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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

THEODORE P. KRACKE, and individual, Plaintiff/Petitioner, vs. CITY OF SANTA BARBARA, a Municipality, Defendant/ Respondent	Case No.: 56-2016-00490376-CU-WM-VTA STATEMENT OF DECISION

Petitioner and plaintiff, Theodore P. Kracke ("Petitioner"), contends that respondent and defendant, City of Santa Barbara ("City"), has acted contrary to the mandates of the California Coastal Act of 1976 by effectively prohibiting him and other owners of residential properties in the coastal areas of Santa Barbara from making those properties available as "short-term vacation rentals" ("STVRs").[1] The City denies that Kracke is entitled to relief. It contends, among other things, that the City's restrictions on short-term vacation rentals have not changed and that its heightened enforcement of existing zoning laws against the owners of short-term vacation rentals does not constitute a "development" requiring approval under the Coastal Act.

[1] This type of an arrangement is referred to in the exhibits as a "short-term vacation rental" and sometimes as simply a "short-term rental," often abbreviated as "STVR" or "STR," respectively. The court understands these terms to be synonymous. Generally, a short-term vacation rental is a dwelling unit rented for transient use of 30 consecutive days or less.

Pursuant to the stipulation of the parties, the first and third causes of action of Kracke's pleading were severed and tried to the court on February 1, 2019. The court took the matter under submission, served its tentative decision, and gave notice that the tentative decision would constitute the court's proposed statement of decision. (See Calif. Rules of Ct., rules 3.1590, 3.1591.) Thereafter the court received an objection to the proposed statement of decision from the City and Kracke's opposition to the objection. The court has adopted the proposed statement of decision with some minor modifications in light of the objection.

Evidence and Objections

The court grants the requests for judicial notice and receives the parties' evidence, except as indicated here.

Petitioner asks the court to take judicial notice of a declaration signed by Steve Hudson. The declaration contains the caption of this action and is dated September 14, 2018. Mr. Hudson states that he is the Deputy Director of the South Central Coast District office of the California Coastal Commission. Attached to the declaration are three exhibits. The first is a copy of a letter purportedly signed by Steve Kinsey, Chair of the California Coastal Commission. The second is a letter to Renee Brooke, City Planner of the City of Santa Barbara, and signed by Jacqueline Phelps, Coast Program Analyst of the California Coastal Commission. The last is a letter signed by Mr. Hudson addressed to Paul Casey, Santa Barbara's City Administrator, dated July 11, 2017.

The City has objections to Petitioner's request to take judicial notice of the declaration and, also, to the admissibility of the declaration. First, the City objects to Mr. Hudson's declaration on the ground it states the opinions of an undisclosed expert witness, namely, Mr. Hudson. To the extent that Mr. Hudson provides expert opinion evidence, the court agrees that the evidence should not be received. The court, at the parties' request, established an expert

disclosure requirement and deadline. Petitioner did not disclose Mr. Hudson as an expert who would be providing opinion evidence at trial. Exclusion of the undisclosed expert's opinions is proper. The objection is sustained to the extent that Mr. Hudson's declaration provides expert opinion evidence.

Mr. Hudson's declaration contains statements that are not expert opinions. For example, he authenticates the attached exhibits. The City states that it has no objection to the admission of those exhibits into evidence. Therefore, Mr. Hudson's declaration will be received solely for the purpose of establishing his position within the Coastal Commission and to authenticate the attached exhibits.

The court believes that this ruling renders the City's first three evidentiary objections to Mr. Hudson's declaration moot. To the extent that it does not, the court agrees with the City that Mr. Hudson cannot provide evidence of his understanding or opinion as to the Coastal Commission's present position on STVRs. (City's Objection Nos. 1 and 2.) He did not make his declaration in the capacity of a representative of the Coastal Commission. His personal statements cannot reflect the official position of the commission. Similarly, the court sustains the City's Objection No. 3 – Mr. Hudson's attempt to paraphrase the contents of the attached letters is inadmissible secondary evidence.

Objection No. 4 is sustained on Evidence Code section 352 grounds. The probative value of this evidence is slight and dependent upon the court engaging in a complicated and perhaps speculative process.

Objection No. 5 is sustained on hearsay grounds.

Objection No. 6 is sustained on relevance grounds. Counsel for the City acknowledged at trial that the City does not dispute the proposition that the availability of lower cost overnight accommodations facilitates access to coastal zones.

Procedural History

Petitioner commenced this action by filing a petition and complaint. After the court sustained a demurrer to that pleading, Petitioner filed his first amended petition and complaint ("FAP"). It asserts causes of action against the City for (1) a writ of administrative mandate; (2) civil fines under the Coastal Act; (3) declaratory relief under the Coastal Act; and (4) injunctive relief under the Coastal Act. The court overruled a demurrer to that pleading. It also denied Petitioner's motion for issuance of a preliminary injunction. The City has answered by denying that Petitioner is entitled to any relief.

On the stipulation of the parties, the matter comes on for trial on Petitioner's first and third causes of action only.

Facts

Petitioner resides in Santa Barbara. (FAP, ¶ 1; Answer to FAP, ¶ 1.) He owns a business, Paradise Retreats, which manages residential properties that were offered for short-term rental in Santa Barbara. (FAP, ¶ 33; Answer to FAP, ¶ 33.) He contends that in 2015 the City initiated a change in policy concerning STVRs that has adversely affected him.[2]

The development of the Internet has fueled the popularity of STVRs, particularly in popular vacation destinations like Santa Barbara. (AR, p. 1369.) The City recognized in 2015, "The growing industry of online marketing sites . . . [has made] short-term rentals more accessible to vacationers and travelers than ever before." (AR, p. 1373.)

The proliferation of STVRs across California has been controversial. Experiences with unsupervised and poorly behaved short-term tenants in residential neighborhoods has made STVRs unpopular with some. Also, concerns exist about the impact of STVRs in tight housing

[2] Without conceding the merits of Petitioner's contentions, the City concedes he has standing to assert his claims.

markets.[3] Others argued that STVRs in beach communities provide increased access to coastal areas, particularly for low income families.[4] These conflicting policy considerations led the Chair of the California Coastal Commission, Steve Kinsey, to write in December 2016, "There are no easy answers to the vexing issues and questions of how best to regulate short-term/vacation rentals." (Hudson Decl., Ex. "A," p. 1.)

