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SAN CLEMENTE COASTAL ACCESS ALLIANCE and
COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
11/26/2018 at 04:07:11 PM
Clerk of the Superior Court
By Alan Silva,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

SAN CLEMENTE COASTAL ACCESS ALLIANCE, an unincorporated association, and COASTAL ENVIRONMENTAL RIGHTS FOUNDATION, a California non-profit public benefit corporation,

Plaintiffs and Petitioners,

v.

CITY OF SAN CLEMENTE, CITY COUNCIL OF THE CITY OF SAN CLEMENTE, and DOES 1 through 10, inclusive,

Defendants and Respondents.

DOES 11 through 25, inclusive,

Real Parties-in-Interest.

Case No.: 30-2018-01034124-CU-WM-CJC

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND CIVIL PENALTIES UNDER THE COASTAL ACT

Judge Linda Marks

INTRODUCTION

Petitioners and Plaintiffs SAN CLEMENTE COASTAL ACCESS ALLIANCE and COASTAL ENVIRONMENTAL RIGHTS FOUNDATION ("Petitioners") hereby request relief as follows:

1. Petitioners challenge Respondents CITY OF SAN CLEMENTE ("City") and CITY COUNCIL OF THE CITY OF SAN CLEMENTE's ("City Council", collectively "Respondents") enforcement and implementation of the City's short-term lodging unit ("STLU") restrictions within the Coastal Zone.

2. Respondents have not erected a physical barrier to the beach but have erected a monetary barrier to the beach. They have no right to do so.

3. In the past few years, the City Council adopted Ordinance Numbers 1622, 1623, 1624, and 1654, pertaining to the regulation of STLUs, sober-living homes and treatment facilities within San Clemente's Coastal Zone. Through these ordinances, and San Clemente Municipal Code Sections 3.24, 17.16, 17.28, 17.32, 17.40, 17.72, and 17.88, the City regulates the location and operation of STLUs (collectively, "STLU Regulations").

4. Respondents' implementation and enforcement of the STLU Regulations in the Coastal Zone prior to approval by the California Coastal Commission ("Commission") constitutes a violation of the California Coastal Act ("Coastal Act").[1]

5. Under Section 30803 of the Coastal Act, "any person" may bring a lawsuit to enjoin an activity that violates the Coastal Act. (*Greenfield v. Mandalay Shores Community Assn*. (2018) 21 Cal.App.5th 896, 900).

6. Public Resources Code section 30803 specifically makes declaratory and injunctive relief broadly available to review possible violations of the Coastal Act. (*Pacific Legal Foundation v. California Coastal Com*. (1982) 33 Cal.3d 158, 169).

7. Petitioners request that this Court enjoin Respondents from enforcing the STLU Regulations in the Coastal Zone by issuing a preliminary and permanent injunction pursuant to Public Resources Code Section 30803 and a writ of mandate pursuant to Code of Civil Procedure

[1] Public Res. Code § 30000 *et seq*

Sections 1085 and 1094.5.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Sections 1085, 1094.5, and 187 of the Code of Civil Procedure and Sections 30803, 30805, and 30820 of the Public Resources Code.

9. Venue for this action properly lies in the Orange County Superior Court because Respondents are located in Orange County and the STLU Regulations impact property located in Orange County.

PARTIES

10. Petitioner SAN CLEMENTE COASTAL ACCESS ALLIANCE ("Alliance") is an unincorporated association composed of and supported by individuals and groups devoted to preservation of the environment and conserving, expanding, and promoting access to the Coastal Zone. Petitioner Alliance is a community group that was organized for the purpose of representing the interests of the public in assuring compliance with the State's environmental and land use laws and the Coastal Act. Members of Petitioner reside within San Clemente, own real property within San Clemente, or visit San Clemente by staying in STLUs.

11. Petitioner COASTAL ENVIRONMENTAL RIGHTS FOUNDATION is, and at all times herein mentioned has been, a non-profit public benefit corporation, organized and existing under the laws of the State of California, with its principal place of business in Encinitas, San Diego County, California.

12. CERF meets all organizational standing requirements for prosecuting this action. CERF is an environmental organization established to advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents throughout the State. The interests CERF seeks to protect in this action are therefore germane to its fundamental purpose; and CERF has a geographical nexus with the affected environment of San Clemente. CERF further meets all associational standing requirements for prosecuting this action. Members of CERF regularly use the beaches and the ocean waters of San Clemente.

13. On behalf of their members and other San Clemente and County residents and visitors, Petitioners challenge the City's enforcement of the STLU Regulations. Petitioners have standing and are beneficially interested in the issuance of the requested writ of mandate and injunctive and declaratory relief. Unless and until this Court grants the requested temporary and permanent relief, the impacts resulting from the City's enforcement of the STLU Regulations will extend to areas in which Petitioners' members, supporters and numerous citizens represented by Petitioners live, recreate, and vacation and will directly and adversely affect them.

14. Petitioners brings this action, not just on their own behalf and behalf of their members, but also to enforce important public rights and to compel compliance with public duties that arise under California law. Other beneficially interested persons would find it difficult or impossible to seek vindication of the rights asserted. Petitioners have a continuing interest in, and a well-established commitment to, the public rights asserted.

15. Respondent CITY OF SAN CLEMENTE is a coastal general law city organized and existing under and by virtue of the laws of the State of California and is situated in the County of Orange. A significant portion of San Clemente lies within the Coastal Zone. The City has a certified Land Use Plan, but not a certified Local Coastal Program. The City must therefore obtain approval from the Commission for any "development" within the Coastal Zone, including implementation and enforcement of the STLU Regulations.

