

## Shayna Sharke

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**From:** Annette Szlachta <annetteszlachta@gmail.com>  
**Sent:** Thursday, February 23, 2023 4:35 PM  
**To:** Comment  
**Subject:** March 7, 2023, council meeting, STR programs

Again I write, for the record, to condemn the city council's STR programs in the coastal and non-coastal zones.

Please return to the California Coastal Commission to request that the commission revise the STR permit limit to 1 percent of households in the coastal zone.

Reduce as well the number of STR permits in the non-coastal zone from 115 to 0 (zero). We residents don't want STRs, and may I remind you that you work for and represent us, the residents of Dana Point, and our best interests, not those of real estate developers and other entities comprising PACs who lie to voters and commit libel and defamation, and must issue retractions in the Dana Point Times.

Annette Szlachta-McGinn  
Sunset Hills, Dana Point

Agenda Item No. 9  
3/7/2023

**Shayna Sharke**

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**From:** Jay Sowell <raeandjayinfo@gmail.com>  
**Sent:** Saturday, February 25, 2023 11:56 AM  
**To:** Comment  
**Subject:** STRs

The recently passed STR rules are wrong and will fundamentally change the character of the city for the worse.

I am asking that the City Council go back to the Coastal Commission to revise the number of STRs down to 1% instead of 2% of households. In addition, the Council should reduce the number of STRs in the non-Coastal zone. We can't afford to reduce our housing stock more than absolutely necessary.

Jesse (Jay) Sowell  
24085 Windward Dr, Dana Point, CA 92629  
323-466-1403

Agenda Item No. 9  
3/7/2023

## Shayna Sharke

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**From:** Sue and Gary Webber <dpwebbers@gmail.com>  
**Sent:** Tuesday, February 28, 2023 12:48 PM  
**To:** Comment; Comment  
**Subject:** March 7th Council meeting, STR Program

To Whom It May Concern,

We have been residents of Dana Point for 36 years and have seen many changes in our city. The last thing Dana Point needs is more STRs. We ask you to meet again with the Coastal Commission and request a reduction of STR to 1% in lieu of 2%. In addition, we ask the City Council to lower the number of STRs in the non-coastal areas.

It is important that Dana Point have a STR policy that is agreeable to the Coastal Commission and its residents. In 2016, 4,000 Dana Point residents signed a referendum to rescind an unreasonable STR ordinance. Our city's residents need to vote on the issue of STRs as opposed to the Council making decisions on such an important issue that has such a strong affect on its people.

Do the right thing, let the people of Dana Point have their voices heard by a city wide vote.

Sincerely,

Gary and Sue Webber

Agenda Item No. 9  
3/7/2023

Mark Zanides  
33851 Valencia Place  
Dana Point, Ca, 92629  
[mzanides@gmail.com](mailto:mzanides@gmail.com)

Via email

March 6, 2023

TO: Honorable Mayor and City Council

RE: March 7, 2023 Council Meeting, Agenda Item 9

I urge the Council to reject the staff's recommendation that you subsidize Homeowner Association (HOA) applications for CDPs seeking authority to ban STRs in HOAs in the Coastal Zone (CZ). In fact you should instruct the staff not to assist with or support these CDPs.

Brenda Wisneski<sup>1</sup> claims first that reducing the CDP application fee is appropriate because it "benefits the entire community".

This assertion of preposterous. HOAs, and HOAs alone, will benefit from the City subsidy. **Not only will others in the Coastal Zone not benefit, they will be harmed.**

What is happening is clear. Shortly after the November 16, 2022, de novo hearing on STRs before the Coastal Commission (CCC), HOAs in the CZ started to realize that the city attorney's new interpretation of the Dana Point zoning codes and the decision to submit to the jurisdiction of the CCC meant that STRs could not be restricted solely by HOA CC&Rs. The HOAs were fearful that the additional 49 permits that the City insisted on offering in the CZ would end up in their HOAs, since the CC&R bans on STRs were not enforceable unless the HOA had formally restricted STRs prior to the 1976 Coastal Act or already had a CCC-approved CDP in place. After first attempting to dismiss this reality as "chatter", the City staff has responded to HOA fears by offering them a discounted application for CDP

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<sup>1</sup> The city attorney's name is conspicuously absent from the staff memo.

rate and reassurance that getting CCC approval was likely. This action was not sanctioned by the Council as far as I can tell, and it is entirely inappropriate.

