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

AUGUST 10, 2023

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Exhibit 1 – Request for Revocation

To: California Coastal Commission and Staff

From: Toni Nelson and Roger Malcolm, residents of Dana Point's Coastal Zone

Date: May 22, 2023

Re: Request to Revoke under Section 13105(a) of the Commission's Regulations the City of Dana Point's CDP for its Short Term Rental (STR) Program, [A-5-DPT-22-0038](#) granted with conditions in a De Novo hearing November 16, 2023

REQUEST TO REVOKE

Pursuant to Section 13105(a) of the Coastal Commission's regulations, the undersigned residents of Dana Point hereby request that the Executive Director and/or other authorized Coastal Commission body revoke the City of Dana Point's CDP for its Short Term Rental (STR) Program, [A-5-DPT-22-0038](#), granted by the Coastal Commission with conditions in a De Novo hearing November 16, 2022 on the basis that the City's Application for the CDP contained inaccurate, erroneous and incomplete information, and that, had the Commission had accurate and complete information, it would have denied the permit or required additional or different conditions.

SUMMARY OF ARGUMENT

On November 16, 2022, at a *de novo* hearing on an appeal by Dana Point residents, the Coastal Commission (CCC) approved Dana Point's STR CDP with the limitation that no more than 115 unhosted STRs, or approximately two per cent of the total residential units, would be permitted in the Coastal Zone (CZ) and that any HOA ban on STRs had to be "legal."

This CCC decision was made in reliance on information provided by the City of Dana Point, specifically:

1. That there are 5,664 residential units in the CZ.
2. That there are 28 Home Owners' Associations (HOAs) comprising 2,648 residential units.
3. That of the 28 HOAs in the CZ, 10 allow STRs.
4. That there were 69 STR permits issued in the CZ (66 non-primary), and that 91% of those were located in HOAs.
5. That the City did not know how many HOAs banned STRs, but intimated that the number was very low.

In fact, based on the current version of city data:

1. There are 5,737 residential units in the CZ.
2. There are 53 HOAs comprising 4,216 housing units, leaving only 1,521 non-HOA homes.
3. Of the 53 HOAs in the CZ, the only public City [data](#) available admits there are 9 HOAs that allow STRs, representing 639 housing units,¹ leaving 85% of HOAs with bans, which the City is helping them to legalize via CDPs.
4. Of the 69 grandfathered permits issued in the CZ, only 31, or 45% (not 91% as claimed) were issued to HOAs. At the time, a total of 31 (now 27) STRs existed in the historic neighborhood of Beach Road, which the city falsely classified as an HOA. Beach Road has never been an HOA and has no power to restrict STRs.
5. At the time the CCC ruled, the City failed to disclose that almost all HOAs had CCRs barring STRs;² and that they intended to protect the HOAs from STRs while concentrating STRs in the small number of communities (representing less than 1/3 of the CZ) that are not protected by bans.

Since the CDP was granted, the City has actively encouraged and subsidized the submission by HOAs of CDP requests “legalizing” the historic STR bans contained in the HOA CCRS which are otherwise illegal under the Coastal Act.

As a result of the City’s inaccurate, incomplete and misleading information, and its failure to disclose information necessary to make statements already made by the City not misleading, the City’s implementation of its STR Program has resulted and will continue to result in undue concentration of STRs in three particular communities: Beach Road, Monarch Hills, and a small number of non-HOA housing units representing about 1/3 of the CZ while banning STRs from most HOAs which together represent approximately 2/3 (68%) of the CZ.

According to a staff report presented at a City Council [meeting](#) on May 16, 2023, once new permit applications [likely to be granted] are added to existing STRs, **the City’s program will result in all STRs being located in less than 1/3 of the CZ’s coastal zone (at an overall saturation rate of at least a 7%). Two communities will endure concentrations of 14% (Monarch Hills) and 22% (Beach Road)**³.

¹ No specific information has been provided to support this claim. At this time, the authors of this request are aware of one HOA (Monarch Hills) representing 349 units that allows 7-day rentals.

² The CCC staff report for the *de novo* hearing suggested that as many as 10 of the purported 28 HOAs did not have bans. This was later corrected in a CCC staff [addendum](#) (p. 4) to 38 HOAs, 9 of which ban STRs. Now the City reports that there are 53 HOAs in the CZ. The City data has been subject to much change and no independent verification. It’s difficult to ascertain exactly how many of the HOAs in the CZ do not ban STRs, but we believe the number is very small.

³ See attachment 1 – The Math – Saturation Calculations

Coastal Act Regulation 30214 calls for preserving a balance between coastal visitor serving uses and private residential uses. **The City's omissions, plus the inaccurate and misleading information provided by the City led the Commission to approve a CDP that was intended to result in a 2% saturation rate and allow for even distribution across the CZ. The actual results will be far outside those parameters (7 to 22%), burdening less than 1/3 of the Coastal Zone with concentrations that far exceed the Commission's intentions.**

Had the Commission known the true facts⁴, it likely would have either denied the CDP as requested or conditioned its grant on terms which would have eliminated the undue concentration of STRs in certain communities.

THE LEGAL STANDARD FOR REVOCATION

Under Coastal Commission Regulations Section [13105 \(a\)](#), “grounds for revocation of a permit shall be:

Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application.”

A. APPLICANT PROVIDED INCOMPLETE, INACCURATE OR ERRONEOUS INFORMATION

1. Numbers of housing units, number of HOAs and number of HOA housing units were grossly and materially inaccurate

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

After persistent questioning in early April 2023 by citizens who could not locate the purported 3,016 non-HOA residences, City staff stated that the numbers had been derived from the City's GIS (Geographic Information System) and insisted that the numbers were correct. City staff was unable to produce workpapers or other summaries

⁴ In reality “true facts” are still not available. The City has not responded to repeated resident pleas to provide accurate, reliable and verifiable data to ascertain exactly how many housing units in the CZ are actually eligible to become STRs.

backing up its claims. The staff member “hoped” to have verification of this number by the end of April.

Rather than respond to residents, in a staff report to the Planning Commission, on April 24, 2023, the City staff suddenly provided significantly different numbers, stating that now there are approximately 5,700 residential units in the CZ, 4,400 of which are in 52 HOAs. [[Planning Commission Staff Report](#) (SR) at 3.] In essence, the City admitted that there were really only 1,300 housing units in non-HOA communities, not the 3,016 reported to the CCC.

At a May 16, 2023 City Council [meeting](#) where Councilman Villar asked for a review of STR data by staff, the numbers changed again. The City now claims that there are 5,737 housing units in the CZ, with 4,216 attributed to 53 HOAs, leaving 1,521 housing units in non-HOA communities.

There has been no explanation as to why the 3,016 non-HOA homes reported to the Commission at the *de novo* hearing are now, according to the latest version, only 1,521. There has been no explanation as to why the CCC was told there were 28 HOAs in the CZ, but now there are apparently 52 (or 53 by the latest numbers). The staff does not even advert to this shocking difference, much less explain it.

The HOA data provided to the CCC was inaccurate by 59% to 66% depending on which data is to be believed. **This is not a rounding error but a serious inaccuracy which influenced the CCC’s decision on the City’s CDP. We respectfully submit that a discrepancy this large supports an inference that inaccurate numbers were intentionally provided to the CCC and its staff.**

2. The City resisted attempts to obtain accurate data

The staff’s radical change to the reported data was not voluntary, but rather occurred because on March 8, 2023 appellant Nelson asked a City senior planner to substantiate how he came up with the numbers staff provided to the CCC at the November hearing. Ms. Nelson had worked with other residents to try to identify the location of the 3,016 housing units supposedly located in the non-HOA sections of the CZ. Using maps and public real estate records, they could only account for about 1,500 homes, and these included many that could not ever be STRs (mobile homes, long term rentals and section 8 housing). After several additional queries⁵, the senior staff member stated that he derived the information from the City’s GIS (Geographic Information System). When they were still unable to identify more than about 1/3 of the supposed 3,016 non-HOA units in the coastal zone, Ms. Nelson and another resident asked to meet with the staffer so that he could show them his working papers and explain where those units

⁵ See attachment 2, emails querying housing unit data supplied to CCC.

might be located. They expected him to be able to substantiate his numbers by referring to working papers or schedules referenced to city streets. They met on March 28th at City Hall at which time the staffer showed them the GIS system but was unable to point to where those additional housing units might be. Shockingly, he did not appear to have working papers nor any other data to support the numbers submitted to the CCC. When asked to supply detailed records to support these numbers, he stated that he was very busy and could not produce the supporting data until the end of April, 2023. He has never responded to residents on this matter.

Rather than reply to Ms. Nelson, in the April 24, 2023 [Planning Commission Staff Report](#) the staff then presented new data: suddenly there were 52 HOAs (not 28) comprising 4,400 dwelling units (not 2648), an astonishing 66% increase in the numbers provided to the CCC. There has never been any explanation offered as to how or why this huge restatement occurred.

3. Beach Road Status Appears To Have Been Intentionally Concealed

While the Dana Point [Planning Commission Staff Report](#) does not identify all of the HOAs by name, it appears obvious that in order to report to the CCC that 91% percent of STRs are located in HOAs, the City must have included the residential units on Beach Road as HOAs. This is so because the staff falsely 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) Planning Commission Staff Report at 5.)

Most of the difference between the 1,300 non-HOA units reported to the Planning Commission and the 1,521 reported to the City Council is attributed to staff’s repeated erroneous claim that Beach Road⁶, a special district with no ability to restrict or ban STRs, is an HOA.

The City claim that Beach Road is an HOA is simply false, and the City knows or should have known it’s true status. Beach Road is not an HOA, but is and has always been a Special District since the community was formed by the County in 1959, 30 years before Dana Point became a City. Multiple times throughout the STR saga which started in 2014, Beach Road Board members, management and residents have written to or appeared before City Council asserting that Beach Road cannot legally restrict STRs and complaining of parking issues, parties and other issues. It is common knowledge among those who have been following this issue that Beach Road cannot restrict STRs. It is unfathomable that City staff and officials could have thought it was an HOA and reported this false information to the CCC.

⁶ This controversy emerged in the CCC’s November *de novo* hearing and was addressed and corrected in a letter from Beach Road Manager Donal Russell to Shahar Amitay on 11/16/22 (See Attachment 3, p.11).

Moreover, this error was pointed out repeatedly by both Beach Road management and citizens and City staff was aware of the error on the morning of the *de novo* Hearing.⁷

Even if it had failed to acknowledge the letter in the CCC records, the City was in receipt of a letter from Roger Malcolm on 4/23/23⁸ attaching Don Russell's letter to the CCC last November.

Of course the inevitable result of this false statement is that in fact Beach Road has and will continue to suffer undue concentration of STRs. At the May 16th City Council meeting, staff finally acknowledged that the 196 Beach Road homes accounting for 27 grandfathered STRs (31 at the time of the *de novo* hearing) should be categorized as non-HOA housing units. The City also revealed that new permits have been requested for an additional 17 STRs on Beach Road. This community will now have 44⁹ STRs within 196 homes. For every 3 ordinary residences with zero lot lines, 1 will be an STR.

Beach Road residents have never been consulted about their wishes with regard to the STR program, nor were they advised of the potential impacts coming to their neighborhood. Unlike *real* HOA's, this community was never given a choice. Beach Road will end up with at least a 22% saturation rate (applications have not yet been received for all 115 CZ STR permits allowed).

4. The City Did Not Disclose that in reality, most HOAs ban STRs

5. Monarch Hills Status Withheld

Similarly, there was no mention of the fact that the other major community with a large concentration of STRs, Monarch Hills HOA, only allows STRs of 7 days or greater. There was no disclosure of this fact nor recognition that fifteen 2-day rentals/month next door to a residential home has a far greater impact than four 7-day rentals/month. This information is very significant to non-HOA residents who have never enjoyed the same status as their fellow citizens in HOAs and were never offered the option of 7-day rentals. The impact of saturation of STRs in such a small slice of the City was never a City concern, and has certainly never been discussed with residents.

⁷ Beach Road was still being treated as an HOA at the Planning Commission hearing on 4/24/23.

⁸ See attachment 3 – letter of Roger Malcolm, April 23, 2023

⁹ Ironically, in one version of the Program documented in a [letter](#) from John Ciampa to the CCC, it appears the City Council recognized the potential for undue concentration on Beach Road, restricting STRs to 35 units. This provision was later withdrawn and there is nothing in the final program to prevent oversaturation there.

The Community of Monarch Hills contains some of the more affordable housing units in Dana Point. This HOA originally hosted 31 grandfathered STRs in 349 units. New permit applications representing 19 new STRs for Monarch Hills have been received. If all are granted, the community will forfeit a total of 50¹⁰ units to tourist accommodation – units that could have otherwise been rented to long term tenants. It is unclear how many renters will be ousted as a result of the issuance of 15 new non-primary STR permits in this community.

Monarch Hills will end up with a 14% saturation rate. Both the City and the Commission are well aware that Dana Point is experiencing an acute housing shortage and has not fulfilled its RHNA quotas for affordable housing.¹¹ This data was relevant to the Commission, which has always been concerned with maintaining housing stock, and it should have been disclosed at the *de novo* hearing.

6. The City Failed to Disclose that almost all HOA's ban STRs

During the CCC [appeal hearing](#) of September 7, 2022, both Mayor Muller (at 5:06:52) and City Attorney Patrick Munoz refer to “91%” of STRs being in HOAs. The Mayor stated that “60 of 69 STRs are in HOA's” and “*we don't have a real problem with HOA's eliminating them*”. The City Attorney (at 5:08:00 and 5:10:53) claimed the City “*doesn't really know*” which HOAs prohibit them and which don't, and stated that he was aware of only 1 HOA that has prohibitions because of a lawsuit that involved the City. He also referred to the Corniche area (Monarch Hills) that seemed to be actively hosting STRs but did not mention Beach Road.

The City Attorney intimated that the City does not have access to HOA CCR information. However, per the [Orange County Register](#) any member of the public can access such records since “*they are a public notice. Anybody can obtain a copy by either seeking it from the local County Recorder or by contacting your favorite title insurance company's customer service department.*” Ironically, the City had no problem contacting HOAs to ask if they wanted to legalize their CCRs. They could have simply asked for a copy of CCRs directly from the HOAs had they wanted to provide accurate information to the public and correct the record with the CCC.

The reason for the City's deliberate mischaracterization of Beach Road as an HOA and failure to disclose the extent of HOAs with CCRs banning STRs is obvious. It wanted to assure the CCC that HOAs were bearing the lion's share of STRs; that there was no

¹⁰ It is possible that a few of the STRs attributed to Monarch Hills may be located in one or two other small HOAs. The City has been asked for, but failed to provide a breakdown of STRs by HOA, but it appears that the vast majority of these units are in the Monarch Hills community.

¹¹ <https://documents.coastal.ca.gov/reports/2022/11/W13b/W13b-11-2022-corresp2.pdf> appellants Tarantino/Wilson/Zanides correspondence

reason to concern themselves about HOA bans; and that there would be no undue concentration within non-HOA residences in the CZ.

At no time during the de novo hearing or in its written submissions to the CCC did the City staff disclose that almost all of its (then 28, now 52 or 53) HOAs ban STRs. In fact, the staff report asserts that 91% of STRs were located in HOA communities. This was, and is, simply not so, and it tacitly implied that HOA's were shouldering the bulk of the STRs. The staff claims in the 4/24/23 [Planning Commission Staff Report](#) (P. 5) that:

*“Notably, the 11 HOAs that have applied for CDPs currently ban STRs. As such, the Planning Commission’s action, if it were to approve the requested CDPs, would not result in a change or a loss in visitor-serving accommodations or ability to access the coast. **Rather, these pre-existing prohibitions were one of the facts that led to the City and the CCC’s determination that the City’s STR Program struck the appropriate balance.**”* (Emphasis added).

The staff suggests that the CCC knew “of these pre-existing prohibitions” that most of the HOAs banned STRs when this is simply not so. That information was never disclosed to the Commissioners. To suggest that the Commissioners somehow thought having most of the HOAs banning STRs in 2/3 of the CZ would somehow create an “appropriate balance” is preposterous.

In addition, the City asserted to the CCC that 10 of the (then) 28 HOAs allowed STRs. In a [letter](#) to the CCC on 9/1/22, former Mayor Joe Muller inexplicably claimed that “*approximately half of the HOAs located in the Coastal Zone allow STRs.*” If the City’s written statement to the CCC that 9 STRs actually allow STRs and they represent 639 housing units is accurate, there are actually a total of 3,577 housing units (4,216-639) or 85% of HOA housing units in the CZ that can *never* become STRs. This is a significant and material fact. Had the City calculated reliable, accurate data, and had it been disclosed to the CCC, Commissioners would have understood that STRs would indeed be concentrated in a fraction of the CZ in violation of CCC regulation 30214.

At the time of the De Novo hearing, the vast majority of HOAs had CCRs banning STRs, but none of the HOAs had legal bans (i.e. CCRs which restrict STRs that predated the Coastal Act). This led CCC staff to impose [Special Condition 1](#) (page 4) which required the City to inform the HOAs of the need to legalize their bans through CDPs.

While the City was required to inform HOAs of the status of their bans, the false assertion that most of the STRs were located in HOAs plus the testimony of City officials at the Appeal hearing implied that few CZ HOAs had bans.

7. Effects of using a CDP rather than an LCPA to enact the City's STR Program

Starting on February 28, 2023, the City began a concerted effort to legalize HOA bans. They held a public workshop for HOAs; reduced normal CDP fees by 90%; and engaged City staff to draft their CDPs, batching them for efficient passage through the Planning Commission. The staff first contended in a [staff report](#) for the March 7, 2023 City Council meeting that the reduction in fees was justified because the CDPs benefited the entire community. (Staff Report at 2). When citizens pointed out that this policy would actually harm the rest of the CZ residents by concentrating STRs, 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 was also misleading.

There is a clear and lengthy record of City officials repeatedly and publicly expressing their interest in honoring HOA bans. In this case, city staff did not merely "facilitate" the applications for CDPs but shouldered virtually the entire burden for the first 11 applicants (6 more are in process). Staff arranged public notices, created the CDP language, produced a staff report and legal documentation totaling 174 pages, and were the sole presenters of information at the [Planning Commission Hearing](#). The applicants never made an independent submission in support of their CDP requests. This advocacy is far in excess of what the City typically has done for any other person or groups requesting a CDP.¹² The sole reason to promote these CDPs is to "legalize" STR bans within the coastal zone, guaranteeing that primarily non-HOA neighborhoods (with the exception of Monarch Hills) will absorb STRs.

As of this writing, the Planning Commission has already unanimously approved CDPs for 11 HOAs representing 832 housing units in the CZ. Another 6 representing 615 units are on the way. More will very likely follow.¹³ City Councilmembers have consistently and publicly expressed their support for upholding STR bans since this issue came to the forefront in 2014 and publicly reiterated their strong support of that policy as recently at the Council [meeting](#) on May 16, 2023.

¹² Not only did the City carry the burden of CDP applications for the HOAs, at least one Council member claimed the city was "neutral". In an email (see Attachment 4) to citizens, Mayor Pro Tem Federico said *"To be clear, the City is not taking any position on whether any HOA should allow or restrict STRs. We're simply creating a process (and a fee) for an administrative CDP..... The reality is that many HOAs already restrict STRs. Many do not. This fee and process isn't meant to change that."* This statement reveals the Councilman's true intent. Apart from the fact that there is no support for his claim that "many" HOAs do not ban STRs (actually, most do), the City is clearly NOT NEUTRAL. Rather, the City is plainly taking a position: it supports STR bans in HOAs, to the detriment of non HOA residents in the CZ to whom the Council owes the same duty to protect as it does HOA members. Second, his statement that this is merely an "administrative CDP" is equally significant: it obviously reflects what this councilman intended all along, namely to "administratively" grant the CDPs to protect the HOAs from STRs.

¹³ The City has tacitly discouraged STR applicants from HOA areas. The STR 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 on a first come/first served basis.

Moreover, in processing these CDPS, the staff failed to give statutory notice to the residents most severely impacted by the passage of these CDPs – mainly those living in the three areas representing the other 1/3 of the CZ, (Monarch Hills, Beach Road and small non-HOA neighborhoods) which will be permanently impacted by increased concentration as HOA bans are approved. Dana Point Municipal Code Section 9.61.050(5) requires that notices may be provided to “*properly inform those persons who may be affected*” but that did not seem to apply to residents outside of HOA zones.

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 residents other than those in HOAs 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 ever considered at all, despite repeated pleas for such consideration in multiple public meetings and letters.

When the authors of this revocation request attempted to appeal¹⁴ the HOA CDPs to the City Council on the grounds that they resulted in an undue concentration of STRs in a small segment of the CZ, they were told they would not be allowed to present an appeal of the entire batch. Rather, they would have to pay a fee of \$250 for *each* CDP, along with public noticing fees (\$91 for the one CDP in the appeal zone they could afford to appeal – an HOA with only 34 units). Estimated costs for the first batch of 11 CDPs would have been \$4,300 (\$250 each plus about \$2 per household for noticing). While HOAs enjoyed a 90% fee discount and batched processing, the same courtesy was not extended to appellants from the less favored non-HOA zone. Given that there are 53 HOAs in the CZ and most appear to ban STRs, and given that the City would not allow batch appeals even though the CDPs will be passed in batch decisions, the cost of appealing this over saturation became cost prohibitive and was effectively blocked.

At the [May 16, 2023 Council meeting](#), Councilman Villar made a motion to request reconsideration of the cap for the CZ by the CCC due to the severe impact on certain communities representing only 1/3 of the CZ. When no Council member would second the motion, it failed. Since this confirmed that the appeal to City Council would have no chance, it was withdrawn.¹⁵

We observe as well that even if some of the HOA CDPs could be appealed, most are outside the appeal zone, and are not appealable at all. This is a consequence of the

¹⁴ See Attachment 5, May 8, 2023 Appeal of Planning Commission Decision approving HOA CDPs

¹⁵ Fees were levied anyways. Despite Ms. Nelson telling the City Clerk she would be out of the country on 6/8/23, the chosen date for the appeal, the City decided to go ahead with the scheduled hearing and process the public notices without checking whether Ms. Nelson would be available for remote testimony. (She would not have been available).

City using a CDP instead of an LCPA for its STR program.¹⁶ Citizens learned it is expensive and awkward to appeal the consequences of the STR Program without appealing each HOA CDP, and so far, most are not located within the CCC appeal zone. The City Attorney had claimed the CDP process was more “flexible.” Citizens have discovered that it actually serves as an effective block of citizens’ efforts to appeal the program to both the City Council and the CCC.

B. INACCURATE, ERRONEOUS OR INCOMPLETE INFORMATION WAS MATERIAL TO THE COMMISSION’S DECISION

1. The City has engaged in a comprehensive scheme to protect HOAs while concentrating HOAs within a small segment (1/3) of the homes in the Coastal Zone

HOA residents in Dana Point are generally regarded as a privileged class that is treated to far more consideration and deference from the City Council than those in non-HOA neighborhoods. The latter simply don’t seem to matter – at least not on the issue of STRs. The Council consistently and openly honors the “choice” of residents to live in HOAs but has no concern for non-HOA residents who relied on their residential zoning to protect them from commercial activity and have never been given a “choice” about protecting the residential nature of their neighborhoods. In its eagerness to protect the HOAs in 2/3 of the CZ, the City caused undue concentration in the remaining 1/3. When the opportunity arose to remedy that situation, 4/5s of the Council would not take that opportunity by seconding Councilman Villar’s motion.

The erroneous information provided to the Commission, along with information withheld was consistent with the goal of protecting HOAs and instead, concentrating STRs in 1/3 of the CZ, with no regard for the impact on the residential nature of neighborhoods, nor on the extremely scarce housing stock in the city.

- The city has a history of protecting HOAs and failing to protect non-HOA communities;
- The City’s initial ordinance eliminated STRs from HOAs unless specifically allowed;

¹⁶ We are aware that Appellants Tarantino and Zanides in the underlying STR De Novo hearing objected to the CCC’s first attempt to enable an STR program via CDP in a City that had an LCP. Aside from the inadequacy of notice described above, this is just one example of why that may have been unwise: unlike a *construction project which affects only a few neighbors*, a *CZ-wide program affects the entire community* and should be handled via an LCPA. Enacting the program via CDP allowed Dana Point to permanently ban STRs in many HOAs without any recourse to the CCC due to both the cost of appeals and the small number of HOAs in the appeal zone. That is why, among other reasons, we are seeking revocation of the City’s CDP permit here.