16. Respondent CITY COUNCIL OF THE CITY OF SAN CLEMENTE is the duly elected legislative body of respondent San Clemente. The Council is responsible for regulating and controlling land use police powers in all areas within the City, including, but not limited to implementing and complying with all of the provisions of the Coastal Act and Municipal Code.

17. Petitioners are ignorant of the true names and capacities of the respondents named herein as DOES 1 through 10, and the real parties in interest named herein as DOES 11 through 25, inclusive, and therefore sues those respondents and real parties in interest by such fictitious names. Petitioners will amend this Petition to allege the true names and capacities of those DOE parties when ascertained. Petitioners are informed and believe, and on that basis allege, that each of the parties designated herein as a DOE is responsible in some manner for the events and

actions referred to herein or has some legal or equitable interest in the subject matter of this action

18. Petitioners are informed and believe, and on that basis allege, that at all relevant times Respondents, and the DOE real parties in interest and respondents were and are the agents of each other, authorized to do the acts herein alleged, each of which was ratified by the others.

19. Petitioners are informed and believes, and on that basis alleges, that Respondents and each of the DOES proximately caused the acts, omissions to act, and/or injuries herein alleged.

20. The City is and at all times relevant herein has been charged by law with the performance of all duties arising under the Coastal Act and Municipal Code.

21. If the Court does not grant the relief prayed for herein, Petitioners will suffer irreparable injury for which it has no adequate remedy at law, there will be a waste, and the failure to enjoin further conduct may tend to render the judgment in this action ineffectual.

ALLEGATIONS

Short-Term Vacation Rentals in San Clemente

22. San Clemente has historically been a popular tourist and vacation spot. For decades property owners in San Clemente have made their residential properties available for short-term rental to military personnel, tourists, vacationers and visiting family members without objection from Respondents. STLUs provide lower-cost accommodations, unique recreational opportunities, and increased coastal access opportunities for visiting families or small groups with a range of incomes. STLUs afford people who otherwise could not afford the cost of staying in hotel rooms in San Clemente the ability to enjoy San Clemente and access to the Coastal Zone. STLUs offer families and small groups a high degree of flexibility, convenience, and affordability which is notably absent from traditional hotels and motels within the Coastal Zone

23. Websites such as VRBO/HomeAway and AirBnB enable tourists and vacationers, including military families and persons and families of very low-, low- and moderate-income, to more easily locate STLUs in San Clemente.

24. At the urging of a few outspoken residents, the City Council initiated regulation

of STLUs in an attempt to restrict their use in residential areas of the City, including within the Coastal Zone.

25. The City defines an STLU as "any lodging unit that is occupied or intended or designed to be occupied on a short-term basis other than a hotel, motel, or bed-and-breakfast inn and in accordance with Subsection 17.28.292C.2, is limited to a single rental contract. Among other things, 'STLU' includes (1) a STAR, which is subject to special regulations specified in Section 17.28.292 of [Tile 17], and (2) home-exchanges where homeowners temporarily occupy one another's property simultaneously during the same short-term period without rent or other exchange of money more than once in any 12-month period." (San Clemente Municipal Code §17.88.030).

26. " 'Short term' is defined as "occupancy for a period of 29 or fewer consecutive calendar days." (San Clemente Municipal Code §17.88.030).

27. The City defines a short-term apartment rental or "STAR" as "a type of STLU that is a multi-family-dwelling structure on a single parcel, under single ownership, where some or all individual units are rented as STLUs and where the STAR owner being a person that holds legal or equitable title to the property lives on-site in one of the other units not being rented short term. STAR does not include an STLU in a multi-family-dwelling structure where the units are under multiple separate ownerships, such as a condominium development, unless the STAR owner owns all the units in the structure and on the parcel and resides in one of the other units not being rented short term. Multi-family-dwelling structures containing six or more STARs or STLUs, whether under individual or separate ownership for the purposes of this title, are considered hotels' [sic] or 'motels.' " (San Clemente Municipal Code §17.88.030).

The City's Land Use Plan

28. A "Land Use Plan" is the "relevant portion of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions." (Public Res. Code §30108.5).

29. The Coastal Commission certified the City's Land Use Plan on May 11, 1988 and

certified an update thereto on March 14, 1996. The City's Land Use Plan was not updated again until the City completed a comprehensive Land Use Plan update in 2016.

30. The Commission did not certify the most recent comprehensive Land Use Plan update until February 8, 2018, and only with suggested modifications. The Council approved the Commission's suggested modifications on June 12, 2018.

31. The City's Land Use Plan, as recently amended, contains Policy LU-43, which prohibits the loss of existing lower cost facilities, including lower cost hotel, motel or inn units, or campsites.

32. The City's Land Use Plan Policy LU-49 states:

> The City shall allow the short term renting (29 days or less) of dwelling units, administratively permitted as Short Term Lodging Units (STLU) or conditionally permitted as Short Term Apartment Rentals (STAR), in residential and mixed use zones, subject to appropriate regulations minimizing adverse impacts to neighborhoods or coastal resources. STLUs and STARs shall conform to the requirements of the underlying land use designation, and all standards and laws established by the City.

33. The City was to address the specific zones and areas within the City where STLUs and STARs would be permitted, as well as proposed STLU Regulations, within the Implementation Plan.

34. The City has not released a draft of its Implementation Plan. On information and belief, the City is currently working on a draft of the Implementation Plan.

35. On information and belief, it will likely be at least another year before the Coastal Commission considers certification of the City's Implementation Plan.

