

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001
(805) 585-1800



F10a

DATE: July 21, 2022

TO: Commissioners and Interested Persons

FROM: Steve Hudson, District Director
Barbara Carey, District Manager
Deanna Christensen, District Supervisor
Denise Gonzalez, Coastal Program Analyst

SUBJECT: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-20-0083-2 (Short-term Rentals) for August 12, 2022 Commission Meeting

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, **deny** proposed City of Malibu Local Coastal Program (LCP) Amendment No. LCP-4-MAL-20-0083-2, as submitted. The motion and resolution for Commission action can be found on page 7.

The City of Malibu (“City”) is requesting an amendment to the Land Use Plan (LUP) and Local Implementation Plan (LIP) components of its certified LCP to add policies and provisions to regulate short-term rentals (STRs). The proposed amendment would allow “hosted” STRs only (i.e., an onsite “host” must be present on the property during the duration of the short-term rental) within single-family dwellings, condominiums, and duplexes in the City. In other words, the proposed amendment would ban un-hosted STRs in single-family residences. The proposed amendment would allow “un-hosted” STRs only within multi-family residential properties up to two units or up to 40 percent of the units on the parcel (whichever is less). These proposed restrictions are entirely new. Currently, the City’s certified LCP does not explicitly define, regulate, or prohibit STRs. However, the short-term rental of residential property has historically occurred in the City of Malibu for many decades, particularly in the residential neighborhoods nearest the beach. Moreover, the City has required rentals to be registered with the City and for the Transient Occupancy Tax to be remitted.

In addition, the proposed amendment would modify existing LUP Policies 2.34 and 5.20 to include additional language clarifying that short-term rental use of residential property is only allowed pursuant to a city-issued STR permit. Furthermore, the amendment would add and revise definitions for terms related to STRs. Moreover, a new section to LIP Chapter 13 (Coastal Development Permits) would specify that no coastal development permit is required for short-term rental of residential property, provided that the rental (1) meets a valid STR permit issued by the City, (2) is in a dwelling unit that was lawfully established, (3) will not result in the reduction or elimination of public parking for access to the beach,

public trails or parklands.

The Commission has found STRs to be an important source of visitor accommodations in the state. STRs provide amenities that distinguish them from other types of overnight lodging and often make them the most affordable option for overnight stays on the coast, particularly for groups and families. Further, STRs can augment the stock of overnight accommodations in coastal areas that have limited hotel/motel availability or where many of the available hotel rooms are particularly high-cost. At the same time, STRs have the potential to raise a range of local issues, including loss of affordable housing, enforcement issues, altered residential neighborhood character, and parking and transportation impacts. Statewide, the Commission has sought to balance these types of issues through context-specific LCP provisions that allow STRs subject to reasonable restrictions.

Despite being a significant visitor-serving destination, Malibu's lodging options are significantly limited compared to similar coastal towns in California. While there are several hotels and motels in cities surrounding Malibu, the approximate 21 miles of Malibu coastline is only serviced by approximately 130 hotel rooms, 142 RV sites, 35 tent sites, and the City's existing short-term rental stock. According to the City, approximately 414 properties remitted transient occupancy taxes for STRs in 2018 (which is the most current tax data provided by the City). As of June 15, 2021, which is the most current data provided by the City, the City has approved 202 STR permits (pursuant to the City's Municipal Code "Enforcement Ordinance," which created a new STR permit system and enforcement provisions, and which went into effect January 15, 2021). Of the approved 202 STR permits, 71 multifamily units and 173 single-family units have been approved for use as STRs. Thus, most Malibu STR-approved permits are for single-family residences by a wide margin.

The City uses this STR permit figure to estimate the current demand for STRs. However, Commission staff believes utilizing data collected on December 2, 2020 (372 units) is a more appropriate baseline to reflect the historical trend data on STRs operating in the City. Using data from December 2020 as the baseline is more appropriate, particularly because 2020 was the last year of data not affected by the Enforcement Ordinance (effective January 15, 2021). Looking collectively at hotels, motels, and STRs in the City, STRs account for (at a minimum) over 74 percent of the total supply of overnight accommodations (130 hotel/motel rooms and 372 STRs as of December 2020). Therefore, STRs are a critically important visitor-serving use in Malibu, given that the City currently contains only six hotels and one RV park within its 21 miles of coastline.

Requiring all single-family residences used as STRs to be hosted on-site, even in areas of the City that have traditionally contained existing STRs, will reduce the number of STRs available as overnight accommodations. Hosted STRs generally do not provide the space and privacy desired by families and larger groups traveling together that STRs often offer, and thus, the public is less likely to stay at hosted STRs. Therefore, in this case, the proposed amendment would result in a loss of existing, lower-cost overnight accommodations in the City and would not provide enough STRs to accommodate existing or future visitor demand. Furthermore, the proposed amendment would limit the number of STRs within multi-family properties up to two units or up to 40 percent of the units on the parcel (whichever is less). According to the City, this restriction prevents a multi-family

LCP-4-MAL-20-0083-2 (Short-term Rentals)

building from becoming a de-facto hotel and prevents erosion of the availability of housing stock within the City. However, only allowing unhosted STRs to operate in multi-family zones will still result in the loss of existing STRs overall because there are very limited areas zoned for multi-family uses in the City, and most multi-family zoned parcels are generally concentrated in a few areas throughout the City, primarily in eastern Malibu and Pacific Coast Highway. Additionally, by only allowing for “un-hosted” STRs within multi-family properties, demand for the more desirable un-hosted STRs will likely shift to multi-family housing instead of single-family residential properties. This shift will likely place a burden on multi-family properties to be used as un-hosted STRs, and this will likely result in a loss of affordable housing within the City, considering multi-family properties make up a major of the City’s affordable long-term housing.

For these reasons, the City’s amendment does not strike an appropriate balance to continue to accommodate STRs in a manner that would not adversely impact the stock of existing and potential future visitor-serving overnight accommodations or long-term housing stock. Alternatives exist for a more balanced approach, such as maintaining the existing supply of un-hosted STRs, limitations on the total number of STRs allowed within certain areas (e.g., by neighborhood, or by communitywide ratio, etc.), limits on maximum vacation rental occupancies, limits on the amount of time a residential unit can be used as a vacation rental during a given year or season, and/or limits on the type of housing that can be used as STRs (e.g., disallowing STRs in affordable housing such as accessory dwelling units, designated affordable housing units, etc.). These example alternatives should be guided by the available data and historical trend regarding STRs in the City, and developed through an inclusive planning process at the local level.