Faced with these conflicting policy considerations, local governments across California have adopted different approaches to STVRs. Some treat STVRs as commercial activity and ban them from residential areas. (AR, p. 1371.) Others allow but regulate STVRs. (*Ibid.*)

By 2015, many STVRs existed in Santa Barbara and the numbers were increasing. Although the City believed that most STVRs were not in compliance with the City's zoning ordinance, the City generally allowed STVRs to be operated so long as the owner remitted the occupancy tax. In 2015, the City considered whether STVRs should be allowed to continue to operate in the city and, if so, where and under what circumstances. The City Council decided, based on its interpretation of its existing zoning ordinance, to prohibit STVRs in residential areas and to regulate STVRs in commercial areas as though they were "hotels." The City Council directed staff to create a plan to aggressively identify and prosecute all STVR owners not in compliance.

Some of the properties targeted by the City's aggressive enforcement program were within Santa Barbara's Coastal Zone, which is subject to the jurisdiction of the California Coastal Commission ("Coastal Commission").[5] The Coastal Commission is tasked with reviewing and certifying local coastal programs prepared by local governments within the coastal

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[3] See Pet. Req. for Jud. Notice, Ex. "L," p. 3 ["Short term vacation rentals, when coupled with our community's extremely low vacancy rate, have cause many of the hard working, low-income families, senior and disabled individuals we serve to be unable to locate a unit to rent under the Housing Authority's Section 8 Housing Choice Voucher (HCV) program."].)

[4] See Hudson Decl., Ex. "A," p. 1 ["Others argue that vacation rentals [in coastal areas] 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."].

[5] " 'Coastal zone' means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico . . . extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea." (Pub. Resources Code, § 30103.)

zone. The Coastal Act establishes the mechanism by which the Coastal Commission conducts its work. Among other things, it requires local governments to develop local coastal programs, consisting of land use plans and implementing ordinances. The Coastal Commission certified the City's current land use plan in 1981 at a time when STVRs were not common. Not surprisingly, the City's current land use plan does not specifically reference STVRs.

At some time not evident from the record but before 2015, the City began to view STVRs as "hotels" for purposes of its zoning ordinance. Title 28 of the Santa Barbara Municipal Code ("SBMC") contains regulations related to the planning, zoning, and development review in the City. In 1983, the City Council amended the City's zoning ordinance to define the term "hotel." (SBMC § 28.04.395.) That definition has continued unchanged. It provides that "hotel" means:

> "A building, group of buildings or a portion of a building which is designed for or occupied as the temporary abiding place of individuals for less than thirty (30) consecutive days including, but not limited to establishments held out to the public as auto courts, bed and breakfast inns, hostels, inns, motels, motor lodges, time share projects, tourist courts, and other similar uses."

Treating STVRs as "hotels" had two primary consequences. First, it meant that under the City's zoning ordinance, STVRs could not be lawfully operated within residential areas. Second, it meant that STVRs could only be lawfully operated in a commercial zone if the permitting requirements and regulations applicable to hotels were satisfied. The City also took the position that an owner of a property in a commercial zone in the coastal zone wishing to convert the property from a residential use to the STVR was required to obtain a coastal development permit.[6]

In cracking down on STVRs, the City Council professed to merely be enforcing the existing zoning ordinance. However, the City's treatment of STVRs as "hotels" prior to 2015

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[6] Generally, the Coastal Act requires a coastal development permit before undertaking any development within a coastal zone. (See Pub. Resources Code, §§ 30101.5, 30600.)

was considerably different in effect. Before the summer of 2015, the City had an informal but recognized policy of allowing STVRs on two conditions. The first was that the owner of an STVR "register" with the City, pay for and obtain a business license, and remit to the City a 12 percent Transient Occupancy Tax ("TOT"). (AR, p. 1374.) The second condition was that the City receive no complaint about the conduct of tenants at the property. (*Ibid.*) So long as an STVR owner met these two conditions, an STVR could be operated openly in the city, including in a residential area, without fear of prosecution.

Under this policy of allowing and taxing STVRs, the number of STVRs in Santa Barbara grew significantly. In 2010, there were 52 STVRs "registered" with the City and paying TOT. (AR, p. 1374.) However, the City suspected there were many more STVRs operating without remitting the tax. The City initiated an effort in 2010 to identify and "bring into compliance" the STVR owners from whom TOT was not being collected. (*Ibid.*) Then and again in 2014, the City offered "amnesty" to any STVR owner who had not been paying the TOT. (AR, p. 1374.) Under these programs, the City offered to forgive three years of unpaid back taxes if the STVR owner agreed to remit TOT in the future. These amnesty programs were not intended to curb the numbers of STVRs -- which the City apparently considered to be in violation of its zoning ordinance -- but rather to increase TOT revenues. The result of these programs was a six-fold increase in the number of "registered" and taxpaying STVRs from 2010 to 2015. (AR, p. 1702.) In the 2015 fiscal year, the City collected $1.2 million in TOT from 349 registered STVRs. (AR, p. 1370.)

By March 2015, however, the City Council was rethinking its stance on STVRs. (See Pet. Req. for Jud. Notice, Ex. "L" at p. 6.) It conducted a public hearing on June 23, 2015 to consider the "regulation and enforcement of short-term vacation rentals." (AR, p. 1369.) That hearing drew over 200 people. (AR, p. 1397.) Sixty-nine speakers provided over three hours of testimony. (*Ibid.*) Another 47 provided comment letters. (*Ibid.*)

Staff to the council summarized the issue under consideration this way:

"The trend of converting residential units into full- or part-time vacation rentals has become increasingly popular, especially in vacation destination communities such as Santa Barbara. The City Council and staff are aware that short-term vacation rentals exist throughout the City and that most are operating in residential areas where they are not currently allowed. To date, alleged violations have been investigated and code enforcement action taken only in response to neighborhood complaints.

"At the same time, however, the City is collecting Transient Occupancy Tax (TOT) revenue from short-term vacation rental owners. In response to the growing concerns over the impacts of vacation rentals in neighborhoods and the potential for confusion created by the City's enforcement actions and simultaneous collection of TOT, the City Council recently directed staff to address this policy issue." (AR, p. 1369.)

Staff submitted a ten-page report summarizing its findings and recommendations. The report included a map displaying the location of approximately 350 STVRs that were known to be operating in the city limits. (AR, pp. 1369-78, 1397, 1416.) Most of those STVRs were within residential areas[7] and many were in the coastal zone.[8]

In that report, staff presented the council with several "options" for dealing with STVRs and home-sharing rentals. As it related to STVRs, those options were: (1) "[p]rohibit vacation rentals . . . in the City (including R-4 and commercial zones) and forego collection of TOT"; (2) "[a]llow vacation rentals . . . only in hotel/motel/multiple residential unit (R-4) and commercial zoning districts, and continue collecting TOT"; and (3) "[a]llow vacation rentals . . . where residential uses are allowed and continue collecting TOT." (AR, p. 1375.)