36. Because a Local Coastal Program ("LCP") is comprised of both a Land Use Plan and Implementation Plan, the City does not have a certified LCP. (Public Res. Code §30108.6).

The City Council Approves the STLU Regulations

37. On February 2, 2016, the City Council heard public comment on Ordinance Number 1617, a proposed regulation of STLUs. The so-called "Common Sense" regulation ordinance added multiple new Municipal Code sections, *inter alia*, defining STLUs, requiring an

STLU permit, and imposing various conditions on STLU owners and permit-holders.

38. On February 2, 2016, the City Council also approved the City's most recent Land Use Plan update and sent it to the Coastal Commission for approval.

39. On February 16, 2016, Ordinance Number 1617 passed on second reading.

40. From February 17, 2016 to May 2, 2016, the City's Planning Commission held three sessions for the purpose of designing a City Zoning Amendment and Specific Plan Amendment to regulate and place restrictions on STLUs.

41. By letter dated May 2, 2016, the Coastal Commission informed the Council that its proposed three ordinances under consideration "will require approval from the Coastal Commission" and that the restrictions imposed on STLUs by them were "likely [] inconsistent with Coastal Act sections 30213 and 30222." A true and correct copy of the Commission letter is attached hereto as Exhibit A and incorporated as if fully set forth herein.

42. Ordinances 1622, 1623, and 1624 (the STLU Regulations) were introduced at the May 3, 2016 Council meeting.

43. Ordinance Number 1622 amended the City zoning ordinance, *inter alia*, limiting the occupancy of an STLU, establishing development and zone density standards for STLUs, establishing a two-year amortization period for lawfully operating STLUs, and restricting STLUs in certain zones.

44. Ordinance Number 1623 amended the Pier Bowl Specific Plan to establish regulations for STLUs and restricting their use in certain zones.

45. Ordinance Number 1624 amended the City zoning ordinance to prescribe areas where "specialty hospitals" are allowed.

46. At its May 17, 2016 meeting, the City Council noted it had received the Coastal Commission's May 2nd letter informing the Council that the STLU Regulations required approval from the Coastal Commission. Nonetheless, the City Council approved the second reading of the STLU Regulations. Upon the City Council's second reading of Ordinance Nos. 1622, 1623 and 1624, the City's approval of the STLU Regulations became final.

47. On or about June 20, 2016, the San Clemente Vacation Rental Alliance

("SCVRA") filed a petition for writ of mandate against Respondents alleging, *inter alia*, Respondents violated the California Environmental Quality Act and Coastal Act in approving the STLU Regulations.

48. On or about April 17, 2018, Respondents and SCVRA entered into a settlement agreement, whereby, *inter alia*, individual members of SCVRA were granted a ten-year amortization period as non-conforming STLUs.

49. As a result of the negotiated settlement with SCVRA, on or about May 9, 2018, the City Council introduced Ordinance Number 1654, *inter alia*, expanding the STLU overlay area, and amending STLU development standards and operating procedures.

50. On or about May 15, 2018, the City Council approved the second reading of Ordinance Number 1654.

City's Enforcement of STLU Regulations

51. On information and belief, on or about March 8, 2018, the City Planning Division mailed notices to STLU property owners outside of the "STLU zone" notifying them they were ineligible to continue operation of their STLUs. The letter also notified STLU property owners that the amortization period would end June 16, 2018 and continued STLU operations beyond that date would "be subject to Code Compliance action, including, but not limited to, administrative citations." A true and correct copy of such notice is attached hereto as Exhibit B.

52. On information and belief, on or about May 16, 2018, the City Planning Division mailed notices to STLU property owners outside of the "STLU zone" notifying them of their right to apply for a hardship extension and again reiterating operation of an STLU after June 16, 2018 would subject them to Code Compliance action. A true and correct redacted copy of such notice is attached hereto as Exhibit C.

53. As a result of the negotiated settlement with SCVRA, Respondents extended the amortization period for STLUs in higher-density zones for a total of ten years. On information and belief, the City received 78 applications for nonconforming STLU amortization extensions. On information and belief, staff approved 54 applications and denied 24 applications.

54. One such denial was for an STLU located at 228 W. Mariposa, Unit 2 in San

Clemente. This property is within the Coastal Zone.

55. On information and belief, the Planning Commission denied the appeal for the STLU located at 228 W. Mariposa, Unit 2 on or about November 8, 2018.

56. On or about August 6, 2018, the City Community Development Director denied an amortization extension application for STLUs located at 259 Avenida Granada, Units A, B and C. The aforementioned units are within the Coastal Zone.

57. On or about June 14, 2018, counsel for Petitioners reached out to the San Clemente City Attorney office, Best Best and Krieger. Petitioners notified Respondents that enforcement of the STLU Regulations in the Coastal Zone absent Coastal Commission approval was unlawful.

58. In response, on June 19, 2018, the City Attorney's office reiterated its position that "the City's enforcement of the STLU Ordinances is well within the City's authority to regulate land use." The City further maintained it may "enforce its zoning ordinance, including the STLU Ordinances, in the absence of a certified LCP and without Coastal Commission's prior review and approval." A true and correct copy of the City Attorney's letter is attached hereto as Exhibit D.

59. On information and belief, Petitioners allege the City has enforced the STLU Regulations since their adoption and continues to enforce the STLU Regulations within the Coastal Zone.

60. Since the City's adoption of the STLU Regulations, and as a result of the City's implementation and enforcement of the STLU Regulations, fewer short-term vacation rentals, including lower-cost visitor accommodations, are available within the City, and specifically within the Coastal Zone.

