

## Martha Ochoa

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**From:** Shayna Sharke  
**Sent:** Monday, June 12, 2023 2:46 PM  
**To:** Johnathan Ciampa; Martha Ochoa  
**Subject:** FW: Planning commission meeting 6/12/23 agenda item 3  
**Attachments:** Notice of Pending Revocation Request.pdf

John / Martha,

Please see the attached notice and email below as public comment for tonight's Planning Commission meeting.

**Shayna Sharke, CMC**

City Clerk | City of Dana Point

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**From:** Toni Nelson <tonidn1@gmail.com>  
**Sent:** Monday, June 12, 2023 2:42 PM  
**To:** Shayna Sharke <SSHARKE@DanaPoint.org>  
**Cc:** Amitay, Shahar@Coastal <shahar.amitay@coastal.ca.gov>; Roger <rjm.carbonfiber@gmail.com>; Stevens, Eric@Coastal <eric.stevens@coastal.ca.gov>  
**Subject:** Planning commission meeting 6/12/23 agenda item 3

Dear Planning Commissioners,

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

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

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

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

to encourage landlords to convert badly needed rental housing to more lucrative STRs. We do not believe the CCC, or any reasonable body, would encourage these concentrations.

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

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

Thank you for your attention to this important matter.

Toni Nelson  
Roger Malcolm  
Residents of non - HOA Coastal Zone

Sent from my iPad

**CALIFORNIA COASTAL COMMISSION**

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



June 2, 2023

**NOTICE OF PENDING REVOCATION REQUEST**

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

Delivered via electronic mail: [BWisneski@DanaPoint.org](mailto:BWisneski@DanaPoint.org)

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

Dear Brenda Wisneski:

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

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

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

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

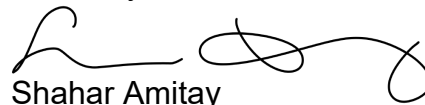
A copy of the pending revocation request and the relevant sections of the California Code of Regulations for CDP revocations are attached.

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Shahar Amitay', with a stylized, flowing script.

Shahar Amitay  
Coastal Program Analyst

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

Barclays Official California Code of Regulations Currentness  
Title 14. Natural Resources  
Division 5.5 California Coastal Commission [FNA1]  
Chapter 5. Coastal Development Permits Issued by Coastal Commissions  
Subchapter 1. Regular Permits  
Article 16. Revocation of Permits

14 CCR § 13104

## § 13104. Scope of Article.

The provisions of this article shall govern proceedings for revocation of a coastal development permit previously granted by a regional commission or the commission.

Note: Authority cited: [Sections 30331 and 30333, Public Resources Code](#). Reference: [Sections 30331 and 30620, Public Resources Code](#).

### HISTORY

1. New Article 16 (Sections 13104-13108) filed 2-11-77 as an emergency; effective upon filing (Register 77, No. 7).
2. Certificate of Compliance filed 4-29-77 (Register 77, No. 18).
3. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
4. Change without regulatory effect amending Note filed 2-7-2019 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2019, No. 6).

This database is current through 8/7/20 Register 2020, No. 32

14 CCR § 13104, 14 CA ADC § 13104

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Title 14. Natural Resources  
Division 5.5 California Coastal Commission [FNA1]  
Chapter 5. Coastal Development Permits Issued by Coastal Commissions  
Subchapter 1. Regular Permits  
Article 16. Revocation of Permits

14 CCR § 13105

§ 13105. Grounds for Revocation.

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; or
- (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.

Note: Authority cited: [Section 30333, Public Resources Code](#). Reference: [Section 30620, Public Resources Code](#).

**HISTORY**

- 1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
- 2. Amendment filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
- 3. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
- 4. Change without regulatory effect amending subsection (a) filed 2-7-2019 pursuant to [section 100, title 1, California Code of Regulations](#) (Register 2019, No. 6).

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14 CCR § 13105, 14 CA ADC § 13105

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Subchapter 1. Regular Permits  
Article 16. Revocation of Permits

14 CCR § 13106

§ 13106. Initiation of Proceedings.

Any person who did not have an opportunity to fully participate in the original permit proceeding by reason of the permit applicant's intentional inclusion of inaccurate information or failure to provide adequate public notice as specified in Section 13105 may request revocation of a permit by application to the executive director of the commission specifying, with particularity, the grounds for revocation. The executive director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. The executive director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13105.