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[7] See AR, p. 1417 ["In all, we have about . . . 350 [registered STVRs], and with regards to where the vacation rentals are not allowed, we have counted 248 units out of the 350 . . .."].

[8] Compare AR, p. 1378 to Pet. Comp. Ex. 15.)

George Buell, the City's Community Development Director, addressed the City Council at the June 23, 2015 meeting. He noted, "there is a problem that we have." (AR, p. 1411.) He explained, "On one hand, we are collecting TOT . . . from vacation rentals; and on the other hand, we have a Zoning Ordinance that largely prohibits it." (*Ibid.*) He noted that under the zoning ordinance, STVRs were only allowed in commercial areas if "they get their discretionary approvals." (AR, p. 1579.)

That observation drew comment from Councilmember Greg Hart:

> "I just want to pause on that last point about . . . the R4 vacation rental things. Because I think this is incredibly confusing. You show a map that shows that it's 'allowed,' quote, unquote, but then there's the little fine print that says, 'As long as you meet all the other stuff.' Meeting all the other stuff is effectively banning it. I mean, it truly isn't possible, except in very extraordinarily rare instances, for somebody to provide the off-street parking, to meet the code requirements, to actually pull that off, as evidenced by there's only one, who – after a two-year process – to successfully navigate that system. [¶] So I don't want people to leave with the impression that because they're in the proper zoned area that it's going to be easy or simple or even achievable to have it be legitimized in the existing Zoning Ordinance." (AR, pp. 1579-50.)

The result of the hearing was that the City Council "gave direction to staff to: 1) prohibit Vacation Rentals, as defined; . . . 4) move forward with enforcement of prohibition of Vacation Rentals with the owners who have attempted to work with City; 5) work with City Attorney in developing procedures for enforcement; and 6) develop a work plan on the enforcement." (AR, p. 1601.)

Staff responded to that directive with a report prepared for the August 11, 2015 City Council meeting. (AR, p. 1696-1703.) Among staff's informal recommendations was a call for "clarity" in the City's zoning ordinance relative to STVRs. Specifically, staff wrote:

"The City's Zoning Ordinance contains distinct definitions for residential units and hotels, which have existed for decades. . . . The sharing economy and use of the Internet to book commercial transactions (transportation, rooms or homes) did not exist when the City's zoning definitions and regulations were adopted. Applying existing regulation to this new and rapidly expanding phenomenon has proven challenging. [¶] Initiating a Zoning Ordinance amendment to add relevant definitions and clarify regulations will be beneficial to both the public and staff." (AR, p. 1698.)

For these reasons, staff recommended that "Vacation Rental" be expressly defined in the City's zoning ordinance. (AR, p. 1697.)

With respect to the enforcement of the prohibition on STVRs in residential areas, staff noted the enormity of the challenge of prosecuting those violations. The process of identifying SVTR owners for prosecution would be "time-consuming and relatively costly because of the sheer number of unlawful Vacation Rentals in the City." (AR, p. 1699.) Staff identified two "goals" of the enforcement program: to achieve "permanent compliance" with zoning ordinance and recover "unpaid Business License and Transient Occupancy Tax." (AR, pp. 1699-1700.) "In order to be effective as an incentive and deterrent, Vacation Rental business owners must be presented with the threat of enforcement costs that are higher than the cost of compliance." (AR, p. 1700.) Therefore, staff recommended "the use of more sophisticated business litigation strategies than typically used in code enforcement." (*Ibid.*) However, staff suggested that, "existing Vacation Rentals that [were] paying TOT [should be] in the lowest enforcement priority category." (*Ibid.*) Staff also suggested that those tax-paying STVR owners should be allowed to continue operating "until they are notified by the City Attorney's Office to cease operations." (AR, p. 1701.)

Staff noted that, with the aid of contract attorneys, "about 300 cases per year [could] be competently and aggressively managed." (AR, p. 1700.) A plan was outlined in which 30-40

cases would be prosecuted in "6 week enforcement wave[s]." (*Ibid.*) Staff recommended that the City Council allocate $80,000 to the City Attorney's Office to cover the additional enforcement costs for the first of what was expected to be a two-year enforcement period. (AR, p. 1702.) Staff also recommended allocations of $90,000 to the Community Development Department and $10,000 to the Finance Department for additional staff and overtime needed to execute the enforcement plan during the first year. (AR, p. 1703.) Finally, staff noted the expected loss of over $1 million in TOT revenue. (AR, p. 1702.)

The City Council unanimously adopted staff's funding recommendations.[9] (AR, p. 1836.) Just before voting, Councilmember Frank Hotchkiss described the effect of the council's action this way:

> "Well, I think a more proper way of expressing it from a media point of view is that the door is closing on vacation rentals. And that ought to be understood. It's just got a period of time to do that." (AR, p. 1824.)

In October 2016, staff reported to the City Council on results of the first year of the enhanced enforcement program. Staff observed, "In this first year, a significant amount of time and resources have been allocated to identifying new unanticipated issues and developing strategies to handle enforcement." (Pet. Req. for Jud. Notice, Ex. "O," p. 2.) "Now that staff has developed a program and operation dealing with the wide array of issues that STR enforcement presents, more time and resources can be focused on the individual enforcement cases, thereby increasing the enforcement numbers . . . and reducing the number of illegally operated STRs in the City." (*Ibid.*) Staff reported that since August 2015, the City Attorney's Office had issued 44 legislative subpoenas. (*Ibid.*) By late 2016, the City Attorney was prosecuting over 1,000 cases against STVR owners. (*Id.*, p. 4.) The City Attorney's office had also had drafted a "standard settlement agreement." (*Id.*, p. 3.) Among other things, that form agreement required

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[9] The recommendation to specifically define STVRs in the zoning ordiance was not adopted by the City Council.

the STVR owner to "permanently discontinue the [STVR]" and pay for three years of TOT and business license fees. (*Ibid.*) The settlement agreement had been used in multiple instances, generating $175,115 in revenue. (*Ibid.*) STVR owners with a current business license were allowed "to renew their existing business licenses through December 31, 2016," and presumably permitted to continue operations until those licenses expired. (*Id.*, p. 5.)

Staff summarized the impact of the heightened enforcement program:

> "At the time of Council's direction in June 2015, there were three hundred and forty-nine (349) registered STRs. As of September 23, 2016, there [were] two hundred and fifteen (215) registered STRs, representing a total decline of one hundred and thirty four (134)." (Pet. RJN, Ex. "O," p. 5.)