- When made aware of the fact that these protections were not 'legal' in that they predated the Coastal Act, to circumvent the Coastal Act and frustrate the CCC's desire to avoid undue concentration changing the character of neighborhoods, the City took the following steps:
 - a. It submitted wildly inaccurate HOA numbers which had the effect of minimizing and obfuscating the potential for undue concentrations.
 - b. It failed to disclose that it fully intended to process and adopt CDPs which would protect any HOA that wanted protection.
 - c. It initially protected HOAs by requiring that those seeking STR permits obtain a letter from their HOAs to certify they were allowed subject to the Coastal Act before a permit could be granted. (Since permit numbers are limited and permits are issued on a first come, first served basis, any built-in delays naturally move STR owners in HOAs down the list.).
 - d. When that plan was made public, and former Councilman Paul Wyatt pointed out that HOAs were not legally protected against a lawsuit by a resident seeking an STR permit¹⁷, the City counseled and induced HOAs to legalize their bans by inviting them to file CDPs, reducing fees by 90%, and drafting and presenting the submissions to the Planning Commission on their behalf.
 - e. When citizens attempted to appeal wholesale banning of STRs in HOAs because they created an unacceptable concentration in non-HOA neighborhoods, the City refused to allow the appeals to be batched (as they had for the HOAs) and insisted on charging individual fees that were too burdensome for residents to afford to move forward with the appeals.
 - f. It failed and refused to produce accurate data until pressured by persistent residents. Verifiable, accurate and detailed information has still not been provided .
 - g. It has yet to produce oft requested data for the (likely significant) number of housing units in Section 8, mobile homes and other affordable housing units and long term rental apartment units which can never become STRs.

2. Staff intentionally distorted the CCC's CDP ruling to suggest concentrating HOAs in the small non-HOA sector would be consistent with the Coastal Act

¹⁷ See Former Councilman Paul Wyatt's letters to the Dana Point Times, <https://www.danapointtimes.com/letter-to-the-editor-short-term-rentals-are-coming-to-your-hoa/> and <https://www.danapointtimes.com/letter-to-the-editor-short-term-rentals-in-your-hoa-chatter-proven-accurate/>

The staff's deception does not stop there. They used statements in the CCC's ruling (which was based on the City's grossly inaccurate data and significant and relevant omissions) as a basis for justifying CDP bans:

*"The CCC's November 15, 2022 Staff Report for [A-5-DPT-22-0038](#) 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)."*

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."* ([Planning Commission 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 knew the true extent of HOAs banning STRs in the CZ; that HOA CCR bans on STRs would remain; and that if they did, the concentration of authorized STRS would still 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."* ([Planning Commission Staff Report](#) at 5).

This statement is extremely misleading because it neglects to mention that the CCC's staff report was based on the City's inaccurate data and material omissions. The Commissioners had no way of knowing that 2/3rds of the CZ would be exempt from STRs and cause an undue concentration in the remaining 1/3. information was sufficiently obfuscated that Commissioners were not led to ask the questions that would have revealed the reality of STR distribution in the CZ.

First, **it is highly unlikely that the CCC would have made a "determination" that continued and extensive STR bans by HOAs would "strike the proper balance" had it known that HOAs with banned STRs represented two thirds¹⁸ of the**

¹⁸ ((4,216 HOA units - 639 purported to allow STRs)/5,737 total housing units).

housing units in the CZ. The CCC Commissioners were not advised that the STR cap they approved would apply solely to three areas, Monarch Hills, Beach Road and a small segment of non-HOA properties.

To the extent the CCC staff addressed the issue, the staff report itself did NOT accept the “existing prohibitions of STRs in HOAs” (because they were never accurately defined) , 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, the CDPs have been filed in response to that clarification, i.e., to render them “legal.”

C. HAD THE COMMISSION BEEN PROVIDED ACCURATE INFORMATION, IT WOULD HAVE IMPOSED ADDITIONAL OR DIFFERENT CONDITIONS OR DENIED THE PERMIT

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 the true extent of potential HOA bans, nor their intention to encourage the removal of 2/3rds of households from the denominator of the saturation equation by encouraging and approving bans through CDPs. The City failed to provide accurate data on housing units in HOAs (they were off by 66%), but instead led the Commissioners to believe that HOAs were already well represented because they represented “91%” of existing STRs. **Had they done so, the CCC would never have agreed to what will effectively be a punitive concentration of STRs in Dana Point’s CZ. Nor would it have agreed to concentrate the distribution of STRs in only two communities and other non-HOA streets representing a combined total of 1/3 of the Coastal Zone.**

At the De Novo hearing on November 16, 2022, the CCC Commissioners and staff appeared to completely understand appellants’ two key points:

1. Dana Point has an extraordinary number of existing tourist accommodations at every price point (almost 2,000 with more on the way); and

2. Dana Point has extremely scarce housing stock, with a severe shortage of affordable housing in particular. The City has not been able to meet its RHNA quotas for affordable housing.

In recognition of these two factors, Commissioner Harmon started the discussion of caps on STRs¹⁹ by suggesting a cap of 1% in the CZ (57 units) which she later expanded to 1.2% to get to 66 existing grandfathered units. She asked if staff was okay with that and staff concurred. (See transcript of hearing in Attachment 6). Chair Brownsey then asked City Staff (Brenda Wisneski) if she was okay with that. She suggested 1.5% or 85 due to demand for permits. Mayor Muller interrupted to insist on 115 (2%) saying he didn't have the authority to approve less than that (even though he had had no problem with the authority to negotiate and approve a significant change in a legal aspect of the program). The Commissioners reluctantly agreed to a fixed cap of 115 STRs in order to "keep the train moving", and the fate of the 1/3 segment of the Coastal Zone without STR bans was sealed – unfortunately based on grossly inaccurate data and material omissions.

The CCC Commissioners thought they were reluctantly approving a 2% saturation rate for a City that is the poster child for coastal access. It had no idea that the effective saturation rate would be much greater – by our math, 7% or greater overall; 14% in Monarch Hills; and 22% on Beach Road.²⁰ The denominator in these equations has not yet been adjusted to remove homes that can never become HOAs – section 8, mobile homes and other affordable housing units and long term rental apartment units – despite repeated requests for such data. The impact on a very small number of homes in Dana Point's CZ – in a city with a severe housing shortage that already provides more tourist accommodations than any other SoCal city, is unacceptable by any reasonable measure. If one adds to this the facts that:

1. Every legal STR in Dana Point is usually accompanied by 1 to 2 additional illegal ones (see De Novo hearing correspondence/Tarantino), and
2. The City's no cap policy for "primary STRs" (where homeowners can rent their homes while on vacation for up to 60 days) is proving strangely popular in Dana Point but is rarely acceptable to most cities because it is almost impossible to regulate effectively,

the ultimate concentration in the small portion of Dana Point's CZ subject to STRs will be devastating.

Given its goals of fairness and sensitivity to impacts on housing and residential communities, we are convinced that, had accurate information been provided to this Commission, it would never have agreed to concentrate so many STRs in 1/3 or less of Dana Point's CZ, causing saturation rates that are way beyond what has been granted to other cities.

¹⁹ See attachment 6 - Transcript of CCC discussion of Saturation Rates

²⁰ See attachment 1 – the Math – calculations of Saturation Rates

The Commission may have requested that Dana Point apply a 1- 2 percentage of STRs to verifiable housing units eligible to become STRs, or it may have recognized the City's significant existing tourist accommodations and scarce housing stock and simply allowed unlimited home stays and allowed existing STRs to operate until they naturally expired. It also may have asked the Mayor to return to the City Council and discuss the acceptability of a lower concentration rate (something that any other City that cared for non-HOA communities would have gladly embraced) rather than insisting on an arbitrary number suggested by the City Attorney in a late night meeting as something that "would be acceptable to the CCC". It would be much more equitable to either restrict STRs to homestays only, or establish a percentage cap based on the actual verified number of homes that can reasonably become STRs. Further, had the CCC anticipated the rapid and piecemeal banning of STRs in HOAs and the fact that resident appeals of such CDPs would be effectively blocked by the City, it likely would have required the city to establish its program through a traditional (and appealable) LPCA.

It is certain that this Commission would never have burdened such a small number of homes (1/3 of the CZ or less) with such a devastating concentration of STRs, particularly in a town like Dana Point with scarce housing and prolific coastal access.

We respectfully urge you to revoke this permit and grant us the reasonable STR concentrations our City Council seems unable or unwilling to extend to particular residential neighborhoods in Dana Point.

Respectively submitted,

Toni Nelson

Roger Malcolm

Attachments:

1. The Math – Saturation Calculations
2. Emails Querying Housing Unit Data Supplied to CCC
3. Letter of Roger Malcolm 4/23/23
4. Emails asserting City's neutral position on HOA bans
5. Appeal of Roger Malcolm and Toni Nelson dated May 8, 2023 (subsequently withdrawn due to Council comments at May 16, 2023 meeting, agenda item 10.)
<https://www.youtube.com/watch?v=p92oE3L-MYk&t=11256s>
6. Transcript of CCC Discussion of Saturation Rates at De Novo hearing

ATTACHMENT 1

The Math – Saturation Calculations

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)
Mobile Homes (not STR eligible per City program)	(169)
Monarch Hills + (Could be a little higher. No data)	<u>349</u>

Total STR-eligible homes* 1,701

* includes Section 8 and other affordable units or long term rentals that cannot become STRs

$115/1701 = 7\%$ saturation (or worse*)

Saturation Rate acceptable by Commission:	1.2% - 1.5%
Saturation Rate Approved by CCC (on City insistence):	2%
Overall Saturation Rate in CZ	7%
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%

ATTACHMENT 2

Emails Querying Housing Unit Data Supplied to CCC

Mail

housing units in CZ

Toni Nelson <tonidn1@gmail.com>

To: Johnathan Ciampa <JCiampa@danapoint.org>

Wed, Mar 8, 2023 at 8:34 AM

Bcc: [REDACTED]

Hi Jonathan - We are having a terrible time figuring out how you came up with the 5,664 housing units in the coastal zone (the number supplied to the CCC in connection with the STR program).

The map is very hard to read, but when we remove the 2,648 HOA units (presumably you verified these numbers with the HOAs themselves) there should be 3,016 units remaining. We looked at maps and title reports and we came up with 1,529 non-HOA units in the CZ including all the trailers in Doheny Village. Is there another pocket of homes somewhere that we're missing?

It would be great if you could give us a list of streets. We added Beach Road, the bluff side of Camino Cap, Palisades, Doheny Place, all of DV (number supplied by Belinda) and then looked at title reports for the streets in Lantern District south of La Cresta. There don't appear to be any homes not in HOAs in District 1. Are there more somewhere?

Can you help with this? What are we missing?

Thanks and best regards,

To: Toni Nelson <tonidn1@gmail.com>

Wed, Mar 8, 2023 at 8:57 AM

It will be interesting if and how he responds.

Sent from my iPhone

> On Mar 8, 2023, at 8:34 AM, Toni Nelson <tonidn1@gmail.com> wrote:

>

>

Toni Nelson <tonidn1@gmail.com>

To: Johnathan Ciampa <JCiampa@danapoint.org>

Tue, Mar 14, 2023 at 8:38 AM

Hi Jonathan. You haven't responded to this. Do I need to ask for this information as a Public Records Act request? Please let me know.

We want to understand how you calculated the housing unit data submitted to the CCC. When they decided on density of STRs in the coastal zone they were relying on these figures. This data is the key to the concentration that will be allowed in our neighborhoods.

Thank you,

Johnathan Ciampa <JCiampa@danapoint.org>
To: Toni Nelson <tonidn1@gmail.com>

Tue, Mar 14, 2023 at 5:30 PM

Toni,

Sorry I missed your email earlier as I was out of the office the last few days.

I used the City's GIS to obtain the number of housing units in the coastal zone (included units in HOAs).

John Ciampa
Senior Planner
City of Dana Point
949-248-3591

Toni Nelson <tonidn1@gmail.com>
To: Johnathan Ciampa <JCiampa@danapoint.org>

Tue, Mar 14, 2023 at 7:03 PM

[REDACTED]

Can you tell me how to access that John? I can't figure out where those other housing units are located.

Thanks so much.

Toni Nelson <tonidn1@gmail.com>
To: Johnathan Ciampa <JCiampa@danapoint.org>

Wed, Mar 15, 2023 at 3:28 PM

[REDACTED]

Hi John. I found the GIS map but it's not apparent how one would count housing units from this. It doesn't provide any totals that I could see but merely shows the CZ boundary line. Is there a filter or some other means to help summarize the totals? How exactly did you calculate those numbers?

Thanks so much,

On Tue, Mar 14, 2023 at 5:30 PM Johnathan Ciampa <JCiampa@danapoint.org> wrote:

Toni Nelson <tonidn1@gmail.com>
To: Johnathan Ciampa <JCiampa@danapoint.org>

Thu, Mar 23, 2023 at 9:42 AM

[REDACTED]

Hi John. You haven't responded to this. Might it be possible for [REDACTED] and I to come in and look at it with you and maybe you can provide some guidance?

Thanks so much,

Johnathan Ciampa <JCiampa@danapoint.org>
To: Toni Nelson <tonidn1@gmail.com>

Thu, Mar 23, 2023 at 10:20 AM

[REDACTED]

Toni,

We can meet and go over your approach and my method of identifying the units. Let me know when you are able to come in next week to meet.

Toni Nelson <tonidn1@gmail.com>
To: Johnathan Ciampa <JCiampa@danapoint.org>

Thu, Mar 23, 2023 at 12:51 PM

[REDACTED]

That's great John! Thank you! How is Tuesday at 1PM?

Johnathan Ciampa <JCiampa@danapoint.org>
To: Toni Nelson <tonidn1@gmail.com>

Thu, Mar 23, 2023 at 4:14 PM

Toni,

1pm on Tuesday works. I will meet you and [REDACTED] at the planning counter.

Toni Nelson <tonidn1@gmail.com>
To: Johnathan Ciampa <JCiampa@danapoint.org>
[REDACTED]

Thu, Mar 23, 2023 at 4:55 PM

Sounds good. See you then! Thanks John.

Toni Nelson <tonidn1@gmail.com>
To: Toni Nelson <tonidn1@gmail.com>

Sat, May 20, 2023 at 1:12 AM

ATTACHMENT 3

Letter of Roger Malcolm 4/23/23

April 23, 2023

TO: Dana Point Planning Commission

FROM: Roger Malcolm, non-HOA resident of Dana Point Coastal Zone

RE: Meeting of April 24, 2023

Agenda Item No. 3

Dear Commissioners:

I urge you to reject the proposal to grant Coastal Development Permits (CDPs) to permit Homeowners Associations (HOAs) to ban short term rentals (STRs) within their associations, for four reasons.

First, it unfairly places an outsized burden of STRs on non-HOA neighborhoods. Having authorized STRs, this Commission and the City Council should 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.

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, mainly in Capistrano Beach, and particularly on Beach Road.

*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 should take no part in this exercise at all. The City has previously insisted that it 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.) But there is a clear and long-time record of City officials repeatedly and publicly expressing their interest in honoring HOA bans. Here the city staff has not merely facilitated the applications for CDPs but has shouldered virtually the entire burden for the applicants' CDPs. This advocacy is far in excess of what the City typically has done for any other person or groups requesting a CDP. But the City has a duty to all of its citizens, not solely those in the HOAs.

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.

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.]

This is significantly different from what the staff told the CCC. In October of 2022, it stated to 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.] Now, City staff admits that there are really only 1,300 housing units in non-HOA communities. The staff does not even advert to this difference, much less explain it.

We note that in an email dated March 8, 2023, Mr. Ciampa was asked by coastal zone resident, Toni Nelson 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 or 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 28th 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, 2023²¹.

²¹ Ms. Nelson and another resident made their own review of CZ residential units and estimated a number far smaller than the 3,016 originally suggested by Ciampa.

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 [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. But Beach Road 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 letter from Beach Road Manager Donal Russell.]

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 30% 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).

This, too, is highly misleading in that it implies that the CCC accepted that HOA CCR bans on STRs would persist. But that is not so. Quite the contrary. In fact 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.” Per Special Condition 1, the City should modify the final STR Program once legal HOA bans are known. They should certainly not issue new permits starting May 1st as planned, since the special condition requires modification that will almost certainly change the cap.

Even if the CCC staff's comments could be interpreted as the city claims, which it cannot, they were based on the city's false 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 70% 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 Capistrano Beach and particularly, Beach Road. 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 1,000.²² 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.*

²² 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.

We therefore respectfully request that if this Commission is actually going to entertain this proposal at all, it continue this hearing for sixty days and direct the staff to submit numbers with supporting documentation with which the numbers can be verified. The only way to accurately measure the degree of concentration of STRs in a particular area is to count the number of housing units that could potentially become STRs.

3. ***This Proposal 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), and reviewed the STR saturation rates it approved in other coastal cities. The approvals 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 hearing²³, Commissioner Harmon first suggested a cap of 1% (55 STRs) and then modified that to 1.2% or 66⁴ 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 Wiesnewsli 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.

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 nonhuman communities.*

Given its sensitivity to the impact STRs can have on residential neighborhoods, it is critical that this Commission 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).

²³ https://cal-span.org/meeting/ccc_20221116/ discussion begins at 5:20:59 ⁴ 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.

4. *The City Should Take No Action on the CDP's Requested Without Adjusting the Existing CDP Numbers*

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 explicitly do was decide that certain members of the community deserve special protection, and others do not. In the absence of a city wide vote it is inappropriate for this Commission (and if appealed, the City Council), to grant this CDP without also adjusting concentrations of STRs in the non-HOA areas .

This "staff report" should be withdrawn in its entirety. 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. The city staff has inappropriately arrogated unto itself the responsibility for representing the CDP applicants before the Planning Commission. It has produced 174 pages of legal argumentation on behalf of eleven HOAs. The staff has included no submissions by the HOAs themselves, but is carrying the burden by itself.

Significantly, the sole reason for the CDP offered by the city staff is that the HOAs want their bans to be "legal".

There should be no position taken by the City, this Commission, or the City Council. 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.

Conclusion:

This Commission should deny the CDP requests identified in Agenda Item 3 on the merits as grossly unfair to non-HOA residents in the Coastal Zone as they will result in an undue and unfair concentration of STRs in certain areas, but particularly in Capistrano Beach.

If the Commission is inclined to consider the issue on the merits, it should defer the matter until such time as the city staff can produce and document accurate, verifiable statistics on number of residential units in the city, particularly in the Coastal Zone, 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 will never be allowed to become STRs. Then and only then will this Commission have the information necessary to make an informed decision.

As a matter of fairness and basic ethics, 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.

I ask the Planning Commission to request that staff prepare detailed, documented and verifiable housing statistics, and consider these CDPs only if they are also accompanied by a request to reduce concentration in the tiny non-HOA Coastal Zone community.

I further request that CDPs be granted only if they are also accompanied by a request that the City of Dana Point request a CDP amendment pursuant to Special Condition 1 to reduce the impact on non-HOA communities.

Sincerely,

Roger Malcolm

Roger Malcolm

Resident of non-HOA Coastal Zone

Capistrano Beach

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

From: Don Russell

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

To: 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 Wrk - 949-496-6576
drussell@capobay.org

One attachment • Scanned by Gmail

FILE COPY

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

December 14, 1959

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

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

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

Kate S. Barney	William H. Limebrook
Robert L. Clark	Lloyd J. Reich
Otto J. Falk	Lawrence W. Anderson
Dr. Castile	

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

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

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

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

Resolution No. 59-1354

1.

CLERK OF
COUNTY COURTHOUSE
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>
Kate S. Barney	39
Robert L. Clark	26
Otto J. Falk	27
William H. Linebrook	20
Lloyd J. Reich	43
Lawrence W. Anderson	9
Dr. Castile	5

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

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

28 That certain portion of Tract No. 797, as shown on a map
29 thereof recorded in Book 24, Pages 10 to 13, inclusive,
30 of Miscellaneous Maps, in the office of the County Re-
31 corder of the County of Orange, State of California, and
32 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:

2.

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 pro-
6 longation of the Southeasterly line of Block "A" of said
7 Tract No. 797; thence Southwesterly, along said prolonga-
8 tion and said Southeasterly line, to the irregular South-
9 westerly line of said tract No. 797 and designated approxi-
10 mate ordinary high tide line on said map of Tract No. 797;
11 thence Southeasterly, along said irregular Southwesterly
12 line to the Southeasterly line of said Tract No. 797;
13 thence Northeasterly along said Southeasterly line, to the
14 point of beginning;

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

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

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

Kate S. Barney
Otto J. Falk
Lloyd J. Reich

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 Michael L. Leaster
28 Deputy
29
30
31
32

ATTACHMENT 4

Emails asserting City's neutral position on HOA bans



STR CDP fee

Jamey Federico <JFederico@danapoint.org>

Tue, Mar 7, 2023 at 5:53 PM

To: Kim Tarantino <kim.a.tarantino@gmail.com>, Toni Nelson <tonidn1@gmail.com>

Hi Ladies,

Thanks for your comments. The staff report is a little unclear. It says the fee is "reduced" but it doesn't say what the fee is reduced from. It's only reduced from the city's advertised CDP fee of \$4628. That amount is set based on estimated staff time to process an application for a CDP for a full-blown construction development project in the coastal zone. An HOA CDP is basically two pieces of paper and probably will take something like two hours of staff time. Thus, staff estimated the full-rate fee would be \$500; it's not subsidized.

Thanks for your letters. Hopefully they helps explain.

Sincerely,
Jamey

Sent from my iPhone

Kim Tarantino <kim.a.tarantino@gmail.com>

Tue, Mar 7, 2023 at 6:53 PM

To: Jamey Federico <JFederico@danapoint.org>

Cc: Toni Nelson <tonidn1@gmail.com>

Thank you, Jamey, for the very quick response. \$500 still seems low considering the time and effort that's already been spent and future efforts to communicate to, process the applications, and assist the HOAs.

Best,

Kim

Jamey Federico <JFederico@danapoint.org>

Tue, Mar 7, 2023 at 8:54 PM

To: Kim Tarantino <kim.a.tarantino@gmail.com>

Cc: Toni Nelson <tonidn1@gmail.com>

Thanks Kim. I understand where you're coming from. Philosophically, the STR permit fees and the TOT will defray the costs of the staff time that went into creating the STR ordinance. While its coincident, the processing of a CDP to validate CCRs is independent, and the fee is designed to cover only the cost of processing the CDP. The two hours we estimated includes the share of staff time that went into the zoom meeting and researching the fee policy.

To be clear, the city is not taking any position on whether any HOA should allow or restrict STRs. We're simply creating a process (and a fee) for an administrative CDP, something we've never really had to do before, in order to comply with the CCC's direction that came out of the appeal.

The reality is that many HOAs already restrict STRs. Many do not. This fee and process isn't meant to change that.

Sincerely,
Jamey

Sent from my iPhone

??
k f

ATTACHMENT 5

Appeal of Roger Malcolm and Toni Nelson dated May 8, 2023 (subsequently withdrawn due to Council comments at May 16, 2023 meeting, agenda item 10.) <https://www.youtube.com/watch?v=p92oE3L-MYk&t=11256s>

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.²⁴

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 211 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.

²⁴ 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.

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.

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 28th 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, 2023²⁵.

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.

²⁵ 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.

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).

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 1st] 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 nonHOA 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 1,000.²⁶*

²⁶ 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.

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

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).²⁷ 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 hearing²⁸, Commissioner Harmon first suggested a cap of 1% (55 STRs) and then modified that to 1.2% or 66⁶ 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

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.

²⁷ 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.

²⁸ https://cal-span.org/meeting/ccc_20221116/ discussion begins at 5:20:59⁶ 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.

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)

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 20th, 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 nonHOA 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.

ATTACHMENT 6

Transcript of CCC Discussion of Saturation Rates

November 16, 2022

https://cal-span.org/meeting/ccc_20221116/

Begins at 5:20:59

Commissioner Harmon:

Thank you Madame Chair. I just wanted to suggest in my comments earlier I had requested that the Commission consider a 1% cap on number of STRs that's the equivalent of 1% and it looks like if we set that number at 66 instead of 115 that's 1.2% and that seems to fit well within this landscape so that's what I would suggest 1.2% and 66 is the cap.

