
NOTE

Airbnbs & Coastal Access: Can the California Coastal Commission Reject Local Ordinances That Ban Short-Term Rentals?

Veronika Morrison*

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INTRODUCTION

California resolved to ensure public access to the coast with the passage of Proposition 20 in 1972¹ and the California Coastal Act (“CCA”) in 1976.² However, the protections of this legislation are currently under threat.³ As the short-term rental service Airbnb⁴ has gained traction and popularity in coastal cities, local governments have grappled with how to regulate short-term rentals.⁵ Many cities have passed ordinances banning or placing caps on the number of Airbnb short-term rentals that are permitted, thus interfering with public coastal access.⁶ Controversially, the California Coastal Commission (the “Commission”) has asserted its authority over such ordinances under the theory that they constitute “development” in the coastal zone and are therefore subject to the requirements of the CCA.⁷ The

¹ CAL. PUB. RES. CODE §§ 27000-27650 (1972) (repealed 1977); see David Helvarg, *The Savior of California’s Coast*, L.A. TIMES (Apr. 8, 2012, 12:00 AM), <https://www.latimes.com/opinion/la-xpm-2012-apr-08-la-oe-helvarg-douglas-coastal-commission-20120408-story.html> [https://perma.cc/4PZK-ZBQK].

² See JORDAN DIAMOND ET AL., *THE PAST, PRESENT, AND FUTURE OF CALIFORNIA’S COASTAL ACT: OVERCOMING DIVISION TO COMPREHENSIVELY MANAGE THE COAST* 9 (2017), <https://www.law.berkeley.edu/wp-content/uploads/2017/08/Coastal-Act-Issue-Brief.pdf> [https://perma.cc/778K-KL3A].

³ See PUB. RES. § 30001(a).

⁴ Airbnb is an online platform that allows property owners to rent their housing units, typically for short time periods. See generally *About Us*, AIRBNB, <https://news.airbnb.com/en-in/about-us/> (last visited Nov. 16, 2019) [https://perma.cc/YR9K-UBY6]. It is self-described as “[a]n economic empowerment engine,” which has “helped millions of hospitality entrepreneurs monetize their spaces” *Id.* This Note will use “Airbnbs” as shorthand for short-term rental units.

⁵ See Megan Barber, *Airbnb vs. The City: How Short-Term Rentals Are Changing Urban Neighborhoods*, CURBED (Nov. 10, 2016, 10:00 AM), <https://www.curbed.com/2016/11/10/13582982/airbnb-laws-us-cities> [https://perma.cc/9X35-LKKN].

⁶ E.g., Jondi Gumz, *Santa Cruz Vacation Rental Limits OK’d by Coastal Commission*, SANTA CRUZ SENTINEL (Apr. 11, 2018, 12:00 AM), <http://www.santacruzsentinel.com/business/20180411/santa-cruz-vacation-rental-limits-okd-by-coastal-commission/> [https://perma.cc/D4AL-N2HB] [hereinafter *Santa Cruz Vacation Rental Limits OK’d*] (describing Santa Cruz’s attempt to put restrictions on short-term rentals); Joe Tash, *Del Mar to Fight for Its Short-Term Rental Ordinance before Coastal Commission*, DEL MAR TIMES (June 6, 2018, 5:05 AM), <http://www.delmartimes.net/news/sd-cm-nc-delmar-rentals-20180606-story.html> [https://perma.cc/3E58-XTLW] (describing Del Mar’s proposal to place statutory caps on short-term rentals); Heather Weiermann, *California Coastal Commission Rejects Laguna Beach’s Short-Term Rental Ban*, VRM INTEL (Dec. 22, 2017), <http://www.vrmintel.com/california-coastal-commission-rejects-laguna-beachs-short-term-rental-ban/> [https://perma.cc/CRZ5-YV3X] (describing Laguna Beach’s short-term rental ban and restrictions).

⁷ Letter from Steve Kinsey, Chair, Cal. Coastal Comm’n, to Coastal Planning/Cmty. Dev. Dirs. (Dec. 6, 2016), https://documents.coastal.ca.gov/assets/la/Short_Term_

Commission has consistently struck down these ordinances under the provision of the CCA that requires the protection of affordable access to the California coast.⁸ However, it has not provided clear, definitive rationales for its decisions. This lack of clarity has left cities, residents, and Airbnb without an established legal framework for determining what they can and cannot do with regard to short-term rentals in the coastal zone.⁹

Part I of this Note provides background information that frames this issue within the context of the CCA, recent litigation, and coastal land use issues.¹⁰ Part II contends that the California Second District Court of Appeal correctly categorized city ordinances that restrict short-term rentals as “development” for the purpose of Commission discretion under the CCA.¹¹ Additionally, Part II discusses the scope of the Commission’s authority over these ordinances, assuming they constitute “development.”¹² Part II also argues that policy considerations weigh in favor of allowing Commission discretion in this area.¹³ Finally, Part III argues that the Commission should clarify its criteria for review of short-term rental ordinances by either formally publishing its decisions or adopting a policy letter.¹⁴