Shortly after this report, in December 2016, Steve Kinsey, Chair of the Coastal Commission, sent a letter to local governments, including the City. (Hudson Decl., Ex. "A.") After identifying the "vexing issues" presented by regulation of STVRs in coastal zones, he provided "guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal areas moving forward." (*Ibid.*) He wrote:

> "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.

". . .

"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." (Hudson Decl., Ex. "A," pp. 1-2, emphasis in original.)

In communities with an "ample supply of vacation rentals," Mr. Kinsey wrote, some restrictions on STVRs "may be appropriate." (Hudson Decl., Ex. "A," p. 2.) "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." (*Id.*, emphasis in original.) He concluded by stating the Commission's willingness to work with local coastal governments "to regulate vacation rentals through your LCP." (*Id.*, p. 3.)

In January 2017, Jacqueline Phelps, a Coastal Program Analyst with the Coastal Commission, wrote to Renee Brooke, the Santa Barbara City Planner. (Hudson Decl., Ex. "B.") Ms. Phelps was responding to a letter sent by Ms. Brooke asking "whether the conversion of an existing residential unit . . . to a short-term vacation rental (STVR) is categorically exempt from Coastal Development Permit (CDP) requirements." (*Id.*, p. 1.) Ms. Phelps indicated that it was not. In addition, she noted, "As the SBMC does not contain a definition of vacation rental, the City has indicated that it considers STVRs to be a use similar to that of a hotel." "However," she continued, "we disagree with the City's current approach to consider residences used as STVRs as 'hotel' uses (pursuant to the City's interpretation of the definition 'hotel' included in the SBMC) for the purposes of prohibiting or limiting STVRs in residential zones." (*Ibid.*) Ms. Phelps referred back to the December 2016 "guidance letter" from Mr. Kinsey and reiterated that " 'the Commission has found that vacating rental prohibitions unduly limit public

recreational access opportunities inconsistent with the Coastal Act.' " (*Ibid.*) "Furthermore," Ms. Phelps wrote, "the City of Santa Barbara Land Use Plan (LUP) includes policy language that prioritizes visitor-serving recreational facilities, protects lower cost visitor and recreational facilities, and prohibits removal or conversion of visitor-serving development in certain areas of the City." (*Id.*, pp. 1-2.) Ms. Phelps concluded by urging the City "to process an LCP amendment to establish clear provisions and coastal development permit requirements that will allow for STVRs and regulate them in a manner consistent with the Coastal Act." (*Id.*, p. 2.) She suggested that regulation of STVRs could be addressed in discussions that were ongoing between the City and Coastal Commission. (*Ibid.*)

Similar comments were reiterated in a letter from Mr. Hudson to Paul Casey, Santa Barbara City Administrator in July 2017. (Hudson Decl., Ex. "B.") In that correspondence, Mr. Hudson stated, "As the Commission's prior guidance on STVRs indicates, the *regulation* of STVRs [in a coastal zone] must occur through the LCP process or be authorized by a CDP." (*Id.*, p. 1-2; emphasis in original.) He referenced Mr. Kinsey's letter from December 2016 as authority. He also referred to Ms. Phelps's letter to the City and observed that "the Executive Director continues to disagree with the City's current approach to considering existing residential units that are used as STVRs as a 'hotel' use for the purpose of prohibiting or limiting STVRs in residential zones." (*Id.*, p. 2.) Mr. Hudson concluded, "We strongly encourage the City to update its current approach by processing an LCP amendment that establishes clear provisions and CDP requirements that will allow for, and not unduly limit, STVRs and that will regulate them in a manner consistent with the Coastal Act." (*Ibid.*)

In 2014, the Coastal Commission award the City a grant to update its LCP. (See City's Req. for Jud. Notice, Ex. "E.") Representatives of the City and the Commission met periodically in the process of drafting an amended LCP that the Coastal Commission would certify. One of those meetings occurred in Feburary 2017 – shortly after Ms. Phelps's letter to Ms. Brooke. Steven Hudson, the Deputy Director of the South Central Coast District office of the Coastal Commission, and Ms. Phelps attended that meeting with Ms. Brooke, among others. (Brooke Decl., p. COSB 512.) Mr. Hudson indicated that for the commission to certify the City's

proposed amended LCP, "the City need[ed] to incorporate STVR policies into the LCP." (Brooke Decl., p. COSB 512.) The City, however, wished to defer that issue. Ms. Brooke recommended that the group "address[] STVR in the future with an LCP Amendment if that is indeed shown to be necessary." (*Ibid.*)

In August 2018, the City Council adopted a resolution approving an LCP amendment to repeal the existing LCP in its entirety and approve a new one. (Brooke's decl., ¶ 9.) The City's LCP amendment application is pending with the Coastal Commission. (*Ibid.*)

It is undisputed that the City did not obtain a CDP before implementing its program to reduce the number of STVRs in the city.

Discussion

The parties' dispute centers on whether the permitting requirements of the Coastal Act were triggered by the City's policy directive to aggressively enforce its zoning laws to reduce the numbers STVRs. The principal issue is whether the City's actions constituted a "development" within the meaning of the Act to the extent that it affected those STVRs operated in the coastal zone of Santa Barbara. If it was a "development" then the City could only proceed after it obtained a CDP or a certified amendment to its LCP. The City obtained neither.

1. The Coastal Act

"The Coastal Act 'was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California.' [Citation.]" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793.) "One of the basic goals of the [Coastal Act] is to 'maximize public access' to the beach. (*Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896, 898.)

"The Coastal Act relies heavily on local government '[t]o achieve maximum responsiveness to local conditions, accountability, and public accessibility....' (Pub. Resources

Code, § 30004, subd. (a).)" (*Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 940, paraphrasing *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra.)* The Coastal Act requires local governments to develop local coastal programs ("LCP") to promote the Act's objectives. (*Ibid.*) Each LCP must "contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided." (Pub. Resources Code, § 30500, subd. (a).)

An LCP consists of "a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of [the Coastal Act] at the local level." (Pub. Resources Code, § 30108.6.)

" 'Local governments are responsible for creating their LCP's.' " (*Schneider v. California Coastal Com., supra,* 140 Cal.App.4th at 1344, citation omitted; also see Pub. Resources Code, § 30512.2, subd. (a) ["the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan"].) However, a local government must prepare its LCP "in full consultation with the commission." (Pub. Resources Code, § 30500, subd. (c).)

