

CALIFORNIA COASTAL COMMISSION

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Request Filed: 06/02/23
Staff: S. Amitay – LB
Staff Report: 07/26/23
Hearing Date: 08/10/23

STAFF REPORT: REQUEST FOR REVOCATION

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

Applicant: City of Dana Point

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

Project Description: Request to revoke the Commission's November 16, 2022 approval of Coastal Development Permit (CDP) No. A-5-DPT-22-0038 to establish a Short-Term Rental (STR) Program within the Coastal Zone of the City of Dana Point

Requestors: Toni Nelson and Roger Malcolm

Staff Recommendation: Denial

PROCEDURAL NOTE

The California Code of Regulations, Title 14, Division 5.5, Section 13105 states that the grounds for the revocation of a coastal development permit are as follows:

Grounds for revocation of a permit shall be:

- a) 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;
 - b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.
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SUMMARY OF STAFF RECOMMENDATION

On November 16, 2022, the Commission approved de novo, with conditions, Coastal Development Permit (CDP) No. A-5-DPT-22-0038 for the establishment of a short-term rental (STR) program (Program) to implement regulations and standards for the operation of STRs within the City of Dana Point's Coastal Zone ([Exhibit 3](#)). The Program establishes a total 115-permit cap for non-primary STRs, multi-family home stays, and mixed-use parcel STRs within the Coastal Zone.¹ There is no cap for primary and home stay STRs because the City suggested that when a property owner resides onsite, the STR is less likely to generate nuisance issues.² The Program also clearly defines STRs, adds new permitting requirements and operational standards, including, but not limited to, maximum occupancy and parking requirements, affords a mechanism for neighbors to report problems, and establishes provisions for the imposition of fines and penalties for the violation of the regulations. Finally, the Program states that if the City must deny an STR permit application on the basis that a governing HOA bans STRs, then the HOA ban must be legal.

The request for revocation contends that grounds for revocation, pursuant to Section 13105(a), exist because the City intentionally provided erroneous data to the Commission during the course of the permit proceedings. The requestors assert that the City intentionally underreported the number of homeowners associations (HOAs), underreported the number of units they contain, and misrepresented the geographic distribution of the HOAs within the City's Coastal Zone. Further, the requestors assert that as a result of the City's underreporting of HOAs and misrepresentation of HOAs' geographic distribution, and because the Program allows HOAs to prohibit or restrict STRs, then significantly more HOAs than were previously considered by the Commission would become "off-limits" (unavailable) to short-term rentals – resulting in an oversaturation of non-HOA areas with STRs.

The requestors assert that if the HOA numbers were reported accurately, and if the Commission were aware of the high potential "saturation rate" of short-term rentals in non-HOA areas, the Commission would have required additional or different conditions, or denied the underlying permit.

The request for revocation does not contend any grounds for revocation listed in Section 13105(b) regarding appropriate noticing of interested parties.

¹ *Non-Primary (Residence) STR* – traditional investment properties rented as STRs, where the owner does not live onsite; *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; *Mixed-Use Parcel STR* – any STR type 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).

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), and; *Home Stay STR* – short-term renter stays within home of owner while owner present.

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Based on new information received from the City, Commission staff concurs that the City clearly did provide the Commission with inaccurate information, as alleged in the revocation request. The table below summarizes the evolving data provided by the City:

Document Description	Dates of Information Provided	Number of HOAs	Number of Residential Units in HOAs in CZ	Total Number of Residential Units in CZ	Number of HOAs in CZ that Allow STRs	Number of HOAs in CZ that Prohibit STRs
LCPA No. 1-14	Published 4/1/2016	78 total, 28 in CZ	3,287 Units	-	10 HOAs (639 Units)	15 HOAs (2,648 Units)
City staff report for local CDP No. 22-0010	Published 7/12/2022	-	-	-	-	-
Substantial Issue staff report for A-5-DPT-22-0038	Published 8/25/2022	78 total, 28 in CZ	3,287 Units	-	10 HOAs (639 Units)	15 HOAs (2,648 Units)
Email from City	10/28/2022	-	-	5,664 Units	-	-
De Novo staff report for A-5-DPT-22-0038	Published 11/3/2022	78 total, 28 in CZ	3,287 Units	5,664 Units	10 HOAs (639 Units)	15 HOAs (2,648 Units)
Email from City	11/10/2022	38 in CZ	-	-	9 HOAs	17 HOAs
Addendum for A-5-DPT-22-0038	Published 11/15/2022	38 in CZ	-	5,664 Units	9 HOAs	17 HOAs
City staff report for local CDPs for HOA Bans on STRs	Published 4/24/2023	52 in CZ	4,400 Units	5,700 Units	-	-
Staff report for City Council Meeting	5/16/2023	53 in CZ	4,216 Units	5,737 Units	-	17 HOAs (19 likely)

Nevertheless, the Commission must also consider in a revocation request whether the applicant *intentionally* included the inaccurate, erroneous, or incomplete information. Staff recommends that the Commission find that the City’s data discrepancies are a result of the City refining its information and data as it performed additional research and analysis, rather than an intentional effort to misrepresent information to the Commission.

