands (myself included) experienced these noise levels from an illegal rental at 101 Lower Walden over a two year period. Over 17 neighbors were impacted, causing many sleepless nights, and many dozens of complaints failed to fix the situation. I personally measured the noise levels with a dB meter. The owner's agents and designated representatives failed completely to control the situation, and ultimately it was clear they were there to protect their clients, not to make things right for the neighborhood. On the evening of one Short Term Rental I measured at approximately 11 p.m. and noted that "the sound levels at the back door of my house and they peaked at 89 db, average 68, low 51. About 4 minutes ago. Inside my house they peak at 81db."
40. Short Term Renters have a track record, including those at 101 Lower Walden, of trespassing on neighboring properties, parking dangerously on the road or trespassing their cars on neighboring properties, and a host of other problems inconsistent with the quiet enjoyment of our own homes.
41. The Enforcement program contemplated by the Committee depends upon Short Term Rental owners to enforce noise standards, but gives them tremendous leeway, allowing violation after violation of our neighborhood's rights to the quiet enjoyment of our homes. Short Term Rental owners have proven particularly reluctant to enforce noise restrictions and trespassing. And now the Coastal Commission is asking the neighbors to trust the same people who have been illegally renting and openly violating the law by failing to control their guests. Under the option considered by the Committee, owners who rent out parts of their houses only have to use their best efforts, at best a weak requirement. The County has to find two violations before any ramification occurs – a lengthy and bureaucratic process, and even then there was no explicit authority to shut them down. "Sandra Sagert, who heads Anaheim's code enforcement unit, said noise complaints and other problems have grown with the surge of short-term rentals in the city."<sup>9</sup> What if the owner can't or won't control their guests, and what if the County can't or won't revoke any licenses and shut them down?
42. Neighbors of Short-Term Rentals face significant costs to secure their homes in ways not necessary for our current safe and quiet neighbors because every week there are unknown persons living adjacent to and wandering through the neighborhood. In our case we experienced short-term visitors going from door to door after midnight ringing doorbells and running away, and there was frequently evidence of trespass and illegal parking on

neighbors property. Fences need to be built, and security for children implemented. These costs add up quickly, and in the end the Short-Term rental owner enjoys the profits while the neighbors bear the cost and inconvenience of their modifications. In reality, the effort of enforcing proper Short-Term Rentals behavior falls to the neighbors.

- a. The County does not have the personnel or budget to enforce Short-Term Rental ordinances, and the Short-Term Rentals industry has become sophisticated at hiding true ownership, renting out in violation of local laws, and using political clout to weaken local enforcement. This leaves neighbors the task of enforcing the ordinances through litigation and other legal means.
  - b. The most cost-effective of these to neighbors is currently in Small Claims Court where groups of neighbors can each sue a Short Term Rental owner for Nuisance for each night of rental.
43. Those who seek to be Short-Term Renters in New York and other areas have regularly been denied access based on their race in violation State and Federal law.
- a. “Users report racial bias when using app, which comes after Harvard study found ‘African-American sounding’ names 16% less likely to be accepted as guests” (#AirBnBWhileBlack hashtag highlights potential racial bias on rental app; The Guardian, 5 May 2016)
  - b. “As Katie Benner writes, Airbnb is currently under scrutiny over the way some of its members choose who they will rent to. One study shows it’s harder for people with names that seem African-American to book stays. Yet if those people are wronged on Airbnb, there’s little they can do to seek legal redress. As part of signing up for an Airbnb service, renters waive the right to sue Airbnb, or join any arbitration or class-action lawsuit against the company. A few months back, Airbnb highlighted those terms, and older users were compelled to show that they were aware of the rights they were losing by listing with Airbnb. The class-action waiver is particularly important where discrimination is concerned. Class actions are a strong tool in discrimination cases, as the significance of the number of participants reinforces the idea that a systemic ill is being promulgated. It is the kind of thing that has helped ease discrimination by hotels and real estate brokers”— Airbnb’s old-economy counterparts. (Airbnb and Social Control in the Sharing Economy; New York *Times* June 20, 2016).
44. Short-Term Rentals have regularly denied access to the handicapped persons in violation of the American with Disabilities Act. This discriminates against the handicapped by not requiring that the largest hotel project in the history of Monterey be required to provide ADA facilities and meet ADA standards.
45. When 300 notices of violation were sent out in 2016, over 600 letters were received by the Supervisor’s office sent by Short Term Rental businesses demanding their illegal practices be made legal. None of those 600 sites had a legal right to the water they were using, which tallies somewhere between 20 million and 60 million gallons per year.