Chair Brownsey: *Ok, Staff, can you respond to that now, go to Ms. Wiesnicki?*

Head of CCC staff: *I think staff would find that acceptable*

Brownsey: *Ms. Wiesnicki, is that acceptable?*

BW: *That would not allow any additional capacity in the coastal zone, to just to ensure the Commission is clear with that. We would be more accepting of perhaps a 1.5 so that we can accommodate some increased demand that we have. As you know, the permits that are in place now, those were issued in 2016 we certainly have some interested parties that want to have the permits.. 1.5 would be our hope.*

Brownsey: *So 1.5 gets us where?*

BW: 85

Brownsey: *How much?*

BW: 85

Muller: *I'm sorry but, I'm sorry to jump in here, this is Mayor Muller, but the Council has not discussed that number. We don't have the authority to agree to that today. That is lower than anything we had discussed. And I don't know that we have the authority to agree.*

Brownsey: *Good point. Given that, Commissioner, we will have a report back in 3 years. I'd hate to see this go away, for that.*

Harmon: *Look, I won't stop the train. The train is moving. I think the broader point still stands and I still want to go on record once again, maintaining my ongoing discomfort and admonishment that we all really tried to consider the long-term impacts.*

Exhibit 2 – Executive Director's Determination

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

GAVIN NEWSOM, GOVERNOR

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CALIFORNIA 90802-4830
PH (562) 590-5071 FAX (562) 590-5084
WWW.COASTAL.CA.GOV



June 2, 2023

NOTICE OF PENDING REVOCATION REQUEST

Brenda Wisneski, Director
City of Dana Point, Community Development Department
33282 Golden Lantern, Suite 209
Dana Point, California 92629

Delivered via electronic mail: BWisneski@DanaPoint.org

Re: Notice of Pending Revocation Request No. A-5-DPT-22-0038-REV

Dear Brenda Wisneski:

On May 22, 2023, the Commission's South Coast District Office received a request for revocation of Coastal Development Permit (CDP) No. A-5-DPT-22-0038 for the City of Dana Point's Short-Term Rentals (STR) Program, which the Commission approved on November 16, 2022.

Section 13105(a) of the California Code of Regulations states that grounds for requesting revocation are the following:

"Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application."

The Commission's Executive Director confirms receipt of Revocation Request No. **A-5-DPT-22-0038-REV**. The Commission's Executive Director has started review of the stated grounds for revocation in the pending request, finding that the stated grounds are not patently frivolous under Section 13106 of the California Code of Regulations. As such, the Executive Director shall continue to review the stated grounds for revocation and schedule the matter for a Commission public hearing pending a review of the merits of the revocation request.

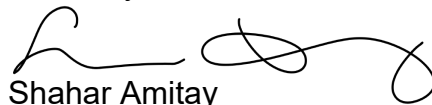
A copy of the pending revocation request and the relevant sections of the California Code of Regulations for CDP revocations are attached.

Sections 13104–13108 of the California Code of Regulations set forth the procedures for the Commission public hearing on the pending revocation request. No later than 10 calendar days prior to the scheduled hearing, Commission staff will transmit notice to the permittee and any interested persons with a copy of the staff report and recommendation on the merits of the request, as well as a formal hearing notice advising all parties of the relevant hearing procedures.

In addition to the opportunity for oral rebuttal during the Commission’s scheduled public hearing on the matter, the permittee is notified that a written defense may be submitted to the Commission’s South Coast District Office beforehand. As such, you may wish to make use of this time to prepare documentation in support of your position.

If you have any questions regarding the pending revocation request, or otherwise wish to discuss the permit revocation process in general, please contact me at shahar.amitay@coastal.ca.gov or at the phone number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shahar Amitay', with a stylized flourish at the end.

Shahar Amitay
Coastal Program Analyst

cc: Toni Nelson
Roger Malcolm
Mark Zanides
Kim Tarantino
Rebecca “Becca” Ayala, Better Neighbors LA

Exhibit 3 – Adopted Staff Report and Exhibits (CDP No. A-5-DPT-22-0038)

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

GAVIN NEWSOM, GOVERNOR

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
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WWW.COASTAL.CA.GOV



W13b

Appeal Filed: 07/27/22
SI Found: 09/07/22
Staff: S. Amitay – LB
Staff Report: 11/3/22
Hearing Date: 11/16/22

ADOPTED STAFF REPORT: APPEAL – DE NOVO

Application No.: A-5-DPT-22-0038

Applicant: City of Dana Point

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

Project Description: Establish a Short-Term Rental (STR) Program to regulate the permitting and operation for STRs within the Coastal Zone of the City of Dana Point.

Staff Recommendation: Approval with conditions.

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 (STRs) within the coastal zone. STRs generally refer to the short-term rental (30 days or less) of private dwelling units or a room in a home. The STR Program would regulate STRs in all residential areas of the City's Coastal Zone.¹ The City's proposed STR Program can be found in [Exhibit 2](#) and is the subject of the local CDP.

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

¹ 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.

overnight accommodations in the Coastal Zone to visitors 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 STRs, with respect to housing stock and affordability, community character, noise, and parking impacts.

Typically, STR regulations are contemplated by the Commission within the context of a jurisdiction's LCP.² Even though the City of Dana Point has a certified LCP, the City is seeking a CDP to establish limitations on this use within the Coastal Zone as an alternative to the Local Coastal Program Amendment (LCPA) process. The Commission has approved one previous STR program via a CDP, although for a City without a certified LCP (Torrance).³ Thus, this is the first time the Commission is reviewing a CDP for an STR program for a city with a certified LCP.

As currently proposed, 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).

The City estimates that there are currently approximately 139 STRs operating in the City, including approximately 69 in the City's Coastal Zone. Of those in the Coastal Zone, 66 STRs are non-primary, one is primary, one is home stay, and one is a multi-family home stay.

The City's proposed STR program would create a cap on non-primary STRs in the Coastal Zone of 115 permits.

None of the existing STRs are operating within mixed-use parcels. The City believes mixed-use parcels would be well suited to support renting to visitors who rely on the

² 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](#)), City of Laguna Beach ([LCP-5-LGB-19-0074-1](#)), and Long Beach ([LCP-5-LOB-20-0058-3](#)). Note that this is not a comprehensive list.

³ [CDP 5-20-0031](#) (City of Torrance).

City's public transportation infrastructure, commercial businesses, and recreational areas near the City core. Thus, a goal of the STR Program is to encourage STRs on mixed-use parcels. To encourage this type of STR, the City proposes to allow an additional 190 STRs on mixed-use parcels.⁴ There are two main mixed-use sections of the City's Coastal Zone located in the Town Center (inland of the Harbor, within a roughly triangular area bounded by Pacific Coast Highway, Del Prado, and Golden Lantern) and Doheny Village ([Exhibit 7](#)).

The City is proposing not to cap the number of STR permits for primary, home stay, and multi-family home stay STRs.⁵ The proposed resolution 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.

On July 27, 2022, the local CDP was appealed, and on September 7, 2022, the Commission found substantial issue due to concerns that the STR program could adversely impact existing and future long-term multi-family housing in the City's Coastal Zone. Since the City did not propose a cap for multi-family home stay STR permits, STRs could adversely impact the availability of long-term rental housing in multi-family areas. The Commission also found issue with the permit cap adjustment process for mixed-use non-primary STRs, which would serve to concentrate STRs in mixed-use districts of the Coastal Zone and could also have adverse impacts on long-term rental housing.

Sections 30221-30223 of the Coastal Act prioritize visitor-serving, commercial recreational facilities over private residential development regarding the use of private lands, as the former use enhances public opportunities for coastal recreation. Likewise, LUP (LUE) Policy 2.10 of the City's "1996" LCP and Section II.D of the Dana Point Specific Plan (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. These policies are not intended to adversely impact residential uses in the Coastal Zone; rather, it is important to balance visitor-serving recreational uses with private residential uses to ensure all coastal resources are protected. This balance is required by Coastal Act Section 30214. Nevertheless, the Commission finds that the Program is currently structured in a manner that does not adequately balance coastal public access and long-term residential opportunities. 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 in order to maximize public access in the Coastal Zone for all people, including visitors and long-term residents of Dana Point.

⁴ As proposed, as new permits are issued for STRs on mixed-use parcels, the number of available non-primary STR permits would be reduced by an equivalent number.

⁵ As proposed, as new permits are issued for primary, home stay, and multi-family home stay STRs, the number of available non-primary STR permits would be reduced by an equivalent number.

Staff recommends **APPROVAL** of the proposed project with five special conditions. **Special Condition 1** includes revisions to the City's originally proposed Program and is shown in ~~strikeout~~/underline in **Exhibit 3**. As conditioned, staff is recommending significant reductions in the number of year-round "entire unit" STR permits (non-primary, multi-family home stay, and mixed-use non-primary). Staff's recommended changes to the caps and categories of the STR Program are summarized by the following (additions are shown in underline and deletions in ~~strikeout~~):

STR Type	Proposed Cap
Non-Primary Short-Term Rentals	115 in the CZ
<u>Multi-Family Home Stay Short-Term Rental⁶</u>	
<u>Mixed Use Parcel Non-Primary STR⁷</u>	
Primary Short-Term Rentals	No Cap
Home Stay Short-Term Rentals	No Cap
Multi-Family Home Stay Short-Term Rental	No Cap
Mixed Use Parcel Non-Primary STR	190 City-wide

Staff is recommending additional changes to the STR program, including to specify the process to make changes to the program, to clarify that homeowners associations' bans on short-term rentals must be legally valid, and to remove references in the program to sections of the City's municipal code that have not been approved by the Commission.

The other four special conditions require: **2)** submittal of any changes to the Program for review by the Executive Director to determine whether a new CDP or CDP amendment is necessary; **3)** submittal of a study at the end of a 6-year established period, including specific criteria and metrics to track the performance of the Program ([Exhibit 4](#)), which may trigger the need for a CDP amendment; and **4)** reimbursement in full for all Coastal Commission costs and attorneys' fees that the Coastal Commission may be required by a court to pay in connection with the defense of any challenges of the approval, issuance, or implementation of this CDP.

⁶ Properties with five (5) or fewer residential units that are located in a structure or group of structures may only convert a maximum of one (1) unit into an STR, and properties with six (6) or more residential units that are located in a structure or a group of structures may only convert a maximum of twenty percent (20%) of the total number of residential units into STRs.

⁷ No more than twenty percent (20%) of the number of residential units in each of the City's certified Mixed-Use Districts shall be converted to STRs.

The City of Dana Point LCP was certified by the Commission on September 13, 1989. The proposed program applies to the entirety of the City of Dana Point's Coastal Zone. The entirety of the proposed program is subject to Commission appeal procedures pursuant to Coastal Act Section 30603(a). Therefore, the standard of review for de novo consideration of the project is conformance with the certified LCP and public access and recreation policies of the Coastal Act. The motion and resolution to approve the permit are on page 7 of this staff report.

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EXHIBITS

Exhibit 1 – Project Location
Exhibit 2 – Resolution No. 22-07-12-01
Exhibit 3 – CCC Strikeout/Underline Revisions to STR Program
Exhibit 4 – Rubric for 6-Year Study
Exhibit 5 – City of Dana Point LCP Areas Map
Exhibit 6 – Overnight Accommodations within Coastal Zone Vicinity
Exhibit 7 – Mixed-Use Zones Map
Exhibit 8 – STR Enforcement Data 2016-2022

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit A-5-DPT-22-0038 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit No. A-5-DPT-22-0038 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Revised Final Short-Term Rental (STR) Program.** BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall agree to implementation of the final STR Program consistent with Exhibit A to Resolution No. 22-07-12-01 ([Exhibit 2](#)), except that that the Program shall be modified pursuant to the revisions shown in [Exhibit 3](#).
2. **Future Changes to Short-Term Rental Regulations.** This permit is only for the Short-Term Rental (STR) Program described in CDP No. A-5-DPT-22-0038, as conditioned. Any changes to the aforementioned Program shall be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. If the Executive Director determines that an amendment is necessary, no changes shall be made effective until a permit amendment is approved by the Commission and issued by the Executive Director.
3. **Short-Term Rental (STR) Program Study.** BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall undertake the study in accordance with the rubric enclosed in [Exhibit 4](#) for the duration of six (6) years. The study shall monitor various elements of the STR Program, provide quantitative and qualitative data and trends for the 6-year period, and make recommendations for any appropriate changes to the Program.

Any proposed changes to the approved rubric shall be reported to the Executive Director. No changes to the rubric shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

Following the 6-year period, the applicant shall submit the study and any recommended changes for review and written approval of the Executive Director. If, based on the results of the study, which shall be reported out to the Commission at a scheduled public hearing, the Executive Director determines that adverse significant impacts to public access or community character are occurring as a result of the STR program, and/or the City determines that significant impacts to housing stock in the Dana Point Coastal Zone are occurring as a result of the STR program, the City shall seek an amendment from the Commission to revise the STR program to address these issues. No changes to the STR program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. **Liability for Costs and Attorneys' Fees.** BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the City of Dana Point agrees to reimburse the California Coastal Commission in full for any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay,

which the Coastal Commission may incur in connection with the defense of any action brought by a party other than the City of Dana Point against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval, issuance, and implementation of this CDP. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission, provided that if (1) the City is a party to such litigation, and (2) the Commission settles any such litigation without the consent of the City, the reimbursement provision above shall not apply.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

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 City's proposed STR Program can be found in [Exhibit 2](#).

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).

The City estimates that there are currently approximately 139 STRs operating in the City, including approximately 69 in the City's Coastal Zone. 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 a home stay, and one is a multi-family home stay.

The STR program establishes an overall cap of non-primary STRs in the Coastal Zone of 115 permits. The 115-permit cap was established by approximating the number of STR permits in existence when the City stopped issuing STR permits (i.e., there were 183 STR permits citywide in 2016), and applying a pro-rata assessment of the number of existing operating non-primary STRs in the Coastal Zone. While the 115-permit cap exceeded the true pro-rata number (which would have been closer to a 91-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 approved in the local CDP. Likewise, there would 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. There are two main small mixed-use sections of the City's Coastal Zone located in the Town Center (inland of the Harbor, within a roughly triangular area bounded by Pacific Coast Highway, Del Prado, and Golden Lantern) and Doheny Village ([Exhibit 7](#)).

Another goal of the STR Program is to encourage home stay, multi-family home stay, and primary STRs. The City suggests that when a property owner resides onsite, the STR is less likely to generate nuisance issues, and thus no cap for these categories is proposed. These categories collectively only account for approximately 4% of the existing STRs operating within the City's Coastal Zone.

Certain types of residential units would be ineligible for use as STRs under the proposed program, such as accessory dwelling units (ADUs) and units designated as affordable. 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 less than two off-street parking spaces 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.

The City approval 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 three (3) 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 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, if the STR program is not implemented within the two years of approval of the CDP, 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. The City states that currently, 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, without an existing STR permit, or cited for nuisance, are still subject to enforcement action ([Exhibit 8](#)).

Typically, STR regulations are contemplated by the Commission within the context of a jurisdiction’s LCP.⁸ Even though the City of Dana Point has a certified LCP, the City is 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).⁹ Thus, this is the first time the Commission is reviewing a CDP for an STR program for a city with a certified LCP.

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.

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. No land use plan changes were proposed. The Commission approved LCPA No. 1-14 on April 14, 2016 with the suggested modifications, which included the requirement for the

⁸ 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](#)), City of Laguna Beach ([LCP-5-LGB-19-0074-1](#)), and Long Beach ([LCP-5-LOB-20-0058-3](#)). Note that this is not a comprehensive list.

⁹ [CDP 5-20-0031](#) (City of Torrance).

City to it incorporate Chapter 5.38 of the Municipal Code into the LCP, as well as further clarification that if the Program is to change in the future, the City would require an additional LCPA. LCPA No. 1-14 did not establish any caps or categories for STRs, and rather established short-term rentals as a “special use standard” in the City’s certified Zoning Code.

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.

On November 15, 2016, the City Council approved [Resolution No. 16-11-15-04](#) to allow existing permitted STRs to continue to operate, but to cease issuing new STR permits. STR regulation must occur within the context of a Local Coastal Program and/or be authorized pursuant to a coastal development permit for the regulation to be effective in the Coastal Zone. However, the City did not pursue a CDP to enact the moratorium on new STR permits. Since then, 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. 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.

On July 12, 2022, the City officially adopted City Council Resolution No. 22-07-12-01,¹⁰ authorizing local CDP 20-0010 to establish the City’s final STR Program. 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 proposed STR Program. The proposed STR Program found in [Exhibit 2](#) of this staff report and is the subject of the local CDP.

On July 27, 2022, the local CDP was appealed, and on September 7, 2022, the Commission found substantial issue due to concerns that the STR program could adversely impact existing and future long-term multi-family housing in the City’s Coastal Zone. Since the City did not propose a cap for multi-family home stay STR permits, STRs could adversely impact the availability of long-term rental housing in multi-family areas. The Commission also found issue with the permit cap adjustment process for mixed-use non-primary STRs, which would serve to concentrate STRs in mixed-use districts of the Coastal Zone and could also have adverse impacts on long-term rental housing.

¹⁰ 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.

Project Setting

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 ([Exhibits 1, 5](#)). The Coastal Zone is bounded on the west by the City of 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.

The Dana Point Coastal Zone has 3,432 residential properties, developed with 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). Within the Coastal Zone, there are 5,664 housing units in total, which are comprised of 2,798 single-family residences and 2,866 multi-family units.¹¹ Thus, approximately a third of the City's housing units are located entirely or partially within the Coastal Zone, and the Coastal Zone's housing stock is nearly evenly divided into single-family (49.4%) and multi-family (50.6%) residential units.

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 asserts 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.

Past Commission Actions Related to STRs in Other Coastal Communities

As in other coastal communities in California, STRs have proliferated over the years. What may have been predominantly summer and holiday rentals have evolved into what is now in some cases year-round. The unregulated proliferation of such STRs has

¹¹ Information provided by the City of Dana Point on October 28, 2022.

raised concerns regarding impacts to the preservation of neighborhood integrity, reductions in rental housing stock, public safety, increased traffic and parking difficulties, and other issues that have sometimes been associated with STRs.

As a reaction to such issues, cities are seeking to regulate STRs, and typically such regulations are contemplated by the Commission within the context of an amendment to a jurisdiction's Certified Local Coastal Program (LCP). Some LCP amendment proposals have been submitted to the Commission to ban STRs in certain communities (e.g. outright bans in all residential zones). However, such bans can conflict with the Coastal Act and LCP policies and objectives to protect and provide for visitor-serving opportunities and coastal public access. In general, rather than supporting restrictive bans of such uses, the Commission has encouraged allowance of this use and more targeted, responsive regulations of STRs that are based on applicable community and area specific factors.

In response to proposed amendments of the LCPs of the City of Laguna Beach (LCP-5-LGB-19-0074-1), 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 Encinitas (ENC-MAJ-1-06), in order to be consistent with Chapter 3 of the Coastal Act, the Commission has required that local jurisdictions provide a framework to appropriately regulate the establishment and operation of STRs, rather than overly restrict this use or otherwise significantly diminish its visitor-serving utility. The Commission has historically supported STR regulations that provide for the following:

- Limits on the total number of STRs allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a STRs (e.g., disallowing STRs in affordable housing contexts, etc.).
- Limits on maximum STR occupancies.
- Limits on the amount of time a residential unit can be used as an STR during a given time period.
- Requirements for 24-hour management and/or response, whether onsite or within a certain distance of the STR.
- Requirements regarding onsite parking, garbage, and noise.
- Signage requirements, including posting 24-hour contact information, posting requirements and restrictions within units, and incorporating operational requirements and violation consequences (e.g., forfeit of deposits, etc.) in rental agreements.
- Payment of Transient Occupancy Tax
- Enforcement protocols, including requirements for responding to complaints and enforcing against violations of STR permit requirements, including providing for revocation of STR permits in certain circumstances.

Furthermore, there is a balance that must be achieved between maintaining the visitor-serving utility of STRs while preserving a City's rental housing stock. The Commission has approved a number of LCP amendments and CDPs regulating STRs in the Coastal

Zone.¹² Each of these LCP amendments and CDP presented unique issues considering geographic specificity, but the approved LCP amendments and CDPs generally provide for standards for continued STR operations, rather than blanket bans.

B. Standard of Review

Section 30603(a) 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 tideline 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, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

Section 30604(b) of the Coastal Act states:

(b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

Section 30604(c) of the Coastal Act states:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The standard of review for the Coastal Commission's de novo hearing on this project is the City of Dana Point's certified Local Coastal Program. Dana Point is a shoreline community in southern Orange County that incorporated as a City in 1989. On September 13, 1989, the Commission approved the City's post-incorporation LCP. The City's LCP is comprised of a variety of planning documents. This permit applies to the City's entire Coastal Zone, so all LCP documents are applicable. Since portions of the project site are located between the first public road and the sea, the project must also

¹²https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals.pdf

be consistent with the Chapter 3 public access and recreation policies of the Coastal Act.

C. Public Access and Recreation

Section 30210 of the Coastal Act states:

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 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 repass 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.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states:

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

Section 30223 of the Coastal Act states:

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

The policies of the City of Dana Point LCP are also applicable ([Appendix A](#)).¹³

In the early 2010s, STRs grew in popularity in Dana Point 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

¹³ The public access policies in the City's certified LCP are similar to the Coastal Act access policies. Therefore, the findings in this staff report are based primarily on the applicable Coastal Act policies.

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.

Similarly, the Commission has generally found that visitor-serving overnight accommodation uses, including STR units, help maximize the opportunities provided for all the public to access the coast. Yet, the Commission has recognized legitimate community concerns associated with the potential adverse impacts associated with STRs, with respect to housing stock and affordability, community character, noise, and traffic impacts. The City of Dana Point's proposed STR Program includes restrictions on the number of "non-primary" (traditional) STRs allowed in the Coastal Zone and seeks to strike a balance between providing visitor-serving overnight accommodations and maintaining long-term housing, which is in short supply in Dana Point and statewide.

Visitor-Serving Accommodations

Sections 30221-30223 of the Coastal Act prioritize visitor-serving, commercial recreational facilities over private residential development regarding the use of private lands, as the former use enhances public opportunities for coastal recreation. Likewise, LUP (LUE) Policy 2.10 of the City's "1996" LCP and Section II.D of the Dana Point Specific Plan (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. These policies are not intended to adversely impact residential uses in the Coastal Zone; rather, it is important to balance visitor-serving recreational uses with private residential uses to ensure all coastal resources are protected. This balance is required by Coastal Act Section 30214.

Nevertheless, the Commission finds that the Program is currently structured in a manner that does not adequately balance coastal public access and long-term residential opportunities. The "Multi-Family Home Stay" STR category is essentially the same as a non-primary STR, the only distinction being that the owner of the Multi-Family Home Stay must own and live in another unit onsite. Thus, the City's proposal to allow for unlimited multi-family home stays throughout all residentially zoned areas of the Coastal Zone has the potential to adversely impact the stock of available residential units.

Multi-family home stay STRs, as currently proposed without a cap, could also foreseeably remove many units from the long-term rental market. The City's proposed STR Program allows for up to six STRs for every multi-family residential structure or associated group of structures; otherwise, the structure(s) would be considered a

“hotel” per the City’s Zoning Code. While this limitation is useful in large condominium structures and/or associations, buildings containing five units or fewer (where each are under separate ownership) could be completely converted into short-term rental investment properties. Multi-family home stay STRs currently only represent 1.5% of the City’s total STR permits in the Coastal Zone (there is only one such registered STR at the moment). However, the Program as proposed would allow for substantial depletion of housing in the approximately 600 multi-family residential parcels in the Coastal Zone, especially in duplexes, triplexes, and quadruplexes.¹⁴ 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 in order to maximize public access in the Coastal Zone for all people, including visitors and long-term residents of Dana Point.

In order to ensure that the Program maximizes public access to the coast and visitor-serving opportunities while balancing long-term residential uses in the Coastal Zone, the Commission imposes **Special Condition 1** to reduce the number of certain categories of STRs that could potentially deplete the City’s housing stock. This Special Condition modifies the City’s proposed STR Program (Resolution No. 22-07-12-01, [Exhibit 2](#)) to establish a total 115-permit cap for non-primary STRs, multi-family home stays, and mixed-use parcel STRs ([Exhibit 3](#)). In an effort to adequately allocate multi-family home stay STRs as a share of the total cap, the modified language also places a second limitation on multi-family home stay STRs so that they may not exceed a particular percentage within any particular multi-family structure or group of structures.

