

CALIFORNIA COASTAL COMMISSION

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Th10c

LCP-5-LGB-19-0074-1 (SHORT-TERM LODGINGS)
AUGUST 13, 2020

CORRESPONDENCE

Public Comment on August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals).

Karyn Lewandowski <kdowski@gmail.com>

Fri 8/7/2020 11:11 AM

To: SouthCoast@Coastal <SouthCoast@coastal.ca.gov>

Hello-

I am writing against the Laguna Beach movement to ban all short-term rentals in residential zones. As a homeowner in Laguna Beach and frequent traveler I believe an outright ban is extreme overreach and infringement on our property rights. I don't understand why there is not some middle ground/compromise to be made here.

I believe that there are many different scenarios and also possibilities for compromise. At minimum, homeowners should have the flexibility to rent out their home short-term if it is their primary residence and they live there most of the year.

I live in Laguna Beach, and my home is my primary (and only) residence (for going on 11 years). I travel frequently and would like to have the option to rent out my home at times while I am gone. Because it is my home, I am very concerned about the same things that my neighbors and community are concerned about: I don't want to upset my neighbors. I don't want to rent to someone who will trash my house and cause problems. I don't want to create extra problems with parking. I want to make sure I have no liability issues. Etc. This home is where I live.

I have rented my home out for short periods in the summer in the past (weekly rentals for a total of 2-3 months maximum). Over several years of doing this, I have never had any problems or complaints. I did not have a permit, because at the time I didn't realize one was required for my primary residence and for such short periods of time.

When I rented my home short term in the past, I screened potential tenants very carefully. I had a nearby property manager who was available 24/7 to deal with any issues (of which I never had any). I had proper homeowner's/liability insurance. I rented to single families with one car, which is exactly the same neighborhood impact as when I am home (same parking needs, same home usage, same trash, etc). Over several years of short-term renting my home in the summer (weekly rentals), I never had a single complaint. My new long-term neighbors across the street have caused significantly more issues in the neighborhood in the last 5 months than any renters I have ever had at my home. But unfortunately, they are here to stay, as opposed to gone in a week.

There is definitely a difference between renting your primary/owner-occupied residence short term when you travel (or other scenarios-maybe you are at home but want a way to help offset costs, as is the case for many elderly/long-time residents in Laguna), and renting out investment properties where owners do not primarily reside. I believe that most of the issues that people complain about here in town and elsewhere occur at residences that are not primary/owner occupied, but where the property is simply an investment, the owners are not here/involved, and do not care as much about the state of the property and the neighborhood. Which makes total sense.

Why not have a set of rules for owner occupied residences? Maybe there is a limit to how many total weeks a year, something like 90 days? With a process for neighbor complaints? And require the collection of bed tax, which would bring in extra revenue for the city? I think there should be the same accountability as if I were to rent my home to long-term tenants, or when I am at home. If tenants are behaving badly (whether short- or long-term) there should be a process for grievances to be addressed. Ultimately, it should be my right, and is also my responsibility. I should have the

opportunity to rent my home short-term (and possibly fail, but also to succeed and have no issues as I have in the past).

Can the city tell me that I can't do Home Swaps or Home Exchanges, where no money changes hands but I trade houses for a short-term period with strangers? What about letting family or friends stay at my home while I am out of town? How is this different? The concerns that neighbors would have would be exactly the same, can the city tell me as a homeowner that I can't do that either?

I do not live in an HOA for a reason, and I think this ban is an overreach by the city of Laguna Beach. A black and white ban on short-term rentals in residential zones is extreme and does not allow for compromise. I also believe it is an infringement on my property rights.

Thank you very much for your time and consideration.

Karyn Lewandowski

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I support the Staff Recommendation on the August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals).

MB

Margaret Brown <margaretbee@cox.net>

Tue 8/11/2020 3:06 PM

To: SouthCoast@Coastal

    ...

I support the Staff Recommendation on the August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals).

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I support the Staff Recommendation on Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1

JD

James Danziger <danziger@uci.edu>

Tue 8/11/2020 3:10 PM

To: SouthCoast@Coastal

Cc: 'James Danziger' <danziger@uci.edu>

    ...

I strongly support the staff recommendation on Item 10c regarding short-term lodging regulation in Laguna Beach. I have been concerned about the proliferation of STLs in residential neighborhoods for some years. The substantial negative impacts from STLs on the sense of community and enjoyment of our property in my neighborhood and many others are very clear. I believe that the compromise in the current amendment to Laguna's LCP is fair and sensible. Laguna is very visitor friendly, affords extensive access to the coast, and, as staff notes, Laguna has a substantial number of options for visitors due to its relatively high number of hotel/motel rooms plus the existing legal STLs. The amendment will allow for even more STLs in commercial and close-to-beach locations.

Please vote in favor of staff's recommendation.

Thank you.

James Danziger, Laguna Beach homeowner and also owner of long-term rental property in Laguna for more than 40 years

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Public Comment on August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals).

DW

Danielle Wilson <danielle.wilson@unitehere11.org>

Tue 8/11/2020 3:11 PM

To: SouthCoast@Coastal



2019 STR memo_CCC.pdf

206 KB

Dear Commissioners and Staff:

I would like to re-submit the memo we circulated last summer about our position on Short-Term Rentals (STRs) in the Coastal Zone for you to review. I will also submit more specific comments on this item as soon as possible.

Thank you,
Danielle Wilson

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July 9, 2019

Via Electronic Mail

Mr. John Ainsworth, Executive Director
Chair Dayna Bochco, and Commissioners
California Coastal Commission
45 Fremont Street #2000
San Francisco, California 94105
[c/o Jeff Staben, Jeff.staben@coastal.ca.gov]

Re: California Coastal Commission & Short-Term Rentals, including
7/12/19 Local Government Workshop

Dear Mr. Ainsworth, Chair Bochco, and Commissioners:

On behalf of UNITE HERE, we write to comment on local ordinances regulating short-term rentals (“STRs”) in the Coastal Zone. UNITE HERE believes that local governments in California have the power and a duty to stringently regulate STRs in their communities.

Commission staff have taken the position that STRs represent a “low-cost” accommodation option for coastal areas, but there is little evidence to support this assertion. There is, however, substantial and mounting data showing that the explosion of illegal STRs following the emergence of AirBnB and similar, platform-based companies has undermined the availability of affordable housing, particular in desirable locations like the Coast. STRs increase the cost of all housing by converting units from residential use to tourist use, decreasing supply and thereby increasing price. This contributes to the gentrification of coastal cities, which are increasingly beyond the reach of working- and middle-class residents. This affordability crisis has forced UNITE HERE members to choose between paying an even larger share of their family income on housing or living further and further from coastal areas, and the neighborhoods where they have built communities and where the hotels in which they work are located.

Local governments should not be hamstrung in their responses to the growth of STRs. UNITE HERE does not believe that the adoption or enforcement of general zoning laws regulating STRs is “development” requiring a coastal development permit (“CDP”). But until that issue is resolved by the courts, the

Commission should give local governments the utmost flexibility in addressing the problems that STRs create in their communities.

This letter is divided into three parts. First, we outline the legal debate on Coastal Commission review of STR ordinances and advocate for local flexibility in addressing STR growth.

Second, we outline key problems with the Commission staff's current approach to STRs, including the unsupported assumption that STRs represent a low-cost accommodation option and the undervaluing of affordable housing and environmental justice as goals.

Finally, we set forth a series of recommendations on the Commission's criteria for approving local STR ordinances. The Commission should approve local STR ordinances that require registration and licensing, limit STRs to primary residences to avoid the problem of corporate STR hotels, and set enforceable limits on the number of days a residence may be rented out. Consistent with recent appellate precedent, the Commission should also require individual STR owners and STR brokers like AirBnB to obtain CDPs prior to engaging in short-term rentals.

We appreciate the complex nature of STRs in the coastal zone and the work staff has done thus far on this topic. The approach to coastal cities' STR ordinances outlined in this letter will help ensure access to the Coast for Californians, a goal that we all share.

I. The Commission should preserve local flexibility in addressing STRs.

UNITE HERE does not believe that the enforcement of general zoning ordinances banning or substantially limiting STRs in residential areas is "development" within the meaning of the Coastal Act. *See* Pub. Resources Code § 30600(a). The Commission staff report for this workshop cites *Greenfield v. Mandalay Shores Community Association* (2018) 21 Cal.App.5th 896 as the basis for staff's view that coastal communities are required to obtain a coastal development permit ("CDP") when they adopt or enforce such ordinances. But *Mandalay Shores* involved only the question of whether a *private* homeowner association could ban STRs in the Coastal Zone, not whether a generally applicable land-use ordinance constituted "development" requiring a CDP. *See Mandalay Shores*, 21 Cal.App.5th at 901 ("STRs may not be regulated by *private actors* where it affects the intensity of use or access to single family residences in a coastal zone.").

No California case has previously interpreted the term “development” to include land-use ordinances adopted pursuant to local police power. The two reported cases that have directly addressed the question of whether local zoning ordinances regulating STRs are “development” have answered that they are not. *Johnston v. City of Hermosa Beach*, No. B278424, 2018 WL 458920 (Cal. Ct. App. 2018) (rejecting the claim that an STR ordinance is a “development” requiring a CDP: “The Ordinance was enacted pursuant to the City’s police power and did not fall under the auspices of the Coastal Commission. The absence of a certified LCP did not eliminate the City’s ability to enact and amend zoning ordinances.”); *Homeaway.com, Inc. v. City of Santa Monica*, No. 216CV06641ODWAFM, 2018 WL 1281772, at *5 (C.D. Cal. Mar. 9, 2018) (“The Coastal Act does not preempt the police powers of California municipalities absent clear conflict with the act. Because the Court finds that Plaintiffs have not met their burden to establish that the Ordinance constitutes either an amendment to the LUP or “development” under the Coastal Act, Plaintiffs have likewise not demonstrated that the Ordinance clearly conflicts with the Coastal Act.”).

The Commission’s jurisdiction over STR ordinances is particularly tenuous in the many cities in which STRs have long been illegal and the local government is simply adopting a new and more rigorous enforcement system. *See Homeaway.com*, 2018 WL 1281772, at *4 (“Plaintiffs have not convinced the Court that it should adopt a broad interpretation of ‘development,’ which would include every possible change in the law that might result in a change in land use.”).

Until this issue is resolved by the courts, it is crucial that the Coastal Commission to exercise its jurisdiction conservatively, preserving the greatest amount of local control as possible.

II. The Commission should revise its approach to STRs in the Coastal Zone.

1. There is little support for the assertion that STRs are, in fact, “lower cost” accommodations.

Commission staff have referenced the Coastal Act’s goal that “[l]ower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided,” Cal. Pub. Res. Code § 30213, as the justification for rejecting outright STR bans and for overturning elements of ordinances that are deemed too restrictive. As you know, UNITE HERE supports making coastal areas accessible to working-class visitors, including its members. But the goal of encouraging lower cost tourist accommodations is only one of the Coastal Act’s goals. The first and most important one is to “[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and

manmade resources.” Cal. Pub. Res. Code § 30001.5(a). The second one, which is directly pertinent to the regulation of STRs, is to “[a]ssure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.” Cal. Pub. Res. Code § 30001.5(b) (emphasis added).

As this section and the next explain, there is no evidence that STRs are a significantly lower cost alternative to other forms of accommodations, and there is overwhelming evidence that the explosion of STRs is contributing to the housing crisis in California cities, including its coastal areas.

Commission staff appear to simply assume that STRs are a lower-cost alternative to other forms of coastal accommodations, such as hotels and motels. But there is little evidence to support this. AirBnB, which dominates the STR market, is notoriously secretive about its data, making study of its impact (as well as enforcement of existing laws) difficult.¹

But existing studies demonstrate that AirBnB and other STR rentals are not significantly cheaper than hotel rooms; that AirBnB and other STR brokers have generally cannibalized other low-cost accommodation offerings (such as motels) rather than adding to the stock of low-cost accommodations; and that the availability of STRs appears to have only a marginal effect on willingness to travel.

Smith Travel Research (“STR”) was granted access to proprietary AirBnB data for 13 markets, including Los Angeles, for the period December 1, 2013 to July 31, 2016.² It compared “entire house/apartment” listings on AirBnB with hotel offerings in the same market, excluding “shared room” homestays of the type most local STR regulations permit. STR found that for the Los Angeles/Long Beach market, AirBnB rates were only 8% (or \$14 per night) lower than hotel rooms on average, at \$153 versus \$167 per night.³ In San Francisco/San Mateo, AirBnB rates were only 11% lower than hotel rooms on average, at \$207 per night versus \$232

¹ See, e.g., Paris Martineau, “Inside Airbnb’s ‘Guerrilla War’ Against Local Governments,” WIRED, March 20, 2019, available at: <https://www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-governments/> (describing claims by City of New Orleans that AirBnB “deliberately obfuscated” data related to enforcement efforts); Paris Martineau, “AirBnB and New York City Reach a Truce on Data Sharing,” WIRED, May 24, 2019, available at: <https://www.wired.com/story/airbnb-new-york-city-reach-truce-on-home-sharing-data/> (describing AirBnB’s unsuccessful fight against New York City subpoenas of host and guest information).

² STR, “Airbnb & Hotel Performance: An analysis of proprietary data in 13 global markets” (2017), available at: https://www.str.com/Media/Default/Research/STR_AirbnbHotelPerformance.pdf

³ *Id.* at 19.

per night for hotel rooms.⁴ These comparisons likely overstate the difference in price between AirBnB rates and hotel rates, since STR does not appear to have included the normally separate “cleaning fee” added to the ultimate price of an AirBnB booking. In neither California case was the average AirBnB offering “affordable,” as the Commission defines the term.⁵

In coastal areas, AirBnB and other STR rates can be expected to be higher than the average price of hotel and motel rooms, since coastal housing is generally more expensive than housing in other parts of the State. For example, a survey conducted by the City of Morro Bay in 2017 found that the average room rate for all hotels and motels in the City was \$129.85, while the average rate for the short-term rental of an entire home with two occupants (and no specific dates selected) was \$248.45.⁶ In the City of Del Mar, where the rate for a hotel room is \$314 per night on average, a recent survey of STRs in the city found the average rate of \$331 per night.⁷

Nor is there any reliable data that the growth in STRs has made it possible for more people to travel. In two recent surveys, between 96% and 98% of survey respondents said that if AirBnB and other STR services did not exist, they still would have taken the trip.⁸ This is consistent with the general conclusion that AirBnB and other STRs are not adding new, affordable supply to coastal communities, but are simply cannibalizing the market shares of lower-cost options like motels and mid-scale hotels.

Absent substantial, verifiable data showing that STRs are “lower cost” than other forms of visitor accommodation that comply with local zoning regulations,

⁴ *Ibid.*

⁵ See Coastal Conservancy/Sustinere, “Lower Cost Coastal Accommodation Analysis.”

⁶ City of Morro Bay, “Lower-Cost Visitor-Serving Accommodations Technical Memorandum” (December 2017), at 9, 19, available at: <http://www.morro-bay.ca.us/DocumentCenter/View/11734/Final-Low-Cost-Accommodations-Memo-Dec-2017?bidId=>

⁷ “Coastal Commission tells Del Mar to expand short-term rentals.” SAN DIEGO TRIBUNE, June 17, 2018.

⁸ Guttentag, Daniel Adams, “Why Tourists Choose Airbnb: A Motivation-Based Segmentation Study Underpinned by Innovation Concepts” PhD diss., University of Waterloo (2016), available at: https://uwspace.uwaterloo.ca/bitstream/handle/10012/10684/Guttentag_Daniel.pdf; Morgan Stanley Research, *Surprising Airbnb Adoption Slowdown in US/EU, and What It Means for Hotels and OTAs*. Report on Global Insight AlphaWise survey, November 2017, available at: <https://financedocbox.com/Investing/66040838-Surprising-airbnb-adoption-slowdown-in-us-eu-and-what-it-means-for-hotels-and-otas.html>

such as hotels, motels and bed & breakfasts, the Coastal Commission does not have a basis on which to limit coastal cities' ability to regulate STRs.

