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# W12b

Filed: 07/27/2022  
49<sup>th</sup> Day: 10/05/2022  
Staff: S. Amitay – LB  
Staff Report: 08/25/2022  
Hearing Date: 09/07/2022

**STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE**

**Appeal Number:** A-5-DPT-22-0038

**Applicants:** City of Dana Point

**Local Government:** City of Dana Point

**Local Decision:** Approval with Conditions

**Appellants:** Miriam Rupke, Deanna Slocum, Jason Colaco, Mark Zanides, Kim Tarantino, and Bridget McConaughy (on behalf of UNITE HERE Local 11)

**Project Location:** Citywide within the Coastal Zone, City of Dana Point, Orange County

**Project Description:** Appeal of City of Dana Point Local Coastal Development Permit No. 20-0010 to establish a short-term rental (STR) Program. The terms and conditions of the City's STR Program can be found in [Exhibits 2](#) and [3](#).

**Staff Recommendation:** No Substantial Issue.

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**IMPORTANT HEARING PROCEDURE NOTE:** This is the “substantial issue” phase of the appeal hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, appellant(s), persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

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## SUMMARY OF STAFF RECOMMENDATION

The City of Dana Point's action on Local Coastal Development Permit (CDP) No. 20-0010 approved the City's proposed short-term rental program to implement new regulations and standards for the operation of short-term rentals, or vacation rentals within the coastal zone. Short-Term Rentals (STRs) generally refer to the short-term rental (30 days or less) of private dwelling units or a room in a home by tourists and other travelers visiting the area. The CDP will apply to all areas within the City of Dana Point's certified Coastal Overlay District (Coastal Zone), a portion of which is located within the Coastal Commission appeal jurisdiction. The standard of review for this appeal is the Dana Point certified Local Coastal Program (LCP) and the Chapter 3 public access and recreation policies of the Coastal Act.

The Coastal Act contains policy language that protects and prioritizes lower-cost visitor and recreational facilities and requires that public coastal access be maximized. The Commission has found that visitor-serving overnight accommodation uses, including STR units, help maximize the opportunities provided for the public to access the coast. These units can increase public coastal access by providing a wider selection of overnight accommodations in the Coastal Zone to groups and families that might not otherwise be able to afford a more expensive traditional option (i.e., hotels), and by including more units in areas where residential communities directly flank the shoreline. At the same time, the Commission has recognized legitimate community concerns over potential adverse impacts associated with vacation rentals, with respect to housing stock and affordability, community character, noise, and traffic impacts.

Typically, STR regulations are contemplated by the Commission within the context of a jurisdiction's LCP.<sup>1</sup> Even though the City of Dana Point has a certified LCP, they are seeking a CDP for this change in use within the Coastal Zone as an alternative to the LCPA process. The Commission has approved one previous STR program via a CDP, although for a City without a certified LCP (Torrance).<sup>2</sup> Thus, this is the first time the Commission has reviewed a CDP for an STR program for a city with a certified LCP.

The City of Dana Point submitted a Local Coastal Program Amendment (LCPA) in 2014 to the Commission to regulate STRs within the Coastal Zone. The Commission approved LCPA No. 1-14 on April 14, 2016, with the suggested modifications. Concurrence with the Executive Director's determination that the action of the City of Dana Point accepting certification with suggested modifications of the LCPA was scheduled for November 4, 2016. However, ahead of the Commission hearing, the City received two referendum petitions against the underlying ordinances encompassing the LCPA, and the City consequently notified the Commission that the City was withdrawing the STR LCPA from final consideration and certification. Shortly thereafter, on December 6, 2016, the

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<sup>1</sup> In the Commission's past actions, the Commission has approved STR regulations in the following LCPs: County of Ventura (LCP-4-VNT-18-0058-1), City of Pismo Beach (LCP-3-PSB-18-0051-1), County of Santa Cruz (3-SCO-18-0032-2-Part B), City of Del Mar (LCP-6-DMR-17-0083-3), and City of Laguna Beach (LCP-5-LGB-19-0074-1), and Long Beach (LCP-5-LOB-20-0058-3).

<sup>2</sup> [CDP No. 5-20-0031](#) (City of Torrance).

Commission published a resource for local governments on short-term/vacation rentals in the California Coastal Zone.<sup>3</sup> Per the Commission's guidance, short-term/vacation rental regulations in the Coastal Zone should occur within the context of a certified LCP or be authorized pursuant to a CDP.

The City's certified LCP currently allows STRs in all residential zones within the Coastal Zone. Specifically, IP Section 9.09.020 allows for "recreational facilities, private" as an accessory use for all residential districts. Section 9.61.020 and Chapter 9.75 of the IP contain applicable definitions for various types of overnight accommodations. A CDP is thus appropriate here as a means of regulating changes in intensity of use in residential areas of the City's Coastal Zone by placing new restrictions on STRs.

Currently, the City of Dana Point does not prohibit the operation of short-term rental uses in the Coastal Zone. Nonetheless, on November 15, 2016, the City Council voted to allow existing permitted STRs to continue to operate, but ceased issuing new STR permits; thus, existing STRs are "grandfathered." Existing STRs will not need to reapply, but they will be subject to provisions of the new STR Program moving forward, subject to the outcome of this appeal. In the meantime, existing operating STRs are held to the standards found in uncertified Municipal Code Chapter 5.38, which is not part of the City's certified Zoning Code. Any STRs in Dana Point that are currently operating without paying transient occupancy tax (TOT), without an existing STR permit, or cited for nuisance, are still subject to enforcement action ([Exhibit 8](#)).

The STR Program would regulate STRs in all residential areas of the City's Coastal Zone.<sup>4</sup> The final STR Program can be found in [Exhibit 3](#). Section (3), STR permit limitations, has been adjusted and clarified to reflect the City Council's final action, as shown in [Exhibit 2](#). The final STR Program, including all the changes and clarifications made in [Exhibit 2](#), represents the final local CDP under review pursuant to this appeal.

The Program creates five categories of STRs (1) *Non-Primary (Residence) STR*; (2) *Primary (Residence) STR*; (3) *Home Stay STR*; (4) *Multi-Family Home Stay STR*; and (5) *Mixed-Use Parcel STR*. City Council Resolution No. 22-07-12-01<sup>5</sup> additionally stipulated five general conditions for the City's implementation of the STR Program. First, it was recognized that approval of the coastal development permit in its current form would establish permitting, regulations, and penalties for short-term rentals in Dana Point. Second, the STR Program would be reviewed by the City's Community Development Director at least every five (5) years to reevaluate the permit cap, regulations, penalties, and any other aspect of the STR Program to determine if an amendment must be made. Amendments to the Program that are not in substantial conformance, such as those outlined in Section (9) of the STR Program, would require an amendment to the CDP.

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<sup>3</sup>[https://documents.coastal.ca.gov/assets/la/Short\\_Term\\_Vacation\\_Rental\\_to\\_Coastal\\_Planning\\_&\\_Devt\\_Directors\\_120616.pdf](https://documents.coastal.ca.gov/assets/la/Short_Term_Vacation_Rental_to_Coastal_Planning_&_Devt_Directors_120616.pdf)

<sup>4</sup> The City has indicated that it plans to take action on establishment of an STR program for the areas outside the Coastal Zone following Commission action on the subject appeal.

<sup>5</sup> This City Council Resolution denied in part, and affirmed in part, the local appeal of the City's Planning Commission's approval on May 9, 2022 of local CDP No. 22-0010 to establish an STR Program to regulate the permitting and operation of STRs in the Coastal Zone, by amending and upholding portions of the Planning Commission's CDP approval.

Third, the provisions of uncertified Municipal Code Section 5.38.080 would remain applicable to STRs outside the Coastal Zone only, and the CDP would apply within the Coastal Zone only. Fourth, within six months of approval of the CDP, applications for new STRs in the Coastal Zone shall be accepted by the City for review. And finally, approval of the CDP is valid for 24 months (two years) from the date of passage of the City Council Resolution. If not implemented within the two years, the permit will expire and become null and void.

The proposed ordinance also establishes a variety of regulations for STRs intended to limit neighborhood impacts from parties, noise, trash disposal, parking, and other related issues that are often raised in terms of STRs and nuisance issues. These proposed operational standards are generally similar to other standards the Commission has approved for other communities, such as for the City of Long Beach, Torrance, Laguna Beach, Oxnard, Carpinteria, and Ventura County, as reasonable regulations to address potential STR issues.

On July 27, 2022, appeals were filed by Miriam Rupke, Deanna Slocum, Jason Colaco, Mark Zanides, Kim Tarantino, and Bridget McConaughy (on behalf of UNITE HERE Local 11) ([Exhibit 4](#)). The appellants generally fall into two categories of “supporters” of (favoring additional) and “critics” of (opposing nearly all) short-term rentals within Dana Point.

First, the appellants contend that the City’s proposed STR Program does not conform with the public access policies of the Coastal Act (Sections 30210-30214) and of the LCP. In particular, the STR supporters contend in their appeals that the proposed CDP is overly restrictive, and that the Program will serve to essentially reduce the number of available STRs citywide. Conversely, the STR critics contend in their appeals that the proposed CDP is overly permissive and will deplete the City’s (affordable) housing stock. Nonetheless, the City of Dana Point STR Program provides an appropriate balance to continue to accommodate STRs in a manner that would not contribute to a loss of lower-cost overnight accommodations and represents a very small proportion of existing residential units in the Coastal Zone that would be allowed for STR (between 1.4% and 2%). The City also finds that by allowing new types of “hosted” STRs (e.g., primary, home stay, multi-family home stay), the generation of potential nuisance issues would be minimized. In addition, there will be dedicated enforcement and imposition of penalties to ensure that the terms and conditions of the STR Program, including the required nuisance abatement controls, are being followed. Thus, the appellants’ contentions do not raise a substantial issue with regard to the Program’s consistency with Coastal Act Sections 30210-30214, as well as the public access policies of the certified LCP.