On March 28, 2022, Commission staff met with City staff to express concern that the amendment, as submitted, is too restrictive and is inconsistent with the Coastal Act and the certified LUP, and therefore, staff was inclined to recommend denial of the amendment (Exhibits 4 and 5). Commission staff also discussed possible alternative approaches for a more targeted and balanced approach to continuing to accommodate STRs in a manner that would not adversely impact the stock of visitor-serving overnight accommodations or long-term housing stock in the City. City staff initially had indicated that they would develop ideas and continue coordinating with Commission staff toward an approach that could be supported. However, at its June 13, 2022 hearing, the City Council indicated that it wished to proceed with the LCP Amendment as originally adopted by the City. It also directed City staff not to work with Commission staff on any alternative STR regulations. As such, City and Commission staff have not coordinated further on any possible modifications to the LCP Amendment (Exhibit 6).

Overall, the City’s proposal to ban non-hosted STRs in single-family residences would eliminate existing, lower-cost overnight accommodations in the City. Considering the relatively limited hotel/motel rooms in the City, STRs are an essential part of the City’s supply of overnight accommodations. The City’s amendment does not strike an appropriate balance to continue to accommodate STRs in a manner that would not adversely impact the stock of existing and potential future visitor-serving overnight accommodations or long-term housing stock. Given that several different alternative approaches exist that would serve to protect public visitor-serving opportunities and affordable housing stock, an LCPA

can be developed for the City that contains more appropriate STR regulations that could also address potential visitor-resident conflicts and that could satisfy competing objectives associated with facilitating public recreational access and visitor-serving opportunities near and within residential areas of the City. However, such regulations will need to respond to the local context and are best developed through an inclusive planning process at the local level. The Commission does not here suggest modifications to the City's proposed LCP Amendment to create an alternative program to regulate STRs without input from the City as it is unlikely to be productive in the immediate context of this action.

The amendment, as submitted, would unduly restrict the rental of residential units to visitors and diminish the public's ability to access and recreate on the coast. For these reasons, the proposed LCP amendment is inconsistent with and inadequate to carry out the certified LUP, and the LCP amendment is not in conformity with the policies of Chapter 3 of the Coastal Act. Thus, the LCP amendment should be denied.

Table of Contents

| | |
|--|----|
| I. PROCEDURAL OVERVIEW | 6 |
| A. Standard of Review | 6 |
| B. Procedural Requirements | 6 |
| C. Public Participation | 7 |
| II. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE LAND USE PLAN AMENDMENT | 7 |
| DENIAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED | 7 |
| III. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE LOCAL IMPLEMENTATION PLAN AMENDMENT | 8 |
| DENIAL OF THE LOCAL IMPLEMENTATION PLAN AS SUBMITTED | 8 |
| IV. FINDINGS FOR DENIAL OF THE LOCAL COASTAL PROGRAM AMENDMENT 8 | |
| A. Amendment Description and Background | 8 |
| B. Findings for Denial of the LCP Amendment | 13 |
| D. California Environmental Quality Act | 22 |

Exhibits

[Exhibit 1 – City of Malibu Ordinance No. 472](#)

[Exhibit 2 – City of Malibu Resolution No. 20-51](#)

[Exhibit 3 – City of Malibu Overnight Accommodations Table](#)

[Exhibit 4 – April 11, 2022 City of Malibu STR LCP Amendment Staff Memo](#)

[Exhibit 5 – June 13, 2022 Malibu City Council Meeting Agenda Report re: STR Ordinance
Discussion](#)

[Exhibit 6 – June 13, 2022 City Council Meeting Deliberations Conclusion \(Update 7/18/22\)](#)

[Exhibit 7 – Public Comment Letters](#)

I. PROCEDURAL OVERVIEW

A. Standard of Review

The Coastal Act provides:

The Commission shall certify a land use plan, or amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200) ... (Section 30512(c))

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...(Section 30513)

...The Commission may only reject zoning ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out together with its reasons for the action taken...(Section 30513)

The Commission may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions, which, if adopted by the local government and transmitted to the commission, shall be deemed approved upon confirmation by the executive director...(Section 30513)

Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513... (Section 30514(b))

Pursuant to Section 30512(c), the standard of review that the Commission utilizes in reviewing the adequacy of the proposed amendment to the City's certified land use plan (LUP) is whether the proposed amendment is consistent with, and meets the requirements of, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the City's certified local implementation plan (LIP), pursuant to Sections 30513 and 30514(b) of the Coastal Act, is whether the proposed amendment is in conformance with, and adequate to carry out, the provisions of the LUP portion of the City's certified local coastal program (LCP).

B. Procedural Requirements

If, as recommended by Staff, the Commission denies the LCP Amendment as submitted (and without suggested modifications), no further action is required by either the Commission or City Council, and the LCP amendment is not effective, pursuant to Section 13542(f). If the Commission instead certifies the LCP amendment as submitted, no further

City Council action will be necessary pursuant to Section 13544(b)(2) of Title 14 of the California Code of Regulations. Or, if the Commission instead denies the LCP Amendment as submitted, but then approves it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City Council's acceptance is consistent with the Commission's action. In that latter scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCP Amendment will become final at a subsequent Commission meeting if the Commission concurs with the Executive Director's determination. If the City Council does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and is not effective within the coastal zone.

C. Public Participation

Section 30503 of the Coastal Act requires public input in preparation, approval, certification, and amendment of any LCP. The City held public hearings on this amendment and received oral and written comments regarding the proposed changes from concerned parties and members of the public. The hearings were duly noticed consistent with the provisions of Section 13515 of Title 14 of the California Code of Regulations. Notice of the Coastal Commission's consideration of the subject amendment has been distributed to all known interested parties.

II. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE LAND USE PLAN AMENDMENT

Following public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided.

DENIAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED

MOTION:

I move that the Commission certify Land Use Plan Amendment No. LCP-4-MAL-20-0083-2 as submitted by the City of Malibu.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY AS SUBMITTED:

The Commission hereby **denies** certification of the Land Use Plan Amendment No. LCP-4-MAL-20-0083-2 as submitted by the City of Malibu and adopts the findings set forth below

on the grounds that the Land Use Plan Amendment, as submitted, does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act.

III. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE LOCAL IMPLEMENTATION PLAN AMENDMENT

Following public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided.

DENIAL OF THE LOCAL IMPLEMENTATION PLAN AS SUBMITTED

MOTION:

I move that the Commission reject Local Implementation Plan Amendment No. LCP-4-MAL-20-0083-2 as submitted by the City of Malibu.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **YES** vote. Passage of this motion will result in denial of the Implementation Plan Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY AS SUBMITTED:

The Commission hereby **denies** certification of the Local Implementation Plan Amendment No. LCP-4-MAL-20-0083-2 as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the Local Implementation Plan Amendment, as submitted, does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan.

IV. FINDINGS FOR DENIAL OF THE LOCAL COASTAL PROGRAM AMENDMENT

The following findings support the Commission’s denial of the proposed Local Coastal Program Amendment as submitted. The Commission hereby finds and declares as follows:

A. Amendment Description and Background

The City of Malibu (“City”) is requesting an amendment to the Land Use Plan (LUP) and Local Implementation Plan (LIP) components of its certified LCP to add policies and provisions to regulate short-term rentals (STRs). The proposed regulations would allow “hosted” STRs only (i.e., *an onsite “host” must be present on the property during the duration of the short-term rental*) within single-family dwellings, condominiums, and duplexes. The regulations would also allow “un-hosted” STRs within multi-family residential

LCP-4-MAL-20-0083-2 (Short-term Rentals)

properties up to two units or up to 40 percent of the units on the parcel (whichever is less), subject to the limitations described in detail below. The City asserts that the proposed amendment seeks to address nuisance issues, protect residential neighborhood character, and protect housing stock availability and variety.

Currently, the City's certified LCP does not explicitly define, regulate, or prohibit STRs. However, the short-term rental of residential property has historically occurred in the City of Malibu for many decades, particularly in the residential neighborhoods nearest the beach. The Commission has taken the position that where LCPs are silent on the use of homes for short-term rentals, the general assumption is that the LCP allows for STRs, similar to the rental of homes for longer-term renters.

In addition, rentals in Malibu currently are required to be registered with the City and the Transient Occupancy Tax (TOT) must be remitted.

The full text of the City's proposed changes to the LCP is included as Exhibits 1 and 2 of this report.

Land Use Plan Amendment

The City is requesting an amendment to its land use plan to specify that short-term rentals are an allowed use in all residential land use designations within the city. The proposed amendment would add language to the land use designations for Rural Residential (RR), Single-Family Residential (SF), Mobile Home Residential (MHR), and Multi-Family Residential (MF) to allow for designated short-term rental use of residential property pursuant to a short-term rental permit issued by the City.

Existing LUP Policy 2.34 protects existing, lower-cost visitor-serving facilities, including overnight accommodations, to the maximum feasible extent. And existing LUP Policy 5.20 requires all residential development to conform with all applicable LCP policies, including density provisions. The proposed amendment to the LUP portion of the LCP would modify existing LUP Policies 2.34 and 5.20 to include additional language clarifying that short-term rental use of residential property is only allowed pursuant to a city-issued STR permit.

Local Implementation Plan Amendment

The City also proposes to amend the local implementation plan to add regulations for the short-term rental of residential properties. These proposed changes are described in detail below.

The amendment proposes to modify the existing definition of "Guest House" and add seven new definitions to LIP Chapter 2.1 (Definitions): Designated Operator, Dwelling Unit, Guest, Hosted Short-Term Rental, Lives Onsite, Owner, and Short-Term Rental.

The amendment defines "Short-Term Rental" as the renting or offer to make available (by way of a rental agreement, lease, license, or any other means, whether oral or written) for compensation or consideration, of residential property, a dwelling unit, or a portion thereof, for a period of 30 consecutive days or less to a transient. Furthermore, the amendment

defines “Hosted Short-Term Rental” as a short-term rental for which the owner or designated operator lives onsite throughout the guests’ stay in accordance with the requirements of a hosted short-term rental permit issued by the City.

To clarify the definition of “Hosted Short-Term Rental,” the amendment includes the definitions of “Owner,” “Designated Operator,” “Guest,” and “Lives Onsite.” “Owner” is defined as a person who, alone or with others, has legal or equitable title to a dwelling unit. “Designated Operator” is defined as a natural person who is required by the owner of a short-term rental unit to (1) resolve any nuisance or compliance issues with the dwelling unit, (2) produce requested records, (3) allow others, including, but not limited to, code enforcement officers and law enforcement personnel, to enter the dwelling unit, and (4) live onsite at any dwelling unit offered for use a hosted short-term rental for the duration of the rental. “Lives Onsite” is defined as maintaining a physical presence on the property, including, but not limited to, sleeping overnight, preparing, and eating meals, and being present on the property each day of the short-term rental as required by the hosted short-term rental permit. Additionally, “Guest” is defined as a natural person who rents a short-term rental or is an invitee of such person.

Additionally, the City proposes to add LIP Section 13.31 (Short-term Rental of Residential Property) to LIP Chapter 13 (Coastal Development Permits) to declare that no coastal development permit is required for short-term rental of residential property provided that the rental use meets all of the following criteria: (1) the short-term rental use is conducted pursuant to a valid STR permit issued by the City, (2) the short-term rental use is conducted in a dwelling unit that was lawfully established as described in the LIP, and (3) the short-term rental use will not result in the reduction or elimination of public parking for access to the beach, public trails or parklands.

The proposed amendment would require STRs in Rural Residential (RR), Single Family Residential (SF), and Mobilehome Residential (MHR) zone districts to be “Hosted” only. As discussed above, “Hosted Short-Term Rental” is a form of short-term rental where the owner or designated operator lives onsite throughout the guests’ stay. The amendment would allow STRs to be “un-hosted” only within multi-family zoned properties. For those multi-family properties, the amendment only allows short-term rental use of a maximum of two dwelling units per parcel, or a maximum of 40 percent of the number of units per parcel, whichever is less. The only residential zoning districts within the City where “un-hosted” STRs would be allowed is within Multi-Family (MF) and Multi-Family Beachfront (MFBF) residential zones.