Note: Authority cited: [Section 30333, Public Resources Code](#). Reference: [Section 30620, Public Resources Code](#).

**HISTORY**

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
3. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).

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14 CCR § 13106, 14 CA ADC § 13106

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Barclays Official California Code of Regulations Currentness

Title 14. Natural Resources

Division 5.5 California Coastal Commission [FNA1]

Chapter 5. Coastal Development Permits Issued by Coastal Commissions

Subchapter 1. Regular Permits

Article 16. Revocation of Permits

14 CCR § 13107

## § 13107. Suspension of Permit.

Where the executive director determines in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended unless and until the commission votes to deny the request for revocation. The executive director shall notify the permittee by mailing or transmitting by other reasonable means a copy of the request for revocation and a summary of the procedures set forth in this article, to the permittee's last known address. The executive director shall also advise the permittee in writing that any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to the penalties set forth in [Public Resources Code, Sections 30820 through 30822](#).

Note: Authority cited: [Section 30333, Public Resources Code](#). Reference: [Sections 30620, 30820, 30821 and 30822, Public Resources Code](#).

### HISTORY

1. Repealer and new section filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 3).
3. Amendment of section and Note filed 7-30-2019; operative 1-1-2020 pursuant to [Government Code section 11343.4\(b\)\(2\)](#) (Register 2019, No. 31).
4. Amendment filed 11-27-2019; operative 1-1-2020 (Register 2019, No. 48).

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14 CCR § 13107, 14 CA ADC § 13107

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Subchapter 1. Regular Permits  
Article 16. Revocation of Permits

14 CCR § 13108

§ 13108. Hearing on Revocation.

(a) After a staff report and recommendation have been prepared, and after notice has been transmitted to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the commission with a recommendation on the merits of the request.

(b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.

(c) The commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission requests the executive director or the Attorney General to perform further investigation.

(d) A permit may be revoked by a majority vote of the members of the commission present if it finds that either of the grounds specified in Section 13105(a) or (b) exist. If the commission finds that the request for revocation was not filed with due diligence following approval of the permit, it shall deny the request.

Note: Authority cited: [Section 30333, Public Resources Code](#). Reference: [Section 30620, Public Resources Code](#).

**HISTORY**

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment filed 1-3-80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-3-80.
3. Certificate of Compliance transmitted to OAH 4-29-80 and filed 5-8-80 (Register 80, No. 19).
4. Amendment filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
5. Amendment of subsections (a), (c) and (d) and amendment of Note filed 11-27-2019; operative 1-1-2020 (Register 2019, No. 48).

This database is current through 8/7/20 Register 2020, No. 32

To: California Coastal Commission and Staff  
From: Toni Nelson and Roger Malcolm, residents of Dana Point's Coastal Zone  
Date: May 22, 2023

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

## **REQUEST TO REVOKE**

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

## **SUMMARY OF ARGUMENT**

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

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

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

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

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

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

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

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

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

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

<sup>3</sup> See attachment 1 – The Math – Saturation Calculations

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

**Had the Commission known the true facts<sup>4</sup>, it likely would have either denied the CDP as requested or conditioned its grant on terms which would have eliminated the undue concentration of STRs in certain communities.**

## **THE LEGAL STANDARD FOR REVOCATION**

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

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

### **A. APPLICANT PROVIDED INCOMPLETE, INACCURATE OR ERRONEOUS INFORMATION**

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

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

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

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

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

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

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

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

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

## **2. The City resisted attempts to obtain accurate data**

The staff’s radical change to the reported data was not voluntary, but rather occurred because on March 8, 2023 appellant Nelson asked a City senior planner to substantiate how he came up with the numbers staff provided to the CCC at the November hearing. Ms. Nelson had worked with other residents to try to identify the location of the 3,016 housing units supposedly located in the non-HOA sections of the CZ. Using maps and public real estate records, they could only account for about 1,500 homes, and these included many that could not ever be STRs (mobile homes, long term rentals and section 8 housing). After several additional queries<sup>5</sup>, the senior staff member stated that he derived the information from the City’s GIS (Geographic Information System). When they were still unable to identify more than about 1/3 of the supposed 3,016 non-HOA units in the coastal zone, Ms. Nelson and another resident asked to meet with the staffer so that he could show them his working papers and explain where those units

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<sup>5</sup> See attachment 2, emails querying housing unit data supplied to CCC.

