

CALIFORNIA COASTAL COMMISSION

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W13b

ADDENDUM

DATE: November 15, 2022

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W13b, CDP NO. A-5-DPT-22-0038 FOR THE COMMISSION MEETING ON WEDNESDAY, NOVEMBER 16, 2022.**

This addendum is designed to achieve the following objectives. First, in Section I, Commission staff updates the record by supplementing it with correspondence that was received after publication of the staff report. Section II provides responses to issues raised in the recent correspondence, and Commission staff proposes the Commission incorporate these responses into its findings. Finally, Section III provides corrections and modifications to the staff report in light of the correspondence received.

I. CORRESPONDENCE RECEIVED

After publication of the staff report dated November 3, 2022, the Commission has received one (1) letter in support of the proposed project, and eleven (11) letters in opposition, mainly from the City of Dana Point and its residents. The letter in partial opposition from the City of Dana Point (applicant) asserts that the 10-year authorization period could put the STR Program at risk, resulting in delays in its implementation, and that the City will not accept the terms of **Special Condition 5** to reimburse the Commission for all attorneys' costs and fees for any legal defense action. The other letters in opposition generally assert the following: 1) that the proposed Program, as modified, still does not adequately distribute STRs in the Coastal Zone; 2) that STRs decrease the quality of life for Dana Point residents; 3) that the caps in the modified Program should be further reduced/restricted; and 4) that the City should more strongly enforce against unpermitted STRs.

The Commission had also received additional correspondence prior to publication of the staff report dated November 3, 2022. These are included on pages 2 – 9 of the correspondence available on the Commission's website at the following address: <https://documents.coastal.ca.gov/reports/2022/11/W13b/W13b-11-2022-corresp.pdf>.

II. RESPONSE TO COMMENTS

The staff report dated November 3, 2022, included some inaccuracies that were identified in the correspondence received. Commission staff would like to correct the record and incorporate additional findings into the staff report, such as the pro-rata permit cap as calculated on page 10, and the number of HOAs disallowing and the number of HOAs allowing STRs in the Dana Point Coastal Zone. Another change to the staff report includes integration of some of the requirements in **Special Condition 3** into **Special Condition 4** regarding the permit's authorization period. The Special Conditions, and references thereof, were consequently renumbered and reformatted throughout the staff report. Finally, the staff report discusses the Commission's position on **Special Condition 5** in response to the City's concerns related to liability for any challenges of the approval, issuance, or implementation of this CDP.

The Commission's staff report fully addresses the concerns raised in the correspondence received, but additional discussion is included below regarding the assertion that the caps in the modified Program should be further reduced/restricted.

As for the concern that the de novo CDP would not prevent clustering of STRs in the Dana Point Coastal Zone, Commission staff would point to the section titled "Geographic Clustering" on page 20 of the staff report. While interested parties in opposition claim that there is "nothing" in the Program to "prevent undue clustering and concentration," staff would refer to this section of the staff report for an overview of how various policies would interact to create a balanced distribution of STR in Dana Point's Coastal Zone, which include the modifications required in **Special Condition 1**. Likewise, for the assertions that that STRs decrease the quality of life for Dana Point residents, and that the City should more strongly enforce against unpermitted STRs, substantive findings were included in the staff report discussing the impacts that the STR Program could have on community character of Dana Point's coastal residential neighborhoods. Staff would note that the City has additionally submitted an enforcement report in [Exhibit 8](#), and will be required per **Special Condition 4** (original numbering) to continue tracking all nuisance issues and complaints for the ten-year study period, as is discussed in greater detail in the section titled "Cumulative Impacts" on page 28 of the staff report.

Thus, the following is added to the end of the **Response to Comments** section on page 31 of the staff report dated November 3, 2022:

In correspondence received after November 3, 2022, several requests were made to the Commission to change the numerical caps on STRs, as required in **Special Condition 1** and shown in [Exhibit 3](#). For example, one suggestion was to reduce the percentage of STRs allowed within multi-family properties from 20% to 10%. Other suggestions were to completely remove the Non-Primary STR category, to reduce the 115-permit cap to 1% of the residential unit count in the Dana Point Coastal Zone (equivalent to 57 permits), and/or to eliminate the Multi-Family Home Stay and Mixed-Use Parcel STR categories. The interested parties' various recommendations all sought to further restrict the City's STR Program.

The Commission has made substantive findings concerning the numerical cap in previous sections of this staff report. First, the Commission recognizes the importance of traditional, non-primary STRs in promoting public access and lower cost overnight

accommodations along the coast. The numerical cap of 115 is the City's chosen figure, which is loosely based on the proportion of STRs in the Coastal Zone at the time that Dana Point enacted its moratorium. The numerical cap the City established is in line with other Commission actions in nearby coastal communities. The Commission agrees with the City's proposed cap for non-primary STRs, but is acting de novo to restrict the multi-family home stay and mixed-use STR categories for the reasons stated in the sections above. It is important to distinguish between traditional non-primary STRs and multi-family home stay and mixed-use STRs, as the latter two categories are currently underrepresented in Dana Point, and a more equitable distribution of STRs among these various categories will further encourage public access and visitor-serving uses while balancing issues related to community character and affordable housing. Thus, the Program, as conditioned, conforms to the Chapter 3 policies of the Coastal Act and the City's certified LCP.

