

## **CALIFORNIA COASTAL COMMISSION**

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# Th17a

**A-5-DPT-22-0038-REV (City of Dana Point)**

**AUGUST 10, 2023**

**CORRESPONDENCE**

**RECEIVED PRIOR TO**

**JULY 26, 2023**

May 8, 2023

TO: Dana Point City Clerk

FROM: Toni Nelson and Roger Malcolm, non-HOA residents, Dana Point Coastal Zone

RE: Appeal of Decision of Planning Commission, April 24, 2023  
Agenda Item No. 3, regarding CDPs for 11 HOAs in the Coastal Zone

## **I. Notice of Appeal**

Pursuant to Section 9.61.1110(a) and (b) of the Municipal Code, Roger Malcolm and Toni Nelson hereby appeal the action taken on April 24, 2023 by the Planning Commission approving a batch of eleven Coastal Development Permits listed below which effectively permit the applicant Homeowners Associations (HOAs) to ban Short Term Rentals within their associations:

1. Amber Lantern Condos – 24531 - 24575 Santa Clara Ave.
2. Chelsea Pointe–1-32 Chelsea Point
3. The Admiralty–Southeast of the intersection of Santa Clara and Amber Lantern.
4. The Village at Dana Point–North of the intersection of Pacific Coast Highway and Del Obispo St.
5. Santa Clara–24341 Santa Clara Avenue, Units 1-3
6. The Estates at Monarch Beach–1-35 Gavina and 1-51 Marbella
7. Las Mariannas–24242 Santa Clara Ave., Units 1-34
8. Pilgrims Bluff–24445-24455 Santa Clara Ave. and 34271-34279 Amber Lantern St.
9. Monarch Beach Master–Northeast of the intersection of Niguel Rd. and Stonehill Dr.
10. Spindrifter – 24631-24647 Santa Clara Ave.
11. Corniche Sur Mer – Southwest of intersection of Camino Del Avion and Ritz Pointe Dr.

Accompanying this Appeal is a check for \$250.00. We submit that all of the subject CDPs should be appealable for one fee inasmuch as each applicant was solicited by the City to apply for STR relief; each applicant was granted a reduction of approximately ninety percent of the normal cost of a CDP; the submissions by city staff on behalf of each was the same; the issues present for review as to each are identical. Most importantly, the Planning Commission considered the issue as one issue; made one decision, not eleven; and never addressed individually any factors unique to any of the CDPs.

Coastal Development Permits were designed to address particular development requests, not programmatic changes in what is essentially a zoning question. Accordingly, since the issue is one issue, and the staff will expend no more time responding to the appeal of

CDPs 2-11 than it will to the first CDP appealed, it is appropriate that the matters be handled collectively in one appeal.<sup>1</sup>

Even if the Council does deem the matters separate enough to warrant individual fees, we submit that just as the city granted approximately a 90 per cent discount [charging \$500 per application instead of the usual \$5,000] to HOAs seeking the CDPs, it is fair and right that the city afford the same discount here to the appellants. The original justification offered for the huge discount to HOAs was that \$500 covered the cost of staff time to process the streamlined applications designed and solicited by the staff. As we have noted above, there will be no more staff time expended in responding to an appeal for CDPs 2-11 than there will be to responding to the appeal of CDP number 1.

Finally, to impose a cost of \$2,750 to appeal these eleven CDPs, with the certainty that more CDP applications will be forthcoming, places an onerous and unfair burden on appellants.

Should the Council insist that a \$250 fee be applied to each of the CDPs plus more to come, the costs will be prohibitive to appellants. If this is the case, please apply the payment to an appeal of the CDP for Las Mariannas, the largest CDP within the CCC appeals zone.

## **II. Standing of Appellants**

1. Roger Malcolm is a resident of Camino Capistrano, Capistrano Beach , 92624.
2. Toni Nelson is a resident of Camino Capistrano, Capistrano Beach, 92624.
3. Neither resides in an HOA.
4. Both relied on the city's residential zoning to protect them from commercial activities such as short term rentals. Such protection was removed by the City in the process of enacting its STR program.

The effect of the grant of these CDPs will, as explained below, directly affect each appellant as each lives in the Coastal Zone, and each will suffer an increased concentration of STRs in their neighborhood if these CDPs are affirmed.

## **III. Grounds for Appeal**

We appeal the decision by the Planning Commission on April 24, 2023 to grant CDPs to permit HOAs to ban STRs within their associations, for five reasons.

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<sup>1</sup> In Toni Nelson and Roger Malcolm's April 28, 2023 urgent letter to this Council, they requested that the appeal fees be reduced to one. As of the filing of this appeal, they have received no word from the Council on this request.

First, it unfairly places an outsized burden of STRs on non-HOA neighborhoods. Having authorized STRs, both the Planning Commission and the City Council should work to ensure that all neighborhoods bear an equal risk of their presence. There is no reason, let alone a compelling reason, to grant special treatment to HOAs. The Planning Commission decision directly impacts all of those living in non-HOA neighborhoods, including the appellants, affecting the residential nature of their neighborhoods and potentially their property values and the quiet enjoyment of their homes. There is no doubt that a high concentration of STRs affects neighborhood culture and tranquility – precisely the reason why HOAs routinely prohibit STRs.

Second, granting these CDPs, along with more to come, will have a devastating impact on non-HOA Coastal Zone neighborhoods, resulting in up to a 9% (115/1300) or more concentration of STRs in non-HOA neighborhoods.

Third, it is inconsistent with the views of the Coastal Commission (CCC) expressed at the *de novo* hearing at which it authorized 115 STRs in the CZ, clearly indicating their intent that this would represent a 2% saturation rate, already higher than what would be normal in a city with Dana Point's abundant tourist accommodations.

Fourth, the City staff should not have participated in this exercise at all. One Council member has previously insisted that the city is not taking any position on whether any HOA should allow or restrict STRs, but rather only facilitating the administration of CDP applications (albeit at a greatly reduced fee.) At a public hearing on March 7, 2023 the staff defended the paltry \$500 CDP fee for each CDP application on the grounds that it adequately compensated the staff for its time processing the applications.

That, of course, was also misleading: there is a clear and long-time record of City officials repeatedly and publicly expressing their interest in honoring HOA bans. In this case city staff has not merely facilitated the applications for CDPs but has shouldered virtually the entire burden for the applicants' CDPs, including funding and arranging public notices, creating the CDP language, producing a staff report and legal documentation totaling 174 pages, and presenting the information at the Planning Commission hearing. This advocacy is far in excess of what the City typically has done for any other person or groups requesting a CDP. **The sole reason to promote the CDPs is to “legalize” STR bans within the coastal zone.**

Fifth, the staff failed to notice residents most severely impacted by the passage of these CDPs. Municipal Code Section 9.61.050(5) requires that notices be provided to “properly inform those persons who may be affected.” As we will demonstrate, these CDPs will severely affect property owners in the non-HOA Coastal Zone. The Director's failure to notice all non-HOA residents in the CZ should be sufficient cause to rescind these CDPs, even without considering the many other reasons to uphold this appeal.

The City has a duty to *all* of its citizens, not solely those who reside in HOAs. There is nothing in this record which suggests that the city staff solicited the views of other residents in the city for their views on the impending concentration of STRs, particularly

in the CZ. In fact, there is no evidence that the interests of non-HOA residents were considered at all.

## **1. Unfair Burden on non-HOA neighborhoods**

STRs have been a contentious issue in Dana Point for more than a decade. The City's recent rejection of its longstanding interpretation of its Zoning Code was also controversial. Ultimately, the City Council decided to permit STRs, albeit limiting them to 115 in the Coastal Zone and 115 in non CZ areas. At no time did the City indicate that it was their intention to limit STRs to non-HOA communities and those few HOAs which allow short term rentals.