The land use plans ("LUP") of a proposed LCP must be submitted to the Coastal Commission. (Pub. Resources Code, § 30512, subd. (a).) The commission must certify the LUP, or any amendments to it, if it determines that it meets the policies and requirements of the Coastal Act. (*Id.*, subd. (c).) In addition, a local government must submit to the Coastal Commission its zoning ordinances and zoning district maps. (Pub. Resources Code, § 30513, subd. (a).) The commission may only reject the zoning ordinances or maps "on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan." (*Id.*, subd. (b).)

Generally, any "person" -- which includes a city -- "wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit." (Pub. Resources Code, §§ 21066, 30600, subd. (a); also see *Surfrider Foundation v. California Coastal Com.* (1994) 26 Cal.App.4th 151, 154.) "Development" in the context of the Coastal Act is a term of art that is specifically defined in the Act.[10] The meaning of this term, and how it relates to the facts here, is discussed in detail below.

After the Coastal Commission has certified a local government's LCP, a coastal development permit ("CDP") "shall be obtained from the local government" as provided for in the Coastal Act. (*Id.*, subd. (d).) That is, "[o]nce the California Coastal Commission certifies a local government's program, and all implementing actions become effective, the commission delegates authority over coastal development permits to the local government." (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra,* 55 Cal.4th at p. 794.)

"An action taken under a locally issued [CDP] is appealable to the commission. [Citation.] Thus, '[u]nder the Coastal Act's legislative scheme, ... the [local coastal program] and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy.' [Citation.] 'In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government.'

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[10] " '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 of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of 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 use 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 harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511)." (Pub. Resources Code, § 30106.)

[Citation.]" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra,* 55 Cal.4th at p. 794.)

The Coastal Act is to be "liberally construed to accomplish its purposes and objectives." (Pub. Resources Code, § 30009.)

1. First Cause of Action for Writ of Mandate Pursuant to Code of Civil Procedure Section 1085

Petitioner's first cause of action, for traditional mandate (see Code Civ. Proc., § 1085), is based on allegations that the City's alleged STVR "ban" constituted a "development" as that term is defined in the Coastal Act. Based on this conclusion, Petitioner argues that the City had a clear legal duty to obtain a CDP prior to implementing the STVR "ban," and since the City failed to apply for a CDP, a writ should issue. (See First Amended Petition, ¶¶ 39-41, 32, 37.)

To access the merits of this contention, the court must determine whether the City's actions were a "development."

(i) Was the City's Heightened Enforcement Program a "Development" under the Coastal Act?

The term "development" has a specific and technical meaning as used in the Coastal Act. (See Pub. Resources Code, § 30106.) The term is not used in the ordinary sense in this context. (See *Gualala Festivals Committee v. California Coastal Com.* (2010) 183 Cal.App.4th 60, 67.) As the First District Court of Appeal recently noted:

> "The Coastal Act has not been read as narrowly as appellants propose. Instead, the courts have given the term 'development' an 'expansive interpretation ... consistent with the mandate that the Coastal Act is to be "liberally construed to accomplish its purposes and objectives." [§ 30009].' (*Pacific Palisades, supra,* 55 Cal.4th at p. 796; see also *Gualala Festivals Committee v. California Coastal*

Com. (2010) 183 Cal.App.4th 60, 67, (*Gualala*) ['the statute provides an expansive definition of the activities that constitute development for purposes of the Act. It is the language of that definition that must be applied and interpreted, giving the words their usual and ordinary meaning.'].) Thus, directly contrary to appellants' assertions, 'the Coastal Act's definition of "development" goes beyond "what is commonly regarded as a development of real property" [citation] and is not restricted to activities that physically alter the land or water [citation].' (*Pacific Palisades*, at p. 796; see also *Gualala*, at p. 67, [fireworks display is development under plain language of section 30106, even though not 'commonly regarded' as such]; *Surfrider Foundation v. California Coastal Com.* (1994) 26 Cal.App.4th 151, 158 ['the public access and recreational policies of the Coastal Act should be broadly construed to encompass all impediments to access, whether direct or indirect, physical or nonphysical'].)" (*Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 252.)

In *Surfrider Foundation v. Martins Beach 1, LLC*, the appellate court determined that a private party's actions in closing and locking a gate on a road to the beach were a "development" when the road was previously open and the public had been invited to use it.

The definition of a "development" under the Coastal Act is provided in Public Resources Code section 30106. As relevant here, that statute states that a "development" means a "change in the density or intensity of use of land" or a "change in the intensity of use of water, or of access thereto."

Petitioner contends that the City's actions, which he characterizes as a "ban" on STVRs in the coastal zone, were a "development." He asserts that the loss of STVRs necessarily impacted the "density or intensity of use of land" and a "the intensity of use of water, or of access thereto" because STVRs provide a resource for individuals and families, especially low

income families, to visit the Santa Barbara coast. The unavailability of low-cost housing and tourist facilities can be an impediment to coastal access and, consequently, a "development." (See *Surfrider Foundation v. California Coastal Com., supra,* 26 Cal.App.4th at p. 158.)

In response, the City argues that it did not "do" anything new and, therefore, nothing changed. The City contends that its more aggressive enforcement of its existing zoning ordinance cannot constitute a "development." Also, the City asserts that the decrease in the number of STVRs in the city has not resulted in a change in the use of or access to the coastal areas.

The court is unpersuaded by the City's contentions. The City Council's policy directive to aggressively enforce the zoning laws with the purpose of all but completely eliminating STVRs from the city, including the coastal zone, when STVRs had previously been tolerated, licensed and taxed, was a "development" within the meaning of the Coastal Act.

The City's argument places undue emphasis on the way in which the City implemented its purpose, as opposed to what the purpose and effect was. The City recognized that it had "a problem" because its treatment of STVRs was not consistent. (AR, p. 1411.) The City Council was presented with a choice between two existing yet conflicting policies: to allow and tax STVRs or to substantially prohibit them. The City Council chose to adopt and declare a policy to severely restricting STVRs. That decision was made as a deliberative body after public hearings and was reflected in the council's minutes. To implement the prohibition, the City Council directed its staff to prepare a plan to implement its directive, and the council authorized the funds to bring the plan into action. The evidence establishes that the City acted with a clear, and indeed stated, intent to "prohibit" STVRs within the City's residential areas, including those within the coastal zone.