FIRST CAUSE OF ACTION

Violation of Coastal Act

61. Petitioners incorporate and reallege all preceding paragraphs.

62. By law the Coastal Act must "be liberally construed to accomplish its purposes and objectives." (Public Res. Code § 30009; *Bolsa Chica Land Trust v. Superior Court* (1999)

71 Cal.App.4th 493, 506 [“ ‘The courts are enjoined to construe the statute liberally in light of its beneficent purposes. [Citation.] The highest priority must be given to environmental consideration in interpreting the statute [citation].’ ”].)

63. In enacting the Coastal Act, the Legislature found and declared that “existing developed uses” within the Coastal Zone are “essential to the economic and social well-being of the people of this state.” (Pubic Res. Code § 30001(d).) To accomplish this, the Legislature encourages “state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development” and mandates that “[a]ll public agencies and federal agencies [] shall comply with the provisions of [the Coastal Act].” (Public Res. Code §§ 30001.5(e), 30003.)

64. When policy conflicts arise under the Coastal Act, the Legislature has mandated that “such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.” (Public Res. Code § 30007.5.)

65. In its May 2, 2016 letter to the Council, the Coastal Commission explained that it has “generally interpreted local zoning ordinances in a broad fashion and found that short-term rentals are a form of residential use, permitted by right in any residentially zoned area unless such uses are specifically prohibited or otherwise restricted” and pointed the Council to the following “pertinent Coastal Act sections”:

> Section 30213 states:
> *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*
>
> Section 30222 states:
> *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

(Italics in original.)

66. The Coastal Commission then informed the Council that:

> Currently, the City does not yet have a certified Local Coastal Program therefore, this City action will require approval from the Coastal Commission. The standard

of review will be the Coastal Act. Based on Coastal Act mandates and preliminary evaluation of the proposed regulatory revisions, Commission staff has serious concerns about the proposed adoption of the above referenced ordinances. The impact to lower cost visitor accommodations is not analyzed in the City's staff report. For instance, it appears that the impact of a minimum stay requirement, which could limit the general public's accessibility to STLUs, was not considered in the City's review. Additionally, there isn't enough information to ascertain how the proposed caps impact the quantity of STLUs that would be allowed within the coastal zone. (See Exhibit A).

67. Despite the Coastal Commission offer to work with the City to develop STLU Regulations that expand affordable coastal visitor opportunities and comply with the Coastal Act, the City proceeded with the STLU Regulations. Compounding this error, the City began implementing and enforcing the STLU Regulations within the Coastal Zone.

68. In rejecting the Coastal Commission's offer, the City violated the Coastal Act, including Public Resources Code Sections 30213, 30222, and 30336.

69. On or about December 6, 2016, Steve Kinsey, the Chairman of the Coastal Commission sent a letter to the planning and/or community development directors in coastal cities and counties throughout the California coast on the subject of Short-Term/Vacation Rentals in the Coastal Zone. A true and correct copy of Chairman's Kinsey's December 6, 2016 letter is attached hereto as Exhibit E. The stated purpose of Chairman Kinsey's letter was "to provide guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal zone areas moving forward." In it, he cautioned:

> Please note that vacation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation

rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP. (emphasis in original)

70. Petitioners are informed and believe, and on that basis allege, Respondents received a copy of Chairman Kinsey's December 6, 2016 letter.

71. Notwithstanding San Clemente's lack of a certified LCP, Respondents did not seek or receive authorization from the Coastal Commission to approve the STLU Regulations.

72. Respondents did not seek or receive Coastal Commission approval prior to their implementation and enforcement of the STLU Regulations within the Coastal Zone.

73. Section 30009 requires liberal interpretation of the Coastal Act provisions to accomplish its goals, including protection of the Coastal Zone's resources for the benefit of the environment and the public. (§§ 30001, 30001.5.; *Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 394).

74. Public Resources Code Section 31411 contains a Legislative declaration that:

Lower cost accommodations, including hotels, motels, hostels, cabins, and camping opportunities, are essential elements of coastal and park access because they enable Californians and visitors from a variety of backgrounds, including those of low and moderate income, to enjoy California's beaches and parks and experience the full range of recreational, educational, spiritual, and other experiences offered.

…

A lack of affordable accommodations remains a barrier to coastal access. California's historic supply of lower cost coastal accommodations has been reduced, and continues to be diminished, as a result of high coastal property values and economic pressures to develop new coastal accommodations that are too expensive to be affordable to most visitors.

75. In September 2018, the Coastal Commission released a draft Environmental Justice Policy. The draft policy states, in part:

The California Coastal Commission's commitment to diversity and environmental justice

recognizes that the Coastal Act is an inherently equitable law, designed to protect California's coast and ocean commons for the benefit of all the people. In keeping with that aspirational vision, the Commission as an agency is committed to protecting coastal natural resources and providing public access and lower-cost recreation opportunities for everyone, and ensuring that those opportunities shall not be denied on the basis of race, ethnicity, gender, socio-economic status, or place of residence.

76. According to a recent statewide study conducted by Probolsky Research for the California Coastal Conservancy, while 51 percent of white California residents say they stay overnight when they visit the beach, 74 percent of Latinos, 70 percent of Asians and 64 percent of African-Americans say they do not, with price being the main reason.[1]

77. According to the Institute of Environment and Sustainability at the University of California Los Angeles, in a 2016 study entitled "Access for All", (i) Californians have an affinity for the coast, but issues of access remain a problem, particularly for low-income communities and communities of color around the state; and, (ii) 75 percent of the surveyed respondents cite limited options for affordable overnight accommodations, which was rated a big problem at a higher rate by Latino voters and families with children.[2] (Access for All Study, p. 3). The Access for All Study concludes that protecting and increasing the supply of lower-cost overnight accommodations on the coast is critical: "Solving this barrier is key to providing access to the coast for many Californians." (*Id*. at, pp. 7-8.)