Additionally, the appellants contend that the proposed STR Program allows homeowners associations (HOAs) in the Coastal Zone to enact short-term rental bans within their governing areas via their covenants, conditions, and restrictions (CC&Rs), potentially restricting STRs in large portions of the Coastal Zone and leading to inequitable distribution of STRs. The appellants are correct in that a component of obtaining an STR permit, as identified in the Program, is for a property owner providing proof to the City that their STR would not be prohibited by its HOA. However, the STR Program will allocate

approximately 49 non-primary STR permits beyond the existing number of 66 non-primary STR permits for the Coastal Zone, for a total of 115 non-primary STR permits, which will potentially mitigate against HOA bans on STRs.

The City of Dana Point also offers a multitude of alternative overnight accommodations, such as 1,864 hotel rooms and 120 campsites ([Exhibit 6](#)). While some of the HOAs within the Coastal Zone may not allow short-term rentals, the City of Dana Point does provide many opportunities for visitor-serving overnight accommodations, and the City would be able to monitor STR activity and analyze whether there would be cumulative impacts on coastal resources resulting from HOA bans on STRs during the five-year reassessment period (or sooner, should a need for a CDP amendment arise). Therefore, the appellants' contentions that the City of Dana Point STR Program's facilitation of STR restrictions in HOA-governed areas would adversely impact the availability and distribution of public access amenities and overnight visitor accommodations in the City's Coastal Zone do not raise a substantial issue with regard to the Program's consistency with the public access and recreation policies of the Coastal Act or the certified LCP.

Third, the appellants contend that the City's proposed STR Program accounts for properties located outside the Coastal Zone and in residential neighborhoods, raising issues of internal inconsistencies with the intent of the local CDP and the allowable uses in the City's certified LCP. However, the proposed Program is within the Coastal Zone only, and the City's certified LCP already allows for the STRs in coastal residential neighborhoods. Therefore, the appellant contentions do not raise a substantial issue with regard to the Program's consistency with the land uses and zoning designations of the certified LCP.

Fourth, the appellants contend that the proposed STR Program is not consistent with Commission-approved STR programs in neighboring cities. Analysis of the City of Dana Point's STR Program reveals that the City has set comparable limits and parameters in its proposed Program, including, but not limited to, the limits on the number of guests, restrictions on un-hosted primary STRs to a maximum of 60 days per year, and restrictions on multi-family buildings to allow up to 6 operating STRs at one time. In sum, the proposed STR Program strikes a balance between providing visitor-serving overnight accommodations and maintaining long-term housing. Therefore, the appellants' contentions that the Dana Point STR Program is not consistent with other Commission-approved STR programs in neighboring cities do not raise a substantial issue with regard to the STR program's consistency with the housing policies of the certified LCP or Chapter 3 public access policies of the Coastal Act.

In short, Commission staff finds that there is **no substantial issue** with respect to the grounds on which the appeals were filed and that the project is consistent with Chapter 3 public access policies of the Coastal Act and the certified LCP. Commission staff recommends that the Commission, after public hearing, determine that no substantial issue exists. The motion and resolution to carry out the staff recommendation is on Page 7 of this report.

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### EXHIBITS

- [Exhibit 1](#) – Project Location
- [Exhibit 2](#) – Final Changes to Short-Term Rental Program
- [Exhibit 3](#) – Local CDP 20-0010
- [Exhibit 4](#) – Appeals
- [Exhibit 5](#) – City of Dana Point LCP Areas Map
- [Exhibit 6](#) – Overnight Accommodations within Coastal Zone Vicinity
- [Exhibit 7](#) – 2018 & 2020 STR Survey Results Summary
- [Exhibit 8](#) – STR Enforcement Data 2016-2022



## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-DPT-22-0038 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

**Resolution:** The Commission hereby finds that Appeal No. A-5-DPT-22-0038 presents **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.

## II. APPELLANTS' CONTENTIONS

On July 27, 2022, appeals were filed by Miriam Rupke, Deanna Slocum, Jason Colaco, Mark Zanides, Kim Tarantino, and Bridget McConaughy (on behalf of UNITE HERE Local 11) ([Exhibit 4](#)). While the appellants generally fall into two categories of “supporters” (favoring additional) and “critics” (opposing nearly all) short-term rentals within Dana Point, the appellants generally concur on the following concerns raised with the City-approved development:

- 1) The City’s proposed STR Program does not conform with the public access policies of the Coastal Act (Sections 30210-30214) and of the LCP.
- 2) The City’s proposed STR Program allows for areas governed by homeowners associations (HOAs) to ban short-term rentals, which would implicate large portions of the City’s Coastal Zone and inequitably distribute short-term rentals.
- 3) The STR permit cap in the City’s proposed STR Program accounts for properties located outside the Coastal Zone and in residential neighborhoods, raising issues of internal inconsistencies with the intent of the local CDP and the allowable uses in the City’s certified LCP.
- 4) The City’s proposed STR Program is not consistent with Commission-approved STR programs in neighboring cities.
- 5) The City’s proposed STR Program will have an adverse impact on the City’s housing stock.

## III. LOCAL GOVERNMENT ACTION

On May 9, 2022, a public hearing was held by City’s Planning Commission, during which it adopted a resolution to approve CDP No. 22-0010 to establish the City’s STR Program. The public comments on the Planning Commission’s agenda item can be found [here](#). On May 23, 2022, appellants Kim Tarantino and Mark Zanides timely filed an appeal of the

Planning Commission's decision to the Dana Point City Council. The appellants generally contended that a CDP was an improper way to proceed on approving an STR program, and that the Planning Commission had neglected to consider the impact of the Program on the City's housing stock and on coastal access. On June 21, 2022, the City Council set the appeal for hearing. The hearing was stayed and resumed on July 12, 2022. Additional public comments can be found for the [June 21](#) and [July 12](#) hearings. The City Council adopted Resolution No. 22-07-12-01, which denied in part, and affirmed in part, the local appeal of the City's Planning Commission's approval of the CDP to establish an STR Program to regulate the permitting and operation of STRs in the Coastal Zone. The final City Council decision thus amended certain portions of Planning Commission's original CDP approval, and upheld others. On July 13, 2022, the Community Development Department Senior Planner issued a Notice of Final Action (NOFA) and determination letter for the approval of the local CDP for the proposed STR Program ([Exhibit 3](#)). On July 27, 2022, the aforementioned appellants filed timely appeals of the City's local CDP approval to the Commission ([Exhibit 4](#)). Additional appeals were received prior to the end of the appeal period on July 27, 2022 and are included as part of the administrative record.

#### **IV. APPEAL PROCEDURES**

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development projects approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea, or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff.

Section 30603 of the Coastal Act states, in relevant part:

(a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The project site is located, in part, within an appealable area due to its location between the sea and the first public road paralleling the sea, and within 300 feet of the inland extent of any beach (Section 30603(a)(1)). The issues raised in the subject appeals apply to proposed development located in the appealable area.



## **Grounds for Appeal**

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1):

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in [Chapter 3 of the Coastal Act].

As stated above, the project is located in the appealable area. Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If Commission staff recommends a finding that a substantial issue does exist, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered presumed, and the Commission will conduct the de novo portion of the public hearing on the merits of the project at a later time. A de novo review of the application on the merits uses the certified LCP as the standard of review (Section 30604(b)). In addition, for projects located between the first public road and the sea, a specific finding must be made at the de novo stage of the appeal that any approved project is consistent with the public access and recreation policies of the Coastal Act (Section 30604(c)). Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

## **Qualifications to Testify Before the Commission**

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the appellants, applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue question. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date during which the Commission will take public testimony.

## **V. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE**

### **A. PROJECT LOCATION AND DESCRIPTION**

The City of Dana Point has proposed a Short-Term Rental (STR) Program to implement new regulations and standards for the operation of short-term rentals within the Coastal

Zone. The provisions of the Program are largely derived from uncertified Chapter 5.38 of the City's Municipal Code, although changes have been made in an iterative manner throughout the CDP process. On July 12, 2022, the City officially adopted City Council Resolution No. 22-07-12-01,<sup>6</sup> authorizing local CDP 20-0010 to establish the City's final STR Program. At the time of hearing, in response to public comments and councilmember concerns, there were changes between the STR Program outlined in the City Council Agenda Report dated July 12, 2022 and the final Program adopted by the City Council. Namely, the City was interested in bifurcating the Program into one applicable to the Coastal Zone, and another applicable outside the Coastal Zone, the two of which are anticipated to be substantially similar. In response to Commission staff inquiry, the City made clarifications to the final scope of the STR Program and supplemented the administrative record on July 26, 2022 ([Exhibit 2](#)). Thus, the final STR Program can be found in [Exhibit 3](#). Section (3), STR permit limitations, has been adjusted and clarified to reflect the City Council's final action, as shown in [Exhibit 2](#). The final STR Program, including all the changes and clarifications made in [Exhibit 2](#), is the subject of the local CDP and its appeal.

The Program creates five categories of STRs:

- (1) *Non-Primary (Residence) STR* – traditional investment properties rented as STRs, where the owner does not live onsite;
- (2) *Primary (Residence) STR* – renter stays in the owner's primary home, while owner is away. This type of STR permit applies for a maximum of 60 days per 12-month period (or shorter, if restricted by covenants, conditions, and restrictions);
- (3) *Home Stay STR* – short-term renter stays within home of owner while owner present;
- (4) *Multi-Family Home Stay STR* – short-term rental of a unit within a multi-family building, where the owner of the rented unit also lives in the same building and is present during the rental period; and
- (5) *Mixed-Use Parcel STR* – any of the above STR types that is located on a Mixed-Use Parcel, which is a parcel zoned for both commercial and residential uses (e.g., commercial on first floor and residential on upper floors).

Resolution No. 22-07-12-01 additionally stipulated five general conditions for the City's implementation of the STR Program. First, it was recognized that approval of the coastal development permit in its current form would establish permitting, regulations, and penalties for short-term rentals in Dana Point. Second, the STR Program would be reviewed by the City's Community Development Director at least every five (5) years to reevaluate the permit cap, regulations, penalties, and any other aspect of the STR Program to determine if an amendment must be made. Amendments to the Program that are not in substantial conformance, such as those outlined in Section (9) of the STR Program, would require an amendment to the CDP. Third, the provisions of uncertified

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<sup>6</sup> This City Council Resolution denied in part, and affirmed in part, the local appeal of the City's Planning Commission's approval on May 9, 2022 of local CDP No. 22-0010 to establish an STR Program to regulate the permitting and operation of STRs in the Coastal Zone, by amending and upholding portions of the Planning Commission's CDP approval.

