

April 17, 2023

to: City of Dana Point  
Community Development Dept.  
attn: John Ciampa

RECEIVED

APR 20 2023

CITY OF DANA POINT  
COMMUNITY DEVELOPMENT  
DEPARTMENT

from: Clyde C. Lacher and Maurine Lacher  
25241 La Cresta Drive  
Dana Point, CA 92629


responding to: Public Notice, Coastal Development  
Permit CDP 23-0008

As a resident and home owner of said address, of 60 years, we are in favor of the Village of Dana Point Homeowners Association to prohibit short term rentals in their community.

Clyde Lacher CLYDE LACHER  
Maurine Lacher MAURINE LACHER

April 24, 2023

TO: Dana Point Planning Commission

FROM: Mark Zanides Dana Point resident 

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 bar short term rentals (STRs) within their associations, for all four of the reasons set forth by Roger Malcolm in his letter to you which will be submitted to you today.

First, there is no reason, to grant special treatment to HOAs. All residents in Dana Point should bear the STR burden imposed on them by the City Council.

Second, granting these CDPs, which are only the first 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, grant of these CDPs will be appealed to the City Council and, if necessary, to the Coastal Commission because these CDPs will result in a concentration of STRs which 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. The CCC clearly indicating their intent that this would represent no more than 2% of residential units, already higher than what would be normal in a city with Dana Point's abundant tourist accommodations.

Fourth, this is not a decision which should be made by the Planning Commission at all. This is not a garden variety building permit issue. This program has citywide implications, and this Commission should take no position on the CDP applications. When the Council first passed the CDP permitting STRs it originally took the view that it was only assisting HOAs with the administrative burden of filing a CDP. It is clear, however, that the city has now leading the charge to protect HOAs. This is a city wide issue for the Council and Council alone to decide.

Finally, this Commission does not have reliable data at this time on which to base a decision. Let me explain.

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.

If this Commission is inclined to take action, surely it must recognize that no governing body can make informed decisions without accurate information. In view of the staff's wildly different numbers, which have never been explained, what this Commission can and should do is demand that the city staff produce accurate figures with publicly available supporting data regarding the number of residential units within the city and within the coastal zone; number of HOAs and their location; number of units within each HOA; number, type and location of residential which legally bar STRs, including apartment complexes, trailer parks, etc. The staff should also address why it apparently includes Beach Road as an HOA, when it is not.

Once the accurate numbers are established, I submit that it will be clear that it would be grossly unfair to favor HOA residents over non HOA residents. If this Commission or the Council wishes to protect HOA residents, at the very minimum it must amend the existing CDP so that the concentration of STRs in the coastal zone reflects the view of the CCC and does not exceed 1.5-2 %.

## **Conclusion**

I agree with Mr. Malcolm. 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.

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.

Therefore, 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.

**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 to reduce the impact on non-HOA communities.**

Sincerely,

Mark Zanides  
Dana Point Resident (non-HOA)



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.

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

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

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

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

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

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

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

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

BEGINNING at the Northeasterly corner of Block "C" of said Tract No. 797, said Northeasterly corner being in the Southwesterly line of the Atchison Topeka and Santa Fe Railroad right-of-way as shown on the map of said tract No. 797; thence Northwesterly, along the Southwesterly line of said railroad right-of-way to the Northeasterly prolongation of the Southeasterly line of Block "A" of said Tract No. 797; thence Southwesterly, along said prolongation and said Southeasterly line, to the irregular Southwesterly line of said tract No. 797 and designated approximate ordinary high tide line on said map of Tract No. 797; thence Southeasterly, along said irregular Southwesterly line to the Southeasterly line of said Tract No. 797; thence Northeasterly along said Southeasterly line, to the point of beginning;

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

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

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

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



OFFICE OF  
CLERK OF ORANGE COUNTY  
CLERK OF ORANGE COUNTY

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

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

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

9 NOES: SUPERVISORS NONE

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

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

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

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

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

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

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 28<sup>th</sup> at City Hall at which time Mr. Ciampa showed them the GIS system but was unable to point to where those additional housing units might be. When asked to supply detailed records to support these numbers, Mr. Ciampa stated that he was very busy and could not produce the supporting data until the end of April, 2023<sup>1</sup>.

Rather than reply to Ms. Nelson, the staff now claims that within the CZ there are 52 HOAs comprising 4,400 dwelling units, an astonishing 66% increase in the numbers

---

<sup>1</sup> 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.