78. On information and belief, the City of San Clemente has nine visitor-serving accommodations within the Coastal Zone, none of which are lower cost.

79. The STLU Regulations constitute "Development" under the Coastal Act and therefore require Coastal Commission approval.

80. By implementing and enforcing the STLU Regulations prior to obtaining a Coastal Development Permit or Coastal Commission approval of the STLU Regulations in an Implementation Plan, Respondents violated the Coastal Act and the certified Land Use Plan.

[1] http://scc.ca.gov/files/2017/10/SCC_CoastalAccessWebinar_Probolsky.pdf
[2] https://www.ioes.ucla.edu/coastal-access/

81. Unless and until Respondents are enjoined from operation and enforcement of the STLU Regulations in the Coastal Zone, they will continue to violate the Coastal Act.

82. Pursuant to Public Resources Code Section 30820, any person who violates the Coastal Act may be civilly liable for penalties up to $30,000. (Public Res. Code §30820(a)(1)).

83. A knowing or intentional violation of the Coastal Act may be civilly liable for not less than $1,000 and not more than $15,000 per day for each day the violation persists. (Public Res. Code §30820(b)).

84. On information and belief, Respondents knowingly and intentionally violated the Coastal Act in implementing and enforcing the STLU Regulations within the Coastal Zone without (i) a Coastal Development Permit; or (ii) a certified Implementation Plan which incorporates the STLU Regulations.

85. Respondents are therefore subject to civil penalties pursuant to Section 30820 of the Coastal Act since at least June 16, 2018.

86. Petitioners have no adequate remedy at law to reverse the consequences of Respondents' violation of the Coastal Act, namely the unlawful regulation and enforcement of STLUs and STARs within the Coastal Zone.

87. Respondents' enforcement and threat of enforcement has a chilling effect on STLUs in the Coastal Zone.

88. Petitioners are entitled to preliminary and permanent injunctive relief to restrain Respondents' continued violation of the Coastal Act.

SECOND CAUSE OF ACTION
Writ of Mandate

89. Petitioners incorporate and reallege all preceding paragraphs

90. Respondents have a clear, mandatory duty to comply with the Coastal Act and the City's certified Land Use Plan.

91. Respondents have failed to perform this duty and, unless mandated to do so by this Court, will continue to fail and refuse to perform the duties imposed on them by California law.

92. Petitioners have no available administrative remedies.

93. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law, other than the relief sought herein.

94. Petitioners are beneficially interested in issuance of a peremptory writ of mandate. Petitioners will be seriously harmed if Respondents continue to implement and enforce the STLU Regulations in the Coastal Zone.

95. At all times material hereto, Respondents have been able to perform their duties and obligations as demanded by Petitioners. Respondents have, however, failed and refused to undertake their obligations.

96. An actual controversy has arisen and now exists between Petitioners and Respondents as to the appropriate scope of Respondent's authority to implement and enforce their STLU Regulations within the Coastal Zone. Petitioners accordingly seek judgment declaring that Respondents' failure to obtain a Coastal Development Permit or certified Implementation Plan prior to implementation and enforcement of the STLU Regulations within the Coastal Zone is unlawful and constitutes an abuse of discretion. Such a declaration is necessary and appropriate in order that Petitioners may ascertain the right to have Respondents act in compliance with the Coastal Act.

PRAYER

WHEREFORE, Petitioners pray for relief as follows:

1. Alternative and peremptory writs of mandate commanding Respondents to take no further steps toward enforcement or implementation of the STLU Regulations unless and until Respondents fully comply with the Coastal Act;
2. A stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting Respondents from implementing and enforcing the STLU Regulations unless and until Respondents have fully complied with all requirements of the Coastal Act;
3. Civil Penalties pursuant to Public Resources Code Section 30820;
4. Judgment declaring unlawful and contrary to the Coastal Act Respondents

implementation and enforcement of the STLU Regulations prior to obtaining a Coastal Development Permit or certification of an Implementation Plan;

5. Costs of suit;

6. Attorneys' fees as allowed by law, including under Code of Civil Procedure Section 1021.5;

7. Such other and further relief as the Court deems just and proper.

Dated: November 26, 2018

COAST LAW GROUP, LLP

Livia Borak Beaudin
Attorneys for Petitioners,
SAN CLEMENTE COASTAL ACCESS ALLIANCE and COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

VERIFICATION

I, Sara S. Kent, declare:

I am an Officer, to wit; Programs Director of the Coastal Environmental Rights Foundation, a California public benefit corporation organized and existing under the laws of California. Coastal Environmental Rights Foundation is Petitioner and Plaintiff in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Verified Complaint and Petition for Writ of Mandate and know the contents thereof, except as to those matters which are alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification was signed on the 26th day of November, 2018 in Encinitas, California.