There is no principled reason why HOAs should be singled out for special protection from consequences of this decision. The City Council, having chosen not to permit citizens at large to vote on the issue, ought not now to be singling out some residents for special treatment, via CDP or otherwise. Nor should it be singling out certain non-HOA areas for an extraordinary burden. This Planning Commission would not grant wholesale exemptions from compliance with the Municipal Code to any group, but this is exactly what this proposal would do. It should be rejected on fundamental grounds of basic fairness and equal treatment of all citizens.

## **2. The Impact on the non-HOA Coastal Zone Will Be Devastating**

It is important to examine the false statements presented by the staff which underlie this proposal.

In October of 2022, the staff told the CCC that there were 5,664 residences in the CZ, and that there were 28 HOAs comprising 2,648 units, leaving 3,016 in non-HOA communities in the Coastal Zone. [CCC November 15, 2022 staff report at p. 21.]

The staff now claims that there are approximately 5,700 residential units in the CZ, 4,400 of which are in 52 HOAs. [Staff Report (SR) at 3.] In essence, City staff admits that there are really only 1,300 housing units in non-HOA communities. The staff does not even advert to this shocking difference, much less explain it.

The city staff's change in reporting was not voluntary, but rather because on March 8, 2023 appellant Nelson asked senior planner John Ciampa to substantiate how he came up with the numbers he gave the CCC on October 22, 2022. Shockingly, he did not appear to have working papers nor other data to support the numbers submitted to the CCC. After several additional queries, Mr. Ciampa stated that he derived that information from the City's GIS system. When they were unable to identify more than about 1/3 of the supposed 3,016 non-HOA units in the coastal zone, Toni Nelson and another resident asked to meet with Mr. Ciampa so that he could show them his working papers and explain where those units might be located. They met on March 28<sup>th</sup> at City Hall at which time Mr. Ciampa showed them the GIS system but was unable to point to where

those additional housing units might be. When asked to supply detailed records to support these numbers, Mr. Ciampa stated that he was very busy and could not produce the supporting data until the end of April, 2023<sup>2</sup>.

Rather than reply to Ms. Nelson, the staff now claims that within the CZ there are 52 HOAs comprising 4,400 dwelling units, an astonishing 66% increase in the numbers provided to the CCC [Planning Commission Staff Report (SR) at 3.] There has been no explanation offered as to how or why this huge restatement occurred.

While the Dana Point staff report does not identify all of the HOAs by name, it appears obvious that to calculate the purported percentage of STRs in HOAs, the staff must have included the residential units on Beach Road. This is so because the staff claims that "...since only five STR permits in the CZ are not in HOAs, the additional allowance of 46 STRs will not result in a cumulative impact." (sic) Staff Report at 5.)

The staff has misled the Planning Commission: Beach Road has many STRs (we believe 27 at this point), **but is not an HOA** and has no power to restrict uses within its Special District. The city staff knows this: Beach Road Management has advised the city that this is so, and made that clear in a letter to the Coastal Commission on November 16, 2022 (see attached).

Of course the reason for mischaracterizing Beach Road is obvious: if Beach Road is included, it misleadingly makes it appear as if HOAs are actually shouldering the burden of STRs: the staff claims "92.7% of STRs are in HOAs." SR 3. In fact, after removing Beach Road from the HOA category, as we must, HOAs may actually represent as little as 40% of the total, not 93%. We are aware of Monarch Hills STRs which operate outside the City's CDP allowing STRs of 7 days or greater (the City allows 2-day rentals.) but do not see any other HOA STRs within the coastal zone. (The City does not provide a detailed list of current STRs, but this appears to be so based on records provided via PRA in 2019. Since the City has not issued new permits in years, the addresses should not have changed). Frankly, this misleading argumentation is unacceptable.

The staff's deception does not stop there. The staff claims:

The CCC's November 15, 2022 Staff Report cumulative analysis concluded that, **even with the existing prohibitions of STRs in HOAs**, the STR 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 therefore be consistent with Coastal Act Sections 30212 and 30212.5." (emphasis added).

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<sup>2</sup> Ms. Nelson and another resident made their own review of CZ residential units and estimated a number far smaller -- approximately one third of the 3,016 originally suggested by Ciampa.

It submitted this language in each of the Resolutions passed by the Planning Commission authorizing the CDPs. See, for example, the CDP for the Amber Lantern Condo Association which states: *“the City’s adoption of the CDP would not result in intensification of [residential use] and rather would limit it.”* It further states, *“the prohibition of STRs in the HOA is consistent with the General Plan Urban Design Element Goal 2 – Preserve the individual character and identity of the city’s communities.”* (Staff report at 8). Apparently the City believes that the “individual character and identity” of the City’s non-HOA communities is exempt from Urban Design Goal 2 and need not be considered.

This, too, is highly misleading in that it implies that the CCC assumed that HOA CCR bans on STRs would remain, and that even if they did, the concentration of authorized STRs would be acceptable. The staff concludes that: “...these pre-existing prohibitions (of STRs by HOAs) were one of the facts that led to the City and the CCC’s determination the City’s STR Program struck the appropriate balance.” Staff Report at 5.

This statement is both false and misleading.

First, the CCC never made a “determination” that continued STR bans by HOA would strike the proper balance. There was no mention of HOA bans continuing at the CCC De Novo hearing, nor any suggestion by City staff that they would seek to legalize such bans after the fact. The CCC Commissioners were not advised that the STR cap they approved would apply solely to non-HOA properties.

To the extent the CCC staff addressed the issue, the CCC staff report itself did NOT accept the “existing prohibitions of STRs in HOAs”, but rather stated:

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. To ensure that the City and HOAs comply with all legal requirements, the Commission imposes **Special Condition 1 to modify the final STR Program** to ensure the legality of HOA bans or restrictions on STRs (Exhibit 3). (Emphasis added)

Special Condition 1 clarified that the City could **not** honor STR bans by HOAs which were not “legal”. And of course, these very CDPs have been filed in response to that clarification, i.e., to render them “legal.” Thus per Special Condition 1, the City should modify the final STR Program once “legal” HOA bans are known. It should certainly not issue new permits [scheduled to begin May 1<sup>st</sup>] since the special condition requires modifications that will almost certainly change the cap.

The City sought and received California Coastal Commission (CCC) approval for its CDP on the basis that all housing units in the Coastal Zone (CZ) would be subject to STRs unless they had a legal ban. At no time during the hearing did the City indicate it intended to honor HOA bans and encourage the removal of up to 77% of households from that equation by encouraging and approving bans through CDPs. At no time during

the hearing did the City object to the fact that the program would apply to all households unless there was a “legal” ban in effect, and at no time did City staff or officials express an intention to advocate for HOA protection after the fact. **Had they done so, the CCC would never have agreed to what will effectively be a punitive concentration in non-HOA communities.**

Even if the CCC staff’s comments could be interpreted as the city claims, which it cannot, they were based on the city’s gross misrepresentation of the numbers. The city had claimed there were only 2,648 units in the HOAs. We are now told there are 4,400. **Based on the staff’s false numbers the claim that protection of HOAs will be consistent with the CCCs goal of ensuring “adequate distribution of STRs in the CZ” is unsustainable.**

We already know that an estimated 60% of existing STRs are within non-HOA CZ units. We also know that many if not most of the rest of the HOAs will seek to “legalize” their bans. This proposal will shrink the number of housing units with the ability to become STR units from 5,700 to something more like 1,625 (5,700 – 4,400 HOA units + 325 housing units in Monarch Hills). That would represent a 7% saturation rate (115/1625), far greater than the 2% the CCC thought it was approving, and even those numbers are somewhat inflated.