Finally, even if the City intentionally provided erroneous information, the Commission would not have acted differently. The Commission had sufficient evidence to decide whether to approve the Program at the time of the hearing. First, the Commission knew the City’s STR Program would facilitate legalization of HOA bans on STRs via the CDP process, and had an understanding that many (but not all) HOAs would elect to ban

STRs, which would further concentrate STRs in non-HOA areas of the City's Coastal Zone. Second, in the Program, the Commission also contemplated and enacted sufficient measures to geographically distribute STRs throughout the Dana Point Coastal Zone in a manner that conforms with the public access policies of the Coastal Act and the City's certified Local Coastal Program (LCP). Third, and most importantly, the Commission imposed **Special Condition 3** of CDP No. A-5-DPT-22-0038 to require the City to return to the Commission by November 30, 2025, and again by November 30, 2028, with in-depth studies and evaluations of whether an amendment to the CDP is warranted to resolve unintended impacts of the Program on public access, recreation, housing, and/or community character.

Thus, the evidence provided by the requestors does not demonstrate that the City intentionally omitted information in its permit application, nor that any intentional failure to include complete and accurate information, if it were to have occurred, would have caused the Commission to act differently on the permit. In light of the above, there is no basis for revocation.

Moreover, the CDP has clear check-in dates, which allow the City time to evaluate, reevaluate, and adjust the Program based on the results of its implementation. It also provides a requirement for the City to return to the Commission in the future to implement changes/amendments to the Program based on the information collected between the evaluation periods. Thus, it is not appropriate or necessary to revoke the approval at this time.

Finally, unregulated STRs may cause impacts to coastal resources. Revocation of the CDP would allow for the uncontrolled proliferation of short-term rentals in the Coastal Zone of Dana Point. In other words, if the CDP is revoked, there is nothing standing in its stead to regulate the permitting and operation within the Coastal Zone of the City of Dana Point, and all residentially-zoned property could then host an STR, thus creating a "free-for-all" scenario.³ The "free-for-all" scenario could adversely impact public access and recreation and community character. In areas that are oversaturated with STRs, the Commission has recognized legitimate community concerns over potential associated adverse impacts with respect to housing stock and affordability, community character, noise, and parking impacts. If the revocation were to be granted, then it is likely that this scenario would even further concentrate STRs and exacerbate the aforementioned issues within the Coastal Zone, since the City's analogous program outside of the Coastal Zone would still be in effect.

Therefore, staff recommends that the Commission **DENY** the request for revocation on the basis that no grounds exist for revocation under Section 13105 of the Commission's Regulations. The motion and resolution can be found on Page 6.

³ The "free-for-all" scenario would apply to all HOAs that do not have an approved CDP to ban STRs (such as shown in [Exhibit 4](#)) or have long-standing CC&Rs enacted prior to the Coastal Act.

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EXHIBITS

[Exhibit 1](#) – Request for Revocation

[Exhibit 2](#) – Executive Director’s Determination

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

[Exhibit 4](#) – Summary of HOA STR Prohibition CDPs

[Exhibit 5](#) – Summary of STR Permit Applications Received

I. MOTION AND RESOLUTION

Motion:

I move that the Commission grant revocation of Coastal Development Permit No. A-5-DPT-22-0038.

Staff recommends a **NO** vote on the foregoing motion. Failure of this motion will result in denial of the request for revocation 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 denies the request for revocation of the Commission's approval of Coastal Development Permit No. A-5-DPT-22-0038 on the grounds that a) there was no intentional inclusion of inaccurate, erroneous, or incomplete information in connection with the coastal development permit application which would have caused the Commission to require additional or different conditions on the permit or deny the application, and/or b) there was no failure to comply with the notice provisions of California Code of Regulations, Title 14, Division 5.5, Section 13054 where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

II. FINDINGS AND DECLARATIONS

A. Project Description and Background

On July 12, 2022, the Dana Point City Council adopted Resolution No. 22-07-12-01, which denied in part, and affirmed in part, a local appeal of the City's Planning Commission's approval of CDP No. 22-0010 to establish an STR Program to regulate the permitting and operation of STRs in the Coastal Zone. On July 13, 2022, the Community Development Department Director issued a Notice of Final Action (NOFA) and determination letter for the approval of the local CDP for the proposed STR Program. On July 27, 2022, the Miriam Rupke, Deanna Slocum, Jason Colaco, Mark Zanides, Kim Tarantino, and Bridget McConaughy (on behalf of UNITE HERE Local 11) filed timely appeals of the local CDP to the Commission.