2. AirBnB and other STR platforms have had a significant, negative impact on housing affordability.

Since its inception, AirBnB's and other STR platforms' business model has been based on violating local zoning laws regulating STRs. The companies' carefully crafted public images—and the rhetoric that it uses to describe that business model, such as “hosts”⁹ and the “sharing economy”¹⁰—convey the sense that those who list STRs are ordinary homeowners sharing a room or a couch with a visitor. But in fact, while such home-sharing listings do exist, they represent a miniscule amount of AirBnB's revenues in places like Los Angeles. Instead, AirBnB is dominated by property owners renting out entire units of housing as commercial, transient accommodations. Much of this revenue is generated by owners listing multiple units, including large, commercial property-management companies. AirBnB's business model has reduced the availability of housing and increased rents.

A 2015 study of AirBnB's impact in the City of Los Angeles, for example, found that AirBnB listings for shared rooms accounted for less than one quarter of one percent of AirBnB's Los Angeles revenue. Instead, ninety percent of AirBnB revenue came from listings of entire housing units. Fully thirty-five percent of AirBnB revenue came from leasing companies renting more than one entire unit of housing.¹¹ Commercial property management companies listing multiple units for rent—sometimes using fake pseudonyms like “Shawn and Sal” to convey an impression that they were individual homeowners—earned the lion's share of AirbnB revenue.¹² A subsequent study conducted by CBRE Hotels' Americas

⁹ The term “host” inaccurately suggests STR listings typically involve property owners who are present during the visitor's stay. UNITE HERE uses the more neutral terms AirbnB “listers” or “operators” throughout this letter.

¹⁰ See Abbey Stemler, “The Myth of the Sharing Economy and Its Implications for Regulating Innovation,” 67 EMORY L.J. 197, 198 (2017)

¹¹ Roy Samaan, “Airbnb, Rising Rent and the Housing Crisis in Los Angeles,” LOS ANGELES ALLIANCE FOR A NEW ECONOMY (March 2015), at p. 9, at: <https://www.laane.org/wp-content/uploads/2015/03/Airbnb-Final.pdf>.

¹² Roy Samaan, “Short-Term Rentals and LA's Lost Housing,” LOS ANGELES ALLIANCE FOR A NEW ECONOMY (August 24, 2015), at p. 2, at: http://www.laane.org/wp-content/uploads/2015/08/Short-Term_RentalsLAS-Lost_Housing.pdf; see also Dayne Lee, “How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations,” 10 HARV. L. & POLICY REV. 229 (2015).

Research found that multi-unit AirBnB listings increased by 87% in Los Angeles between 2015 and 2016, and represented fully 81% of Airbnb revenue in 2016.¹³

Southern California trends are mirrored in other destination cities. A study conducted by McGill University researchers found that 66% of revenue (\$435 million) and 45% of all New York City AirBnB reservations in 2017 were illegal under New York State law. The researchers estimate that AirBnB listings had removed between 7,000 and 13,500 units of housing from New York City's long-term rental market, including 5,600 entire-home listings that were available as STRs 240 days or more during the year.¹⁴ The CBRE study mentioned earlier found that multi-unit, entire-home operations were the fastest growing AirBnB segment in terms of the number of listers, units, and revenue generated in 2016, and represented \$1.8 billion in AirBnB revenues that year. Property owners listing 10 or more units represented a quarter of all multi-unit listers nationally, generating \$175 million in revenue.¹⁵

The large-scale conversion of housing units to more or less permanent, commercial STRs has had the effect that standard economics would predict—the reduction in housing supply has resulted in an increase in rents. The McGill University study of New York City estimated a 1.4% increase in median rent over a three-year period due to AirBnB, with greater increases occurring in trendy neighborhoods like Brooklyn.¹⁶ A study of Boston found that each standard deviation increase in AirBnB listings was associated with a 0.4% increase in asking rents.¹⁷

A national study published by the National Bureau of Economic Research (“NBER”) found that in low owner-occupancy cities (like many California coastal communities), each 1% increase in AirBnB listings is associated with a .024%

¹³ CBRE Hotels' Americas Research, “Hosts with Multiple Units – A Key Driver of Airbnb Growth A Comprehensive National Review Including a Spotlight on 13 U.S. Markets” (March 2017), at p. 14, at: https://www.ahla.com/sites/default/files/CBRE_AirbnbStudy_2017.pdf.

¹⁴ David Wachsmuth *et al.*, “The High Cost of Short-Term Rentals in New York City,” McGill University School of Urban Planning (January 30, 2018), at p. 2, at: <https://www.mcgill.ca/newsroom/channels/news/high-cost-short-term-rentals-new-york-city-284310>.

¹⁵ CBRE Hotels' Americas Research, “Hosts with Multiple Units – A Key Driver of Airbnb Growth A Comprehensive National Review Including a Spotlight on 13 U.S. Markets”, at p. 4.

¹⁶ David Wachsmuth *et al.*, *supra*, at p. 2.

¹⁷ Keren Horn & Mark Merante, “Is home sharing driving up rents? Evidence from Airbnb in Boston,” 38 JOURNAL OF HOUSING ECONOMICS 14-24 (December 2017).

increase in rent.¹⁸ While this might not sound like much, consider that AirBnB *rentals* increased by an average 27% *annually* in one coastal city, Santa Monica, between 2010 and 2018 according to data analytics company AirDNA,¹⁹ and that the City’s median move-in rent was \$3,000 per month for a two-bedroom unit in 2017.²⁰ Applying NBER’s formula and conservatively assuming a 27% increase in *listings* annually, Airbnb listings were responsible for nearly 10% of the median rent increase for a two-bedroom apartment in Santa Monica between 2010 and 2017, or approximately \$1,100 per year in additional rent payments.²¹ This impact is in line with other cities. For example, New York City’s Comptroller determined that Airbnb had been responsible for nearly 10% of the total rent increase in that City between 2009 and 2017, meaning that “renters citywide paid a whopping \$616 million in additional rent in 2016 due to the exponential growth of Airbnb listings.”²²

The NBER study mentioned earlier found robust evidence that increases in AirBnB listings were linked to the growth of short-term rental markets, “consistent with absentee landlord[s] switching from the long- to the short-term rental market.”²³

As summarized by a recent Economic Policy Institute study, “Airbnb—though relatively new—is already having a measurable effect on long-term housing supply and prices in some of the major cities where it operates.”²⁴ Given the desirability of

¹⁸ Kyle Barron, Edward Kung, Davide Proserpio, “The Sharing Economy and Housing Affordability: Evidence from Airbnb,” NATIONAL BUREAU OF ECONOMIC RESEARCH (April 1, 2018), at <https://papers.ssrn.com/abstract=3006832>.

¹⁹ <https://www.airdna.co/market-data/app/us/california/santa-monica/overview>.

²⁰ Santa Monica Rent Control Board, 2017 Annual Report, at p. 14, at https://www.smgov.net/uploadedFiles/Departments/Rent_Control/Reports/Annual_Reports/2017%20Annual%20Report%20FINAL.pdf.

²¹ See Santa Monica Rent Control Board, 2010 Annual Report, at p. 4, available at https://www.smgov.net/uploadedFiles/Departments/Rent_Control/Reports/Annual_Reports/Annual_Report_10.pdf (median monthly rental for two-bedroom apartment in 2010 was \$2,000).

²² New York City Comptroller Scott M. Stringer, “Comptroller Stringer Report: NYC Renters Paid an Additional \$616 Million in 2016 Due to Airbnb” (May 2, 2018), available at: <https://comptroller.nyc.gov/newsroom/comptroller-stringer-report-nyc-renters-paid-an-additional-616-million-in-2016-due-to-Airbnb/>.

²³ Barron *et al.*, *supra*, at p. 6.

²⁴ Josh Bivens, “The economic costs and benefits of Airbnb,” ECONOMIC POLICY INSTITUTE (Jan. 30, 2019), available at: <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/>

STRs in the Coastal Zone, the impact on housing affordability in California's coastal communities can be expected to be even greater.

3. Commission staff has undervalued housing affordability and environmental justice in its evaluation of STR ordinances.

Unfortunately, when assessing local STR ordinances, Commission staff have undervalued the importance of protecting housing stock and underanalyzed the impact of STRs on housing affordability. As against extensive empirical evidence of STRs' impact on housing affordability, Commission staff's analysis has been anecdotal and conjectural.

Staff's treatment of the City of Santa Cruz's proposed cap on non-hosted STRs in City of Santa Cruz LCP Amendment Number LCP 3-STC-17-0073-2-Part B is an example. Here is staff's analysis:

[W]ith respect to housing availability, it is not clear that the ban and cap will have a meaningful impact on housing supply generally, and it is even less clear that they will affect the availability of affordable housing in the City. STRs make up a very small percentage of the City's overall housing stock (about 2.5%), and evidence from other jurisdictions suggests that many STRs are second homes whose owners are likely to let their properties sit vacant if they are unable to offer them to visitors as STRs. In addition, many, if not most STRs, are located in some of the most desirable areas of the City, where long-term rentals would likely be out of reach for the vast majority of people even if these houses were made available in that way; they certainly do not represent affordable housing. Many are homes offered as STRs so local residents can afford to live in the City at all.

There are many problems with this analysis. Staff offered no basis on which to conclude that the use of 2.5% of the City's housing stock for tourist rather than residential use would not meaningfully impact affordability.

Staff's analysis of Santa Cruz's STR ordinance next stated anecdotally that "many STRs are second homes whose owners are likely to let their properties sit vacant if they are unable to offer them to visitors as STRs" or are "homes offered as STRs so local residents can afford to live in the City at all." But staff provided no basis for these conclusions either, and as explained above, credible empirical studies have demonstrated that most STRs are not "second homes" or primary residences used for "home shares," but investment properties owned as part of multi-unit STR portfolios. In fact, Commission staff's assumption is the opposite of what the best empirical studies have found: that AirBnB "is *positively* correlated with the share of homes that are vacant for seasonal or recreational use . . . and *negatively* correlated

with the share of homes in the market for long-term rentals.”²⁵ In other words, “because of Airbnb, absentee landlords are moving their properties out of the long-term rental and for-sale markets and into the short-term rental market.”

Staff next argued that STR conversion should not be seen as a problem because most STRs are located in “the most desirable areas of the City, where long-term rentals would likely be out of reach for the vast majority of people.” This misunderstands how housing markets work. By removing housing units from the residential market and converting them to tourist use, STR owners reduce the overall supply of housing in the City. Because of intense demand for housing in coastal cities—the apartment vacancy rate in Santa Cruz/Watsonville is reported to be less than 2%²⁶—the reduced supply results in price increases across the housing market. The fact that many STRs would not themselves be “affordable” if used for long-term rentals ignores that taking them off the market leads to increased competition for the housing stock that remains.

Given the scale of the housing crisis in California generally, and in coastal areas specifically, it is important that the analysis that is informing Commission decisions on these issues be sound. It is also a mandate under the Coastal Act.

In Public Resources Code § 30604(g), the Legislature declared “that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.” *See also* Pub. Resources Code 30604(f) (“The commission shall encourage housing opportunities for persons of low and moderate income.”). Commission staff should prioritize these objectives as it reviews local STR ordinances aimed at preserving affordable housing.

The Coastal Act’s recently added provisions on environmental justice are also directly relevant. Under Public Resources Code § 30604(h), the Commission is directed to take into account environmental justice when acting on coastal development permits. In its Environmental Justice Policy, the Commission recognized the “historical use of discriminatory housing policies in California and their impact on present day demographics in the coastal zone.”²⁷ Indeed, for much of California’s history, African-Americans, Latinos, and Asians were legally barred

²⁵ Kyle Barron, Edward Kung, and Davide Proserpio, “Research: When Airbnb Listings in a City Increase, So Do Rent Prices,” *HARVARD BUSINESS REVIEW*, April 17, 2019, available at: <https://hbr.org/2019/04/research-when-airbnb-listings-in-a-city-increase-so-do-rent-prices>.

²⁶ See Beacon Economics, “An Analysis of Rent Control Ordinances in California” (January 2016), at p. 10, available at: https://caanet.org/app/uploads/2016/02/Jan2016_Rent_Control_Study.pdf

²⁷ California Coastal Commission, “Environmental Justice Policy” (March 8, 2019), p. 8, available at: https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf

from moving into desirable neighborhoods by restrictive covenants, or were denied government loans in redlined neighborhoods.²⁸

Working- and middle-class communities of color are doubly impacted by this history when it comes to STRs. They are much less likely to own a residence, much less a non-primary residence, from which they could derive STR revenue.²⁹ And they are much more likely to be impacted by housing-cost increases that are driving waves of displacement and homelessness across the region.

In its Environmental Justice Policy, the Commission “recognizes that the elimination of affordable residential neighborhoods has pushed low-income Californians and communities of color further from the coast, limiting access for communities already facing disparities with respect to coastal access and may contribute to an increase in individuals experiencing homelessness.” It states that it “will increase [its] efforts with project applicants, appellants and local governments, by analyzing the cumulative impacts of incremental housing stock loss, and by working with local government to adopt local coastal program policies that protect affordable housing and promote a range of affordable new residential development types.” Yet, in evaluating one of the major factors pushing low-income communities of color out of coastal areas, Commission staff has largely ignored these objectives.

III. The Commission should endorse effective local STR regulations.

An increasing number of cities in California are adopting regulations aimed at limiting the adverse impacts that STRs have on our communities. These impacts include the decrease in affordable housing as residential units are converted to tourist use; pressure on small, neighborhood-serving businesses and merchants as their resident customers are replaced by transients; and negative externalities on communities, as formerly tranquil residential areas are converted into tourist zones.

The regulations that have proved most effective follow a straightforward model, one that allows for true “home sharing” of primary residences while prohibiting the wholesale conversion of residential units into *de facto* hotels. UNITE HERE makes the following recommendations:

²⁸ Rothstein, Richard, “Why Los Angeles is still a segregated city after all these years,” LOS ANGELES TIMES, August 20 2017, available at: <https://www.latimes.com/opinion/op-ed/la-oe-rothstein-segregated-housing-20170820-story.html>.

²⁹ Bivens, ““The economic costs and benefits of Airbnb” (noting that “[a]cross racial groups, more than 80 percent of wealth in one’s primary residence was held by white households” and that the holdings of nonprimary housing wealth by race and ethnicity are again even more skewed, with white households holding more than 86 percent of this type of wealth”).

Recommendation #1: The Coastal Commission should endorse and uphold the following elements in local ordinances that regulate STRs:

- a. **STR owners should be required to register with a city and to share information about their listings regularly.** Requiring STR owners to register in order to offer an STR, and including robust reporting and disclosure requirements covering STR brokers like AirBnB, will enable local governments to control STR growth and facilitate the collection of transient occupancy taxes. Charging STR owners registration fees will provide the necessary funding for municipal oversight.
- b. **STRs should be limited to an operator's primary residence; second homes and investment properties should be ineligible for use as STRs.** Commercial property companies are taking housing units off the residential market, sometimes even disingenuously listing properties on STR platforms under fake, individual names to make them sound like true "home shares."³⁰ City ordinances that limit STRs to primary residences provide security for the local housing stock. STR owners are permitted to rent spare rooms or their entire unit, allowing for true "home sharing" and an ample number of tourist accommodations.
- c. **Enforceable limits should be set on the number of days a residence can be used as an STR.** The ability to rent STRs year-round creates an incentive for property owners to take residential units off the market and convert them to *de facto* hotels.³¹ Limiting the number of days during a year that a residence can be used as an STR – whether it is a primary residence or not -- addresses this problem and ensures that only true primary residences are being marketed as STRs. A cap of 60 days per year is, in our experience, the level to achieve this objective.