Applying required EIR procedures, the numbers will be much, much higher. Carmel-By-The Sea has also started enforcing the ban on Short Term Rentals more aggressively.<sup>10</sup> Then after the 600 letter response,(and noting for the record that campaign contributions were made to Supervisor Potter by a advocacy group for Short Term Rentals), the Planning Department’s timeline was suddenly vastly accelerated just days after announcing the process for drafting a new ordinance would take until mid-2017.

## **Housing Costs and Availability for the People who Live and Work in Monterey County**

46. In addition, cheating by Short-Term Rentals owners has been rampant. For example:

- a. “Of particular concern to officials are the Airbnb hosts who lease multiple apartments, renting them out year-round and distorting their market value in a climate of scarce affordable housing. One Airbnb user who spoke with the *Times* provided a glimpse into how lucrative the scheme could be. Josh, who agreed to describe his business on the condition that his last name not be used because he was fearful of legal penalties, said he rents out five apartments in Manhattan. Each one earns about \$100,000 a year, he said, totaling about half a million dollars annually before fees. Only one of the leases is in his name, he said. The other four are held by people he has recruited to sign the leases in exchange for a percentage of the rental income. The arrangement is illegal. The New York State Multiple Dwelling Law prohibits apartment rentals of less than 30 days unless a permanent occupant is there. Yet Josh said that he personally knew several others engaged in the scheme in New York City. 124 hosts, all of whom had a minimum of 10 listings on the site and were earning an average of \$500,000 a year.” (“Hotels in Disguise”, *New York Times*, December 3, 2015)
- b. “. . . the agent’s relationship with Airbnb soon shifted from desperation to opportunism. Realizing the potential to exploit the difference between long- and short-term rental prices, he signed a lease on a second Manhattan apartment this summer. He now uses it solely for Airbnb, generating up to \$6,000 a month in profit. Last month, he added a third rental — this one under his wife’s account. He plans to add more, he said, possibly even under phony accounts to avoid legal scrutiny. . . Another New Yorker, a 49-year-old entrepreneur (who also insisted on anonymity), got his start on the site after shareholders pushed him out of the information technology company he had founded, leaving him without a source of income. . . But after renting out his apartment on Craigslist and through word of mouth, he signed up for Airbnb in early 2011, with a plan to make short-term rentals his full-time job. He signed leases on former factory spaces in Lower Manhattan, renovating them and listing them on Airbnb. At his peak, he said, he managed 12 listings and hired a team of cleaners, greeters and handymen to keep his scatter-site hotel operating. His relationship with Airbnb, however, turned sour

when Schneiderman sought data from the company about operators like him. . . . And who would want to stop a man with 12 apartments from making ends meet?“ (“The Business Tycoons of Airbnb”, *New York Times*, November 25, 2014)

47. The numbers of potential renters and cars above are reasonable and appropriate because they are less than 50% of the worst case conditions that you would be required to consider in a proper EIR.
48. The assertion by the Coastal Commission that an ordinance modeled on “Santa Cruz and San Luis Obispo counties [are] places where ordinances permitting short term rentals have been successful” ignores the facts that are unique to the Coastal Zone in Monterey County and that the evolution of the STR industry is dramatically different than even one or two years ago. Both Santa Cruz<sup>11</sup> and San Luis Obispo are in fact experiencing increasing problems with STR and have not found solutions as yet. The problem is that ways to circumvent the proposed changes are also well known in the STR industry. The Coastal Commission should take administrative/judicial notice not just of the problems experienced in Santa Cruz and San Luis Obispo, but also serious problems encountered in:
  - a. Amsterdam, Netherlands; Anaheim, CA; (Anaheim just banned short-term rentals entirely. Residents had complained that Disneyland visitors had overrun their neighborhoods. (New York Times; July 1, 2016); Berlin, Germany;<sup>12</sup> Big Sur, CA; Carmel Highlands, CA; Carmel, CA; Danville, CA; Dana Point, CA;<sup>13</sup> Goleta, CA;<sup>14</sup> Hermosa Beach, CA;<sup>15</sup> Huntington Beach, CA;<sup>16</sup> Laguna Beach, CA;<sup>17</sup> Los Angeles, CA;<sup>2</sup> Malibu CA; Mill Valley, CA; Montecito, CA; (“Montecito Says No to Short-Term Rentals” *Independent News*, November 21, 2015; *Growing sentiment countywide against short-term vacation rentals in residential neighborhoods received more unanimous backing with the Montecito Planning Commission’s recent support of an all-out ban, even in areas where vacation homes have been operating for years, such as Miramar Beach.*); Nagano, Japan; New Orleans, LA; New South Wales, Australia; New York, NY;(*In New York, where the housing shortage is dire, the law forbids virtually any short-term rental of a residential unit. The city is proposing to sharply ramp up enforcement and penalties, in part because state Atty. Gen. Eric Schneiderman has charged that 72% of private short-term rentals violate the law. (Los Angeles Times, July 19, 2015); Ojai, CA; Pacific Grove, CA (In Pacific Grove — where a short-term rental program was approved with barely an objection during the recession — voices are beginning to be raised asking for the program to be rescinded. – Carmel Pine Cone October 16, 2015); Paris, France; Portland, OR; Redondo Beach, CA San Francisco, CA; “Last month, San Francisco supervisors unanimously approved an ordinance that would fine Airbnb \$1,000 per day for*