The actual concentration rate will ultimately be worse for non-HOA areas including particularly Beach Road and other areas of Capistrano Beach. The 1,625 remaining units susceptible to STRs include housing units like the 165 mobile homes in Doheny Village, multiple units of Section 8 housing, and even long term rental units in Prado West and other major developments that **do not permit STRs**. We estimate the actual number of non-HOA homes *actually available to become STRs* to be less than 1,000.<sup>3</sup> Adding the 325 units in Monarch Hills, which allows STRs of 7 days+, will result in a saturation rate of 9% (115/(1,000 + 325)). Other than in Monarch Hills, almost all of the new STR permits in the CZ will be concentrated along Beach Road, Doheny Place, the bluff side of Camino Capistrano and a smattering of homes in the non-commercial area of Lantern Village.

The CCC repeatedly noted within its staff report at the de novo hearing that the Commission has a strong interest in avoiding “excessive detriment to the existing resident population or affordable housing supply.” (Staff Report p. 164). These CDPs do exactly

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<sup>3</sup> The City is also tacitly discouraging STR applicants from HOA areas. It appears to be requiring applicants to submit a letter from the HOA confirming that the CCRs permit HOAs. But HOAs have no incentive to produce such a letter, even though the Coastal Act overrules most existing CCRs in Dana Point. This will deter most HOA applicants, and at a minimum, delay their applications while the remaining STR licenses are issued. In short, the City has devised what is effectively an informal or “pocket” ban on STRs in HOAs whether they have a legal CDP or not, and improperly so, as it is the City’s responsibility to comply with the Coastal Act, not adopt procedures which will effectively nullify it.



the opposite – placing an excessive burden on neighborhoods not protected by HOAs and affecting affordable housing supply by giving preference to STR permits requested in multi-family units, housing that is traditionally more affordable than single family homes.

### **3. The Planning Commission Decision is Inconsistent With CCC Views on Concentration**

At the *de novo* hearing on the City's CDP to permit STRs, the CCC recognized that Dana Point has an extraordinary number of visitor accommodations (close to 2,000).<sup>4</sup> It then reviewed the STR saturation rates it approved in other coastal cities. The approvals for STRs in other coastal cities range from 1.2-2% of existing residences, nothing like the 7 to 9% concentration that will be inflicted on Dana Point's non-HOA neighborhoods once HOA bans are legalized.

At the CCC hearing<sup>5</sup>, Commissioner Harmon first suggested a cap of 1% (55 STRs) and then modified that to 1.2% or 66<sup>6</sup> STRs to reflect the number in existence at the time. Chair Brownsey asked if that would be ok with CCC staff and they concurred. Brenda Wisneski then asked for 1.5% (a cap of 85 STRs) to accommodate increased demand. Then Mayor Muller objected and insisted on 115, saying that he did not have authority to agree to anything less without Council approval. Given its sensitivity to the impact STRs can have on residential neighborhoods, it is clear that the CCC would never have approved a plan which would result in a concentration of up to nine percent in one small portion of the CZ.

It is critical that the City have accurate data on which it can base a decision which will properly and fairly balance the concentration of STRs. If the number of residences in the CZ that are available to become STRs is not 5,700 (and it is obvious that it is not), but closer to 1,325 (which we believe it is based on the City's oft stated desire to protect HOA bans) then removing HOAs from STR vulnerability concentrates the available 115 permits into a very small area, thus basically disproportionately impacting a very small section of the coastal zone (about 1,325 homes).

### **4. The City Should Take No Action on the CDPs Requested Without Also Adjusting the Existing Numbers in the City's CDP (STR Program)**

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<sup>4</sup> In support of the STR Program, last year, the staff claimed that visitor accommodations were inadequate, and therefore an increased number of STRs was warranted. It has now done an about face and argues that since there are adequate visitor accommodations the HOAs can ban STRs.

<sup>5</sup> [https://cal-span.org/meeting/ccc\\_20221116/](https://cal-span.org/meeting/ccc_20221116/) discussion begins at 5:20:59

<sup>6</sup> It is not clear how we now have 69 STRs despite 66 reported at the CCC hearing, especially since the City has not been issuing new permits, but numbers are clearly not its strong suit.

As set forth above, these CDPs seek special protection and treatment for certain privileged residents of Dana Point. We do not begrudge HOA members the right to seek protection from STRs for their communities. But the non-HOA residents of Dana Point deserve protection as well. We assumed that the City Council weighed the interests of **all** residents when it authorized 115 STR permits in the CZ and another 115 in non CZ zones. What it did NOT do was decide that certain members of the community deserve special protection, and others do not. In fact, the City failed to notice non-HOA residents of the proposed CDPs, even though the concentration of STRs in those communities would clearly impact the residential nature of and quality of life in those neighborhoods. **In the absence of a city wide vote it is inappropriate for the City Council to allow the Planning Commission decision to stand without also adjusting concentrations of STRs in the non-HOA areas.**

There should be no position taken by either the Planning Commission or the City Council. This appeal should be upheld. If that be deemed a *de facto* denial of the CDP, the applicants have a right to appeal to the CCC. But Dana Point should stay completely out of this issue as a matter of principle.

**5. The City failed to notice non-HOA residents in Dana Point who will be excessively impacted by the 11 CDPs.**

City staff failed to notice residents most severely impacted by the passage of these CDPs. The staff report notes that “*Notices of the Public Hearings were mailed to property owners within a 500-foot radius and occupants within a 100-foot radius on April 6, 2023, published within a newspaper of general circulation on April 6, 2023, and posted on April 6, 2023, at Dana Point City Hall, the Dana Point and Capistrano Beach Branch Post Offices, as well as the Dana Point Library.*” (Staff Report at 1).

Even if these notices were given, they ignore the clear intent of Municipal Code Section 9.61.050(5). That section provides that if the Director of Community Development “*finds that the posting and mailing of notices prescribed in this Section may not give sufficient notice to the affected property owners, then additional notices may be posted at locations which are best suited to reach the attention of, and properly inform those persons who may be affected.*”

The appellants and most other non-HOA residents in the CZ only became aware of the full impact of the pending CDPs on the evening of April 20<sup>th</sup>, 2 business days before the Planning Commission hearing, even though personal notices were mailed to others on April 6th.

As we have demonstrated, these CDPs will severely affect property owners in the non-HOA Coastal Zone, in fact, to a much greater extent than those in the HOAs because of the change in intensity of concentration of STRs. The Director should have noticed all non-HOA residents in the CZ. Her failure to do so is yet another example of the blatant

and inexplicable disregard of the rights and concerns of non-HOA CZ residents. The failure to provide such notice should be sufficient cause to rescind these CDPs, even without considering the many other reasons to uphold this appeal.

### **Conclusion:**

**The City Council should uphold this appeal:** based on the current version of the staff's information, the City has no business granting HOAs to one group of residents, knowing that the result will be to unduly burden a small segment of the coastal zone. The City asked the CCC to approve a program that purportedly spread 115 STRs over 5,664 housing units. Now we know their intention was to honor HOA bans and actually concentrate them in as few as 1,325 to 1,625 residential homes. This violates not only CCC policy against undue concentration, but any standard of basic fairness.

Moreover, it is clear that the staff has misled this Council and the Coastal Commission. Before any further action is taken on STRs, **this Council should direct the city staff to produce, document and publish accurate, verifiable statistics on the number of residential units in the city**, particularly in the coastal zone, the number of homeowners associations, number of units within HOAs, which HOAs have CCRs which purport to ban STRs, and which of them have current CCRs which have lawful bans on STRs. The city should also produce verifiable data regarding the nature and composition of the units themselves, (i.e. duplex, triplex, single family, motor home, Section 8, restricted long term rental, etc.) identifying housing units that are highly unlikely to become STRs or will never be allowed to become STRs.

