

CALIFORNIA COASTAL COMMISSION

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Th17a

ADDENDUM

DATE: August 8, 2023

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM Th17a, REVOCATION REQUEST NO. A-5-DPT-22-0038-REV FOR THE COMMISSION MEETING ON THURSDAY, AUGUST 10, 2023.**

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

I. CORRESPONDENCE RECEIVED

After publication of the staff report dated July 26, 2023, the Commission has received one (1) letter from the City of Dana Point in support of the staff recommendation to deny the revocation request, ten (10) letters from members of the public in support of the staff recommendation to deny the revocation request, thirty-two (32) letters in opposition of the staff recommendation (and in favor of the revocation request), mainly from the revocation requestors and Beach Road residents, and two (2) letters with no clear stated position. These are included on pages 2 – 126 of the updated correspondence available on the Commission's website at the following address:
<https://documents.coastal.ca.gov/reports/2023/8/Th17a/Th17a-8-2023-corresp2.pdf>.

The letters in opposition of the staff recommendation (in favor of the revocation request) primarily assert that the City's actions have already resulted in the overconcentration of short-term rentals (STRs) in select neighborhoods, such as Beach Road, and that the permit should be revoked and then consequently amended to address ongoing issues related to oversaturation of STRs and community character impacts. The revocation requestors also continue to allege that the City intentionally provided inaccurate information to the Commission.

The Commission had also received additional correspondence prior to publication of the staff report dated July 26, 2023. These are included on pages 2 – 32 of the

correspondence available on the Commission’s website at the following address:
<https://documents.coastal.ca.gov/reports/2023/8/Th17a/Th17a-8-2023-corresp.pdf>.

II. RESPONSE TO COMMENTS

The following is added as a **Response to Comments** section to the staff report dated July 26, 2023 (as section **E** on staff report page 19, thus renumbering the Conclusion section as section **F**):

The majority of the letters in favor of revocation come from residents of Beach Road (i.e., Capistrano Bay District). Beach Road is a private gated community of 196 residences located immediately adjacent to the beach in Dana Point. The Beach Road residents contend that the Program results in oversaturation of STRs along Beach Road, and that the permit should thus be revoked and amended.

The Commission has made substantive findings concerning geographic clustering of STRs in both the November 16, 2022 adopted de novo staff report and the July 26, 2023 revocation staff report. The Commission finds that there is no evidence that the City intentionally provided false information as to overly concentrate STRs in specific neighborhoods such as Beach Road.

Even if the claims were true, and at some point in the future, 1-in-4 Beach Road homes become STRs as alleged, then the Program still has inherent measures and mechanisms to correct adverse impacts to public access, recreation, and community character. In addition to the fact that the Program sets forth regulations to control noise, traffic, and other nuisances, the Program also establishes a method for tracking permitted STRs, enforcing against illegal STRs, and adjusting details of the Program in response to changing circumstances. With respect to housing stock and housing affordability, the availability of STRs on Beach Road does not present an issue, given that Beach Road only comprises approximately 3.4% of the total 5,737 units within the Dana Point Coastal Zone, and homes average approximately \$3.76 million in value.¹ Lastly, at no point did the Program guarantee a uniform 2% saturation rate throughout the City’s Coastal Zone; the Commission was aware that STRs tended to concentrate in particularly popular areas such as the Lantern District, Doheny Village, and Beach Road, and thus required **Special Condition 1** to appropriately minimize geographic clustering to the degree possible.

As for whether the permit could be amended, it is important to note that the subject public hearing and Commission action *only* concerns revocation of CDP No. A-5-DPT-22-0038. Since the Commission can only consider whether to revoke the permit, then the correspondence received urging the Commission to amend the permit at this time is not relevant. As also explained in previous sections of this staff report, the Commission will have ample opportunity to consider future amendments to the permit based on benchmarks specifically prescribed in the approved STR Program. **Special Condition 3** of the permit requires the City to return to the Commission by November 30, 2025, and again by November 30, 2028, with in-depth studies and evaluations of whether an amendment to the CDP is warranted to resolve unintended impacts of the Program on public access, recreation, housing, and/or community character. The City informed

¹ Data obtained from LandVision. The value at “last transfer or sale” was not adjusted for inflation. Many of the homes along Beach Road typically range in value from ~4 to 10 million dollars per realty listings (Ref: Zillow).

Commission staff in writing that it will submit the first STR Program study to the Executive Director within the first year of implementation of the Program, by the end of the 2023 calendar year, which is sooner than the anticipated deadline.

The revocation requestors also allege that the City provided intentionally erroneous and incomplete information to the Commission related to the City's enforcement response to STR nuisance complaints and violations. On page 6 of the letter of correspondence dated August 4, 2023, the requestors state that:

"[...] in a city staff submission (Exhibit 8 page 3) provided to the CCC for consideration at the November 16, 2022 de novo CDP hearing, the city claimed it had conducted over 3,000 'inspections' of STRs in calendar 2021 and another 3,000 to date in 2022 (6,000 inspections of [*sic*] at the time, only 69 STRs). The City has not produced any record of 6,000 inspections, despite a PRA seeking those records. This is further evidence that the City has made false and misleading statements in support of its STR program."

Based on the available record, the City began inspecting STRs and undertaking enforcement actions related to noise, trash, and parking problems beginning in 2016. The enforcement statistics were shared with the public beginning in 2018 as part of a comprehensive public outreach effort, and the most recent data was provided to the Commission in July 2022. Commission staff has not investigated whether there are reproducible "records" of the inspections purported by the City, but it is the Commission's understanding that the City's Code Enforcement is responsible for responding to nuisances and gathering data about them. There has been no evidence submitted to staff that the information provided to the Commission is (intentionally or unintentionally) inaccurate, erroneous, or incomplete, or that substantially different enforcement statistics would have caused the Commission to act differently on the CDP. Further, **Special Condition 3** of the approved STR Program requires the City to produce verifiable records related to future enforcement of STRs per specified metrics.

Finally, the revocation requestors state on page 12 of their letter dated August 4, 2023 that:

"Even in the absence of city regulations, any would be STR operator in the CZ would still need to get the permission of the Commission, as operating an STR would constitute a 'change' to coastal access. Just as the City's STR program requires a CDP because it constitutes development under the Coastal Act, so too would the conversion of a residential home from residential use to tourist accommodation constitute a change in coastal access, regardless of how the City Attorney reinterprets the zoning code."

As already discussed in previous sections of this staff report, the above statement is incorrect, and the issuance of a CDP is not required to use an individual residential unit for an STR. This is not only the City Attorney's interpretation, but also the interpretation of the Commission and of the courts.² Thus, as explained heretofore, nothing stands in place of the Commission's approved STR Program if it is revoked.

² *Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896; *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089.