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

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

### **3. Beach Road Status Appears To Have Been Intentionally Concealed**

While the Dana Point [Planning Commission Staff Report](#) does not identify all of the HOAs by name, it appears obvious that in order to report to the CCC that 91% percent of STRs are located in HOAs, the City must have included the residential units on Beach Road as HOAs. This is so because the staff falsely claims that “...*since only five STR permits in the CZ are not in HOAs, the additional allowance of 46 STRs will not result in a cumulative impact.*” (sic) Planning Commission Staff Report at 5.)

Most of the difference between the 1,300 non-HOA units reported to the Planning Commission and the 1,521 reported to the City Council is attributed to staff's repeated erroneous claim that Beach Road<sup>6</sup>, a special district with no ability to restrict or ban STRs, is an HOA.

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

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

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

Even if it had failed to acknowledge the letter in the CCC records, the City was in receipt of a letter from Roger Malcolm on 4/23/23<sup>8</sup> attaching Don Russell's letter to the CCC last November.

Of course the inevitable result of this false statement is that in fact Beach Road has and will continue to suffer undue concentration of STRs. At the May 16<sup>th</sup> City Council meeting, staff finally acknowledged that the 196 Beach Road homes accounting for 27 grandfathered STRs (31 at the time of the *de novo* hearing) should be categorized as non-HOA housing units. The City also revealed that new permits have been requested for an additional 17 STRs on Beach Road. This community will now have 44<sup>9</sup> STRs within 196 homes. For every 3 ordinary residences with zero lot lines, 1 will be an STR.

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

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

#### **5. Monarch Hills Status Withheld**

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

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

<sup>8</sup> See attachment 3 – letter of Roger Malcolm, April 23, 2023

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



The Community of Monarch Hills contains some of the more affordable housing units in Dana Point. This HOA originally hosted 31 grandfathered STRs in 349 units. New permit applications representing 19 new STRs for Monarch Hills have been received. If all are granted, the community will forfeit a total of 50<sup>10</sup> units to tourist accommodation – units that could have otherwise been rented to long term tenants. It is unclear how many renters will be ousted as a result of the issuance of 15 new non-primary STR permits in this community.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Starting on February 28, 2023, the City began a concerted effort to legalize HOA bans. They held a public workshop for HOAs; reduced normal CDP fees by 90%; and engaged City staff to draft their CDPs, batching them for efficient passage through the Planning Commission. The staff first contended in a [staff report](#) for the March 7, 2023 City Council meeting that the reduction in fees was justified because the CDPs benefited the entire community. (Staff Report at 2). When citizens pointed out that this policy would actually harm the rest of the CZ residents by concentrating STRs, the staff defended the paltry \$500 CDP fee for each CDP application on the grounds that it adequately compensated the staff for its time processing the applications. That was also misleading.

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

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

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

<sup>13</sup> The City has tacitly discouraged STR applicants from HOA areas. The STR Program requires applicants to submit a letter from the HOA confirming that the CCRs permit HOAs. But HOAs have no incentive to produce such a letter, even though the Coastal Act overrules most existing CCRs in Dana Point. This will deter most HOA applicants, and at a minimum, delay their applications while the remaining STR licenses are issued on a first come/first served basis.

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

The City has a duty to all of its citizens, not solely those who reside in HOAs. There is nothing in this record which suggests that the city staff solicited residents other than those in HOAs for their views on the impending concentration of STRs, particularly in the CZ. In fact, there is no evidence that the interests of non-HOA residents were ever considered at all, despite repeated pleas for such consideration in multiple public meetings and letters.

When the authors of this revocation request attempted to appeal<sup>14</sup> the HOA CDPs to the City Council on the grounds that they resulted in an undue concentration of STRs in a small segment of the CZ, they were told they would not be allowed to present an appeal of the entire batch. Rather, they would have to pay a fee of \$250 for *each* CDP, along with public noticing fees (\$91 for the one CDP in the appeal zone they could afford to appeal – an HOA with only 34 units). Estimated costs for the first batch of 11 CDPs would have been \$4,300 (\$250 each plus about \$2 per household for noticing). While HOAs enjoyed a 90% fee discount and batched processing, the same courtesy was not extended to appellants from the less favored non-HOA zone. Given that there are 53 HOAs in the CZ and most appear to ban STRs, and given that the City would not allow batch appeals even though the CDPs will be passed in batch decisions, the cost of appealing this over saturation became cost prohibitive and was effectively blocked.