Recommendation #2: The Commission should update its criteria for local STR regulations and update its guidance to Coastal Zone cities on STR ordinances.

- a. **Any local ordinance that has the above elements should *not* be overturned by the Commission.** Coastal cities that produce STR regulatory ordinances that include requirements for registration and licensing, a primary residence

³⁰ Roy Samaan, "Short-Term Rentals and LA's Lost Housing," *Los Angeles Alliance for a New Economy*. August 24, 2015, p. 2, available at http://www.laane.org/wp-content/uploads/2015/08/short-term_rentalslaslost_housing.pdf

³¹ Roy Samaan, "Airbnb, Rising Rent and the Housing Crisis in Los Angeles," *Los Angeles Alliance for a New Economy*. March 2015, p. 9, available at <https://www.laane.org/wp-content/uploads/2015/03/Airbnb-final.pdf>

stipulation, and enforceable limits on duration of rentals must be allowed to keep those policies moving forward.

- b. **Guidance to coastal cities should be updated to affirm support for the elements above.** The December 6, 2016 memo from Steve Kinsey to Coastal Planning/Community Development Directors with subject line “Short-Term/Vacation Rentals in the California Coastal Zone” should be updated with the above elements and shared with all coastal cities’ planning and community development directors.

Recommendation #3: The Commission should require STR owners and STR brokers like AirBnB to obtain CDPs prior to converting to STR use in the Coastal Zone.

The California appellate-court decision in *Greenfield v. Mandalay Shores Community Association*, 21 Cal.App.5th 896, makes clear that when private actors convert their properties to STR use in the Coastal Zone, they are engaged in “development” and are required to obtain a CDP. The same reasoning should apply to STR brokers like AirBnB, which like the homeowners’ association in *Mandalay Shores*, are directly involved in the process of STR conversion.

In *Mandalay Shores*, 21 Cal.App.5th at 901-02, the court held that a private homeowner association’s ban on STR use in a condominium complex was a “change in the density or intensity of land use” meeting the definition of “development” and necessitating a CDP. This is consistent with other cases holding that converting the use or ownership of an individual property can require a CDP. *California Coastal Comm. v. Quanta Investment Corp.*, 113 Cal.App.3d 579, 609 (1980) (conversion of apartments into stock cooperative constitutes development); *see also La Fe, Inc. v. Los Angeles County*, 73 Cal.App.4th 231, 241-242 (1999) (lot line adjustments which did not increase the overall size of the landholding or the number of parcels within it was nevertheless a “development”). By the same reasoning, a private homeowner’s (or a corporate property owner’s) decision to place a residential unit on the market as an STR is a “change in the density or intensity of land use” requiring a CDP. Just as other forms of visitor accommodations must obtain CDPs before proceeding, so must an STR owner offering tourist accommodations.

The CDP requirement for STR use should also apply to STR brokers like AirBnB when they operate in the Coastal Zone. STR brokers are directly involved in the conversion of residential units to STR use and the resulting “change in the density or intensity of land use.” STR brokers provide a platform for the listing of STRs—both legal and illegal—and profit by taking a percentage of the booking transaction for the STR. Like the homeowner association in *Mandalay Shores*, they are directly involved in the “development” process.

Accordingly, the Coastal Commission should require that STR brokers like AirBnB obtain a CDP prior to booking STR transactions in the Coastal Zone. At a minimum, the Commission should prohibit STR brokers like AirBnB from booking STR transactions in the Coastal Zone unless the STR being booked has obtained a CDP. *See HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 679 (9th Cir. 2019) (upholding Santa Monica's prohibition against STR brokers booking transactions involving non-registered STRs).

CONCLUSION

UNITE HERE looks forward to continued dialogue with the Commission and its staff on the best ways of supporting local regulation of STRs. We welcome the opportunity to participate in the July 12 workshop and to working with the Commission and its staff going forward to ensure that the Coast is a home to all Californians.

Sincerely,



Paul More, Esq.
McCracken Stemberman & Holsberry



Anna Evans-Goldstein
UNITE HERE Local 11



Lee Strieb
UNITE HERE International Union

cc: [Coastal Commissioners – depending on if we address them or not]

UNITE HERE California affiliate leaders

 Delete ...

Laguna' Beach Local Coastal Plan (LCP) regarding STLs

MM

meg monahan <monahan.shops@gmail.com>

Tue 8/11/2020 3:16 PM

To: SouthCoast@Coastal



Honorable Commissioners,

I just heard that you will be reviewing this item this Thursday. I am expressing my support for the staff recommendation. I believe this is a very good compromise that allows short term rentals in our coastal community without destroying our residential neighborhoods.

The problem with short term rentals in our residential neighborhoods is it was turning neighborhoods (particularly those close to the coastline) into uncontrollable "hotel zones" with no front desk to resolve noise and other issues. It was also turning our few more affordable units into short term rentals and we were losing the affordable housing that houses the workers who support our visitor serving businesses.

Thank you for your consideration.

Meg Monahan
345 Flora Street
Laguna Beach, CA

[Reply](#) | [Forward](#)

 Delete ...

City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals)

CM

Charlotte Masarik <charlottemasarik@cox.net>

Tue 8/11/2020 3:32 PM

To: SouthCoast@Coastal

    ...

I support the Staff Recommendation on the August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals). It is important to preserve the community character of residential neighborhoods in Laguna Beach and STLs undermine that community character. Thank you, Charlotte Masarik

Charlotte Masarik
949-494-1630 Land
949-295-8040 Mobile
charlottemasarik@cox.net

Reply | Forward

 Delete ...

Laguna Beach Short Term Lodging Ordinance

VR

Verna Rollinger <vernarollinger@cox.net>

Tue 8/11/2020 3:33 PM

To: SouthCoast@Coastal



I support the Staff Recommendation on the August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals).

Verna Rollinger

825 Park Avenue

Laguna Beach, CA 92651

[Reply](#) | [Forward](#)

 Delete ...

I support the Staff Recommendation on the August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals).

J

johnthomas@cox.net

Tue 8/11/2020 3:39 PM

To: SouthCoast@Coastal

Cc: A <johnthomas@cox.net>



I support the Staff Recommendation on the August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals).

The process of coming up with a fair approach to short term lodging in Laguna Beach started in earnest in 2015 as STLs proliferated – often with unfortunate consequences for neighbors. After many well-attended public hearings, in 2016 the City Council unanimously passed an earlier version of an STL ordinance that was not approved by The Coastal Commission. The modified version before you today is the result of extensive work between representatives of the City of Laguna Beach and Coastal Commission staff. What you see is a fair and reasonable ordinance that allows improved access to visitors while providing Laguna a chance to preserve community character. The Coastal staff recommends approval without modification. Please follow the Coastal Staff recommendation.

John Thomas
Laguna Beach

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 Delete ...

I support the Staff Recommendation on the August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals)

AM

Ann Marie McKay <annmarie.socal@yahoo.com>

Tue 8/11/2020 4:08 PM

To: SouthCoast@Coastal

    ...

I support the Staff Recommendation. As a long-term renter, I have been actively involved in ensuring the City of Laguna Beach knows the impact to all residents, but specifically long-term renters like me.

Compromise is important, and as staff notes, Laguna is already extremely visitor-friendly, provides extensive access to the beaches and coastline, and has more than 1,300 existing hotel/motel lodging units as well as numerous legal existing short-term lodging units. The new regulation would open appropriate areas in Laguna to additional STLs but protect residential neighborhoods from being overrun. Illegal STLs have proliferated in residential neighborhoods and the City needs a clear and enforceable set of rules to protect our neighborhood character.

Best,

Ann Marie McKay

Laguna Beach resident

as a long-term renter since 2009

[Reply](#) | [Forward](#)

 Delete ...

City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1

BM

Barbara Metzger <barbarapmetzger@gmail.com>

Tue 8/11/2020 4:10 PM

To: SouthCoast@Coastal

    ...

Dear Commissioners,

I support the staff recommendation on City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-Term Lodgings/Rentals) on your Thursday, August 13, agenda.

Barbara Metzger

[Reply](#) | [Forward](#)

 Delete ...

I support the Staff Recommendation on the August 2020 Agenda Item Thursday 10c - City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals).

 You forwarded this message on Tue 8/11/2020 6:13 PM

AC

Anne Caenn <acaenn@icloud.com>

Tue 8/11/2020 4:55 PM

To: SouthCoast@Coastal

    ...

I believe it is important to preserve the community character of residential neighborhoods in Laguna Beach and STLs undermine our community character. Please remember that the vast majority of residents in Laguna oppose the legalization of STLs in their residential neighborhoods.

Thank you for your consideration of this important issue,
Anne Caenn

Anne Caenn
965 Katella Street
Laguna Beach, CA 92651

[Reply](#) | [Forward](#)

 Delete ...

Support for Laguna Beach Staff Recommendation re Short term lodging/rentals

 You forwarded this message on Wed 8/12/2020 4:30 AM

CH

carol hamilton <carolhamilton949@gmail.com>

Wed 8/12/2020 12:10 AM

To: SouthCoast@Coastal

    ...

I wish to support wholeheartedly the staff recommendation on Aug.2020 Agenda Item Thursday. 10c. City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short Term Lodging/Rentals)

My husband and I are 40 year residents (home owners) of Laguna Beach, and were day-visitors for many years as children. Our town is very community minded and boasts many full-time residents who came here for the small town it is.... and quiet neighborhoods. Some call it the "Village Atmosphere." Some short term rentals in our residential areas can spoil the peace and privacy that are the very reasons tourists come here by the thousands. We don't feel it necessary to have more short term rentals for them – because we have many now, plus ample hotel spaces.

Thank you so much for your consideration.

Sincerely,
Carol K. Hamilton

Sent from [Mail](#) for Windows 10

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UNITE **HERE!** Local 11

464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

August 12, 2020

VIA EMAIL

Jeff Staben, Executive Assistant
c/o California Coastal Commission
45 Fremont St #2000
San Francisco, California 94105
Jeff.staben@coastal.ca.gov

RE: City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-0074-1 (Short-term Lodgings/Rentals)

Dear Chair Padilla, Staff, and Honorable Commissioners:

On behalf of the 30,000 hotel, airport, and stadium workers that UNITE HERE Local 11 (“Local 11”) represents in Southern California, we write to the California Coastal Commission (“Commission”) to urge you to deny the Local Coastal Program (“LCP”) amendment as it is currently proposed. It is inconsistent with the City of Laguna Beach’s LCP, and would create a significant increase in unhosted Short-Term Rentals (“STRs”), which have not been proven to increase coastal access. As we have argued in the past, the premise upon which STRs are analyzed by this body, e.g. the assertion that STRs increase coastal access, is inaccurate. Rather, STRs cannibalize existing motels and other lower-cost options, in addition to our state’s decreasing supply of housing. **Instead, the Commission should modify the amendment to require new STRs to be *hosted*, meaning that the resident of the housing unit must be present during the rental. This would ensure both that the short term rentals created would be the lowest cost accommodations possible, and that people actually *live* in these units rather than having empty units that function as de facto hotels.**

Amid an unprecedented housing crisis and global pandemic, there is no better time for the Commission to revisit the framework with which it has analyzed STR regulation ordinances across the state. While we appreciate the staff and Commission’s attention to this matter, we are disappointed in the outcome of the negotiations with Laguna Beach, which go too far to promote the interests of STR platforms, without doing enough to protect working people in need of housing, and address the *barriers* to coastal access, such as the continuing loss of existing Lower-Cost Overnight Accommodations (“LCOAs”), as exemplified by Laguna Beach’s own Surf & Sand Resort.

- I. If the Commission goes forward with the proposed LCP amendment, it should only permit legitimate “home-sharing,” in order to mitigate the negative impacts of STRs while creating affordable lodging opportunities.**

Contrary to analysis in the staff report, there is no evidence that the proliferation of STRs actually increases public coastal access. Thus, we object to staff's assertion that the LCP amendment is consistent with various Coastal Act policies, namely, Section 30213 of the Coastal Act which states, "Low cost visitor and recreational facilities . . . shall be protected, encouraged, and where feasible provided." **To the contrary, the proliferation of unhosted STRs simply creates more luxury options for the richest travelers. In fact, unhosted STR units are often marketed as luxury hotel rooms. Moreover, these types of high-end units tend to crowd out existing affordable motels and mid-range hotels, decreasing LCOAs. LCOAs like motels and bed and breakfast inns have to abide by strict permitting and anti-discrimination regulations, and it is unfair and bad policy to dump hundreds of new units onto the market that are not covered by the same requirements.** Thus, STRs do not increase the overall supply of LCOAs, and we believe the LCP amendment is inconsistent with Section 30213 of the Coastal Act.

As we wrote in a memo last summer, existing studies demonstrate that AirBnb and other STR platforms do not provide significantly cheaper lodging options than hotel rooms, and they appear to have only a marginal effect on willingness to travel. In a Smith Travel Research study conducted for the period December 1, 2013 to July 31, 2016, AirBnB rates were only 8% (or \$14 per night) lower than hotel rooms on average in the Los Angeles/Long Beach market, and only 11% lower than hotel rooms on average in the San Francisco/San Mateo market. In neither of these cases was the average AirBnb offering "affordable," per the Commission's own definition. For a more in-depth analysis and sources, see Exhibit A, California Coastal Commission & Short-Term Rentals, including 7/12/19 Local Government Workshop.

The proposed LCP amendment would preserve the existing 97 STRs and allow for up to 606 new units, totaling 703 units. The staff report admits that there are 1,305 existing hotel/motel lodging units within the city's coastal zone (p. 3), which means that *more than a third* of the city's overnight accommodations could become STRs. Without the ability to guarantee that the STRs would be affordable, they could potentially crowd out existing motels and mid-range hotels, limiting access to already-existing affordable LCOAs.

The only way to ensure that the new STRs would provide low cost visitor accommodations and not unfairly compete with existing affordable LCOAs is to require the host to be on-site. The Coastal Commission has previously voted to require limited amenities and smaller hotel rooms in new hotels in order to ensure that "lower cost facilities are maintained as lower cost while avoiding conflicts with the Coastal Act's restriction on setting room rates." The requirement for hosts to live on-site presents a similar opportunity to ensure that STRs remain affordable.¹ This is exactly the approach that cities like Santa Monica have taken, demonstrating that it is possible to balance the need for overnight accommodations with the need to protect affordable housing and neighborhood livability via legitimate home-sharing. Through enabling *actual* home-sharing of hosted units, Santa Monica has had marked success in

¹ Public Workshop: Lower Cost Visitor Serving Accommodations, Dec. 10, 2014, p. 11, available at: <https://documents.coastal.ca.gov/reports/2014/12/W3-12-2014.pdf>

enforcement of its policies, including fine collection, tax collection, and the return of valuable residential units to the housing market.²

II. Due to the potentially negative impacts on housing, the proposed LCP amendment conflicts with the Coastal Act and various policies within the city's LCP.

The STR industry's business model – which relies on the conversion of residential units to de facto hotel rooms – has decreased the housing supply in many major U.S. metropolitan markets, and resulted in an increase in rents. A national study published by the National Bureau of Economic Research found that in low owner-occupancy cities (like many California coastal communities), each 1% increase in AirBnB listings is associated with a .024% increase in rent. The proposed LCP amendment would result in an 158% increase in STRs.³

Last year, during the Southern California Association of Government's (SCAG) Regional Housing Needs Assessment (RHNA) allocation process, the body voted to shift much of the state's burden to produce more housing onto coastal cities.⁴ The City of Laguna Beach voted to oppose SCAG's decision to allocate 390 units in the current RHNA cycle, a modest, yet sizable task given that the city only permitted 78 units from 2013 to 2021.⁵ Given the proposal to convert over 600 existing units of housing into STRs, the city would have to produce 990 units of housing during the current RHNA cycle to generate a sufficient net gain of units.