III. REVISIONS TO THE STAFF REPORT

The following modifications and corrections are made to the staff report dated November 3, 2022. Language to be added is shown in underlined text, and language to be deleted is identified by ~~strikethrough~~.

- a) Modify the Summary of Staff Recommendation on page 4 as follows:

The other four special conditions require: **2)** submittal of any changes to the Program for review by the Executive Director to determine whether a new CDP or CDP amendment is necessary; **3)** ~~within 10 years, reauthorization of this CDP or application for a CDP or LCP amendment;~~ **4)** submittal of a study at the end of a 10-year established authorization period, including specific criteria and metrics to track the performance of the Program ([Exhibit 4](#)), which may trigger the need for a CDP amendment; and **54)** reimbursement in full for all Coastal Commission costs and attorneys' fees that the Coastal Commission may be required by a court to pay in connection with the defense of any challenges of the approval, issuance, or implementation of this CDP.

- b) Delete **Special Condition 3** on page 8.

- c) Modify **Special Condition 4** on page 8 as follows:

4. Short-Term Rental (STR) Program Study. BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall undertake the study in accordance with the rubric enclosed in [Exhibit 4](#) for the duration of ten (10) years. ~~the applicant shall submit for review and written approval of the Executive Director, concurrent with the reauthorization application required in **Special Condition 3**, a~~ The study that shall monitors various elements of the STR Program, provides quantitative and qualitative data and trends for the authorization 10-year period, and makes recommendations for any appropriate changes to the Program.

~~The applicant shall undertake the study in accordance with the rubric enclosed in [Exhibit 4](#) for the duration of the ten (10) year authorization period. Any proposed changes to the approved rubric shall be reported to the Executive Director. No changes to the rubric shall occur without a Coastal Commission approved~~

amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

Following the 10-year period, the applicant shall submit the study and any recommended changes for review and written approval of the Executive Director. If, based on the results of the study, the Executive Director determines that adverse significant impacts to public access or community character are occurring as a result of the STR program, and/or the City determines that significant impacts to housing stock in the Dana Point Coastal Zone are occurring as a result of the STR program, the City shall seek an amendment from the Commission to revise the STR program to address these issues. No changes to the STR program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- d) Renumber the Special Condition titled “Short-Term Rental (STR) Program Study” as **Special Condition 3** and renumber all references throughout the staff report.
- e) Renumber the Special Condition titled “Liability for Costs and Attorneys’ Fees” as **Special Condition 4** and renumber all references throughout the staff report.
- f) Modify the first full paragraph on page 10 in Project Description and Background as follows:

The STR program establishes an overall cap of non-primary STRs in the Coastal Zone of 115 permits. The 115-permit cap was established by approximating the number of STR permits in existence when the City stopped issuing STR permits (i.e., there were 183 STR permits citywide in 2016), and applying a pro-rata assessment of the number of existing operating non-primary STRs in the Coastal Zone. While the 115-permit cap exceeded the true pro-rata number (which would have been closer to a 9194-permit cap), the City Council decided to retain the 115 figure, citing the strong visitor demand for overnight accommodations near the coast (as exemplified by the numerous hotel offerings and campsites within the Coastal Zone), and the City’s many coastal and coastal dependent visitor-serving amenities.

- g) Modify the first full paragraph of Homeowners Associations (HOAs) on page 21 as follows:

There are 238 HOAs within the Coastal Zone. Based on the most recently available information, ~~fifteen (15)~~ seventeen (17) of these HOAs, ~~which contain approximately 2,648 residential units,~~ enact short-term rental bans via their covenants, conditions, and restrictions (CC&Rs). ~~Ten (10)~~ Nine (9) of these HOAs, ~~which contain approximately 639 residential units,~~ have CC&Rs that allow short-term rental use. 91% of the existing 69 STR permits in the City’s Coastal Zone are found in areas governed by a homeowners association (HOA).¹⁶

¹⁶ Information provided by the City at the Commission’s September 7, 2022 ‘substantial issue’ hearing. The City considers Beach Road as an HOA for the purposes of STRs, since the District manages short-term rentals via its bylaws (akin to CC&Rs).

- h) Modify the first full paragraph on page 24 in Lower Cost Overnight Accommodations as follows:

Special Condition 2 requires the City to submit any changes to the Program for review by the Executive Director to determine whether a CDP amendment is required, and **Special Condition 3** requires the applicant to study and assess whether the STR Program would have any adverse impacts on lower cost overnight accommodations within the Dana Point Coastal Zone over ~~authorizes this CDP for a ten-year period term only, which may trigger the need for a~~ unless the City applies for a renewal (via CDP/LCP amendment or new CDP). The Executive Director may extend this deadline for good cause. Together, these conditions will safeguard the protection and encouragement of lower cost visitor and recreational facilities through the continued monitoring of the Program's performance and implementation of appropriate adjustments on an as-needed basis.