Municipal Code Chapter 5.38 would remain applicable to STRs outside the Coastal Zone only, and the CDP would apply within the Coastal Zone only. Fourth, within six months of approval of the CDP, applications for new STRs in the Coastal Zone shall be accepted by the City for review. And finally, approval of the CDP is valid for 24 months (two years) from the date of passage of the City Council Resolution. If not implemented within the two years, the permit will expire and become null and void.

According to communications with City staff, the City will not begin enforcing the new STR regulations for properties within the Coastal Zone until the Commission acts on this CDP appeal. Nonetheless, on November 15, 2016, the City Council voted to allow existing permitted STRs to continue to operate, but ceased issuing new STR permits; thus, existing STRs are “grandfathered” in the sense that they continue to remain valid and holders of such STR permits will not need to reapply, but they will be subject to provisions of the new STR Program moving forward, subject to approval of the CDP. In the meantime, existing operating STRs are held to the standards found in uncertified Municipal Code Chapter 5.38, which is not part of the City’s certified LCP. Any STRs in Dana Point that are currently operating without paying transient occupancy tax (TOT), without an existing STR permit, or cited for nuisance, are still subject to enforcement action ([Exhibit 8](#)).

The City estimates that there are currently approximately 139 STRs, including approximately 69 in the City’s Coastal Zone ([Exhibit 2](#)). While the existing STR permits were not issued by type, the City has been able to parse out that 66 of the Coastal Zone STRs are non-primary, one is primary, one is home stay, and one is a multi-family home stay. The approved STR program increases the overall cap of non-primary STRs in the Coastal Zone from 66 to 115 permits. The 115-permit cap was established by using the City’s original proposal for 185 permits citywide and applying a pro-rata assessment of the number of existing operating non-primary STRs. While the 115-permit cap exceeded the true pro-rata number (which would have been closer to a 94-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.

None of the existing STRs are operating within mixed-use parcels, and thus a goal of the STR Program is to encourage STRs on mixed-use parcels, which the City believes would be better suited to support renting to visitors who rely on the City’s public transportation infrastructure, commercial businesses, and recreational areas near the City core. To encourage this type of STR, an increased cap of 190 new mixed-use parcel STR permits was established. Likewise, there will be a 25% reduction in the STR permitting fee for new mixed-use parcel STRs. Each time a mixed-use parcel STR permit is issued for a non-primary STR located within the Coastal Zone, the numerical cap for non-primary STR Permits (i.e., 115) will be reduced by one (1). This reduction does not impact existing non-primary STR permits, including when such permits are considered for annual renewal. It only applies to either: (1) reduce the number of non-primary STR permits available to be issued in the event that less than the total number of permissible permits have been issued, or (2) limit the availability of non-primary STR permits that would otherwise be available to property owners on the STR permit waitlist.

Yet another goal of the STR Program is to encourage home stay, multi-family home stay, and primary STRs, since the property owner resides onsite and the STR is less likely to generate nuisance issues, and thus no cap for these categories is proposed. As noted above, these categories collectively only account for approximately 4% of the existing STRs operating within the City's Coastal Zone, and the City hopes that these STR types will proliferate over time.

The City observed an increase in a number of issues and complaints related to unregulated STRs in residential neighborhoods, such as noise, trash, and parking problems ([Exhibit 8](#)). In response to this, the City began an STR public outreach effort in 2018 and studied the issue in order to develop STR regulation recommendations for the Planning Commission and City Council ([Exhibit 7](#)). As further discussed above, a number of public hearings were held by the City between February 2022 and July 2022 regarding the most recently proposed iteration of the STR Program. In response to these meetings, the City's proposed STR Program was developed to meet the above-stated goals and expand the types of STRs made available (e.g., multi-family home stay STRs).

Certain types of residential units would be ineligible for use as STRs under the proposed ordinance, such as accessory dwelling units (ADUs). However, the Program does allow for the host to stay in the ADU, as long as the renter stays in the main residential unit. Units with non-compliant off-street parking would also be excluded.

The proposed Program would clearly define STRs, add new permitting requirements and operational standards, including, but not limited to, maximum occupancy and parking requirements; afford a mechanism for neighbors to report problems; and establish provisions for the imposition of fines and penalties for violation of the regulations.

## **Project History**

On February 3, 2014, the City submitted LCPA Request No. 1-14 (LCP-5-DPT-14-0105-1) to amend the Implementation Plan (IP) for both the '1986 LCP' and the '1996 LCP' for Coastal Commission certification regarding short-term rentals (STRs), as defined in uncertified Chapter 5.38 of the City's Municipal Code. At that time, STRs grew in popularity through the increased use of electronic reservation systems and online platforms, and Dana Point's coastal location has been especially appealing to out-of-town visitors. In general, STRs have provided an important opportunity to increase visitor-serving overnight accommodations throughout the Coastal Zone, in accordance with Coastal Act Sections 30210, 30211, and 30213. Nonetheless, it has been noted that STRs can also cause problems for coastal residential neighborhoods, and there has been extensive discussion among interested stakeholders regarding impacts from their uses, including but not limited to: changes to community character, rental housing stock reduction, public safety concerns, increased traffic and parking issues, noise impacts, and increased litter accumulation, which are coastal resource issues of concern in part referenced in Coastal Act Section 30214. As such, the City's position has been to attempt regulating and permitting STR uses, rather than outright banning them.

The City had asserted that the proposed regulations set forth in the LCPA would safeguard the peace, safety, and general welfare of the residents of Dana Point, while also facilitating public access throughout the Coastal Zone for residents and visitors alike. The City's original submittal included conditions of approval and operation of STRs, which identified aspects such as the minimum number of parking spaces, maximum number of guests, removal of trash, noise controls, and transient occupancy tax (TOT). No land use plan changes were proposed. The Commission suggested minimal modifications to the City's submitted LCPA, which included further clarification that if the Program is to change in the future, the City would require an additional LCPA.

The Commission approved LCPA No. 1-14 on April 14, 2016 with the suggested modifications. Concurrence with the Executive Director's determination that the action of the City of Dana Point accepting certification with suggested modifications of the LCPA was scheduled for November 4, 2016. Ahead of the hearing, the City received two referendum petitions against the underlying ordinances encompassing the LCPA, and on November 2, 2016, the City notified the Commission that the City was withdrawing the STR LCPA from final consideration and certification.

The City has since then provided more specific information regarding existing or planned overnight accommodations (e.g. hotels, hostels, or campsites), as shown in [Exhibit 6](#).

The City officially adopted City Council Resolution No. 22-07-12-01 on July 12, 2022, authorizing local CDP 20-0010 to establish the City's final STR Program. Since there were changes between the STR Program outlined in the City Council Agenda Report dated July 12, 2022 and the final program adopted by the City Council, the City made clarifications to the final scope of the STR Program and supplemented the administrative record on July 26, 2022 ([Exhibit 2](#)). The final STR Program found in [Exhibits 2](#) and [3](#) of this staff report, and as further described above, is the subject of the local CDP and its appeal.

Per the Commission's guidance, short-term/vacation rental regulations in the Coastal Zone should occur within the context of a certified LCP or be authorized pursuant to a CDP.<sup>7</sup> The Commission has approved one previous STR program via a CDP, although for a City without a certified LCP (Torrance).<sup>8</sup> Here, the City of Dana Point is electing to pursue a CDP as an appropriate means of regulating changes in intensity of use in residential areas of the City's Coastal Zone by placing new restrictions on STRs. Thus, this is the first time the Commission will review a CDP for an STR program for a city with a certified LCP.

## **Project Setting**

The Coastal Zone in the City of Dana Point is relatively long compared to other coastal cities ([Exhibit 5](#)). The shoreline in the Coastal Zone of Dana Point extends approximately 6.7 miles, and the area included in the City's Coastal Zone extends approximately two to four blocks deep near Capistrano Beach, and much further inland near San Juan Creek and west of Dana Point Harbor. The Coastal Zone is bounded on the west by the City of

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<sup>7</sup>[https://documents.coastal.ca.gov/assets/la/Short\\_Term\\_Vacation\\_Rental\\_to\\_Coastal\\_Planning\\_&\\_Devt\\_Directors\\_120616.pdf](https://documents.coastal.ca.gov/assets/la/Short_Term_Vacation_Rental_to_Coastal_Planning_&_Devt_Directors_120616.pdf)

<sup>8</sup> [CDP No. 5-20-0031](#) (City of Torrance).



Laguna Beach, on the north by the Cities of Laguna Niguel and San Juan Capistrano, and on the south/east by the City of San Clemente. The area is largely developed with commercial, professional/industrial, and residential uses, but open space, conservation, and recreation areas can also be found, especially near Doheny State Beach/Capistrano Beach County Park, the Dana Point Headlands, Dana Strands Beach, and Monarch Beach/Salt Creek Beach. There is a small mixed-use section of the City found inland of the Harbor, found within a roughly triangular area bounded by Pacific Coast Highway, Del Prado, and Golden Lantern.

The Dana Point Coastal Zone is developed with 3,432 residential properties, both single-family and multi-family dwellings, with the vast majority of parcels zoned for single-family and multi-family residential uses, including a specific carveout for duplexes and Beach Road properties. The City's Coastal Zone also has mixed-use areas, including Town Center Mixed-Use (TC-MU) and Residential/Commercial (C/R and RC-18) zones. The housing stock citywide (both inside and outside the Coastal Zone) consists of approximately 16,172 housing units, which is comprised of 5,376 single-family residences and 10,796 multi-family units (which would include condominiums, duplex/triplex/quadplex units, and apartments). The City does not have information available for the housing stock specifically within the Coastal Zone, and the City has indicated that there would be tremendous difficulties in obtaining such data over the short-term. Nonetheless, it is assumed that between a third and half of the City's population, and thus housing units, are located entirely or partially within the Coastal Zone. A letter of correspondence (from Toni Nelson, dated August 8, 2022) offers additional information regarding the City's existing affordable housing stock, specifically ([Correspondence](#)).