The problem is that if the HOAs are permitted to ban STRs, there will be an undue concentration of STRs in the CZ. Per the city staff, in the CZ there are 5664 housing units, 2,648 of which are in HOAs. If STR bans are upheld in the HOAs, of 5,664 housing units eligible to be converted to STR use, there will be 3,016 eligible units (5664-2,648), or a reduction of almost 47%. This will result in an STR saturation of nearly 4%.

Ms. Wisneski cannot seriously or credibly contend that the **entire city** will benefit from the city conferring a subsidy on HOA owners to assist them to evade the consequences of the City's STR CDP and further unduly concentrate STRs in the CZ. Certainly those in the CZ who will bear the brunt of the undue STR concentration will not benefit.

The second stated reason for assisting HOAs to ban STRs is the "City honors the desires of each HOA's decision to prohibit or allow STRs (sic)" Staff Report at 2. At least this appears to be a true statement, but the naked admission that the city favors HOAs over other city residents is stunning.

The City Council has not permitted any other citizens to vote directly on whether to permit STRs. Why subsidize HOA efforts? Why give HOAs special treatment? Doesn't the Coastal Act apply to both non HOA and HOA residents alike.

There is no good reason to give preferential treatment to HOA members. Rather, it is not fair, or right for the City to attempt to avoid and evade the clear intent of the Coastal Act by subsidizing and assisting HOAs to apply for CDP's to attempt to protect HOAs. All citizens, including those who oppose STRs, and oppose an undue concentration of STRs in the CZ, should be treated equally by the City, and must not be forced to subsidize an effort to impose STR bans contrary to their interests.


The Council should also be aware that its actions will almost certainly be scrutinized by the Coastal Commission. The CCC recently granted the city's request for a CDP based on the representation that the requested 115 unhosted STRs would be spread over the full 5664 housing units in the CZ. I do not believe the CCC will be amused to find the city back within a few months recommending that the 115 be spread over 47% fewer housing units, a material change in the CDP which is inconsistent with its recommendations in November, was undisclosed,

and which will result in the undue concentration described above. This is particularly true where, as here, many of remaining CZ housing units are comprised of low cost housing which is in short supply.

The City and city staff should be scrupulously neutral in this matter. Therefore the proper course is for the City to take no position on any HOA request for a CDP permitting an STR ban. The staff has not done so: rather it has embarked on this extensive effort to grant HOA owners preferential treatment to the detriment of other residents in the CZ. In fact, it is my understanding that John Ciampa has even stated that the CCC staff concurs with the soon to be requested CDPs and that the city feels that there will be no problem at the Coastal Commission getting the CDPs approved. This course of action is wholly inappropriate.

In short, the Council should deny the staff request to discount CDP application fees, direct the staff to take no further action in support or assist HOA CDP requests, and publicly state it will be neutral on this issue.<sup>2</sup>

Respectfully submitted,



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Mark Zanides

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<sup>2</sup> There is an alternative solution. The Council could go to the CCC and request that its own CDP be modified to reduce the number of unhosted STRS to one percent, or 55, or 66 or 69. While this would not formally protect the HOAs, as a practical matter they would be relatively safe. And contrary to the claims of the city attorney, in my view an unopposed amendment to the CDP could be done in a matter of months. After all, it took only a few months to get a contested CDP on the calendar. The notion that it would take a year or a year and a half to get an uncontested amendment on calendar highly unlikely: after all, the city attorney's rational for a CDP in the first place was that it is "more flexible."

March 7, 2023

Dear Dana Point Planning Commissioners,

You will soon be receiving Coastal Development Permit (CDP) applications from Dana Point homeowner associations (HOAs) that are seeking to restrict short-term rentals (STRs) in their Coastal Zone (CZ) communities. These applications are being prepared with the assistance of City staff. I am informed that these applications will be processed at discounted fees (that is, lower fees than normally charged for a CDP).

I urge you to deny all these applications. If granted, STRs will be banned by HOAs in the coastal zone, which will result in an undue concentration of STRs in non-HOA communities. This will essentially double the impact the California Coastal Commission (CCC) contemplated last November when they approved the City's STR program. Instead of spreading the 115 permit cap over 5,664 housing units as stated in the City's submission, 2,648 HOA units will be removed. This carveout is inconsistent with the CDP approved by the Coastal Commission. If approved by the Planning Commission and by the Council, the affected non-HOA residents will have no choice but to appeal the CDPs to the Coastal Commission, where the City's bad faith will be fully apparent.