- a. Due to its potentially negative impacts on housing, the LCP amendment conflicts with the Coastal Act, specifically Public Resources Code § 30604(g), and cannot be approved as it is currently proposed.*

Public Resources Code § 30604(g) states that “The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.” While the proposed amendment prohibits the conversion of any unit that “is restricted by covenant or similar instrument for the purpose of providing affordable housing”⁶ into an STR, it does not protect units that are accessible to persons of low and moderate income regardless of a covenant. As the proposed LCP amendment would allow 606 units of housing to be converted to STRs, it does not protect existing affordable housing, and therefore conflicts with Section 30604(g) of the Coastal Act (p. 20).

² Between 2016 and 2018, the City of Santa Monica was able to decrease the number of unlawful STRs from 1700 to 502. See “Short-Term Rental Program Update,” p. 7-8, available at: <https://www.smgov.net/WorkArea/DownloadAsset.aspx?id=53687101095>

³ The staff report states that 383 total STRs exist citywide, and proposed LCP amendment would create the potential for 606 new units.

⁴ Hillary Davis, et al, “Potential housing mandates take coastal cities by surprise,” *Los Angeles Times, Daily Pilot* (Nov. 16, 2019), available at: <https://www.latimes.com/socal/daily-pilot/news/story/2019-11-16/potential-housing-mandates-take-coastal-cities-by-surprise>

⁵ Jeff Collins, et al, “California needs more housing, but 97% of cities and counties are failing to issue enough RHNA permits,” *OC Register* (Dec. 9, 2019), available at: <https://www.ocregister.com/2019/12/09/losing-the-rhna-battle-97-of-cities-counties-fail-to-meet-state-housing-goals/>

⁶ Page 3 of Exhibit 5 of the Exhibits to the Staff Report, p. 28.

- b. The proposed LCP amendment conflicts with various policies within the Land Use Element (“LUE”) of the city’s LCP, and should therefore be denied.*

In order for the proposed amendment to be approved by the Coastal Commission, it must be in conformance with, and adequate to carry out, the policies of the certified Land Use Plan (LUP) portion of the certified LCP.

The LUE of the LUP states the following policy goals:

Policy 2.3: Preserve and enhance the qualities that contribute to the character of the residential community, including quiet neighborhoods, pedestrian use of streets, and appropriate levels of illumination and nighttime activity and seek to mitigate the effects of high-volume thru-traffic.

...

Policy 6.4: Promote the provision of housing to serve the City's low- and moderate-income households, including City employees.”

...

Policy 6.6 Preserve and promote an increase in the stock of residential rental units in the City.

Action 6.6.1. Consider establishing development incentives, such as relaxed open space and setback requirements, to maintain higher, nonconforming density in older, nonconforming multi-family residences.

Action 6.6.2 Evaluate increasing the allowable residential square footage within mixed-use developments and create incentives to encourage residential development above the street level in commercial zones.

...

Policy 6.12 Promote mixed-use development in commercial zones, where appropriate, to encourage the provision of lower-cost housing and to reduce traffic trips.”⁷

All of these policies seek to protect the character of neighborhoods and access to housing, even in commercial zones. The proposed LCP amendment would permit hundreds of new STR units that could potentially impact the character of the city, in addition to the availability and affordability of housing. As the amendment conflicts with policies and goals within the city’s certified LCP, it cannot be approved in its current form.

A policy that only permits home-sharing would better align with these policy goals. The presence of the host on site will protect the “quiet neighborhoods” of policy 2.3 and ensure that commercial zones have the residential units necessary to promote “mixed use development” and encourage “the provision of lower-cost housing,” as in policy 6.12. Moreover, the provisions of the proposed amendment that allow for the conversion of nonconforming residential units into unhosted STRs clash with policy 6.6 and actions 6.6.1 and 6.6.2, which all aim to promote residential uses in all parts of the city, even commercial zones. Creating more commercial, unhosted STRs out of these precious residential units that exist in the commercial zone will

⁷ Laguna Beach Land Use Element, p. 47, p. 57-60.

undermine the City's efforts to pursue the policies that promote residential uses downtown. At the same time, hosted rentals will allow residents to continue living in these units while still promoting coastal access.

III. Instead of increasing the proliferation of STRs, the Commission should increase incentives to build new LCOAs and protect existing LCOAs.

It is especially egregious to allow such a proliferation of STRs when the state's existing supply of LCOAs is disappearing. For example, last year the Commission made a landmark enforcement decision in the case of Shore Hotel in Santa Monica, which infamously displaced 72 LCOAs with a luxury resort. Additionally, Local 11 has written in the past to express concerns about Laguna Beach's Surf & Sand Hotel and the loss of affordable accommodations that were originally provided, as the hotel transformed over decades from a 13-room motel to a 167-room luxury resort. The Commission should pursue enforcement action against the Surf & Sand – both for the loss of LCOAs and other potential unpermitted development (i.e. the loss of coastal bluff and public access; see Exhibit B) – and uphold the outstanding appeal unless any further development remediates these two concerns. To increase coastal access, the Commission should focus on protecting existing LCOAs rather than allow for the proliferation of STRs, which displace long-term residents in favor of tourists.

IV. Conclusion

UNITE HERE Local 11 supports strong measures, such as a ban, or a bonafide home-sharing ordinance, to ensure that the proliferation of STRs do not further exacerbate gentrification along the coast. We encourage the Commission to continue the necessary discussion around the impact of STRs on coastal access. We maintain that there is no evidence that STRs actually increase coastal access, and we urge the Commission to consider a more holistic framework of analysis that accounts for the overall impacts of STRs on our neighborhoods, housing, and, in turn, coastal access for all. Instead of trying to create LCOAs out of housing, the Coastal Commission should promote regulated home-sharing and enforcement of the Coastal Act on lodging providers like the Surf & Sand.

Sincerely,

Danielle Wilson
Research Analyst
UNITE HERE Local 11

Exhibit A



WESTERN REGIONAL OFFICE

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WWW.UNITEHERE.ORG • facebook.com/UNITEHERE • @UNITEHERE

July 9, 2019

Via Electronic Mail

Mr. John Ainsworth, Executive Director
Chair Dayna Bochco, and Commissioners
California Coastal Commission
45 Fremont Street #2000
San Francisco, California 94105
[c/o Jeff Staben, Jeff.staben@coastal.ca.gov]

Re: California Coastal Commission & Short-Term Rentals, including
7/12/19 Local Government Workshop

Dear Mr. Ainsworth, Chair Bochco, and Commissioners:

On behalf of UNITE HERE, we write to comment on local ordinances regulating short-term rentals (“STRs”) in the Coastal Zone. UNITE HERE believes that local governments in California have the power and a duty to stringently regulate STRs in their communities.

Commission staff have taken the position that STRs represent a “low-cost” accommodation option for coastal areas, but there is little evidence to support this assertion. There is, however, substantial and mounting data showing that the explosion of illegal STRs following the emergence of AirBnB and similar, platform-based companies has undermined the availability of affordable housing, particular in desirable locations like the Coast. STRs increase the cost of all housing by converting units from residential use to tourist use, decreasing supply and thereby increasing price. This contributes to the gentrification of coastal cities, which are increasingly beyond the reach of working- and middle-class residents. This affordability crisis has forced UNITE HERE members to choose between paying an even larger share of their family income on housing or living further and further from coastal areas, and the neighborhoods where they have built communities and where the hotels in which they work are located.

Local governments should not be hamstrung in their responses to the growth of STRs. UNITE HERE does not believe that the adoption or enforcement of general zoning laws regulating STRs is “development” requiring a coastal development permit (“CDP”). But until that issue is resolved by the courts, the

Commission should give local governments the utmost flexibility in addressing the problems that STRs create in their communities.

This letter is divided into three parts. First, we outline the legal debate on Coastal Commission review of STR ordinances and advocate for local flexibility in addressing STR growth.

Second, we outline key problems with the Commission staff's current approach to STRs, including the unsupported assumption that STRs represent a low-cost accommodation option and the undervaluing of affordable housing and environmental justice as goals.

Finally, we set forth a series of recommendations on the Commission's criteria for approving local STR ordinances. The Commission should approve local STR ordinances that require registration and licensing, limit STRs to primary residences to avoid the problem of corporate STR hotels, and set enforceable limits on the number of days a residence may be rented out. Consistent with recent appellate precedent, the Commission should also require individual STR owners and STR brokers like AirBnB to obtain CDPs prior to engaging in short-term rentals.

We appreciate the complex nature of STRs in the coastal zone and the work staff has done thus far on this topic. The approach to coastal cities' STR ordinances outlined in this letter will help ensure access to the Coast for Californians, a goal that we all share.

I. The Commission should preserve local flexibility in addressing STRs.

UNITE HERE does not believe that the enforcement of general zoning ordinances banning or substantially limiting STRs in residential areas is "development" within the meaning of the Coastal Act. *See* Pub. Resources Code § 30600(a). The Commission staff report for this workshop cites *Greenfield v. Mandalay Shores Community Association* (2018) 21 Cal.App.5th 896 as the basis for staff's view that coastal communities are required to obtain a coastal development permit ("CDP") when they adopt or enforce such ordinances. But *Mandalay Shores* involved only the question of whether a *private* homeowner association could ban STRs in the Coastal Zone, not whether a generally applicable land-use ordinance constituted "development" requiring a CDP. *See Mandalay Shores*, 21 Cal.App.5th at 901 ("STRs may not be regulated by *private actors* where it affects the intensity of use or access to single family residences in a coastal zone.").

No California case has previously interpreted the term “development” to include land-use ordinances adopted pursuant to local police power. The two reported cases that have directly addressed the question of whether local zoning ordinances regulating STRs are “development” have answered that they are not. *Johnston v. City of Hermosa Beach*, No. B278424, 2018 WL 458920 (Cal. Ct. App. 2018) (rejecting the claim that an STR ordinance is a “development” requiring a CDP: “The Ordinance was enacted pursuant to the City’s police power and did not fall under the auspices of the Coastal Commission. The absence of a certified LCP did not eliminate the City’s ability to enact and amend zoning ordinances.”); *Homeaway.com, Inc. v. City of Santa Monica*, No. 216CV06641ODWAFM, 2018 WL 1281772, at *5 (C.D. Cal. Mar. 9, 2018) (“The Coastal Act does not preempt the police powers of California municipalities absent clear conflict with the act. Because the Court finds that Plaintiffs have not met their burden to establish that the Ordinance constitutes either an amendment to the LUP or “development” under the Coastal Act, Plaintiffs have likewise not demonstrated that the Ordinance clearly conflicts with the Coastal Act.”).

The Commission’s jurisdiction over STR ordinances is particularly tenuous in the many cities in which STRs have long been illegal and the local government is simply adopting a new and more rigorous enforcement system. *See Homeaway.com*, 2018 WL 1281772, at *4 (“Plaintiffs have not convinced the Court that it should adopt a broad interpretation of ‘development,’ which would include every possible change in the law that might result in a change in land use.”).

Until this issue is resolved by the courts, it is crucial that the Coastal Commission to exercise its jurisdiction conservatively, preserving the greatest amount of local control as possible.

II. The Commission should revise its approach to STRs in the Coastal Zone.

1. There is little support for the assertion that STRs are, in fact, “lower cost” accommodations.

Commission staff have referenced the Coastal Act’s goal that “[l]ower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided,” Cal. Pub. Res. Code § 30213, as the justification for rejecting outright STR bans and for overturning elements of ordinances that are deemed too restrictive. As you know, UNITE HERE supports making coastal areas accessible to working-class visitors, including its members. But the goal of encouraging lower cost tourist accommodations is only one of the Coastal Act’s goals. The first and most important one is to “[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and

manmade resources.” Cal. Pub. Res. Code § 30001.5(a). The second one, which is directly pertinent to the regulation of STRs, is to “[a]ssure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.” Cal. Pub. Res. Code § 30001.5(b) (emphasis added).

As this section and the next explain, there is no evidence that STRs are a significantly lower cost alternative to other forms of accommodations, and there is overwhelming evidence that the explosion of STRs is contributing to the housing crisis in California cities, including its coastal areas.

Commission staff appear to simply assume that STRs are a lower-cost alternative to other forms of coastal accommodations, such as hotels and motels. But there is little evidence to support this. AirBnB, which dominates the STR market, is notoriously secretive about its data, making study of its impact (as well as enforcement of existing laws) difficult.¹

But existing studies demonstrate that AirBnB and other STR rentals are not significantly cheaper than hotel rooms; that AirBnB and other STR brokers have generally cannibalized other low-cost accommodation offerings (such as motels) rather than adding to the stock of low-cost accommodations; and that the availability of STRs appears to have only a marginal effect on willingness to travel.

Smith Travel Research (“STR”) was granted access to proprietary AirBnB data for 13 markets, including Los Angeles, for the period December 1, 2013 to July 31, 2016.² It compared “entire house/apartment” listings on AirBnB with hotel offerings in the same market, excluding “shared room” homestays of the type most local STR regulations permit. STR found that for the Los Angeles/Long Beach market, AirBnB rates were only 8% (or \$14 per night) lower than hotel rooms on average, at \$153 versus \$167 per night.³ In San Francisco/San Mateo, AirBnB rates were only 11% lower than hotel rooms on average, at \$207 per night versus \$232

¹ See, e.g., Paris Martineau, “Inside Airbnb’s ‘Guerrilla War’ Against Local Governments,” WIRED, March 20, 2019, available at: <https://www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-governments/> (describing claims by City of New Orleans that AirBnB “deliberately obfuscated” data related to enforcement efforts); Paris Martineau, “AirBnB and New York City Reach a Truce on Data Sharing,” WIRED, May 24, 2019, available at: <https://www.wired.com/story/airbnb-new-york-city-reach-truce-on-home-sharing-data/> (describing AirBnB’s unsuccessful fight against New York City subpoenas of host and guest information).

² STR, “Airbnb & Hotel Performance: An analysis of proprietary data in 13 global markets” (2017), available at: https://www.str.com/Media/Default/Research/STR_AirbnbHotelPerformance.pdf

³ *Id.* at 19.

per night for hotel rooms.⁴ These comparisons likely overstate the difference in price between AirBnB rates and hotel rates, since STR does not appear to have included the normally separate “cleaning fee” added to the ultimate price of an AirBnB booking. In neither California case was the average AirBnB offering “affordable,” as the Commission defines the term.⁵

In coastal areas, AirBnB and other STR rates can be expected to be higher than the average price of hotel and motel rooms, since coastal housing is generally more expensive than housing in other parts of the State. For example, a survey conducted by the City of Morro Bay in 2017 found that the average room rate for all hotels and motels in the City was \$129.85, while the average rate for the short-term rental of an entire home with two occupants (and no specific dates selected) was \$248.45.⁶ In the City of Del Mar, where the rate for a hotel room is \$314 per night on average, a recent survey of STRs in the city found the average rate of \$331 per night.⁷

Nor is there any reliable data that the growth in STRs has made it possible for more people to travel. In two recent surveys, between 96% and 98% of survey respondents said that if AirBnB and other STR services did not exist, they still would have taken the trip.⁸ This is consistent with the general conclusion that AirBnB and other STRs are not adding new, affordable supply to coastal communities, but are simply cannibalizing the market shares of lower-cost options like motels and mid-scale hotels.

Absent substantial, verifiable data showing that STRs are “lower cost” than other forms of visitor accommodation that comply with local zoning regulations,

⁴ *Ibid.*

⁵ See Coastal Conservancy/Sustinere, “Lower Cost Coastal Accommodation Analysis.”