*each host listed on its website who is not registered with the city.” New York Times, July 1, 2016. . . Campos says illegitimate rentals have effectively taken 1,900 long-term housing units off the San Francisco market at a time when the city is experiencing a historic housing shortage. But the reality that concerns municipal officials is the drastic expansion and commercialization of short-term rentals. There are indications that owners or managers of single or multiple properties available for rent year-round provide a disproportionate share of the market's volume. (Los Angeles Times, July 19, 2015). And just three weeks ago “Airbnb Sues San Francisco to Block Rental Registration Law: Startup is seeking an injunction to prevent the city from fining Airbnb for each unregistered listing (June 27, 2016 Wall Street Journal); Santa Monica, CA; Vienna, Austria; and many, many others.*

49. For example, “What we're trying to stop is the phenomenon of people buying buildings and evicting tenants so they can rent to tourists for three to four times as much. . . .” But there's a commercial short-term rental industry that buys entire buildings and rents them all out. That's changing the character of the neighborhood and taking housing stock away from people who need it.”

A study issued in March by the Los Angeles civic group LAANE found that although 52% of the listing hosts on Airbnb in L.A. were on-site hosts offering private or shared rooms, they accounted for only 11% of revenue in the market. Leasing companies offering two or more whole units constituted 6% of all listing hosts but accounted for 35% of revenue.

*REALTOR MAGAZINE, December 2015*

STRs are having a dangerous effect on our housing stock. In L.A., a city desperate for more affordable housing, 11 units of long-term rental housing are being lost daily to STR conversions, according to a report from the Los Angeles Alliance for a New Economy. The report says people are converting rent-controlled units into commercial STR operations, and long-term rent-control tenants are being evicted. The loss of these units in the long-term rental market has driven up total housing costs for L.A. renters by more than \$464 million in the last year.

The trend for STRs is away from “shared spaces,” where owners are present. Individuals are now purchasing single-family or multifamily units to turn them into STRs — creating a business — to the considerable detriment of their neighbors. Some short-term renters turn these locations into party houses, creating noise, traffic, and a public nuisance. In such instances, neighbors who need a night’s sleep to work the next day or who have school-age children are disturbed. In my neighborhood, a home owner leased her property for a year to someone she believed was occupying it, only to learn he listed it on one of the STR sites as a “commercial party house.” Some 500 people being charged \$125 apiece

crammed narrow, winding canyon roads by illegally parking and throwing trash everywhere. When the property owner was alerted, she was shocked and started eviction proceedings.”