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 1<sup>st</sup> 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.<sup>2</sup> Adding the 325 units in Monarch Hills, which allows STRs of 7 days+, will result in a saturation rate of 9% (115/(1,000 + 325)). Other than in Monarch Hills, almost all of the new STR permits in the CZ will be concentrated along Beach Road, Doheny Place, the bluff side of Camino Capistrano and a smattering of homes in the non-commercial area of Lantern Village.

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.

---

<sup>2</sup> The City is also tacitly discouraging STR applicants from HOA areas. It appears to be requiring applicants to submit a letter from the HOA confirming that the CCRs permit HOAs. But HOAs have no incentive to produce such a letter, even though the Coastal Act overrules most existing CCRs in Dana Point. This will deter most HOA applicants, and at a minimum, delay their applications while the remaining STR licenses are issued. In short, the City has devised what is effectively an informal or “pocket” ban on STRs in HOAs whether they have a legal CDP or not, and improperly so, as it is the City’s responsibility to comply with the Coastal Act, not adopt procedures which will effectively nullify it.

### 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 hearing<sup>3</sup>, Commissioner Harmon first suggested a cap of 1% (55 STRs) and then modified that to 1.2% or 66<sup>4</sup> STRs to reflect the number in existence at the time. Chair Brownsey asked if that would be ok with CCC staff and they concurred. Brenda Wiesnicki 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 non-HOA 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).

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

---

<sup>3</sup> [https://cal-span.org/meeting/ccc\\_20221116/](https://cal-span.org/meeting/ccc_20221116/) discussion begins at 5:20:59

<sup>4</sup> It is not clear how we now have 69 STRs despite 66 reported at the CCC hearing, especially since the City has not been issuing new permits, but numbers are clearly not its strong suit.

As set forth above, these CDPs seek special protection and treatment for certain privileged residents of Dana Point. We do not begrudge HOA members the right to seek protection from STRs for their communities. But the non-HOA residents of Dana Point deserve protection as well. We assumed that the City Council weighed the interests of **all** residents when it authorized 115 STR permits in the CZ and another 115 in non CZ zones. What it did not 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](mailto:shahar.amitay@coastal.ca.gov)

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

Good Morning Mr. Amitay,

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

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

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

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

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

Regards, Don

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OFFICE OF  
CLERK OF SUPERVISORS  
ORANGE COUNTY

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

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

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

9 NOES: SUPERVISORS NONE

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

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

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

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

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

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

April 24, 2023

To: Dana Point Planning Commissioners

From: Toni Nelson, resident of Capistrano Beach

Re: Agenda Item 3, HOA CDPs in the coastal zone

Please reject the multiple HOA requests for approval of CDPs banning STRs in the coastal zone. While I empathize and support these requests in principle, because all residential communities should be protected from commercial activity including STRs, I have no choice but to oppose them because of the resultant effect on residents of the non-HOA coastal zone. Approval of these CDPs will leave about 1,325 homes shouldering 115 STRs, a saturation rate of 9%.

This will be completely unacceptable to any fair minded person and to the Coastal Commission. One of the CCC's stated policies is to prevent clustering of STRs in order to preserve the residential nature of neighborhoods. The CCC-approved saturation rates for other cities has ranged from 1.2 to 2%. Dana Point, with an extraordinary number of hotel accommodations and extremely scarce housing stock should be on the low side of that range. In fact, at the November De Novo hearing on Dana Point's STR program, the CCC first suggested 1% as an acceptable rate and this was also acceptable to CCC staff. Dana Point's staff said 1.5% would be acceptable. It was only on then Mayor Muller's insistence that we ended up with 115 units or 2%. Commissioner Harmon reluctantly agreed but went on record expressing her discomfort with this rate, given the very scarce housing stock in the city. This is extraordinary. Almost any other city would have been thrilled with the Coastal Commission's suggested saturation rates. Why did Dana Point insist on more? This is particularly perplexing because more than 60% of our STRs are owned by non-resident investors. I'm astonished that the wishes of residents, 4,000 of whom signed a referendum against STRs in 2016, were not paramount.

First, the City's data is unreliable and has significantly changed since the hearing. The staff simply must provide reliable data that can be verified for accuracy. The staff report sent to the CCC in October, 2022 reported 5,664 housing units in the coastal zone with 2,648 units in 28 HOAs. Now they're reporting 5,700 housing units with 4,400 units in 52 HOAs. How could they provide such inaccurate data to the CCC? And where is the support for these new numbers? Accurate, verifiable data is absolutely necessary before the City proceeds with its STR program and reopens it to new permits. How can the Planning Commission possibly assess the impact of its actions without having good data? The only way to accurately determine the real saturation rate is to determine the number of housing units that could become STRs after all the HOA bans are upheld. At this point, the City does not even have a list of HOAs that allow STRs, but the staff currently reports that number could be as low as 5 of 52. Given the City's oft-repeated desire to protect HOA bans and its eagerness to legalize them, it's reasonable to assume that very few of the 4,400 HOA housing units will ever become STRs.