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. On November 16, 2022, the Commission approved de novo, with conditions, CDP No. A-5-DPT-22-0038 for the establishment of a STR program to implement regulations and standards for the operation of STRs within the City's Coastal Zone ([Exhibit 3](#)).

The Commission approved the Program pursuant to the staff recommendation with minor changes. The Program establishes a maximum number of non-primary STRs,

multi-family home stays, and mixed-use parcel STRs within the Coastal Zone in the form of a total 115-permit cap.⁴ There is no cap for primary and home stay STRs because the City asserted that when a property owner resides onsite, the STR is less likely to generate nuisance issues.⁵ The Program also clearly defines STRs, adds new permitting requirements and operational standards, including, but not limited to, maximum occupancy and parking requirements, affords a mechanism for neighbors to report problems, and establishes provisions for the imposition of fines and penalties for the violation of the regulations. Finally, the Program states that if a City must deny an STR permit application on the basis that a governing HOA bans STRs, then the HOA ban must be legal.

The Program, as conditioned, includes provisions to ensure that any significant adverse impacts to public access, housing stock, or community character resulting from the implementation of the Program would not be prolonged in perpetuity without remedy or recourse. The City must reevaluate the permit cap, regulations, penalties, and any other aspect of the STR Program within three (3) years of issuance of the CDP (until November 30, 2025) to determine if an amendment must be made to change any aspect of the Program. On June 20, 2023, the City informed Commission staff in writing that it will submit the first STR Program study to the Executive Director within the first year of implementation of the Program, by the end of the 2023 calendar year, which is sooner than the anticipated deadline. To accomplish thorough and comprehensive monitoring and tracking of the STR Program's performance, the City is also required to submit to the Commission during an extended six-year period since issuance of the CDP (until November 30, 2028) a study and assessment with additional prescriptive criteria and metrics, in order to evaluate if the Program results in any unintended adverse cumulative impacts on public access, lower cost overnight accommodations, housing stock, and community character. If, at that time, the City finds that the Program caused adverse, unintended consequences, the City must resolve those issues and obtain an amendment to the CDP if an amendment is required. This study will need to be reported to the Commission during a regularly scheduled public hearing, and either the City or Commission's Executive Director can determine that an amendment is necessary to improve the Program and resolve any outstanding issues.

The Commission's de novo permit was issued on November 30, 2022, and City began implementation of the Program and issuance of STR permits in 2023. As of the date of this staff report, the City has received 48 STR permit applications and has issued 24 (half) of the 48 remaining available STR permits ([Exhibit 5](#)). The City has also issued

⁴ *Non-Primary (Residence) STR* – traditional investment properties rented as STRs, where the owner does not live onsite; *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; *Mixed-Use Parcel STR* – any STR type 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).

⁵ *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), and; *Home Stay STR* – short-term renter stays within home of owner while owner present.

CDPs to 17 HOAs to prohibit STRs within their communities, with two additional HOAs currently in the process of obtaining a CDP to prohibit STRs, as a manner to legalize community covenants, conditions, and restrictions (CC&Rs) related to STRs passed after enactment of the Coastal Act on January 1, 1977. To date, the HOA STR CDPs issued by the City affect 1,847 housing units, with another 256 units currently pending ([Exhibit 4](#)). Seven of the aforementioned HOAs are located within the appealable area of the Coastal Zone, but, so far, none of the CDPs issued have been appealed to the Commission.

The City of Dana Point has an analogous program for the regulation of STRs *outside* the Coastal Zone, which is outside the Commission's jurisdiction. The program outside the Coastal Zone provides similar regulations for the permitting and operation of STRs, with some exceptions. Together, both the STR Program CDP within the Coastal Zone and the program outside the Coastal Zone function to establish STR regulations citywide.