To ratify the City’s proposed STR regulations, the City proposes to amend LIP Appendix 1 – Table B (Permitted Uses) to add short-term rental use as a permitted use subject to a Short-Term Rental Permit in all residential district zones (Rural Residential, Single Family Residential, Multi-Family Residential, Multi-Family Beach Front Residential, and Mobilehome Residential). The City also proposes to add a new footnote “Footnote 21” to the Permitted Uses Table in that appendix to specify the proposed restrictions as follows: “single-family properties are limited to hosted short-term rental permits only; one dwelling unit in a duplex may be rented un-hosted if the owner or designated operator lives onsite in the other dwelling unit during the rental period; and for multi-family properties, a maximum

LCP-4-MAL-20-0083-2 (Short-term Rentals)

of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.” The amendment includes “Footnote 21” within all the residential zones where STRs are proposed to be a permitted use.

The City of Malibu submitted the subject LCP Amendment to the Commission on December 9, 2020. The amendment submittal was deemed complete by Commission staff and filed on June 29, 2021. At its September 2021 Commission meeting, the Commission extended the 90 working-day time limit to act on the LCP amendment for a period not to exceed one year from the original deadline of November 4, 2021.

Malibu Municipal Code Enforcement Ordinance No. 468

On September 29, 2020, the City Council adopted a Malibu Municipal Code (MMC) Amendment, known as the “Enforcement Ordinance” (Ordinance No. 468). This ordinance created a new STR permit system to regulate the short-term rental of residential property and to create enforcement tools, and which went into effect January 15, 2021. As of January 15, 2021, the advertisement or operation of residential property as a short-term rental without a City-issued STR permit is considered a violation of the City’s MMC ordinance. It is important to note that the MMC is not a part of the City’s LCP. The City’s proposed LCP amendment does not include various procedural requirements for the City’s STR permitting system, STR operational standards, or enforcement regulations; the City intends to include these elements in the MMC only and not in the LCP.

STR Amendment Background

STRs have historically occurred in the City of Malibu. Such use was considered lawful so long as the rental complied with the Malibu Municipal Code (MMC), the property was registered with the City, and the Transient Occupancy Tax (TOT) was properly remitted. In 2016, the City Council directed City staff to research potential options and procedures for regulating the short-term rental of property for purposes of developing an ordinance because the STR industry was growing rapidly and the City was seeing an increased interest in STRs, including interest by owners of multi-family housing complexes to convert their properties into STRs.

On September 26, 2018, the City planning staff recommended a Malibu Municipal Code (MMC) ordinance to the City Council, which was ultimately rejected by the City Council. That recommendation would have allowed for the continuance of short-term rental of residential property in single-family homes in the City (i.e., without hosting requirements). In addition, the recommendation by City planning staff would have (1) allowed for the rental of a maximum of two units per multi-family apartment property within the City, (2) created a new permitting system, (3) established limits on the number of operating permits a natural person may be issued, (4) specified requirements regarding onsite parking, and (5) specified enforcement protocols.

On September 20, 2018, before the City’s September 26, 2018 City Council hearing, Commission staff provided City staff with a comment letter expressing that (1) the City planning staff’s proposed MMC amendment was a supportable effort to provide certain

regulatory controls and management provisions for short-term rentals, and (2) vacation rental regulations in the coastal zone must occur within the context of the City's LCP. Commission staff also encouraged the City to submit an LCP amendment to the Commission that included policies and provisions reflecting the MMC amendment regarding short-term rentals.

At the City's September 26, 2018 hearing, the City Council did not adopt the staff-recommended draft MMC ordinance. Instead, the City Council directed City planning staff to investigate potential options and procedures for banning STRs in the City, the implications and potential impacts of a ban, including financial analysis, approaches to using the LCP Amendment process and the approaches of other coastal cities to regulate STRs.

About a month after that City Council hearing, the Woolsey Fire destroyed 488 single-family residences in the city, and a local emergency declaration persisted until April 22, 2019. This delayed the City's efforts to explore STR regulation options.

On December 3, 2019, the City Council adopted a resolution to initiate an LCP Amendment to regulate STRs similar to the City of Santa Monica's STR ordinance. Santa Monica's ordinance requires the presence of an onsite host within the rented dwelling unit, known as a "home-share" or a "hosted" rental. (Staff notes that, to-date, the Commission has not received any coastal development permit application nor any LCP Amendment submittal for regulating STRs in the City of Santa Monica.) The City Council also directed City staff to initiate a zoning text amendment to the MMC to establish an interim STR permit system and STR enforcement ordinance regulating short-term rentals while the City pursued an LCP amendment with hosting requirements.

On September 29, 2020, the City Council adopted an ordinance (the Enforcement Ordinance) amending the City's MMC only to establish a new STR permitting system and to provide enforcement tools against nuisance properties while the City separately processed an LCP Amendment with hosting requirements. Under this Enforcement Ordinance (Ordinance No. 468), properties had to obtain an STR permit by January 15, 2021 to rent property on a short-term basis, and all rentals from that date had to comply with the Enforcement Ordinance. Furthermore, the City's action indicated its intent to supersede the Enforcement Ordinance with the City's LCP Amendment upon any certification by the Commission.

On November 23, 2020, the City Council adopted the subject Hosted Ordinance (Ordinance No. 472 and Resolution No. 20-51), approving the subject LCP Amendment to regulate the rental of residential units for 30 days or less (STRs). As described in detail above, this LCP Amendment proposes provisions to regulate the short-term rentals citywide. The proposed amendment would require STRs to be "hosted" for single-family dwellings, condominiums, and duplexes (i.e., an onsite "host" must be present on the property during the duration of the short-term rental), and it would allow "un-hosted" STRs within multi-family residential properties up to two units, or up to 40 percent of the units on the parcel (whichever is less), subject to the limitations described in detail above. Ordinance No. 472 also included an MMC amendment that nearly mirrors the City's

LCP-4-MAL-20-0083-2 (Short-term Rentals)

Enforcement Ordinance (Ordinance No. 468) to update the City's STR permit and enforcement tools to ratify the hosted-only requirements. This MMC amendment does not take effect unless and until the subject LCP Amendment is certified by this Commission.