⁶ City of Morro Bay, “Lower-Cost Visitor-Serving Accommodations Technical Memorandum” (December 2017), at 9, 19, available at: <http://www.morro-bay.ca.us/DocumentCenter/View/11734/Final-Low-Cost-Accommodations-Memo-Dec-2017?bidId=>

⁷ “Coastal Commission tells Del Mar to expand short-term rentals.” SAN DIEGO TRIBUNE, June 17, 2018.

⁸ Guttentag, Daniel Adams, “Why Tourists Choose Airbnb: A Motivation-Based Segmentation Study Underpinned by Innovation Concepts” PhD diss., University of Waterloo (2016), available at: https://uwspace.uwaterloo.ca/bitstream/handle/10012/10684/Guttentag_Daniel.pdf; Morgan Stanley Research, *Surprising Airbnb Adoption Slowdown in US/EU, and What It Means for Hotels and OTAs*. Report on Global Insight AlphaWise survey, November 2017, available at: <https://financedocbox.com/Investing/66040838-Surprising-airbnb-adoption-slowdown-in-us-eu-and-what-it-means-for-hotels-and-otas.html>

such as hotels, motels and bed & breakfasts, the Coastal Commission does not have a basis on which to limit coastal cities' ability to regulate STRs.

2. AirBnB and other STR platforms have had a significant, negative impact on housing affordability.

Since its inception, AirBnB's and other STR platforms' business model has been based on violating local zoning laws regulating STRs. The companies' carefully crafted public images—and the rhetoric that it uses to describe that business model, such as “hosts”⁹ and the “sharing economy”¹⁰—convey the sense that those who list STRs are ordinary homeowners sharing a room or a couch with a visitor. But in fact, while such home-sharing listings do exist, they represent a miniscule amount of AirBnB's revenues in places like Los Angeles. Instead, AirBnB is dominated by property owners renting out entire units of housing as commercial, transient accommodations. Much of this revenue is generated by owners listing multiple units, including large, commercial property-management companies. AirBnB's business model has reduced the availability of housing and increased rents.

A 2015 study of AirBnB's impact in the City of Los Angeles, for example, found that AirBnB listings for shared rooms accounted for less than one quarter of one percent of AirBnB's Los Angeles revenue. Instead, ninety percent of AirBnB revenue came from listings of entire housing units. Fully thirty-five percent of AirBnB revenue came from leasing companies renting more than one entire unit of housing.¹¹ Commercial property management companies listing multiple units for rent—sometimes using fake pseudonyms like “Shawn and Sal” to convey an impression that they were individual homeowners—earned the lion's share of AirbnB revenue.¹² A subsequent study conducted by CBRE Hotels' Americas

⁹ The term “host” inaccurately suggests STR listings typically involve property owners who are present during the visitor's stay. UNITE HERE uses the more neutral terms AirbnB “listers” or “operators” throughout this letter.

¹⁰ See Abbey Stemler, “The Myth of the Sharing Economy and Its Implications for Regulating Innovation,” 67 EMORY L.J. 197, 198 (2017)

¹¹ Roy Samaan, “Airbnb, Rising Rent and the Housing Crisis in Los Angeles,” LOS ANGELES ALLIANCE FOR A NEW ECONOMY (March 2015), at p. 9, at: <https://www.laane.org/wp-content/uploads/2015/03/Airbnb-Final.pdf>.

¹² Roy Samaan, “Short-Term Rentals and LA's Lost Housing,” LOS ANGELES ALLIANCE FOR A NEW ECONOMY (August 24, 2015), at p. 2, at: http://www.laane.org/wp-content/uploads/2015/08/Short-Term_RentalsLAS-Lost_Housing.pdf; see also Dayne Lee, “How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations,” 10 HARV. L. & POLICY REV. 229 (2015).

Research found that multi-unit AirBnB listings increased by 87% in Los Angeles between 2015 and 2016, and represented fully 81% of Airbnb revenue in 2016.¹³

Southern California trends are mirrored in other destination cities. A study conducted by McGill University researchers found that 66% of revenue (\$435 million) and 45% of all New York City AirBnB reservations in 2017 were illegal under New York State law. The researchers estimate that AirBnB listings had removed between 7,000 and 13,500 units of housing from New York City's long-term rental market, including 5,600 entire-home listings that were available as STRs 240 days or more during the year.¹⁴ The CBRE study mentioned earlier found that multi-unit, entire-home operations were the fastest growing AirBnB segment in terms of the number of listers, units, and revenue generated in 2016, and represented \$1.8 billion in AirBnB revenues that year. Property owners listing 10 or more units represented a quarter of all multi-unit listers nationally, generating \$175 million in revenue.¹⁵

The large-scale conversion of housing units to more or less permanent, commercial STRs has had the effect that standard economics would predict—the reduction in housing supply has resulted in an increase in rents. The McGill University study of New York City estimated a 1.4% increase in median rent over a three-year period due to AirBnB, with greater increases occurring in trendy neighborhoods like Brooklyn.¹⁶ A study of Boston found that each standard deviation increase in AirBnB listings was associated with a 0.4% increase in asking rents.¹⁷

A national study published by the National Bureau of Economic Research (“NBER”) found that in low owner-occupancy cities (like many California coastal communities), each 1% increase in AirBnB listings is associated with a .024%

¹³ CBRE Hotels' Americas Research, “Hosts with Multiple Units – A Key Driver of Airbnb Growth A Comprehensive National Review Including a Spotlight on 13 U.S. Markets” (March 2017), at p. 14, at: https://www.ahla.com/sites/default/files/CBRE_AirbnbStudy_2017.pdf.

¹⁴ David Wachsmuth *et al.*, “The High Cost of Short-Term Rentals in New York City,” McGill University School of Urban Planning (January 30, 2018), at p. 2, at: <https://www.mcgill.ca/newsroom/channels/news/high-cost-short-term-rentals-new-york-city-284310>.

¹⁵ CBRE Hotels' Americas Research, “Hosts with Multiple Units – A Key Driver of Airbnb Growth A Comprehensive National Review Including a Spotlight on 13 U.S. Markets”, at p. 4.

¹⁶ David Wachsmuth *et al.*, *supra*, at p. 2.

¹⁷ Keren Horn & Mark Merante, “Is home sharing driving up rents? Evidence from Airbnb in Boston,” 38 JOURNAL OF HOUSING ECONOMICS 14-24 (December 2017).

increase in rent.¹⁸ While this might not sound like much, consider that AirBnB *rentals* increased by an average 27% *annually* in one coastal city, Santa Monica, between 2010 and 2018 according to data analytics company AirDNA,¹⁹ and that the City’s median move-in rent was \$3,000 per month for a two-bedroom unit in 2017.²⁰ Applying NBER’s formula and conservatively assuming a 27% increase in *listings* annually, Airbnb listings were responsible for nearly 10% of the median rent increase for a two-bedroom apartment in Santa Monica between 2010 and 2017, or approximately \$1,100 per year in additional rent payments.²¹ This impact is in line with other cities. For example, New York City’s Comptroller determined that Airbnb had been responsible for nearly 10% of the total rent increase in that City between 2009 and 2017, meaning that “renters citywide paid a whopping \$616 million in additional rent in 2016 due to the exponential growth of Airbnb listings.”²²

The NBER study mentioned earlier found robust evidence that increases in AirBnB listings were linked to the growth of short-term rental markets, “consistent with absentee landlord[s] switching from the long- to the short-term rental market.”²³

As summarized by a recent Economic Policy Institute study, “Airbnb—though relatively new—is already having a measurable effect on long-term housing supply and prices in some of the major cities where it operates.”²⁴ Given the desirability of

¹⁸ Kyle Barron, Edward Kung, Davide Proserpio, “The Sharing Economy and Housing Affordability: Evidence from Airbnb,” NATIONAL BUREAU OF ECONOMIC RESEARCH (April 1, 2018), at <https://papers.ssrn.com/abstract=3006832>.

¹⁹ <https://www.airdna.co/market-data/app/us/california/santa-monica/overview>.

²⁰ Santa Monica Rent Control Board, 2017 Annual Report, at p. 14, at https://www.smgov.net/uploadedFiles/Departments/Rent_Control/Reports/Annual_Reports/2017%20Annual%20Report%20FINAL.pdf.

²¹ See Santa Monica Rent Control Board, 2010 Annual Report, at p. 4, available at https://www.smgov.net/uploadedFiles/Departments/Rent_Control/Reports/Annual_Reports/Annual_Report_10.pdf (median monthly rental for two-bedroom apartment in 2010 was \$2,000).

²² New York City Comptroller Scott M. Stringer, “Comptroller Stringer Report: NYC Renters Paid an Additional \$616 Million in 2016 Due to Airbnb” (May 2, 2018), available at <https://comptroller.nyc.gov/newsroom/comptroller-stringer-report-nyc-renters-paid-an-additional-616-million-in-2016-due-to-Airbnb/>.

²³ Barron *et al.*, *supra*, at p. 6.

²⁴ Josh Bivens, “The economic costs and benefits of Airbnb,” ECONOMIC POLICY INSTITUTE (Jan. 30, 2019), available at: <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/>

STRs in the Coastal Zone, the impact on housing affordability in California's coastal communities can be expected to be even greater.

3. Commission staff has undervalued housing affordability and environmental justice in its evaluation of STR ordinances.

Unfortunately, when assessing local STR ordinances, Commission staff have undervalued the importance of protecting housing stock and underanalyzed the impact of STRs on housing affordability. As against extensive empirical evidence of STRs' impact on housing affordability, Commission staff's analysis has been anecdotal and conjectural.

Staff's treatment of the City of Santa Cruz's proposed cap on non-hosted STRs in City of Santa Cruz LCP Amendment Number LCP 3-STC-17-0073-2-Part B is an example. Here is staff's analysis:

[W]ith respect to housing availability, it is not clear that the ban and cap will have a meaningful impact on housing supply generally, and it is even less clear that they will affect the availability of affordable housing in the City. STRs make up a very small percentage of the City's overall housing stock (about 2.5%), and evidence from other jurisdictions suggests that many STRs are second homes whose owners are likely to let their properties sit vacant if they are unable to offer them to visitors as STRs. In addition, many, if not most STRs, are located in some of the most desirable areas of the City, where long-term rentals would likely be out of reach for the vast majority of people even if these houses were made available in that way; they certainly do not represent affordable housing. Many are homes offered as STRs so local residents can afford to live in the City at all.

There are many problems with this analysis. Staff offered no basis on which to conclude that the use of 2.5% of the City's housing stock for tourist rather than residential use would not meaningfully impact affordability.

Staff's analysis of Santa Cruz's STR ordinance next stated anecdotally that "many STRs are second homes whose owners are likely to let their properties sit vacant if they are unable to offer them to visitors as STRs" or are "homes offered as STRs so local residents can afford to live in the City at all." But staff provided no basis for these conclusions either, and as explained above, credible empirical studies have demonstrated that most STRs are not "second homes" or primary residences used for "home shares," but investment properties owned as part of multi-unit STR portfolios. In fact, Commission staff's assumption is the opposite of what the best empirical studies have found: that AirBnB "is *positively* correlated with the share of homes that are vacant for seasonal or recreational use . . . and *negatively* correlated

with the share of homes in the market for long-term rentals.”²⁵ In other words, “because of Airbnb, absentee landlords are moving their properties out of the long-term rental and for-sale markets and into the short-term rental market.”

Staff next argued that STR conversion should not be seen as a problem because most STRs are located in “the most desirable areas of the City, where long-term rentals would likely be out of reach for the vast majority of people.” This misunderstands how housing markets work. By removing housing units from the residential market and converting them to tourist use, STR owners reduce the overall supply of housing in the City. Because of intense demand for housing in coastal cities—the apartment vacancy rate in Santa Cruz/Watsonville is reported to be less than 2%²⁶—the reduced supply results in price increases across the housing market. The fact that many STRs would not themselves be “affordable” if used for long-term rentals ignores that taking them off the market leads to increased competition for the housing stock that remains.

Given the scale of the housing crisis in California generally, and in coastal areas specifically, it is important that the analysis that is informing Commission decisions on these issues be sound. It is also a mandate under the Coastal Act.

In Public Resources Code § 30604(g), the Legislature declared “that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.” *See also* Pub. Resources Code 30604(f) (“The commission shall encourage housing opportunities for persons of low and moderate income.”). Commission staff should prioritize these objectives as it reviews local STR ordinances aimed at preserving affordable housing.

The Coastal Act’s recently added provisions on environmental justice are also directly relevant. Under Public Resources Code § 30604(h), the Commission is directed to take into account environmental justice when acting on coastal development permits. In its Environmental Justice Policy, the Commission recognized the “historical use of discriminatory housing policies in California and their impact on present day demographics in the coastal zone.”²⁷ Indeed, for much of California’s history, African-Americans, Latinos, and Asians were legally barred

²⁵ Kyle Barron, Edward Kung, and Davide Proserpio, “Research: When Airbnb Listings in a City Increase, So Do Rent Prices,” *HARVARD BUSINESS REVIEW*, April 17, 2019, available at: <https://hbr.org/2019/04/research-when-airbnb-listings-in-a-city-increase-so-do-rent-prices>.

²⁶ See Beacon Economics, “An Analysis of Rent Control Ordinances in California” (January 2016), at p. 10, available at: https://caanet.org/app/uploads/2016/02/Jan2016_Rent_Control_Study.pdf

²⁷ California Coastal Commission, “Environmental Justice Policy” (March 8, 2019), p. 8, available at: https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf

from moving into desirable neighborhoods by restrictive covenants, or were denied government loans in redlined neighborhoods.²⁸

Working- and middle-class communities of color are doubly impacted by this history when it comes to STRs. They are much less likely to own a residence, much less a non-primary residence, from which they could derive STR revenue.²⁹ And they are much more likely to be impacted by housing-cost increases that are driving waves of displacement and homelessness across the region.

In its Environmental Justice Policy, the Commission “recognizes that the elimination of affordable residential neighborhoods has pushed low-income Californians and communities of color further from the coast, limiting access for communities already facing disparities with respect to coastal access and may contribute to an increase in individuals experiencing homelessness.” It states that it “will increase [its] efforts with project applicants, appellants and local governments, by analyzing the cumulative impacts of incremental housing stock loss, and by working with local government to adopt local coastal program policies that protect affordable housing and promote a range of affordable new residential development types.” Yet, in evaluating one of the major factors pushing low-income communities of color out of coastal areas, Commission staff has largely ignored these objectives.

III. The Commission should endorse effective local STR regulations.

An increasing number of cities in California are adopting regulations aimed at limiting the adverse impacts that STRs have on our communities. These impacts include the decrease in affordable housing as residential units are converted to tourist use; pressure on small, neighborhood-serving businesses and merchants as their resident customers are replaced by transients; and negative externalities on communities, as formerly tranquil residential areas are converted into tourist zones.

The regulations that have proved most effective follow a straightforward model, one that allows for true “home sharing” of primary residences while prohibiting the wholesale conversion of residential units into *de facto* hotels. UNITE HERE makes the following recommendations:

²⁸ Rothstein, Richard, “Why Los Angeles is still a segregated city after all these years,” LOS ANGELES TIMES, August 20 2017, available at: <https://www.latimes.com/opinion/op-ed/la-oe-rothstein-segregated-housing-20170820-story.html>.

²⁹ Bivens, ““The economic costs and benefits of Airbnb” (noting that “[a]cross racial groups, more than 80 percent of wealth in one’s primary residence was held by white households” and that the holdings of nonprimary housing wealth by race and ethnicity are again even more skewed, with white households holding more than 86 percent of this type of wealth”).