Vacation_Rental_to_Coastal_Planning_&_Devt_Directors_120616.pdf [https://perma.cc/TY3U-NFC5]; see CAL. COASTAL COMM’N, COMMISSION LCP ACTIONS ON SHORT-TERM RENTALS (THROUGH MAY 2019) (2019), <https://documents.coastal.ca.gov/assets/la/Commission-STR-LCP-Actions-Table-May-20-2019.pdf> [https://perma.cc/X957-XYJL] [hereinafter COMMISSION LCP ACTIONS ON STRS]; Bona Law PC, *How the California Coastal Commission Regulates Vacation Rentals*, TITLES & DEEDS (June 23, 2018), <https://www.titlesanddeeds.com/how-the-california-coastal-commission-regulates-vacation-rentals/> [https://perma.cc/ASJ6-T443].

⁸ E.g., Tash, *supra* note 6 (describing an instance where the Commission recommended changes to a local short-term rental ordinance before approving it); Weiermann, *supra* note 6 (describing an instance when the Coastal Commission rejected a local ban on short-term rentals); see CAL. COASTAL COMM’N, COMMISSION LCP ACTIONS ON STRS, *supra* note 7.

⁹ See Rachel Keyser, *A Guide to Smart AirBnB Regulation for Local Governments*, VIEWPOINT (Nov. 24, 2018), <http://www.viewpointcloud.com/blog/local-government-resources/airbnb-regulation-guide/> [https://perma.cc/HZ4H-F86S] (explaining that regulating Airbnbs is a “delicate issue that involves balancing the interests and well-being of diverse stakeholders” and providing an extensive list of the information that a city would need to analyze to have the best chance at successfully establishing a regulation over short-term rentals).

¹⁰ See *infra* Part I.

¹¹ See *infra* Part II.A.

¹² See *infra* Part II.B.

¹³ See *infra* Part II.C.

¹⁴ See *infra* Part III.

I. LEGAL AND POLITICAL CONTEXT

Airbnb's services are growing in popularity and short-term rentals have become more prevalent.¹⁵ Airbnb had 50,000 listings in 2011, two million listings by 2016,¹⁶ and currently has over seven million listings in more than 100,000 cities and 220 countries.¹⁷ Some coastal city residents have voiced concerns that these short-term rentals operate like mini-hotels and contribute to litter, loud parties, and parking shortages.¹⁸ These residents do not want to see their neighborhoods turned into de facto hotel communities¹⁹ or have the housing prices in their neighborhoods negatively affected by these short-term rentals.²⁰ There is also a fear that long-term renters could be pushed out of their homes by landlords seeking the higher profits of short-term rentals.²¹ On the other hand, some long-term renters depend on income from renting out their spare rooms on Airbnb to afford to live in areas where already high costs of living continue to grow disproportionately to salaries.²²

¹⁵ Compare Barber, *supra* note 5 (reporting 50,000 Airbnbs in 2011 and two million in 2016), with AIRBNB, *supra* note 4 (reporting over seven million Airbnbs in 2019).

¹⁶ See Barber, *supra* note 5.

¹⁷ *Airbnb Newsroom*, AIRBNB, <https://news.airbnb.com/fast-facts/> (last visited Jan. 30, 2020) [<https://perma.cc/W45E-5TXW>].

¹⁸ Tash, *supra* note 6.

¹⁹ See Barbara Bry, Opinion, *Commentary: Why San Diego Needs Limits on Vacation Rentals*, SAN DIEGO UNION-TRIB. (July 6, 2018, 4:15 PM), <http://www.sandiegouniontribune.com/opinion/commentary/sd-utbg-vacation-rentals-bry-sandiego-20180706-story.html> [<https://perma.cc/7B2E-MNU8>]; Sarah Maslin Nir, *Airbnb Backlash: Island Oasis Dreads Becoming Hamptons Hotbed*, N.Y. TIMES (Apr. 29, 2019), <https://www.nytimes.com/2019/04/29/nyregion/shelter-island-airbnb-rentals-law.html?searchResultPosition=5> [<https://perma.cc/7J2B-LJ95>].

²⁰ See SUSAN CRAIG & SARAH CARVILL, CAL. COASTAL COMM'N, CITY OF SANTA CRUZ LCP AMENDMENT NUMBER LCP 3-STC-17-0073-2-PART B (SHORT TERM RENTALS): SUMMARY OF STAFF RECOMMENDATION 2 (Mar. 23, 2018), <https://documents.coastal.ca.gov/reports/2018/4/w20a/w20a-4-2018-report.pdf> [<https://perma.cc/MUB6-TCME>] [hereinafter SANTA CRUZ STAFF RECOMMENDATION].

²¹ See, e.g., Emily Alpert Reyes, *Are Airbnb-Type Rentals a Boon Or a Threat for Tenants Under Rent Control?*, L.A. TIMES (Oct. 7, 2018, 5:00 AM), <http://www.latimes.com/local/lanow/la-me-ln-rent-stabilized-20181007-story.html> [<https://perma.cc/NRM9-264F>] (highlighting the experience of a seventy-five-year-old Hollywood resident whose landlord sought to terminate her subsidized Section 8 lease in an apparent attempt to make way for short-term renters).