The City's proposed STR ordinance changed multiple times as the proposal went through Planning Commission and City Council hearings. Commission staff provided general feedback during regularly scheduled coordination meetings between City and Commission staff. In those discussions, Commission staff notified the City of recent actions on other 'jurisdictions' STR-related LCP amendments and communicated the need for an approach to STR regulations that balanced public benefits and visitor-serving requirements with their potential impacts on coastal communities. In particular, during a meeting between City and Commission staff on July 6, 2020, Commission staff cautioned that a balanced approach to STR regulation with supporting data would be critical for the Commission.

After a detailed review of the final adopted LCP Amendment, on March 28, 2022, Commission staff met with City staff to discuss the proposed amendment. Commission staff expressed concern that the amendment is too restrictive and is inconsistent with the Coastal Act and the certified LUP. Commission staff also indicated that they were inclined to recommend denial of the proposed amendment (Exhibits 4 and 5).

Public Correspondence Received

Commission staff has received 4 emails/letters in support of the City's proposed amendment without any suggested modifications, and staff has received 24 emails/letters from interested parties in opposition to the proposed LCP amendment. These public comment emails and letters are attached as Exhibit 7 of the staff report.

B. Findings for Denial of the LCP Amendment

The proposed amendment affects the Land Use Plan (LUP) and Local Implementation (LIP) components of the certified Malibu Local Coastal Program (LCP). The standard of review for the proposed amendment to the LUP of the certified LCP, pursuant to Section 30512 of the Coastal Act, is whether the LUP, with the proposed amendment, would meet the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the LIP, pursuant to Section 30513 and 30514 of the Coastal Act, is whether the LIP, with the proposed amendment, would remain in conformance with, and would be adequate to carry out, the provisions of the LUP portion of the certified Malibu LCP, as amended.

Public Access and Recreation

A core goal of the Coastal Act is to protect the public's ability to recreate in and enjoy the coastal zone, particularly for coastal visitors not fortunate enough to live by the shoreline. The Coastal Act's access and recreation policies provide significant direction regarding protecting existing public recreational access opportunities and ensuring that such access opportunities are provided and maximized. Specifically, Coastal Act Section 30210 requires that maximum public access and recreation opportunities be provided, stating:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Similarly, the Coastal Act requires that overnight accommodations, and particularly lower-cost accommodations, be protected and encouraged as a means of providing public recreation access to the coast. Section 30213 states (in part):

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Development providing public recreational opportunities are preferred.

Furthermore, Coastal Act Section 30222 places a higher priority on the provision of visitor-serving uses designed to enhance public opportunities for coastal recreation over residential, industrial or general commercial uses. Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential general commercial development, but not over agriculture or coastal-dependent industry.

The Coastal Act policies above have been incorporated in their entirety into the certified Land Use Plan. The Malibu LCP also contains several additional policies to ensure the protection of public access and overnight accommodations.

The following Land Use Plan (LUP) policies are applicable in this case:

Land Use Plan Policy 2.1 states:

The shoreline, parklands, beaches and trails located within the City provide a wide range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.

Land Use Plan Policy 2.34 states:

Existing, lower cost visitor-serving and recreational facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreational facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

Land Use Plan Policy 2.36 states:

Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

Visitor-Serving Accommodations

These Coastal Act and LCP policies make clear that public recreational access, particularly as it relates to the specific needs of the visiting public, is of critical importance and must be protected and maximized. Overnight accommodations are necessary for providing public access and recreational opportunities for the many visitors that live further from the coast, including those from inland areas, where a coastal trip may require a lengthy car ride. For many low and moderate-income visitors, lower-cost overnight accommodations are essential to being able to access the California coast at all. These access issues are perhaps more apparent than ever now and more critical as they relate to overnight accommodations, as coastal visitors are increasingly priced out of the overnight accommodations market, particularly impacting low and middle-income households, communities of color, and many young people.¹

The Commission has found STRs to be an important source of visitor accommodations in the state. STRs provide amenities that distinguish them from other types of overnight lodging and often make them the most affordable option for overnight stays on the coast, particularly for groups and families. For example, unlike many traditional hotels, STRs usually include full kitchens and common spaces where visitors can spend time together. While these amenities can be obtained at some hotels, the cost of extra space and rooms or a room with a kitchen is often much higher than the price of an STR. Since many STRs contain multiple bedrooms, it is often possible to spread the cost of additional shared amenities among more visitors. The opportunity to prepare food on-site saves visitors the significant costs associated with dining out. STRs also provide a unique visitor experience that is different from a standard hotel/motel, and many are situated close to desirable visitor destinations along the shoreline. Further, STRs can augment the stock of overnight accommodations in coastal areas that do not have many hotel/motel rooms or where the existing rooms are particularly high-cost. STRs are, in many ways, complementary lodging alternatives that can help coastal visitors enjoy coastal zone opportunities.

The Commission also recognizes that STRs have the potential to cause adverse impacts, including loss of housing (including more affordable housing), enforcement issues, altered residential neighborhood character, and parking and transportation impacts. The Commission has provided local governments with guidance and direction to regulate STRs in a manner that balances these public benefits and visitor-serving requirements with their potential impacts on coastal communities. Consistent with this guidance, the Commission

¹ See [“Explore the Coast Overnight: An Assessment of Lower-Cost Coastal Accommodations” by the California Coastal Conservancy \(March 2019\)](#) and [California Coastal Commission Public Workshop Staff Report on Lower-Cost Visitor-Serving Accommodations \(October 2016\)](#).

has supported STR-related LCP provisions that prescribe occupancy limits, parking requirements, quiet hours, complaint response processes, and other common-sense standards on STR operations.

Setting

Demand for STRs is especially high in the City of Malibu because of its proximity to the coast and historical reputation as a popular coastal community. The City lies entirely within the Coastal Zone and extends approximately 26 miles from the Ventura County Line to Topanga Canyon Boulevard on the east. The beaches of Malibu are world-famous tourist destinations for millions of visitors annually from foreign countries, all 50 states of the U.S., as well as for residents of cities and towns throughout California. In addition, the Santa Monica Mountains area within and adjacent to the City provides an extensive network of public trails that traverse and connect Federal, State, and County parklands and a system of heavily used historic trails on private land. Overall, a wide variety of recreational opportunities exist in the area, including hiking, biking, horseback riding, camping, fishing, picnicking, nature study, surfing, diving, and swimming. Public access to and along the shoreline and trails and the provision of public recreational opportunities and visitor-serving facilities such as campgrounds, hotels, and motels has historically been a critical and controversial issue in Malibu.