In devising the latter requirement, Commission staff compared and contemplated various past Commission actions on STRs.

For instance, 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. 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.

Finally, 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, and therefore allows for the conversion of only one unit into an STR on properties with five or fewer residential units, and in properties with six or more residential units, a maximum of 20% of the total number of residential units can be converted into STRs.¹⁵ Given the City of Laguna Beach’s similar population size, and the City of Dana Point’s Zoning Code requirement that no more than six units be converted to short-term

¹⁴ If there are 3,432 parcels in the Dana Point Coastal Zone, and there are 2,798 single-family residences, then, assuming one single-family residence per parcel, there would be a remainder of 634 multi-family residential parcels. This is a conservative estimate.

¹⁵ City of Laguna Beach ([LCP-5-LGB-19-0074-1](#)).

rentals in one structure or group of structures, the Commission believes that the City of Laguna Beach's limitation on multi-family unit conversions to STRs could be appropriately adapted to Dana Point's STR Program.

With the limits on multi-family home stay STRs, the Program will allow for some STRs in multi-family structures in a manner that does not disproportionately restrict the pool of long-term rental/purchase opportunities in multi-family housing, empowers owners of multi-family units to reasonably benefit from the additional income provided, and fosters continued coastal public access and recreation that considers the needs of residential communities.

Geographic Clustering

Currently, STR operations in Dana Point are not evenly distributed throughout the Coastal Zone and tend to concentrate in particularly popular areas, such as the Lantern District, Doheny Village, and Beach Road. A more even distribution of STRs throughout the City's coastal zone may result in a greater range of price points and rental types for visitors. Equitably distributing STRs in the Coastal Zone also reduces the likelihood of overburdening public parking availability in a particular area. In certifying the City of Laguna Beach's 2019 LCP amendment, the Commission 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/motel stock in Laguna Beach both within and outside the Coastal Zone, and preventing STRs from negatively impacting the neighborhoods and community character.

The City proposes to incentivize STRs in mixed-use parcel areas. While in theory the Program allows for STRs in all residentially zoned areas of the City's Coastal Zone, the proposed STR Program may in practice serve to concentrate the STR offerings in the two mixed use areas in the Coastal Zone. The proposed incentives for mixed-use parcel STRs could lead to substantial competition with non-primary STRs in other areas of the Coastal Zone. This would mainly occur because the City is currently proposing reductions in the regular non-primary STR cap with each new mixed-use STR permit issued, and the proposed cap for this category is 190 additional STR permits. Mixed-use zoning is mainly located in the Town Center and Doheny Village ([Exhibit 7](#)). Future establishment of a significant portion of the City's STRs in these two mixed-use areas would not result in a wide geographic range of STR options within the Coastal Zone.

In order to ensure that the Program equitably distributes STRs throughout the Coastal Zone, the Commission imposes **Special Condition 1** to place limits on the availability of mixed-use parcel STR permits and change the incentive structure. This Special Condition modifies the City's proposed STR Program to eliminate the additional 190 STR permits proposed for mixed use parcels, and to instead establish a total 115-permit cap for non-primary STRs, multi-family home stays, and mixed-use parcel STRs ([Exhibit 3](#)). In an effort to adequately allocate mixed-use parcel STRs as a share of the total cap, the modified language also places a second limitation on mixed-use

parcel STRs so that they may not exceed a 20% of residential units in either of the City's certified mixed-use districts in the Coastal Zone. In order to honor the City's intention to still encourage STRs in mixed-use areas, applications for mixed-use parcel STR permits will be given priority when selected from the City's STR permit waitlist, so long as STR permits are available, and the total 115-permit cap is not exceeded.

Homeowners Associations (HOAs)

There are 38 HOAs within the Coastal Zone. Based on the most recently available information, seventeen (17) of these HOAs enact short-term rental bans via their covenants, conditions, and restrictions (CC&Rs). Nine (9) of these HOAs have CC&Rs that allow short-term rental use. 91% of the existing 69 STR permits in the City's Coastal Zone are found in areas governed by a homeowners association (HOA).¹⁶

California appellate court decisions in *Greenfield v. Mandalay Shores Community Association* and *Kracke v. City of Santa Barbara* 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 30106.¹⁷ 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.

In the City of Long Beach's LCPA to establish an STR program,¹⁸ 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. As proposed, STR permits would not be approved in communities where the CC&Rs prohibit STRs. However, the proposed program does not explicitly require that CC&R STR prohibitions be established prior to the Coastal Act or pursuant to a CDP/LCPA.

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](#)). Future applications for HOA prohibitions on STRs would be evaluated based on consistency with the City's certified LCP. For properties between the sea and first public road, the public access and recreation policies of the Coastal Act would also be part of the standard of review.

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

¹⁷ *Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896; *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089.

¹⁸ [LCP-5-LOB-20-0058-3](#) (City of Long Beach).

Conclusion

As conditioned, the Program will require development to account for various environmental sustainability factors and the privacy of private property owners, in a manner that balances and optimizes public access and visitor-serving recreational opportunities. Additionally, the Program, as conditioned, will help 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. Finally, the City of Dana Point STR Program's facilitation of STR restrictions in HOA-governed areas would not adversely impact the availability and distribution of public access amenities and overnight visitor accommodations in the City's Coastal Zone. Thus, the Program, as conditioned, conforms to the public access and recreation policies of the Coastal Act and the City's certified LCP.

D. Lower Cost Overnight Accommodations

Section 30213 of the Coastal Act states:

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

The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

The policies of the City of Dana Point LCP are also applicable ([Appendix A](#)).¹⁹

Coastal Act Section 30213 requires that lower-cost visitor facilities be protected, encouraged, and where feasible, provided. LUP (LUE) Policy 3.3 identifies the protection and encouragement of lower cost visitor and recreational facilities as a priority.

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

¹⁹ The lower cost overnight accommodations policies in the City's certified LCP are similar to the Coastal Act lower cost overnight accommodations. Therefore, the findings in this staff report are based primarily on the applicable Coastal Act policies.

rooms in each accommodation. The City clarified whether the overnight accommodations are existing or pending review. To this end, the City has provided evidence that the proposed STR Program will not detract from the existing overnight accommodations available in the City's Coastal Zone.

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, Barbara Wilson, a local realtor, provided hotel rates data collected from hotel websites on July 21, 2022, and by confirming those rates by phone call ([Exhibit 4](#) of staff report dated 8/25/2022). Average hotel room daily rates ranged from \$264 (lower cost) to \$439 (higher cost). While Commission staff did not verify the nightly rates compiled by the appellants, they appear to be within the ranges provided by the Visit California survey.²⁰

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, also typically include full kitchen facilities, which allow overnight visitors the option of preparing meals in, a more affordable option than dining out.

Many of the existing STRs rent at similar average rates as the local hotel rooms, but there is wide variation in prices. While a few Beach Road homes have daily rates approaching \$2,000 during the peak high season, many more homes listed within the \$500-\$600 range.²¹

Also, a hosted STR, such as home stay, allows property owners who live onsite to rent living space 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.²² The City proposes to incentivize affordable home stay STRs. While home stay 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 three-year reassessment period would help prevent adverse impacts on affordable overnight accommodations or other types of STRs in the Coastal Zone resulting from home stay

²⁰ [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.

²¹ STR data was collected for week-long listings on Airbnb in Dana Point for the June to August 2023 period (www.airbnb.com, accessed November 3, 2022).

²² In reviewing Dana Point's Airbnb listings for the 2023 summertime period, Commission staff found that home stay STR daily rates start at \$119 and average \$142 per room (or \$106 per bed).

STRs.

Special Condition 2 requires the City to submit any changes to the Program for review by the Executive Director to determine whether a CDP amendment is required, and **Special Condition 3** requires the applicant to study and assess whether the STR Program would have any adverse impacts on lower cost overnight accommodations within the Dana Point Coastal Zone over a six-year period, which may trigger the need for a CDP amendment. Together, these conditions will safeguard the protection and encouragement of lower cost visitor and recreational facilities through the continued monitoring of the Program's performance and implementation of appropriate adjustments on an as-needed basis.

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, the Program, as conditioned, is consistent with the lower cost overnight accommodations policy of the Coastal Act and the City's certified LCP.

E. Development and Community Character

Section 30105.5 of the Coastal Act states:

"Cumulatively" or "cumulative effect" means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Section 30250 of the Coastal Act states, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. [...]

(c) Visitor-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.

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to

minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service [... and] (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

Section 30253 of the Coastal Act states, in relevant part:

New development shall do all of the following:

(d) Minimize energy consumption and vehicle miles traveled.

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30255 of the Coastal Act states:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

The policies of the City of Dana Point LCP are also applicable ([Appendix A](#)).²³

Residents of Dana Point have previously expressed concern that the City is currently experiencing an extremely low housing vacancy rate and they believe that the short-term rental market is exacerbating the scarcity of affordable housing and rental housing. The low vacancy rate also determinately affects the cost of already limited housing for both affordable housing and workforce housing.

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

²³ The development and community character policies in the City's certified LCP are similar to the Coastal Act development and community character policies. Therefore, the findings in this staff report are based primarily on the applicable Coastal Act policies.

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.

Land Uses

The City previously interpreted the City's Zoning Code to not allow for STRs in residentially-zoned neighborhoods.²⁴ However, 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*) precipitated a change of circumstance where the City legally must now find STRs to be allowable uses in residential zones. The City is not proposing to amend the zoning designations in residential neighborhoods via implementation of the STR Program; rather, the general goal of the City's STR 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.

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 residentially-zoned property in the Coastal Zone could, by right, operate an STR.

Community Character

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. Within the Coastal Zone specifically, the 115-permit cap under the current iteration of the STR Program would constitute approximately 2% of housing units. These figures are slightly higher in comparison to rates found in other nearby cities, such as Laguna Beach (1.5%), San Diego (1.0%), and Long Beach (1.6%). Still, 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.

²⁴ [Dana Point City Council Regular Meeting Minutes, November 15, 2016 \(Page 15\).](#)

It is also over one-half of the total cap, which protects the proportion of Coastal Zone non-primary STRs, as described above. 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 cap on non-primary, multi-family home stay, and mixed-use STRs imposed by **Special Condition 1** is thus appropriate and adequately protects public access and existing community character, by continuing the offerings of STRs in the Coastal Zone, rather than implementing a total ban on STRs, without excessive detriment to the existing residential population or affordable housing supply.

The proposed Program also 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 the residential use of these properties or the area's available housing stock because the City has indicated that very few "entire home" short-term rentals, which could include both primary and non-primary residences, are rented less than 60 days per year.

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 three-year reassessment period would help prevent adverse impacts on community character 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 preservation of existing community character, more affordable STRs, or alleviation of 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 in a manner consistent with the existing community character of Dana Point's coastal residential neighborhoods.

Cumulative Impacts

When reviewing a project's consistency with the community character protection policies of the Coastal Act and the Dana Point LCP, the Commission also analyzes the cumulative effects of development. Section 30250(a) of the Coastal Act requires development to not have significant adverse effects, either individually or cumulatively, on coastal resources. Sections 30251 and 30253 of the Coastal Act state that scenic areas and special communities shall be protected. These sections of the Coastal Act require permitted development to be compatible with the character of surrounding areas

and require protection of communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses. To evaluate the potential cumulative effects of programmatic CDPs, such as the subject STR Program, on community character, the incremental effects of the development are considered in connection with the effects of past, current, and probable future impacts that arise from implementation of the program.

The City is already proposing to reevaluate the permit cap, regulations, penalties, and any other aspect of the STR Program to determine if an amendment must be made within three years of issuance of this CDP. To accomplish a more thorough and comprehensive monitoring/tracking of the STR Program's performance, the Commission imposes **Special Condition 3** for a study and assessment during an extended six-year period with more prescriptive criteria and metrics, to corroborate that no unintended adverse cumulative impacts on public access, lower cost overnight accommodations, housing stock, and community character arise during implementation of the Program.

In particular, the City will be required to 1) monitor the number of STR permits issued and rescinded over the six-year term, determine their affordability, and assess whether the permit caps or types are adequate in meeting both market demand and neighborhood needs, 2) monitor enforcement statistics (nuisance complaints, violations, City's enforcement response) and assess the Program's efficacy to address nuisance complaints and violations (in a format similar to [Exhibit 8](#)), 3) monitor the City's Coastal Zone housing inventory, including the number of residential units at any given time and the number of units converted to STRs, evaluate long-term rental affordability, and assess the Program's adverse impacts on depleting housing stock and affordable long-term rental units in the Coastal Zone, 4) monitor inventory of non-STR coastal overnight accommodations and their affordability, and assess the Program's adverse impacts on visitor use of non-STR overnight accommodations and other visitor-serving recreational facilities (in a format similar to [Exhibit 6](#)), 5) assess whether parking and vehicle occupancy requirements for STRs are adequate and whether STRs are facilitating or offering non-automobile transit options, and 6) assess revenues from application fees and waitlist times to determine if they are appropriate.

Special Condition 3 requires that if, based on the results of the study (which shall be reported out to the Commission at a scheduled public hearing), the Executive Director determines that adverse significant impacts to public access or community character are occurring as a result of the STR program, and/or the City determines that significant impacts to housing stock are occurring as a result of the STR program, in the Dana Point Coastal Zone, the City shall seek an amendment from the Commission to revise the STR program to address these issues. During the six-year study period, the City must monitor and report on STRs throughout the Coastal Zone, which will give the City time to learn, incorporate, and assess the Program's requirements and impacts. Six years is a sufficient time period for the City to evaluate various market trends and to present available data and make recommendations on necessary improvements to the Program. Thus, as written, this condition will ensure that any significant adverse impacts

to public access, housing stock, or community character are not prolonged in perpetuity without remedy or recourse.

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

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

F. Response to Comments

On October 23, 2022, appellants of the local CDP submitted a letter of correspondence raising procedural issues with regard to the Commission's CDP process; additional correspondence was submitted on October 31, 2022 with several specific questions ([Correspondence](#)). In particular, the appellants are concerned that the Commission will be enacting STR "legislation" without evaluating best practices in other coastal communities, that "rushing" the consideration of this item in November 2022 is "unreasonable," and that Commission staff does not have sufficient data to make a comprehensive staff recommendation. Additionally, the appellants are interested in understanding why the matter cannot be continued at a later hearing per their request, whether the staff recommendation could be negotiated ahead of publication of the staff report, and if a voter-ballot initiative could affect the outcome of the CDP process.

First, the Commission emphasizes that the Coastal Act CDP appeals process is an important implementation mechanism for the Commission's LCP planning and regulatory program. LCPs are intended to implement the statewide policies of the Coastal Act; the Commission is the statewide body tasked with assuring that local governments interpret and apply their LCPs consistent with the Coastal Act with respect to those critical geographic areas and types of development defined by the legislature to be of statewide concern (e.g., public access and recreation, land use, cumulative impacts of development, etc.).²⁵ Rather than enable the Commission to "legislate" coastal policies, the Commission's appellate review accomplishes the opposite by providing an important oversight, mechanism, and backstop to local LCP implementation, and an important way for the public to continue to be involved in Coastal Act implementation via the public hearing process. In evaluating CDP applications for their consistency with the LCP and potential substantial issues they may raise, the Commission can assure that ongoing implementation of the Coastal Act at the local level is dynamic and responsive to statewide policy concerns, changing conditions, and new information as may be identified by the Commission. Finally, the appeals process is also a critical mechanism for continued ongoing collaboration between

²⁵ [Briefing on the Commission's Coastal Development Permit Appeals Process, For Commission Public Hearing, June 11-13, 2014 Meeting.](#)

Commission and local government staff to achieve the goals of the Coastal Act through LCPs.

The Commission has found “substantial issue” at its September 7, 2022 hearing, and as such is reviewing the application de novo. Pursuant to 14 C.C.R. § 13115(b), the de novo hearing for an appeal is conducted in the same manner as the hearing for a regular coastal development permit application in the Commission’s jurisdiction. Commission staff makes its recommendation, the Commission reports ex partes, the applicant and interested parties testify, staff provides a rebuttal, and the Commission deliberates and decides. Prior to the Commission hearing, staff is obligated to prepare a staff report, schedule and agendize the item, distribute the staff report for review of the Commissioners and public, circulate all written comments on the CDP application and staff report, and ensure that all interested parties are noticed (14 C.C.R. § 13057-13063, Coastal Act Section 30339). Thus, the appellants’ request to formally confer with Commission staff and the Commissioners and/or establish a 60-day public review period of the de novo CDP, in order to influence the final details of the STR Program, is outside of the protocols established by the Coastal Act and its implementing regulations. Furthermore, the appellants have already had ample opportunity to participate in the appeals process at the local level, to submit a local appeal on May 23, 2022, and to collaborate with the City on drafting the STR Program.

14 C.C.R. § 13064 states that “the commission's public hearing on a permit matter shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.” The City has requested that the item be heard as soon as feasible. Sufficient information is available to proceed with the de novo hearing.

Where some information may not be readily available, since the City’s currently proposed STR Program has several aspects and policies that are novel and have not yet been implemented, the Commission notes that **Special Condition 3** of this permit will require the applicant to provide very detailed information that would ensure that all pending and future authorizations of the Dana Point STR Program are data-driven and fully conform with the Chapter 3 policies of the Coastal Act. The Commission finds the requirement in this condition to be a reasonable approach by allotting the City six (6) years to prepare the requisite information, while simultaneously mitigating potential adverse cumulative impacts of the Program.

Finally, Commission staff may assist the applicant and interested parties in this matter before the Commission for action; however, Commission staff’s assistance is often limited to matters of procedure and does not necessarily extend to advice on substantive issues regarding a project’s consistency with the Chapter 3 policies. For this reason, Commission staff did not prepare a written response to the appellants’ inquiries regarding the hypothetical legalities of a voter-ballot initiative, and how it may interact with the CDP process, as that is outside of the scope of the procedure presently before the Commission.

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

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

G. Reimbursement of Costs and Fees

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. See also 14 C.C.R. § 13055(g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 4** requiring reimbursement of any costs and attorneys' fees the Commission incurs in connection with the defense of any action brought by a party other than the permittee challenging the approval, issuance, or implementation of this permit. Modifications to the final STR Program (Resolution No. 22-07-12-01, [Exhibit 2](#)) required in **Special Condition 1** will ensure that the Commission is not subject to any claims, damages, or liabilities resulting from or arising out of the City of Dana Point's implementation of the STR Program described in this coastal development permit, for which the City assumes full responsibility ([Exhibit 3](#)).

In correspondence received from the City of Dana Point on November 10, 2022, the City states that it "is unwilling to accept Special Condition #[4] on the basis that the financial impacts are unknown and to accept it would be fiscally irresponsible." The City goes on to claim that this Special Condition has "not been applied to CDPs issued for

programs.” The City points to Torrance’s STR Program ([CDP 5-20-0031](#)) and other STR Programs processed via LCP amendment.

The Commission did not impose this condition on Torrance’s CDP for its STR program for several reasons, including the limited scope of the Torrance program and the lack of controversy or public opposition to the proposed CDP. The Commission would note that in at least two previous actions, the Commission imposed an indemnification condition on programmatic CDPs.²⁶ In both cases, the Commission found it necessary to impose “Liability for Costs and Attorney’s Fees,” even while the CDPs were mainly programmatic and concerned matters such as beach curfews (Cowell Beach) and vehicular dust control (Oceano Dunes). In the case of Dana Point’s STR Program, interested parties have previously filed a referendum and various appeals, and it is a possibility that interested parties will explore litigation following the approval of this CDP. It is therefore appropriate to require the acceptance of liability condition here. The Commission would also note that the STR Program will remain the responsibility of the City’s to administer and implement, even while the Commission retains permitting authority, and as such, it is incumbent upon the City to assume any litigation risk. Thus, the Commission maintains that **Special Condition 4** is necessary and is supported by past Commission actions. The Commission made changes to the condition in its action on November 16, 2022.

H. California Environmental Quality Act

Section 13096(a) of the California Code of Regulations requires Commission approval of coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. On July 12, 2022, the City of Dana Point, as the lead agency, determined that short-term rental use is an already established residential use in the City (as determined by the Commission and related case law), and the City’s adoption of the STR Program would not result in intensification or expansion of that use but would rather limit it, and is thus categorically exempt from CEQA under Class 1 (14 C.C.R. § 15301).

Under Section 15251(c) of Title 14 of the California Code of Regulations, the Commission’s CDP regulatory process has been certified as the functional equivalent to the CEQA process. As a certified regulatory program, Section 21080.5(d)(2)(A) of CEQA still applies to the Commission’s CDP regulatory process and prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

The proposed project, as conditioned, has been found consistent with the certified LCP and the Chapter 3 policies of the Coastal Act. The Commission incorporates these findings as if set forth here in full. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

APPENDIX A – RELEVANT LCP POLICIES

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.

Click here to go
to staff report

W13b

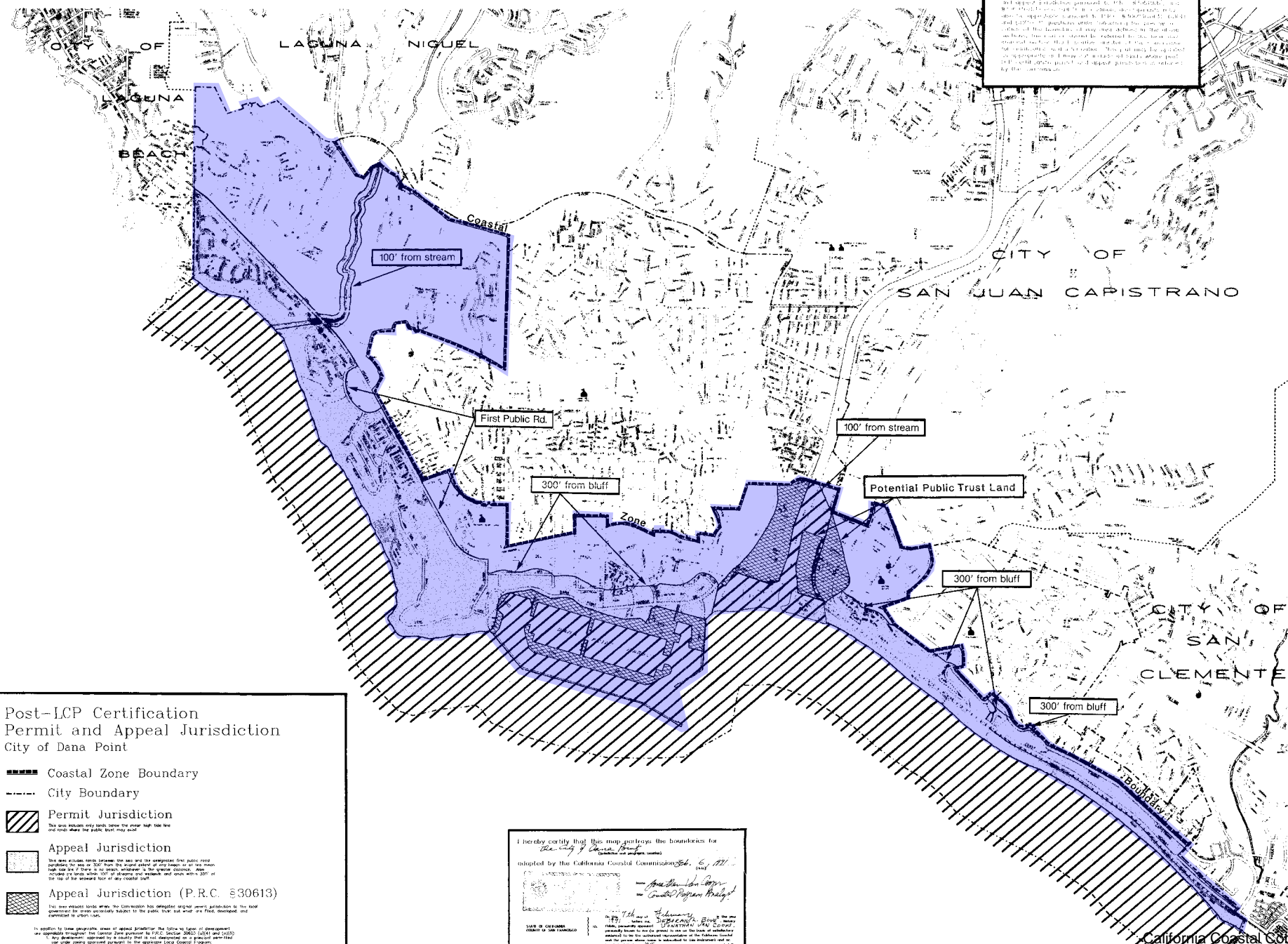
A-5-DPT-22-0038 (City of Dana Point)

NOVEMBER 16, 2022

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CITY OF DANA POINT

[illegible]

In addition to these geographic areas of appeal jurisdiction the following types of development are appealable throughout the Coastal Zone pursuant to P.R.C. Section 30653 (a)(4) and (a)(5):

1. Any development approved by a county that is not designated as a principal water-limited use under zoning approved pursuant to the applicable Local Coastal Program;
2. Any development that constitutes a major public works project or a major energy facility.