There are currently 1,864 existing hotel rooms and 120 campsites within the City of Dana Point, the vast majority of which can be found within its Coastal Zone. Approximately 300 additional hotel rooms and 52 hostel beds are planned or under review by the City ([Exhibit 6](#)). Of the existing and planned overnight accommodations, the City finds that 215 (or 11%) of the hotel rooms will be affordable, and all (100%) of the 52 hostel beds and 120 campsites will be affordable. In terms of other coastal access facilities found within Dana Point, the City points to at least 15 coastal access points, multiple scenic lookouts, the funicular cable car with access to Strands Beach, the Headlands trails and lookout points, Doheny State Beach, the Harbor, and the City's operating Trolley.

## **B. LOCAL COASTAL PROGRAM**

Dana Point is a shoreline community in southern Orange County that was incorporated as a city in 1989. The City of Dana Point presently has two groups of documents that serve as its certified LCP. There is an older set of documents that were originally certified when Dana Point was unincorporated and which were adopted by the City when it incorporated, which still apply to the central geographic area of the City ([Exhibit 5](#)). These older documents have generally been referred to as the Dana Point Specific Plan LCP or '1986' LCP, which the Commission certified on September 13, 1989. In addition, there is a more recent group of documents that includes three elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation Open Space Element), the City's Zoning Code, the Monarch Beach Resort Specific Plan, the Headlands Development



and Conservation Plan, and the Dana Point Town Center Plan, which apply to those areas of the City that are not covered by the 1986 LCP ([Exhibit 5](#)). These more recent documents are referred to as the ‘1996 LCP.’<sup>9</sup> The area covered by the local CDP includes the entire Coastal Zone of the City of Dana Point, and therefore all of the aforementioned documents are applicable, which moving forward will be collectively referred to as the ‘LCP’ in this staff report. Reference to the Land Use Plan (“LUP”) portion of the LCP includes the relevant sections of the Dana Point Specific Plan (DPSP) and the City’s General Plan; reference to the Implementation Plan (“IP”) portion of the LCP includes the applicable sections of the City’s Zoning Code, as well as the Monarch Beach Resort Specific Plan, the Headlands Development and Conservation Plan, and the Dana Point Town Center Plan, which are included as an appendix to the City’s Zoning Code.

### **C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed pursuant to Section 30603. When determining whether an appeal raises a “substantial issue,” Section 13115(b) of the Commission’s regulations provide that the Commission may consider factors, including but not limited to:

The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the applicable standard of review;

The extent and scope of the development as approved or denied by the local government;

The significance of the coastal resources affected by the decision;

The precedential value of the local government’s decision for future interpretations of its LCP; and

Whether the appeal raises local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

The Commission finds that **no substantial issue exists** with respect to whether the local government action conforms to the provisions of the City’s certified LCP and public access policies of the Coastal Act for the reasons set forth below.

### **D. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the City’s certified LCP or the public access and recreation policies of the Coastal

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<sup>9</sup> However, this is now a misnomer because the Headlands Development and Conservation Plan and the Dana Point Town Center Plan were adopted after 1996.

Act. Pursuant to Section 30625(b) of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue with respect to the grounds upon which the appeal was filed pursuant to Section 30603 of the Coastal Act. The primary issue raised by this appeal relates to impacts to public access.

Section 30210 of the Coastal Act states, in relevant part:

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.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby... Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 states, in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged and where feasible provided. Developments which provide public recreational opportunities are preferred.

Section 30214 of the Coastal Act states, in relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and re-pass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

### **Relevant Certified LCP Policies**

All certified LCP policies below are included, in relevant part, in [Appendix A](#) due to length:

Certified IP Section 9.09.020, Permitted Uses, Accessory Uses, Temporary Uses and Conditional Uses.

Certified IP Section 9.13.010(b), Residential/Commercial-18 (R/C-18).

Certified IP Section 9.61.020, Interpretation, Administration, and Enforcement.

Certified IP Chapter 9.75, Definitions and Illustrations of Terms.

Certified '1986' DPSP Section II.D, Access Component.

Certified '1996' LUP Land Use Element (LUE) Policies.

### **Appellants' Argument No. 1: The City's proposed STR Program does not conform with the public access policies of the Coastal Act (Sections 30210-30214) and of the LCP.**

Section 30213 of the Coastal Act requires that lower-cost visitor and recreation facilities be protected, encouraged, and where feasible provided. LUP (LUE) Policy 2.10 of the City's "1996" LCP and Section II.D of the DPSP place 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. Coastal Act Section 30210 requires that public coastal access be maximized.

The Commission has found that generally visitor-serving overnight accommodation uses, including STR units, help maximize the opportunities provided for all the public to access the coast. At the same time, the Commission has recognized legitimate community

concerns associated with the potential adverse impacts associated with vacation rentals, with respect to housing stock and affordability, community character, noise, and traffic impacts.

As explained earlier in this staff report, the appellants generally fall into two categories. There is a group of appellants (Miriam Rupke, Deanna Slocum, and Jason Colaco) that strongly favor short-term rentals in Dana Point and believe that the proposed STR Program, notably its permit cap, falls short in providing sufficient STR opportunities in the Coastal Zone. This group of appellants will be referred to as the “STR supporters” from this point forward. On the other hand, another group of appellants (Mark Zanides, Kim Tarantino, and Bridget McConaughy (on behalf of UNITE HERE Local 11)) strongly opposes any short-term rentals in Dana Point and believes that the proposed STR Program is too permissive and will adversely affect the City’s residential neighborhoods. This group of appellants will be referred to as the “STR critics” from this point forward. In both groups, the appellants overall allege that the City-approved Program is not consistent with the public access policies of the Coastal Act (Sections 30210-30214) and of the LCP.

The STR supporters contend that the proposed CDP is overly restrictive, and that the Program will serve to essentially reduce the number of available STRs citywide. This group of appellants theorizes that the City could use the CDP to eliminate STRs outside the Coastal Zone. The appellants also allege that the STR Program will be established in only one zone within the City’s Coastal Zone, thereby decreasing public access to the coast and reducing opportunities for overnight accommodations/lower cost visitor and recreational facilities. The appellants find the Program to not conform with the public access policies of Chapter 3 of the Coastal Act, or to LUP (LUE) Policy 3.3, which identifies the protection and encouragement of lower cost visitor and recreational facilities as a priority.

The STR critics contend that the proposed CDP is overly permissive. First, this group of appellants alleges that the Program will not conform with Coastal Act Section 30214, which requires development to account for various environmental sustainability factors and the privacy of private property owners, in a manner that balances and optimizes public access. The appellants cite nuisance issues associated with STRs, such as noise, drug use, parking hoarding, increased garbage/litter, and the prevalence of “party houses,” which are seen as posing a threat to public safety and impinging upon the rights of nearby property owners. The appellants also argue that since Coastal Act Section 30212 requires all new coastal developments to include public access from the nearest public roadway to the shoreline, and the City of Dana Point has not proposed a manner to oversee or enforce this requirement for all properties licensed for STR use, then the Program is inconsistent with this provision of the Coastal Act and should be overturned. The appellants state that currently, STR operations in Dana Point are not evenly distributed throughout the Coastal Zone, tend to concentrate in particularly popular areas, and the proposed STR Program does not attempt to ensure fair geographic distribution of STR permits. Thus, they contend that the City’s action will not mitigate against the adverse impacts of overcrowding or overuse. Finally, the appellants state that the STRs that will be made permissible per the CDP will be prohibitively

expensive, as evidenced by the current going average nightly rates for the 139 “grandfathered” STRs, which would not conform with Coastal Act Section 30213 requiring protection and encouragement of lower cost visitor and recreational facilities.

As stated, there are approximately 139 grandfathered STRs in the City of Dana Point Coastal Zone. According to the City, most of those STRs offer full house/condo/apartment rentals without a host onsite, which is the traditional manner that the City’s Program refers to as “non-primary.” The proposed Program would “grandfather” the existing 139 STRs without additional application requirements, but through the CDP, there would be new administrative and operational requirements promulgated in the Program for *all* STRs. There will also be new types of “hosted” STRs (e.g., primary, home stay, multi-family home stay), which the City finds to be a superior method of short-term renting that would minimize the generation of potential nuisance issues and should therefore be encouraged. In any case, there will be dedicated enforcement and imposition of penalties to ensure that the terms and conditions of the STR Program, including the required nuisance abatement controls, are being followed. Thus, the STR critics’ concerns of the Program’s consistency with Coastal Act Section 30214 do not raise a substantial issue.

Coastal Act Section 30213 requires that lower-cost visitor facilities be protected, encouraged, and where feasible, provided. To this end, the City has provided evidence that the proposed STR Program will not detract from the existing affordable overnight accommodations available in the City’s Coastal Zone. The City has provided an inventory of existing accommodation types (i.e., hotel, hostel rooms, and campsites) located within the City of Dana Point, many of which are within the City’s Coastal Zone ([Exhibit 6](#)). The City has also pointed to overnight accommodations in neighboring jurisdictions, such as San Clemente. The City categorized these accommodations based on affordability and included the number of rooms in each accommodation. The City clarified whether the overnight accommodations is existing or is pending review. While the City did not provide nightly rates for these accommodations, a recent survey by Visit California for the 2021 peak season (June – August) shows a regional average daily rate for Orange County of \$195.94. To supplement the record, the STR critics provided hotel rates data collected from hotel websites on July 21, 2022 by local realtor Barbara Wilson, and by confirming those rates by phone call. While Commission staff did not verify the nightly rates compiled by the appellants in Table B.1.1 of the appeal ([Exhibit 4](#)), they appear to be within the ranges provided by the Visit California survey.<sup>10</sup>

As the City has pointed out in its findings, many of the STRs rent at similar average rates as the local hotel rooms, but there is wide variation in prices. Depending on site-specific circumstances, short-term rental of a residence can potentially provide a lower cost option than a traditional hotel room. For instance, this can be true when traveling with extended family or other larger groups where renting a single residence is less expensive than renting multiple traditional hotel rooms. Short-term residential rental units, especially if non-primary, can also typically include full kitchen facilities, which allow overnight visitors the option of preparing meals in, a more affordable option than dining out. While

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<sup>10</sup> [Visit California](#) publishes monthly average daily rate (ADR) data for the State of California, which is broken down by County. This information can be downloaded directly from the website, but is not archived.

the appellants are correct that a few Beach Road homes have daily rates approaching \$2,000 during the peak high season, Commission staff's investigation yields many more homes listed within the \$500-\$600 range; it should also be noted that many of these STR offerings are non-primary, and therefore the renting visitor has many bedrooms available (sometimes up to 5), which on a pro-rata basis, is approximately equivalent to typical going rates for hotel rooms in the City's Coastal Zone.