Recommendation #1: The Coastal Commission should endorse and uphold the following elements in local ordinances that regulate STRs:

- a. **STR owners should be required to register with a city and to share information about their listings regularly.** Requiring STR owners to register in order to offer an STR, and including robust reporting and disclosure requirements covering STR brokers like AirBnB, will enable local governments to control STR growth and facilitate the collection of transient occupancy taxes. Charging STR owners registration fees will provide the necessary funding for municipal oversight.
- b. **STRs should be limited to an operator's primary residence; second homes and investment properties should be ineligible for use as STRs.** Commercial property companies are taking housing units off the residential market, sometimes even disingenuously listing properties on STR platforms under fake, individual names to make them sound like true "home shares."³⁰ City ordinances that limit STRs to primary residences provide security for the local housing stock. STR owners are permitted to rent spare rooms or their entire unit, allowing for true "home sharing" and an ample number of tourist accommodations.
- c. **Enforceable limits should be set on the number of days a residence can be used as an STR.** The ability to rent STRs year-round creates an incentive for property owners to take residential units off the market and convert them to *de facto* hotels.³¹ Limiting the number of days during a year that a residence can be used as an STR – whether it is a primary residence or not -- addresses this problem and ensures that only true primary residences are being marketed as STRs. A cap of 60 days per year is, in our experience, the level to achieve this objective.

Recommendation #2: The Commission should update its criteria for local STR regulations and update its guidance to Coastal Zone cities on STR ordinances.

- a. **Any local ordinance that has the above elements should *not* be overturned by the Commission.** Coastal cities that produce STR regulatory ordinances that include requirements for registration and licensing, a primary residence

³⁰ Roy Samaan, "Short-Term Rentals and LA's Lost Housing," *Los Angeles Alliance for a New Economy*. August 24, 2015, p. 2, available at http://www.laane.org/wp-content/uploads/2015/08/short-term_rentalslaslost_housing.pdf

³¹ Roy Samaan, "Airbnb, Rising Rent and the Housing Crisis in Los Angeles," *Los Angeles Alliance for a New Economy*. March 2015, p. 9, available at <https://www.laane.org/wp-content/uploads/2015/03/Airbnb-final.pdf>

stipulation, and enforceable limits on duration of rentals must be allowed to keep those policies moving forward.

- b. **Guidance to coastal cities should be updated to affirm support for the elements above.** The December 6, 2016 memo from Steve Kinsey to Coastal Planning/Community Development Directors with subject line “Short-Term/Vacation Rentals in the California Coastal Zone” should be updated with the above elements and shared with all coastal cities’ planning and community development directors.

Recommendation #3: The Commission should require STR owners and STR brokers like AirBnB to obtain CDPs prior to converting to STR use in the Coastal Zone.

The California appellate-court decision in *Greenfield v. Mandalay Shores Community Association*, 21 Cal.App.5th 896, makes clear that when private actors convert their properties to STR use in the Coastal Zone, they are engaged in “development” and are required to obtain a CDP. The same reasoning should apply to STR brokers like AirBnB, which like the homeowners’ association in *Mandalay Shores*, are directly involved in the process of STR conversion.

In *Mandalay Shores*, 21 Cal.App.5th at 901-02, the court held that a private homeowner association’s ban on STR use in a condominium complex was a “change in the density or intensity of land use” meeting the definition of “development” and necessitating a CDP. This is consistent with other cases holding that converting the use or ownership of an individual property can require a CDP. *California Coastal Comm. v. Quanta Investment Corp.*, 113 Cal.App.3d 579, 609 (1980) (conversion of apartments into stock cooperative constitutes development); *see also La Fe, Inc. v. Los Angeles County*, 73 Cal.App.4th 231, 241-242 (1999) (lot line adjustments which did not increase the overall size of the landholding or the number of parcels within it was nevertheless a “development”). By the same reasoning, a private homeowner’s (or a corporate property owner’s) decision to place a residential unit on the market as an STR is a “change in the density or intensity of land use” requiring a CDP. Just as other forms of visitor accommodations must obtain CDPs before proceeding, so must an STR owner offering tourist accommodations.

The CDP requirement for STR use should also apply to STR brokers like AirBnB when they operate in the Coastal Zone. STR brokers are directly involved in the conversion of residential units to STR use and the resulting “change in the density or intensity of land use.” STR brokers provide a platform for the listing of STRs—both legal and illegal—and profit by taking a percentage of the booking transaction for the STR. Like the homeowner association in *Mandalay Shores*, they are directly involved in the “development” process.

Accordingly, the Coastal Commission should require that STR brokers like AirBnB obtain a CDP prior to booking STR transactions in the Coastal Zone. At a minimum, the Commission should prohibit STR brokers like AirBnB from booking STR transactions in the Coastal Zone unless the STR being booked has obtained a CDP. *See HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 679 (9th Cir. 2019) (upholding Santa Monica's prohibition against STR brokers booking transactions involving non-registered STRs).

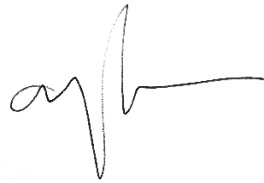
CONCLUSION

UNITE HERE looks forward to continued dialogue with the Commission and its staff on the best ways of supporting local regulation of STRs. We welcome the opportunity to participate in the July 12 workshop and to working with the Commission and its staff going forward to ensure that the Coast is a home to all Californians.

Sincerely,



Paul More, Esq.
McCracken Sterman & Holsberry



Anna Evans-Goldstein
UNITE HERE Local 11



Lee Strieb
UNITE HERE International Union

cc: [Coastal Commissioners – depending on if we address them or not]

UNITE HERE California affiliate leaders

Exhibit B

UNITE HERE! Local 11

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December 12, 2019

VIA US MAIL & EMAIL:

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RE: Surf and Sand Resort Development History and Appeal No. A-5-LGB-19-0010

Dear Chair Bochco, Executive Director Ainsworth, and Commissioners:

On behalf of the 30,000 hotel, airport, and stadium workers that UNITE HERE Local 11 (“Local 11”) represents in Southern California and Arizona, we write to the California Coastal Commission (“Commission”) to ask you to open an enforcement investigation related to development of Surf and Sand Resort located in Laguna Beach, California (“Resort” or “Property”) owned and operated by JC Resorts (“Owner”), and to pursue remedies associated with any potential violations of the California Coastal Act (“Coastal Act”), Pub. Res. Code §§ 33000-30900 (inclusive of Commission Regulations under 14 Cal. Code. Regs. §§ 13001-13666.4, revealed by your investigation.

In short, in April 2019, the Commission found “Substantial Issues” raised in Laguna Beach residents Mark and Sharon Fudge’s Appeal No. A-5-LGB-19-0010 (“Appeal”) regarding the Resort’s most recent renovation plans associated with the City of Laguna Beach (“City”) Coastal Development Permit (“CDP”) 18-2147.^{1, 2} These development plans have stalled because it is not clear that the entire project is fully described, which creates questions as to compliance with Coastal Act policies addressing public access, coastal bluff development, and visual resources.³

The persuasive claims made by the appellants in connection with the Appeal led us to investigate the broader history of development on the Resort. Due to various gaps in the record, the documentation in existing development permits and other records that we have uncovered does not adequately account an apparent history – potentially in violation of the Coastal Act – of upscale development that has resulted in adverse impacts, including:

¹ Please note that pages cited herein are either to the page’s stated pagination (referenced herein as “p. ##”) or the page’s location in the hyperlinked PDF document (referenced herein as “PDF p. ##”).

² Commission (4/26/19) Draft Minutes of Meeting of April 10-11, 2019, PDF p. 9 (Item 17.a), <https://documents.coastal.ca.gov/reports/2019/5/W24/W24-5-2019-report.pdf>.

³ Commission (3/21/19) Staff Report Item Th17a (Appeal – Substantial Issue – A-5-LGB-19-0010), PDF p. 2. <https://documents.coastal.ca.gov/reports/2019/4/Th17a/Th17a-4-2019-report.pdf>

1. The loss of affordable accommodations originally provided when the Property was built as a 13-room motel in 1948 due to the Property's subsequent conversion into a 167-room luxury Resort;
2. The Resort's encroachment of and prevention of public access to the beach adjacent to the Property via the reported use of hotel beach chairs, towels, and umbrellas directly in front of the Property; and
3. The destruction of the sea bluff face on Bluebird Beach.

Local 11 respectfully urges the Commission to open an enforcement investigation related to the Property's development history to determine whether JC Resorts and/or its predecessors obtained the necessary CDPs and other approvals for the Resort, as well as the potential violations of the Coastal Act referenced above and discussed further below.

I. BACKGROUND ON THE PROPERTY SHOWS ELIMINATION OF COASTAL BLUFFS

Originally built as a 13-room motel in 1948, the 167-room luxury Resort currently sits along an oceanfront lot located on South Coast Highway in Laguna Beach.⁴ Building permits indicate that the original certificate for hotel/resort use was issued in 1969 (*see* Fig. 1 below). Historic photographs taken after renovations occurred give us an image of what Bluebird Beach might have looked like had the Surf and Sand Resort refrained from developing over coastal bluffs (*see* Figs. 2 and 3 below)

FIGURE 1: PRE-APPLICATION SITE DEVELOPMENT REVIEW EVALUATION (2014) ⁵

City of Laguna Beach – Community Development Department Pre-Application Site Development Review Meeting Evaluation	
Evaluation Meeting Number: 14-2301	Date: December 10, 2014
Prepared by: Evan Jedynak, Assistant Planner Belinda Ann Deines, Associate Planner	
Attendees: Blaise Bartell, JC Resorts; Chris Dutton, Designer	
Site Address: 1555 South Coast Highway	Assessor Parcel Number: 644-217-10
Zone/Specific Plan: C-1 (Local Business District)	
<p>Background: The subject property is a building site approximately 2.5 acres (110,349 square feet) in total lot area. The property is an oceanfront lot located on South Coast Highway. The frontage along South Coast Highway is approximately 500 feet. The property is currently developed as a hotel/resort with 165 total rooms, a parking garage, and conference rooms located across multiple structures. Building permits indicate that the original certificate for hotel/resort use was issued in 1969. A variance is requested to exceed the maximum allowed height limit in order to install a new elevator, partially enclosed access stairs, and landings open to the exterior. Staff informed the applicant that the floor area of an elevator is only counted on one story for the purpose of determining total square footage. The proposal also includes replacement of existing guardrails. The existing staircase and guardrails are not in compliance with current ADA and building code regulations. Staff advised that the guardrails could be replaced with permits issued over the counter and would not require Design Review Board approval. City records show that the property has been granted the following entitlements:</p>	

⁴ CBS Local (1/20/12) Southlands Best Boutique Hotels: Surf and Sand Resort, <https://losangeles.cbslocal.com/2012/01/20/southlands-best-boutique-hotels-surf-and-sand-resort/>.

⁵ Commission (3/21/19) Staff Report Item Th17a Exhibits, PDF p. 109 (Dec. 2014 City Pre-Application Site Development Review Meeting Evaluation), <https://documents.coastal.ca.gov/reports/2019/4/Th17a/Th17a-4-2019-exhibits.pdf>.

FIGURE 2: SURF & SAND HOTEL POSTCARD (1966) ⁶

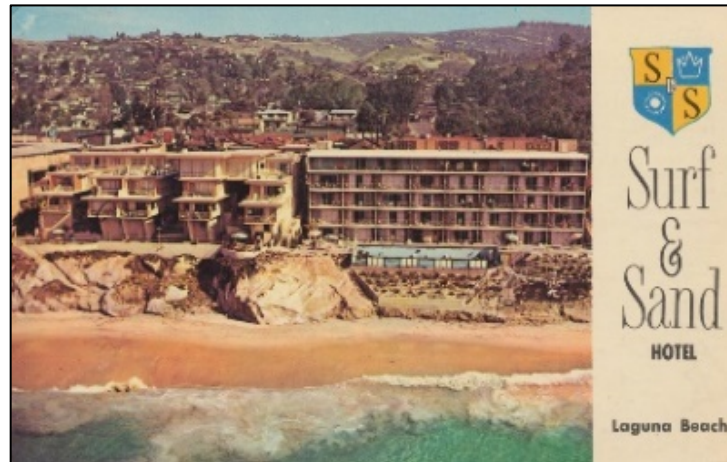


FIGURE 3: SURF & SAND APARTMENT (DATE UNKNOWN) ⁷



Through a series of renovations and expansions (see Fig. 4 below), JC Resorts and former Property owners have since turned the 13-room motel into a 167-room luxury resort complete with an on-site spa, high-end restaurant, seaside bar and pool.⁸ The Property now sits directly on the sandy beach and the coastal bluff is all but gone (see Figs. 5 and 6 below), presumably demolished for the expansion of the Property. Furthermore, as of November 1, nightly rates for the Surf and Sand Resort ranged from \$299 to \$549 for the week of November 4th.⁹

⁶ Flickr (2019) 1966 Surf & Sand Postcard, <https://www.flickr.com/photos/hollywoodplace/6511808715>.

⁷ Surf and Sand Photo (undated) provided by appellant Sharon Fudge.

⁸ JC Resorts (2019) Surf & Sand Resort “About” Webpage, <https://www.surfandsandresort.com/about-laguna-beach-resort/>.

⁹ JC Resorts (2019) Surf & Sand Resort “Reservations” Webpage (accessed 11/1/19), https://reservations.travelclick.com/106547?NCK=8777415908&rooms=1&datein=11%2F04%2F2019&dateout=11%2F05%2F2019&Adults=2&Children=0&code=&_ga=2.202344596.442261.1572639181-622536474.1572639181#/datesofstay.

FIGURE 4: SURF & SAND ENTITLEMENT HISTORY ¹⁰

Table B. Surf and Sand Parking Entitlement History		
Date	Entitlement	Summary
December 11, 1967	Variance 2009	For a motel that exceeded the height limit, a conference facility, and a two-level parking facility.
December 16, 1968	Variance 2045	To amend VA 2009 to include a restaurant/bar, one additional motel room, and a reduction in conference facility floor area.
July 10, 1986	Conditional Use Permit 86-6	For additions to a motel, and to allow residential use as part of a commercial development.
July 31, 1986	Variance 4016	To encroach into the required front yard, exceed the maximum building height, not provide sufficient parking, not meet minimum parking bay width standards, and not bring existing nonconformities into conformity.

August 28, 1986	Design Review 86-167	For additions to a hotel, elevated decks, and grading.
May 28, 1987	Conditional Use Permit 87-27 Design Review 87-159 Variance 4189	To amend CUP 86-6 to reduce density to 222 hotel rooms and one residential apartment with 349 on-site parking spaces, to encroach into the additional building setback at the street and oceanfront, and to provide less than the required parking spaces.
February 4, 1988	Design Review 88-002	For exterior alterations.
January 19, 1989	Conditional Use Permit 89-01 Design Review 89-002 Variance 4450	To allow valet parking of cars, additions to the hotel, an apartment in a hotel complex, front yard encroachment, additional building setback encroachment, to not meet landscape parking standards, and to not bring nonconformities into conformity.
January 11, 2001	Design Review 00-292 Variance 6764	For exterior alterations, additions of windows, site walls, a rooftop mechanical enclosure, new chimney, and to exceed the maximum building height with existing and new construction.
July 24, 2001	Design Review 01-247	For façade alterations, repaving of the existing parking lot, and new landscaping.
September 11, 2008	Design Review 08-209	For a new exterior fireplace and built-in benches.

FIGURE 5: SURF & SAND RESORT PHOTO LACKING BLUFF FACE (2010) ¹¹



¹⁰ Commission, *supra* fn. 5, PDF pp. 17-18 (Nov. 2018 City Department Planning Commission Staff Report).