Overview of Malibu's Overnight Accommodations

Despite being a significant visitor-serving destination, there are limited facilities within the City that offer overnight accommodations for visitors within its 21 miles of coastline. Based on information provided by the City to Commission staff in April 2021, there are six hotels (The M Malibu, The Surfrider, Malibu Beach Inn, Malibu County Inn, The Native, and Nobu Ryokan) within the City, containing a total of 130 rooms. According to information provided by the City at that time, the average hotel nightly room rate for four of the six hotels ranged between \$252 - \$1,109 (Exhibit 3).² The City did not provide nightly room rates for The Native because the hotel was closed and being renovated. Furthermore, the City indicated they did not include nightly room rates for Nobu Ryokan (\$2,000 - \$3,500 a night) because the hotel is a boutique hotel, and the rates can skew the average hotel rate in the City.

Additionally, the City contains one Recreational Vehicle (RV) park (Malibu RV Park), which includes 142 RV sites and 35 tent sites. The nightly rates for RV sites range from \$73 to \$316 and the nightly rates for tent sites range from \$56 to \$121, depending on the season and location. However, these types of accommodations are not directly comparable to hotels/motels or STRs. Visitors utilizing the RV park would be required to secure a recreational vehicle either by renting or owning it and tent camping visitors would similarly need to bring their own camping equipment and supplies. While this mode of overnight accommodations is an important part of the range of overnight accommodations, it may not be feasible for many visitors seeking accommodations in Malibu.

² The breakdown for the average room rates for these four hotels are as follows: The M Malibu: \$252 average; The Surfrider: \$564 average; Malibu Beach Inn: \$1,109 average; Malibu Country Inn: \$838 average. The hotel with the lowest average room rate, the M Malibu, has only 18 rooms.

LCP-4-MAL-20-0083-2 (Short-term Rentals)

Although there are several hotels and motels in other cities surrounding Malibu, the approximate 21 miles of Malibu coastline is only serviced by approximately 130 hotel rooms, 142 RV sites, 35 tent sites, and the City's existing short-term rental stock (as discussed in detail below).

Existing STRs in Malibu

Currently, the City's certified LCP does not explicitly define, regulate or prohibit STRs. The Commission has taken the position that where LCPs are silent on the use of homes for short-term rentals, the general assumption is that the LCP allows for STRs, similar to the rental of homes for longer-term renters. STRs have historically operated in the City for many decades, particularly in the residential neighborhoods nearest the beach. At present, short-term rental of residential property is allowed in the City so long as the property is registered with the City and Transient Occupancy Tax (TOT) is adequately remitted. For several years, rentals were handled directly by owners or with the assistance of real estate agents or brokers. With the rise of internet platforms such as Airbnb, VRBO, Homeaway, and others in the last decade, the number and geographic location of STRs have expanded considerably in recent years, the short-term rental process has become more convenient and efficient.

To gather STR data, the City contracted with Host Compliance in February 2018. According to the City, approximately 414 properties remitted TOT for STRs in 2018 (which is the most current tax data provided by the City). Furthermore, there were 423 properties advertised for STRs as of July 2, 2018, 387 as of July 2, 2019, 381 as of July 2, 2020, 372 as of December 2, 2020, and 176 as of May 2, 2021. As demonstrated by the number of STRs in the years above, the number of advertised STR properties decreased by 196 units from December 2, 2020 (372 units) to May 2, 2021 (176 units). According to the City, this decrease in STRs corresponds with letters sent to property owners notifying them that the City had adopted Ordinance No. 468 (Enforcement Ordinance), which created a new STR permit system to regulate STRs through the City's municipal code (which is not a part of the City's certified LCP). Owners were advised by the City that, effective January 15, 2021, the STR of residential property could only be conducted with a valid STR permit. If a property was advertised or operated as an STR without a permit, it would be considered a violation of the City's municipal code.

According to the most current data provided by the City on June 15, 2021, the City has received STR permit applications from 224 properties and approved 202 STR permits for those properties. Of the approved 202 STR permits, 71 multifamily units and 173 single-family units have been approved for use as STRs. This data indicates that most Malibu STRs approved permits are for single-family residences. The City uses this STR permit figure to estimate the current demand for STRs, although the actual demand for STRs may vary widely over time. However, Commission staff does not believe the number of approved STR permit data collected after the effective date of the City's Enforcement Ordinance (January 15, 2021) accurately reflects the historical number of STRs operating in the City. Commission staff believes utilizing the December 2, 2020 (372 units) baseline is more appropriate, given this was the last year of data not affected by the new Enforcement Ordinance (STR permit requirements). The baseline number of STRs may actually be

higher than the 372 units advertised in December 2020 in light of the larger numbers of STRs identified in 2018 and 2019 -- prior to the Covid-19 pandemic. Therefore, December 2020 data is an appropriate baseline for purposing of evaluating STR availability in light of the historic data and trends. By contrast, the City's proposed use of June 15, 2021 data would not yield a representative baseline.

Using a conservative estimate and looking collectively at hotels, motels, and STRs in the City, STRs account for (at a minimum) over 74 percent of the total supply of overnight accommodations (130 hotel/motel rooms and 372 STRs as of December 2020). Therefore, STRs are a critically important visitor-serving use in Malibu, given that the City currently contains only six hotels and one RV park within its 21 miles of coastline. Thus, it is imperative to preserve the amount of STRs that have generally operated within the City.

Proposed STR LCP Amendment

Demand for STRs is high in the City because of its proximity to the coast and historical reputation as a popular coastal community. While STRs have been available in the City dating back decades, the number and geographic location of STRs have expanded considerably in recent years. This increase in STRs can increase potential adverse impacts on some residential neighborhoods. The City found that while STRs serve as an important lodging resource and contributor to the local economy, these rentals have the potential to impact the character of residential neighborhoods and housing availability. In an attempt to address these issues while still allowing some STR uses, the City is requesting an amendment that substantially limits short-term rentals by requiring "hosted" STRs (*an onsite "host" must be present on the property during the duration of the short-term rental*) within single-family dwellings, condominiums, and duplexes. The City would only allow STRs as "un-hosted" within multi-family residential properties (up to two units or up to 40 percent of the units on the parcel (whichever is less)) subject to the limitations described in detail above. While the amendment does allow the property owner or designated operator to be physically present onsite in either a second dwelling unit or guest house, and therefore the entire main dwelling unit could be offered as an STR, it cannot be reasonably disputed that the vast majority of single-family residences in Malibu do not have guest houses or second dwelling units.