Also, a hosted STR, such as home stay and multi-family home stay, permits owners and long-term residents who live onsite to be able to rent a spare room and host visitors in their homes. Because only a room or a portion of a residential unit is being rented, home stay units oftentimes provide lower-cost overnight accommodations and can be more affordable than traditional overnight accommodations (hotel/motel) and traditional "entire home" STRs. Affordable low-to moderate-cost overnight accommodations increase and maximize public coastal access by allowing visitors of all income levels to stay at the coast, consistent with Section 30213 of the Coastal Act. Importantly, in all cases, STRs increase the range of options available to coastal visitors, regardless of the cost. Overnight accommodations are a high priority use because they allow for enhanced public access and visitor serving opportunities, consistent with the public access policies of the Coastal Act. Thus, both STR supporters' and critics' contentions regarding the Program's consistency with the lower coast overnight accommodations policy of the Coastal Act do not raise a substantial issue.

Finally, with regard to the appellants' contentions that the proposed STR Program will serve to concentrate the STR offerings in only one or a few "clustered" areas in the Coastal Zone, the Program specifically allows for STRs in all residentially zoned areas of the City's Coastal Zone. In a past CDP action, the Commission has found that requiring STRs to be hosted in all residentially zoned areas of the Coastal Zone would allow for maximized public coastal access while preserving the City's available housing stock, preserving the existing lower cost hotel/hostel stock in the City both within and outside the Coastal Zone, and preventing STRs from negatively impacting the neighborhoods and community character.<sup>11</sup>

The subject CDP provides a programmatic framework for lower cost public visitor-serving opportunities while maintaining the residential character of the coastal neighborhoods that make up the Dana Point Coastal Zone. While it is true that the City will encourage certain types of STRs, particularly in mixed-use parcel areas, the City has clarified that mixed use zoning is located in the Town Center, Doheny Village, and a small cluster of parcels at the south end of town, which would still allow for a wide geographic range of STR options within the Coastal Zone. The incentives given to mixed-use parcel STRs would not reduce non-primary STRs in other areas of the Coastal Zone, unless the permit is not being used and/or consideration to the waitlist is being given.

The Program will further require off-street parking spaces in each permitted STR and will therefore not reduce available on-street parking, which could impact public access to the coast by reducing the amount of parking available for coastal users. Therefore, the

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<sup>11</sup> [CDP 5-20-0031](#) (City of Torrance).



Program will ensure adequate distribution of STRs throughout the City of Dana Point Coastal Zone, will not adversely impact the public's continued access to the coast, and will not contribute significantly to overcrowding and overuse of any particular area of the City's Coastal Zone, and will thus be consistent with Coastal Act Sections 30212 and 30212.5.

In sum, as proposed and conditioned, the City of Dana Point STR Program provides an appropriate balance to continue to accommodate STRs in a manner that would not contribute to a loss of lower-cost overnight accommodations, unduly restrict the rental of residential units to visitors, or diminish the public's ability to access and recreate on the coast. Thus, the appellants' contentions do not raise a substantial issue with regard to the Program's consistency with Coastal Act sections 30210-30214, as well as the public access policies of the certified LCP.

**Appellants' Argument No. 2: The City's proposed STR Program allows for areas governed by homeowners associations (HOAs) to ban short-term rentals, which would implicate large portions of the City's Coastal Zone and inequitably distribute short-term rentals.**

Both STR supporters and critics contend that the proposed STR Program allows for areas of the Coastal Zone governed by homeowners associations (HOAs) to enact short-term rental bans via their covenants, conditions, and restrictions (CC&Rs). The two appellant groups contend that the Program's facilitation of these bans across HOAs would restrict STRs within large portions of the City and inequitably distribute STRs geographically and demographically among the City's coastal communities. The STR supporters allege that the STR Program would limit the availability of affordable STRs because a large portion of the Coastal Zone is comprised of HOAs, some of which have historically banned STRs and will continue to do under the proposed Program. The appellants further claim that residential areas inside the Coastal Zone not covered by the Coastal Zone are comprised mainly of homes with a starting price of \$3 million, which will make the Coastal Zone inaccessible and unaffordable to many out-of-town visitors. Similarly, the STR critics contend that the City's proposed STR Program would continue to disproportionately cluster STR permits in Capistrano Beach (along Beach Road) and Lantern District, since these are main areas where STRs are currently present, and which do not have many HOAs. This group's analysis is that the Program will have an outsized impact on workforce housing in areas adjacent to the Coastal Zone where most of Dana Point's disadvantaged communities live, while protecting the more affluent (and largely non-Hispanic White) residents of gated HOA communities who are able to effectively ban STRs.

The appellants are correct that a property owner must provide proof that their short-term rental is not prohibited by its HOA CC&Rs or any other community standards/guidelines applicable to the proposed short-term rental. Furthermore, should an HOA permit STRs in the area it governs, then the Program requires that a summary of the applicable CC&Rs of the HOA must be stated on the STR's lease/agreement and disclosed in a conspicuous place within the rental unit. In response to Commission staff's letter dated April 1, 2022, the City has indicated that it will continue to honor CC&R regulations

established by HOAs that may pose potential restrictions on STRs.

The City is aware of the California appellate court decisions in *Greenfield v. Mandalay Shores Community Association* and *Kracke v. City of Santa Barbara*, which confirm the requirement that HOAs must obtain a coastal development permit prior to establishing a ban on STRs, pursuant to Coastal Act Sections 30600 and 30106.<sup>12</sup> Those cases make clear that regulation of STRs in the coastal zone is a matter for cities and the Coastal Commission to regulate, not HOAs acting alone. The City has clarified through discussions with Commission staff that it will inform HOAs of the CDP process and facilitate the filing of CDP applications where required. The City is weighing its options to direct HOAs to apply for a regular CDP, CDP waiver, and/or programmatic permit in order to ensure that there would be no adverse impacts to public access or coastal resources. Absent such explicit direction for HOAs and homeowners seeking to operate STRs within HOA communities, the City's current CDP otherwise forgoes mention of STRs in HOAs.

The City has stated that there are approximately 78 HOAs within its jurisdiction, 28 of them within the Coastal Zone. Fifteen (15) of these HOAs, which contain approximately 2,648 residential units, have CC&Rs that do not allow short-term rental use. Ten (10) of these HOAs, which contain approximately 639 residential units, have CC&Rs that allow short-term rental use. Commission staff was not able to verify the demographics and housing stock within each HOA community, and thus it cannot be verified whether the notion that HOA bans on STRs would have a chilling effect on affordable STRs is supported in the first place, or the appellants correctly analyze whether the communities found *within* or *outside* these HOAs would be disproportionately affected.

While the most recent 2020 STR Survey has shown that approximately forty-two percent (42%) of participants are residents of HOAs in the City of Dana Point ([Exhibit 7](#)), this does not correlate to an exact proportion of the City's population, and the above figures suggest that approximately 32% to 50% of the City's population may be excluded from participating in the STR Program, should the City recognize all HOA bans. While this is not written into the CDP, the City has stated to the Commission that as individual short-term rental owners apply for an STR permit, the City would verify if their HOA's CC&Rs allow the short-term rental use. The City would initiate discussions with the HOA, as necessary, to determine whether the language in the CC&R ought to be formally effectuated via the CDP (waiver) process. The Commission will not address hypothetical conversations between the City and HOAs via this report, but cautions the City that state case law makes clear that prohibitions of STRs require CDPs issued by the permit authority, whether that be the City or Commission.

The STR Program will allocate approximately 21 STR permits beyond the pro-rata number of 94 STR permits, for a total of 115 STR permits, in order to partially mitigate against the potential for HOA bans on STRs. The City of Dana Point also offers a multitude of alternative overnight accommodations, such as hotels, hostels, and campsites. As described previously, the certified LCP includes policies that provide public

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<sup>12</sup> *Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896; *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089.

access to the coast by protecting, encouraging, and providing, where feasible, visitor-serving overnight accommodations. While STRs offer such accommodations, the City of Dana Point also has 11 existing hotels in the Coastal Zone of varying ranges of affordability with a total approximate number of 1,864 rooms ([Exhibit 6](#)). Doheny State Beach Campgrounds that is also located in the City of Dana Point offers 120 campsites. In addition, approximately 300 additional hotel rooms and 52 hostel beds across five hotels are planned or under review by the City. In fact, the City of Dana Point has one of the highest concentrations of overnight accommodations per capita in the Coastal Zone, with approximately 58 lodging units per 1,000 persons currently, which is set to rise to over 67 lodging units per 1,000 persons. Therefore, while some of the HOAs found within the Coastal Zone do not allow short-term rentals, the City of Dana Point does provide a large number of opportunities for visitor-serving overnight accommodations, and the STR Program will add a number of visitor-serving overnight accommodations that give the public an opportunity to visit and enjoy the coast, in a manner that will not deter from the existing supply of hotel rooms and campsites, or at significant expense of the City's housing stock. In all cases, whether or not at lower price points than hotel or motel rooms, short-term rentals increase the range of options available to coastal visitors.

In the City of Long Beach's LCPA to establish an STR program,<sup>13</sup> one of the concerns raised by the public was that by not allowing homeowners associations (HOAs) to prohibit STRs, it would pose a security risk and an unfair financial burden for homeowners within HOAs that share utility costs. In this case, the City of Dana Point's STR Program would not prevent HOAs from prohibiting STRs. The Commission understands pre-Coastal STR bans, and any bans effectuated via a CDP, to remain in effect. However, any HOA prohibitions on STRs would be evaluated based on its consistency with the City's certified LCP and Coastal Act, including the policies that protect public access to the coast.