As you know, on November 16, 2022, the CCC conducted a de novo hearing on the issue of STR permits within the Coastal Zone. At that hearing, beginning at the 5-hour, 20 minute, 59 second mark, Commissioner Meagan Harmon suggested that, based on the number of housing units in the CZ, (approximately 5,664, see p. 13, Nov 3, 2022 CCC staff report), a cap of 66 permits, or 1.2% of housing units (66/ 5,664 housing units, rounded) would be reasonable. The appellants had made a convincing argument that Dana Point not only has a significant number of tourist accommodations (close to 2,000) but that residential housing in the City (particularly affordable housing) is and has been extremely scarce. The 1.2% burden suggested by Commissioner Harmon was consistent with the percentages of STRs allowed in other coastal cities, most of which have far fewer coastal accommodations per capita than Dana Point. This was followed by a comment made by Brenda Wisneski, Director of Community Development, suggesting that "1.5% or 85 units" would be more appropriate. These comments, plus several references in the CCC's archived correspondence on this item clearly support the fact that all parties to the hearing - the City, the CCC, the appellants and the general public thought the CCC was approving 115 units representing 2% of the housing units subject to STRs as reported by the City.

However, former Mayor Joe Muller insisted that he, as a City representative, could not agree to accept anything less than 115 permits in the CZ "without City Council approval at this time". Ultimately the CCC permitted 115 unhosted STRs, a 66% increase in existing STRs, and a 2% STR saturation rate in the coastal zone. **This approval was based on the CCC's understanding that they would be spread amongst 5,664 housing units within the CZ – the number provided by the City, and a number that specifically included 2,648 housing units in HOAs.**

Agenda Item No. 9  
3/7/2023

If the CDP carveouts are granted and Coastal Zone STRs are not permitted in HOAs, the 115 unhosted STRS will now be spread over almost half as many housing units, constituting an outrageous 4% of eligible coastal zone housing. This far exceeds both the 2% saturation rate approved by the CCC for Dana Point, and the more reasonable rate (1.2%) suggested by Commissioner Harmon and found in other coastal cities.<sup>1</sup>

The City clearly included the homes in the 53 HOAs in the CZ in the housing unit data provided to the CCC. Now, the City seeks to change the math, severely burdening Capistrano Beach and the Lantern District (the two areas without HOAs). Why would the City favor HOA over non-HOA residents?

The answer is clear. Shortly after the CCC hearing, HOAs in the CZ unhappily discovered that STRs could not be restricted solely by their CC&Rs. They were fearful that the additional 46 permits that the City insisted on offering would end up in their communities. The City confirmed the CCC stance - that unless an HOA formally restricted STRs prior to the 1976 Coastal Act or already had a CCC-approved CDP in place, their bans on STRs are unenforceable. So, the City quickly responded to HOA demands by offering them a *discounted* CDP fee and assuring them that CCC approval was likely (apparently based on an off the record understanding between the CCC staff and City staff). It is unknown whether CCC Commissioners would share the same "understanding", particularly once they realize that the impact on non-HOA residential neighborhoods in the CZ will be almost doubled thanks to the City's action.

It is neither fair, nor right for the City to attempt to avoid and evade the clear intent of the Coastal Act by issuing CDPs to attempt to protect HOAs. Nor is it appropriate to reduce housing stock subject to STRs by almost half after the CCC (somewhat reluctantly) and the City had agreed on a program which kept it to an already high 2%.

Moreover, it is inappropriate for the city to grant a "discount" on CDP fees to HOA owners. Fees charged by government entities are established based on the cost of processing the fee; the amount charged cannot exceed that cost. Is a CDP discount being funded by all City residents

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<sup>1</sup> How did we get from a greater-than-average STR saturation rate of 2% to an extremely abnormal 4%? The calculations used by the City and the CCC during the hearings were based on the total number of housing units in the CZ: those both in *and* outside HOAs. The City advised that there are 5,664 housing units in the CZ, 2,648 of which are in HOAs. These CDPs, if granted, would reduce by almost half, (2,648 or 46.7%) the housing units available for STRs: Instead of 5,664 housing units eligible to be converted to STR use, there will only be 3,016 eligible units (5664-2,648). The STR saturation rate will now be calculated as: 115/3,016 housing units (4% rounded) – far more than other coastal cities, and particularly outrageous considering Dana Point's existing high number of tourist accommodations and its very scarce housing stock – two factors the CCC acknowledged.