The California Department of Finance estimated that there were 6,692 total housing units in Malibu as of January 1, 2022, of which 4,568 were single-family detached units, 1,568 were multi-family units, and 556 were mobile home units. While there is a housing crisis statewide, and the City must consider housing needs in addition to the provision of visitor-serving overnight accommodations, as discussed in detail above, the City has a very limited number of overnight accommodations in the coastal zone. The City's proposal to restrict STRs in single-family residences to only hosted STRs (albeit without any limits on the total number of hosted STRs) would allow for this type of overnight accommodations while avoiding the use of any single-family residence for only an STR (and not as a residence) at any time during the year. In that way, the use of hosted STRs is less likely to change the supply of available housing and rental units within the area.

However, requiring all single-family residences used as STRs to be hosted on-site, even in areas of the City that have traditionally contained existing STRs will reduce the number of

LCP-4-MAL-20-0083-2 (Short-term Rentals)

STRs available as overnight accommodations. Hosted STRs generally do not provide the space and privacy desired by families and larger groups traveling together that STRs often offer, and therefore, the public is less likely to stay at hosted STRs under Malibu's proposed STR framework.

The City could not estimate how many existing STRs are advertised or operating as hosted or un-hosted or how many single-family residences could operate as hosted STRs. Additionally, the City has not provided staff with an approximation of how single-family properties contain either guest houses or second dwelling units. Although it is difficult to accurately identify how many existing STRs would be lost through the restriction of requiring all STRs in all single-family residences to be hosted, it's reasonable to presume that many existing single-family property STRs would either not be able to meet the proposed hosted only requirements or experience less demand as hosted STRs and would thus stop operating as un-hosted STRs. Therefore, in this case, the proposed amendment would result in a loss of existing lower-cost overnight accommodations in the City and would not provide enough STRs to accommodate existing or future visitor demand.

Furthermore, the proposed amendment would limit the number of STRs within multi-family properties up to two units, or 40 percent of the units on the parcel (whichever is less). According to the City, this restriction prevents a multi-family building from becoming a de-facto hotel and prevents erosion of the availability of regular rental stock within the City. However, the approach proposed in the subject LCPA raises several issues. For one, only allowing unhosted STRs to operate in multi-family zones will result in the loss of existing STRs overall because there are very limited areas zoned for multi-family uses in the City and most multi-family zoned parcels are generally concentrated in a few areas throughout the City, primarily in eastern Malibu and Pacific Coast Highway. Moreover, based on data provided by the City, nearly 70% of the STRs in Malibu have been for single-family residences. As discussed above, families and groups may prefer to rent single family residences. Thus, it is not reasonable for the City to assume that multi-family residences will make up for the loss of STRs in single family residences. Additionally, although the City is concerned with the potential for STRs to adversely impact the stock of available long-term housing within the City by only allowing for "un-hosted" STRs within multi-family properties, some demand for the more un-hosted STRs will likely shift to multi-family properties instead of single-family residential properties. This shift will likely place a burden on multi-family properties to be used as un-hosted STRs. The City's desire to locate un-hosted STRs in multi-family properties will likely result in a loss of affordable housing within the City, considering multi-family properties make up a major of the City's affordable long-term housing.

Coastal Act Section 30210 requires the provision of maximum public coastal access and recreational opportunities that are consistent with public safety, the protection of both public and private rights, and the protection of natural resources. The Commission has found that short-term rentals within the Coastal Zone can provide an opportunity for the public to stay at a location where they can have access to the coast. However, in this case, the Commission finds that the proposed amendment is inconsistent with Coastal Act 30210's requirement of protecting and maximizing public coastal access and recreation opportunities because the amendment does not maximize public access to the coast or

protect the public's right of access to and along the shoreline. Instead, the proposed amendment, if certified, would cause a significant net reduction in the existing stock of visitor-serving overnight accommodations in the City, which is located entirely within the Coastal Zone. This would reduce opportunities to stay near the coast, and likely either force visitors to stay at inland locations or discourage them from coming to the coast at all. Given the unique location of Malibu and the geography of the surrounding Santa Monica Mountains, the nearest inland visitor accommodations are a considerable distance from the coast. Further, Coastal Act Section 30213 and Land Use Plan (LUP) policies 2.34 and 2.36 protect both lower-cost overnight accommodations and visitor-serving facilities within the Coastal Zone. Additionally, LUP policy 2.36 explicitly prohibits the removal or conversion of existing lower-cost opportunities unless the use will be replaced with another comparable offering visitor serve or recreational opportunities. As discussed above, the proposed amendment to ban non-hosted STRs in single-family residences would result in a loss of existing lower-cost overnight accommodations in the City, inconsistent with Coastal Act Section 30213 and the City's LUP policies.

The City's amendment does not strike an appropriate balance to continue to accommodate STRs in a manner that would not adversely impact the stock of existing and potential future visitor-serving overnight accommodations or long-term housing stock. Alternatives exist for a more balanced approach, such as maintaining the existing supply of un-hosted STRs, limitations on the total number of STRs allowed within certain areas (e.g., by neighborhood, or by communitywide ratio, etc.), limits on maximum vacation rental occupancies, limits on the amount of time a residential unit can be used as a vacation rental during a given year or season, and/or limits on the type of housing that can be used as STRs (e.g., disallowing STRs in affordable housing such as second units, etc.). These example alternatives should be guided by the available data and historical trend regarding STRs in the City, and developed through an inclusive planning process at the local level.