Sara S. Kent
Programs Director
Coastal Environmental Rights Foundation
Petitioner and Plaintiff

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

May 2, 2016

City of San Clemente
100 Avenida Presidio
San Clemente, CA

Subject: City Council May 3, 2016 meeting – Short-term Lodging Units Proposed Zoning Amendment 15-426/Specific Plan Amendment 16-072

Dear Councilmembers,

Recently, the emergence and proliferation of short term rentals has become an issue in many coastal communities. In general, under the Coastal Act, these represent a high priority visitor-serving use that should be promoted as a means to provide overnight accommodations and support increased coastal access opportunities. In addition, they may also serve as a more affordable option of overnight accommodations than traditional hotels, motels, or timeshare units, especially for families. Specifically, the pertinent Coastal Act sections are as follows:

> Section 30213 states:
> *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*
>
> Section 30222 states:
> *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Due to their function as a high priority visitor-serving use, the Coastal Commission has generally interpreted local zoning ordinances in a broad fashion and found that short term rentals are a form of residential use, permitted by right, in any residentially zoned area unless such uses are specifically prohibited or otherwise restricted. Nonetheless, this agency also understands and appreciates that these uses may raise a number of neighborhood character and operational issues, such as site management, number of occupants, special events, parking, litter, and noise limits. Therefore, the Coastal Commission has endorsed certain regulations to require on-site management, enforcement protocols, occupancy limits, required parking and other use provisions.

For the proposed ordinances, based on an initial review of the City Council Agenda Report Item 7B for the May 3, 2016 meeting, it is this office's understanding that the City has had a moratorium on new short term lodging units (STLUs) since July 2015. Three Ordinances under consideration, #1622, #1623, and #1624, would limit STLUs to only high density "visitor serving" areas of North Beach, Del Mar, Pier Bowl and South El Camino Real Corridor. The STLU ordinances would also provide an undetermined cap on the total number of allowable STLUs in these areas, would implement a 20% maximum of STLUs in high density residential zones and would implement operational standards such as a 5-day minimum stay.

Currently, the City does not yet have a certified Local Coastal Program[1], therefore, this City action will require approval from the Coastal Commission. The standard or review will be the Coastal Act. Based on Coastal Act mandates and preliminary evaluation of the proposed regulatory revisions, Commission staff has serious concerns about the proposed adoption of the above referenced ordinances. The impact to lower cost visitor accommodations is not analyzed in the City's staff report. For instance, it appears that the impact of a minimum stay requirement, which could limit the general public's accessibility to STLUs, was not considered in the City's review. Additionally, there isn't enough information to ascertain how the proposed caps impact the quantity of STLUs that would be allowed within the coastal zone.

In summary, Commission staff acknowledges the need to provide for some regulatory controls and management provisions for short term rentals. However, the proposed restrictions impose limits staff would likely find inconsistent with Coastal Act sections 30213 and 30222. In addition, Commission staff would strongly recommend that as part of any proposed ordinance or ordinance amendment, an updated inventory and mapping of existing visitor-serving accommodations by type, capacity, ownership and price range be conducted in order to gain an accurate assessment of other kinds of overnight accommodations available to visitors. Utilization studies would also be helpful in gauging how various forms of vacation rentals operate, and demand projections for overnight visitor accommodations are also needed to evaluate whether the current supply is adequate to meet future needs. We appreciate the opportunity to comment and look forward to working with the City to develop an ordinance that promotes and expands affordable coastal visitor opportunities while also addressing neighborhood concerns. If you have any questions, please don't hesitate to contact our office.

Sincerely,

Karl Schwing
Coastal Program Manager
Orange County

[1] The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. The Coastal Commission refers to the LUP for guidance. The LUP currently does not have any policies specific to STLUs. Furthermore, all language pertaining to STLUs suggested by Commission staff was struck out of the final updated LUP approved by the City on February 2, 2016 (the updated LUP has not yet been certified by the Coastal Commission).

City of San Clemente | Planning Division
910 Calle Negocio, Suite 100
San Clemente, CA 92673
(949) 361-6197
email: planning@san-clemente.org

90-DAY NOTICE: AMORTIZATION PERIOD ENDING AND STLU ZONING LAWS EFFECTIVE JUNE 16, 2018

March 8, 2018

Dear Property Owner,

You are receiving this letter as you are listed as the owner of a short-term vacation rental in the City of San Clemente. On May 17, 2016, the City Council adopted new zoning laws regarding Short-Term Lodging Units (STLUs) throughout San Clemente. The new regulations limited STLUs to specific zones in the City and established additional operating standards. However, to help facilitate the transition, STLUs legally established before February 2, 2016 (barring changes in ownership) were provided an amortization period that ends on **June 16, 2018**. At the end of the amortization period, STLUs must comply with the new regulations. **Your property is NOT located in an allowed STLU zone, and, therefore, is not eligible to continue operation of the STLU.**

If your property is a single-family dwelling, you must cease all short-term lodging operations by June 16, 2018. Single-family dwellings located outside the allowable STLU zones are no longer allowed to provide vacation and short-term rentals of fewer than 30 days. Long-term rentals (30 days or more) are still permitted.

If your property is a multi-family dwelling (i.e., duplex, triplex, or apartment building) and you meet certain criteria, you might qualify for a Short Term Apartment Rental (STAR) Permit. The property owner of the short-term apartment rental must live on-site in the same structure as the unit or units used as an STLU. A STAR property must be located at least 300 feet from other STAR properties. Additional standards and requirements apply. Please contact the Planning Division at (949) 361-6197 to determine if you are eligible. STAR Permits take two to three months to process and are subject to Zoning Administrator approval at a noticed public hearing.