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

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

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

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

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

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

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

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

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

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

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

- When made aware of the fact that these protections were not 'legal' in that they predated the Coastal Act, to circumvent the Coastal Act and frustrate the CCC's desire to avoid undue concentration changing the character of neighborhoods, the City took the following steps:
  - a. It submitted wildly inaccurate HOA numbers which had the effect of minimizing and obfuscating the potential for undue concentrations.
  - b. It failed to disclose that it fully intended to process and adopt CDPs which would protect any HOA that wanted protection.
  - c. It initially protected HOAs by requiring that those seeking STR permits obtain a letter from their HOAs to certify they were allowed subject to the Coastal Act before a permit could be granted. (Since permit numbers are limited and permits are issued on a first come, first served basis, any built-in delays naturally move STR owners in HOAs down the list.).
  - d. When that plan was made public, and former Councilman Paul Wyatt pointed out that HOAs were not legally protected against a lawsuit by a resident seeking an STR permit<sup>17</sup>, the City counseled and induced HOAs to legalize their bans by inviting them to file CDPs, reducing fees by 90%, and drafting and presenting the submissions to the Planning Commission on their behalf.
  - e. When citizens attempted to appeal wholesale banning of STRs in HOAs because they created an unacceptable concentration in non-HOA neighborhoods, the City refused to allow the appeals to be batched (as they had for the HOAs) and insisted on charging individual fees that were too burdensome for residents to afford to move forward with the appeals.
  - f. It failed and refused to produce accurate data until pressured by persistent residents. Verifiable, accurate and detailed information has still not been provided .
  - g. It has yet to produce oft requested data for the (likely significant) number of housing units in Section 8, mobile homes and other affordable housing units and long term rental apartment units which can never become STRs.

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

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

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

*"The CCC's November 15, 2022 Staff Report for [A-5-DPT-22-0038](#) cumulative analysis concluded that, **even with the existing prohibitions of STRs in HOAs**, the STR Program will "Ensure adequate distribution of STRs throughout the City of Dana Point Coastal Zone, will not adversely impact the public's continued access to the coast, and **will not contribute significantly to overcrowding and overuse of any particular area of the City's Coastal Zone**, and will therefore be consistent with Coastal Act Sections 30212 and 30212.5." (emphasis added)."*

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

This, too, is highly misleading in that it implies that the CCC knew the true extent of HOAs banning STRs in the CZ; that HOA CCR bans on STRs would remain; and that if they did, the concentration of authorized STRS would still be acceptable. The staff concludes that: *"...these pre-existing prohibitions (of STRS by HOAs) were one of the facts that led to the City and the CCC's determination the City's STR Program struck the appropriate balance."* ([Planning Commission Staff Report](#) at 5).

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

First, it is **highly unlikely that the CCC would have made a "determination" that continued and extensive STR bans by HOAs would "strike the proper balance" had it known that HOAs with banned STRs represented two thirds<sup>18</sup> of the**

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

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

To the extent the CCC staff addressed the issue, the staff report itself did NOT accept the “existing prohibitions of STRs in HOAs” (because they were never accurately defined) , but rather stated:

*“The City has clarified through discussions with Commission staff that it will inform HOAs of the CDP process and facilitate the filing of CDP applications where required. To ensure that the City and HOAs comply with all legal requirements, the Commission imposes **Special Condition 1 to modify the final STR Program** to ensure the legality of HOA bans or restrictions on STRs.”* (Exhibit 3). (Emphasis added)

Special Condition 1 clarified that the City could **not** honor STR bans by HOAs which were not “legal”. And of course, the CDPs have been filed in response to that clarification, i.e., to render them “legal.”