50. Another example, while drafting this letter (June 28, 2016), the New York Times published an article, “*Airbnb in Disputes With New York and San Francisco*” that states, “Airbnb executives once promoted San Francisco as a city it could work with. After affordable housing advocates expressed fear that the service worsened the city’s housing crunch, Airbnb agreed to cap short-term rentals for entire homes and required hosts of such listings to register with the city. That law, which became known as the “Airbnb law” for its friendliness to the company, took effect in February 2015. But only 20 percent of the 7,000 or so hosts required to register have done so, and Airbnb has not removed lawbreakers . . . .”
51. The Coastal Commission letter supporting Short Term Rentals for “families and large groups” also fails to take in to account there is already a process in place for homeowners to do short-term rentals either by applying to become a Bed & Breakfast or through the Conditional Use Process. Both of these processes provide appropriate safeguards for business and adjacent homeowners. Short Term Rentals programs have clearly and unequivocally proven to eviscerate reasonable cost housing for people living and working in the area, driving up costs and commute times, while shrinking the labor pool, and making serving the influx of visitors already here more and more difficult. The saturation point that has already been reached and exceeded by visitors will disastrously impact the ability to serve these and other visitors to the area. This problem already exists in the Coastal Zone and hundreds of other cities. And now Air BnB is actually suing the City of San Francisco who is trying to stop advertising of illegal rentals on the Air BnB site. New York State legislature has passed a similar bill.
52. The Monterey Herald reported (6/24/16) “The demand for rental housing on the Monterey Peninsula now far exceeds the supply. . . People are scrambling out there,” said Jan Leasure of MontereyRentals.com a consortium of seven local property managers. “We manage about 400 houses and right now there is a 1 percent vacancy rate.” The problem pertains to the long-term rental market as there are plenty of short-term rentals, said Leasure.”
53. The Coastal Commission must consider Housing and Rental Costs. The Coastal Commission letter seems to suggest the extreme impact Short-Term Rentals have on long-term rental availability and costs in a time of housing shortage need not be considered. The lack of appropriate weight to the issue does a disservice to city after city after area that have seen housing costs for the people who are needed to live and work in an area skyrocket beyond any reasonable measure or ability to pay. In effect, the Coastal Commission seems to envision a future where visitors and corporate owners of formerly residential properties are served by people who live one, two, three hours away who have to commute in heavy traffic to jobs, many of which are not high paying.

- a. Mike Novo, former Director of County Planning states (memo, April 1, 2016), addressed this issue for Big Sur, and it is evident it should apply to Carmel Highlands as well:

“As it stands today, we have a large need for housing in Big Sur, and a very small supply. The situation in Big Sur, where much of the acreage is in public ownership, under conservation easement, or undevelopable due to our policies, means that housing supply will be constrained in the future as well.

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The need for housing includes affordable housing for employees that work in the area and housing needs for the community, so that a nucleus of residents can remain to represent the community and work or volunteer in the local businesses and governmental functions. Housing needs for the community includes long time residents, artists who provide to the galleries in the area, and an available supply so that the children of residents have a place to live as they get older and establish their own households.

Short term, or vacation, rentals are nothing new. They have been in existence for many, many years. There are heavily used tourist areas (e.g., Sea Ranch, Tahoe, and Yosemite) where whole communities of second homes and vacation homes are the rule, and housing for residents is the exception. With the relatively new tools being used on the web for short term rentals, the pressure on housing stock to convert to short term rental use is great in areas such as Big Sur and we should ensure that housing for the community does not become the exception.

From what I know so far, I believe that there likely is not enough housing stock for the needs of just the community and for employee needs. While not all employees will want to live in the community, we should plan to try to accommodate the needs of those that want to live near their jobs. That creates a safer environment for travelers on Highway 1 by reducing the need to commute long distances from outside Big Sur. It also helps to have a core nucleus of residents who stay and are invested in the community and meets our goal of reducing greenhouse gas emissions.

As such, I do not think that we have a substantial supply of housing that could or should be converted to short term rentals in Big Sur. The needs of the community and accommodating employee housing needs should come first.