Under Zoning Ordinance Section 17.72.060(G), the owner of an existing STLU may submit a request to extend the amortization period. The owner must demonstrate a substantial financial hardship that is legally sufficient to justify the extension. An application for a Hardship Extension of the STLU Amortization must be accompanied by an initial deposit of $3,500, which will be drawn down as the City incurs costs in the review, and copies of any part of a federal income-tax return that refers to income or expenses of the STLU. If you wish to apply for a hardship extension, applications must be submitted to the Planning Division by April 1, 2018. Applications received after April 1, 2018, are not guaranteed to be decided before the end of the amortization period on June 16, 2018.

In summary, after June 16, 2018, your property will no longer have valid City approvals to operate as a short-term rental. Continued business operations beyond June 16, 2018, will be subject to Code Compliance action, including, but not limited to, administrative citations. All STLU operations must cease by June 16, 2018, unless a STAR Permit or hardship extension is approved by the City; submitting a STAR Permit or hardship-extension application does not constitute a City approval.

For questions and more information, please contact the Planning Division at (949) 361-6197 or by email: Planning@San-Clemente.org.

Sincerely,

Stephanie Roxas, AICP
Senior Planner

City of San Clemente
Planning

Phone: (949) 361-6197 Fax: (949) 361-8309
Planning@San-Clemente.org

May 16, 2018

SAN CLEMENTE,CA

RE:

Dear

Your Short-Term Lodging Unit (STLU) will cease being a legal use on June 16, 2018. Pursuant to San Clemente Municipal Code (SCMC) Section 17.72.060(G)(4), you may apply for a hardship extension to extend the operation of your STLU. The hardship extension application is enclosed. The application requires a deposit of $3,500, which will be drawn down as the City incurs costs in the review. Applications received after June 16, 2018 cannot be considered for an amortization extension. To avoid any lapse in your ability to continue operating your STLU beyond June 16, 2018, should you be eligible for a hardship extension, please submit the enclosed application to the Planning Division as soon as possible for immediate processing.

The City has granted a continuation of your current STLU Operators Permit, which will now expire on June 16, 2018. If you choose to apply for the hardship extension, please contact Business License upon approval at 949-361-6166 or shankm@san-clemente.org to request the annual renewal for your Short Term Lodging Operators Permit for the 2018-2019 period.

You will be unable to renew your STLU Operating License beyond June 16, 2018, unless you have received City approval of a hardship extension from the Planning Division. Continued operations of your STLU beyond June 16, 2018, will be subject to Code Compliance action, including, but not limited to, administrative citations.

If you have questions about the new STLU regulations or the enclosed application, please contact the Planning Division at (949) 361-6197 or Planning@San-Clemente.org.

Sincerely,

City of San Clemente

Indian Wells
(760) 568-2611
Los Angeles
(213) 617-8100
Manhattan Beach
(310) 643-8448
Ontario
(909) 989-8584

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Matthew E. Richardson
(949) 263-6562
Matthew.Richardson@bbklaw.com

June 19, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

Livia Borak Beaudin
Coast Law Group LLP
1140 South Coast Highway 101
Encinitas, CA 92024
livia@coastlaw.com

Re: Enforcement of STLU Ordinances

Dear Ms. Beaudin:

Best Best & Krieger LLP serves as City Attorney for the City of San Clemente ("City"). As I understand it, your client owns and operates a short-term lodging unit ("STLU") in the Coastal Zone, in a low-density residential zoning district ("RL Zone"), but not in an STLU-allowed area. The City regulates the location and operation of STLUs through a series of ordinances codified in the City's Zoning Code (SCMC, Chs. 3.24, 17.16, 17.28, 17.32, 17.40, 17.72, 17.88; Ord. Nos. 1622, 1623, 1624) ("STLU Ordinances"). While STLUs are addressed in the City's Coastal Land Use Plan ("LUP"), the City does not yet have a fully-certified Local Coastal Program ("LCP"). I understand your position is that the City may not enforce its STLU Ordinances without Coastal Commission's approval.

The City's enforcement of the STLU Ordinances is well within the City's authority to regulate land use. The zoning powers afforded to cities authorize the City to enforce the STLU Ordinances absent the Coastal Commission's approval. Moreover, the City's STLU ordinances are in line with the City's LUP that was recently approved with modifications by the Coastal Commission.

The City may enforce its zoning ordinance, including the STLU Ordinances, in the absence of a certified LCP and without Coastal Commission's prior review and approval. When the Coastal Commission certifies a city's LCP, the Commission delegates to the city authority to review and approve coastal development permits ("CDPs"). (Pub. Res. Code, §§ 30519(a), 30600(d).) However, LCP certification is not the source of a city's land-use authority in the Coastal Zone. A city's power to zone and regulate land use in its jurisdiction, including in the Coastal Zone, is a police power granted by the California Constitution. (Cal. Const., art. XI, § 7;

IT Corp. v. Solano County Bd. of Supervisors (1991) 1 Cal.4th 81, 89.) In an unpublished decision regarding city regulation of short-term rentals in the Coastal Zone, the California Court of Appeal held that:

> The Ordinance [regulating short-term rentals] was enacted pursuant to the City's police power and did not fall under the auspices of the Coastal Commission. The absence of a certified LCP did not eliminate the City's ability to enact and amend zoning ordinances. (*Johnston v. City of Hermosa Beach* (Cal. Ct. App., Jan. 17, 2018, No. B278424) 2018 WL 458920, at *4, as modified (Feb. 13, 2018), review denied (Apr. 11, 2018).)

While this opinion was not published, we expect that the next case to go up on appeal with similar facts and issues will result in a published decision that reaches the same result. Here, the facts and issues are similar to those in *Johnston*. The City is confident that it has the power to zone and to enforce its zoning at this point in the City's LCP-certification process.