In cases where a parcel is bisected by the open jurisdiction boundary, only that portion of the parcel with the area defined as openwater is subject to the Commission's openwater jurisdiction.

I hereby certify that this map portrays the boundaries for
the city of San Francisco (county name)
adopted by the California Commission on June 6, 1977.

THE OFFICE OF THE COUNTY CLERK
COUNTY OF SAN FRANCISCO

WITNESS MY HAND AND SEAL OF OFFICE
this 14th day of February, 1978.

CLERK OF THE COUNTY OF SAN FRANCISCO

By Richard J. Harris
County Clerk

California Coastal Commission
A-5-DPT-22-0038-REV

Exhibit 2 – Resolution No. 22-07-12-01

RESOLUTION NO. 22-07-12-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DENYING IN PART, AND AFFIRMING IN PART, THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP22-0010 (THE CDP) TO ESTABLISH A SHORT-TERM RENTAL PROGRAM TO REGULATE THE PERMITTING AND OPERATION OF SHORT-TERM RENTALS IN THE CITY, BY UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF THE CDP AND AMENDING THE PROGRAM APPROVED BY THE PLANNING COMMISSION

The City Council for the City of Dana Point does hereby resolve as follows:

WHEREAS, the City of Dana Point filed a verified application for a Coastal Development Permit to establish a Short-Term Rental Program (STR Program) to regulate the permitting and operation of short-term rentals (STRs) in the City; and

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, STRs have historically been a part of Dana Point and enhanced regulatory provisions and fines were adopted in 2021 to limit community impacts and impose strict enforcement measures; and

WHEREAS, relevant court decisions, *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089 and *Keen v. City of Manhattan Beach* (2022) 77 Cal.App.5th 142, provide the framework that any regulation and/or prohibition of STRs in the Coastal Zone requires compliance with the Coastal Act, such as with an amendment to the City's Local Coastal Program (LCP), or issuance of a Coastal Development Permit (CDP); and

WHEREAS, the California Coastal Commission has made clear that it will not support a prohibition of STRs based on its interpretation of the Coastal Act; and

WHEREAS, the City understands that it is the Coastal Commission's position, which has been confirmed by the Courts in the above noted cases, that STRs are already legally authorized as residential uses, which are permitted by the City's existing zoning and Local Coastal Program in various zoning districts in the City; and

WHEREAS, because STRs are already permitted by the City's zoning and Local Coastal Program, in order to comply with the Coastal Act, a CDP is proposed to allow the regulation of STRs; and

WHEREAS, until STR regulations are established, the City will face arguments that STRs may operate at any existing residential property in the Coastal Zone, without regulation or limitation; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the adoption of the STR Program does not qualify as a "project" because it does not authorize any new construction or development in the City, and rather, only establishes regulations limiting the potential uses of certain existing residential dwelling units, and as such would not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Alternatively, if the adoption of the STR Program is a "project" subject to CEQA, it falls within Categorical Exemption Class 1 - Section 15301 (Existing Facilities), in that the STR use is an already established residential use in the City (as determined by the CCC and related case law), and the City's adoption of the STR Program would not result in intensification or expansion of that use, and rather would limit it. Further, in the event the City Council's actions in adopting the CDP is not exempt, the City has satisfied its CEQA obligations and no additional review is required pursuant 14 CCR 15162, as the City has previously adopted a Mitigated Negative Declaration by Resolution 13-12-03-08. relating to short term rentals, and (a) there are no substantial changes related to the involvement or severity of any potential environmental impacts, (b) there are no substantial changes related to the circumstances under which the project is undertaken that would require major revisions to the previously approved MND, and (c) there is no new information of substantial importance showing that the project would have new or more severe environmental impacts, or any new or more feasible mitigation measures; and

WHEREAS, the Planning Commission did, on the 9th day of May, 2022, hold a duly noticed public hearing as prescribed by law to consider said request and the CDP establishing the STR Program; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to Coastal Development Permit CDP22-0010, and approved the project 4-1; and

WHEREAS, on the 23rd day of May, 2022, Kim Tarantino and Mark Zanides, submitted an appeal of the Planning Commission approval; and

WHEREAS, on the 21st day of June, 2022, the City Council held a lawfully noticed hearing on the appeal of the Planning Commission's determination with respect to CDP22-0010, and continued the public hearing to July 12, 2022; and

WHEREAS, on the 12th day of July, 2022, the City Council reopened the lawfully noticed hearing on the appeal of the Planning Commission's determination with respect to CDP22-0010, and considered all testimony and arguments for and against said appeal.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Dana Point as follows:

Section 1. That the above recitations are true and correct, adopted as findings of the Council, and incorporated herein by this reference.

Section 2. Based on the evidence presented at the public hearing, the City Council denies the appeal in part, and affirms it in part, by upholding the Planning Commission's decision to adopt CDP22-0010 for the Short-Term Rental (STR) Program, and revising the STR Program approved by the Planning Commission to address community concerns as set forth in the accompanying Exhibit A, subject to the following findings and conditions of approval:

Findings:

Coastal Development Permit CDP22-0010

1. That the project is in conformity with the certified Local Coastal Program (LCP) as defined in Chapter 9.75 of this Zoning Code (Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096) **in that, the STR Program allows the establishment of regulations for STRs in the City. The Coastal Commission has determined (which determination was confirmed by court decisions including *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089 and *Keen v. City of Manhattan Beach* (2022) 77 Cal.App.5th 142) that STR uses are the same as any other residential use already permitted by the City's zoning and LCP, and they are therefore a permitted use in the City's Residential and Mixed-Use zones. The STR Program regulations ensure STRs are compatible with residential neighborhoods and safeguards the peace, safety and general welfare of the residents of Dana Point. The regulations prohibit excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse. The establishment of regulations for STRs and a permitting process ensures the City provides a mix of overnight accommodations to provide coastal access to visitors as required by the Coastal Act and the City's LCP. The City's existing supply of overnight accommodations along with the STR Program's balanced approach increases the availability of overnight (market rate and affordable) accommodations while protecting neighborhoods, long-term housing stock, and public access.**
2. If located between the nearest public roadway and the sea or shoreline of any body of water, that the project is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096) **in that, the establishment of the STR Program increases public access in the Coastal Overlay District in the City by creating additional opportunities for overnight accommodations for visitors. The establishment of four types of STRs (Non-Primary, Primary**

Residence, Home Stay and Multi-Family Home Stay STRs) allows for improved overnight access to the coast with amenities that provide a mixed range of affordability to ensure all types of visitors can access the coast in Dana Point. The establishment of the STR Program is in addition to the 1,864 hotel rooms and 120 campsites within the City limits. Allowing more Home Stay STRs than are realistically needed to meet demand, and prioritizing Multi-Family Home Stay STRs expands the potential for affordable overnight accommodations since these STRs are, by design, an affordable option by allowing the renting of individual rooms or an attached unit versus an entire house.

- 3. That the project conforms to Public Resources Code Section 21000 (the California Environmental Quality Act - CEQA) and following, in that, the STR Program does not qualify as a “project” because it does not authorize any new construction or development in the City, and rather, only establishes regulations limiting the potential uses of certain existing residential dwelling units, and as such would not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Alternatively, if the adoption of the STR Program is a “project” subject to CEQA, it falls within Categorical Exemption Class 1 - Section 15301 (Existing Facilities), in that the STR use is an already established residential use in the City (as determined by the CCC and related case law), and the City’s adoption of the STR Program would not result in intensification or expansion of that use, and rather would limit it. Further, in the event the City Council’s actions in adopting the CDP is not exempt, the City has satisfied its CEQA obligations and no additional review is required pursuant 14 CCR 15162, as the City has previously adopted a Mitigated Negative Declaration by Resolution 13-12-03-08 . relating to short term rentals, and (a) there are no substantial changes related to the involvement or severity of any potential environmental impacts, (b) there are no substantial changes related to the circumstances under which the project is undertaken that would require major revisions to the previously approved MND, and (c) there is no new information of substantial importance showing that the project would have new or more severe environmental impacts, or any new or more feasible mitigation measures.**
- 4. That the proposed development will not encroach upon any existing physical access-way legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program Land Use Plan, nor will it obstruct any existing public views to and along the coast from any public road or from a recreational area in that, the project is for the establishment of an STR Program to establish regulations for the permitting and operation of STRs**

and does not result in any physical development that would encroach on any access-way or public view identified in the City's LCP. The STR Program creates a range of affordable overnight accommodations to increase access to the coast for visitors of Dana Point. The STR Program requires, at a minimum, a review by the Community Development Director every five years; however, the City has the authority to review the Program sooner and propose amendments to the CDP to incorporate modifications and/or mitigation to address any impacts of the Program on public access and/or public views.

5. That the project has been sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources in that, the project is for the establishment of an STR Program to establish regulations for the permitting and operation of STRs and does not result in any physical development that would create adverse impacts to environmentally sensitive habitats and scenic resources identified in the City's LCP. The establishment of the STR Program will improve public access to the coast and not result in adverse impacts to the environment or recreational areas.
6. That the project minimizes the alteration of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards resources in that, the project is for the establishment of an STR Program to establish regulations for the permitting and operation of STRs and does not result in any physical development.
7. That the project is visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas in that, the project is for the establishment of an STR Program to establish regulations for the permitting and operation of STRs and does not result in any physical development.
8. That the project conforms with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or any other applicable adopted plans and programs in that, the establishment of an STR Program allows for the establishment of regulations for STRs in the City. The Coastal Commission has determined (and that determination was confirmed by Court decisions) that STR uses are the same as any other residential use already permitted by the City's zoning and LCP and is therefore a permitted use in Residential and Mixed-Use zones in connection with existing residential or mixed-use structures. The establishment of STR regulations ensures the use is compatible with residential neighborhoods and safeguards the peace, safety and general

welfare of the residents of Dana Point and their visitors and guests by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse which are directly related to short-term rentals. The establishment of regulations for STRs and a permitting process ensures the City provides a mix of overnight accommodations to provide coastal access to visitors as required by the Coastal Act and the City's LCP. The City's existing supply of overnight accommodations along with the STR Program's balanced approach increases the availability of overnight (market rate and affordable) accommodations while protecting neighborhoods, long-term housing stock, and public access.

Conditions:

General:

1. Approval of this application permits the STR Program, which establishes permitting, regulations, and penalties for short-term rentals.
2. The STR Program shall be reviewed by the Community Development Director at least every five (5) years to re-evaluate the permit cap, regulations, penalties, and all other aspects of the STR Program to determine if amendments should be made. Amendments to the Program must be processed as an amendment to the Coastal Development Permit.
3. The provisions of Municipal Code Section 5.38.080 shall remain applicable to STRs outside the Coastal Zone, but the provisions of the STR Program, and this CDP, shall not apply to STR Permits issued for STRs outside of the Coastal Zone.
4. Within six (6) months of approval of this application, applications for new short-term rentals permits in the Coastal Zone shall be accepted by the City for review.
5. Approval of this application is valid for a period of 24 months (two years) from the noted date of determination. If the development approved by this action is not established, the approval shall expire and shall thereafter be null and void.

PASSED AND ADOPTED this 12th day of July, 2022.



JOSEPH L. MULLER
MAYOR

ATTEST:



SHAYNA SHARKE
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF DANA POINT)

I, Shayna Sharke, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 22-07-12-01 was duly adopted and passed at a regular meeting of the City Council on the 12th day of July, 2022, by the following roll-call vote, to wit:

AYES: Viccorek, Villar, Muller

NOES: Federico, Frost

ABSENT: None

ABSTAIN: None



SHAYNA SHARKE
CITY CLERK

Exhibit A

Coastal Development Permit Short-Term Rental Program

1. Introduction

The following sets forth the rules and regulations for the City of Dana Point's Short-Term Rental Program (the "STR Program"), the purpose of which is to require the owner or owners of a residential Dwelling that operates as a Short-Term Rental ("STR"), as defined herein, to apply for and secure a permit authorizing such use in the manner provided for by this STR Program to safeguard the peace, safety and general welfare of the residents of Dana Point, their guests, and out of town visitors, by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse which are directly related to STRs. There are currently existing STR Permits in the City. These existing STR Permits are subject to the provisions of this STR Program on a moving forward basis, including the provisions hereof related to renewals; but, they are "grandfathered" in the sense they continue to remain valid and the holders of such STR Permits do not need to submit a new initial application.

2. Definitions

The following definitions shall apply to the STR Program:

- (a) "Accessory Dwelling Unit" shall mean an attached or a detached residential Dwelling that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multi-family dwelling is or will be situated. An Accessory Dwelling Unit also includes the following: (A) An efficiency unit, and (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code."
- (b) "Agent" shall mean the representative, if any, designated by the owner in accordance with Section 5.38.040 of the Municipal Code.
- (c) "City Manager" shall mean the City Manager of the City of Dana Point or designee.
- (d) "Community Development Director" shall mean the Community Development Director of the City of Dana Point or designee.
- (e) "Dwelling Unit" or "Dwelling" shall have the same meaning as set forth in Section 9.75.050 of the Municipal Code.
- (f) "Home Stay Short-Term Rental" shall mean an STR at a Dwelling (as defined in the Municipal Code) at which the Property Owner rents a portion of the Dwelling Unit for use as an STR while continuing to live in the Dwelling Unit during the period of the rental.
- (g) "Junior Accessory Dwelling Unit" shall mean a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior Accessory Dwelling Unit may include separate sanitation facilities or share sanitation facilities with the existing structure."
- (h) "Mixed-Use Parcel" shall mean a parcel upon which the City's zoning permits commercial and residential uses to exist at the same time (i.e., commercial on first floor and residential on upper

floors). By way of example only, as of the effective date of the STR Program, parcels located in the following zoning districts in the City would meet the definition of Mixed-Use Parcel: C/R; R/C – 18; P/R; TC-MU.

- (i) "Mixed-Use Parcel STR Permit" shall mean a Permit for either a Non-Primary STR or a Multi-Family Home Stay STR issued for an STR located in a Dwelling on a Mixed-Use Parcel.
- (j) "Multi-Family Home Stay Short-Term Rental" shall mean an STR at a parcel upon which a multi-family Dwelling (i.e., a duplex, tri-plex, etc.) lawfully exists, and at which all the following conditions also exist: (i) the Property Owner owns two or more Dwellings on the parcel, and (ii) the Property Owner resides in one of the Dwellings on the parcel and such Dwelling unit is the Property Owner's Primary Residence, and (iii) one of the Dwellings owned by the Property Owner is used for STR purposes.
- (k) "Non-Primary Short-Term Rental" shall mean a Dwelling used for Short-Term Rental purposes other than a Home Stay, Multi-Family Home Stay or Primary Residence Short-Term Rental.
- (l) "Permittee" shall mean the holder of an STR Permit.
- (m) "Primary Residence" shall mean a Dwelling which a Permittee uses as his or her domicile and permanent principle home for legal purposes.
- (n) "Primary Residence Short-Term Rental" shall mean an STR at a Dwelling which is the Property Owner's Primary Residence, as evidenced per the provisions hereof, which is being rented for STR purposes when the Property Owner is traveling or living elsewhere.
- (o) "Property Owner" shall mean a person who holds a recorded interest in a parcel upon which a Dwelling exists which is used for, or proposed to be used for an STR. In the case of a trust, both the trustees and any person or entity holding a beneficial interest of more than 5% in the trust are deemed to be the Property Owner. In the case of a business entity, any person having an ownership interest of more than 5% in the entity shall be deemed to be a Property Owner.
- (p) "Short-Term Rental" or "STR" shall have the same meaning as Section 5.30.020(e) of the Municipal Code.
- (q) "STR Permit" means a permit issued to the Property Owner to authorize use of a Dwelling for STR purposes pursuant to the STR Program.

3. STR Permit Limitations:

- (a) A maximum of 115 STR Permits may be issued for Non-Primary STRs in the City, with this limitation only applicable to Non-Primary STRs at Dwellings located inside the Coastal Zone. Any STR Permits issued as of the effective date of this STR Program for Non-Primary STRs shall continue to be valid, and shall count towards this numerical cap.
- (b) There shall be no limit on the number of STR Permits that may be issued for Multi-Family Home Stay, Home Stay or Primary Residence STRs in the City's Coastal Zone. Any STR Permits issued as of the effective date of this STR Program for STRs that meet the definition of a Multi-Family Home Stay, Home Stay or Primary Residence STR shall continue to be valid.
- (c) Two goals of this STR Program are (1) to encourage Home Stay, Multi-Family Home Stay and Primary STRs because there is less potential for nuisance issues in situations where the STR Permit

is issued for a parcel which is the Property Owner's Primary Residence and (2) to encourage STRs on Mixed-Use Parcels, rather than parcels zoned for single family Dwellings so as to avoid impacts on surrounding residents at such parcels. Towards this end, the following provisions shall apply:

- i. Adjustments to cap when new Home Stay, Multi-Family Home Stay or Primary Residence STR Permits are issued:
 - A. Each time after the effective date of this STR Program that a new STR Permit is issued in the Coastal Zone for a Home Stay, Multi-Family Home Stay or Primary Residence STR Permit, the cap for Non-Primary STR Permits noted in Section (3)(a) shall be reduced by one (1).
 - B. This reduction to the numerical cap shall have no impact on or application to an existing Non-Primary STR Permit, including when such STR Permit is considered for annual renewal. Rather, it shall only apply to either: (1) reduce the number of Non-Primary STR Permits available to be issued in the event less than the total number of applicable, permissible STR 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.
- ii. Adjustments to cap when new Mixed-Use Parcel STR Permits are issued:
 - A. A maximum of 190 new Mixed-Use Parcel STR Permits may be issued for Non-Primary STRs that are located on Mixed-Use Parcels.
 - B. Mixed-Use Parcel STR Permits shall be required to pay the STR Permit fee established by the City Council in an amount calculated as follows (Total STR Permit Fee x 0.75).
 - C. Mixed-Use Parcel STR Permits may be issued without regard to the numerical cap noted in Section 3(a) above, and do not count towards determining such numerical cap.
 - D. Each time a Mixed-Use Parcel STR Permit is issued for a Non-Primary STR, the numerical cap for such category of STR Permits noted in Section 3(a) [as such cap may be adjusted pursuant to the provisions of Section 3(c)(1)] shall be reduced by one (1). This reduction to the numerical cap shall have no impact on or application to an existing Non-Primary STR Permit, including when such STR Permit is considered for annual renewal. Rather, it shall only apply to either: (1) reduce the number of Non-Primary STR Permits available to be issued in the event less than the total number of applicable, permissible STR 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.
- (d) When a parcel upon which a Dwelling exists for which an STR Permit has been issued is sold, the STR Permit shall expire upon the date the title to such parcel transfers, and the STR Permit shall not transfer to the new Property Owner. Should the new Property Owner desire to use any Dwelling on the parcel as an STR, such new Property Owner must apply for and receive an STR Permit.
- (e) Notwithstanding the foregoing, if a parcel upon which a Dwelling exists for which an STR Permit has been issued changes ownership through an inheritance, or as a result of a family transfer that

results in no new property tax assessment of the parcel, the STR Permit may be transferred provided the new Property Owner(s) is/are family members of the prior Property Owner. In such circumstance, the new Property Owner may apply for an STR Permit transfer. The STR Permit transfer shall be subject to such requirements as may be imposed by the Community Development Director to confirm the new Property Owner(s) is(are) a family member(s) of the prior Property Owner(s). Prior to the first use of any Dwelling on a parcel as an STR after a change of ownership as a result of an inheritance, an STR Permit transfer shall have been approved by the City. The Community Development Director shall determine if a familial relationship exists, and shall base that decision on the totality of the facts of any given circumstance in a manner that carries out the intent of this provision consistent with applicable laws.

- (f) Upon reaching the maximum number of Non-Primary STR Permits, the City will establish a waitlist for the issuance of Non-Primary STR Permits when they become available.
- (g) Upon the effective date of the STR Program, STR Permits shall be limited to one STR Permit per Property Owner without regard to the category of STR to which such STR Permit applies (i.e., whether for a Home Stay, Non-Primary, Multi-Family Home Stay, or Primary Residence STR.) Any STR Permits issued prior to the effective date of the STR Program which conflict with this provision shall be deemed to be "grandfathered" and will remain valid, subject to all other provisions hereof until such time as the pre-existing STR Permit(s) expire(s) or is (are) revoked.
- (h) An STR Permit shall not be issued for a Dwelling located in a multi-family structure if issuance of such Permit would result in the creation of a "hotel", as defined by the Dana Point Zoning Code (i.e., 6 or more guest rooms or suites located in a structure or group of structures.)
- (i) After five years of the STR Program, the Community Development Director will review the Program to determine if a change to the maximum number of STR Permits should be considered. Any change to the maximum number of STR Permits shall be subject to an amendment to the Coastal Development Permit.

4. Permit Holders/Agents

- (a) STR Permits shall be issued only to the Property Owner of the parcel upon which a Dwelling exists that is proposed to be used as an STR. The Property Owner shall be responsible for compliance with the provisions of this STR Program, and any STR Permit.
- (b) A Property Owner may retain an Agent or a representative to comply with the requirements of this STR Program, including, without limitation, the filing of an application for an STR Permit, the management of the STR, and the compliance with the conditions to the STR Permit. The Property Owner shall sign and notarize an agreement satisfactory to the Community Development Director demonstrating the creation of an Agent relationship. The failure of an Agent to comply with this STR Program or any STR Permit condition shall be deemed non-compliance by both the Property Owner and Agent, and both shall be subject to any adverse action by the City related to a violation, including imposition of fines and STR Permit revocation.

5. Permit Required

No person shall rent, offer to rent, or advertise for rent a Dwelling for use as an STR without a valid STR Permit approved and issued by the City of Dana Point for the Dwelling.

6. Application for Permit

The Property Owner of the parcel upon which a Dwelling exists that is proposed to be used as an STR shall submit an application for an STR Permit to the Community Development Director. The application for an STR Permit shall be upon forms provided by the City and shall contain the following information:

- (a) The name, address, email, and telephone number of the Property Owner, and all persons or entities that are Property Owners, of the parcel upon which a Dwelling exists that is proposed for use as an STR and for which the STR Permit is requested.
- (b) The name, address, email, and telephone number of the Property Owner's Agent, if any.
- (c) The address of the Dwelling proposed to be used as an STR.
- (d) Evidence of a valid transient occupancy tax registration certificate issued by the City in connection with the proposed STR.
- (e) Proof of general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit and an executed agreement to indemnify, defend, and save the City harmless from any and all claims and liabilities of any kind whatsoever resulting from or arising out of the issuance of the STR Permit or the use of the Dwelling to which the STR Permit applies as an STR.
- (f) In connection with an application for a Primary Residence, or Home Stay STR the Property Owner shall provide evidence that the Dwelling proposed to be used as an STR is the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and received a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property Owner's domicile such as an income tax return, car registration, Driver's License or similar official record satisfactory to the Community Development Director.
- (g) In connection with an application for a Multi-Family Home Stay STR, the Property Owner shall provide evidence that one of the Dwellings on the parcel where the proposed STR is located is the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and received a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property Owner's domicile such as an income tax return, car registration, Driver's License or similar official record satisfactory to the Community Development Director.
- (h) Acknowledgment that the Property Owner (and Agent if applicable) received a copy of, reviewed and understands the regulations pertaining to the operation of an STR within the city.
- (i) The STR to which the Permit applies shall not be prohibited by any Homeowners Association Conditions, Covenants, and Restrictions ("CC&Rs") or any other community standards/guidelines applicable to the parcel where the Dwelling to be used as an STR is located.
- (j) Such other information as the Community Development Director deems reasonably necessary to administer this STR Program.