Commission/City Staff Coordination

As previously described in Section IV.(A) Amendment Description and Background above, Commission staff has coordinated with City Planning staff and provided comments regarding several iterations of the subject STR amendment. After a detailed review of the final adopted LCP Amendment, on March 28, 2022, Commission staff met with City staff to discuss the proposed amendment. Commission staff expressed concern that the amendment is too restrictive and is inconsistent with the Coastal Act and the certified LUP, and therefore, staff would recommend denial of the amendment (Exhibit 4). At the same meeting, Commission staff also discussed possible alternative approaches for more targeted, responsive regulations of STRs that could be recommended for approval as suggested modifications to provide for a more balanced approach to continue to accommodate STRs in a manner that would not adversely impact the stock of visitor-serving overnight accommodations or of long-term housing stock in the City. Alternative approaches that Commission staff wanted the City to explore include maintaining the existing supply of un-hosted STRs, limitations on the total number of STRs allowed within certain areas (e.g., by neighborhood, or by communitywide ratio, etc.), limits on maximum vacation rental occupancies, limits on the amount of time a residential unit can be used as a vacation rental during a given year or season, and/or limits on the type of housing that

LCP-4-MAL-20-0083-2 (Short-term Rentals)

can be used as STRs (e.g., disallowing STRs in affordable housing such as second units, etc.). Commission staff also expressed that these example alternatives should be guided by the available data and historical trend of STRs in the City. City staff had initially indicated that they would come up with some ideas and continue coordinating with Commission staff toward an approach that could be supported.

However, at its June 13, 2022 hearing, the City Council indicated that it wished to go forward with the LCP Amendment as adopted. It also directed City staff not to work with Commission staff on any alternative STR regulations. As such, City and Commission staff have not coordinated further on any possible modifications to the LCP Amendment. Additionally, at the same June 13, 2022 meeting, the City Council directed their staff to prepare a letter to Commission staff to (1) explain how their proposed amendment “increases the availability of STRs in Malibu,” and (2) explain that “Malibu will be forced to begin the strict enforcement of its existing zoning laws to prohibit the short-term rental of homes in residential neighborhoods” if the Commission does not approve the subject LCP amendment (Exhibit 6). Although the City has taken the position that the proposed amendment increases the availability of STRs within the City, the City has not provided any evidence to support its statement. Moreover, the City Council’s position appears based on a flawed premise that because the City’s certified LCP does not explicitly define or regulate STRs, STRs are currently prohibited under the certified LCP. However, as previously mentioned, the Commission has taken the position that where LCPs are silent on the use of homes for short-term rentals, the general assumption is that the LCP allows for STRs, similar to the way that the rental of homes is allowed for longer-term renters without being explicitly addressed by an LCP. In this case, the Commission does not agree with the City Council’s stated position that STRs are currently prohibited under the City’s certified LCP. Rather, STRs have been allowed in Malibu, even before cityhood and before and after adoption of the LCP. The City has accepted the payment of transient occupancy taxes (TOTs) paid by owners of STRs and later by online platforms that have collected the taxes and remitted them for owners. The Commission has taken the position that ordinances restricting STRs are not in effect in the coastal zone unless approved by the Coastal Commission through certification of an LCP amendment (or by coastal development permit in uncertified areas). Recent court cases have found that new regulations on STRs in the coastal zone requires approval under the Coastal Act through a coastal development permit or LCPA³. In this case, if the City starts enforcing a ban on STRs without an approved LCPA, such action will be inconsistent with the LCP and the Coastal Act. At that point, the Commission’s Enforcement Division would evaluate options to ensure compliance and resolve the matter.

Additionally, the City has indicated that hosted short-term rentals can be more affordable than unhosted short-term rentals because the property owner or long-term tenant is also on the site. While this may be an appropriate assumption in many cases, one possible alternative the City could evaluate is a mix of hosted and unhosted STRs in single-family properties in some geographic areas (e.g., by neighborhood, or by communitywide ratio,

³ See *Kracke v. City of Santa Barbara*, 63 Cal. App. 5th 1089 (2021) and *Keen v. City of Manhattan Beach*, 77 Cal. App. 5th 142 (2022)

etc.).

Given that several different alternative approaches exist that would serve to protect public visitor-serving opportunities and affordable housing stock, an LCP Amendment can be developed for the City that contains more appropriate STR regulations that could address potential visitor-resident conflicts, and that could satisfy competing objectives associated with facilitating public recreational access and visitor-serving opportunities near and within residential areas of the City. However, such regulations will need to respond to the local context and are best developed through an inclusive planning process at the local level.

Conclusion

Overall, the City's proposal to ban non-hosted STRs in single-family residences would eliminate existing, lower-cost overnight accommodations in the City. Despite being a significant visitor-serving destination, the City of Malibu has few overnight accommodations for coastal visitors. Given the few hotel/motel rooms in the City, STRs are an essential part of the City's supply of overnight accommodations. While the Commission has approved past regulations allowing "hosted only" STRs in certain geographic location or zone districts, unlike the City of Malibu, those cities or counties either had ample existing overnight accommodations, allowed existing unhosted STRs to remain in areas nearest the coast (for instance, the City of Carpinteria), or had a relatively small coastal zone area (e.g., the shoreline in the Coastal Zone of the City of Torrance extends approximately one mile). The City's amendment does not strike an appropriate balance to continue to accommodate STRs in a manner that would not adversely impact the stock of existing and potential future visitor-serving overnight accommodations or long-term housing stock.

Given that several different alternative approaches exist that would serve to protect public visitor-serving opportunities and affordable housing stock, an LCPA can be developed for the City that contains more appropriate STR regulations that could address possible visitor-resident conflicts, and that could satisfy competing objectives associated with facilitating public recreational access and visitor-serving opportunities near and within residential areas of the City. However, such regulations will need to respond to the local context and are best developed through an inclusive planning process at the local level. The Commission does not here suggest modifications to the City's proposed LCP Amendment to create an alternative program to regulate STRs without input from the City as it is unlikely to be productive in the immediate context of this action.

The amendment, as submitted, would unduly restrict the rental of residential units to visitors and diminishes the public's ability to access and recreate on the coast. For these reasons, the proposed LCP amendment is inconsistent with and inadequate to carry out the certified LUP, and the LCP amendment is not in conformity with the policies of Chapter 3 of the Coastal Act and must be denied.

D. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code—within the California Environmental Quality Act (CEQA)—exempts local government from the requirement of

LCP-4-MAL-20-0083-2 (Short-term Rentals)

preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission; however, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP action.

Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Accordingly, the Commission's denial of the proposed amendment represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.