²² See, e.g., *id.* (describing a seventy-six-year-old Del Rey renter who depends on income from Airbnb to supplement his other work and make ends meet).

Cities have responded to citizen complaints regarding Airbnbs by enacting caps or bans on short-term rentals.²³ For example, Laguna Beach passed an ordinance in 2016 that permanently banned rentals for thirty days or less in residentially zoned neighborhoods.²⁴ Additionally, Del Mar passed an ordinance restricting short-term rentals in residentially zoned areas to a minimum period of seven days, with a maximum of twenty-eight rental days each year.²⁵ These short-term rentals are typically subject to different regulations according to whether the property owner is present or absent (referred to as hosted and non-hosted, respectively).²⁶ For example, Santa Cruz implemented a cap of 250 hosted short-term rentals and an outright ban of non-hosted rentals.²⁷

A. *Logistics and Relevance of the California Coastal Act*

The California state legislature enacted the California Coastal Act of 1976, recognizing that the state's coast is a "distinct and valuable natural resource of vital and enduring interest to *all* of the people and exists as a delicately balanced ecosystem."²⁸ The CCA requires that cities and counties obtain approval from the Commission for any changes made

²³ See, e.g., Gumz, *Santa Cruz Vacation Rental Limits OK'd*, *supra* note 6 (discussing how the City of Santa Cruz passed "[n]ew rules to cap hosted rentals at 250 and phase out non-hosted rentals for vacationers . . . in response to the housing crisis"); Tash, *supra* note 6 (stating that the City of Del Mar proposed an ordinance that "restricts short-term vacation rentals in residential neighborhoods to a minimum period of seven days, for a maximum of 28 rental days per year"); Weiermann, *supra* note 6 (stating that the City of Laguna Beach proposed an ordinance "that effectively banned short-term vacation rentals in residential areas").

²⁴ See Weiermann, *supra* note 6.

²⁵ Tash, *supra* note 6.

²⁶ See Santa Cruz, Cal., *Ordinance of the City of Santa Cruz Amending Chapter 24.12 of the City of Santa Cruz Municipal Code and the Local Coastal Program by Adding Part 18: Residential Short-Term Rentals* (Oct. 24, 2017), <http://www.cityofsantacruz.com/home/showdocument?id=64619> [<https://perma.cc/FVY7-8NYP>].

²⁷ See Gumz, *Santa Cruz Vacation Rental Limits OK'd*, *supra* note 6.

²⁸ CAL. PUB. RES. CODE § 30001(a) (1972) (emphasis added).

to their Local Coastal Programs (“LCPs”)²⁹ or any developments within the coastal zone.³⁰ The coastal zone is defined as:

[T]hat 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. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards.³¹

The Commission reviews these local actions pursuant to the CCA.³² One of the main goals of the CCA is to maximize affordable public access to the coast, while limiting development.³³ It follows that the Commission, which is tasked with enforcing the CCA,³⁴ should encourage the utilization of existing structures near the coast, such as Airbnbs, to meet this goal of increasing affordable overnight accommodations and avoiding new development in the coastal zone.³⁵ City ordinances that restrict short-term rentals conflict with the purpose of the CCA because they reduce the availability of affordable

²⁹ *Id.* § 30512. Local Coastal Programs are planning tools used by local governments to comply with the Coastal Act and must “contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided.” *Id.* §§ 30500, 30108.6; *Local Coastal Programs*, CAL. COASTAL COMM’N, <https://www.coastal.ca.gov/lcps.html> (last visited Nov. 11, 2019) [<https://perma.cc/XN4V-P28W>].

³⁰ PUB. RES. § 30600. *See generally id.* § 30103(a) (explaining that the coastal zone includes the entire length of California and extends from the land — “generally 1,000 yards from the mean high tide line of sea” — to the outer limit of the state’s jurisdiction of the ocean).

³¹ *Id.* § 30103(a). *See generally Maps & Jurisdictions*, CAL. COASTAL COMM’N, <https://www.coastal.ca.gov/maps/> (last visited Jan. 2, 2019) [<https://perma.cc/VB2W-FHLK>] (maps of the coastal zone in different regions of the state).

³² *See* PUB. RES. § 30512.2 (specifying that the commission’s review of LCPs involves a determination of whether it conforms to the requirements of Chapter 3 of the Coastal Act).

³³ *Id.* § 30001.5.

³⁴ *Id.* § 30330.