The Program's policies, terms, and conditions are consistent with the LCP policies that protect public access and overnight accommodations. The City's STR Program further avoids cumulative impacts to public access from individual short-term rental restrictions approved in accordance with the required findings listed above by requiring monitoring and reporting on STRs throughout the Coastal Zone for a five-year assessment period, and, if adverse impacts are observed, amending the CDP to correct and mitigate for such impacts. As proposed, the City would be allowing prohibitions on a case-by-case basis, and even when analyzing the specific impact of one STR prohibition application cumulatively on coastal resources and public access via the CDP process, it may be the case that larger trends overtime may not be identified or addressed. Thus, the City's ability to reassess the entirety of the Program within the first five years, or sooner should a need for a CDP amendment arise, allows the City to monitor STR activity and analyze whether there would be cumulative impacts on coastal resources resulting from HOA bans on STRs.

Thus, the appellants' contentions that the City of Dana Point STR Program's facilitation of STR restrictions in HOA-governed areas would adversely impact the availability and distribution of public access amenities and overnight visitor accommodations in the City's

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<sup>13</sup> [LCP-5-LOB-20-0058-3](#) (City of Long Beach).

Coastal Zone do not raise a substantial issue with regard to the Program's consistency with Coastal public access and recreation policies of the certified LCP.

**Appellants' Argument No. 3: The STR permit cap in the City's proposed STR Program accounts for properties located outside the Coastal Zone and in residential neighborhoods, raising issues of internal inconsistencies with the intent of the local CDP and the allowable uses in the City's certified LCP.**

The STR supporters contend that the proposed CDP is overly restrictive because the permit cap for non-primary STRs used to account for properties outside the Coastal Zone, at which point it was 185 permits, but will now be reduced to 115 permits. As explained in Argument No. 1, this group of appellants contends that the Program's scheme will serve to essentially reduce the number of available STRs citywide, since the City could apply the 115-permit cap citywide and eliminate the currently proposed 70-STR permit cap outside the Coastal Zone. The appellants recommend that the City follow the example of the City of Long Beach by setting up a hard cap of 185 STR permits irrespective of the number of non-primary STRs operating outside the Coastal Zone. The Commission reiterates that the Commission cannot enforce development outside the Coastal Zone. In the case of Long Beach, the City's STR Program was proposed via the LCP process, and the City adopted suggested modifications approved by the Commission during public hearing. Here, the CDP process does not allow for similar consideration of an STR program proposal outside the Coastal Zone. Therefore, the appellants' argument does not raise a substantial issue as to the proposed Program's conformance with Chapter 3 public access policies of the Coastal Act or the City's certified LCP. In any case, City staff has indicated that the an ordinance to amend uncertified Municipal Code Section 5.38, which will govern areas of the City outside the Coastal Zone, will be heard by the City Council after finalization of the CDP for the Coastal Zone portion, and a first reading of the [draft ordinance](#) was heard on July 19, 2022.

The STR critics contend that the proposed cap for non-primary STR permits, and moreover the STR Program as a whole, more generally, is not allowed at all, by referring to recent case law (e.g., *Kracke v. City of Santa Barbara*, *Keen v. City of Manhattan Beach*, and *Protect Our Neighborhoods v. City of Palm Springs*). The appellants contend that per case law and the City's definitions of STRs and related terms (e.g., "transient," "residential," "guest room," etc.), that STRs are essentially "hotels" under the Dana Point Municipal Code and are thus barred in the absence of rezoning and amendment of the LCP. While it may be true that the City previously interpreted the City's Zoning Code to not allow for STRs in residentially-zoned neighborhoods, a change of circumstance, precipitated by the three aforementioned Court of Appeal opinions, now means that the City legally finds STRs to be allowable uses in residential zones. More specifically, IP Section 9.09.020 allows "recreational facilities, private" as an accessory use for all residential districts. The City also cites IP Section 9.61.020 as an authority for the City to interpret its certified Zoning Code, and Chapter 9.75 contains applicable definitions for what constitutes STRs, as compared to other types of overnight accommodations. Furthermore, the Commission concurs with the City's findings that despite inherent differences between the currently proposed STR Program and the program considered

under the *Santa Barbara* decision, if the case were to be applied in Dana Point, it would likely be interpreted to mean that until STR regulations are approved pursuant to the Coastal Act, any residential property in the Coastal Zone could, by right, operate an STR since STRs are considered accessory residential uses permitted by the City's LCP. Thus, the City's STR Program, including more specifically the proposed cap for non-primary STRs throughout residentially-zoned neighborhoods in the City's Coastal Zone, is consistent with the allowable uses in the City's certified LCP.

Finally, the certified LCP includes policies that protect overnight accommodations like short-term rentals in the coastal zone, which provide for facilitated coastal access and recreational opportunities at a range of price points. The proposed cap on non-primary STRs adequately protects public access, by allowing the offerings of STRs in the Coastal Zone, rather than implementing a total ban on STRs, which could adversely impact the stock of visitor-serving and lower cost overnight accommodations. The recommended allowance of 115 permits is a pro-rata approximation of the number of active non-primary residence STRs that the Coastal Zone has historically supported. It is also over one-half of the total cap, which protects the proportion of coastal zone non-primary STRs, as described above.

Thus, the appellants' contentions that the City of Dana Point STR Program's cap for non-primary STRs account for properties outside the Coastal Zone and/or within residential neighborhoods, therefore leading to internal inconsistencies with the CDP's intent and LCP zoning, do not raise a substantial issue with regard to the Program's consistency with the land uses and zoning designations of the certified LCP.

**Appellants' Argument No. 4: The City's proposed STR Program is not consistent with Commission-approved STR programs in neighboring cities.**

Both STR supporters and critics contend that the proposed STR Program is not consistent with Commission-approved STR programs in neighboring cities. The STR supporters believe that the City's cap for non-primary STRs within the Coastal Zone should be independent of the cap outside the Coastal Zone (following the Long Beach example), that multi-family building owners should have limited means to prohibit STRs (also following the Long Beach example), and that the Dana Point STR Program should follow precedent set in *Santa Barbara* and *Manhattan Beach*. Likewise, the STR critics contend that the City's proposed STR Program should follow the court interpretations in *Kracke v. Santa Barbara* and *Keen v. City of Manhattan Beach*, and that case law does not necessarily support the City of Dana Point's STR Program in its establishment of STRs in residential zones.

As discussed earlier, the City is not attempting to amend the zoning designations in residential neighborhoods via implementation of the STR Program; rather, the general goal of the City's short-term rental regulations is to allow for STRs without impacting long-term rental housing stock in the City and creating a nuisance or threatening the public health, safety, or welfare of neighboring properties. This is found to be in accordance with other Commission-approved STR programs in the Coastal Zone. The STR critics' contention that the City did not heed judicial precedent in *Kracke v. Santa Barbara* and

*Keen v. City of Manhattan Beach* does not raise substantial issue with regards to the Program’s consistency with the City’s Zoning Code (IP portion of the LCP), as further discussed in the contention above. Correspondingly, the Commission has discussed the STR Program’s permit cap at length in previous sections.

As for the STR supporters’ specific contention that the City’s STR Program places onerous limits on STR permit holders in comparison to other neighboring cities in the Coastal Zone, the Commission finds that the City of Dana Point has set comparable limits and parameters in its proposed Program. For example, the limits on the number of guests—an overnight occupancy requirement of two guests maximum per bedroom plus two, up to 8 individuals, and a daytime occupancy requirement of 2.5 times the overnight occupancy, up to 20 individuals—and length of stays— maximum of 30 consecutive days—are consistent with recent Commission actions on STR LCPAs, including, but not limited to Ventura County, Santa Cruz County, City of Santa Cruz, City of Laguna Beach, City of Newport Beach, City of Torrance, and City of Long Beach. The City’s occupancy limits are not expected to significantly affect public access to the coast or the availability of STRs in the Coastal Zone. Similarly, the proposed Program includes a provision that restricts un-hosted primary STRs to a maximum of 60 days per year. This number corresponds with the length of a summer/winter season when homeowners are more likely to be away from their primary residence and, therefore, offer their home for un-hosted stays. Hosted home stays (both single-family and multi-family) are not subject to this cap. Even with this limit for un-hosted primary STRs, up to 30 two-night weekend stays or 20 three-night weekend stays would be feasible. In addition, this regulation is consistent with other certified STR-related Programs, including but not limited to, the City of Trinidad (maximum 59 days of STR use per year), the City of Torrance (maximum 90 days of STR use per year), and the City of Oxnard (maximum 100 days of STR use per year). This specific restriction for un-hosted primary STRs is not expected to impact public access to the coast because the City has indicated that very few “entire home” short-term rentals, which could include primary and non-primary residences, are rented less than 60 days per year.

With regard to the STR supporters’ concern that the Dana Point STR Program does not sufficiently encourage STRs in multi-family residences, the City of Laguna Beach’s certified LCP includes findings that STRs can be associated with depletion of the City’s supply of multi-family residential units. The City of Long Beach adopted a policy geared at protecting long-term (lower cost) rental housing, which allows for: one non-primary STR for up to 10 units, 10% STRs for 11-50 units, 12% for 51-100 units, and 15% for over 100 units. There was no restriction for primary residence STRs. As certified by the Commission, the City of Torrance has a similar policy that limits STRs in multi-family buildings to one unit per every thirty residential units. The City of Eureka’s LCP includes a policy that allows up to 75% of the residential units on a site to be STRs. The City’s proposed STR Program is somewhat permissive, in that it allows for up to 6 STRs for every multi-family residential structure or associated group of structures (otherwise, the structure(s) would be considered a “hotel”). Nonetheless, it similarly strikes a balance between providing visitor-serving overnight accommodations and maintaining long-term housing, which is in short supply state-wide. In addition, the Program will allow for some STRs in multi-family structures in a manner that does not disproportionately restrict the



rights of residents in multi-family housing; the Commission recognizes that, as with any STR, residents of multi-family buildings can benefit from the additional income provided.

Therefore, the appellants' contentions that the Dana Point STR Program is not consistent with other Commission-approved STR programs in neighboring cities does not raise a substantial issue with regard to the City approval's consistency with the housing policies of the certified DPSP/LCP or Chapter 3 public access policies of the Coastal Act.