B. Executive Director's Determination

Pursuant to Title 14 of the California Code of Regulations ("14 C.C.R.") Section 13108(d), the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that either of the grounds listed in 14 C.C.R. Section 13105 (meaning all of the elements listed in either subsection of 13105) exist. 14 C.C.R. Section 13105 states, in part, that the grounds for revoking the permit shall be as follows: (a) that the permit application intentionally included inaccurate, erroneous, or incomplete information where accurate and complete information would have caused the Commission to act differently; or (b) that there was a failure to comply with the notice provisions of 14 C.C.R. Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to act differently.

The Commission's South Coast District Office received a written request for revocation of the subject coastal development permit from Toni Nelson and Roger Malcolm on May 22, 2023 ([Exhibit 1](#)). The request for the revocation is based on Section 13105(a) only, as discussed in Section II.C of this staff report below.

On June 2, 2023, Commission staff transmitted a Notice of Pending Revocation Request to the applicant (City of Dana Point), requestors (Toni Nelson and Roger Malcolm), and other interested persons ([Exhibit 2](#)). The Notice stated that the Commission's Executive Director has initiated review of the stated grounds for revocation in the pending request and did not find that the grounds contented are patently frivolous under Section 13106 of Commission regulations. The Executive Director then scheduled a public hearing for the Commission to consider the merits of the revocation request.

C. Grounds for Revocation

Grounds for revocation in 13105(a) contain three essential factors for the Commission to consider:

(1) Did the applicant include inaccurate, erroneous, or incomplete information relative to the coastal development permit application?

(2) If the application included inaccurate, erroneous, or incomplete information, was the inclusion **intentional** (emphasis added)?

(3) If the answer to (1) and (2) above is yes, would accurate and complete information have caused the Commission to require additional or different conditions or deny the application?

REQUESTORS' CONTENTIONS

The request for revocation contends that the grounds for revocation listed in Section 13105(a) exist because: (1) the numbers that the City provided to quantify the number of HOAs, the number of units they contain, and their geographic distribution within the coastal zone were intentionally erroneous; (2) the City acted in a misleading way to facilitate the prohibitions of STRs in HOA areas; (3) therefore, STRs would be concentrated in a much more limited area, mainly outside HOAs, and would increase the "saturation rate" of STRs in non-HOA areas; and (4) the Commission would have acted differently on the permit had the numbers been correct and/or complete.

The request for revocation does not contend any grounds for revocation listed in Section 13105(b) regarding appropriate noticing of interested parties.

REVOCATION ANALYSIS

1. Erroneous HOA Numbers

The City's initially proposed Program remained silent on the interaction of HOAs and STRs, and did not provide guidance as to how the City would manage this interaction during the implementation of the Program. Thus, when the City issued local CDP No. 20-0010, the accompanying staff report and resolution did not include information related to HOAs ([Exhibit 3](#)). Therefore, during Commission staff's analysis of local CDP No. 20-0010 (Appeal No. A-5-DPT-22-0038) at the "Substantial Issue" phase, staff requested that the City of Dana Point provide additional information about HOAs, including the number of existing HOAs, the number of units they each contain, and their geographic distribution within the Coastal Zone. On August 1, 2022, staff requested this information in an effort to understand the role that HOAs would play in the availability of STRs within the City's Coastal Zone.

In response, the City provided Commission staff with information that the City had previously prepared and submitted to the Commission in preparation for LCPA No. 1-14.⁶ The information provided by the City stated that there were approximately 78 HOAs

⁶ The Commission approved LCPA No. 1-14 on April 14, 2016 with the suggested modifications, which included the requirement for the City to incorporate Chapter 5.38 (Short-Term Rentals) 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

within its jurisdiction, 28 of them within the Coastal Zone. Fifteen (15) of the HOAs in the Coastal Zone, containing approximately 2,648 residential units, were known to have CC&Rs that did not allow STR use. Ten (10) of the HOAs in the Coastal Zone, containing approximately 639 residential units, were known to have CC&Rs that allowed STR use. Because the information the City provide was based on a 2016 analysis, Commission staff requested that the City provide more current information. City staff noted that it would be difficult to obtain more recent, accurate information within the Commission's 49-working-day period available prior to the hearing on the "Substantial Issue" question, since the City did not track which HOAs permit or do not permit STRs per their CC&Rs. Commission staff thus used this information in its August 25, 2022 (No Substantial Issue) and November 3, 2022 (De Novo) staff reports.