## **ENVIRONMENTAL REVIEW REQUIRED: CEQA**

54. Although not directly the concern of the Coastal Commission, the Board of Supervisors and other agencies (including the Coastal Commission) may properly take in to account evidence of racial discrimination, discrimination against the handicapped, safety and security concerns, noise problems, enforceability issues, neighborhood character, local Land Use Plans, and the elements of all Environmental Impact Statements including: Aesthetics, Agricultural resources, Air quality, Biological resources, Cultural Resources, Geology and Soils, Greenhouse gases, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public services, Recreation, Transportation and traffic, Utilities and Service Systems.
55. There is a clear environmental and social impact from the promotion of one form of commercial visitor housing over another. In one, some Silicon Valley Corporation makes decisions based on the best interest of its shareholders, and does not contribute or participate in the community, versus the other where local government makes the decisions where visitor housing should go based on all the factors that need to be considered. To usurp this local authority in favor of an uncontrollable hotel-equivalent model that serves the interests of its shareholders is beyond the scope of the Coastal Commissions authority.
56. The CEQA analysis required here is among the most extensive in the history of Monterey County because it impacts almost every area required in a CEQA analysis extensively. Most of The areas for CEQA Environmental impact analysis are listed below, and 15 of the 17 have a negative impact that are likely not able to be mitigated:
- 3.1 Aesthetics – likely negative impact
  - 3.2 Agricultural resources – likely not impacted
  - 3.3 Air quality – clearly negative impact
  - 3.4 Biological resources – likely negative impact
  - 3.5 Cultural Resources – clearly negative impact
  - 3.6 Geology and Soils – likely negative impact (septic systems)
  - 3.7 Greenhouse gases – clearly negative impact
  - 3.8 Hazards and Hazardous Materials – clearly negative impact
  - 3.9 Hydrology and Water Quality – clearly negative impact
  - 3.10 Land Use and Planning – clearly negative impact
  - 3.11 Mineral Resources – likely not impacted
  - 3.12 Noise – clearly negative impact
  - 3.13 Population and Housing – clearly negative impact
  - 3.14 Public services – clearly negative impact
  - 3.15 Recreation – clearly negative impact
  - 3.16 Transportation and traffic – clearly negative impact
  - 3.17 Utilities and Service Systems – clearly negative impact

## **CONCLUSION**

It is not the time for Monterey County to pass an ordinance allowing Short Term Rentals in the Coastal Zone, or anywhere connected to Cal-Am. The industry and enforcement mechanisms are evolving rapidly, and Monterey needs to study the Short Term Rentals and the enforcement mechanisms used by cities and counties around the world to combat the many problems they bring, develop additional water supplies, have well-funded mechanisms and ample personnel to strictly enforce any ordinance, and make sure there is plenty of affordable housing before legalizing Short Term Rentals.

Respectfully Submitted,

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## **APPENDIX A Addresses and distribution list**

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Sacramento, CA 95814

By email to various interested parties.:

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## END NOTES

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<sup>1</sup> version 12/16/1999

<sup>2</sup> Letter by Susan Craig to Monterey County dated June 23, 2016. I have not been able to obtain the original letter, so the analysis is based on newspaper reports quoting the letter.

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<sup>3</sup> The members of the Committee represent only a small portion of the views of the citizens of our area, and in particular do not represent the views of many residents of Carmel Highlands who have had distressing experiences with Short Term Rentals adjacent to or within hearing distance of 101 Lower Walden and 183 Sonoma Lane. Both locations were doing illegal Short-Term Rentals between at least 2012 and 2014.

<sup>4</sup> An analysis by the Monterey Herald (June 3, 2015) found over 600 ads for illegal short-term rentals in our area. “[A search on Airbnb, a website where people can rent lodging, shows more than 350 short-term rentals available in Monterey. On Vacation Rentals by Owner (VRBO), a similar site, 218 rentals are listed in Carmel. On Craigslist, a search for Pebble Beach/Pacific Grove produces 73 listings.”

<sup>5</sup> Page 41

<sup>6</sup> Page 41

<sup>7</sup> Catalytic converters do not work properly at such low speeds because of exhaust temperature related issues.

<sup>8</sup> E.g. Big Sur LUP 2.1, pg. 6, LUP 3.1, pg. 10, and LUP 6.1.3, pg.118. Quoted in large part from letter by the Big Sur LCP Defense Committee. <https://bigsurhcp.com>

<sup>9</sup> L.A. Times

<sup>10</sup> As noted in the Carmel Pine Cone [the city will be] “STEPPING UP efforts to put an end to short-term rentals — which are banned in Carmel but still happen, anyway — city attorney Don Freeman announced Tuesday the city would be taking a “very aggressive” stance on them, including hauling property owners into court.” – Carmel Pine Cone October 9-15 2015.

<sup>11</sup> See KION September 30, 2015

<sup>12</sup> See Slate.com April 12, 2014 and <http://www.investopedia.com/articles/investing/083115/top-cities-where-airbnb-legal-or-illegal.asp>

<sup>13</sup> Short-Term Rentals not allowed in residential areas

<sup>14</sup> Short-Term Rentals not allowed in residential areas

<sup>15</sup> Short-Term Rentals not allowed in residential areas

<sup>16</sup> Short-Term Rentals not allowed in residential areas

<sup>17</sup> See <http://www.ocregister.com/articles/short-692385-beach-city.html>