The court acknowledges that most cases in which a "development" has been found there has been more substantial and identifiable conduct. (For example, see *Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896 [HOA resolution]; *Surfrider Foundation v. Martins Beach 1, LLC, supra,* 14 Cal.App.5th 238 [locking a gate]; *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra,* 55 Cal.4th 783 [approval of mobile home park conversion]; *Gualala Festivals Committee v. California Coastal Com'n* (2010) 183 Cal.App.4th 60, 67 [building a fireworks display]; *LT–WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 776, 804–805, 60 Cal.Rptr.3d 417 [installation of gates with "no trespassing" signs]; *La Fe, Inc. v. County of Los Angeles, supra,* 73 Cal.App.4th 231, 239–240, 86 Cal.Rptr.2d 217 [lot line adjustment]; *Stanson v. San Diego Coast Regional Com.* (1980) 101 Cal.App.3d 38, 47–48, 161 Cal.Rptr. 392 [remodel of existing structure]; *California Coastal Com. v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 605–609, 170 Cal.Rptr. 263 [conversion of existing apartments into a stock cooperative]; *Monterey Sand Co. v. California Coastal Com.* (1987) 191 Cal.App.3d 169, 176, 236 Cal.Rptr. 315 [offshore sand extraction].)

But the provisions of the Coastal Act do not confine the scope of a "development" to particular conduct. The thing required by the Act is simply a "change." The "change in the density or intensity of use of land" language of Public Resources Code section 30106 focuses on *the nature of the impact* necessary to find a "development" and does not restrict *the manner in which the change comes about.*[11] The same can be said of the language defining a

[11] Public Resources Code section 30106 does identify certain conduct which, by definition, is a "change in the density or intensity of use of land" – such as certain subdivisions and lot splits. But these enumerated items do not reflect an intention to limit the definition of what is a "development." To the contrary, "by introducing a list of projects, including 'subdivision,' with the phrase 'including, but not limited to,' the Legislature in Public Resources Code section 30106 has explained that each listed project is a change in the intensity of use for purposes of the act, and by means of the list illustrates various species of changes in land use against which other unspecified projects may be measured so it may be determined whether they, too, require coastal permits. . . . [T]he Legislature intended 'development' to include all listed uses and *all changes in density or intensity of use whether or not the specific use was*

"development" as a "change in the intensity of use of water, or of access thereto." This demonstrates a legislative intent to apply the provisions of the Coastal Act to a wide range of actions impacting coastal areas. The action need only affect a coastal zone in one of the ways identified in the Act – which as applicable here means that it produce a "change in the density or intensity of use of land" or a "change in the intensity of use of water, or of access thereto." (Pub. Resources Code, § 30106.) Those impacts may occur indirectly. (*Surfrider Foundation v. California Coastal Com., supra,* 26 Cal.App.4th at p. 158.)

The City cannot credibly contend that it did not produce a change because it deliberately acted to create a change. Prior to 2015, it was the City's *de facto* policy to allow STVRs in both commercial and residential areas. More than simply tolerating STVRs, the City issued business licenses to owners of STVRs and encouraged them through "amnesty" programs to remit TOT to the City. The City acknowledges that the only time zoning enforcement action was taken against the owner of a STVR was when tenants created a nuisance resulting in a complaint.

The heightened enforcement program was not intended to target specific STVR owners based on a case-by-case evaluation. Rather, it was directed against *all owners* of STVRs. The City's objective was to remove STVRs from areas where they previously had been allowed. Under the new enforcement policy, STVRs were prohibited in all residential areas. And, although STVRs were technically allowed to continue in commercial zones, an owner of an STVRs in a commercial zone was required to submit to a permitting process which even the City acknowledged could be "onerous."[12] (Pet. Req. for Jud. Notice, 9/20/18, Ex. "A," p. 2; also see

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among those listed." (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra,* 55 Cal.4th at p. 795, emphasis added.)

[12] Ironically, the City required as a part of that permitting process that an owner of an STVR in the coastal zone obtain a CDP on the theory that the conversion of a single residential unit to an STVR was a "development." How the conversion of one property to an STVR could be a "development" while converting

AR, p. 1699 ["Due to the complexity of the process, especially for conversion of more than one unit on a lot, staff has developed a brochure describing the steps involved to legally convert one or more residential units into a Vacation Rental"].) To paraphrase one member of the City Council, the City closed the door on vacation rentals. (AR, p. 1824.)

Although the City's purpose was not implemented through an amendment of the City's zoning ordinance or the adoption of a new rule or resolution, it was nevertheless recognized within the City as an official change in policy. (For example, see City Req. for Jud. Notice, Ex. H, pp. 167-68 ["City Council's 2015 *policy direction* regarding Vacation Rental Enforcement and Home Sharing Ordinance (Santa Barbara City Council Minutes of 8/11/2015)" (emphasis added)]; also see generally, AR 1369-78 ["the City Council recently directed staff to address this *policy issue*"] (emphasis added).) It was also recognized by the Coastal Commission, which repeatedly urged the City to regulate STVRs in the coastal zone only through a CDP or a certified amendment to its LCP. (See Hudson Decl., Exs. "B" and "C," and Brooke Decl., p. COSB 512.)

In order for the City's change in enforcement policy to constitute a "development," the new policy must produce a "change in the density or intensity of use of land" or a "change in the intensity of use of water, or of access thereto." The City contends this element is wanting. The court turns to that issue next.

The parties have presented declarations and reports of experts, who, not surprisely, disagree on the impact of the decrease of STVRs in Santa Barbara's coastal areas. Even in the absence of that evidence, it is clear that the availability of STVRs affects the public's use of and access to the coastline.

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scores of properties from STVRs to single occupancy use would not be a "development" is not satisfactorily explained by the City.

In *Greenfield v. Mandalay Shores Community Assn., supra,* 21 Cal.App.5th 896, Division Six of the Second District Court of Appeal determined that a homeowners association's resolution banning STVRs was a "development." It reasoned:

> "Here the STR ban changes the intensity of use and access to single family residences in the Oxnard Coastal Zone. STRs were common in Oxnard Shores before the STR ban; now they are prohibited." (21 Cal.App.5th at p. 901.)

The same may be said here.

The Coastal Commission has clearly expressed the important role STVRs play in promoting the use of and access to coastal areas. As the chair of the Coastal Commission has said, "the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act." (Hudson Decl., Ex. "A," pp. 1-2.) Thus, the Coastal Commission has concluded that, "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." (Hudson Decl., Ex. "A," p. 1.)

These conclusions are in line with common sense. The availability of STVRs in coastal zones not only increases the supply of over-night short-term lodging, but it provides an opportunity for families that hotels and motels cannot provide. That is, some families may find that the opportunity to stay in a house – with a kitchen and all other amenities – to be more desirable and economical.