After the initial staff report dated November 3, 2022 was published for the "De Novo" phase of CDP Application No. A-5-DPT-22-0038, City staff transmitted additional information to Commission staff on November 10, 2022 regarding updates to the number of HOA communities. The updated information showed 38 HOAs (both large and small) within the Coastal Zone; nine (9) of these HOAs confirmed to the City that they allow STR use, seventeen (17) of these HOAs confirmed that they do not allow STR use, and twelve (12) of these HOAs did not respond to the City. City staff did not provide Commission staff with additional updated information on the number of residential units within each of these communities. Commission staff published an addendum on November 15, 2022 correcting the record with the newly acquired information provided by City staff.

The Commission imposed **Special Condition 1**, which, among other things, modified the final STR Program to ensure the legality of HOA bans or restrictions on STRs in accordance with California appellate court decisions in *Greenfield v. Mandalay Shores Community Association* and *Kracke v. City of Santa Barbara*.⁷ These cases confirm the requirement that HOAs must obtain a CDP (or Local Coastal Program amendment) prior to establishing a ban on STRs, pursuant to Coastal Act Sections 30600 and 30106, and further 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.

Therefore, once the City began implementing the Program after the CDP was issued, it concurrently worked with individual HOA communities to facilitate legalization of their respective bans or restrictions on STRs via the local CDP process so that they may operate in accordance with case law and **Special Condition 1** of the Program's CDP.

The City processed an initial batch of CDPs requested by HOAs to prohibit STRs. On April 24, 2023, in the City staff report for the initial HOA STR bans, the City stated that

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.

⁷ *Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896; *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089.

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there are approximately 52 HOAs in its Coastal Zone, containing 4,400 units. At the May 16, 2023 City Council meeting and City revised the information to state that there are 5,737 total housing units in the Coastal Zone and 4,216 of those housing units pertain to 53 HOAs.

The table below summarizes the evolving data provided by the City:

Document Description	Dates of Information Provided	Number of HOAs	Number of Residential Units in HOAs in CZ	Total Number of Residential Units in CZ	Number of HOAs in CZ that Allow STRs	Number of HOAs in CZ that Prohibit STRs
LCPA No. 1-14	Published 4/1/2016	78 total, 28 in CZ	3,287 Units	-	10 HOAs (639 Units)	15 HOAs (2,648 Units)
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The requestors elected to initiate a revocation request in light of the above discrepancies, contending that it is notable enough as to affect the scope and intent of the approved CDP ([Exhibit 1](#)).

The requestors also allege that the City provided erroneous information related to Beach Road. The Beach Road Community (i.e., Capistrano Bay District) is an ocean-fronting gated community accessed by a private road and consisting of approximately two hundred (200) single-family residences in the southern portion of Dana Point. Historically, Beach Road contained many STRs (both proportionally and in absolute

numbers) due to high demand for vacation rentals; currently, there are 27 operating STRs and 17 additional STR permit applications being considered, for a potential total of 44 STRs ([Exhibit 5](#)). The revocation request states that the City inaccurately referred to the Beach Road community (Capistrano Bay District) as an “HOA” on numerous occasions, when, in fact, it is a “community services district” that cannot manage STRs under its jurisdiction and authority. The requestors contend that this inaccuracy, had it been known or investigated prior, would have affected staff analysis and the Commission’s actions. They believe this issue to be significant because the City has stated that over 90% of existing STRs can be found in HOAs, whereas, in reality, most HOAs (and thus, most of the City’s Coastal Zone) actually prohibit STRs, thus concentrating STRs in non-HOA areas like Beach Road.

The Commission finds that the City did provide inaccurate, erroneous, or incomplete information relative to the CDP with regard to the number of HOA communities, the number of residential unit that each HOA contains, and their geographic distribution within the City’s Coastal Zone, all of which was information considered at the de novo CDP hearing. The Commission also finds that the City did make inaccurate oral and written remarks at the de novo CDP hearing that the Capistrano Bay District is an HOA when it is not.

2. Facilitation of HOA Prohibitions of STRs via CDPs

The second element the Commission must consider in a revocation request is whether the applicant *intentionally* included inaccurate, erroneous, or incomplete information.

The revocation request states that the City was aware of the discrepancy in the numbers reported to the Commission for the total count of HOAs, the residential units they contain, and their geographic distribution at the time that Commission staff was gathering information from the City for the de novo recommendation. The requestors compiled email correspondence and other documentation to attempt to substantiate that the City “resisted attempts” of the requestors to obtain data, and that the status of Beach Road as a community services district has been “intentionally concealed.” The requestors also contend that the City did not disclose that most HOAs ban STRs, and that “the City has engaged in a comprehensive scheme” to facilitate HOAs’ prohibitions of STRs via unique treatment during the local CDP process for those bans.