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

The City sought and received California Coastal Commission (CCC) approval for its CDP on the basis that all housing units in the Coastal Zone (CZ) would be subject to STRs unless they had a legal ban. At no time during the hearing did the City indicate the true extent of potential HOA bans, nor their intention to encourage the removal of 2/3rds of households from the denominator of the saturation equation by encouraging and approving bans through CDPs. The City failed to provide accurate data on housing units in HOAs (they were off by 66%), but instead led the Commissioners to believe that HOAs were already well represented because they represented “91%” of existing STRs. **Had they done so, the CCC would never have agreed to what will effectively be a punitive concentration of STRs in Dana Point’s CZ. Nor would it have agreed to concentrate the distribution of STRs in only two communities and other non-HOA streets representing a combined total of 1/3 of the Coastal Zone.**

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

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



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

In recognition of these two factors, Commissioner Harmon started the discussion of caps on STRs<sup>19</sup> by suggesting a cap of 1% in the CZ (57 units) which she later expanded to 1.2% to get to 66 existing grandfathered units. She asked if staff was okay with that and staff concurred. (See transcript of hearing in Attachment 6). Chair Brownsey then asked City Staff (Brenda Wisneski) if she was okay with that. She suggested 1.5% or 85 due to demand for permits. Mayor Muller interrupted to insist on 115 (2%) saying he didn't have the authority to approve less than that (even though he had had no problem with the authority to negotiate and approve a significant change in a legal aspect of the program). The Commissioners reluctantly agreed to a fixed cap of 115 STRs in order to "keep the train moving", and the fate of the 1/3 segment of the Coastal Zone without STR bans was sealed – unfortunately based on grossly inaccurate data and material omissions.

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

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

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

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

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<sup>19</sup> See attachment 6 - Transcript of CCC discussion of Saturation Rates

<sup>20</sup> See attachment 1 – the Math – calculations of Saturation Rates



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

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

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

Respectively submitted,

*Toni Nelson*

Roger Malcolm

**Attachments:**

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

## ATTACHMENT 1

### The Math – Saturation Calculations

**Total STRs approved for CZ:** 115

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

**Per City-provided data:**

Total Housing Units in CZ	5,737
Homes represented by HOAs requesting STR-banning CDPs	(1,447)
Homes represented by HOAs that have not yet filed CDPs	(2,769)
Mobile Homes (not STR eligible per City program)	(169)
Monarch Hills + ( Could be a little higher. No data)	<u>349</u>

**Total STR-eligible homes\*** 1,701

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

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

Saturation Rate acceptable by Commission:	1.2% - 1.5%
Saturation Rate Approved by CCC (on City insistence):	2%
Overall Saturation Rate in CZ	7%
Monarch Hills $50/349 = 1$ house of every 7 can be an STR	14%
Beach Road $44/196 = 1$ house of every 4 can be an STR	22%
Saturation Rate in <b>Non</b> – CZ (includes HOAs)	1%

## ATTACHMENT 2

### Emails Querying Housing Unit Data Supplied to CCC

Mail

Toni Nelson <tonidn1@gmail.com>

#### housing units in CZ

14 messages

Toni Nelson <tonidn1@gmail.com>

To: Johnathan Ciampa <JClampa@danapoint.org>

Wed, Mar 8, 2023 at 8:34 AM

Bcc: [REDACTED]

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

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

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

Can you help with this? What are we missing?

Thanks and best regards,

[REDACTED]  
To: Toni Nelson <tonidn1@gmail.com>

Wed, Mar 8, 2023 at 8:57 AM

It will be interesting if and how he responds.

Sent from my iPhone

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

>

>

Toni Nelson <tonidn1@gmail.com>

To: Johnathan Ciampa <JClampa@danapoint.org>

Tue, Mar 14, 2023 at 8:38 AM

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

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

Thank you,

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

Tue, Mar 14, 2023 at 5:30 PM

Toni,

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

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

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

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

Tue, Mar 14, 2023 at 7:03 PM

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

Thanks so much.

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

Wed, Mar 15, 2023 at 3:28 PM

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

Thanks so much,

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

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

Thu, Mar 23, 2023 at 9:42 AM

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

Thanks so much,

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

Thu, Mar 23, 2023 at 10:20 AM

Toni,

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

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

Thu, Mar 23, 2023 at 12:51 PM

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

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

Thu, Mar 23, 2023 at 4:14 PM



Toni,

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

[Quoted text hidden]

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

Thu, Mar 23, 2023 at 4:55 PM

Sounds good. See you then! Thanks John.