- (k) Permits shall only be issued to the Property Owner of the parcel upon which a Dwelling exists that is proposed to be used as an STR. If multiple Property Owners exist, one such owner may be designated as the Agent, subject to the provisions hereof related to Agents.
- (l) Only one (1) STR Permit, for one Dwelling, shall be issued to any person or entity that meets the definition of a Property Owner hereunder; and, when an STR permit is issued for a Dwelling, it is deemed to be issued to all Property Owners of such Dwelling.
- (m) A fee for issuance of an STR Permit shall be established by the City Council.

7. Application for Waitlist

A Property Owner desiring to be added to the City's waitlist for Non-Primary STR Permits shall submit a waitlist application. Once received, the Property Owner will be added to the City's STR Permit waitlist.

- (a) Property Owners on the STR Permit waitlist must provide an application annually to verify continued eligibility to preserve their position on the STR Permit waitlist.
- (b) A Property Owner's position on the STR Permit waitlist is not transferable.
- (c) The application for the STR Permit waitlist shall be upon forms provided by the City and shall contain the following information:
 - (1) The name, address, email, and telephone number of the Property Owner of the parcel upon which a Dwelling exists that is proposed for use as an STR and for which the STR Permit is requested.
 - (2) The address of the Dwelling proposed to be used as an STR.
 - (3) Additional information as the Community Development Director deems reasonably necessary to administer this STR Program.
- (d) The STR Permit waitlist fee shall be the same as the STR Permit fee. Upon selection and STR Permit issuance, the STR Permit waitlist fee paid will be applied toward the first year's STR Permit fee.
- (e) Upon selection from the STR Permit waitlist, the Property Owner shall have 14 days to submit a complete STR Permit application to the City.

8. Renewal of Permit

All Property Owner's holding STR Permits shall apply for and renew their STR Permit annually on March 1st or an alternative date as determined by the Community Development Director. STR Permit renewals shall include any changes to the information or requirements set forth in these regulations, as well as proof of current general liability insurance as required in Section 6(e) of this Program.

In the case of renewal of STR Permits issued for Primary Residence and Home Stay STRs, the Property Owner shall provide evidence that the Dwelling proposed to be used as an STR continues to be the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and continues to receive a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property

Owners domicile such as an income tax return, car registration, Driver's License or similar official record satisfactory to the Community Development Director.

In the case of renewal of STR Permits issued for Multi-Family Home Stay STRs, the Property Owner shall provide evidence that one of the Dwellings on the parcel where the proposed STR is located continues to be the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and received a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property Owner's domicile such as an income tax return, car registration, Driver's License or similar official record satisfactory to the Community Development Director.

Any STR Permit that is inactive during a permit year (meaning no rentals occurred during the year) will not be renewed. The inactivity requirement can be waived if the Dwelling to which the STR Permit renewal applies is under renovation, as evidenced by validly issued, unexpired building permits, or for good cause as determined by the Community Development Director. Any STR Permit inactive for two permit years shall not be renewed.

9. Conditions of Permit Issuance and Renewal

- (a) STR Permits and renewals issued pursuant to this STR Program are subject to the following standard conditions:
 - (1) All STR Permits shall comply with the terms of this STR Program and the provisions of this STR Program are deemed to be included in all STR Permits by the Community Development Director pursuant to Sections 5.38.080(b) and (c) of the Municipal Code.
 - (2) The Property Owner (or Agent if applicable) shall ensure that the STR complies with all applicable codes regarding fire, building and safety, and all other relevant laws and ordinances.
 - (3) The Property Owner (or Agent if applicable) shall provide proof that STR to which the Permit applies is not prohibited by any Homeowners Association Conditions, Covenants, and Restrictions ("CC&Rs") or any other community standards/guidelines applicable to the parcel where the Dwelling to be used as an STR is located.
 - (4) Concurrent with the issuance of the STR Permit and annually upon its renewal, City Staff shall provide notice of the proposed action on the STR Permit to all property owners and tenants abutting the parcel, or in the case of an STR in a multi-family Dwelling the owners and tenants of all other Dwelling Units on the parcel and/or in the same structure, upon which the Dwelling proposed to operate as an STR is located. The notice shall also provide the contact information for the Property Owner (and Agent if applicable) and their twenty-four (24) hour emergency contact phone number. The notification package shall also identify the City's twenty-four (24) hour STR hotline phone number, Code Enforcement phone number, and Orange County Sheriff's Department phone number. The notice shall not afford the abutting owners/tenants any protest, appeal, or other related rights; rather, its intent is to provide the abutting property owners/tenants with an annual reminder as to the contact information for the various individuals and entities

responsible for enforcement in the event that an issue arises with the operation of the STR.

- (5) The Dwelling for which an STR Permit is requested must pass an initial inspection by the City prior to STR Permit issuance. The City may conduct additional inspections as deemed necessary or prudent at any reasonable time, including prior to subsequent renewals.
- (6) The Property Owner shall provide a twenty-four (24) hour emergency contact that will be available to respond to issues at the STR.
- (7) The STR must have and maintain a minimum of two (2) off-street parking spaces.
- (8) The STR must have a visible house number easily seen from the street, day or night.
- (9) All advertising for the STR shall include the City issued STR Permit number in the subject line and in the description of the STR. In addition, all photographs, maps, and diagrams of the STR that are used for advertising purposes shall impose the City-issued STR Permit number in the lower right-hand corner in a font, style, size, and color to be reasonably legible, with any dispute as to the meaning of this provision subject to interpretation by the Community Development Director.
- (10) The primary overnight and daytime renter, who shall also be residing as a guest in the STR during any STR rental period must be an adult twenty-five (25) years of age or older. This adult must provide a telephone number to the Property Owner (or Agent if applicable) and shall be accessible to the Property Owner by telephone at all times.
- (11) Prior to occupancy, the Property Owner (or Agent if applicable) shall obtain the name, address, and driver's license number or a copy of the passport of the primary adult occupant of the STR. The Property Owner (or Agent if applicable) shall require that same adult to sign a formal acknowledgment that he or she is legally responsible for compliance by all occupants and guests of the STR with the provisions of this STR Program, as well as a copy of the City's Good Neighbor Acknowledgment. An unsigned copy of the City's Good Neighbor Acknowledgment shall be posted in a conspicuous location within the STR, along with a copy of the City's STR regulations. This information shall be readily available upon request of any police officer or employee of the City authorized to enforce this STR Program or State law.
- (12) The Property Owner (or Agent if applicable) shall rent the STR for a minimum stay of two (2) consecutive nights.
- (13) The maximum overnight occupancy of the STR shall be limited to two (2) persons per bedroom plus two (2) additional persons within the STR. The Community Development Director may, when unusual size, interior layout, parking, or other physical characteristics are shown, approve a greater maximum number of overnight occupants as part of an STR Permit application or renewal. The maximum daytime occupancy shall be limited to two and a half (2.5) times the overnight occupancy and not exceed twenty (20) persons; however, the Community Development Director may, when unusual size, or other physical characteristics, approve a greater maximum number of daytime occupants as part of an STR Permit application or renewal.
- (14) The maximum number of vehicles allowed at the STR shall be limited to one (1) vehicle per one (1) bedroom unit or two (2) vehicles maximum with two (2) or more bedrooms

within the STR. The Community Development Director may, when unusual size, parking, or other physical characteristics are shown, approve a greater maximum number of vehicles as part of an STR Permit application or renewal. The Property Owner must ensure a sufficient number of parking spaces are accessible to tenants to accommodate the maximum number of vehicles allowed.

- (15) No on-site exterior signs are to be posted on a parcel advertising an STR at the location.
- (16) Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the responsible trash hauler and between the hours of 5:00 p.m. the day before and 8:00 a.m. the day after the scheduled trash collection days, as provided in Chapter 6.10 of the Dana Point Municipal Code. In the event the Property Owner fails to comply with this provision, he/she shall be required to sign up for walk-up trash service provided by the City's waste disposal franchisee and provide proof to the City of the same. The Property Owner shall provide sufficient trash collection containers and services to meet the demand of the occupants of the STR.
- (17) Each lease or rental agreement for an STR shall include the following terms, notifications, and disclosures, which shall also be posted in a conspicuous location inside the STR:
 - (A) The maximum number of occupants that are permitted and notification that failure to conform to the maximum occupancy is a violation of this STR Program.
 - (B) The number of parking spaces provided and, if not adjacent to the STR, the location of assigned parking and the maximum number of vehicles that are permitted.
 - (C) The trash pick-up day(s) and applicable rules and regulations pertaining to leaving or storing trash on the exterior of buildings on the parcel.
 - (D) Notification that the occupant may be cited or fined by the City and/or immediately evicted by the Property Owner (or Agent as applicable) for violating any and all applicable laws.
 - (E) The name of the Property Owner or Agent, and a telephone number at which that party may be reached at all times and 9-1-1 Emergency information.
 - (F) Summary of applicable Homeowners Association Conditions, Covenants, and Restrictions (CC&Rs) and bylaws, including pool location and hours.
 - (G) The terms, notifications, and disclosures must be posted during the registration process.
- (18) The Property Owner shall ensure that the occupants of the STR do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the Municipal Code or any State Law pertaining to noise, disorderly conduct, overcrowding, alcohol consumption, or the use of drugs. Property Owners are expected to take any measures necessary to abate disturbances, including, but not limited to, directing the tenant, calling for law enforcement services or City code enforcement officers, evicting the tenant, or any other action necessary to immediately abate the disturbance.

- (19) The Property Owner or Agent as applicable shall, upon notification that occupants or tenants of an STR have created unreasonable noise or disturbances, engaged in disorderly conduct, or committed violations of the Municipal Code or State Law pertaining to, but not limited to, noise, disorderly conduct, and/or overcrowding, take action to abate the issue within thirty (30) minutes of the Property Owner or Agent being notified of a complaint and prevent a recurrence of such conduct by those occupants or guests. In some instances, the Property Owner or Agent may be required to arrive on site within thirty (30) minutes of a received complaint to address the issue and ensure there is not a re-occurrence.
- (20) No outside noise from the STR shall be heard during quiet hours of 10:00 p.m. to 7:00 a.m.
- (21) The Property Owner or Agent as applicable shall include ADA information, if available, in all advertisements for the STR (e.g., stairs, signage, ingress/egress, parking, storage, utilities, showers and lavatories, air conditioning, etc.).
- (22) Advertisements, and information provided in the STR itself, shall disclose whether bicycles or other means of transport (scooters, skateboards, carpooling, rideshare, etc.) are available.
- (b) The Community Development Director shall have the authority at any time to impose additional standard conditions, applicable to all STRs, as necessary to achieve the objectives of this STR Program.
- (c) The Community Development Director shall have the authority to impose additional conditions on any STR Permit in the event of any violation of the conditions to the STR Permit or the provisions of this STR Program subject to compliance with the procedures specified in Section 5.38.100 of the Municipal Code.
- (d) The Property Owner or Agent as applicable shall maintain a valid transient occupancy tax registration certificate issued by the City for the STR, and shall collect and remit transient occupancy tax as required by Chapter 3.25 of the Municipal Code.

10. Short-Term Rental Operator Regulations

The following are additional regulations and clarifications applicable to all Property Owners or Agents if applicable for the operation of STRs. These regulations may be updated periodically by the Community Development Director for clarification of situations that may develop based on the implementation of the STR Program and regulations within the City.

- (a) No person shall rent, offer to rent, or advertise for rent a Dwelling for use as an STR if such Dwelling is an Accessory Dwelling Unit, Junior Accessory Dwelling Unit, created as part of Single-Family Residential Duplex (as defined by Zoning Code Section 9.72), or designated as an affordable housing unit, and no STR Permit shall be issued for any such Dwelling.
- (b) No person shall rent, offer to rent, or advertise for rent a Dwelling for use as an STR unless such Dwelling is in a zoning district where residential uses are allowed, including, but not limited to, detached single-family dwellings, condominiums, duplexes, triplexes, townhomes, and multiple-family dwellings, and no STR Permit shall be issued for a Dwelling that does not meet this criteria.

- (c) Home Stay STR and Multi-Family Home Stay STR shall be subject to the following:
 - (1) Notwithstanding any other provision of this STR Program to the contrary, the Property Owner of a Home Stay STR or Multi-Family Home Stay STR shall be present at the parcel upon which the STR is located during the rental period between the hours of 10:00 p.m. to 7:00 a.m.
 - (2) A maximum of one Home Stay STR Permit may be issued for any parcel upon which multiple Dwellings exist.
 - (3) In no instance shall a Home Stay STR Permittee allow the use of an on-site camper, RV, or tent by renters as part of the STR use on a parcel.
- (d) Primary Residence STR shall be subject to the following:
 - (1) A Property Owner to whom an STR Permit for a Primary Residence STR is issued shall be limited to renting the Dwelling to which the STR Permit applies for a maximum of 60 days per 12-month period, (with the date starting on the date the STR Permit is issued) unless further restricted by CC&R regulations. Compliance will be monitored by the transient occupancy tax annual submittal, and such other means as deemed necessary and appropriate by the Community Development Director.

11. Violations and Penalties

- (a) Violations are described in Conditions of Permit Issuance and Renewal. The following conduct shall constitute a violation for which the penalties specified in Section 5.38.090 of the Municipal Code and subsection (b) below may be imposed, or for which the STR Permit may be revoked:
 - (1) The Property Owner and/or Agent has failed to comply with the standard conditions specified in Conditions of Permit Issuance and Renewal Section (a);
 - (2) The Property Owner and/or Agent has failed to comply with conditions imposed by the Community Development Director pursuant to the provisions of Conditions of Permit Issuance and Renewal Section (b) or (c);
 - (3) The Property Owner and/or Agent has willfully violated the provisions of this Program;
 - (4) The Property Owner and/or Agent has failed to comply and pay any fines imposed pursuant to subsection (b) within thirty (30) days of the date of notification; or
 - (5) The Property Owner and/or Agent has failed to comply and pay the transient occupancy tax or submit a report as required by Chapter 3.25 of the Municipal Code within the required time limit.
- (b) Penalties. The penalties for violations imposed per subsection (a) above, or the Municipal Code, shall be the responsibility of the Property Owner, and/or the Agent if applicable, and are issued per day per violation as follows:

- (1) For the first violation, the penalty shall be the maximum monetary amount allowed per State law;
- (2) For a second violation, the penalty shall be the maximum monetary amount allowed per State law;
- (3) For a third violation, the penalty shall result in the immediate revocation of the STR Permit. In the event the STR Permit has been revoked, the Property Owner shall thereafter be ineligible to receive an STR Permit for any category of STR to be operated on the same parcel upon which the STR for which the Permit was revoked existed.

12. Procedure for Imposition of Penalties/Revocation

Penalties, including notice of violation, shall be imposed, and STR Permits shall be revoked only in the manner provided in this Section and Section 5.38 of the Municipal Code.

The Community Development Director shall conduct an investigation whenever he or she has reason to believe that a Property Owner (or Agent as applicable) has committed a violation described in Section 5.38.090(a) of the Municipal Code. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Community Development Director shall issue written notice of intention to impose a penalty and/or revoke the STR Permit.

The written notice shall be served on the Property Owner, and the Agent if applicable, and shall specify the facts which, in the opinion of the Community Development Director, constitute substantial evidence to establish grounds for imposition of the penalties and/or revocation, and specify that the penalties will be imposed and/or the STR Permit will be revoked within thirty (30) days from the date the notice is given unless the Property Owner, or Agent if applicable, files with the City Clerk before the penalties or revocation becomes effective, a request for hearing before the City Manager.

Exhibit A

Coastal Development Permit Short-Term Rental Program

~~Strikethrough Text~~ = Proposed language to be removed

Underline Text = Proposed language to be added

1. Introduction

The following sets forth the rules and regulations for the City of Dana Point's Short-Term Rental Program (the "STR Program"), the purpose of which is to require the owner or owners of a residential Dwelling that operates as a Short-Term Rental ("STR"), as defined herein, to apply for and secure a permit authorizing such use in the manner provided for by this STR Program to safeguard the peace, safety and general welfare of the residents of Dana Point, their guests, and out of town visitors, by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse which are directly related to STRs. There are currently existing STR Permits in the City. These existing STR Permits are subject to the provisions of this STR Program on a moving forward basis, including the provisions hereof related to renewals; but, they are "grandfathered" in the sense they continue to remain valid and the holders of such STR Permits do not need to submit a new initial application.

2. Definitions

The following definitions shall apply to the STR Program:

- (a) "Accessory Dwelling Unit" shall mean an attached or a detached residential Dwelling that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multi-family dwelling is or will be situated. An Accessory Dwelling Unit also includes the following: (A) An efficiency unit, and (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code."
- (b) "Agent" shall mean the representative, if any, designated by the owner in accordance with Section 5.38.040 of the Municipal Code.
- (c) "City Manager" shall mean the City Manager of the City of Dana Point or designee.

- (d) "Community Development Director" shall mean the Community Development Director of the City of Dana Point or designee.
- (e) "Dwelling Unit" or "Dwelling" shall have the same meaning as set forth in Section 9.75.050 of the Municipal Code.
- (f) "Home Stay Short-Term Rental" shall mean an STR at a Dwelling (as defined in the Municipal Code) at which the Property Owner rents a portion of the Dwelling Unit for use as an STR while continuing to live in the Dwelling Unit during the period of the rental.
- (g) "Junior Accessory Dwelling Unit" shall mean a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior Accessory Dwelling Unit may include separate sanitation facilities or share sanitation facilities with the existing structure."
- (h) "Mixed-Use Parcel" shall mean a parcel upon which the City's zoning permits commercial and residential uses to exist at the same time (i.e., commercial on first floor and residential on upper floors). By way of example only, as of the effective date of the STR Program, parcels located in the following zoning districts in the City would meet the definition of Mixed-Use Parcel: C/R; R/C-18; P/R; TC-MU.
- (i) "Mixed-Use Parcel STR Permit" shall mean a Permit for either a Non-Primary STR or a Multi-Family Home Stay STR issued for an STR located in a Dwelling on a Mixed-Use Parcel.
- (j) "Multi-Family Home Stay Short-Term Rental" shall mean an STR at a parcel upon which a multi-family Dwelling (i.e., a duplex, tri-plex, etc.) lawfully exists, and at which all the following conditions also exist: (i) the Property Owner owns two or more Dwellings on the parcel, and (ii) the Property Owner resides in one of the Dwellings on the parcel and such Dwelling unit is the Property Owner's Primary Residence, and (iii) one of the Dwellings owned by the Property Owner is used for STR purposes.
- (k) "Non-Primary Short-Term Rental" shall mean a Dwelling used for Short-Term Rental purposes other than a Home Stay, Multi-Family Home Stay or Primary Residence Short-Term Rental.
- (l) "Permittee" shall mean the holder of an STR Permit.
- (m) "Primary Residence" shall mean a Dwelling which a Permittee uses as his or her

domicile and permanent ~~principle~~ principal home for legal purposes.

- (n) "Primary Residence Short-Term Rental" shall mean an STR at a Dwelling which is the Property Owner's Primary Residence, as evidenced per the provisions hereof, which is being rented for STR purposes when the Property Owner is traveling or living elsewhere.
- (o) "Property Owner" shall mean a person who holds a recorded interest in a parcel upon which a Dwelling exists which is used for, or proposed to be used for an STR. In the case of a trust, both the trustees and any person or entity holding a beneficial interest of more than 5% in the trust are deemed to be the Property Owner. In the case of a business entity, any person having an ownership interest of more than 5% in the entity shall be deemed to be a Property Owner.
- (p) "Short-Term Rental" or "STR" shall ~~have the same meaning as Section 5.30.020(e) of the Municipal Code~~ the rental of any structure or any portion of any structure for occupancy, dwelling, lodging or sleeping purposes for at least two (2) consecutive nights, but no more than thirty (30), consecutive calendar days in duration in a zoning district where residential uses are allowed, including, but not limited to, detached single-family dwellings, condominiums, duplexes, triplexes, townhomes and multiple-family dwellings.
- (q) "STR Permit" means a permit issued to the Property Owner to authorize use of a Dwelling for STR purposes pursuant to the STR Program.

3. STR Permit Limitations:

- (a) A total maximum of 115 STR Permits may be issued for Non-Primary, Multi-Family Home Stay, and Mixed-Use Non-Primary STRs in the City, with this limitation only applicable to ~~Non-Primary~~ such STRs at Dwellings located inside the Coastal Zone. Any STR Permits issued as of the effective date of this STR Program for Non-Primary, Multi-Family Home Stay, and Mixed-Use Non-Primary STRs shall continue to be valid, and shall count towards this numerical cap.
- (b) There shall be no limit on the number of STR Permits that may be issued for ~~Multi-Family Home Stay,~~ Home Stay or Primary Residence STRs in the City's Coastal Zone. Any STR Permits issued as of the effective date of this STR Program for STRs that meet the definition of a ~~Multi-Family Home Stay,~~ Home Stay or Primary Residence STR shall continue to be valid.
- (c) Two goals of this STR Program are (1) to encourage Home Stay, ~~Multi-Family Home Stay~~ and Primary STRs because there is less potential for nuisance issues

in situations where the STR Permit is issued for a parcel which is the Property Owner's Primary Residence and (2) to encourage STRs on Mixed-Use Parcels, rather than parcels zoned for single family Dwellings so as to avoid impacts on surrounding residents at such parcels. Towards this end, the following provisions shall apply:

- i. Adjustments to cap when new Home Stay, ~~Multi-Family Home Stay~~ or Primary Residence STR Permits are issued:
 - A. Each time after the effective date of this STR Program that a new STR Permit is issued in the Coastal Zone for a Home Stay, ~~Multi-Family Home Stay~~ or Primary Residence STR Permit, the cap for Non-Primary, Multi-Family Home Stay, and Mixed-Use Non-Primary STR Permits noted in Section (3)(a) shall be reduced by one (1).
 - B. This reduction to the numerical cap shall have no impact on or application to an existing Non-Primary, Multi-Family Home Stay, and Mixed-Use Non-Primary STR Permits, including when such STR Permits is are considered for annual renewal. Rather, it shall only apply to either: (1) reduce the number of Non-Primary, Multi-Family Home Stay, and Mixed-Use Non-Primary STR Permits available to be issued in the event less than the total number of applicable, permissible STR Permits have been issued, or (2) limit the availability of Non-Primary, Multi-Family Home Stay, and Mixed-Use Non-Primary STR Permits that would otherwise be available to Property Owners on the STR Permit waitlist.
- ii. ~~Adjustments to cap when~~ Encouragement of new Mixed-Use Parcel STR Permits are issued:
 - A. ~~A maximum of 190 new Mixed-Use Parcel STR Permits may be issued for Non-Primary STRs that are located on Mixed-Use Parcels. No more than twenty percent (20%) of the number of residential units in each of the City's certified Mixed-Use Districts shall be converted to STRs.~~
 - B. Mixed-Use Parcel STR Permits shall be required to pay the STR Permit fee established by the City Council in an amount calculated as follows (Total STR Permit Fee x 0.75).
 - C. ~~Mixed-Use Parcel STR Permits may be issued without regard to the numerical cap noted in Section 3(a) above, and do not count towards determining such numerical cap.~~
 - D. C. Each time a Mixed-Use Parcel STR Permit is issued for a Non-Primary STR, the numerical cap for such category of STR Permits

~~noted in Section 3(a) [as such cap may be adjusted pursuant to the provisions of Section 3(c)(1)] shall be reduced by one (1). This reduction to the numerical cap shall have no impact on or application to an existing Non-Primary STR Permit, including when such STR Permit is considered for annual renewal. Rather, it shall only apply to either: (1) reduce the number of Non-Primary STR Permits available to be issued in the event less than the total number of applicable, permissible STR 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. Mixed-Use Non-Primary STR Permit applications shall be given priority when selected from the City's STR Permit waitlist, so long as STR Permits are available and the cap for this category is not exceeded.~~

- (d) When a parcel upon which a Dwelling exists for which an STR Permit has been issued is sold, the STR Permit shall expire upon the date the title to such parcel transfers, and the STR Permit shall not transfer to the new Property Owner. Should the new Property Owner desire to use any Dwelling on the parcel as an STR, such new Property Owner must apply for and receive an STR Permit.
- (e) Notwithstanding the foregoing, if a parcel upon which a Dwelling exists for which an STR Permit has been issued changes ownership through an inheritance, or as a result of a family transfer that results in no new property tax assessment of the parcel, the STR Permit may be transferred provided the new Property Owner(s) is/are family members of the prior Property Owner. In such circumstance, the new Property Owner may apply for an STR Permit transfer. The STR Permit transfer shall be subject to such requirements as may be imposed by the Community Development Director to confirm the new Property Owner(s) is/are a family member(s) of the prior Property Owner(s). Prior to the first use of any Dwelling on a parcel as an STR after a change of ownership as a result of an inheritance, an STR Permit transfer shall have been approved by the City. The Community Development Director shall determine if a familial relationship exists, and shall base that decision on the totality of the facts of any given circumstance in a manner that carries out the intent of this provision consistent with applicable laws.
- (f) Upon reaching the maximum number of Non-Primary, Multi-Family Home Stay, and Mixed-Use Non-Primary STR Permits, the City will establish a waitlist for the issuance of Non-Primary, Multi-Family Home Stay, and Mixed-Use Parcel STR Permits when they become available.
- (g) Upon the effective date of the STR Program, STR Permits shall be limited to

one STR Permit per Property Owner without regard to the category of STR to which such STR Permit applies (i.e., whether for a Home Stay, Non-Primary, Multi-Family Home Stay, Mixed-Use Parcel, or Primary Residence STR.) Any STR Permits issued prior to the effective date of the STR Program which conflict with this provision shall be deemed to be "grandfathered" and will remain valid, subject to all other provisions hereof until such time as the pre-existing STR Permit(s) expire(s) or is (are) revoked.