The email thread in Attachment 2 of the revocation request ([Exhibit 1](#)) between the requestors and City planning staff concerning queries into the housing data supplied to the Commission describes the process City staff undertook to arrive at the data, using the City’s geographic information system (GIS) software and database. Additionally, City staff showed the requestors in-person the process undertaken using the GIS system on March 28, 2023. While the City process may not have been as rigorous or complete as it should have been, there is no evidence that the City intentionally included inaccurate, erroneous, or incomplete information. City staff had informed Commission staff of the methodology that they typically follow and provided staff with the best and latest available data at various stages of the CDP and within the allotted time constraints. Indeed, City staff worked in good faith with Commission staff to facilitate consideration of the CDP application by supplying updated information on this

complex matter. The Commission finds that this is a case of refinement of information and data as the City performed additional research and analysis, rather than an intentional effort to inaccurately misrepresent information to the Commission.

The Commission also finds that the inaccuracy concerning the status of the Capistrano Bay District as an “HOA” vs. a “community services district” was not intentional, and the Commission was already aware, both prior to and during the Commission public hearing, that the City simply misidentified the nature of the District as an “HOA,” as stated in footnote 16 on page 21 of the Commission’s adopted staff report ([Exhibit 3](#)). The footnote states:

“[This is i]nformation 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).”

Finally, the email correspondence and documentation in Attachment 4 to the revocation request ([Exhibit 1](#)) between the requestors and City Mayor Pro Tempore Jamey Federico concerning the City’s reduced fees for processing local CDPs banning STRs within individual HOAs does not support the notion that the City is intentionally offering preferential treatment to HOAs. On page 21 of the adopted staff report for the Dana Point STR Program CDP, the Commission made the following findings ([Exhibit 3](#)):

“[...] 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 of 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.”

The Commission was aware that the City intended to facilitate the filing of local CDP applications, as needed, to ensure that HOAs are compliant with the requirement to legalize their CC&Rs prohibiting STR uses within their communities. The documentation in Attachment 4 of the revocation request shows that the City was undertaking the above-mentioned process and was transparent in its explanation to the requestors. City Mayor Pro Tempore Federico clarified that the reduced fee of \$500 was assessed based on the time that it would take City staff to review and process each local CDP application, and there is no evidence of a nefarious “scheme” to inappropriately streamline or preferentially treat HOAs’ requests to prohibit STRs that either

undermines or violates the STR Program CDP. Thus, the City's actions do not constitute an intentional omission of fact from the Commission over the course of the CDP's proceeding.

In short, no evidence has been provided as a part of the revocation request that illustrates that the applicant *intentionally* provided any information that was inaccurate, erroneous, or incomplete with the application submittal for the subject CDP.

3. The Commission Would Have Acted Differently

The third part of the test the Commission must consider is if the applicant intentionally provided inaccurate, erroneous, or incomplete information, would accurate and complete information have caused the Commission to require additional or different conditions or deny the application? As stated, this element must only be evaluated if it is determined that the applicant *intentionally* provided inaccurate, erroneous or incomplete information, and the Commission finds that the applicant did not.

Nevertheless, this element also would not be met even if the first two were met.

Whether or not provided intentionally, the requestors assert that the City's inaccurate and incomplete information has adverse implications for the geographic distribution of STRs in the Coastal Zone, and thus presents cumulative impacts to public access, recreation, and community character. On page 15 of the revocation request ([Exhibit 1](#)), the requestors state the following:

“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.”

Attachment 1 of the revocation request ([Exhibit 1](#)) shows how they calculated the saturation rates of STRs in non-HOA areas. In short, the requestors allege that the inaccurate information that the City gave to the Commission could lead to the “oversaturation,” or geographic clustering, of STRs in non-HOA areas of the City's Coastal Zone. They believe this to be the case because the City has already issued CDPs to prohibit STRs in some HOAs.

The requestors argue that since HOAs are legally allowed to ban STRs, that in non-HOA areas that are not able to regulate STRs, the saturation rate would be much higher. The requestors assert that had the Commission known this to be the case, the Commission would have lowered the overall cap of 115 non-primary STRs, multi-family home stays, and mixed-use parcel STRs in the Coastal Zone in order to preserve an overall lower saturation rate across the entire Coastal Zone, including in non-HOA areas.