Please note: this 4% rate does not address the non-permitted STRs currently operated but not acknowledged by the City's code enforcement team. Per AirDNA, an independent STR strategy firm with an excellent rating from the National Association of Realtors, the number of non-permitted STRs operating in Dana Point is normally in the range of 150%-200% of permitted STRs.



including those not residing in HOAs? This adds insult to injury. Why should the city subsidize CDP requests for HOA residents when a grant of these CDPs will directly harm non-HOA CZ residents? The City's staff report for the March 6<sup>th</sup> Council meeting states, "*if the entire community benefits from a service, then general taxes are an appropriate funding mechanism.*" While the entire HOA community in the CZ benefits from this service, the remaining non-HOA community is actually harmed. This discount should not be granted.

This is blatant favoritism of one class of Dana Point citizens over another. The City applied for and received CDP approval from the CCC for 115 unhosted STRs in the Coastal Zone, based on the CCC Commissioners understanding that this would burden the CZ by 2%. The documents, meeting records and correspondence associated with the hearing support this understanding. By changing the math after the fact, the City places the validity of the entire program in jeopardy. All residents within the Coastal Zone, including HOA members, should share the burden equally, as the City affirmed in their submission to the CCC and as the CCC Commissioners were led to believe. If HOA residents, like their overburdened non-HOA neighbors, feel the unhosted STR number is too high, they should join us in asking the Council to return to the CCC explaining that after due consideration, the City Council would like to reduce the number to the 1.2% (66 STRs) originally proposed at the hearing.

Should you allow these CDPs to stand, you will be tacitly approving the City's back room deal to manipulate housing numbers and completely alter the impact of STRs in the CZ. You will also be placing an unfair and extraordinary burden on a small segment of Dana Point homeowners – a burden that far exceeds any CCC approved program for any other City with the scarce housing and vast number of tourist accommodations already present in Dana Point. Three of the Coastal Commission's stated objectives are to ensure that STR programs adequately protect and preserve housing, that the residential nature of neighborhoods is preserved, and that undue clustering is avoided. Dana Point's proposed action negates all these objectives.

I urge you to reject these CDPs which have angered unprotected CZ residents and will be appealed at every level should they stand. In fact, I plan to be an appellant and I expect to be supported by scores of angry residents. I have been actively engaged in this entire STR process, and have sent my attorney to speak on my behalf on multiple occasions at both the Planning Commission and the City Council, hoping my concerns would be taken seriously. They have not. I can only hope that now that HOA residents may be jeopardized, the City might reconsider the needs of its non-HOA constituents.

The means to avoid these appeals is simple. If the City wishes to protect CZ HOAs they should simply return to the CCC and request an adjustment in the number of permits allowed in its CDP.

Sincerely,

*Roger Malcolm*

Resident of Capistrano Beach Coastal Zone

To: Dana Point City Council

From: Toni Nelson

Re: Agenda Item #9

Tonight, the City is proposing that HOAs in the Coastal Zone file CDPs (Coastal Development Permits) as a batch, asking the Coastal Commission (CCC) to exempt them from the Short Term Rental (STR) Program they approved on November 16th.

While I certainly empathize and completely agree with the desire of HOA residents to protect themselves from unwanted STRs, I hope they also understand that those of us not in HOAs must also protect ourselves. Like them, we thought our residential properties would retain their residential nature, not through CC&Rs, but through the residential zoning that was in place when we bought our homes. We expected the City to protect this zoning. It has not. Now, through arbitrarily reinterpreting our municipal code and insisting on an increase in STR permits beyond what the CCC indicated was acceptable (1.2% or 66 units), the City has placed our neighborhoods, property values and quiet enjoyment of our homes in jeopardy.

**In taking HOA housing units out of the equation (almost half of all CZ housing units or 2,648 of 5,664) , the effect of the proposed CDPs, if successful, will to be double the saturation of STRs in the small non-HOA areas remaining - from the 2% insisted on by former Mayor Muller and ultimately passed by the CCC to 4% or more<sup>1</sup>. This is not acceptable. Nor was it the CCC's intent. I participated in both CCC hearings and very clearly heard the Commissioners acknowledge that Dana Point already has almost 2,000 tourist accommodations (more than any other coastal city), and that our housing stock is extremely low. There is no way that any of the Commissioners intended to inflict a 4% saturation rate on a small segment of homes in our coastal**

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<sup>1</sup> The impact of STRs on non-HOA housing in the Coastal Zone may be even greater than 4%. We cannot validate the numbers the City sent to the CCC and in fact, can only account for a little over half of the 3,016 (5,664 – 2,648 HOA units) non-HOA housing units in the coastal zone. It is possible we missed some homes because the maps on the City's website are not very clear. I respectfully request that you ask staff to recheck their numbers and provide validation of the numbers they reported to the CCC in November, and specifically identify the locations of the 3,016 non-HOA homes in the CZ. Going street by street with title reports we find 874 in Lantern District and the Capo Beach Palisades' areas. We know there are about 200 units on Beach Road, and Belinda Deines tells me there are 455 housing units in Doheny Village (including units in the trailer parks which are highly unlikely to become STRs). If the non-HOA units are closer to the 1,529 we calculate, than the 3,016 implied in the City's numbers provided to the CCC, the saturation rate will be more like 7.5%. Even if that's ok with the City, it is highly unlikely the CCC will let it stand.