[Quoted text hidden]

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

Sat, May 20, 2023 at 1:12 AM

[Quoted text hidden]

# ATTACHMENT 3

## Letter of Roger Malcolm 4/23/23

*April 23, 2023*

*TO: Dana Point Planning Commission*

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

*RE: Meeting of April 24, 2023*

*Agenda Item No. 3*

*Dear Commissioners:*

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

*First, it unfairly places an outsized burden of STRs on non-HOA neighborhoods. Having authorized STRs, this Commission and the City Council should ensure that all neighborhoods bear an equal risk of their presence. There is no reason, let alone a compelling reason, to grant special treatment to HOAs.*

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

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

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

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

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

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

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

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

*The staff now claims that there are approximately 5,700 residential units in the CZ, 4,400 of which are in 52 HOAs. [Staff Report (SR) at 3.]*

*This is significantly different from what the staff told the CCC. In October of 2022, it stated to the CCC that there were 5,664 residences in the CZ, and that there were 28 HOAs comprising 2,648 units, leaving 3,016 in non-HOA communities in the Coastal Zone. [CCC November 15, 2022 staff report at p. 21.] Now, City staff admits that there are really only 1,300 housing units in non-HOA communities. The staff does not even advert to this difference, much less explain it.*

*We note that in an email dated March 8, 2023, Mr. Ciampa was asked by coastal zone resident, Toni Nelson to substantiate how he came up with the numbers he gave the CCC on October 22, 2022. Shockingly, he did not appear to have working papers or other data to support the numbers submitted to the CCC. After several additional queries, Mr.*

*Ciampa stated that he derived that information from the City's GIS system. When they were unable to identify more than about 1/3 of the supposed 3,016 non-HOA units in the Coastal zone, Toni Nelson and another resident asked to meet with Mr. Ciampa so that he could show them his working papers and explain where those units might be located. They met on March 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>21</sup>.*

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<sup>21</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.



*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*

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*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>22</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.*

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<sup>22</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.

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.

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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>23</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 Wiesnewsli then asked for 1.5% (a cap of 85 STRs) to accommodate increased demand. Then Mayor Muller objected and insisted on 115. saying that he did not have authority to agree to anything less without Council approval.

The City sought and received California Coastal Commission (CCC) approval for its

CDP on the basis that all housing units in the Coastal Zone (CZ) would be subject to STRs unless they had a legal ban. At no time during the hearing did the City indicate it intended to honor HOA bans and encourage the removal of up to 77% of households from that equation by encouraging and approving bans through CDPs. At no time during the hearing did the City object to the fact that the program would apply to all households unless there was a "legal" ban in effect, and at no time did City staff or officials express an intention to advocate for HOA protection after the fact. ***Had they done so, the CCC would never have agreed to what will effectively be a punitive concentration in nonhuman communities.***

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

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<sup>23</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.

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

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*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.

CLERK OF  
COUNTY COURSE  
ORANGE COUNTY

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

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

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

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

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

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

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

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



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

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

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

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

9 NOES: SUPERVISORS NONE

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

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

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

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

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

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

## ATTACHMENT 4

### Emails asserting City's neutral position on HOA bans



Toni Nelson <tonidn1@gmail.com>

#### STR CDP fee

2 messages

Jamey Federico <JFederico@danapoint.org>

Tue, Mar 7, 2023 at 5:53 PM

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

Hi Ladies,

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

Thanks for your letters. Hopefully they help explain.

Sincerely,  
Jamey

Sent from my iPhone

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

Tue, Mar 7, 2023 at 6:53 PM

To: Jamey Federico <JFederico@danapoint.org>

Cc: Toni Nelson <tonidn1@gmail.com>

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

Best,

Kim

Jamey Federico <JFederico@danapoint.org>

Tue, Mar 7, 2023 at 8:54 PM

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

Cc: Toni Nelson <tonidn1@gmail.com>

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

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

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

Sincerely,  
Jamey

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1 1

Sent from my iPhone

## ATTACHMENT 5

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

May 8, 2023

TO: Dana Point City Clerk

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

RE: Appeal of Decision of Planning Commission, April 24, 2023

Agenda Item No. 3, regarding CDPs for 11 HOAs in the Coastal Zone

#### **I. Notice of Appeal**

Pursuant to Section 9.61.1110(a) and (b) of the Municipal Code, Roger Malcolm and

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

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

Accompanying this Appeal is a check for \$250.00. We submit that all of the subject

CDPs should be appealable for one fee inasmuch as each applicant was solicited by the City to apply for STR relief; each applicant was granted a reduction of approximately ninety percent of the normal cost of a CDP; the submissions by city staff on behalf of each was the same; the issues present for review as to