Once accurate, verifiable data is made available, the Council should review the information and independently assess the concentration of STRs which will result in the Coastal Zone and elsewhere if any CDPs are granted. The City should only consider CDPs permitting STR bans once the caps are adjusted appropriately through an amendment of the City's CDP in order to protect the non-HOA areas from over concentration of STRs.

We respectfully request that you grant this appeal to ensure that all citizens and neighborhoods of Dana Point are afforded equal treatment and protection.

Sincerely,

Roger Malcolm  
Roger Malcolm

*Toni Nelson*  
Toni Nelson  
Residents of non-HOA Coastal Zone  
Capistrano Beach

Attachment: Letter of Donal Russell and accompanying District forming resolution

Attachment: Letter from Donal Russell, General Manager of Beach Road, to California Coastal Commission, November 16, 2022 clarifying that Beach Road is not an HOA, but a Special District with no powers to restrict STRs.

**From:** Don Russell

**Sent:** Wednesday, November 16, 2022 10:10 AM

**To:** [shahar.amitay@coastal.ca.gov](mailto:shahar.amitay@coastal.ca.gov)

**Subject:** Application No. A-5-DPT-22-0038/Agenda Item W13b-11-2022

Good Morning Mr. Amitay,

At 9:05 AM this morning I was informed of a written letter to the CCC from the City of Dana Point, signed by Brenda Wisneski, Director of Community Development, dated 11-10-2022. I wanted to respond directly to you regarding the statement that was made on page 2, last paragraph, wherein it was said that the Capistrano Bay Community Services District is an HOA of sorts and has the ability to allow or prohibit STR's and is therefore being included in the STR HOA data.

I'm writing to make it clear to the Coastal Commission that as a Special District and not an HOA, the Capistrano Bay CSD has no authority whatsoever to allow or prohibit Short Term Rentals. Special Districts in California are prohibited from Zoning and Planning authority – this is authority that is granted to Cities and Counties. Our Charter, authorized by the Orange County Board of Supervisors in 1959, provides for our District the authority to provide the following services: ***Trash Collection – Street Lighting – Street Sweeping – Infrastructure Maintenance of Roads, Storm Drains, Curbs, Gutters, Sidewalks – Police Protection and Security.***

Our District is permitted to establish ordinances as long as these ordinances link and relate to the above-noted services. Our ordinances address such actions as ***Speeding, Dogs on Leashes, Keeping Trash in Proper Receptacles, Picking up After your Dog, No Smokey Recreational Wood Burning Outdoor Fires, etc.***

I've attached our District forming resolution for your review that memorializes the creation of our District and enumerates the services for which we were created to provide to our residents and guests. The City's letter inaccurately characterizes the Capistrano Bay District as having the ability to allow or prohibit STR's.

I hope that you receive this message in time to make use of the information during today's hearing.

Regards, Don

**Donal S. Russell, Manager**  
**CAPISTRANO BAY DISTRICT**

35000 Beach Road  
Capistrano Beach, CA 92624  
Cell - 714-206-4331  
Work - 949-496-6576  
[drussell@capobay.org](mailto:drussell@capobay.org)

**One attachment** • Scanned by Gmail

FILE COPY

1 RESOLUTION OF THE BOARD OF SUPERVISORS OF

2 ORANGE COUNTY, CALIFORNIA

3 December 14, 1959

4 On motion of Supervisor Nelson, duly seconded and carried, the  
5 following Resolution was adopted:

6 WHEREAS, by Resolution adopted on October 14, 1959, this Board  
7 fixed the boundaries of the territory hereinafter described proposed  
8 to be formed as a Community Services District pursuant to the Community  
9 Services District Law of the State of California, to be known as Capistrano  
10 Bay District and by said Resolution called an election to be held on  
11 December 8, 1959, in said proposed Community Services District for the  
12 purpose of determining whether the same shall be formed and for the  
13 purpose of election of three (3) Directors;

14 WHEREAS, the following persons were nominated as candidates for  
15 Directors of said Community Services District to be filled at said  
16 election:

17 Kate S. Barney William H. Limebrook  
18 Robert L. Clark Lloyd J. Reich  
19 Otto J. Falk Lawrence W. Anderson

20 Dr. Castile

21  
22 WHEREAS, notice of said election was duly given for the time and  
23 in the manner required by law;

24 WHEREAS, said election was duly held on December 8, 1959, in the  
25 time, form and manner as required by law, the votes cast received and  
26 canvassed, and the returns thereof made to this Board in the time,  
27 form and manner required by law;

28 WHEREAS, there were 6 absentee ballots issued for said  
29 election, which ballots have been duly returned;

30 WHEREAS, this date, December 14, 1959, being the date prescribed by  
31 law for the canvassing of the returns of said election, and this Board  
32 having this day canvassed said returns;

Resolution No. 59-1354

1.

OFFICE OF  
COUNTY CLERK  
ORANGE COUNTY

1 NOW, THEREFORE, BE IT RESOLVED AND ORDERED that upon the canvassing  
2 of said returns this Board finds and declares as follows:

3 1. That a total of 62 votes were cast at said election on  
4 the proposition, "Shall A Community Services District named Capistrano  
5 Bay District be formed?", of which number 48 were cast in favor of  
6 said proposition and 14 votes were cast against said proposition.

7 2. That at said election 6 absentee ballots were cast on  
8 said proposition of which ballots 6 were cast in favor of said  
9 proposition and 0 were cast against said proposition.

10 3. That a total of 169 votes were cast at said election for  
11 the offices of Director of said proposed District. The names of the  
12 persons voted for said offices and the total number of votes cast for  
13 each of said persons is as follows:

	<u>For Director</u>	<u>Number of Votes Received</u>
14	Kate S. Barney	39
15	Robert L. Clark	26
16	Otto J. Falk	27
17	William H. Linebrook	20
18	Lloyd J. Reich	43
19	Lawrence W. Anderson	9
20	Dr. Castile	5

21 BE IT FURTHER RESOLVED AND ORDERED that this Board hereby finds  
22 and declares that a majority of the votes cast at said election on the  
23 question, "Shall a Community Services District named Capistrano Bay  
24 District be formed?", were in favor of said proposition.

25 BE IT FURTHER RESOLVED, ORDERED AND DECLARED that the territory  
26 bounded and described as follows be and the same is hereby duly  
27 organized as a Community Services District organized under the Community  
28 Services District Law:

29 That certain portion of Tract No. 797, as shown on a map  
30 thereof recorded in Book 24, Pages 10 to 15, inclusive,  
31 of Miscellaneous Maps, in the office of the County Re-  
32 corder of the County of Orange, State of California, and  
that certain portion of Tract No. 889 as shown on a map  
thereof recorded in Book 27, Pages 17 to 21, inclusive, of  
said Miscellaneous Maps, more particularly described as  
follows:

1 BEGINNING at the Northeasterly corner of Block "C" of said  
2 Tract No. 797, said Northeasterly corner being in the  
3 Southwesterly line of the Atchison Topeka and Santa Fe  
4 Railroad right-of-way as shown on the map of said tract  
5 No. 797; thence Northwesterly, along the Southwesterly  
6 line of said railroad right-of-way to the Northeasterly pro-  
7 longation of the Southeasterly line of Block "A" of said  
8 Tract No. 797; thence Southwesterly, along said prolonga-  
9 tion and said Southeasterly line, to the irregular South-  
10 westerly line of said tract No. 797 and designated approxi-  
11 mate ordinary high tide line on said map of Tract No. 797;  
12 thence Southeasterly, along said irregular Southwesterly  
13 line to the Southeasterly line of said Tract No. 797;  
14 thence Northeasterly along said Southeasterly line, to the  
15 point of beginning;

16 That the name of said Community Services District is Capistrano  
17 Bay District; that the purposes for which said District is formed are  
18 as follows:

- 19 1. The collection or disposal of garbage or refuse matter.
- 20 2. Public recreation by means of parks, playgrounds, swimming  
21 pools or recreation buildings.
- 22 3. Street lighting.
- 23 4. The equipment and maintenance of a Police Department or other  
24 Police protection to protect and safeguard life and property.
- 25 5. The opening, widening, extending, straightening and surfacing,  
26 in whole or part, of any street in such District, subject to the con-  
27 sent of the governing body of the county or city in which said improve-  
28 ment is to be made.
- 29 6. The construction and improvement of bridges, dams, culverts,  
30 curbs, gutters, drains and works incidental to the purposes specified  
31 in subdivision 5, subject to the consent of the governing body of the  
32 county or city in which said improvement is to be made.