**Appellants' Argument No. 5: The City's proposed STR Program will have an adverse impact on the City's housing stock.**

The City's Housing Element (a portion of the City's General Plan), while not certified by the Commission and not a part of the City's LCP, is designed to address key housing issues in the City. The Housing Element discusses ways to expand housing access for low- and moderate-income households, while enhancing community character and maintenance of existing affordable housing stock. The Dana Point Specific Plan, which forms the '1986' LCP, states that "these Specific Plan Land Use Regulations are intended to facilitate the location of housing for all segments of the population in the Dana Point community by implementing the inclusionary housing provisions of the Housing Element of the [City's] General Plan." The 1996 LUP's Land Use Element (LUE) Policy 7.5 further "encourage[s] the development of a diversity of housing opportunities including medium density housing in the areas adjacent to the retail areas and also as a part of mixed residential and retail or office uses." Finally, 1996 IP Policy 9.13.010(b) directs new residential development within mixed-use areas (particularly districts designated Residential/Commercial-18 (R/C-18)) to provide a minimum of 10% of the total housing units as "affordable units." The Town Center Plan, Headlands Development and Conservation Plan, and the Monarch Beach Resort Specific Plan, which also form part of the City's certified IP, do not have applicable affordable housing requirements beyond an "in-lieu fee" program.

Both STR supporters and critics contend that the proposed STR Program will have an adverse impact on the City's housing stock. The STR supporters believe that the City's STR cap should constitute a larger percentage of the City's housing stock within the Coastal Zone, citing the City of San Diego's program as an example where the proportion of STRs out of the total housing stock is higher. This group of appellants alleges that the City of Dana Point's decision to bifurcate the Program inside and outside the Coastal Zone limits the availability of affordable visitor accommodations (e.g., one-bedroom units outside the Coastal Zone), which would translate to homes typically valued at \$3+ million being used for STRs within the Coastal Zone. On the other hand, the STR critics contend that the City's proposed STR Program will lead to major losses of an already scarce supply of affordable housing in Dana Point. This group of appellants is concerned that this Program would attract investors and displace individual property owners, and that many residential units would be converted into long-term operations of STRs (i.e., "de facto hotel rooms") with much higher rental rates.

As of May 20, 2021, the City estimates that there are approximately 3,400 residential properties in Dana Point's Coastal Zone. The City does not have sufficient housing data

available for the Coastal Zone to directly make an adequate assessment of the impacts that STRs would have on existing housing inventory. Nonetheless, in the City Council Agenda Report dated June 21, 2022, it is established that citywide, there are 10,796 single-family residences and 5,376 multi-family properties. Since the City has bifurcated the STR Program into areas inside and outside the Coastal Zone, the STR critics estimate that within the Coastal Zone specifically, there would be around 5,400 one-unit properties, 200 two- to four-unit properties, and 1,780 five- (or more) unit properties. Commission staff have no reliable method to confirm the appellants' data in lieu of the City's data, but based on what the City has provided thus far, the appellants' housing inventory figures appear to be a gross overestimation. In any case, the Commission acknowledges that there is a housing crisis statewide, and the City must balance housing needs with the provision of visitor-serving overnight accommodations. To maximize public access in the Coastal Zone for all people, including visitors and long-term residents of Dana Point, it is especially important that the City strike an adequate balance between *lower-cost* accommodations (protected and encouraged by Section 30213 of the Coastal Act and the City's certified LCP) with *affordable* housing.

The STR supporters' contention that mainly higher-cost (>\$3 million) single-family homes are going to be affected by the City's STR Program appears to contradict the City's indication that STRs will be widely distributed throughout all areas of the Dana Point Coastal Zone. Even if the conversion of higher-cost housing into non-primary "entire home" STRs were an issue, in that it would provide higher-cost short-term visitor accommodations (which, as discussed previously, is not likely to be a significant issue), then it would still appear that the City's affordable housing stock would not be much affected. Similarly, the STR critics' contention that homes along Beach Road and in the Lantern District would be particularly burdened by STRs does not raise concern that STRs are depleting affordable housing, as many STRs have operated, or currently operate, in these areas without detriment to the existing residential population or affordable housing supply. In fact, the proposed Program will encourage STRs in mixed-use areas, in accordance with the aforementioned LCP policies.

As stated previously, the Program's 115-permit cap is derived from an overall citywide proposal for a 185-permit cap, which approximates the number of STR permits in existence when the City stopped issuing STR permits (i.e., there were 183 STR permits in 2016). Based on the City's previous proposal for a citywide Program with a 185-permit cap, STRs would have represented approximately 1.1% of the City's total 16,172 housing units. While it is more difficult to ascertain the same figure specifically in the Coastal Zone, City staff calculate that between one-third and one-half of the City's housing inventory is completely or partially within the Coastal Zone. Therefore, the 115-permit cap under the current iteration of the STR Program would yield approximately 1.4% to 2% of housing units within the Coastal Zone only. These figures are comparable with metrics found in other nearby cities, such as Laguna Beach (1.5%), San Diego (1.0%), and Long Beach (1.6%). The STR supporters' contention that the cap should be increased in order to represent a larger proportion of the City's housing stock, from 0.5% to 1.0% does not seem to raise issue in light of the above analysis.

The STR critics contend that the Program is too permissive by allowing mixed-use areas

to be primarily converted to STRs and encouraging investors to “snap up” available non-primary STR permits on a first-come, first-serve basis, which would serve to displace individual property owners. This also does not appear to be an issue, given that the target cap of non-primary STRs will not be much beyond the historical baseline, and other categories of less traditional STRs (e.g., home stay, primary) are not nearly as popular.

The STR critics contend that 756 additional residential units would be converted to STRs, especially through a perceived loophole in the Program’s unlimited allowance for primary STRs.<sup>14</sup> While primary STRs are not proposed to have a cap, and they may grow in popularity over time, it is anticipated that the Program’s required registration process, enforcement mechanisms, and five-year reassessment period would help prevent adverse impacts resulting from this type of STRs. A severe reduction in the availability of STRs, or a blanket prohibition of all STRs currently serving guests in the Dana Point Coastal Zone, would not result in more affordable STRs or alleviate potential overcrowding of other lower-cost overnight accommodations in the Coastal Zone. Rather, public access to the coast would be further limited. The Program merely creates a process for the regulation of non-primary STRs that already exist and provides for the possibility to increase other types of STRs.

The STR critics further contend that STRs, especially non-primary STRs, are associated with higher housing costs, displacement of lower-income residents, over-crowding of motels and lower-cost hotels, and prioritization of coastal accessibility for more affluent visitors over existing residents. A letter of correspondence (from Toni Nelson, dated August 8, 2022) offers additional information specifically regarding the City’s existing affordable housing stock ([Correspondence](#)). A search of the City’s housing inventory yields that very few affordable housing units exist within the Coastal Zone. Regardless, the appellants’ did not provide conclusive evidence that reducing the relatively small proportion of STRs in the City would significantly increase affordability and housing availability. Furthermore, the proposed Program does not allow for affordable housing options like ADUs and single room occupancies to be registered as STRs. These restrictions, as additionally evidenced by the current operation of existing STRs in the Coastal Zone, are likely to prevent the development of a significant number of “mini-hotels” within multi-family buildings in residential zones, which is a concern raised by the appellants.

Finally, the proposed STR Program would allow for home stay and multi-family home stay STRs. The intent of requiring property owners to live on-site and directly manage these types of STRs is to encourage greater responsibility from short-term renters and provide the ability to quickly respond to neighbor complaints and disturbances from short-term renters without requiring assistance from City and/or emergency personnel. Even while there is no cap for home stay and multi-family home stay STRs, their limited demand (under current circumstances) and requirements per the proposed Program would likely significantly prevent the displacement of full-time renters or impact their ability to afford to

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<sup>14</sup> The appellants arrive at this estimate by assuming that all 816 primary residences in the Coastal Zone could be converted into STRs, given that there is no cap. The appellants then subtract the number of un-hosted STRs, which they estimate to be 61. There appears to be a calculation error, and these numbers have not been verified by Commission staff.

rent in the Coastal Zone. For these types of STRs, the primary use of the unit would remain residential since the property owner must be living onsite. Additionally, allowing an owner to rent out rooms or units in their home or multi-family structure provides additional income for property owners to better afford a mortgage on the property. Therefore, maintaining owner-occupancy of the unit may, in some situations, serve to protect the housing stock for full-time City residents and prevent a substantial alteration of the residential character of Dana Point's communities in the Coastal Zone.

Therefore, the appellants' contentions that the Dana Point STR Program will adversely impact the City's housing stock does not raise a substantial issue with regard to the City approval's consistency with the housing policies of the certified DPSP/LCP.

### **SUBSTANTIAL ISSUE FACTORS:**

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

**1. The degree of factual and legal support for the local government's decision that the development is consistent with the relevant provisions of the certified LCP and Coastal Act.** The City substantially supported its approval of the project as being consistent with all of the applicable policies of the certified LCP, including public access policies related to lower cost visitor accommodation, as well as other coastal resource protection policies not referenced in the appeals. The City's findings were supported by evidence in the administrative record. Therefore, there is a high degree of factual and legal support for the local government's decision that the project, as conditioned, is consistent with the LCP, and this factor supports a no substantial issue finding.

**2. The extent and scope of the development as approved or denied by the local government.** The City approved a local CDP to develop a short-term rental (STR) Program within the City of Dana Point's Coastal Zone. The proposed project would add compatible uses to residential and mixed-use areas of the Coastal Zone consistent with the land use regulations outlined in the LCP. The scope of the Program is not anticipated to have substantial impacts to coastal recreation or public access in the City, nor result in adverse environmental impact to significant coastal resources. Therefore, this factor supports a finding of no substantial issue.