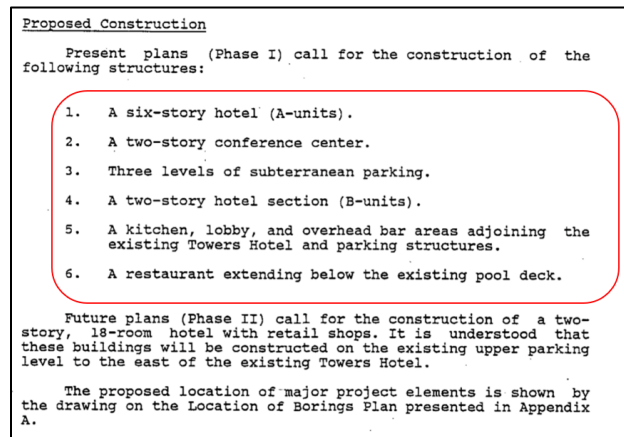
¹¹ Laguna Beach Info (2010) Surf & Sand Resort, <https://www.laguna-beach-info.com/surf-and-sand-laguna-beach-hotel.html>.

FIGURE 6: SURF & SAND RESORT PHOTO (2013) ¹²



The City of Laguna Beach (“City”) permitting records suggest major hotel expansion and renovation between 1980 and 1990 (see Fig. 4 above). A 1986 geotechnical study titled “Surf and Sand Hotel Expansion” proposed the construction of a six-story hotel, a two-story conference center, three levels of subterranean parking, a two-story hotel section, a kitchen, lobby with overhead bar areas, and a restaurant extending below the existing pool deck (see Fig. 7 below). The City approved a 1986 building application to remodel the existing hotel exterior, add a total of 72 net rooms, construct a conference building, relocate the Boardwalk restaurant to an oceanfront location, reduce retail and relocate and enlarge lobby, and add three levels of parking (see Fig. 8 below).


FIGURE 7: PROPOSED CONSTRUCTION (1986) ¹³



¹² OC Mom Blog (2019) Guide to Bluebird Street Beach in Laguna Beach (image captured in 2013), <https://ocmomblog.com/guide-to-bluebird-street-beach-in-laguna-beach/>.

¹³ 1986 Building File Documents, PDF p. 13 (Sep. 1986 Surf & Sand Geotechnical Study), <http://bit.ly/2sieVxb>.

FIGURE 8: BUILDING PERMIT APPLICATION (1986) ¹⁴

 APPLICATION FOR BUILDING PERMIT DEPARTMENT OF COMMUNITY DEVELOPMENT CITY OF LAGUNA BEACH, CA. 92651 505 FOREST AVENUE, (714) 497-3311				APPLICANT TO FILL IN INFORMATION AND DECLARATIONS WITHIN RED LINES. USE BALLPOINT PEN ONLY. PRINT ALL INFORMATION		VALUATION		PLAN CHECK NO.	
JOB ADDRESS		AV. ST. NO.	DATE OF APPLICATION	CITY BUSINESS LICENSE #	OCC. GROUP	OCC. LOAD	DATE		
1555 So. Coast Hwy.			4/21/86						
OWNER'S NAME (SIGNATURE MAY BE REQUIRED)		OWNER'S PHONE	CONTRACTOR		STATE LICENSE #				
J.C. Resorts		(714) 991-9193							
OWNER'S MAILING ADDRESS		CONTRACTOR'S ADDRESS		CONTRACTOR'S PHONE					
533 Coast Blvd. So./La. Jolla, Ca. 92037									
LOT	BLOCK	ASSIGNMENT	ASSESSOR	DESIGNER	STATE LICENSE #	Not Valid Unless Machine Certified			
1	882	444	217	Pacific Associates					
DESCRIPTION OF WORK		DESIGNER'S ADDRESS		DESIGNER'S PHONE	TYPE CONST.		PERMIT NO.		
Renovate Existing hotel exterior, Addition of 12 net rooms, Conference Bldg., Relocate Boardwalk Restaurant to Ocean Front, Relocate Retail and Relocate, Enlarge Lobby, 3 Levels Parking		64 5th St. B/San Diego		(619) 221-7971	DRIVE APPROVED 8/20/86				
LAND AREA 128,312 SQ. FT.		NO. STORIES 2 to 9		NEW CONSTRUCTION		ZONING		PUBLIC WORKS	
EXIST. BLDG. 123,383 SQ. FT.		GARAGE 40,000 SQ. FT.		HABITABLE 191,000 SQ. FT.		FIRE		GEOLOGICAL REPORT REQUIRED	
						YES		NO	

Unfortunately, Local 11 was unable to locate the appropriate CDPs for the above-referenced expansions, should they exist. However, according to its 1989 CDP No. 5-89-136, the Commission granted a CDP allowing, *inter alia*, for the demolition of 19 hotel units and one apartment unit, the construction of 45 hotel units and a new apartment unit, the addition of 95 new parking spaces, and other ancillary uses of varying sizes (e.g., wedding pavilion, dining terrace, banquet room, stair and stair tower on two natural rock outcroppings, seafood bar on an approximate nine feet of fill on sandy beach).¹⁵

Initially, the Commission approved the CDP without the ancillary uses, as recommended by Commission staff that JC Resorts agreed to in April 1989, but later amended the CDP to include the ancillary uses subject to special conditions requiring deed restrictions that barred shoreline protective devices (“Special Condition 5”) and required public lateral access and passive recreational use along the Property’s shoreline that included access along a ten-foot privacy buffer adjacent to the Property when other dry beach areas are unavailable (“Special Condition 6”) (see Fig. 9 below).¹⁶ Special Condition 5 and 6 were predicated on the Commission’s significant concerns over beach erosion from even relatively small structures, which ultimately can result in the public’s loss of important public ownership rights to beach access.¹⁷

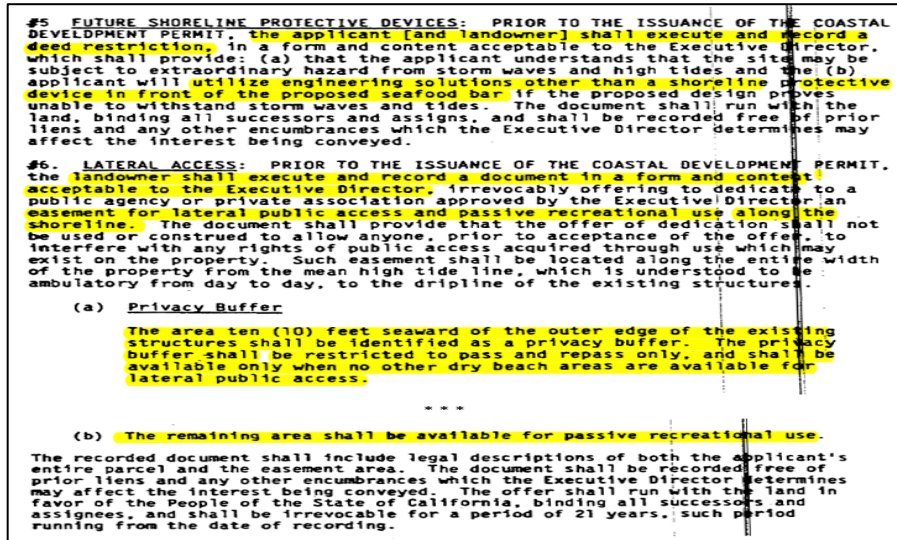
¹⁴ 1986 Building File Documents, PDF p. 43 (Apr. 1986 JC Resorts building permit application for Property), <http://bit.ly/2sieVxb>.

¹⁵ 1989 Surf & Sand CDP Documents, PDF p. 7 (Nov. 1989 Commission CDP # 5-89-136), <http://bit.ly/2RFYCFc>.

¹⁶ *Ibid.*, PDF pp. 41-44 (May 1989 Commission Staff Report CDP # 5-89-136A).

¹⁷ *Ibid.*, PDF pp. 50-55 (“It is *widely recognized that large structures* such as groins and breakwaters will have significant and *obvious impacts on sand supply and beach profiles*, but *even a relatively small structure* such as the one proposed can have an impact on the site and the adjoining area ... it is *generally agreed* that where a *beach is eroding*, a *seawall will come to define the boundary between the sea and the upland* ... when the beach in front of the structure disappears over time the natural shoreward migration of the *beach is blocked by the structure* ... The *Commission is led inexorably to the conclusion that if the seawall* works effectively on a retreating shoreline, it *results in the loss of the beach*, at least seasonally ... *Seawalls affect the public’s ownership and use rights* by tending to eventually fix the line of mean high tide at or near the seawall ... *First*, changes in the shoreline profile, particularly changes in the slop of the profile, *alter the useable area under public ownership* ... The *second* effect on access is through a *progressive loss of sand* as shore material is not available to nourish the bar ... *Third*, seawalls cumulatively affect public access by *causing greater erosion on adjacent public beaches* ... *Fourth*, seawalls, *by their occupation of beach area* which may be seasonally either subject to wave action or actually below the most landward locations of the mean high tide lines, *interfere directly with areas of the beach in which the*

FIGURE 9: SPECIAL CDP CONDITIONS (1989)¹⁸



While the above-discussed CDP approval does not document the status of the retreating sandy beach or loss of the Bluebird Beach sea bluff in 1989, today, the loss of both these public resources is evident (*compare* Fig. 2 & 3 [photos of historic state] *with* Fig. 5 & 6 [photos of recent state])—just as feared by the Commission in 1989.¹⁹

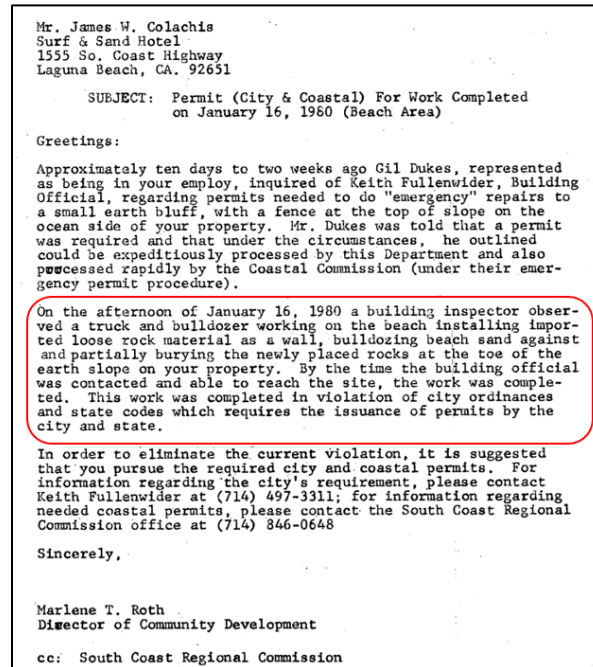
Moreover, based on our review, there is at least one documented instance of illegal development by the Resort that may have contributed to this outcome, a January 1980 incident related to the improper installation of loose rock and wall along the Property (*see* Fig. 10 below).

public has ownership interest or public trust related rights ... [finally] a dedication of an *easement in favor of the people* of the State of California over the sandy beach at 1555 South Coast Highway will operate directly to *compensate the public for, and thus alleviate, the burdens described above.*" Emphasis added.)

¹⁸ *Ibid.*, PDF pp. 43-44.

¹⁹ *Ibid.*, PDF p. 55 ("The Commission recognizes that the *seawall will probably change the beach profile* by steepening it and increasing beach erosion around it; this in turn *will interfere with and decrease the amount of sandy beach available for public access.*" Emphasis added.).

FIGURE 10: LETTER ON UNPERMITTED DEVELOPMENT (1980)²⁰



II. LOCAL 11 REQUESTS AN ENFORCEMENT INVESTIGATION INTO POTENTIAL COASTAL ACT VIOLATIONS AT THE RESORT, INCLUDING THE LOSS OF LOW COST ACCOMMODATIONS, ENCROACHMENT ON PUBLIC ACCESS TO COASTAL RESOURCES, AND THE DESTRUCTION OF BLUEBIRD BEACH SEA BLUFF

The mission of the Commission's Enforcement Program is to uphold the requirements of the Coastal Act, including protection of coastal resources, ensuring public access to coastal resources, and ensure compliance with all terms and conditions of previously issued CDPs.²¹ Under the Act, the Commission has a variety of tools to enforce the requirements of the Coastal Act, such as:

- Issuing Cease and Desist Orders barring certain activities (*see* Pub. Res. Code §§ 30809, 30810; *see also* 14 Cal. Code Regs. §§ 13181, 13187);
- Issuing Restoration Orders requiring affirmative actions to be taken (*see* Pub. Res. Code § 30811; *see also* 14 Cal. Code Regs. §§ 13191, 13196);
- Levying administrative civil penalties up to \$11,250 per day for public access violations (*see* Pub. Res. Code § 30821); and
- Initiating civil actions for equitable relief or civil penalties or both (*see* Pub. Res. Code § 30820; *see also* 14 Cal. Code Regs. §§ 13172-13172).

²⁰ 1970s-1980s Surf & Sand Documents, PDF p. 31 (Jan. 1980 City Letter to Surf & Sand Resort regarding work completed on January 16, 1980), <http://bit.ly/2REF3wV>.

²¹ Commission (2019) Enforcement: Coastal Act Violations Webpage, <https://www.coastal.ca.gov/enforcement/>.

Based on the above-referenced history and current state of the Property, the Resort seems to violate several provisions of the Act (as discussed below).

A. LOSS OF AFFORDABLE ACCOMMODATIONS SHOULD BE RECTIFIED

The Coastal Act's public access policies encourage "maximum access" to be provided for the public (Pub. Res. Code § 30210), which shall not be interfered with by private development (*id.*, § 30211), and that "[l]ower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided[]" (*id.*, § 30213, emphasis added). In carrying out these public access policies, the Coastal Act calls for the need to regulate the time, place, and manner of coastal beaches factoring, *inter alia*, the capacity of a site to sustain use and varying intensities, the fragility of the natural resource, and the balancing of equities between individual property owners and the public's constitutional right of access coastal resources. *Id.*, § 30214.

With regards to the Coastal Act's low-cost overnight accommodations ("LCOA(s)"), the Commission has jurisdiction over preserving access to the coast by encouraging and maintaining LCOAs. To this end, while it cannot set room rates by law (*id.*, § 30213), the Commission has denied development permits that would have adverse impacts on LCOAs, and approved developments (such as "higher-cost accommodation projects") that have either included a) on-site LCOAs, b) off-site LCOAs, or c) payment of in-lieu fees for future LCOAs.²² For example, the Commission denied the demolition of Steep Ravine cabins in Marin County in 1974 because of its potential to be converted into LCOAs in the future.²³ Alternatively, the Commission approved a 360-room hotel convention center in 1981 on the condition that either land is dedicated for or the construction of a 75-bed hostel on/off-site.²⁴

Here, through a series of renovations by JC Resorts and prior Property owners, the Surf & Sands Resort has been transformed from a 13-room motel/apartment building into a 167-room luxury resort. While the exact date at which the Property was converted from a motel into a luxury resort is unclear to Local 11, the 1986-1989 development plans indicate an intensification of uses and addition of amenities consistent with the upscale remodeling of the Property aimed at increasing room prices beyond those typically accessible to individuals served by LCOAs.²⁵ As pointed out by Commission staff, nearly 25,000 economy hotel rooms along the State's coast have been lost since 1989, and who knows how many since 1975 when LCOAs were first deemed threatened and in need of protection.²⁶ According to a 2017 study, only five percent of

²² Commission (10/26/16) Staff Report Item Th6 (Public Workshop: Lower Cost Visitor Serving Accommodations), p. 24, <https://www.ioes.ucla.edu/wp-content/uploads/th6-11-2016.pdf>.

²³ *Ibid.*, p. 9.

²⁴ *Ibid.*

²⁵ 1986 Building File Documents, *supra* fn. 13, PDF p. 13 (Sep. 1986 Surf & Sand Geotechnical Study), <http://bit.ly/2sieVxb>.