33 BE IT FURTHER RESOLVED AND ORDERED that this Board hereby finds  
34 and declares that:

35 Kate S. Barney  
36 Otto J. Falk  
37 Lloyd J. Reich



CLERK OF  
ORANGE COUNTY  
CLERK OF  
ORANGE COUNTY

1 are the persons receiving the highest number of votes for the offices  
2 of Director of said Community Services District, and they are hereby  
3 declared elected to the offices of Director of Capistrano Bay District.

4 BE IT FURTHER RESOLVED AND ORDERED that the County Clerk is hereby  
5 authorized and directed to cause a certified copy of this Resolution to  
6 be filed in the office of the Secretary of State and a certified copy  
7 thereof filed in the office of the County Recorder of Orange County.

8 AYES: SUPERVISORS C. M. NELSON, C. M. FEATHERLY AND WILLIS H. WARN

9 NOES: SUPERVISORS NONE

10 ABSENT: SUPERVISORS WILLIAM J. PHILLIPS AND WM. H. HIRSTEIN

11  
12 STATE OF CALIFORNIA }  
13 COUNTY OF ORANGE } ss.

14 I, L. B. WALLACE, County Clerk and ex-officio Clerk of the Board  
15 of Supervisors of Orange County, California, hereby certify that the  
16 above and foregoing Resolution was duly and regularly adopted by the  
17 said Board at an adjourned meeting thereof held on the 14th day of  
18 December, 1959, and passed by a unanimous vote of said Board members  
19 present.

20 IN WITNESS WHEREOF, I have hereunto set my hand and seal this  
21 14th day of December, 1959.

22  
23 L. B. WALLACE  
24 County Clerk and ex-officio Clerk of  
25 the Board of Supervisors of Orange  
26 County, California

27 By Mark L. Leaster  
28 Deputy  
29  
30  
31  
32

May 9, 2023

To: California Coastal Commissioners

CC: Shahar Amitay, Eric Stevens, Shannon Vaughn

From: Toni Nelson, Non-HOA Coastal Zone Resident, Dana Point

**Re: URGENT REQUEST: Dana Point de novo hearing, Item 13 b, November 16, 2022 CDP approving Dana Point STR Program – City’s false data and attempts to legalize HOA bans will potentially cause 9% saturation of STRs in non- HOA Coastal Zone**

I am writing to urgently request that the California Coastal Commission suspend, appeal and modify, or revoke the CDP granted the City of Dana Point in the November 16, 2022 de novo hearing on its short term rental (STR) Program for the following reasons:

1. The Commission granted the CDP on the basis of materially false facts provided by the City; and
2. The City of Dana Point has engaged in a course of conduct since that CDP was granted which will have the effect of concentrating STRs in a very small area of the Coastal Zone, concentrating the entire cap of 115 STRs in about 1,300 homes, potentially resulting in a 9% STR saturation rate in a tiny segment of the Coastal Zone (CZ).

In October of 2022, the City staff told the CCC there were 5,664 residences in the CZ, and that there were 28 HOAs comprising 2,648 units, leaving 3,016 in non-HOA communities in the Coastal Zone. [CCC November 15, 2022 staff report at p. 21.]

You will recall that during the de novo CCC hearing, Commissioners reluctantly agreed to a 2% saturation rate of STRs in the Coastal Zone, acknowledging Dana Point’s extraordinary existing tourist accommodations (almost 2,000 units) and its extremely scarce housing stock. Commissioner Harmon initially suggested a 1% concentration which was fine with CCC staff. However, Mayor Muller insisted on a cap of 115 STRs (or 2% saturation) and the Commission agreed in order to “keep the train moving”. Now that train threatens to destroy the residential nature of a tiny segment of the Coastal Zone, particularly in Capistrano Beach, an older area of the city with no HOAs.

After Dana Point’s CDP was granted, residents questioned City staff, because we could not locate more than one-third of the alleged number of non-HOA residences. The City

first claimed the numbers were correct, but when it became clear that residents were persistently seeking verification of that number, the staff later asserted that there are actually approximately 5,700 residential units in the CZ, 4,400 of which are in 52 HOAs – an increase of 66%. [Staff Report (SR) at 3.] In essence, they admit that there are really only 1,300 housing units in non-HOA communities. The staff has not even adverted to this shocking difference, much less explained it. Nor has there been any indication that they intend to advise the CCC of the false data submitted at the de novo hearing.

Per Special Condition 1 of the CDP as granted, the City was required to ensure that only HOAs that had legal bans (those existing prior to 1976 or those with approved CDPs) would be exempt from STRs. At no time during the hearing did the City disclose its intention to “legalize” the majority of HOAs (they claim only 7 of the 52 appear to not have STR bans). Yet that is precisely what is underway.

On April 24, 2023 the Planning Commission voted unanimously to approve STR bans in 11 HOAs representing 832 housing units. The City actively participated in the process, creating the CDP language, drafting a 174-page staff report, handling all public notices, and presenting the CDPs at the public hearing. Fees for this service were reduced by approximately 90%, with each HOA charged only \$500 for this advocacy. The 11 CDPs were handled as a batch, and at no time did any particular HOA ban come under discussion. During the hearing, staff admitted there were 5 more CDPs in the works, and we expect there will be more to come.

In addition, the City is also tacitly discouraging STR applicants from HOA areas. The Program requires applicants to submit a letter from the HOA confirming that the CCRs permit HOAs. But HOAs have no incentive to produce such a letter, even though the Coastal Act overrules most existing CCRs in Dana Point. This will deter most HOA applicants, and at a minimum, delay their applications while the remaining STR licenses are issued. In short, the City has devised what is effectively an informal or “pocket” ban on STRs in HOAs whether they have a legal CDP or not, and improperly so, as it is the City’s responsibility to comply with the Coastal Act, not adopt procedures which will effectively nullify it.

When the City’s end run around this Commission’s ruling is complete, the HOA STR bans will effectively squeeze all 115 STRs into a narrow band of residences in Monarch Hills (an HOA which allows 7-day STRs) and Capistrano Beach (non-HOA neighborhoods which will be required to absorb the majority of 2-day STRs).

Residents of the non-HOA coastal zone desperately need your help before our tiny community transforms from a cluster of quiet residential neighborhoods into permanent tourist zones with an unprecedented 9% concentration of 2-day STRs.

We have appealed to the City Council repeatedly in public comments and letters. We also protested the approval of the first batch of 11 CDPs that were unanimously approved by the Planning Commission on April 24<sup>th</sup>. The City began issuing new permits starting May 1<sup>st</sup>. Throughout more than a decade of public hearings on STRs, the City Council has repeatedly asserted its commitment to “honoring” STR bans, even though this intention was not asserted at the CCC hearing on November 16, 2022. However, the City failed to advise either the CCC or residents that their intention was actually to concentrate all 115 STRs in a narrow band of 1,300 homes not protected by HOA bans.