The City does not dispute that before its "enhanced" enforcement policy went into effect STVRs were "prevalent in the coastal zone" whereas now they are "fewer." (City Rebuttal Brief, p. 2.) In 2016, the City assessed the effectiveness of the new enforcement policy this way:

"At the time of Council's direction in June 2015, there were three hundred and forty-nine (349) registered STRs. As of September 23, 2016, there [were] two hundred and fifteen (215) registered STRs, representing a total decline of one hundred and thirty four (134)." (Pet Req. for Jud. Notice, Ex. O, p. 5.)

However, as of that time, the City was still allowing STVR owners with a business license and a history of remitting the TOT to continue operations. (Pet Req. for Jud. Notice, Ex. O, p. 5.) That practice was followed through at least the end of 2016. (*Ibid.*) As of that time, the City Attorney was still prosecuting 1,000 open STVR cases. (Pet. Req. for Jud. Notice, Ex. "O," p. 2.) Presumably, the numbers of STVRs in Santa Barbara's coastal communities are *much fewer* now. Therefore, it is not difficult to conclude that the City Council's stated goal of prohibiting all but a small number of STVRs was realized.

The City collected $1.2 million in TOT from owners of STVRs in fiscal year 2015. This represented about seven percent of the total TOT collected, $18 million. (See Schneipp Dec., Ex. "A," p. 11.) Staff to the City Council predicted that the TOT from STVRs would be lost under the new enforcement policy. The TOT was calculated at the rate of 12 percent of receipts. Simple math indicates that $10 million was spent in Santa Barbara on STVR lodging citywide in that fiscal year. At $500 per night (see Schneipp Dec., Ex. "C," p. 4), this would represent 20,000 unit-nights of STVR lodging lost citywide in one year, of which a significant portion likely came from the coastal zone. It is a reasonable inference, not contradicted by the evidence, that the residences no longer available for short-term rental will span the spectrum from modest, low cost homes to expensive, luxury properties. The court finds that the unavailability of these properties has produced a "change in the density or intensity of use of land" or a "change in the intensity of use of water, or of access thereto."

For these reasons, the court finds that Petitioner has proved a "development."

(ii) Is Petitioner Entitled to a Writ of Mandate Pursuant to Code of Civil Procedure Section 1085?

The City contends that Petitioner is not entitled to relief under Code of Civil Procedure section 1085 because he has not pointed "to any statute or ordinance which 'clearly defines' a specific duty on the part of the City Council to apply for a CDP before it decided to fund enhanced enforcement of the City's zoning ordinance." (Opposition, p. 16.) It asserts that the City Attorney's decision to prosecute is solely within his discretion, and, consequently, there can be no mandatory duty.

Ordinarily, a writ of traditional mandate will only lie to compel performance of a mandatory or ministerial duty, or to prevent an abuse of discretion. (See, e.g., *Common Cause v. Board of Supervisors, supra,* 49 Cal.3d 432, 442.) "Whether [a statute] impose[s] a ministerial duty, for which mandamus will lie, or a mere obligation to perform a discretionary function is a question of statutory interpretation." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 701.)

Petitioner contends the Coastal Act and the SBMC imposed on the City "a clear legal duty to submit an application for a CDP to the Planning Commission or the Staff Hearing Officer in order to obtain approval of the STVR ban." (See First Amended Petition, ¶¶ 39, 40.) The court agrees.

Subdivision (a) of Public Resources Code section 30600 provides:

> "Except as [not relevant here], and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit."

Under Public Resources Code section 21066, the definition of " 'person' includes any . . . city . . .."

After an LCP has been certified by the Coastal Commission, a person (city) shall obtain a CDP from local government. (Pub. Resources Code, § 30600, subd. (d).)

The City's municipal code is consistent with these provisions of the Coastal Act. SBMC section 28.44.030 provides: "Any person (including *the City*, any federal, state or local government, or special district or any agency thereof) wishing to perform or undertake any development within the Coastal Overlay Zone *shall comply* with the provisions of this Chapter 28.44...." (Emphasis added.)

The provisions of Chapter 28.44 of the municipal code include a requirement that the "person" (including the City) wanting to undertake a "development" must first apply for a CDP. (See SBMC §28.44.050(A).)[13]

The definition of "development" stated in SBMC section 28.44.030(H) is identical to the definition of "development" in Public Resources Code section 30106. It follows that, because the City's policy directive prohibiting and restricting STVRs in the coastal zone is a "development" for purposes of the Coastal Act, it is also a "development" for the purposes of SBMC Chapter 28.44.

[13] "APPLICATION. Except for development involving emergency work subject to the provisions of Section 28.44.100, an application for a coastal development permit shall be submitted prior to the commencement of any development within the Coastal Zone."

This language of the Coastal Act and the City's municipal code establishes a mandatory duty to obtain a CDP before undertaking a "development." The requirement to obtain a CDP before undertaking a "development" was not within the City's discretion.[14]

For these reasons, the court finds that Petitioner is entitled to a writ of mandate.

2. *Third Cause of Action for Declaratory Relief*

Petitioner's third cause of action seeks a judicial declaration that the City's actions affecting STVR owners "constitute[s] a violation of the Coastal Act and the Santa Barbara Municipal Code [by] conducting a 'development' in the Coastal Zone without obtaining a Coastal Development Permit and/or amending and obtaining certification of its Local Coastal Program." (First Amended Petition, ¶ 51.) The City contends that Petitioner has not shown an entitlement to declaratory relief.

Petitioner's claim is based on Public Resources Code section 30803, which provides: "(a) Any person may maintain an action for declaratory and equitable relief to restrain any violation of [the Coastal Act] . . ."

The City asks the court to decline to grant relief on two grounds. First, the City argues that Petitioner's request is moot because the City is presently engage in drafting STVR regulations with the Coastal Commission. Second, the City contends that Petitioner is asking the court to decide a "political question," which it should decline to do.

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[14] The fact that the City Attorney may have discretion to prosecute (or not) a given case does not render the City's failure to comply with the Coastal Act and its municipal code "discretionary." As the City has noted, although the City Attorney has "case-by-case" discretion to prosecute, the City Council has the authority to set policy. (AR, p. 1700.) And that's what it did; it established a citywide policy that affected all owners of STVRs, not just petitioner.

As to the first contention, it is true that the City would not require a CDP to regulate STVRs if those regulations were set forth in an LCP certified by the Coastal Commission. [15] The City asks the court to defer any relief to Petitioner on the theory that the City is working productively with the Coastal Commission to develop STVR regulations that the commissioner may certify. It states that it has submitted a proposed amendment to its LCP to the Coastal Commission, which is now reviewing it. (Brooke Decl., ¶ 9.)