Nevertheless, the requestors incorrectly assumed that all residential units in HOAs would be off-limits to STRs. From the data provided so far to the Commission, the City has approved the prohibition of STRs in 17 HOAs and across 1,591 residential units, and anticipates to finalize CDPs in another two HOAs with 256 residential units ([Exhibit](#)

4). Assuming that the pending CDP for the two HOAs is approved, at total of 1,847 units would be removed from the available pool for STRs. 1,847 units represents forty-four percent (44%) of the HOA units in the City and approximately a third (32%) of the City's total residential units. These figures are substantially lower than requestors' assumption that predicted that all (100%) of the housing units in HOAs would become unavailable to STRs. The City has told Commission staff that they are not aware of additional HOAs pursuing HOA bans.

The requestors' argument that HOA prohibitions of STRs effectively "saturate" STRs in non-HOA areas is correct, but the degree to which HOAs would do so is within the realm of what the Commission considered appropriate in its action on the STR Program, based on the best and latest available evidence.

In any case, 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 (3) years of issuance of the CDP (until November 30, 2025) to change any aspect of the Program. The City Council has given City staff direction to submit the first report by the end of the 2023 calendar year, approximately two years sooner than as required per the CDP.

To accomplish a more thorough and comprehensive monitoring/tracking of the STR Program's performance, the Commission imposed **Special Condition 3** of CDP No. A-5-DPT-22-0038 for a study and assessment during an extended six-year period (until November 30, 2028) with more prescriptive criteria and metrics, to evaluate whether any unintended adverse cumulative impacts on public access, lower cost overnight accommodations, housing stock, and community character arise during implementation of the Program ([Exhibit 3](#)).

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, 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, 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 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 conditioned, the Program will ensure that any significant adverse impacts to public access, housing stock, or community character are not prolonged in perpetuity without remedy or recourse. The CDP has clear check-in dates, during which the Commission could change the Program, and it would not be appropriate or necessary to modify the Program at this time.

In conclusion, even if the information about the number of HOAs, the number of residential units contained in each, and their geographic distribution in the City's Coastal Zone were considered intentionally inaccurate or incomplete, the Commission conditioned the Program to have several backstop measures, such as a study to analyze the cumulative impacts of the Program on coastal resource (**Special Condition 3** of the permit), a straightforward procedure to bring the application back to the Commission for an amendment if needed (**Special Conditions 2 and 3**), and several adjustments to the overall distribution and types of STRs as required in **Special Condition 1** so as to mitigate against the geographic clustering of short-term rentals in the Lantern District, Doheny Village, and Beach Road. There is no evidence that the different information would have caused Commission staff to change its analysis or recommend different conditions, or to have caused the Commission to act differently on approval of the permit.

D. Consequences of a Revocation

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

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

Section 30211 of the Coastal Act states:

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

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

(a) Public access from the nearest public roadway to the shoreline and along the

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

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

Section 30212.5 of the Coastal Act states:

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

Section 30213 states, in relevant part:

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

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

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

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and 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.

Relevant Certified LCP Policies

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

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

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

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

Certified IP Chapter 9.75, Definitions and Illustrations of Terms.

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

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

In the scenario that a revocation of Dana Point's STR Program were granted, the consequences could have far-reaching and adverse effects on public access, recreation, and community character in the City's Coastal Zone.

One important factor to consider is that, 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 citywide. Within the Coastal Zone, STR regulation must occur within the context of an LCP and/or be authorized pursuant to a CDP for the regulation to be effective in the Coastal Zone. However, pursuant to the 2016 action, the City did not pursue a CDP to enact the moratorium on new STR permits. The City has since become aware of the California appellate court decisions in *Greenfield v. Mandalay Shores Community Association* and *Kracke v. City of Santa Barbara*, which confirm the requirement that both HOAs and cities must obtain a CDP (or LCP amendment) prior to establishing a ban or restriction on STRs, pursuant to Coastal Act Sections 30600 and 30106. Thus, the City applied for the subject CDP in order to effectively regulate STRs within the Coastal Zone.

If the CDP is revoked, there is nothing standing in its stead to regulate the permitting and operation of STRs within the Coastal Zone of the City of Dana Point, and all residentially-zoned property could then host an STR, thus creating a "free-for-all" scenario.⁸ While it may be true that the City previously interpreted the City's Zoning Code to not allow for STRs in residentially-zoned neighborhoods when it established the initial moratorium in 2016, a change of circumstance, precipitated by the two aforementioned Court of Appeal opinions, now means that the City must legally find STRs to be allowable uses in residential zones if no program is in place. Under this scenario, the City would need to seek an LCPA or a new CDP for a new program, and in the meanwhile, the City would not be able to rely on a moratorium to prevent the proliferation of STRs in the Coastal Zone.