³⁵ *See id.* § 30001.5.

alternatives to hotels in these typically expensive coastal areas, and thus directly limit affordable public access to the coast.³⁶

B. Coastal Commission Review

The Commission reviews these ordinances on a case-by-case basis and seems reluctant to implement a standardized approach.³⁷ Its decisions tend to vary in part due to the structure of the Commission, which provides for relatively frequent Commissioner turnover.³⁸ The Governor, the Senate Rules Committee, and the Assembly Speaker each appoint four of the twelve Commission voting members.³⁹ Half of these appointments are members of the general public and the other half are local elected officials.⁴⁰ The Governor appointees serve at the pleasure of the Governor, while the Senate Rules Committee and Assembly Speaker appointees serve four-year terms.⁴¹

In Laguna Beach, the Commission rejected the city's Airbnb ban because it considered the ban to be economically discriminatory and did not want to allow a "blanket ban."⁴² While some of the city's rules regulating short-term rentals were approved, such as an emergency contact requirement and limits on the number of overnight guests,

³⁶ See Letter from Steve Kinsey, *supra* note 7, at 1-2; Jon Christensen & Philip King, *Access for All: A New Generation's Challenges on the California Coast*, UCLA INST. ENV'T & SUSTAINABILITY, <https://www.ioes.ucla.edu/coastal-access/> (last visited Dec. 26, 2019) [<https://perma.cc/A22L-4NUC>] (discussing a UCLA study demonstrating that three out of four people statewide reported that a lack of affordable overnight housing is one of the main barriers to their access to the coast).

³⁷ See, e.g., Lori Weisberg, *How Will San Diego Fend Off Coastal Commission, Legal Challenges to Airbnb Rules?*, SAN DIEGO UNION-TRIB. (July 21, 2018, 5:00 AM), <http://www.sandiegouniontribune.com/business/tourism/sd-fi-airbnb-cities-regulations-20180721-story.html> [<https://perma.cc/S9D2-4X4E>] (quoting a Coastal Commission staff member: "There's a concern that we have very limited affordable accommodations for the broader public in our coastal zone so we're looking at each community on its own characteristics and merits," said Lee. "If a community has an abundance of hotel rooms and a good number are affordable, then there may not be that big of an issue but unfortunately, in much of the coastal zone there isn't much of an inventory of affordable lodging").

³⁸ See CAL. COASTAL COMM'N, YEAR IN REVIEW 2018, at 37 (2019), <https://documents.coastal.ca.gov/assets/press-releases/year-in-review/2018-Year-in-Review.pdf> [<https://perma.cc/DX3Y-WMNR>].

³⁹ *Our Mission: Protecting & Enhancing California's Coast*, CAL. COASTAL COMM'N, <https://www.coastal.ca.gov/whoweare.html> (last visited Jan. 2, 2019) [<https://perma.cc/AYZ7-H4SH>].

⁴⁰ See *id.*

⁴¹ See *Commissioners & Alternates*, CAL. COASTAL COMM'N, <https://www.coastal.ca.gov/roster.html> (last visited Nov. 27, 2018) [<https://perma.cc/4QM5-TT6Q>].

⁴² Weiermann, *supra* note 6.

short-term rentals are still allowed in the city with a permit.⁴³ Del Mar's ordinance banning short-term rentals was likewise rejected by the Commission.⁴⁴ The Commission recommended that the city change its restriction to allow for a minimum rental period of three days with a maximum of 180 days per year (as opposed to the seven day minimum, twenty-eight day maximum per year restriction initially passed by the city).⁴⁵ In reaching its decision, the Commission pointed to the lack of hotels in the city as evidence that Del Mar already has very few options for overnight stays (Del Mar has only six hotels with a total of 355 rooms),⁴⁶ which means that banning Airbnbs would have a particularly adverse impact on affordable public access to the coast in this area.⁴⁷ In response, Del Mar voted to challenge the Commission's authority over home-sharing in residential neighborhoods, arguing that the Commission can only alter the city's ordinance to make it comply with the Land Use Plan.⁴⁸

The Commission's approval of a short-term rental ban in the City of Santa Cruz provides one exception to its general tendency to reject such ordinances.⁴⁹ The Commission approved the city's short-term rental ban, which capped hosted short-term rentals at 250 units and completely banned non-hosted short-term rentals.⁵⁰ This deviation from the trend is attributable to the extreme housing crisis in Santa

⁴³ *Id.*

⁴⁴ Phil Diehl, *Coastal Commission Tells Del Mar to Expand Short-Term Rentals*, SAN DIEGO TRIB. (June 17, 2018, 6:00 AM), <https://www.sandiegouniontribune.com/communities/north-county/sd-no-short-rentals-20180614-story.html> [https://perma.cc/WY5A-NWHX]; see Tash, *supra* note 6.

⁴⁵ *Id.*

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ City of Del Mar's Petition for Writ of Mandate Against the California Coastal Commission at 5-6, *City of Del Mar v. Cal. Coastal Comm'n*, No. 37-2018-00039254-CU-WM-CTL (Cal. Super. Ct. Aug. 6, 2018); Phil Diehl, *Del Mar Takes State to Court Over Short-Term Rentals*, SAN DIEGO UNION-TRIB. (July 19, 2018, 3:00 PM), <http://www.sandiegouniontribune.com/communities/north-county/sd-no-delmar-court-20180719-story.html> [https://perma.cc/G8QK-RBSS] [hereinafter *Del Mar Takes State to Court*]; Bianca Kaplanek, *Del Mar Rejects Coastal Commission Ideas, Orders Writ to Let Courts Decide*, COAST NEWS GROUP (July 25, 2018), <https://www.thecoastnews.com/del-mar-rejects-coastal-commission-ideas-orders-writ-to-let-courts-decide/> [https://perma.cc/9VKU-C6MB]. A city's land use plan "means the relevant portions of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions." CAL. PUB. RES. CODE § 30108.5 (2019).

