

CALIFORNIA COASTAL COMMISSION

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

**SENT VIA REGULAR AND CERTIFIED MAIL**

August 26, 2016

Mandalay Shores Community Association
Attn: Deirdre Frank, President
1237 S Victoria Ave. #252
Oxnard, CA 93035-1292

Subject: Rule to Prohibit Short Term Vacation Rentals

Dear Ms. Frank:

As you may know, the California Coastal Act was enacted by the state legislature to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to provide maximum public access to the sea.

The Commission has long considered overnight accommodations to be facilities that are critical to providing coastal access. In some instances, short term vacation rentals may provide a lower cost alternative to renting hotel or motel rooms for large families or groups of individuals. In all instances, short term vacation rentals increase the range of options available to coastal visitors. Under the Coastal Act, these types of rentals constitute a high-priority visitor-serving use that provide important overnight accommodations for members of the public in coastal communities and support increased coastal access opportunities. Specifically, the pertinent Coastal Act sections state¹:

Section 30213:

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

Section 30222:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over

¹ The Commission certified a Local Coastal Program ("LCP") for the City of Oxnard, which enables the City to issue coastal development permits for development within the City's Coastal Zone, pursuant to the implementation and resource protection policies of the LCP. The policies of the Coastal Act, such as those noted herein, remain a standard of review of coastal development permits appealed to the Commission.

private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

A prohibition, such as the rule adopted by the Board of Directors of the Mandalay Shores Community Association on June 26, 2016 (“STVR Ban”), of an entire class of accommodation that provides widespread lodging opportunities that are varied in cost, is especially problematic in terms of consistency with the Coastal Act. Moreover, Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law.

“Development” is defined by Section 30106 as:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations...[underlining added for emphasis].

The STVR Ban constitutes “development” under the Coastal Act, as the rule would change access to the coast by diminishing the pool of visitor serving accommodations, and, therefore, requires a coastal development permit. Staff is not aware of any coastal development permit that has been issued for this development by the City of Oxnard or Commission, nor of an application for a coastal development permit. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

Public Access Violation

As already stated, Section 30213 and 30222 generally provide for the protection of lower cost visitor serving facilities. The Association’s rule to purportedly prohibit short term vacation rentals does not protect lower cost visitor facilities, and, in fact, may result in the loss of lower cost facilities, in contravention of Coastal Act Sections 30213 and 30222.

In cases involving violations of the public access provisions of the Coastal Act, which is the case here, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount of up to \$11,250 per day for each violation. In this case, as described above, there are significant violations of the public access provisions of the Coastal Act; therefore, the criterion of Section 30821 has been satisfied.

Please consider this letter to be written notification of our intent to consider pursuit of remedies, including administrative penalties pursuant to Section 30821. In order to avoid the accrual of monetary penalties, please immediately cease any activity that interferes with public access to the coast, including by taking the following actions: 1) rescind the rule described herein prohibiting short term vacation rentals, and 2) cease enforcement of said rule. Please send written confirmation within 15 days of the date of this letter that you have taken the actions listed above and ceased to interfere with public access to the coast.

Coastal Act Remedies

Furthermore, please be advised that the Coastal Act also provides for alternative imposition of civil liability (variously described as fines, penalties, and damages) by the courts for violations of the Coastal Act. Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit, in an amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP, when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists.

In addition, Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a coastal development permit without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. Cease and desist orders may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act.

Mutually Agreeable Resolution

This agency also understands and appreciates that short term vacation rentals may raise 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 example, the Commission recently certified an amendment to the certified LCP for the City of Dana Point at its April 2016 hearing that provided for new regulations for short-term vacation rentals, including limitations on parking and number of allowable guests in order to minimize the impact of short term vacation rentals on beach users and neighbors.

In this situation, while it is not likely that staff would support a prohibition on short term vacation rentals due to the inconsistency of such a ban with the public access provisions of the Coastal Act, we believe that through the coastal development permit process, the Commission, City, and interested parties can work together to develop regulations for short term vacation rentals that address the Association's concerns while ensuring consistency with the Coastal Act and Oxnard LCP and avoiding the costs of litigation, and we are committed to working with the

Mandalay Shores Community Association

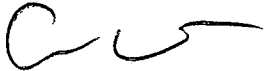
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City and Association towards that end. Therefore, we request that the Association first work with Commission and City staff to develop suitable regulations before taking action in the future related to short term vacation rentals in the community, excepting the actions listed above that are necessary to resolve this issue.

Thank you for your attention to this matter. If you have any questions about this letter, please do not hesitate to contact me at (562) 590-5071, and we look forward to receiving, by the deadline noted above, confirmation from the Association that the steps detailed above have been taken.

Sincerely,

A handwritten signature in black ink, appearing to be 'Andrew Willis', with a stylized flourish at the end.

Andrew Willis

Enforcement Supervisor

cc: **Stephen Fischer, City Attorney, Oxnard**
 Steve Hudson, Deputy Director, CCC
 Barbara Carey, Planning Manager, CCC
 Molly Troup, Enforcement Analyst, CCC