In the staff report for CDP No. A-5-DPT-22-0038, the Commission made findings that a "free-for-all" situation would not be consistent with the City's certified LCP and the public access and recreation policies of the Coastal Act ([Exhibit 3](#)). In areas that are

⁸ The "free-for-all" scenario would apply to all HOAs that do not have an approved CDP to ban STRs (such as shown in [Exhibit 4](#)) or have long-standing CC&Rs enacted prior to the Coastal Act.

oversaturated with STRs, the Commission has recognized legitimate community concerns over potential associated adverse impacts with respect to housing stock and affordability, community character, noise, and parking impacts. If the revocation were to be granted, then it is likely that this scenario would even further concentrate STRs and exacerbate the aforementioned issues within the Coastal Zone, since the City's analogous program outside of the Coastal Zone would still be in effect.

The Commission thus finds that a balanced approach, through regulation, must be maintained in order to ensure the protection of coastal resources and to avoid the erosion of communities.

The Commission finds that maintenance of the approved Program, which is conditioned to allow for future modifications and amendments in order to remain nimble and adaptable to changing circumstances, and which is also conditioned to provide studies and verifiable data that would help in analyzing the potential for cumulative impacts on coastal resources arising from HOA bans on STRs, is a balanced and comprehensive Program consistent with the LCP and Coastal Act policies listed above.

E. Conclusion

For the reasons set forth above, the Commission finds that the request for revocation does not meet the requirements contained in Section 13105(a) or (b) of the Commission's regulations. Therefore, the Commission finds that the revocation request must be denied on the basis that no grounds exist for revocation because there is no evidence that the City intentionally included inaccurate, erroneous or incomplete information relative to the CDP.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit No. A-5-DPT-22-0038 and associated file documents.

APPENDIX B – RELEVANT CERTIFIED LCP POLICIES

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

- (a) Several classes of uses are allowed in Residential Districts. Each of these classes must promote the residential character of the individual districts. These classes of uses are:
- (1) Permitted Use — allowed by right if no discretionary review is required. Certain permitted uses, indicated by P*, are also regulated by provisions contained in Chapter 9.07.
 - (2) Accessory Use — allowed by right if accessory to a dwelling unit or a residential development.
 - (3) Temporary Use — allowed on a temporary basis in accordance with the provisions of Chapter 9.39.
 - (4) Conditional Use — allowed subject to the approval of a Conditional Use Permit in accordance with the provisions of Chapter 9.65. Certain conditional uses, indicated by a C*, are also regulated by provisions contained in Chapter 9.07.
 - (5) Prohibited Use — not allowed in the subject residential district.
- (b) The following Table lists the classification of allowable uses in the Residential Districts. Any use not expressly allowed is prohibited.

SECTION 9.09.020(b) RESIDENTIAL DISTRICTS

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

LAND USES	RMF 7	RMF 14	RMF 22	RMF 30
Recreational Facilities, Private	A	A	A	A

LEGEND:

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Introduction.

...

a. Coastal Act of 1976.

...

Section 30222. The use of private lands suitable for visitor serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or

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

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

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

b. Work Program Issues.

...

- 6. Recreational opportunities to be provided.
- 7. Distribute public facilities to mitigate overcrowding or overuse.
- 8. Identification of ocean front land suitable for recreational use.
- 9. Identification of upland areas necessary to support coastal recreation.
- 10. Identification of visitor-servings and commercial recreational facilities.

...

...

4. Definitions

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

...

...

7. Policies

...

Visitor-Serving and Commercial Recreation Facilities Policies:

...

- 83. Adequate parking will be provided in close proximity to recreation and visitor-serving facilities (Dana Point Specific Plan Local Coastal Program Policy, page X-6)
- 84. Future visitor-serving facilities will be located in those areas designated as tourist recreation/ commercial by the Land Use Plan. (Dana Point Specific Plan Local Coastal Program Policy, page X-7)
- 85. The primary use within this area will be a hotel/lodge facility integrated with a public open space system adjacent to the bluffs. (Dana Point Specific Plan Headlands Land Use Policy, Area D, page IV-23)
- 86. Proposed uses will be oriented exclusively toward Tourist-Recreation/Commercial facilities, and include but not be limited to overnight lodging, retail shops, restaurants, and other similar facilities. (Dana Point Specific Plan Headlands Land Use Policy, Area E, page IV-23)

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

Policy 2.10: The use of private lands suitable for visitor-serving commercial

recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry. (Coastal Act/30222)

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

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