**3. The significance of the coastal resources affected by the decision.** The appellants are concerned that existing coastal-dependent, visitor-serving recreational facilities and community character of coastal residential neighborhoods will be affected by the proposed STR Program as they are both significant resources in the area. The City's many existing hotels and campsites, as well as many other coastal dependent recreational amenities, are significant coastal resources, but their prevalence and importance will not be diminished, and will not be directly impacted by the proposed STR Program. There may be a small impact to the City's housing stock on the order of approximately 0.5% of the available housing units citywide, but the evidence in the record and the City's findings provide that there will not be an adverse cumulative impact to the City's coastal residential

neighborhoods and their community character. Therefore, this factor supports a finding of no substantial issue.

**4. The precedential value of the local government’s decision for future interpretations of its LCP.** The proposed STR Program is consistent with the policies of the certified LCP, and the City interpreted the LCP in a manner that is consistent with the public access, recreation, community character, and coastal resource protection policies of the Coastal Act. Thus, the City’s decision will not set an adverse precedent for interpretation of the LCP. This factor supports a finding of no substantial issue.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.** The appeal raises issues about coastal dependent, visitor-serving overnight accommodations and recreational facilities, which are resources of statewide concern. However, the proposed project is consistent with the public access policies Coastal Act and of the LCP, and as a result, there will be no adverse impacts to these resources. Additionally, many of the short-term rentals permitted under the City’s proposed STR Program will provide low cost visitor accommodations, which will enhance public access to the beach and coastal areas, while mitigating against adverse cumulative impacts to the City’s housing stock, which is an issue of statewide concern as the state grapples with a housing shortage crisis. Therefore, this factor supports a finding of no substantial issue.

## **Conclusion**

Applying the five factors listed above clarifies that, on balance, the appeal raises **no substantial issue** with respect to the project’s consistency with the policies of the City’s certified LCP and Chapter 3 public access policies of the Coastal Act. The City’s decision will not exacerbate issues of public access, recreation, and safety, nor contribute to an existing adverse precedent or influence future interpretations of the certified LCP.

**Appendix A – Relevant Certified LCP Policies**

Certified IP Section 9.09.020, Permitted Uses, Accessory Uses, Temporary Uses and Conditional Uses, states, in relevant part:

(a) Several classes of uses are allowed in Residential Districts. Each of these classes must promote the residential character of the individual districts. These classes of uses are:

- (1) Permitted Use — allowed by right if no discretionary review is required. Certain permitted uses, indicated by P\*, are also regulated by provisions contained in Chapter 9.07.
- (2) Accessory Use — allowed by right if accessory to a dwelling unit or a residential development.
- (3) Temporary Use — allowed on a temporary basis in accordance with the provisions of Chapter 9.39.
- (4) Conditional Use — allowed subject to the approval of a Conditional Use Permit in accordance with the provisions of Chapter 9.65. Certain conditional uses, indicated by a C\*, are also regulated by provisions contained in Chapter 9.07.
- (5) Prohibited Use — not allowed in the subject residential district.

(b) The following Table lists the classification of allowable uses in the Residential Districts. Any use not expressly allowed is prohibited.

**SECTION 9.09.020(b)  
 RESIDENTIAL DISTRICTS**

<b>LAND USES</b>	<b>RSF 2</b>	<b>RSF 3</b>	<b>RSF 4</b>	<b>RSF 7</b>	<b>RBR 12</b>	<b>RBR 18</b>	<b>RD 14</b>	<b>RSF 22</b>
Recreational Facilities, Private	A	A	A	A	A	A	A	A

<b>LAND USES</b>	<b>RMF 7</b>	<b>RMF 14</b>	<b>RMF 22</b>	<b>RMF 30</b>
Recreational Facilities, Private	A	A	A	A

**LEGEND:**

- P = Permitted Use
- C = Conditional Use
- T = Temporary Use
- X = Prohibited Use
- P\* = Permitted Use subject to special use standards (see Chapter 9.07)
- C\* = Conditional Use subject to special use standards (see Chapter 9.07)
- T\* = Temporary Use subject to special use standards (see Chapter 9.39)
- A = Accessory Use



Certified IP Section 9.13.010(b), Residential/Commercial-18 (R/C-18), states:

(b) The Residential/Commercial-18 (R/C-18) district provides for a mixture of residential uses with commercial and office uses in the same building or on the same parcel. Allowable commercial and office uses include those which are visitor serving in nature and at the same time are compatible with residential uses such as bed and breakfast inns, restaurants, specialty and convenience shops and recreation/open space uses such as coastal recreation equipment, rental shops and environmental education facilities related to coastal ecology. This district provides for a residential density of eighteen (18) units per acre. New development within Residential/Commercial-18 shall be sited in a manner that minimizes the residential development residents' vehicle miles traveled (VMT). VMT siting considerations shall include, but not be limited to: close proximity of the new development to existing or planned transit stops (efforts should be made to site residential development within one-half mile to existing or planned transit stops); walkability to commercial development like restaurants, grocery stores and cultural venues; and close proximity to, and/or provision of, bicycle amenities like bicycle racks and bicycle lanes or dedicated bicycle pathways. It implements the State's Mello Act and the City's goals, objectives and policies for production of affordable housing by requiring that any project of new construction with more than ten residential units, which is located within the Coastal Overlay District, shall be required to provide a minimum ten percent (10%) of the total housing units as "affordable units," as defined in the Housing Element of the City's General Plan and pursuant to the provisions of the aforementioned State's Mello Act. The only projects allowed in this district are mixed use (residential/commercial) projects. The gross floor area for commercial uses is limited to a maximum of ten percent (10%) of the total site area. Properties fronting Pacific Coast Highway are required, at a minimum, to provide visitor serving commercial uses on the ground floor of all the buildings fronting Pacific Coast Highway, for a minimum depth of forty (40) feet. (Visitor serving uses are those allowed under the Visitor/Recreation Commercial (V/RC) zoning designation in Sections 9.11.010 and 9.11.020(b)).

Certified IP Section 9.61.020, Interpretation, Administration, and Enforcement, states:

- (a) Authority and Procedure for Interpretations.
- (1) The Director of Community Development is hereby charged with the duty of providing interpretations of the Zoning Code.
  - (2) The interpretations of the Director of Community Development are subject to the policy directives of the Planning Commission and City Council.
  - (3) Any appeal of decisions by the Director of Community Development shall be made pursuant to Section 9.61.110, Appeal Procedures.
  - (4) All interpretations of the Code made by the Director shall be recorded in writing. The record of interpretations made by the Director shall be kept on file in the Community Development Department and shall be available to the

public upon request. These interpretations shall be incorporated into the Zoning Code pursuant to the provisions of Section 9.61.080, at such time as is deemed appropriate by the Director.

(b) Planning Commission Administration of Code. The Planning Commission of the City of Dana Point is responsible for administering the Zoning Code, making recommendations to the City Council on matters governed by the Code, and initiating amendments to the Code when necessary to promote the public health, safety, or welfare.

(c) Procedure for Enforcement. When any use or structure is found to be in violation of the provisions of this Code, the City Council may direct the City Attorney to commence appropriate civil, administrative, or criminal proceedings for the discontinuation or removal of the illegal use or structure in the manner prescribed by law.

(d) Investigation or Inspection of Property. Any duly authorized city official may enter any premises, building, or structure at any reasonable hour, after either obtaining the consent of the owner or other responsible individual or pursuant to an inspection warrant, for investigation or inspection of such premises, building, or structure to determine whether said building, premises, or structure is in violation of this Code. Every person who denies, prevents, obstructs or attempts to deny, prevent, or obstruct such access pursuant to an inspection warrant is guilty of a misdemeanor.

Certified IP Chapter 9.75, Definitions and Illustrations of Terms, states, in relevant part:

“Accessory Use” — a use of a portion of land or building which is customarily and clearly incidental and subordinate to the principal use of the land or building which is located on the same lot as such principal use. Accessory uses typically are very small in proportion to the principal use and associated structures exceed six (6) feet in height.

“Recreational Uses” — shall mean establishments providing active or passive recreational activities and their incidental support facilities. Typical uses would include, but not be limited to, athletic clubs, health clubs, dance studios, game courts, golf courses, golf driving ranges, gymnasiums, swimming pools, private or public recreational facilities and parks.

‘1986’ DPSP Section II.D, Access Component, states, in relevant part:

1. Introduction.

...

a. Coastal Act of 1976.

...

Section 30222. 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 industrial, or

general commercial developments, but not over agriculture or coastal-dependent industry.

Section 30223. Upland areas necessary to support coastal recreational uses shall be preserved for such uses, where feasible.

Section 30250(c). Visitors-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors (amended by Cal. Stats. 1979, Ch. 1090)

b. Work Program Issues.

...

6. Recreational opportunities to be provided.

7. Distribute public facilities to mitigate overcrowding or overuse.

8. Identification of ocean front land suitable for recreational use.

9. Identification of upland areas necessary to support coastal recreation.

10. Identification of visitor-servings and commercial recreational facilities.

...

...

4. Definitions

- j. Visitor-Serving Facilities: Visitor-serving facilities are public and private developments that provide accommodations, food, and services for tourists.

...

...

7. Policies

...

Visitor-Serving and Commercial Recreation Facilities Policies:

...

83. Adequate parking will be provided in close proximity to recreation and visitor-serving facilities (Dana Point Specific Plan Local Coastal Program Policy, page X-6)

84. Future visitor-serving facilities will be located in those areas designated as tourist recreation/ commercial by the Land Use Plan. (Dana Point Specific Plan Local Coastal Program Policy, page X-7)

85. The primary use within this area will be a hotel/lodge facility integrated with a public open space system adjacent to the bluffs. (Dana Point Specific Plan Headlands Land Use Policy, Area D, page IV-23)

86. Proposed uses will be oriented exclusively toward Tourist-Recreation/Commercial facilities, and include but not be limited to overnight lodging, retail shops, restaurants, and other similar facilities. (Dana Point Specific Plan Headlands Land Use Policy, Area E, page IV-23)

'1996' LUP Land Use Element (LUE) Policies, in relevant part:

Policy 2.10: 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 industrial, or general commercial development, but not over agriculture or coastal-dependent industry. (Coastal Act/30222)

Policy 3.3: Priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. (Coastal Act/30213, 30222, 30223)

Policy 7.5: Encourage the development of a diversity of housing opportunities including medium density housing in the areas adjacent to the retail areas and also as a part of mixed residential and retail or office uses.