- (h) An STR Permit shall not be issued for a Dwelling located in a multi-family structure if issuance of such Permit would result in the creation of a "hotel", as defined by the Dana Point Zoning Code (i.e., six (6) or more guest rooms or suites located in a structure or group of structures). Additionally, properties with five (5) or fewer residential units that are located in a structure or group of structures may only convert a maximum of one (1) unit into an STR, and properties with six (6) or more residential units that are located in a structure or group of structures may only convert a maximum of twenty percent (20%) of the total number of residential units into STRs.
- (i) ~~After~~ Every five three years of the STR Program, the Community Development Director will review the Program to determine if a change to the maximum number of STR Permits should be considered. Any change to the maximum number of STR Permits shall be subject to an amendment to the Coastal Development Permit.

4. Permit Holders/Agents

- (a) STR Permits shall be issued only to the Property Owner of the parcel upon which a Dwelling exists that is proposed to be used as an STR. The Property Owner shall be responsible for compliance with the provisions of this STR Program, and any STR Permit.
- (b) A Property Owner may retain an Agent or a representative to comply with the requirements of this STR Program, including, without limitation, the filing of an application for an STR Permit, the management of the STR, and the compliance with the conditions to the STR Permit. The Property Owner shall sign and notarize an agreement satisfactory to the Community Development Director demonstrating the creation of an Agent relationship. The failure of an Agent to comply with this STR Program or any STR Permit condition shall be deemed non-compliance by both the Property Owner and Agent, and both shall be subject to any adverse action by the City related to a violation, including imposition of fines and STR Permit revocation.

5. Permit Required

No person shall rent, offer to rent, or advertise for rent a Dwelling for use as an STR without a valid STR Permit approved and issued by the City of Dana Point for the Dwelling.

6. Application for Permit

The Property Owner of the parcel upon which a Dwelling exists that is proposed to be used as an STR shall submit an application for an STR Permit to the Community Development Director. The application for an STR Permit shall be upon forms provided by the City and shall contain the following information:

- (a) The name, address, email, and telephone number of the Property Owner, and all persons or entities that are Property Owners, of the parcel upon which a Dwelling exists that is proposed for use as an STR and for which the STR Permit is requested.
- (b) The name, address, email, and telephone number of the Property Owner's Agent, if any.
- (c) The address of the Dwelling proposed to be used as an STR.
- (d) Evidence of a valid transient occupancy tax registration certificate issued by the City in connection with the proposed STR.
- (e) Proof of general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit and an executed agreement to indemnify, defend, and save the City and California Coastal Commission harmless from any and all claims and liabilities of any kind whatsoever resulting from or arising out of the issuance of the STR Permit or the use of the Dwelling to which the STR Permit applies as an STR.
- (f) In connection with an application for a Primary Residence, or Home Stay STR the Property Owner shall provide evidence that the Dwelling proposed to be used as an STR is the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and received a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property Owner's domicile such as an income tax return, car registration, Driver's License or similar official record satisfactory to the Community Development Director.
- (g) In connection with an application for a Multi-Family Home Stay STR, the

Property Owner shall provide evidence that one of the Dwellings on the parcel where the proposed STR is located is the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and received a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property Owner's domicile such as an income tax return, car registration, Driver's License or similar official record satisfactory to the Community Development Director.

- (h) Acknowledgment that the Property Owner (and Agent if applicable) received a copy of, reviewed and understands the regulations pertaining to the operation of an STR within the city.
- (i) The STR to which the Permit applies shall not be prohibited by any legal Homeowners Association Conditions, Covenants, and Restrictions ("CC&Rs") or any other legal community standards/guidelines applicable to the parcel where the Dwelling to be used as an STR is located.
- (j) Such other information as the Community Development Director deems reasonably necessary to administer this STR Program.
- (k) Permits shall only be issued to the Property Owner of the parcel upon which a Dwelling exists that is proposed to be used as an STR. If multiple Property Owners exist, one such owner may be designated as the Agent, subject to the provisions hereof related to Agents.
- (l) Only one (1) STR Permit, for one Dwelling, shall be issued to any person or entity that meets the definition of a Property Owner hereunder; and, when an STR permit is issued for a Dwelling, it is deemed to be issued to all Property Owners of such Dwelling.
- (m) A fee for issuance of an STR Permit shall be established by the City Council.

7. Application for Waitlist

A Property Owner desiring to be added to the City's waitlist for Non-Primary, Multi-Family Home Stay, and Mixed-Use Non-Primary STR Permits shall submit a waitlist application. Once received, the Property Owner will be added to the City's STR Permit waitlist.

- (a) Property Owners on the STR Permit waitlist must provide an application annually to verify continued eligibility to preserve their position on the STR

Permit waitlist.

- (b) A Property Owner's position on the STR Permit waitlist is not transferable.
- (c) The application for the STR Permit waitlist shall be upon forms provided by the City and shall contain the following information:
 - (1) The name, address, email, and telephone number of the Property Owner of the parcel upon which a Dwelling exists that is proposed for use as an STR and for which the STR Permit is requested.
 - (2) The address of the Dwelling proposed to be used as an STR.
 - (3) Additional information as the Community Development Director deems reasonably necessary to administer this STR Program.
- (d) The STR Permit waitlist fee shall be the same as the STR Permit fee. Upon selection and STR Permit issuance, the STR Permit waitlist fee paid will be applied toward the first year's STR Permit fee.
- (e) Upon selection from the STR Permit waitlist, the Property Owner shall have 14 days to submit a complete STR Permit application to the City.

8. Renewal of Permit

All Property Owner's holding STR Permits shall apply for and renew their STR Permit annually on March 1st or an alternative date as determined by the Community Development Director. STR Permit renewals shall include any changes to the information or requirements set forth in these regulations, as well as proof of current general liability insurance as required in Section 6(e) of this Program.

In the case of renewal of STR Permits issued for Primary Residence and Home Stay STRs, the Property Owner shall provide evidence that the Dwelling proposed to be used as an STR continues to be the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and continues to receive a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property Owners domicile such as an income tax return, car registration, Driver's License or similar official record satisfactory to the Community Development Director.

In the case of renewal of STR Permits issued for Multi-Family Home Stay STRs, the Property Owner shall provide evidence that one of the Dwellings on the parcel where the proposed STR is located continues to be the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and

received a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property Owner's domicile such as an income tax return, car registration, Driver's License or similar official record satisfactory to the Community Development Director.

Any STR Permit that is inactive during a permit year (meaning no rentals occurred during the year) will not be renewed. The inactivity requirement can be waived if the Dwelling to which the STR Permit renewal applies is under renovation, as evidenced by validly issued, unexpired building permits, or for good cause as determined by the Community Development Director. Any STR Permit inactive for two permit years shall not be renewed.

9. Conditions of Permit Issuance and Renewal

- (a) STR Permits and renewals issued pursuant to this STR Program are subject to the following standard conditions:
 - (1) All STR Permits shall comply with the terms of this STR Program and the provisions of this STR Program are deemed to be included in all STR Permits by the Community Development Director ~~pursuant to Sections 5.38.050(b) and (c) of the Municipal Code.~~
 - (2) The Property Owner (or Agent if applicable) shall ensure that the STR complies with all applicable codes regarding fire, building and safety, and all other relevant laws and ordinances.
 - (3) The Property Owner (or Agent if applicable) shall provide proof that STR to which the Permit applies is not legally prohibited by any legal Homeowners Association Conditions, Covenants, and Restrictions ("CC&Rs") or any other legal community standards/guidelines applicable to the parcel where the Dwelling to be used as an STR is located.
 - (4) Concurrent with the issuance of the STR Permit and annually upon its renewal, City Staff shall provide notice of the proposed action on the STR Permit to all property owners and tenants abutting the parcel, or in the case of an STR in a multi-family Dwelling the owners and tenants of all other Dwelling Units on the parcel and/or in the same structure, upon which the Dwelling proposed to operate as an STR is located. The notice shall also provide the contact information for the Property Owner (and Agent if applicable) and their twenty-four (24) hour emergency contact phone number. The notification package shall also identify the City's twenty-four (24) hour STR hotline phone number, Code Enforcement

phone number, and Orange County Sheriff's Department phone number. The notice shall not afford the abutting owners/tenants any protest, appeal, or other related rights; rather, its intent is to provide the abutting property owners/tenants with an annual reminder as to the contact information for the various individuals and entities responsible for enforcement in the event that an issue arises with the operation of the STR.

- (5) The Dwelling for which an STR Permit is requested must pass an initial inspection by the City prior to STR Permit issuance. The City may conduct additional inspections as deemed necessary or prudent at any reasonable time, including prior to subsequent renewals.
- (6) The Property Owner shall provide a twenty-four (24) hour emergency contact that will be available to respond to issues at the STR.
- (7) The STR must have and maintain a minimum of two (2) off-street parking spaces.
- (8) The STR must have a visible house number easily seen from the street, day or night.
- (9) All advertising for the STR shall include the City issued STR Permit number in the subject line and in the description of the STR. In addition, all photographs, maps, and diagrams of the STR that are used for advertising purposes shall impose the City-issued STR Permit number in the lower right-hand corner in a font, style, size, and color to be reasonably legible, with any dispute as to the meaning of this provision subject to interpretation by the Community Development Director.
- (10) The primary overnight and daytime renter, who shall also be residing as a guest in the STR during any STR rental period must be an adult twenty-five (25) years of age or older. This adult must provide a telephone number to the Property Owner (or Agent if applicable) and shall be accessible to the Property Owner by telephone at all times.
- (11) Prior to occupancy, the Property Owner (or Agent if applicable) shall obtain the name, address, and driver's license number or a copy of the passport of the primary adult occupant of the STR. The Property Owner (or Agent if applicable) shall require that same adult to sign a formal acknowledgment that he or she is legally responsible for compliance by all occupants and guests of the STR with the provisions of this STR Program, as well as a copy of the City's Good Neighbor Acknowledgment.

An unsigned copy of the City's Good Neighbor Acknowledgment shall be posted in a conspicuous location within the STR, along with a copy of the City's STR regulations. This information shall be readily available upon request of any police officer or employee of the City authorized to enforce this STR Program or State law.

- (12) The Property Owner (or Agent if applicable) shall rent the STR for a minimum stay of two
(2) consecutive nights.
- (13) The maximum overnight occupancy of the STR shall be limited to two (2) persons per bedroom plus two (2) additional persons within the STR. The Community Development Director may, when unusual size, interior layout, parking, or other physical characteristics are shown, approve a greater maximum number of overnight occupants as part of an STR Permit application or renewal. The maximum daytime occupancy shall be limited to two and a half (2.5) times the overnight occupancy and not exceed twenty (20) persons; however, the Community Development Director may, when unusual size, or other physical characteristics, approve a greater maximum number of daytime occupants as part of an STR Permit application or renewal.
- (14) The maximum number of vehicles allowed at the STR shall be limited to one (1) vehicle per one (1) bedroom unit or two (2) vehicles maximum with two (2) or more bedrooms within the STR. The Community Development Director may, when unusual size, parking, or other physical characteristics are shown, approve a greater maximum number of vehicles as part of an STR Permit application or renewal. The Property Owner must ensure a sufficient number of parking spaces are accessible to tenants to accommodate the maximum number of vehicles allowed.
- (15) No on-site exterior signs are to be posted on a parcel advertising an STR at the location.
- (16) Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the responsible trash hauler and between the hours of 5:00 p.m. the day before and 8:00 a.m. the day after the scheduled trash collection days, as provided in Chapter 6.10 of the Dana Point Municipal Code. In the event the Property Owner fails to comply with this provision, he/she shall be required to sign up for walk-up trash service provided by the City's waste disposal franchisee and provide proof to the City of the same. The Property Owner shall provide

sufficient trash collection containers and services to meet the demand of the occupants of the STR.

- (17) Each lease or rental agreement for an STR shall include the following terms, notifications, and disclosures, which shall also be posted in a conspicuous location inside the STR:
 - (A) The maximum number of occupants that are permitted and notification that failure to conform to the maximum occupancy is a violation of this STR Program.
 - (B) The number of parking spaces provided and, if not adjacent to the STR, the location of assigned parking and the maximum number of vehicles that are permitted.
 - (C) The trash pick-up day(s) and applicable rules and regulations pertaining to leaving or storing trash on the exterior of buildings on the parcel.
 - (D) Notification that the occupant may be cited or fined by the City and/or immediately evicted by the Property Owner (or Agent as applicable) for violating any and all applicable laws.
 - (E) The name of the Property Owner or Agent, and a telephone number at which that party may be reached at all times and 9-1-1 Emergency information.
 - (F) Summary of applicable Homeowners Association Conditions, Covenants, and Restrictions (CC&Rs) and bylaws, including pool location and hours.
 - (G) The terms, notifications, and disclosures must be posted during the registration process.
- (18) The Property Owner shall ensure that the occupants of the STR do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the Municipal Code or any State Law pertaining to noise, disorderly conduct, overcrowding, alcohol consumption, or the use of drugs. Property Owners are expected to take any measures necessary to abate disturbances, including, but not limited to, directing the tenant, calling for law enforcement services or City code enforcement officers, evicting the tenant, or any other action necessary to immediately abate the disturbance.
- (19) The Property Owner or Agent as applicable shall, upon notification that occupants or tenants of an STR have created unreasonable noise or

disturbances, engaged in disorderly conduct, or committed violations of the Municipal Code or State Law pertaining to, but not limited to, noise, disorderly conduct, and/or overcrowding, take action to abate the issue within thirty (30) minutes of the Property Owner or Agent being notified of a complaint and prevent a recurrence of such conduct by those occupants or guests. In some instances, the Property Owner or Agent may be required to arrive on site within thirty (30) minutes of a received complaint to address the issue and ensure there is not a re-occurrence.

- (20) No outside noise from the STR shall be heard during quiet hours of 10:00 p.m. to 7:00 a.m.
 - (21) The Property Owner or Agent as applicable shall include ADA information, if available, in all advertisements for the STR (e.g., stairs, signage, ingress/egress, parking, storage, utilities, showers and lavatories, air conditioning, etc.).
 - (22) Advertisements, and information provided in the STR itself, shall disclose whether bicycles or other means of transport (scooters, skateboards, carpooling, rideshare, etc.) are available.
- (b) The Community Development Director may have the authority at any time to impose additional standard conditions, applicable to all STRs, as necessary to achieve the objectives of this STR Program, except that any changes to the Program or changes in implementation of the STR regulations shall be submitted for review by the California Coastal Commission's Executive Director to determine whether an amendment to this coastal development permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. If the Commission's Executive Director determines that an amendment is necessary, no changes shall be made effective until a permit amendment is approved by the Commission and issued by its Executive Director.
 - (c) The Community Development Director shall have the authority to impose additional conditions on any STR Permit in the event of any violation of the conditions to the STR Permit or the provisions of this STR Program subject to compliance with the procedures specified in Section 12 of this Program ~~5-38.400 of the Municipal Code~~.
 - (d) The Property Owner or Agent as applicable shall maintain a valid transient occupancy tax registration certificate issued by the City for the STR, and shall collect and remit transient occupancy tax as required by Chapter 3.25 of the Municipal Code.

10. Short-Term Rental Operator Regulations

The following are additional regulations and clarifications applicable to all Property Owners or Agents if applicable for the operation of STRs. These regulations may be updated periodically by the Community Development Director for clarification of situations that may develop based on the implementation of the STR Program and regulations within the City.

- (a) No person shall rent, offer to rent, or advertise for rent a Dwelling for use as an STR if such Dwelling is an Accessory Dwelling Unit, Junior Accessory Dwelling Unit, created as part of Single-Family Residential Duplex (as defined by Zoning Code Section 9.72), or designated as an affordable housing unit, and no STR Permit shall be issued for any such Dwelling.
- (b) No person shall rent, offer to rent, or advertise for rent a Dwelling for use as an STR unless such Dwelling is in a zoning district where residential uses are allowed, including, but not limited to, detached single-family dwellings, condominiums, duplexes, triplexes, townhomes, and multiple-family dwellings, and no STR Permit shall be issued for a Dwelling that does not meet this criteria.
- (c) Home Stay STR and Multi-Family Home Stay STR shall be subject to the following:
 - (1) Notwithstanding any other provision of this STR Program to the contrary, the Property Owner of a Home Stay STR or Multi-Family Home Stay STR shall be present at the parcel upon which the STR is located during the rental period between the hours of 10:00 p.m. to 7:00 a.m.
 - (2) A maximum of one Home Stay STR Permit may be issued for any parcel upon which multiple Dwellings exist.
 - (3) In no instance shall a Home Stay STR Permittee allow the use of an on-site camper, RV, or tent by renters as part of the STR use on a parcel.
- (d) Primary Residence STR shall be subject to the following:
 - (1) A Property Owner to whom an STR Permit for a Primary Residence STR is issued shall be limited to renting the Dwelling to which the STR Permit applies for a maximum of 60 days per 12-month period, (with the date starting on the date the STR Permit is issued) unless further restricted by legal CC&R regulations. Compliance will be monitored by the transient occupancy tax annual submittal, and such other means as deemed

necessary and appropriate by the Community Development Director.

11. Violations and Penalties

- (a) Violations are described in Conditions of Permit Issuance and Renewal. The following conduct shall constitute a violation for which the penalties specified in ~~Section 5.38.090 of the Municipal Code~~ and subsection (b) below may be imposed, or for which the STR Permit may be revoked:
 - (1) The Property Owner and/or Agent has failed to comply with the standard conditions specified in Conditions of Permit Issuance and Renewal Section (a);
 - (2) The Property Owner and/or Agent has failed to comply with conditions imposed by the Community Development Director pursuant to the provisions of Conditions of Permit Issuance and Renewal Section (b) or (c);
 - (3) The Property Owner and/or Agent has willfully violated the provisions of this Program;
 - (4) The Property Owner and/or Agent has failed to comply and pay any fines imposed pursuant to subsection (b) within thirty (30) days of the date of notification; or
 - (5) The Property Owner and/or Agent has failed to comply and pay the transient occupancy tax or submit a report as required by Chapter 3.25 of the Municipal Code within the required time limit.
- (b) Penalties. The penalties for violations imposed per subsection (a) above, or the Municipal Code, shall be the responsibility of the Property Owner, and/or the Agent if applicable, and are issued per day per violation as follows:
 - (1) For the first violation, the penalty shall be the maximum monetary amount allowed per State law;
 - (2) For a second violation, the penalty shall be the maximum monetary amount allowed per State law;
 - (3) For a third violation, the penalty shall result in the immediate revocation of the STR Permit. In the event the STR Permit has been revoked, the Property Owner shall thereafter be ineligible to receive an STR Permit for any category of STR to be operated on the same parcel upon which the STR for which the Permit was revoked existed.

12. Procedure for Imposition of Penalties/Revocation

Penalties, including notice of violation, shall be imposed, and STR Permits shall be revoked only in the manner provided in this Section and ~~Section 5.38 of the Municipal Code~~.

The Community Development Director shall conduct an investigation whenever he or she has reason to believe that a Property Owner (or Agent as applicable) has committed a violation described in the above ~~Section 5.38.090(a) of the Municipal Code~~. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Community Development Director shall issue written notice of intention to impose a penalty and/or revoke the STR Permit.

The written notice shall be served on the Property Owner, and the Agent if applicable, and shall specify the facts which, in the opinion of the Community Development Director, constitute substantial evidence to establish grounds for imposition of the penalties and/or revocation, and specify that the penalties will be imposed and/or the STR Permit will be revoked within thirty (30) days from the date the notice is given unless the Property Owner, or Agent if applicable, files with the City Clerk before the penalties or revocation becomes effective, a request for hearing before the City Manager.

Comprehensive Rubric (Checklist) for Study and Evaluation of City of Dana Point's Short-Term Rental (STR) Program

<u>STR Program Aspect</u>	<u>Study</u>	<u>Assess</u>	<u>Recommendations for any modifications to the Program, in connection with the assessments or otherwise</u>
STR Permits:	1) Number of STR permits issued on a rolling (chronological) basis ¹ for the six (6) year study period. 2) Number of STR permits rescinded or voided on a rolling (chronological) basis for the six (6) year study period. The reason for nullification of the STR permits shall be included and tabulated. 3) Average nightly rates for each STR listing (during peak season and annually) ² , including a breakdown by type of STR and neighborhood.	1) Assessment of whether the STR permit caps are adequate and/or whether the caps should be changed. 2) Assessment of whether the STR permit types are adequate and/or whether the types should be changed.	
Enforcement of Violations:	1) Summarized discussion of the number and types of STR violations for the six (6) year study period.	1) Assessment of whether the STR Program adequately addresses violations/nuisance complaints and/or whether aspects of the City's Program or its enforcement should be changed.	

¹ Rolling (chronological) data can be represented using a run-sequence or time series plot. [Run-Sequence Plot](#), National Institute of Standards and Technology, *U.S. Department of Commerce*.

² Average daily/nightly rates (ADRs) are calculated as revenue per unit rented, often calculated on a monthly basis. The peak season in California runs from June to August. ADRs can be averaged annually (January 1 to December 31) for longer-term trends. For additional explanation, see definitions in the [STAR Report](#) informational guide.

