



City of Malibu

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August 3, 2022

Re: City of Malibu Short-Term Rental Local Coastal Program Amendment (LCPA No. 19-003),
Agenda Item 10a for Friday, August 12, 2022 CCC Meeting

Honorable Commissioners:

The City of Malibu respectfully requests that the Commission approve the short-term rentals (STR) LCPA. The staff report makes unsupported assumptions about the impact of the City's LCPA that are not supported by evidence. Staff assumes that the STR LCPA will have a significant negative impact on the available STRs in the City. Staff presents no evidence to support this incorrect assumption.

The City's LCPA proposes to allow an unlimited number of STR properties in the City, except for multifamily properties where restrictions are put in place to protect this lower-cost housing in the City. While the City proposes to require a host to be available onsite during STR stays, the City does not require that the host be located in the structure that is rented. The host also does not need to be the owner of the property, and can be located in a guest house or second unit that is detached from the main residence.

As the Commission is aware, STRs can have a number of negative impacts on communities — primarily because they are located in residential communities that are not designed to accommodate commercial use or impacts. STR guests often present nuisance issues because they are unfamiliar with a City's rules and regulations, they do not have the same motivation to be good neighbors that long-term owners or renters do, and often live out of state or far from the community and thus are hard to track down if violations occur. They also can negatively impact parking, and thus the ability of other members of the public to access the coast.

The City has found that having an onsite host is the best way to prevent nuisance impacts, and to have such impacts addressed quickly when they occur. It is not a tool to limit STR activity (as the City proposes no limit on the number of STR properties or the number of days they can be rented), but rather a tool to ensure that STRs operate in harmony within the neighborhoods in which they are located. The host requirement thus allows the maximum number of STRs, but in a manner that prevents negative impacts to the community

The CCC has approved hosting requirements in other jurisdictions, the City of Malibu is only asking for approval of a system that has already been approved for others. The CCC has an obligation to treat the City equally with other jurisdictions, and denial of this LCPA would be unjustified and conflict with this obligation.

The CCC is not a legislative body and it does not have authority to draft the City's zoning regulations. In looking at the City's STR LCPA its obligation is only to certify compliance with the City's Land Use Plan. The standard is not to determine what the CCC believes to be the best STR regulatory program, but rather the CCC may reject the City's proposed LIP amendment only if "they do not conform with, or are inadequate to carry out the provisions of the certified land use plan." (Public Resources Code section 30513(b).) Similarly, the City's Land Use Plan (LUP) amendment may only be rejected if the CCC find that it does not "meet the requirements of, and is conformity with, the policies of Chapter 3" of the Coastal Act. (Public Resources Code section 30512(c).) While CCC staff may prefer a different form of STR regulation that includes more unhosted units, they have not demonstrated that the hosting requirement makes the City's LCPA conflict with the City's LUP.

The staff report not only fails to demonstrate that a hosting requirement violates the City's LUP, but also ignores the fact that all current unhosted rentals may be converted into hosted rentals. While the City currently has more unhosted STR properties registered with the City than hosted properties, if a hosting requirement were added these properties can be converted to hosted STRs by having the owner or a representative satisfy the hosting requirement. This host, again, may be located in a detached structure—the City's concern is that there is a presence that is onsite and responsible for any nuisance issues that develop.

The staff report also asserts, without evidence, that most travelers prefer to rent an unhosted STR. The City would assert that there is not a difference, especially if the host is located in a detached unit. The only guests that should be concerned about such a presence would be guests that are concerned with a host ensuring that the City's rules and regulations are followed. The City's obligation is also not to provide visitor serving accommodations in the form most preferred by travelers, but rather to provide those accommodations while also balancing the other priorities and purposes of the City and its LUP.

The staff report in addition asserts, again without evidence, that allowing unhosted rentals only in the multifamily districts would overconcentrate STR activity in those locations. Such a concentration is specifically prevented by the City's proposed LCPA by its strict limits on how many units may be made available for STR rental: two units at the most, or 40% of the units on the parcel, whichever is less. This means that only one or two units of any multifamily dwelling would be available for STR rental. The loss of these more affordable units to STR rental is a central concern of the City and a primary reason for the proposed LCPA. The City's LCPA will protect these units for long term rental.

Finally, the staff report assumes a false baseline for the number of STRs historically located in the City. The staff report proposes to use the number of 372 STRs as an accurate count of the number of STRs operating in the City. While Host Compliance identified 372 STRs operating in the City on December, 2, 2020, not all of the properties identified contained an STR. Once the City adopted its Enforcement Ordinance a series of letters were sent to the identified properties advising them that the short-term rental of residential property could only be conducted with a valid STR permit. This resulted in the City discovering that many of these listings did not reflect a unit that was actually for rent in the City. Some were located outside the City's boundaries, some of the property owners advised staff that they did not know their property was advertised as an STR because the previous property owner had operated the STR and the advertisement had not been removed from the hosting website. Others were for property owners who had advertised only once and then decided they did

not want to continue operating an STR—but did not remove the advertisement. Still others were duplicates, or were the result of a tenant illegally listing a property in violation of a lease. Hosting platforms do not make it easy to remove listings, as it is in their interest to make it appear that they have many properties available both to attract customers, and to improve the market’s opinion of their valuation.

As a result, the Host Compliance numbers referenced in the staff report do not reflect actual units available, and also do not reflect the historical baseline of STRs in Malibu that existed before the explosion of STR activity with the ascent of STR platforms such as Airbnb and VRBO.

The most accurate number for STRs currently operating in the City is the number of permits issued for an STR which was 202 in June 2021. The City’s current ordinance allows anyone to apply for a permit, and thus presents a true reflection of STR activity in the City currently.

The staff report also undercounts the number of second units and guest houses in the City that could be used to facilitate hosted STR rentals. A review of City records indicates there are approximately 113 second units and 65 guest houses in the City that could be utilized by property owners during the time their house was rented as an STR. These numbers do not include other accessory buildings that a property owner could also choose to reside in while renting out their house for an STR. These include attached separate units, studios and enclosed pool cabanas with restroom facilities. These numbers also likely undercount the true number because, prior to September 2002 when the Local Coastal Program was adopted, the California Coastal Commission processed permits for guest houses. The earliest record on the number of second units and guest houses in the City can be found in the City’s 2008-2013 Housing Element. The City did not start separately identifying these accessory uses in building permits until sometime in 2014. They are now identified by a unique code in the City’s building permit system. In addition, many of the Woolsey Fire replacement homes have proposed adding a new second unit so staff is seeing an increase in the number of potential second units.

The City Council believes the City’s proposed LCPA will not negatively affect public access to coastal resources or the availability of visitor serving accommodations, but instead will ensure that STR activity is conducted in a manner that is compatible with their location in residential zones and avoid negative impacts to coastal resources. Short term rental of SFRs and multifamily housing units has never been authorized by the City’s municipal code or by its LCP. The City understands that the CCC staff interprets STR rental as an allowed use despite this lack of authorization, and the City has submitted this LCPA to specifically allow the use—but with limited requirements to ensure the negative impacts of STRs are minimized. Again, the City has not proposed any form of cap on the number of STR units, it has only proposed that the STRs be conducted in a manner that ensures their compatibility with the residential zones in which they lie.

Sincerely,



Richard Mollica
Planning Director

cc: Steve McClary, City Manager