Moreover, the City's STLU Ordinances are entirely consistent with and supported by the City's adopted LUP as modified by the Commission. On February 8, 2018, the Coastal Commission approved an LUP amendment as modified, and, on June 12, 2018, the City Council approved the same. The amendment includes the following policy

> The City shall allow the short term renting (29 days or less) of dwelling units, administratively permitted as Short Term Lodging Units (STLU) or conditionally permitted as Short Term Apartment Rentals (STAR), in residential and mixed use zones, subject to appropriate regulations minimizing adverse impacts to neighborhoods or coastal resources. STLUs and STARs shall conform to the requirements of the underlying land use designation, and all standards and laws established by the City. (LUP, policy LU-49.)

The City's approved LUP as modified by the Coastal Commission permits STLUs, and the City's STLU Ordinances also permit STLUs. The City's STLU Ordinances, including the operating standards, licensing and permitting requirements, and location restrictions are among the "standards and laws established by the City" to which LU-49 requires STLUs to conform in the Coastal Zone. The fact that the approved LUP allows for the STLU Ordinances is no accident or afterthought. Since 2015, City staff and Coastal Commission staff have worked closely on the City's LUP update to draft and modify policies. The effectiveness of the STLU Ordinances has been a core concern for the City throughout the LCP-certification process with Commission staff.

For the reasons explained above, the City will continue to enforce its STLU Ordinances. Your client is welcome to contact the City's Department of Community Development to explore options for your client's STLU operation moving forward. Please feel free to contact me directly if you have any questions.

Sincerely,

Matthew E. Richardson
of BEST BEST & KRIEGER LLP

MER:DFP

CALIFORNIA COASTAL COMMISSION
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SAN FRANCISCO, CA 94105- 2219
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FAX (415) 904- 5400
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December 6, 2016

TO: Coastal Planning/Community Development Directors

SUBJECT: Short-Term/Vacation Rentals in the California Coastal Zone

Dear Planning/Community Development Director:

Your community and others state and nationwide are grappling with the use of private residential areas for short-term overnight accommodations. This practice, commonly referred to as vacation rentals (or short-term rentals), has recently elicited significant controversy over the proper use of private residential stock within residential areas. Although vacation rentals have historically been part of our beach communities for many decades, the more recent introduction of online booking sites has resulted in a surge of vacation rental activity, and has led to an increased focus on how best to regulate these rentals.

The Commission has heard a variety of viewpoints on this topic. Some argue that private residences should remain solely for the exclusive use of those who reside there in order to foster neighborhood stability and residential character, as well as to ensure adequate housing stock in the community. Others argue that vacation rentals should be encouraged because they often provide more affordable options for families and other coastal visitors of a wide range of economic backgrounds to enjoy the California coastline. In addition, vacation rentals allow property owners an avenue to use their residence as a source of supplemental income. There are no easy answers to the vexing issues and questions of how best to regulate short-term/vacation rentals. The purpose of this letter is to provide guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal zone areas moving forward.

First, please note that vacation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.

The Commission has experience in this arena, and has helped several communities develop successful LCP vacation rental rules and programs (e.g., certified programs in San Luis Obispo and Santa Cruz Counties going back over a decade; see a summary of such LCP ordinances on our website at:
https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals

.pdf). We suggest that you pay particular attention to the extent to which any such regulations are susceptible to monitoring and enforcement since these programs present some challenges in those regards. I encourage you to contact your local district Coastal Commission office for help in such efforts.

Second, the Commission has not historically supported blanket vacation rental bans under the Coastal Act, and has found such programs in the past not to be consistent with the Coastal Act. In such cases the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act. However, in situations where a community already provides an ample supply of vacation rentals and where further proliferation of vacation rentals would impair community character or other coastal resources, restrictions may be appropriate. In any case, we strongly support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for vacation rentals, while providing appropriate regulation to ensure consistency with applicable laws. We believe that appropriate rules and regulations can address issues and avoid potential problems, and that the end result can be an appropriate balancing of various viewpoints and interests. For example, the Commission has historically supported vacation rental regulations that provide for all of the following:

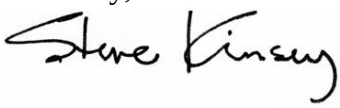
- Limits on the total number of vacation rentals allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a vacation rental (e.g., disallowing vacation rentals in affordable housing contexts, etc.).
- Limits on maximum vacation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

These and/or other provisions may be applicable in your community. We believe that vacation rentals provide an important source of visitor accommodations in the coastal zone, especially for larger families and groups and for people of a wide range of economic backgrounds. At the same time we also recognize and understand legitimate community concerns associated with the potential adverse impacts associated with vacation rentals, including with respect to community character and noise

and traffic impacts. We also recognize concerns regarding the impact of vacation rentals on local housing stock and affordability. Thus, in our view it is not an 'all or none' proposition. Rather, the Commission's obligation is to work with local governments to accommodate vacation rentals in a way that respects local context. Through application of reasonable enforceable LCP regulations on such rentals, Coastal Act provisions requiring that public recreational access opportunities be maximized can be achieved while also addressing potential concerns and issues.

We look forward to working with you and your community to regulate vacation rentals through your LCP in a balanced way that allows for them in a manner that is compatible with community character, including to avoid oversaturation of vacation rentals in any one neighborhood or locale, and that provides these important overnight options for visitors to our coastal areas. These types of LCP programs have proven successful in other communities, and we would suggest that their approach can serve as a model and starting place for your community moving forward. Please contact your local district Coastal Commission office for help in such efforts.

Sincerely,



STEVE KINSEY, Chair
California Coastal Commission