Housing Inventory:	<ul style="list-style-type: none"> 1) Number of single-family residences and multi-family units in the Coastal Zone on a rolling (chronological) basis for the six (6) year study period, including a separate analysis for the number of affordable long-term rental units in the Coastal Zone. 2) Other relevant population trends in the Coastal Zone for the six (6) year study period. 	1) Assessment of whether the STR Program is having adverse impacts on housing stock and affordable long-term rental units in the Coastal Zone and/or whether aspects of the City's Program should be changed to lessen adverse impacts.	<u>Recommendations for any modifications to the Program, in connection with the assessments or otherwise</u>
Overnight Accommodations Inventory:	<ul style="list-style-type: none"> 1) Tabulated inventory of non-STR coastal overnight accommodations and public visitor-serving amenities (including affordable vs. market rate facilities, number of rooms provided in accommodations, and listing by category: e.g., hotels, hostels, campsites, etc.). 2) Average nightly room rates for non-STR overnight accommodations in Dana Point's Coastal Zone (during peak season and annually.) 	1) Assessment of whether the STR Program is having adverse impacts on visitor use of non-STR overnight accommodations and other visitor-serving recreational facilities and/or whether aspects of the City's Program should be changed to lessen adverse impacts.	
Parking:	1) Quantitative and qualitative information for any parking issues, complaints, or other impacts to coastal access.	1) Assessment of whether the parking and vehicle occupancy requirements for STRs should be changed.	
Revenues:	1) Details of the City's final fee structure for STR permit applications. Previous iterations of the fee schedule should be included, too. The City shall confirm	1) Assessment of whether the revenue generated by the Program is sufficient for its continuance, whether additional	

Revenues:	<p>whether the permit fees correspond to the City's costs of developing, managing, and enforcing the STR Program by providing numerical data in support.</p> <p>2) Annual transient occupancy tax (TOT) revenues.</p>	<p>fees are recommended to be implemented, and/or whether the permit fee structure presents public access impacts by overburdening STR hosts and reducing the availability or affordability of STR listings.</p>	<p><u>Recommendations for any modifications to the Program, in connection with the assessments or otherwise</u></p>
Waitlist:	<p>1) Number of STR permit applications on the waitlist on a rolling (chronological) basis for the six (6) year study period.</p> <p>2) Average length of waiting period before STR permit applications are promoted from the waitlist.</p> <p>3) Average duration of STR permits, including renewals.</p>	<p>1) Assessment of whether the STR permit caps are adequate and/or whether the caps should be changed.</p> <p>2) Assessment of whether the waitlisting and renewal procedures should be changed.</p>	

Exhibit 5 – City of Dana Point LCP Areas Map

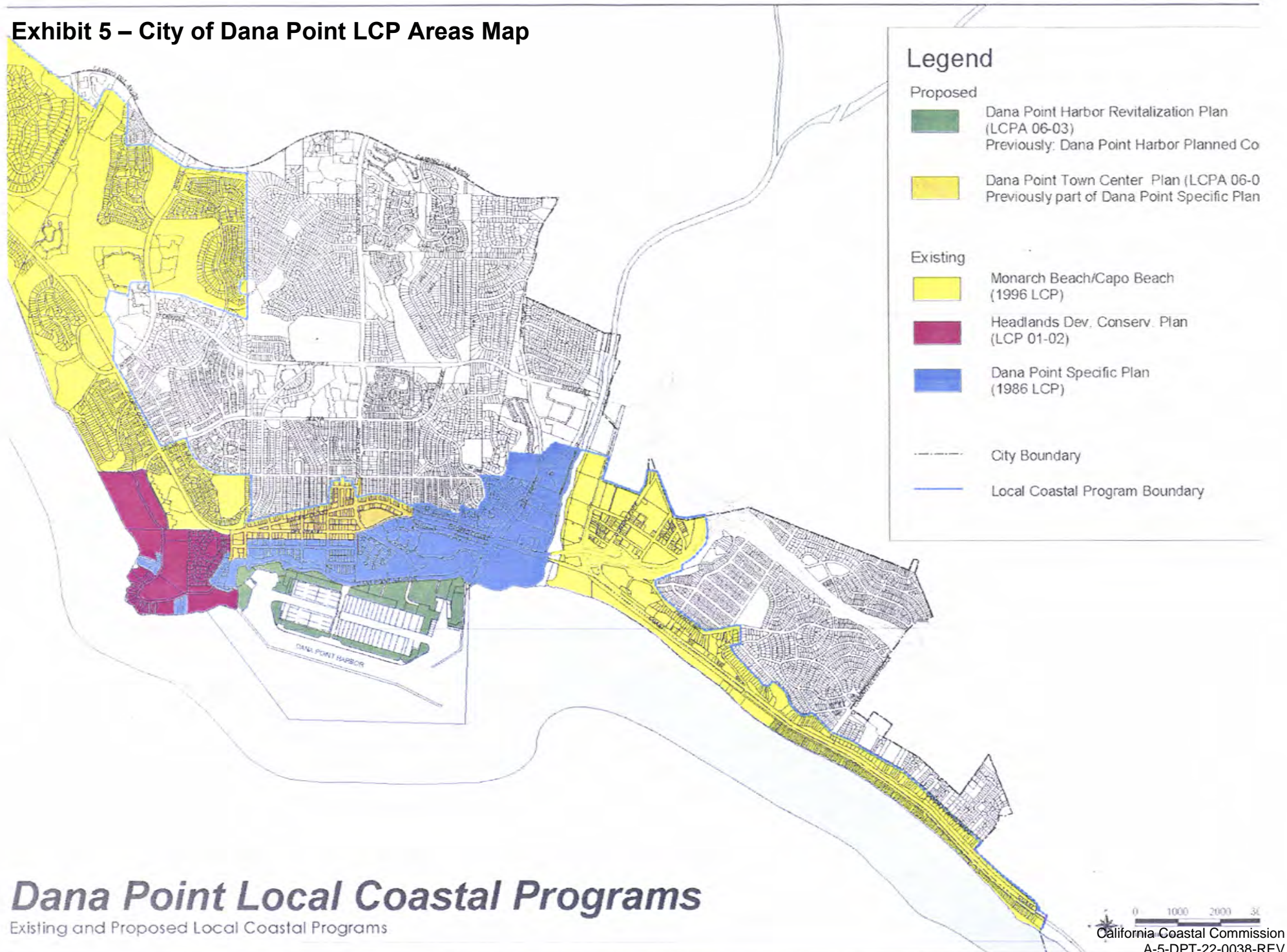


Exhibit 6 – Overnight Accommodations within Coastal Zone Vicinity

Coastal Overnight and Access Visitor Serving Facilities

Affordable/Low-Cost Overnight Accommodations

- Doheny State Beach Campground - 120 campground spaces (group site accommodates 40 people)
- Crystal Cove (in-lieu fees from Ritz Carlton) – 24 cottages/118 people
- Wave Hotel at the Strand (under construction) –52 hostel beds
- Seaside Inn – 28 rooms
- Lantern Point (under City Review) - 51 rooms (25% affordable, 75% market rate)
- Dana Point Marina Inn – 136 rooms

Market Rate Overnight Accommodations

- Best Western Marina Shores Hotel – 87 rooms
- Laguna Cliffs Marriott – 378 rooms
- Riviera Beach and Spa – 129 rooms
- Monarch Beach Resort – 400 rooms
- Ritz-Carlton – 396 rooms
- Wave Hotel at the Strand (under construction) – 57 rooms
- Resort Hotel at Cannon's (CCC Appeal) - 100 rooms
- Green Lantern Hotel – 53 rooms
- Blue Lantern Inn – 29 rooms
- Capistrano Surfside Inn – 37 rooms
- DoubleTree – 196 rooms
- Best Western Inn by the Sea – 29 rooms

Coastal Access Facilities

- 15 coastal access points and multiple scenic lookouts
- Funicular cable car access to Strands Beach
- Headlands trails and lookout points
- State Beach (coastal access and event venue)
- Harbor
- Trolley

Facility	Type of Lower Cost Visitor and Recreational Facility	Number of Rooms/Spaces/Beds
Doheny State Beach	Campground and State Beach	120 Campground Spaces (group-site accommodates 40 people)
Crystal Cove	State facility (cottages, underwritten by in-lieu fees of Ritz Carlton Dana Point)	24 Cottages
Dana Point Marina Inn	Lower Cost Hotel	136 Rooms
Wave Hotel (under construction)	Hostel	52 beds
Sea Side Inn	Lower Cost Hotel	28 Rooms
Lantern Point (approved by Planning Commission 8/26/19)	Lower Coast Rooms (25%)	13 Rooms
TOTALS		120 Campground Spaces 24 Cottages 52 Hostel beds 177 Rooms
Additional Dana Point Coastal Visitor Facilities		
15 Coastal access points		
Multiple scenic lookouts		
Funicular cable car access to Strands Beach		
Headlands trails and lookout points		
Doheny State Beach (coastal access and event venue)		
Harbor		
Ocean Institute		
Trolley		
Dana Point Market Rate Hotels		
Best Western Marina Shores Hotel	Market Rate Hotel	87 Rooms
Laguna Cliffs Marriott	Market Rate Hotel	378 Rooms
Riviera Beach and Spa	Market Rate Hotel	129 Rooms
Monarch Beach Resort	Market Rate Hotel	400 Rooms
Ritz-Carlton	Market Rate Hotel	396 Rooms
Wave Hotel at the Strand (under construction)	Market Rate Hotel	57 Rooms
Resort Hotel at Cannon's (CCC Appeal)	Market Rate Hotel	100 Rooms
Lantern Point (approved by Planning Commission 8/26/19)	Market Rate Hotel	38 Rooms
Blue Lantern Inn	Market Rate Hotel	29 Rooms

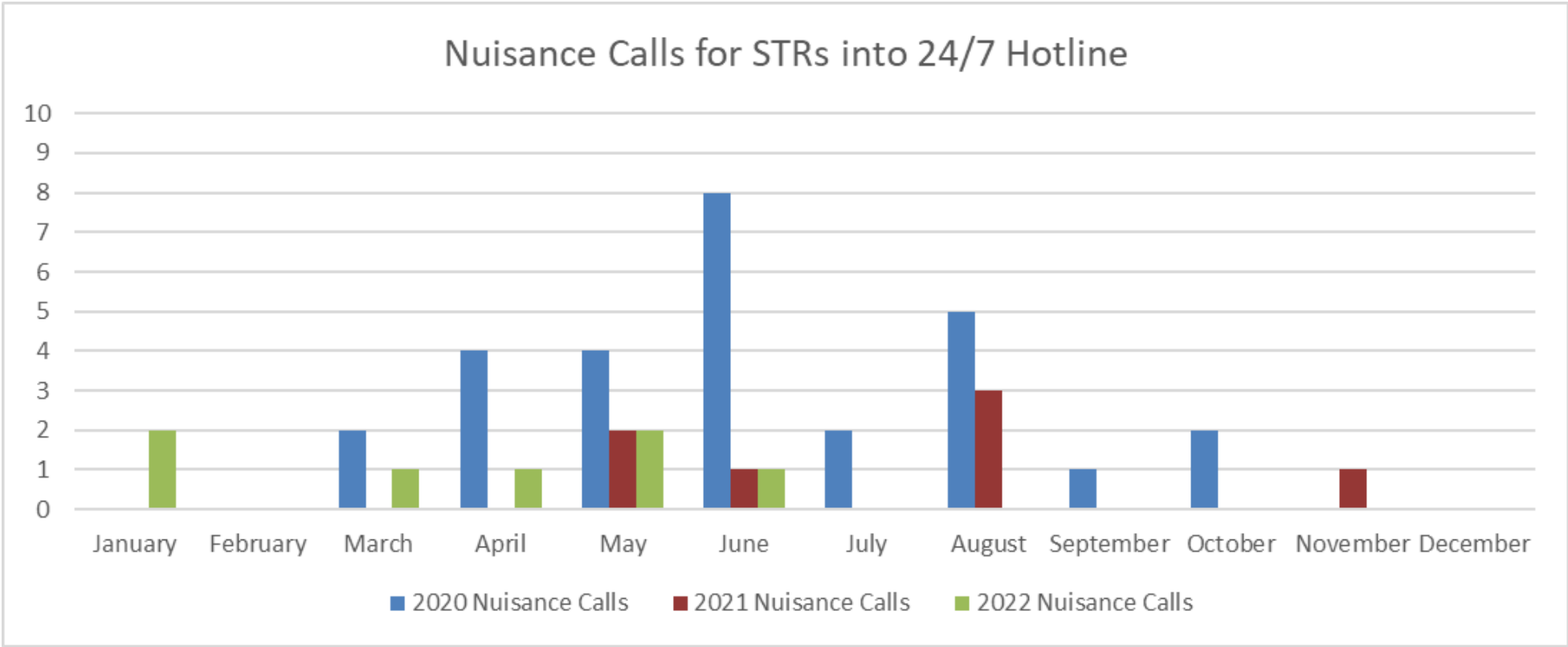
ATTACHMENT 1

Capistrano Surfside Inn	Market Rate Hotel	37 Rooms
DoubleTree	Market Rate Hotel	196 Rooms
Best Western Inn by the Sea	Market Rate Hotel	29 Rooms
Beach Front Inn & Suites Rooms	Market Rate Hotel	33 Rooms
TOTAL		1,909 Rooms
Facilities Adjacent to Dana Point	Type of Lower Cost Visitor and Recreational Facility	Number of Rooms/Spaces
San Clemente State Beach	Campground and State Beach	151 Campground Spaces
San Mateo Campground at San Onofre State Beach	Campground and State Park	150 Campground Spaces
Crystal Cove Moro Campground	Campground and State Park	58 Campground Spaces
Rodeway Inn, San Clemente	Lower Cost Hotel	43 Rooms
Travelodge San Clemente	Lower Cost Hotel	24 Rooms
America's Best Value Inn, San Clemente	Lower Cost Hotel	31 Rooms
San Clemente Inn	Lower Cost Hotel	96 Rooms
San Clemente's Little Inn	Lower Cost Hotel	18 Rooms
San Clemente Motor Lodge	Lower Cost Hotel	15 Rooms
San Juan Capistrano Residence Inn (suites w/ kitchen)	Market Rate Hotel	130 Rooms
TOTALS		359 Campground Spaces 357 Rooms

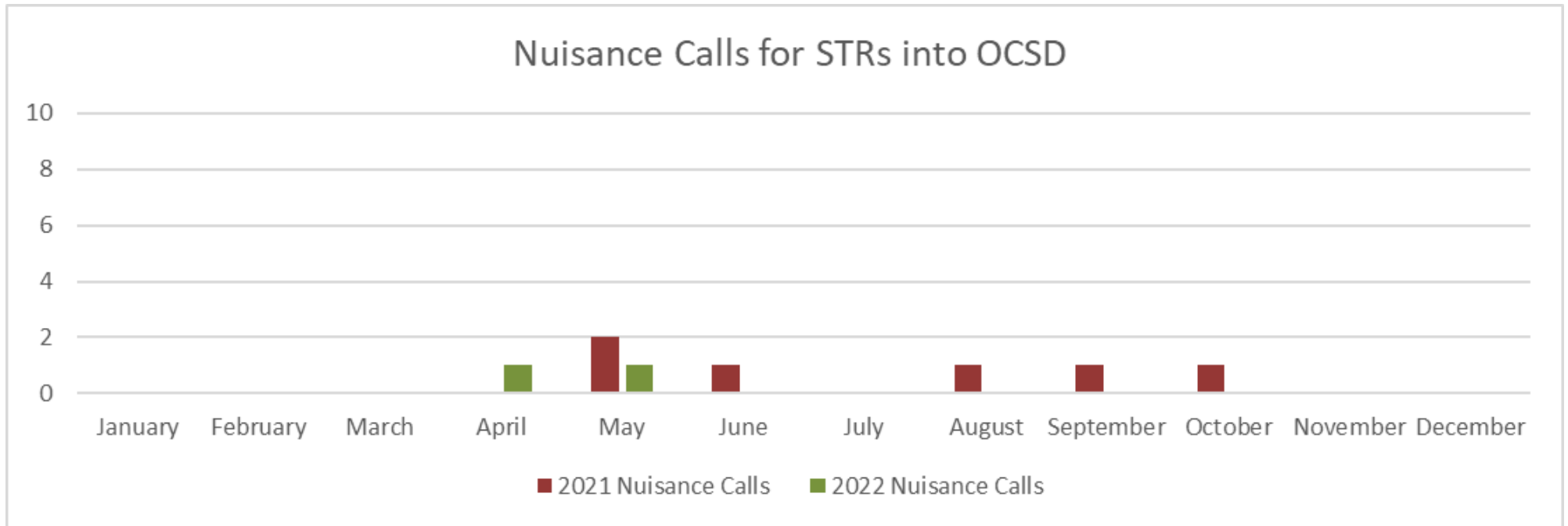
Exhibit 7 – Mixed-Use Zones Map



STR ENFORCEMENT Statistics



STR ENFORCEMENT Statistics



STR ENFORCEMENT Statistics

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

STR ENFORCEMENT Statistics: citations

Year	2018	2019	2020	2021	2022 (to date)
Citations Issued	18	75	101	114	52
Citations Collected	7	28	64	90	20
% Collected	39%	37%	63%	79%	38%
Amount Collected	\$ 2,700.00	\$ 21,111.89	\$ 38,225.00	\$ 50,325.00	\$ 7,600.00
Original Bail	\$ 2,700.00	\$ 21,111.89	48, 650.00	\$ 57,050.00	\$ 30,800.00
Appealed	0	0	1	36	1
Citations Upheld	0	0	1	36	1

STR ENFORCEMENT Statistics: STR Code Cases by type

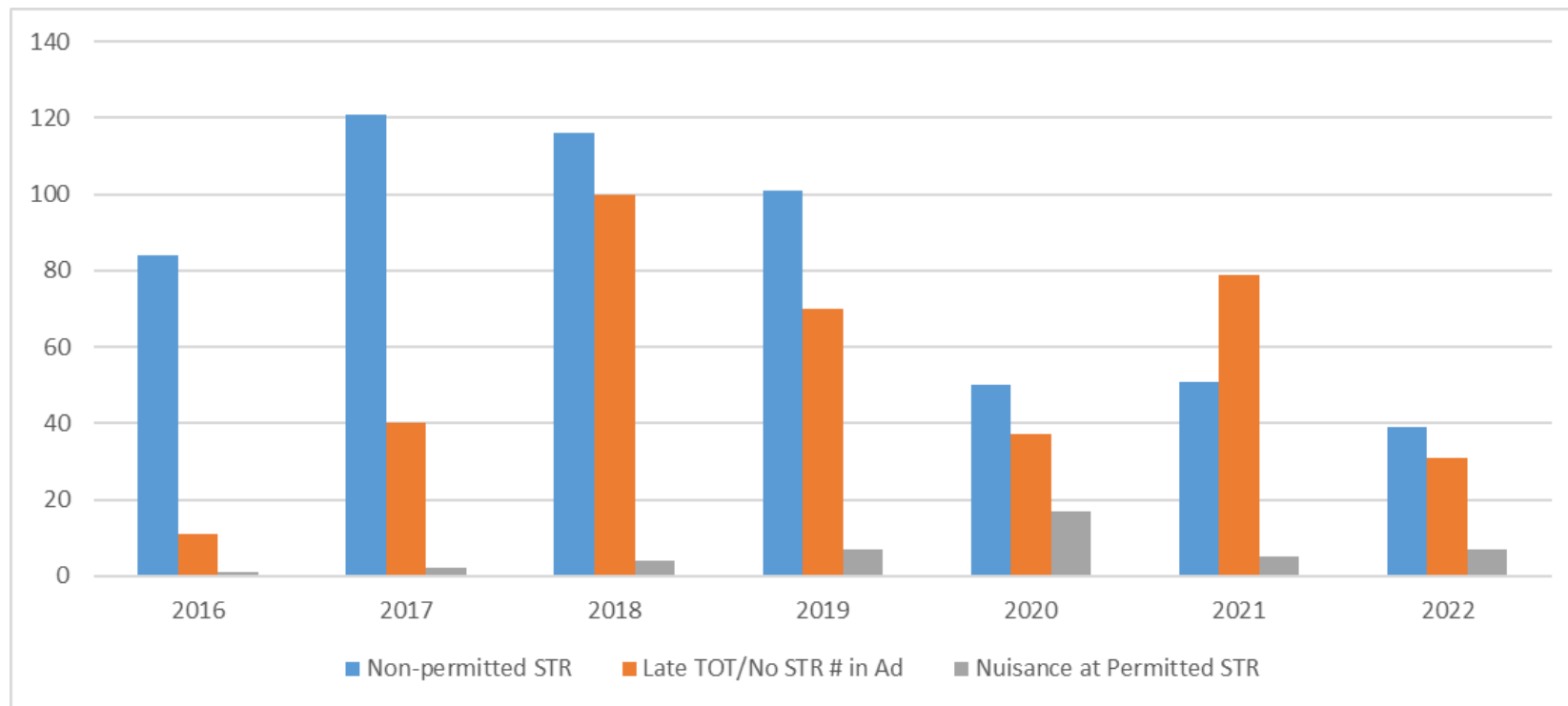


Exhibit 4 – Summary of HOA STR Prohibition CDPs

HOA Name	Local CDP No.	Local CDP Issued on	Appealable Area?	Appealed?	Type	Number of Units	CC&Rs Year Enacted
Chelsea Pointe HOA	CDP23-0006	5/10/2023	Yes	No	SFRs	30	1984
Admiralty HOA	CDP23-0007	5/10/2023	Yes	No	Condos	27	1989
Pilgrims Bluff HOA	CDP23-0013	5/10/2023	Yes	No	Condos	11	1990
Santa Clara HOA	CDP23-0009	5/10/2023	Yes	No	Condos	3	1988
Amber Lantern HOA	CDP23-0005	5/10/2023	No	N/A	Condos	14	1989
The Village at Dana Point HOA	CDP23-0008	5/10/2023	No	N/A	SFRs	71	1989
Estates at Monarch Beach HOA	CDP23-0011	5/10/2023	No	N/A	SFRs	44	1984
Monarch Beach Master HOA	CDP23-0014	5/10/2023	No	N/A	SFRs	444	1982
Spindrifter HOA	CDP23-0015	5/10/2023	No	N/A	SFRs	8	1978
Corniche Sur Mer HOA	CDP23-0016	5/10/2023	No	N/A	SFRs	190	1989
Las Mariannas HOA	CDP23-0012	5/10/2023	Yes	No	Condos	34	?
Stringer, McKenna, Portofino HOA	CDP23-0024	6/28/2023	Yes	No	Condos	7	1989
Spinnaker Run HOA	CDP23-0020	6/28/2023	Yes	No	Condos	136	1982
Ritz Pointe Monarch Beach HOA	CDP23-0018	6/28/2023	No	N/A	SFRs	65	2021
Marquesa HOA	CDP23-0019	6/28/2023	No	N/A	SFRs	147	1989
Monarch Bay Terrace HOA	CDP23-0021	6/28/2023	No	N/A	SFRs	344	2001

Golden Lantern Villas HOA	CDP23-0022	6/28/2023	No	N/A	SFRs	16	1978
Emerald Ridge HOA		Not yet issued	No	N/A	SFRs	76	1976
Tennis Villas HOA		Not yet issued	No	N/A	Condos	180	1986

TOTAL = 1847

Exhibit 5 – Summary of STR Permit Applications Received

STR Coastal Zone Applications

Primary/Home Stay

Street #	Street	Type	HOA
54	Corniche Unit Dr, Unit H	Primary	yes
35661	Beach Road	Primary	yes
36	Corniche Dr., Unit D	primary	yes
35121	Beach Road	Primary	yes
74	Corniche Dr., Unit J	Primary	yes
35551	Beach Road	Primary	yes
35315	Beach Road	Primary	Yes

Multi-Family Home Stay

Street #	Street	Type	HOA
34205	Camino Capistrano, Unit A	MFH	no
35099	Beach Road #B	MFH	yes
34363	Dana Strand No 1	MFH	no
24361	Santa Clara #B	MFH	No

Mixed Use

Street #	Street	Type	HOA
34239	Via Santa Rosa	Mixed Use	no
34352	Pacific Coast Hwy, Unit B	Mixed Use	no
34177	Pacific Coast Hwy	Mixed Use	no

Non-Primary

Street #	Street	Type	HOA	Gated	HOA
46	Corniche Drive, Unit I	Non-Primary	yes		1
35215	Beach Road	Non-Primary	yes	1	
35745	Beach Road	Non-Primary	yes	1	
66	Corniche Dr., #D	Non-Primary	yes		1
35211	Beach Road	Non-Primary	yes	1	
68	Corniche Dr., Unit D	Non-Primary	yes		1
35175	Beach Road., Unit B	Non-Primary	yes	1	
35731	Beach Road	Non-Primary	yes	1	
14	Corniche Drive, Unit F	Non-Primary	yes		1
6	Corniche, Unit E	Non-Primary	yes		1
35171	Beach Rd	Non-Primary	yes	1	
48	Corniche Dr., #C	Non-Primary	yes		1
66	Corniche Dr., Unit E	Non-Primary	yes		1
35315	Beach Rd	Non-Primary	yes	1	
35361	Beach Rd.	Non-Primary	yes	1	
60	Corniche Dr, Unit A	Non-Primary	yes		1
34885	Doheny Place	Non-Primary	no		
35097	Beach Road	Primary (verify)	yes	1	
35685	Beach Road, CB	Non-Primary	yes	1	

60	Corniche Dr., Unit G	Non-Primary	yes		1
48	Corniche Dr., Unit A	Non-Primary	yes		1
35655	Beach Road	Non-Primary	yes	1	
28	Corniche Dr., Unit J	Non-Primary	yes		1
35067	Beach Road	Non-Primary	yes	1	
32	Corniche Dr, Unit D	Non-Primary	yes		1
35697	Beach Road	Non-Primary	yes	1	
16	Corniche Dr., Unit A	Non-Primary	yes		1
16	Corniche Dr, unit H	Non-Primary	yes		1
6	Corniche Dr. Unit D	Non-Primary	Yes		1
66	Corniche, Unit B	Non-Primary	yes		1
44	Corniche Uni D	Non-Primary	yes		1
35581	Beach Road	Non-Primary	yes	1	
35099	Beach Road	Non-Primary	yes	1	
22	Cornich Dr. unit A	Non-Primary	yes		1