*each are identical. Most importantly, the Planning Commission considered the issue as one issue; made one decision, not eleven; and never addressed individually any factors unique to any of the CDPs.*

*Coastal Development Permits were designed to address particular development requests, not programmatic changes in what is essentially a zoning question. Accordingly, since the issue is one issue, and the staff will expend no more time responding to the appeal of CDPs 2-11 than it will to the first CDP appealed, it is appropriate that the matters be handled collectively in one appeal.<sup>24</sup>*

*Even if the Council does deem the matters separate enough to warrant individual fees, we submit that just as the city granted approximately a 90 per cent discount [charging \$500 per application instead of the usual \$5,000] to HOAs seeking the CDPs, it is fair and right that the city afford the same discount here to the appellants. The original justification offered for the huge discount to HOAs was that \$500 covered the cost of staff time to process the streamlined applications designed and solicited by the staff. As we have noted above, there will be no more staff time expended in responding to an appeal for CDPs 211 than there will be to responding to the appeal of CDP number 1.*

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

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

## **II. Standing of Appellants**

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

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

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<sup>24</sup> In Toni Nelson and Roger Malcolm's April 28, 2023 urgent letter to this Council, they requested that the appeal fees be reduced to one. As of the filing of this appeal, they have received no word from the Council on this request.

### **III. Grounds for Appeal**

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

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

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

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

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

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

*Fifth, the staff failed to notice residents most severely impacted by the passage of these*



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

The City has a duty to all of its citizens, not solely those who reside in HOAs. There is nothing in this record which suggests that the city staff solicited the views of other residents in the city for their views on the impending concentration of STRs, particularly in the CZ. In fact, there is no evidence that the interests of non-HOA residents were considered at all.

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

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

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

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

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

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

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

*The city staff's change in reporting was not voluntary, but rather because on March 8, 2023 appellant Nelson asked senior planner John Ciampa to substantiate how he came up with the numbers he gave the CCC on October 22, 2022. Shockingly, he did not appear to have working papers nor other data to support the numbers submitted to the CCC. After several additional queries, Mr. Ciampa stated that he derived that information from the City's GIS system. When they were unable to identify more than about 1/3 of the supposed 3,016 non-HOA units in the coastal zone, Toni Nelson and another resident asked to meet with Mr. Ciampa so that he could show them his working papers and explain where those units might be located. They met on March 28<sup>th</sup> at City Hall at which time Mr. Ciampa showed them the GIS system but was unable to point to where those additional housing units might be. When asked to supply detailed records to support these numbers, Mr. Ciampa stated that he was very busy and could not produce the supporting data until the end of April, 2023<sup>25</sup>.*

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

*While the Dana Point staff report does not identify all of the HOAs by name, it appears obvious that to calculate the purported percentage of STRs in HOAs, the staff must have included the residential units on Beach Road. This is so because the staff claims that "...since only five STR permits in the CZ are not in HOAs, the additional allowance of*

*46 STRs will not result in a cumulative impact."* (sic) Staff Report at 5.)

*The staff has misled the Planning Commission: Beach Road has many STRs (we believe*

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

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

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<sup>25</sup> Ms. Nelson and another resident made their own review of CZ residential units and estimated a number far smaller -- approximately one third of the 3,016 originally suggested by Ciampa.



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

The CCC's November 15, 2022 Staff Report cumulative analysis concluded that, *even with the existing prohibitions of STRs in HOAs, the STR Program will "Ensure adequate distribution of STRs throughout the City of Dana Point Coastal Zone, will not adversely impact the public's continued access to the coast, and will not contribute significantly to overcrowding and overuse of any particular area of the City's Coastal Zone, and will therefore be consistent with Coastal Act Sections 30212 and 30212.5."* (emphasis added).

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

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

This statement is both false and misleading.