⁴⁹ *See* Gumz, *Santa Cruz Vacation Rental Limits OK'd*, *supra* note 6.

⁵⁰ *See id.*

Cruz,⁵¹ which continues to worsen.⁵² The Commission has indicated that it is more likely to allow an exception where there is “clear evidence that [short-term rentals] are causing specific (usually geographic) impacts that cannot be mitigated using more nuanced and targeted tools”⁵³ The housing shortage in Santa Cruz appears to have satisfied this “specific geographic impact” exception,⁵⁴ as the Commissioners repeatedly cited the city’s lack of housing — and little else — in the hearing that culminated in the approval of the ban.⁵⁵

However, this “specific geographic impact” exception is too vague to provide reliable guidance for other cities seeking to pass ordinances that restrict or ban Airbnbs.⁵⁶ The Commission has acknowledged that some situations may call for the allowance of short-term rental restrictions, but has encouraged the use of targeted regulations to address specific problems, such as parking, noise, overcrowding, and trash disposal,

⁵¹ The vacancy rate in Santa Cruz was 1.59% in 2016, when the Commission approved the city’s short-term rental ban. *Santa Cruz California Residential Rent and Rental Statistics*, DEP’T NUMBERS, <https://www.deptofnumbers.com/rent/california/santa-cruz/#f-3> (last visited Nov. 16, 2019) [<https://perma.cc/SWA7-TQRJ>]. This is well below the 5% rental vacancy rate which is considered healthy to allow for “reasonable mobility within [a] community.” SANTA CRUZ CTY. BD. OF SUPERVISORS, 2015 SANTA CRUZ COUNTY HOUSING ELEMENT (DRAFT) 4-18 (2016), <http://www.sccoplanning.com/Portals/2/County/Planning/housing/2015%20Housing%20Element.pdf>. [<https://perma.cc/4PGK-L925>]. It is also below the statewide rate, and well below the nationwide rate. *Santa Cruz California Residential Rent and Rental Statistics*, *supra* note 48. Additionally, the actual conditions of rental units are largely unsatisfactory and even uninhabitable in some cases. See, e.g., Chris Krohn, Opinion, *Santa Cruz Housing Crisis is for Real*, SANTA CRUZ SENTINEL (Sept. 11, 2018, 12:00 AM), <https://www.santacruzsentinel.com/2016/07/15/chris-krohn-santa-cruz-housing-crisis-is-for-real/> [<https://perma.cc/LK5Q-B7ZW>] (recounting an anecdote of a UC Santa Cruz student struggling to find housing with acceptable living conditions); Gillian McFerren, *Students and Housing: Not So Simple*, CITY HILL PRESS (Mar. 14, 2019), <https://www.cityonahillpress.com/2019/03/14/students-and-housing-not-so-simple/> [<https://perma.cc/HJL9-EQPK>] (describing a UC Santa Cruz graduate student’s issues with her rental unit, including constant plumbing issues, lack of electricity and heat, and safety hazards). This issue will likely only continue to worsen, as the UC Santa Cruz student population continues to grow and more students are forced to seek off-campus housing. See Jessica A. York & Nicholas Ibarra, *Newsmakers 2018: UC Santa Cruz Growth Plans Renewed “Town-Gown” Tensions*, SANTA CRUZ SENTINEL (Dec. 26, 2018, 4:00 PM), <https://www.santacruzsentinel.com/2018/12/26/newsmakers-2018-uc-santa-cruz-growth-plans-renewed-town-gown-tensions/> [<https://perma.cc/C7SW-GEHY>].

⁵² See Gumz, *Santa Cruz Vacation Rental Limits OK’d*, *supra* note 6.

⁵³ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 17.

⁵⁴ See Gumz, *Santa Cruz Vacation Rental Limits OK’d*, *supra* note 6.

⁵⁵ See *id.*

⁵⁶ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 17.

instead of sweeping short-term rental bans.⁵⁷ This position contradicts the Commission's ultimate decision to approve the Santa Cruz ban because of the city's overcrowding issue.⁵⁸

Critics of the ban in Santa Cruz have argued that there are other ways to address the city's overcrowding issue and that short-term rentals are not a major cause of the housing crisis.⁵⁹ The existence of potential alternatives, such as time, place, and manner restrictions, indicates that that the Commission should have required the city to implement "more nuanced and targeted tools"⁶⁰ instead of approving an outright ban.⁶¹ However, the Commission did little to explain why these alternatives — that its staff adamantly encouraged — were not appropriate in this case.⁶² As a result, it is nearly impossible for local governments to determine whether their geographically specific issues rise to a level sufficient to win Commission approval.⁶³ Moreover, cities and counties may not even be able to rely on Coastal Commission staff recommendations for guidance, as the Commission does not always adhere to these recommendations.⁶⁴ Finally, Commissioners change over time, which may further convolute the predictability of the Commission's decision on a given issue.⁶⁵ Thus, local governments have no practical way to determine how they can restrict Airbnbs to address similar overcrowding issues.⁶⁶ This situation has frustrated interested

⁵⁷ See *id.* at 15.