I, along with another resident, Roger Malcolm, filed an appeal of the Planning Commission decision to City Council on May 8, 2023. Although we argued that this decision was programmatic unlike other CDPs (the STR program should have been presented as an LCPA but the City Attorney insisted that a CDP was “more flexible”), that the Planning Commission made one decision and not 11; that the City had reduced fees to HOAs by 90%; that staff acted as advocates and not impartial parties, speaking on behalf of the HOAs and producing 174 pages of material to support the applications; the City insisted that we pay a \$250 fee for all 11 of the CDPs plus fees for all public notices. Since we cannot reasonably pay \$2,750 (plus noticing costs) to appeal this decision, especially knowing that many more are on the way, we have no recourse but to urgently plead to the CCC Commissioners for your help.

We respectfully request that in light of the false information provided and the potential for severe concentration of STRs in a tiny segment of the Coastal Zone, far beyond the concentration intended by the Commission, you take urgent action to suspend the City’s approved CDP pending review of the concentration in light of this significant new information.

I attach a copy of the citizens’ appeal submitted to the City of Dana Point on May 8<sup>th</sup> which provides more information. The City’s staff report in support of the Planning Commission’s approval of the first 11 CDPs can be found here:

<https://www.danapoint.org/home/showdocument?id=36120&t=638176073759043831>.

Thank you for your consideration of my urgent appeal on behalf of non-HOA residents in the Coastal Zone.

Sincerely,

Toni Nelson

Resident, Capistrano Beach

Good evening. Toni Nelson Capistrano Beach. Thank you to Michael Villar for asking the staff to prepare this information. As you all know, the Coastal Commission only reluctantly approved 115 STR permits, thinking they would be distributed among the 5,700 homes in the coastal zone.

They thought they were approving a 2% saturation rate. Actually, a rate of 1 – 1.5% was acceptable to them. During the hearing, *either intentionally or unintentionally*, it was never disclosed that the denominator would be reduced by the large number of homes in Dana Point's HOAs.

Shortly after the Commission approved the 2% rate, the City proactively offered assistance to HOAs seeking to legalize their bans. City staff assisted in drafting their CDPs and presenting them to the Planning Commission, and HOAs received a 90% fee reduction. Our Council has a long history of publicly stating its desire to honor STR bans in HOAs. That's perfectly fine, as long as non-HOA areas are treated equally.

As of today, HOAs representing 1,447 homes are in the process of legalizing their STR bans. I believe most other HOAs will do the same. If their CC&Rs currently include a ban, HOA boards have a fiduciary duty to pursue legalization. If the HOAs representing the remaining 2,769 homes apply to ban STRs, the denominator becomes **1,521 (5,737-1447-2769)**. Adding Monarch Hills' 349 units gives a total of: **1,870**. Please note that this number is inflated. It includes many Section 8 and long term rentals that **cannot** be STRs. The staff was asked for, but did not provide this information.

So, we have  $115 / 1,870 =$  a 6% overall saturation rate (or worse) in the Coastal Zone.

**Monarch Hills** ends up with a concentration of 14% - one STR for every 6 real homes.

**Beach Road** ends up with 22% - one STR for every 3 real homes

Is Council ok with that?

None of these saturation rates is anywhere close to the 2% reluctantly approved by the Coastal Commission. Commission policies require that STR programs preserve the residential nature of communities and that STRs are not unduly concentrated.

I don't think you should wait a year to review this program. It's obvious that we are already far out of sync with what the Commission approved. I urge the Council to request an amendment of its CDP in order to provide equal protection to all constituents. I have a handout explaining the math which I'll give to the City Clerk.

## The Math

Documentation supporting Toni Nelson's comments to Dana Point City Council regarding the calculation of STR saturation in the City's Coastal Zone

Comments made May 16, 2023, Agenda Item 10

**Total STRs approved for CZ:** 115

This number was approved based on City-provided data presenting that 5,386 (now 5,737) housing units were STR-eligible.

### Per City-provided data:

Total Housing Units in CZ	5,737
Homes represented by HOAs requesting STR-banning CDPs	(1,447)
Homes represented by HOAs that have not yet filed CDPs	(2,769)
Monarch Hills + ( Could be a little higher. No data)	<u>349</u>

**Total STR-eligible homes\*** 1,870

\*includes Section 8, long term rentals and other units that cannot become STRs.

$115/1870 = 6.1\%$  saturation (or worse)

Saturation Rate acceptable by Commission:	1% - 1.5%
Saturation Rate Approved by CCC (on City insistence):	2%
Overall Saturation Rate in CZ	6.1%
Monarch Hills 50/349 = 1 house of every 7 can be an STR	14%
Beach Road 44/196 = 1 house of every 4 can be an STR	22%
Saturation Rate in Non – CZ (includes HOAs)	1%

Correspondence with Dana Point City Clerk regarding appeal of HOA CDPs granted by the Planning Commission. Note that since the CCC processed the City's STR program as a CDP instead of an LCPA as has been the case for every city with an LCP, it became impossible for citizens to appeal the action without prohibitive costs.



**Toni Nelson** <tonidn1@gmail.com>  
to Shayna, Roger, bcc: Kim, bcc: Mark

May 5, 2023, 9:38 AM ☆ ↶ ⋮

Hi Shayna. I need a little clarification. In your letter of 4/25 below, you indicated that in order to appeal the Planning Commission's decision to grant CDPs permitting HOAs to ban STRs we would have to pay \$250 for each of the 11 CDPs (\$2,750). In our letter of 4/29/23 attaching an Urgent Request to Council, we requested that a single fee of \$250 be levied since we are appealing one decision of the Planning Commission wherein they batched all 11 identical CDPs and treated them as one. In addition, we noted that the City has reduced the normal CDP fee for the HOAs by about 90%, and the City staff not only advocated on behalf of the HOAs, but prepared 173 pages of documents to support their request. We have received no response to our Urgent Request. Please advise what has been decided in this regard.

Can you also clarify as to whether we are required to place one 1/8 page ad in the Dana Point Times for each of the 11 CDPs or whether one notice for the CDPs covered in the decision will be sufficient?

It is my understanding that the HOAs did not pay for the notices in the DP Times. I assume, therefore, that the City did. Will the City be paying for notices on behalf of the appellants?

Finally, what date for hearing on the appeal should we identify in the notices?

Thank you,

Toni Nelson and Roger Malcolm

On Tue, Apr 25, 2023 at 1:07 PM Shayna Sharke <SSHARKE@danapoint.org> wrote:

Good afternoon, Toni,

The procedure to appeal the decisions by the Planning Commission regarding a Coastal Development Permit to the City Council is outlined in [9.61.110 Appeal Procedures](#). Please review each section thoroughly, but to answer your questions - Section B specifies a 15-calendar day period to appeal. There is no City issued appeal form, but Section C specifies the required Appeal Contents. Additionally, please note that Section E requires that the appellant is responsible for all noticing materials that were required for each original application [9.61.050 Notice and Conduct of Public Hearings \(qcode.us\)](#).

Each Coastal Development Permit that you are seeking to appeal requires the information as specified in [9.61.110 Appeal Procedures](#) as well as the \$250.00 appeal fee for each.

**Shayna Sharke, CMC**  
City Clerk | City of Dana Point

**From:** Toni Nelson <tonidn1@gmail.com>  
**Sent:** Tuesday, April 25, 2023 8:03 AM  
**To:** Shayna Sharke <SSHARKE@DanaPoint.org>  
**Subject:** Appeal

Hi Shayna. Can you send me the necessary forms to appeal the PCs ruling on HOA CDPs last night? Is there a 10 day appeal window?

Thanks,

Toni





**Shayna Sharke** <SSHARKE@danapoint.org>  
to me, Roger

May 8, 2023, 4:35 PM ☆ ↶ ⋮

Good afternoon Ms. Nelson and Mr. Malcolm,

I received your appeal letter and check for \$250 today, however, according to Section 9.61.060(b) and the information below, \$250 is only sufficient to appeal one Coastal Development Permit as stated in my email dated April 25<sup>th</sup>.