The Coastal Commission has not, as of this time, certified the LCP amendment. If it does, the issue before this court may become moot. But until the City is authorized to regulate STVRs in the coastal zone through a CDP or a certified amendment to its LCP, it does not act in conformance with the Coastal Act when it regulates STVRs in a manner as to nearly eliminate them from the coastal zone. Petitioner has demonstrated an immediate harm from the City's failure to comply with the Act, and, therefore, he is entitled to immediate relief. (See Pub. Resources Code, § 30803.)

As for the City's second contention -- that the court should decline to rule on the merits under the Political Question Doctrine -- the court is unpersuaded.

The Court of Appeals in *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1213-14, stated:

> "In its broad sense the political question concept is an almost constant restraint on the manner in which the courts perform the judicial function. It is the policy

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[15] The City does not persuasively contend that its regulation of STVRs is authorized under its existing LCP. The City's zoning ordinance is part of its LCP, which was certified by the Coastal Commission in 1981. By treating STVRs as hotels, the City has given its zoning ordinance a meaning that no party contends was contemplated at the time the LCP was certified. The Coastal Commission "disagrees" with the City's interpretation of the "hotel" definition to include STVRs. Thus, the court does not view the City's regulation of STVRs as "hotels" -- regulations which were never certified by the Coastal Commission as applicable to STVRs and are at odds with the commission's interpretation of its certified LCP (see *Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 849 [Coastal Commission's interpretation of LCP is entitled to deference]) -- as in conformance with the Coastal Act.

behind such frequently identified and applied judicial standards as: the primacy of legislative intent in statutory interpretation [citation]; the presumption of constitutionality that is accorded legislation [citation]; the refusal to judge the wisdom of legislation [citation] or the motives of the legislators [citation]; and the refusal to employ judicial remedies to compel the exercise of discretion in a particular manner [citation]. Although seldom specifically attributed to the political question issue, these and other rules for judicial decisionmaking have the same basis as the political question rule in its narrow sense, that is, the deference the courts must give other branches of government operating within their spheres of authority.

"In its narrow sense the political question rule relates to the dismissal of lawsuits without reaching the merits of the dispute. The rule compels dismissal of a lawsuit when complete deference to the role of the legislative or executive branch is required and there is nothing upon which a court can adjudicate without impermissibly intruding upon the authority of another branch of government."

The Political Question Doctrine is premised on deference to the legislative and executive branches, but it is a proper judicial function reserved to the courts to "resolve cases and controversies before them and, in the process, interpret and apply the laws." (*Schabarum v. California Legislature, supra,* 60 Cal.App.4th at p. 1213.)

Here, it is for the City and the Coastal Commission to determine whether, and to what extent, STVRs should be allowed in Santa Barbara's coastal zone. Indeed, the Court'of Appeal in *Greenfield* noted precisely this: "The decision to ban or regulate STRs must be made by the City and Coastal Commission . . .." (21 Cal.App.5th at pp. 901-02.) As to what that policy should be, this court expresses no opinion, and none should be inferred from its ruling. It is, however, a proper judicial function to compel compliance with governmental decision-making

procedures required by law without passing on the merits of what the ultimate decision should be. This court has done no more.

3. *To What Relief is Petitioner Entitled?*

Although the court agrees with Petitioner that some relief is warranted here, the court does not embrace the breadth of the relief Petitioner has requested. The crux of Petitioner's case is that the City was required to comply with the permitting provisions of the Coastal Act and SBMC before it implemented a blanket policy removing large numbers of STVRs from coastal areas. He does not otherwise challenge the City's exercise of its police powers or as it existed before the heightened enforcement policy was adopted. Petitioner is only entitled to be returned to the position he was in before the enforcement policy went into effect. And, before the policy directive was established, the City required business licenses and TOT from STVR owners, and only prosecuted the zoning ordinance against owners of STVRs when prompted by a citizen's complaint.

It is also important to note that the City may comply with the Coastal Act in more ways than obtaining a CDP. As indicated above, it may obtain certification of an amendment to its LCP. In addition, the City may apply to the Executive Director of the Coastal Commission for a waiver. (See Pub. Resources Code, §§ 30108.6, 30610; also see *Surfrider Foundation v. Martins Beach 1, LLC, supra,* 14 Cal.App.5th at p. 254.) This ruling should not be read as preventing the City from obtaining authorization for its "development" by any means allowed by the Coastal Act.

Therefore, the court finds and orders:

(a) On Petitioner's third cause of action, he is entitled to a judicial declaration that the City's directive implementing a new enforcement policy concerning short-term vacation rentals, as evidenced in the Santa Barbara City Council Minutes of August

11, 2015, was a "development" within the meaning of Public Resources Code section 30106 and Title 28 of the Santa Barbara Municipal Code.

(b) On Petitioner's first cause of action, a writ shall issue commanding the City of Santa Barbara to allow short-term vacation rentals in the coastal zone on the same basis as the City had allowed them to operate prior to June 23, 2015, until such time as the City obtains a coastal development permit or otherwise complies with the provisions of the Coastal Act of 1976, including Public Resources Code section 30600, and Title 28 of the Santa Barbara Municipal Code. (Alternative compliance may consist of obtaining a certification by the commission of an amended land use plan in the manner provided for in the Coastal Act or a waiver from the Executive Director of the California Coastal Commission.)

Conclusion

The court finds that Petitioner has prevailed on his first and third causes of action. The judgment in this matter shall include the relief awarded to Petitioner, as set forth above.

The court has set a status conference and trial setting conference to discuss the disposition of the remaining causes of action on March 18, 2019, at 8:30 a.m. in Department 40.

The clerk is directed to mail to the parties copies of this statement of decision.

Date: March 8, 2019

Mark S. Borrell
Judge of the Superior Court

PROOF OF SERVICE
CCP § 1012, 1013a (1), (3) & (4)

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

Case Number: 56-2016-00490376-CU-WM-VTA **Case Title: Theodore P. Kracke v. City of Santa Barbara**

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the **March 8, 2019**, I served the within:

STATEMENT OF DECISION

on the following named party(ies)

Ariel P. Calonne
Tom R. Shapiro
John S. Doimas
Robin Lewis
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Santa Barbara, CA 93102

Travis C. Logue
Jason W. Wansor
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☐ **BY PERSONAL SERVICE**: I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on _____at _____ a.m./p.m.

☒ **BY MAIL**: I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

☐ **BY FACSIMILE**: I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above at _____ a.m,/p.m. from telephone number **(805) 477-5893**

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on **March 8, 2019,** at Ventura, California.

MICHAEL D. PLANET, Superior Court,
Executive Officer and Clerk

By: _____
Denise Arreola, Judicial Secretary