⁵⁸ See Gumz, *Santa Cruz Vacation Rental Limits OK'd*, *supra* note 6.

⁵⁹ See *id.*

⁶⁰ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 17.

⁶¹ See *id.* at 15.

⁶² See *id.* at 23-24 (discussing the Commission's staff recommendation that short-term rentals in Santa Cruz be regulated "in a more nuanced manner" than an outright ban); Gumz, *Santa Cruz Vacation Rental Limits OK'd*, *supra* note 6 (discussing how the Commissioners who disregarded staff and voted in favor of the ban merely emphasized the unique housing impact from the UC Santa Cruz campus and did not squarely address why alternatives were not sufficient here).

⁶³ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 23-24.

⁶⁴ See, e.g., *id.* at 3 (advising against the approval of Santa Cruz's combination cap and ban ordinance that was ultimately passed by the Commission); STEVE HUDSON ET AL., CAL. COASTAL COMM'N, COUNTY OF SANTA BARBARA COASTAL PROGRAM AMENDMENT NO. LCP-4-STB-17-0086-3 (SHORT-TERM RENTALS ORDINANCE), FOR PUBLIC HEARING AND COMMISSION ACTION AT THE MAY 10, 2018 COMMISSION HEARING IN SANTA ROSA: DESCRIPTION OF THE SUBMITTAL (2018), <https://documents.coastal.ca.gov/reports/2018/5/th19a/th19a-5-2018-report.pdf> [<https://perma.cc/XM4Q-X8VX>] (rejecting its own staff recommendation to approve the Santa Barbara Local Coastal Program).

⁶⁵ See *Commissioners & Alternates*, *supra* note 41.

⁶⁶ Compare CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 3 (summarizing the staff recommendation that urged the Commission to not approve Santa Cruz's Airbnb ban and encouraged the city to deal with housing issues in different

parties who are uncertain about how to proceed and led to legal challenges over the Commission's authority in this area.⁶⁷

C. Litigation Involving the Coastal Act & Short-Term Rental Ordinances

The uncertainty of the Commission's case-by-case discretionary review has led cities and counties to contest the Commission's authority over short-term rental bans in courts.⁶⁸ Specifically, these lawsuits have questioned the categorization of short-term rental bans as "development" for purposes of the CCA.⁶⁹ In *Homeaway.com, Inc. v. City of Santa Monica*, the United States District Court for the Central District of California held that ordinances are not "development" under the CCA because such an interpretation could lead to any and every change in the law being considered a development.⁷⁰ In this case, Homeaway.com, Inc. and Airbnb brought suit against the City of Santa Monica, claiming in part that the city's short-term rental ban violated the CCA.⁷¹ The court disagreed that the ordinance constituted a "development" under the CCA, and therefore determined the ordinance was not subject to approval by the Commission.⁷² The court noted the lack of precedential case law or statutes interpreting citywide land use regulations as "development."⁷³ The court went on to state that construing this type of ordinance as a development could create a slippery slope whereby all land use laws would fall in this category.⁷⁴

ways), with *California Coastal Commission Meeting Agenda: April 11, 2018*, at 4:40:20, CAL-SPAN (Apr. 11, 2018, 9:00 AM), <http://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2018-04-11&mode=large> [https://perma.cc/U3C7-VEYS] (approving the City of Santa Cruz's short-term rental ban as submitted, despite the staff recommendation).

⁶⁷ See, e.g., Diehl, *Del Mar Takes State to Court*, *supra* note 48 (detailing Del Mar's frustration with case-by-case decisions that result in "various lawsuits" and describing the city's decision to file a lawsuit to challenge the Coastal Commission's authority over short-term vacation rentals).

⁶⁸ See, e.g., *Homeaway.com, Inc. v. City of Santa Monica*, No. 2:16-CV-06641-ODW (AFM), 2018 WL 1281772, at *4 (C.D. Cal. Mar. 9, 2018) (challenging the categorization of short-term rental bans as "development"); *Greenfield v. Mandalay Shores Cmty. Ass'n*, 230 Cal. Rptr. 3d 827, 828 (Cal. Ct. App. 2018), *review denied* (June 13, 2018) (same).

⁶⁹ See, e.g., *Homeaway.com, Inc.*, 2018 WL 1281772, at *4; *Greenfield*, 230 Cal. Rptr. 3d at 829.

⁷⁰ *Homeaway.com, Inc.*, 2018 WL 1281772, at *4.

⁷¹ *Id.* at *1.

⁷² *Id.* at *4.