Each applicant submitted their application separately and shall be given the ability to be considered based on their own merits. Therefore, separate appeals are justified, including separate notices.

According to Section 9.61.060(b), only the City Council has the authority to waive or reduce fees:

(b) Waiver of Fees. For special circumstances, the City Council may provide for the waiver or reduction of filing fees or deposits that have been established by Resolution of the City Council. The special circumstances may include, but not be limited to, cases of excessive hardship, projects that provide exceptional benefits to the public, projects sponsored by a non-profit applicant, or projects that provide very low, low, or moderate income housing.

Section E requires that the appellant is responsible for all noticing materials that were required for each original application [9.61.050 Notice and Conduct of Public Hearings \(qcode.us\)](https://www.qcode.us/9.61.050%20Notice%20and%20Conduct%20of%20Public%20Hearings). The filing fee submitted by each HOA included the costs of noticing each property.

Council Member Villar referenced your correspondence during Council Reports at the May 2<sup>nd</sup> Council Meeting:  
[https://www.youtube.com/live/xesV2jaw\\_QQ?feature=share&t=6869](https://www.youtube.com/live/xesV2jaw_QQ?feature=share&t=6869)



**Toni Nelson** <tonidn1@gmail.com>  
to Shayna, Roger, bcc: Mark, bcc: Kim

May 8, 2023, 5:33 PM ☆ ↶ ⋮

Thank you Shayna. Since we received no answer to our urgent request dated 4/28 we weren't sure how the Council would like to proceed. Given the short appeal window, we were hoping for the courtesy of a prompt reply. If you'll notice at the bottom of Section I of the appeal, we noted that if the Council is unwilling to grant our request for a batch appeal since this was a batch decision, we asked that it be applied to the largest HOA in the appeal zone, which we believe is Las Mariannas.

In reference to the noticing materials, are you implying that you want us to write the notices, post them and mail them to individuals affected? We have no way of knowing who is affected and have no access to addresses and names for those living in the affected communities. Neither are we, as ordinary citizens, equipped to write the legal notices you require. Nor do we know the timing of the appeal hearing.

The City wrote the notices for the HOA CDPs and did not charge the HOAs for noticing materials over and above the CDP fee. Is it truly possible that noticing materials plus staff time to produce the copious CDP materials and advocate on behalf of the HOAs cost only \$500? In our case, the City will not be spending staff time to write or otherwise participate in our appeal nor advocate on our behalf. Unlike the HOAs, we are on our own and anticipate no assistance from city staff. Please advise what you intend to charge us for noticing materials and if you intend that we somehow need to determine the list of residents to be informed. If this is the city's intent, it seems to be an onerous and unwieldy task to force on ordinary citizens, effectively stymying our right of appeal.

Please bear in mind that what we are really trying to appeal is not Las Marianas or any other individual HOA CDP, but the impact of this single Planning Commission decision plus more to come - i.e. the programmatic and wholesale banning of STRs which creates a significant hardship on non-HOA neighborhoods. We are hopeful that a fair minded Council will allow the appeal to proceed as a single action. If you force us to pay both appeal and notice fees for every HOA CDP, it will definitely create excessive hardship and obvious inequity between a favored (HOA residents) and not so favored class of citizens (non-HOA residents).

We believe this appeal has the potential to provide exceptional benefit to the portion of Dana Point's populace that has been heretofore ignored - the non-HOA residents of the coastal zone. Therefore, we respectfully request relief from these excessive costs and equal consideration and fair treatment from our City.

What we are really after is a chance to explain to the Council how the wholesale banning of STRs in HOAs changes the entire premise of the CCC's decision and should not go forward without also protecting the non-HOA sector of the community by adjusting caps appropriately. We are asking for equal and fair treatment of all citizens. It is our hope that the City will ask for a CDP amendment making a fair adjustment in the Coastal Zone cap, which will eliminate the need for us to take these appeals further with the CCC.

To us, the way forward is obvious and quite simple and we trust our Council to treat all citizens equally and fairly. We will be astonished if the City creates procedural and financial roadblocks and hardship which will surely block our right of appeal.

While we appreciate Councilman Villar's request for a complete analysis of the data and look forward to seeing verifiable, accurate information (if it becomes publicly available), there was no indication that this data will make it to a council agenda, and no sign of Council's willingness to stop issuing new permits or in any way adjust the cap to protect non-HOA areas. Given the short appeal window, we have no choice but to register our appeal of the 4/24 Planning Commission decision.

For your record and convenience, please see the attached PDF of the appeal which may make it easier for you to electronically advise Council or others of our request.

Thank you and best regards,

Toni Nelson and Roger Malcolm

\*\*\*

One attachment • Scanned by Gmail



**Shayna Sharke** <SSHARKE@danapoint.org>

to Roger, me

May 15, 2023, 4:49 PM



Good afternoon, Ms. Nelson, and Mr. Malcolm,

Please find a letter attached notifying you that the appeal hearing has been scheduled for Tuesday, June 6, 2023 at the Regular Meeting of the City Council. This letter will be mailed to you via certified mail as well.

\*\*\*

One attachment • Scanned by Gmail



**Toni Nelson** <tonidn1@gmail.com>

to Shayna, Roger

May 16, 2023, 8:04 AM



Shayna, I'm sorry but that date doesn't work for me. I'll be in Canada through June 20th. Perhaps it can be rescheduled?

Thanks, Toni

\*\*\*



**Toni Nelson** <tonidn1@gmail.com>

to Shayna, Roger, bcc: Mark, bcc: Kim

May 18, 2023, 6:01 PM



Shayna, based on the Council's discussion on item #10 Tuesday night, it appears that the results of our appeal are a foregone conclusion. Please withdraw this appeal since it clearly has no chance of being upheld.

Thank you,

Toni Nelson



**Shayna Sharke** <SSHARKE@danapoint.org>  
to me, Roger ▾

May 19, 2023, 2:41 PM ☆ ↶ ⋮

Hi Toni,

I was going to reply to you today regarding the date, but then I got your withdraw email. The applicant had requested that the hearing remain on 6/6 and we were going to offer a telecommunication option for you to participate remotely.

All of the advance noticing, in the newspaper, posting, and through the mail, was already in process, as required for a public hearing, so it was too late to stop that.

I'll check on the fees and let you know early next week.

Thank you and have a great weekend!

Shayna

Shayna Sharke, CMC  
City Clerk | City of Dana Point

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**From:** Toni Nelson <tonidn1@gmail.com>

**Sent:** Friday, May 19, 2023 2:26:14 PM

\*\*\*

\*\*\*



**Toni Nelson** <tonidn1@gmail.com>  
to Shayna, Roger ▾

May 19, 2023, 2:43 PM ☆ ↶ ⋮

Thanks Shayna. I would have been on a plane and unable to attend regardless.

\*\*\*



**Shayna Sharke** <SSHARKE@danapoint.org>  
to me, Roger ▾

May 23, 2023, 3:50 PM ☆ ↶ ⋮

Good afternoon,

Because the City already incurred the costs for the mailers and advertisement, the appeal and postage fees are still applicable. The invoice for the postage fee is attached.

\*\*\*

One attachment • Scanned by Gmail ⓘ



## Correspondence of June 12, 23 regarding City approving CDPs for HOAs banning STRs .



**Toni Nelson** <tonidn1@gmail.com>  
to Roger, Shahar@Coastal, bcc: Mark

Jun 12, 2023, 5:54 AM



The 6 HOAs that will have their CDPs approved tonight represent 732 more housing units removed from the total homes eligible to be STRs. That brings the total to 1,547 so far. The city has no intention of allowing STRs in any of its HOAs. The process involved in filing an application virtually guarantees that all STRs will be located in non HOA communities with the exception of Monarch hills which allows 7 day rentals.