- i) Modify the Cumulative Impacts on page 28 as follows:

When reviewing a project's consistency[...] the incremental effects of the development are considered in connection with the effects of past, current, and probable future impacts that arise from implementation of the program.

~~First, to avoid cumulative impacts to community character resulting from the implementation of the STR Program and the issuance of short-term rental permits and regulations, the Commission imposes **Special Condition 3** to restrict authorization of this CDP for a ten-year term only, unless the City applies for a renewal (via CDP/LCP amendment or new CDP). The Executive Director may extend this deadline for good cause. This condition will ensure that any significant adverse impacts to public access, housing stock, or community character are not prolonged in perpetuity without remedy or recourse.~~

~~Second, the City must monitor and report on STRs throughout the Coastal Zone during the authorization period of this CDP. If adverse impacts are observed, the City may correct and mitigate for such impacts in accordance with requirements set forth in **Special Condition 2**, which require the City to submit any changes to the Program for review by the Executive Director to determine whether a CDP amendment is required.~~

The City is already proposing to reevaluate the permit cap, regulations, penalties, and any other aspect of the STR Program to determine if an amendment must be made within five years of issuance of this CDP. To accomplish a more thorough and comprehensive monitoring/tracking of the STR Program's performance, the Commission imposes **Special Condition 43** for a study and assessment during an extended ten-year period with more prescriptive criteria and metrics, to corroborate that no unintended adverse cumulative impacts on public access, lower cost overnight accommodations, housing stock, and community character arise during implementation of the Program.

In particular, the City will be required to[...] 6) assess revenues from application fees and waitlist times to determine if they are appropriate.

Special Condition 3 requires that if, based on the results of the study, the Executive Director determines that adverse significant impacts to public access or community character are occurring as a result of the STR program, and/or the City determines that significant impacts to housing stock are occurring as a result of the STR program, in the Dana Point Coastal Zone, the City shall seek an amendment from the Commission to revise the STR program to address these issues. During the ten-year study period, the City must monitor and report on STRs throughout the Coastal Zone, which will give the City time to learn, incorporate, and assess the Program's requirements and impacts. Ten years is a sufficient time period for the City to evaluate various market trends and to present available data and make recommendations on necessary improvements to the Program. Thus, as written, ~~t~~This condition will ensure that any significant adverse impacts to public access, housing stock, or community character are not prolonged in perpetuity without remedy or recourse.

If adverse impacts are observed, the City may correct and mitigate for such impacts in accordance with requirements set forth in **Special Condition 2**, which require the City to submit any changes to the Program for review by the Executive Director to determine whether a CDP amendment is required.

Thus, the Commission finds that the proposed STR Program, as conditioned, can be found consistent with the development and community character policies of the Coastal Act and the City's certified LCP.

j) Modify G. Reimbursement of Costs and Fees on page 31 as follows:

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. See also 14 C.C.R. § 13055(g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 45** requiring reimbursement of any costs and attorneys' fees the Commission incurs in connection with the defense of any action brought by a party other than the permittee challenging the approval, issuance, or implementation of this permit. Modifications to the final STR Program (Resolution No. 22-07-12-01, [Exhibit 2](#)) required in **Special Condition 1** will ensure that the Commission is not subject to any claims, damages, or liabilities resulting from or arising out of the City of Dana Point's implementation of the STR Program described in this coastal development permit ([Exhibit 3](#)).

In correspondence received from the City of Dana Point on November 10, 2022, the City states that it "is unwilling to accept Special Condition #[4] on the basis that the financial impacts are unknown and to accept it would be fiscally irresponsible." The City goes on to claim that this Special Condition has "not been applied to CDPs issued for programs." The City points to Torrance's STR Program ([CDP 5-20-0031](#)) and other STR Programs processed via LCP amendment.

The Commission did not impose this condition on Torrance's CDP for its STR program for several reasons, including the limited scope of the Torrance program and the lack of controversy or public opposition to the proposed CDP. The Commission would note that in at least two previous actions, the Commission

imposed an indemnification condition on programmatic CDPs.²⁶ In both cases, the Commission found it necessary to impose “Liability for Costs and Attorney’s Fees,” even while the CDPs were mainly programmatic and concerned matters such as beach curfews (Cowell Beach) and vehicular dust control (Oceano Dunes). In the case of Dana Point’s STR Program, interested parties have previously filed a referendum and various appeals, and it is a possibility that interested parties will explore litigation following the approval of this CDP. It is therefore appropriate to require the acceptance of liability condition here. The Commission would also note that the STR Program will remain the responsibility of the City’s to administer and implement, even while the Commission retains permitting authority, and as such, it is incumbent upon the City to assume any litigation risk. Thus, the Commission maintains that **Special Condition 4** is necessary and is supported by past Commission actions.

²⁶ See CDPs [3-11-027-A2](#) (Cowell Beach) and [3-12-050](#) (Oceano Dunes).