zone. In fact, we only ended up at 2% because former Mayor Muller insisted. I think there is a very good chance such CDPs will be rejected (if not by the Planning Commission or City Council, almost certainly by the CCC), especially since coastal residents intend to appeal the CDPs.

The CCC's stated objectives include the following: To ensure approved STR programs

1. do not unduly affect residential housing stock;
2. that the residential nature of neighborhoods will be preserved; and
3. that undue clustering will be avoided.

Pushing all 115 STRs into a small segment of the coastal zone will defeat these CCC purposes. The City has also done its part to negate these objectives:

1. The City is aware of the extreme scarcity of housing stock, our RHNA requirements and our almost 2,000 tourist accommodations, but is allowing another 100+ housing units to convert to tourist use in Dana Point.
2. The City is working hard to preserve HOA residential neighborhoods but has yet to extend that same advocacy to the rest of us.
3. The City has been asked repeatedly to place buffers between STRs but has refused. It has taken a less than aggressive stance against unpermitted STRs, and has refused our requests to restrict permits to those who do not have a history of illegal STR activity and fines.

The City's resolution tonight will reduce the cost of CDPs from (I am told) \$5,000 to \$7000 each to \$500 each. This is potentially a significant number. There are 53 HOAs in Dana Point's Coastal Zone. This adds insult to injury for those of us who live in unprotected housing. We will not only be burdened with at least double the STR saturation contemplated in the approved program, but City funds that would otherwise be spent on services to benefit all of us will be used to *harm* our neighborhoods. Cities are legally required to charge applicants the real cost of services rendered. The City says that this is not required here, arguing "*if the entire community benefits from a service, then general taxes are an appropriate funding mechanism. In some cases, a service will have both individual and community-wide benefits. In these cases, the service might be partly funded by general taxes and partly through fees.*" While this service will clearly benefit HOAs, it does not have a city wide benefit and will actually *harm* non-HOA communities in the Coastal Zone. I respectfully ask the City Attorney to weigh in on the legality of benefiting one segment of residents while harming another segment with such action.

The situation the City now finds itself in is a problem of its own making. Rather than accepting the CCC's 1.2% saturation rate, which would have resulted in no new permits, former Mayor Muller insisted on 2%. Rather than going back to the CCC with full resident support from both HOA and non-HOA communities, asking for a revision in the Muller saturation rate, the new Council chose to leave it where it was. Now, you

want to double the saturation rate for non-HOA communities and jeopardize HOAs in the process (because it's highly likely that upon appeal, the CCC will not allow such heavy saturation to stand). In addition, you also decided that 115 STRs was appropriate for the non-coastal communities where you have no CCC pressure to add STRs at all.

It seems like there's a disconnect in your understanding of what the majority of your citizens want. Let me spell it out: *Just like those who live in HOA communities, the vast majority of your constituents in non-HOA communities do not want STR uses to be expanded in our neighborhoods.* They are neither wanted nor necessary. Home stays or primary rentals (while owners are on vacation) are fine, if well-regulated to prevent illegal activity. You will be hard pressed to find many voters who think an increase in non-primary STRs is a good thing for Dana Point.

The solution is simple. Drop the CDP idea and go back to the CCC arguing that 1.2% saturation is much more appropriate given our housing shortage and vast number of existing tourist accommodations. Residents throughout the City will no doubt speak in support of this request.

Should you not choose this course, the appeal process will play out and HOAs will more than likely end up unprotected. In that event, we suggest HOA residents join their non-HOA neighbors in an initiative effort to protect Dana Point's residential neighborhoods.

Thank you,

*Toni Nelson*

Resident of Unprotected Coastal Zone  
Capistrano Beach

**Shayna Sharke**

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**From:** Wendie Pinto <wendiepinto@gmail.com>  
**Sent:** Tuesday, March 7, 2023 1:14 PM  
**To:** Comment  
**Subject:** STR

Please reconsider adding additional STRs.

There are enough already and adding more will turn Dana Point into a hotel zone rather than a community of concerned residents.

It's time to say NO.

Sent from my iPhone

Agenda Item No. 9  
3/7/2023