Have you established a detailed calendar as to when the city must respond to the revocation request and how much time we will have to respond to their response?

Thank you,

Toni Nelson

<https://www.danapoint.org/home/showdocument?id=36439&t=638217246475718897>

...



## Correspondence of June 12, 23 to Dana Point Planning Commission

Planning commission meeting 6/12/23 agenda item 3

Inbox



**Toni Nelson** <tonidn1@gmail.com>  
to: Shayna, Shahar@Coastal, Roger, Eric@Coastal, bcc: Danielle.Wilson@unitehere11.org, bcc: Kim, bcc: Mark, bcc: Rebecca

Jun 12, 2023, 2:42 PM

Dear Planning Commissioners,

Please see attached the California Coastal Commission's Notice of Pending Revocation Request No. A-5-DPT-22-0038-REV regarding the City's Short Term Rental Program. The CCC has determined this request is not frivolous and it is currently under further review.

We wish to register our objection to the proposed action tonight, not because we disagree with the HOAs' desire to ban short term rentals in their communities, but because the City has refused to ask the CCC to reduce concentrations in the remaining sections of the Coastal Zone to afford reasonable protection to all Dana Point neighborhoods. We object to the city's continued discriminatory refusal to preserve the residential nature of ALL communities in Dana Point.

If you grant these GDPs tonight, you will further cement the unfair concentration of STRs in Monarch Hills (14% concentration), Beach Road (22% concentration) and the very small number of non HOA communities in the coastal zone (7% concentration or worse once affordable housing units are removed from the data). It was never the intention of the CCC to inflict concentrations as high as 1 in 4 residential homes in the Dana Point coastal zone such as what is happening on Beach Road. In fact, at the November 16, 2022 hearing cited in the staff report, Commissioners were initially contemplating a 1 or 1.5% concentration and only reluctantly agreed to a 2% concentration on Mayor Muller's insistence. At no time were they made aware that the results of their action would actually concentrate all STRs in three tiny areas of the CZ.

As you will read in the attached revocation request, the CCC was provided with grossly inaccurate data and was discouraged from considering the problems of concentration by what appears to be an intentional mischaracterization of Beach Road as an HOA. Even in tonight's staff report, Beach Road, a special district but not an HOA, is referred to as a "private gated community". It is indeed a gated community, but unlike most private communities, has no legal right to restrict STRs. This distinction continues to be ignored, creating an implication that HOAs are absorbing the bulk of STRs. Further, there is no mention that Monarch Hills HOA restricts STRs to 7 days or greater - a far less impact than the 2 day rentals allowed elsewhere. These omissions continue to present an inaccurate picture of what is really happening to unprotected communities in the Coastal Zone, seriously threatening their essential residential nature while continuing to encourage landlords to convert badly needed rental housing to more lucrative STRs. We do not believe the CCC, or any reasonable body, would encourage these concentrations.

It is audacious for the staff report to claim that this action complies with the CCC's finding that the City's STR program "balances private residential uses and long term housing with visitor-serving recreational uses" when that finding was based on wildly inaccurate housing data and misleading information about HOAs. It is even more disingenuous to claim that it complies with Design Element Goal 2 - "to preserve the individual positive character of communities" when it does the exact opposite.

If this Commission ignores the resultant impact of this action on a tiny segment of homes in the Coastal Zone, it will be complicit in the charade. We urge you to reserve your decision until the revocation request has been heard before the CCC.

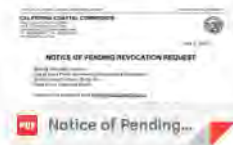
Thank you for your attention to this important matter.

New Message

Toni Nelson  
Roger Malcolm  
Residents of non - HOA Coastal Zone

Sent from my iPad

One attachment • Scanned by Gmail



Correspondence of June 13, 2023 related to appeal for Council to amend CDP



Good evening. Toni Nelson Capistrano Beach. Thank you to Michael Villar for asking the staff to prepare this information. As you all know, the Coastal Commission only reluctantly approved 115 STR permits, thinking they would be distributed among the 5,700 homes in the coastal zone.

They thought they were approving a 2% saturation rate. Actually, a rate of 1 – 1.5% was acceptable to them. During the hearing, *either intentionally or unintentionally*, it was never disclosed that the denominator would be reduced by the large number of homes in Dana Point's HOAs.

Shortly after the Commission approved the 2% rate, the City proactively offered assistance to HOAs seeking to legalize their bans. City staff assisted in drafting their CDPs and presenting them to the Planning Commission, and HOAs received a 90% fee reduction. Our Council has a long history of publicly stating its desire to honor STR bans in HOAs. That's perfectly fine, as long as non-HOA areas are treated equally.

As of today, HOAs representing 1,447 homes are in the process of legalizing their STR bans. I believe most other HOAs will do the same. If their CC&Rs currently include a ban, HOA boards have a fiduciary duty to pursue legalization. If the HOAs representing the remaining 2,769 homes apply to ban STRs, the denominator becomes **1,521 (5,737-1447-2769)**. Adding Monarch Hills' 349 units gives a total of: **1,870**. Please note that this number is inflated. It includes many Section 8 and long term rentals that **cannot** be STRs. The staff was asked for, but did not provide this information.

So, we have  $115 / 1,870 =$  a 6% overall saturation rate (or worse) in the Coastal Zone.


**Monarch Hills** ends up with a concentration of 14% - one STR for every 6 real homes.

**Beach Road** ends up with 22% - one STR for every 3 real homes

Is Council ok with that?


None of these saturation rates is anywhere close to the 2% reluctantly approved by the Coastal Commission. Commission policies require that STR programs preserve the residential nature of communities and that STRs are not unduly concentrated.

I don't think you should wait a year to review this program. It's obvious that we are already far out of sync with what the Commission approved. I urge the Council to request an amendment of its CDP in order to provide equal protection to all constituents. I have a handout explaining the math which I'll give to the City Clerk.

**Toni Nelson** <tonidn1@gmail.com>  
to **Shahar@Coastal** 

FYI. Please see below. When Mark Zanides asked for evidence of the 3,000+ inspections in 2021 and 2022 there were no responsive records.

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**One attachment** • Scanned by Gmail 

2022 NUISANCE CALL AND CITATION STATISTICS (As of July 1, 2022)		
1	Total Number of Vacation Rental Hotline Calls	12 Calls
a.	Number of Calls for Nuisance into the Hotline	5 Calls
b.	Number of Calls for Nuisance into the OC Sheriff Dispatch	2 Calls
c.	Number of Calls for Nuisance where Code Enforcement Engaged	5 Calls
d.	Number of Calls for Nuisance where OCSD Responded	2 Calls
2	Total Number of Citations Issued By the City for STR Nuisance Violations	0 Citations
a.	Citations for Music	0 Citations
b.	Citations for Noise	1 Citation
c.	Citations for Trash	0 Citations
d.	Citations for Parking	0 Citations
3	Total Registered Vacation Rental Homes as of 1/1/2022	131 Properties
a.	Total Number of Vacation Rentals with Zero Citations	129 Properties
b.	Total Number of Vacation Rentals with One Citations	1 Properties
c.	Total Number of Vacation Rentals with Two Citations	0 Properties
d.	Total Number of Vacation Rentals with Three Citations	0 Properties
e.	Total Number of Permits Revoked in 2022	0 Properties

Category	2021 Totals	2022 Totals
After Hour Patrols on STR's	240	135
Number of Inspections	3230	3132
Number of Nuisances Found	0	0
Complaints on 24/7 Hotline	4	1
Complaints to OCSD	2	0
Complaints (Other)	1	0
Nuisances Abated	0	0
Nuisance Citation Issued	3	0