⁷³ *Id.*

⁷⁴ See *id.*

In *Greenfield v. Mandalay Shores Community Association*, the California Second District Court of Appeal came to the opposite conclusion, holding that ordinances restricting short-term rentals are “development” under the CCA because they impose monetary barriers to beach access.⁷⁵ In this case, homeowners of a beach community filed suit against the homeowners’ association for attempting to enforce a resolution banning short-term rentals in the community.⁷⁶ The court determined that a “development” does not necessarily need to be a physical barrier, but can also include monetary barriers that change the intensity of use and access to single family residences in the coastal zone.⁷⁷

While these decisions have established precedent in their respective jurisdictions, neither is binding on all California state courts.⁷⁸ U.S. district court decisions, while persuasive, are not binding on state courts.⁷⁹ California Court of Appeal decisions are also not binding on other districts, but are so strongly persuasive that they are very likely to be followed.⁸⁰ Additionally, the United States Supreme Court has recently refused to hear the case of an individual who purchased Martins Beach and subsequently attempted to block public access to the beach.⁸¹ While not exactly on point, the Court’s denial of certiorari in this case suggests a preference to preserve public access to the coast in line with the goals of the CCA.⁸² Without universally binding judicial precedent, the Commission’s authoritative power to review short-term rentals remains subject to debate.⁸³ This regulatory conflict raises an

⁷⁵ See *Greenfield v. Mandalay Shores Cmty. Ass’n*, 230 Cal. Rptr. 3d 827, 828 (Cal. Ct. App. 2018), *review denied* (June 13, 2018).

⁷⁶ See *id.* at 828-29.

⁷⁷ *Id.* at 830-31.

⁷⁸ See JEFF DICELLO, CITATION GUIDE TO BINDING AND PERSUASIVE CASE LAW FOR CALIFORNIA ATTORNEYS AND PARALEGALS 4 (2019), http://dicelloparalegal.com/citation_guide_web.pdf [<https://perma.cc/SX6M-DC8F>]; *Mandatory v. Persuasive Authority*, MABIE LAW LIBRARY (May 27, 2016, 1:13 PM), <http://lawguides.scu.edu/authority> [<https://perma.cc/9W2B-DLRL>].

⁷⁹ See *Mandatory v. Persuasive Authority*, *supra* note 78.

⁸⁰ See DiCello, *supra* note 78, at 9-10.

⁸¹ See *Surfrider Found. v. Martins Beach 1, LLC*, 221 Cal. Rptr. 3d 382 (Cal. Ct. App. 2017), *cert. denied*, 139 S. Ct. 54 (2018); Peter Fimrite, *Supreme Court Refuses to Take Up Martins Beach Case. Surfers, Beachgoers Relieved*, S.F. CHRON. (Oct. 1, 2018, 9:34 AM), <https://www.sfchronicle.com/bayarea/article/Supreme-Court-refuses-to-take-up-Martins-Beach-13271592.php> [<https://perma.cc/9HDV-A3M5>].

⁸² See Fimrite, *supra* note 81.

⁸³ See DiCello, *supra* note 78, at 4-10; *Mandatory v. Persuasive Authority*, *supra* note 78; see, e.g., Diehl, *Del Mar Takes State to Court*, *supra* note 48 (detailing Del Mar’s frustration with case-by-case decisions that result in “various lawsuits” and decision to

issue of how to balance statewide coastal access rights with local government concerns over affordable housing issues. The Commission's decisions on short-term rental bans implicate both of these interests, and should therefore be issued with a level of clarity that local governments can reasonably rely on.

II. DISCUSSION

A. *Ordinances Banning Short-Term Rentals Should Be Considered "Development," as the Term Has Historically Been Interpreted Broadly Under the CCA*

The CCA is to be "liberally construed to accomplish its purposes and objectives."⁸⁴ "Development" is defined in the CCA as a "change in the density or intensity of use of land" and has generally been construed broadly.⁸⁵ For example, even a lot line adjustment that merely rearranges the boundary lines of existing lots is considered a "development."⁸⁶ Courts have consistently upheld this broad definition of development.⁸⁷ The precedent established by the following cases provides strong support for the Second District's categorization of short-term rental bans as development.⁸⁸

1. Case Law Establishing the Broad Definition of "Development"

In the 2010 case *Gualala Festivals Committee v. California Coastal Commission*, the California First District Court of Appeal held that a fireworks display constituted a "development."⁸⁹ In this case, the Commission prohibited the Festivals Committee from discharging fireworks over the Gualala River estuary because it would have resulted in the discharge of solid and chemical waste within the coastal zone.⁹⁰ The CCA does not require a minimum amount of waste be discharged

file a lawsuit to challenge the Coastal Commission's authority over short-term vacation rentals).

⁸⁴ CAL. PUB. RES. CODE § 30009 (2019).

⁸⁵ *Id.* § 30106.

⁸⁶ *Id.*

⁸⁷ *E.g.*, *Surfrider Found. v. Martins Beach 1, LLC*, 221 Cal. Rptr. 3d 382, 396 (Cal. Ct. App. 2017), *cert. denied*, 139 S. Ct. 54 (2018); *Pac. Palisades Bowl Mobile Estates, LLC v. City of L.A.*, 288 P.3d 717, 723 (2012); *Gualala Festivals Comm. v. Cal. Coastal Comm'n*, 106 Cal. Rptr. 3d 908, 913 (Cal. Ct. App. 2010).