If the City's new data is accurate, the effect of removing HOA units, whether there are 4,400 or some other number, is to force the 115 STRs allowed by the cap into a tiny segment of our city. We estimate the number of housing units eligible to become STRs as 1,325 (see math on power point presentation slide 8). It would be grossly discriminatory and not remotely reasonable to expect so few homes to absorb 115 STRs, converting 9% of scarce housing stock to tourist accommodations. Worse, because of the geography of the coastal zone, these units will be forced mainly into a narrow strip in Capistrano Beach, unfairly overburdening one tiny part of the city.

The City's CDP was approved by the CCC with Special Condition 1 requiring an amendment of the final program to ensure the legality of HOA bans. The City's action on behalf of HOAs is designed to legalize many, if not most of them. The City's CDP must be amended to reflect the effect of those bans on saturation rates on non-HOA communities.

I agree with the arguments expressed in Roger Malcolm's letter. I urge you to act on behalf of ALL residents of Dana Point. It is completely unacceptable to foist all the STRs on a tiny segment of our City, destroying residential character by promoting clustering of tourist accommodations in our neighborhoods.

I urge my neighbors in HOAs to demand that the city amend its CDP to prevent an undue burden on non-HOA communities. If that occurs, I'll be happy to support their requests for CDPs.

*All* residential neighborhoods deserve protection from saturations that far exceed the CCC's acceptable range, particularly in Dana Point, a veritable poster child for coastal tourist accommodations.

Respectfully,

*Toni Nelson*

Toni Nelson  
Resident of non-HOA Coastal Zone  
Capistrano Beach



# STRS IN DANA POINT'S COASTAL ZONE

---

ALL neighborhoods need protection



# REQUESTS

- Freeze permit issuance process scheduled May 1st
- Staff to provide a timely, accurate, detailed, verifiable analysis
- Limit number of STRs to 2% of verified eligible housing units
- Amend City's CDP to reflect 2% cap on verified eligible housing units

# WHY DOES THE CITY FAVOR HOA COMMUNITIES?

---

## CZ HOA communities can't ban STRs unless:

- HOA's CC&Rs predate Coastal Act of 1976, OR
- HOA has CCC approval (via a CDP) to ban STRs

So... the City is "helping" HOAs obtain CDPs to allow STR bans including about a **90% discount** on CDP fees



# WHY IS THE CITY DUMPING STRS IN NON-HOA NEIGHBORHOODS?

---

- City's recent re-interpretation of residential zoning exposed ALL neighborhoods to STRs.
- Which neighborhoods are getting City protection? HOA neighborhoods.
- What about non-HOA neighborhoods? Especially those offering **affordable housing**?
- And why would CCC agree to abnormal clustering of STRs in tiny area? Seems very inconsistent with CCC policy.



## THE CCC WANTED FEWER STRS IN DANA POINT THAN THE CITY DEMANDED

---

- **Yes, the CCC suggested 1% of available housing units (55) was a reasonable number** given Dana Point's 2,000+ visitor accommodations & very scarce housing stock
- Mayor Muller insisted on 2% (115) because Council had not authorized less than 115



# WHY DID THE CCC APPROVE DP'S STR PROGRAM?

---

The CCC approved 115 STRs representing 2% of Coastal Zone housing based on these numbers submitted by City staff:

2,648 HOA housing units

3,016 non-HOA housing units

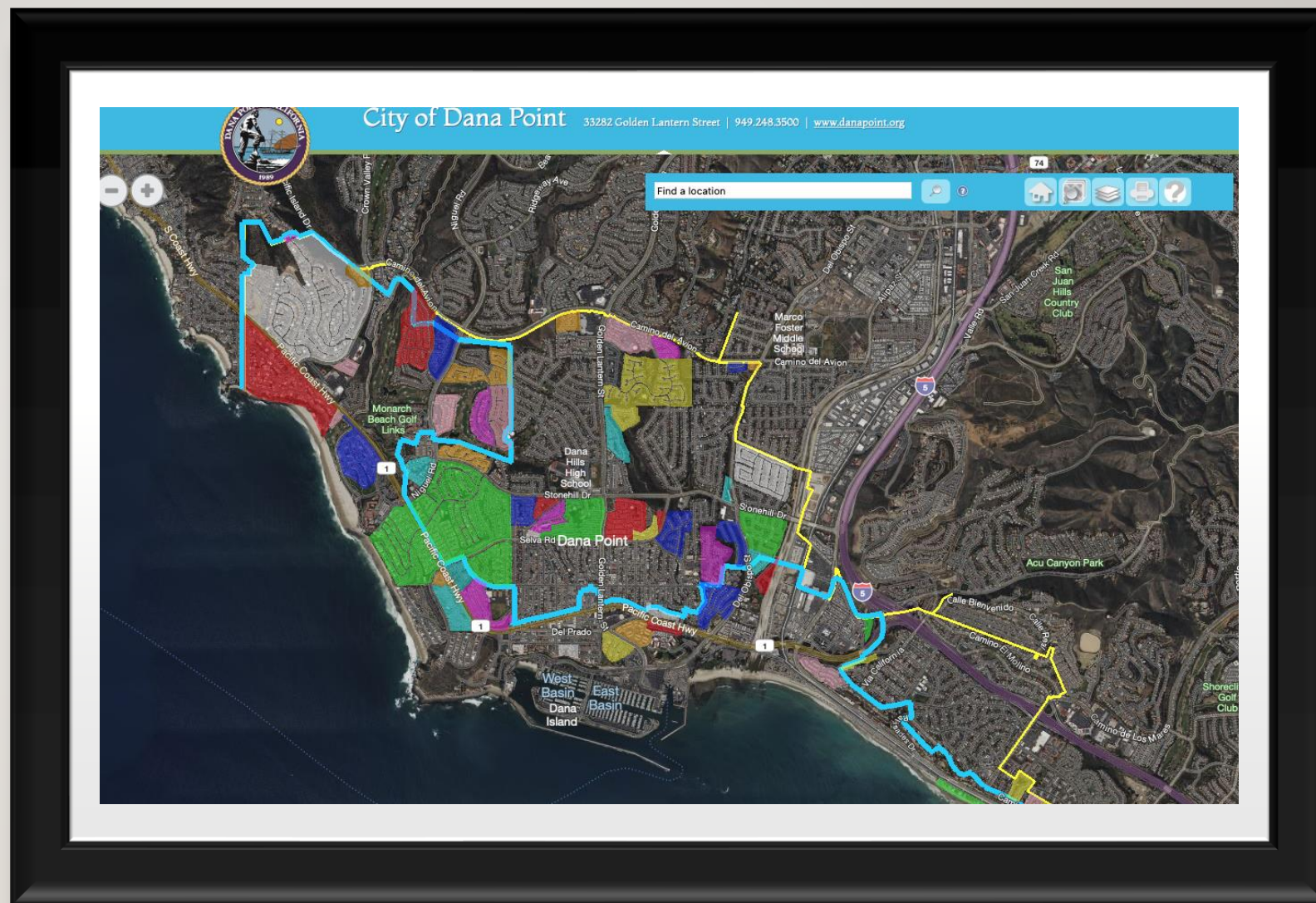
5,664 housing units subject to STRs

**Saturation Rate:  $115 / 5,664 = 2\%$  ...** Or that's what they thought.



# DANA POINT COASTAL ZONE MAP

---



# NEW MATH

---

5,700 housing units in CZ (verification not yet provided)

4,400 in 52 HOAs (vs. 2,648 in 28 HOAs reported to CCC)

1,300 non - HOA housing units plus

325 in Monarch Hills (HOA allows 7-day STRs)

1,625 non-HOA housing units

(300) Mobile homes, section 8, long term rentals

**1,325 est. non-HOA housing units available to  
be used as an STR.**





## COMPARISON

CCC acceptable saturation rate:

1 – 2%

In DP's non-HOA CZ:

9%

(115 STRs / 1,325 units)

# THE PLAN

---

If PC approves these CDPs, an appeal to the City Council will be filed

If the City Council denies the appeal, it will then be appealed to the CCC

# REQUESTS

- Freeze permit issuance process while the requests below are acted upon.
- Ask City staff to provide a timely report substantiating the number of housing units in non-HOA communities that are eligible for STR permits.
- Limit number of STRs to 2% of verified eligible housing units.
- Amend City's CDP to reflect 2% limit of verified eligible housing units.

# ALL RESIDENTS DEMAND EQUAL TREATMENT

---