²⁶ Commission, *supra* fn. 22, p. 18 (Fig. 3); *see also id.* at p. 7 (Commission noting that "Coastal Act Section 30213 has its genesis in the 1975 California Coastal Plan[.]" which included Plan Policy 125 under its Equality of Access section and provided "Lower-cost visitor facilities such as campgrounds, rustic shelters, ranch houses converted to inns, bed and board in private homes, *summer home rentals* where several families can share the cost, and new tourist accommodations that provide some *moderately priced units and short-term rentals* of other recreational facilities (e.g., boats) shall be *given priority over exclusively expensive facilities* (e.g., *private residential developments*, some yacht clubs)." Emphasis added.).

the 6,841 Orange County coastal rooms were considered affordable.²⁷ Without the Commission's vigilance in enforcing the Coastal Act's LCOA public access policies, large swathes of beach and other coastal resources are in jeopardy of being privatized by affluent property owners like hotel operator JC Resorts.

There remains the question as to whether the loss of LCOAs at the Property has ever been considered since the adoption of the Coastal Act. Development that displaces LCOAs without mitigation is inconsistent with the Coastal Act's requirement to protect, provide, and maximize access for all.²⁸ Additionally, because the lack of LCOAs disproportionately affects minorities of lower-income backgrounds from accessing coastal resources,²⁹ the loss of LCOAs at the Property presents an environmental justice issue under the Coastal Act.³⁰

Before considering the merits of the active Appeal regarding JC Resorts' current development plans, the Commission must adequately assess the loss of LCOAs from past actions taken by JC Resorts and its predecessors, which may have occurred without any LCOA mitigation. The failure to sufficiently protect against and mitigate for lost LCOA in connection with prior CDPs and development approvals would not excuse taking appropriate action now regarding the JC Resorts' current development plans to expand its luxury Resort.

B. RESORT ENCROACHMENT ON PUBLIC ACCESS SHOULD BE STOPPED

In maximizing access and recreational opportunities to coastal resources, the Coastal Act protects against developments that interfere with the public's right to access the sea, dry sand, and rocky coastal beaches from the nearest public roadway and along the coast. *See* Pub. Res. Code §§ 30210-30212. Here, pursuant to the granting of the 1989 CDP, the public has a right for lateral access and passive recreational use of the shoreline along the Property, including pass and repass access along the ten-foot "privacy buffer" immediately adjacent to the Property when dry beach is unavailable (*see* Fig. 6 above [Special Condition 6]).³¹ However, reports indicate Resort guests routinely occupy the privacy buffer and sandy beach directly in front of the Property via hotel beach chairs, towels, and umbrellas stretched across (*see* Fig. 11 below). While Commission staff noted copies of an online advertisement for private cabana on the beach by the Resort dating from 2004,³² beach chairs and towels and white umbrellas can be seen as recently

²⁷ Sustinere (2016) Lower Cost Coastal Accommodation Analysis, PDF p. 4 (Presentation to the Commission by the Coastal Conservancy), <https://documents.coastal.ca.gov/reports/2017/5/w6/w6-5-2017-slides.pdf>.

²⁸ Commission, *supra* fn. 22, p. 1.

²⁹ *Ibid.*, pp. 8, 10, 24.

³⁰ Pub. Res. Code § 30107.3 ("‘Environmental justice’ means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Emphasis added); *see also* Pub. Res. Code § 30013 ("The Legislature further finds and declares that in order to advance the principles of environmental justice and equality ... apply to the commission and all public agencies implementing the provisions of this division." Emphasis added.); Pub. Res. Code § 30604 ("When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state." Emphasis added).

³¹ *See also* 1989 Surf & Sand CDP Documents, *supra* fn. 15, PDF p. 34 (1989 Irrevocable Offer to Dedicate Public Access Easement and Declaration of Restrictions granted by JC Resorts).

³² Commission, *supra* fn. 3, PDF p. 13.

as 2013 and 2015 and 2018 (see Figs. 11-13 below), and anecdotal evidence from residents and visitors suggest the practice is still common during the summer.

FIGURE 11: SURF & SAND RESORT PHOTO CAPTURE (2013) ³³



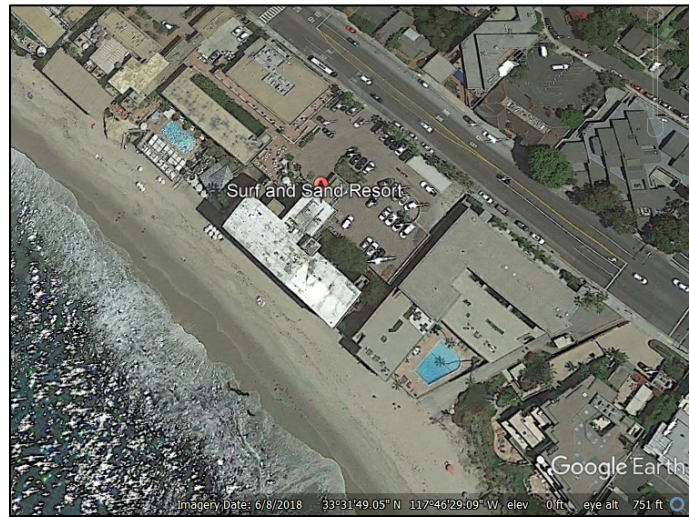
FIGURE 12: SURF & SAND VIDEO CAPTURE (FALL 2015) ³⁴



³³ OC Mom Blog, *supra* fn. 12, (2013 photo of white umbrellas in front of Surf & Sand).

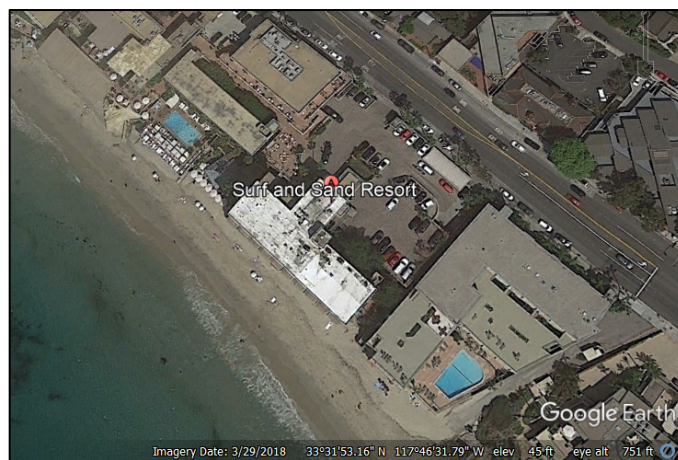
³⁴ YouTube (10/3/15) Gopro Bluebird Beach, mm:ss 00:46, <https://www.youtube.com/watch?v=qJlyXJ6jhNA>.

FIGURE 13: SURF & SAND RESORT SATELLITE IMAGERY (SUMMER 2018) ³⁵



This practice may impede the public use of Bluebird Beach, which is made worse during non-summer months when there is less sandy beach accessible (*see* Figs. 14-16 below).³⁶ This practice would be contrary to both the Coastal Act's public access policies (*see* Pub. Res. Code §§ 30210-30212), and the spirit of Special Condition 6 under the Resorts 1989 CDP. Local 11 urges the Commission to investigate whether JC Resorts continues to provide umbrellas and other equipment on or around the privacy buffer, or any other practices that impede public access to this coastal resource.

FIGURE 14: SURF & SAND SATELLITE CAPTURE (SPRING 2018) ³⁷



³⁵ GoogleEarth (image captured 6/8/18).

³⁶ 1989 Surf & Sand CDP Documents, *supra* fn. 15, PDF p. 54 (Commission noting research showing beach in front of a seawall is narrower than a beach not affected by a seawall, the “effect of that narrowness is to reduce the area located seaward of the ordinary high water mark ... that would otherwise be available for public use ... [an] effect can occur even where the maximum summer width of the beach is essentially unchanged, and represents a temporal loss of access due seawall construction.”).

³⁷ GoogleEarth (image captured 3/29/18).

FIGURE 15: SURF & SAND SATELLITE CAPTURE (FALL 2016) ³⁸

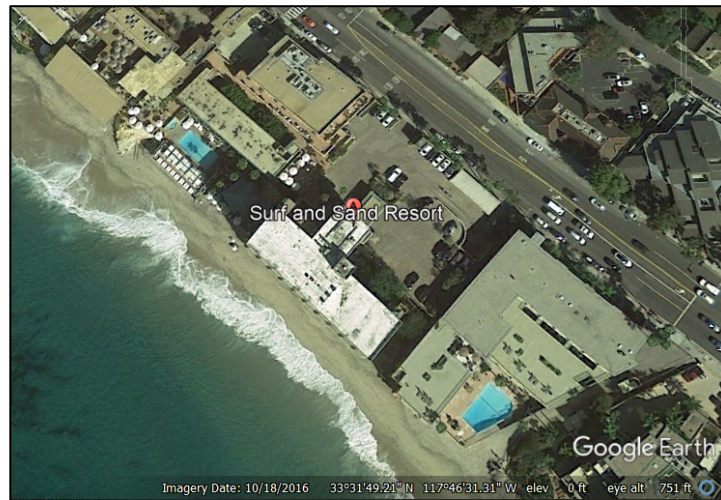
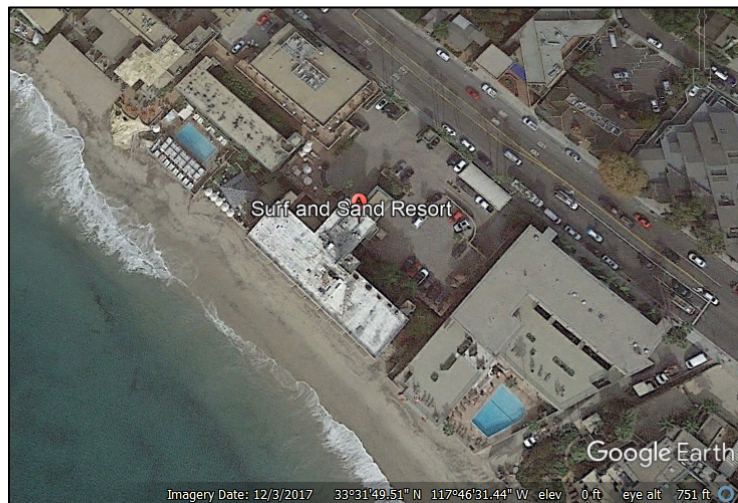


FIGURE 16: SURF & SAND SATELLITE CAPTURE (WINTER 2017) ³⁹



C. DESTRUCTION OF THE BLUEBIRD BEACH BLUFF FACE SHOULD BE MITIGATED

In addition to protecting public access, the Coastal Act also seeks to preserve scenic and visual qualities as “resources of public importance” and require development to “minimize the alteration of natural land forms ... and, where feasible, to restore and enhance visual quality in visually degraded areas.” Pub. Resources Code § 30251, emphasis added; *see also id.*, § 30253 (new development shall “[a]ssure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter

³⁸ GoogleEarth (image captured 10/18/16).

³⁹ GoogleEarth (image captured 12/3/17).

natural landforms along bluffs and cliffs[,] ... [and] [w]here appropriate, *protect* special communities and neighborhoods that, because of their *unique characteristics, are popular visitor destination points for recreational uses.*" Emphasis added).

Here, major remodeling and new development at the Surf and Sand between the implementation of the Coastal Act in 1972 and the adoption of the City's Local Coastal Program ("LCP") in 1993 appear to violate LCP provisions through the apparent expansion of non-conforming buildings onto the sea bluff. Commission staff appears to agree finding Substantial Issues raised in the Appeal.⁴⁰

Rather than preventing the further destruction of Bluebird Beach's sea bluffs, it appears JC Resorts and its predecessors have redeveloped the Property in a manner that has destroyed sea bluff. Again, the failure to adequately protect against and mitigated for the lost sea bluff in connection with prior CDPs and development approvals does not excuse taking appropriate action now regarding the JC Resort's current development plans to expand its luxury Resort.

III. CONCLUSION

In summary, our research suggests that JC Resorts has prioritized upscale development of the Property over the wellbeing of our coastline, as well as continuing a practice of potentially impeding public access to vital coastal resources—contrary to the Coastal Act policies and the Property's 1989 CDP. Past failures to protect against the loss of LCOAs, public access to coastal resources, and the Bluebird Beach sea bluff must be rectified and potentially rectified before allowing yet another expansion of this luxury Resort.

To this end, Local 11 urges the Commission to open an enforcement investigation related to the Property's development history to determine whether JC Resorts obtained the necessary CDPs and other development approvals. In considering yet another expansion of this luxury Resort, the Commission should pursue all appropriate restoration and mitigation associated with the loss of LCOAs at the Property and destruction of the unique Bluebird Beach sea bluffs. So too, we ask that the Commission investigate whether Surf and Sand's practice of placing resort beach chairs and umbrellas violates Special Condition 6 of its 1989 CDP.

If found warranted based upon your investigation, Local 11 urges the Commission to consider all remedies at its disposal, including: 1) granting the Appeal and rejecting JC Resorts most recent development plans until appropriate measures are taken for the loss LCOAs and sea bluff; 2) commencing a Cease and Desist Order to bar the Resort's usurpation of the public

⁴⁰ Commission, *supra* fn. 3, PDF pp. 13-15 (Commission's finding of Substantial Issues given "The *City's record does not adequately establish or explain* whether the project approved by the City is *consistent with the bluff top and oceanfront protections and restrictions policies of the certified LCP* ... Since the *total extent of the proposed project is not clear from the City's record*, the appeal raises a *substantial issue as to whether the project must bring existing non-conformities into conformance with the certified LCP* ... If the project approved by the City constitutes new development (this question is discussed above), then the *location of the bluff edge is important*. As discussed above, the appeal raises substantial issues as to whether the project involves new development. Therefore the Commission finds that the *project does raise a substantial issue regarding conformity with LCP.*" Emphasis added).

beach and prevent public access; 3) seeking administrative civil penalties for each day the Resort knowingly blocked public access to coastal resources; 4) commencing a Restoration Order to mitigate the loss of the Bluebird Beach sea bluff; and 5) pursuing civil action to for all equitable relief and civil penalties allowed pursuant to Pub. Res. Code § 30820 and 14 Cal. Code Regs. §§ 13172-13172.

To: Honorable Chair Padilla, Commissioners, and Staff

From: UNITE HERE Local 11

Date: 8/12/2020

RE: Item 10c, City of Laguna Beach LCP Amendment No. LCP-5-LGB-19-00640-1;
comparison between hosted home-shares, unhosted whole units, and existing LCOAs across Los Angeles County

We calculated the cost difference between hosted home-shares, unhosted whole units, and existing motels/B&Bs (existing LCOAs) across Los Angeles County, including various coastal cities and Laguna Beach. Based on these figures, the currently-proposed LCP amendment is inconsistent with goals of the Coastal Act and the City of Laguna Beach's LCP, as unhosted, whole unit STRs are not more affordable than hosted home-shares or existing LCOAs. **To ensure that the LCP amendment is consistent with these standards, the Commission should require the new STRs to be hosted home-shares.**

Jurisdiction	Home-sharing average (hosted, as of June 2020)	Whole apt/home Average (unhosted, as of June 2020)	Cost of existing motel or bed and breakfast options*
County of Los Angeles	\$110.66	\$299.16	\$137.90**
Santa Monica	\$137.19	\$218.58	\$124
Redondo	\$96.37	\$255.09	\$137
Manhattan	\$100.95	\$430.91	\$136.90
Hermosa	\$269.44	\$416.76	\$161
RPV	\$162.63	\$549.33	\$120
Laguna Beach	N/A	\$500	\$182.43

* With the exception of the County of Los Angeles figure, the other figures reflect the average cost of existing motels/B&B options for the night of August 15, 2020.

** This figure reflects an average of 3 motels/B&Bs in 6 major hotel submarkets across Los Angeles County