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

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

The City has clarified through discussions with Commission staff that it will inform HOAs of the CDP process and facilitate the filing of CDP applications where required. To ensure that the City and HOAs comply with all legal requirements, the Commission imposes *Special Condition 1 to modify the final*

*STR Program* to ensure the legality of HOA bans or restrictions on STRs

(Exhibit 3). (Emphasis added)

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

*The City sought and received California Coastal Commission (CCC) approval for its*

*CDP on the basis that all housing units in the Coastal Zone (CZ) would be subject to STRs unless they had a legal ban. At no time during the hearing did the City indicate it intended to honor HOA bans and encourage the removal of up to 77% of households from that equation by encouraging and approving bans through CDPs. At no time during the hearing did the City object to the fact that the program would apply to all households unless there was a “legal” ban in effect, and at no time did City staff or officials express an intention to advocate for HOA protection after the fact. **Had they done so, the CCC would never have agreed to what will effectively be a punitive concentration in nonHOA communities.***

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

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

*The actual concentration rate will ultimately be worse for non-HOA areas including particularly Beach Road and other areas of Capistrano Beach. The 1,625 remaining units susceptible to STRs include housing units like the 165 mobile homes in Doheny Village, multiple units of Section 8 housing, and even long term rental units in Prado West and other major developments that **do not permit STRs**. We estimate the actual number of non-HOA homes actually available to become STRs to be less than 1,000.<sup>26</sup>*

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<sup>26</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.

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

*The CCC repeatedly noted within its staff report at the de novo hearing that the*

*Commission has a strong interest in avoiding “excessive detriment to the existing resident population or affordable housing supply.” (Staff Report p. 164). These CDPs do exactly*

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

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

*At the de novo hearing on the City’s CDP to permit STRs, the CCC recognized that Dana*

*Point has an extraordinary number of visitor accommodations (close to 2,000).<sup>27</sup> It then reviewed the STR saturation rates it approved in other coastal cities. The approvals for STRs in other coastal cities range from 1.2-2% of existing residences, nothing like the 7 to 9% concentration that will be inflicted on Dana Point’s non-HOA neighborhoods once HOA bans are legalized.*

*At the CCC hearing<sup>28</sup>, Commissioner Harmon first suggested a cap of 1% (55 STRs) and then modified that to 1.2% or 66<sup>6</sup> STRs to reflect the number in existence at the time. Chair Brownsey asked if that would be ok with CCC staff and they concurred. Brenda Wisneski then asked for 1.5% (a cap of 85*

*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.*

*<sup>27</sup> In support of the STR Program, last year, the staff claimed that visitor accommodations were inadequate, and therefore an increased number of STRs was warranted. It has now done an about face and argues that since there are adequate visitor accommodations the HOAs can ban STRs.*

*<sup>28</sup> [https://cal-span.org/meeting/ccc\\_20221116/](https://cal-span.org/meeting/ccc_20221116/) discussion begins at 5:20:59<sup>6</sup> It is not clear how we now have 69 STRs despite 66 reported at the CCC hearing, especially since the City has not been issuing new permits, but numbers are clearly not its strong suit.*

STRs) to accommodate increased demand. Then Mayor Muller objected and insisted on 115, saying that he did not have authority to agree to anything less without Council approval.

Given its sensitivity to the impact STRs can have on residential neighborhoods, it is clear that the CCC would never have approved a plan which would result in a concentration of up to nine percent in one small portion of the CZ.

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

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

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

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

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

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

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

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

*As we have demonstrated, these CDPs will severely affect property owners in the nonHOA Coastal Zone, in fact, to a much greater extent than those in the HOAs because of the change in intensity of concentration of STRs. The Director should have noticed all non-HOA residents in the CZ. Her failure to do so is yet another example of the blatant and inexplicable disregard of the rights and concerns of non-HOA CZ residents. The failure to provide such notice should be sufficient cause to rescind these CDPs, even without considering the many other reasons to uphold this appeal.*

***Conclusion:***

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

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

*Once accurate, verifiable data is made available, the Council should review the information and independently assess the concentration of STRs which will result in the*

*Coastal Zone and elsewhere if any CDPs are granted. The City should only consider CDPs permitting STR bans once the caps are adjusted appropriately through an amendment of the City's CDP in order to protect the non-HOA areas from over concentration of STRs.*

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

*Sincerely,*

*Roger Malcolm*  
Roger Malcolm

*Toni Nelson*  
Toni Nelson

*Residents of non-HOA Coastal Zone*

*Capistrano Beach*

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

## ATTACHMENT 6

### Transcript of CCC Discussion of Saturation Rates

November 16, 2022

[https://cal-span.org/meeting/ccc\\_20221116/](https://cal-span.org/meeting/ccc_20221116/)

Begins at 5:20:59

**Commissioner Harmon:**

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

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

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

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

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

**Brownsey:** *So 1.5 gets us where?*

**BW:** 85

**Brownsey:** *How much?*

**BW:** 85

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

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

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