⁸⁸ *See supra* Part I.C.

⁸⁹ *Gualala Festivals Comm.*, 106 Cal. Rptr. 3d at 909.

⁹⁰ *See id.* at 912-14.

to qualify as a development, so the fact that any amount of waste entered the coastal zone was sufficient.⁹¹ The court conceded that a fireworks display may not fit the traditional conception of development of real property, but concluded that it was nonetheless encompassed within the CCA definition.⁹² Even though this type of activity is limited and temporary, the court determined that an expansive reading of the term development is required to allow the Commission the necessary flexibility to enforce the CCA.⁹³ Thus, the court afforded the Commission authority over this fireworks display.⁹⁴

In *Pacific Palisades Bowl Mobile Estates v. City of Los Angeles*, the California Supreme Court held that the conversion of a mobile home park from tenant occupancy to resident ownership constitutes a development subject to the CCA.⁹⁵ In this case, Pacific Palisades applied to convert the zoning of its existing 170-unit mobile home park from tenant occupancy to resident ownership.⁹⁶ Pacific Palisades argued that the conversion was not a development because it would not cause an increase to the density or intensity of land use.⁹⁷ However, the conversion of a rental mobile home park to resident ownership is technically a “subdivision,” which is explicitly described in the CCA as a change in the intensity of use for purposes of the act.⁹⁸ As in *Gualala Festivals*, the court noted that the “definition of ‘development’ goes beyond ‘what is commonly regarded as a development of real property.’”⁹⁹ The court went further and stated that under the appropriate interpretation, “‘development’ is not restricted to physical alteration of the land.”¹⁰⁰ Thus, the court held that the non-physical zoning conversion of a mobile home park from rental units to ownership units is a development, and hence subject to Commission approval.¹⁰¹

In *Surfrider Foundation v. Martins Beach 1*, the California First District Court of Appeal held that closing a gate and putting up a sign restricting

⁹¹ See *id.* at 913.

⁹² See *id.* at 912-14.

⁹³ See *id.* at 914-15.

⁹⁴ See *id.*

⁹⁵ *Pac. Palisades Bowl Mobile Estates, LLC v. City of L.A.*, 288 P. 3d 717, 720 (2012).

⁹⁶ *Id.* at 720.

⁹⁷ See *id.* at 722.

⁹⁸ See *id.* at 721-22.

⁹⁹ *Id.* at 722 (quoting *Gualala Festivals Comm. v. Cal. Coastal Comm’n*, 106 Cal. Rptr. 3d 908, 912 (Cal. Ct. App. 2010)).

¹⁰⁰ *Id.*

¹⁰¹ See *id.* at 722-23.

coastal access is enough to constitute a development.¹⁰² There, the appellants purchased Martins Beach and the adjacent land, which included the only practical route to the beach.¹⁰³ Appellants subsequently closed this road to public access by closing a remote control gate and putting a no access sign on it.¹⁰⁴ The court rested its decision on a literal reading of the text of the CCA that a “development” includes any “change in the intensity of use of water, or of access thereto,”¹⁰⁵ and also looked to the legislative intent that “environmental considerations”¹⁰⁶ be given the highest priority where provisions of the CCA are at issue. Additionally, the court focused on the plain language of the CCA, which “is to be ‘liberally construed to accomplish its purposes and objectives.’”¹⁰⁷ The critical issue in this case was how “appellants’ conduct indisputably resulted in a significant *decrease* in access to Martins Beach.”¹⁰⁸ The court ultimately held that preventing beach access in this way constituted a development.¹⁰⁹

The term “development” has consistently been interpreted broadly under very different sets of facts.¹¹⁰ Just as the closed gate and no access sign in *Surfrider Foundation* was subject to Commission authority because of its impact on public access,¹¹¹ short-term rental bans should also fall within Commission authority. A gate and no access sign reduces public access by imposing a barrier for people trying to get to the beach.¹¹² Similarly, the lack of affordable overnight accommodations in California coastal cities presents a major barrier to coastal access in the state, as people who cannot afford more expensive accommodations have no practical way to access these places.¹¹³ For

¹⁰² See *Surfrider Found. v. Martins Beach 1, LLC*, 221 Cal. Rptr. 3d 382, 388-90, 394 (Cal. Ct. App. 2017).

¹⁰³ *Id.* at 388.

¹⁰⁴ *Id.* at 389.

¹⁰⁵ *Id.* at 393 (quoting CAL. PUB. RES. CODE § 30106 (2017)).

¹⁰⁶ *Id.* at 393-94 (quoting *McAllister v. Cal. Coastal Comm’n*, 87 Cal. Rptr. 3d 365 (Cal. Ct. App. 2008)).

¹⁰⁷ *Id.* at 394 (quoting CAL. PUB. RES. CODE § 30009 (2017)).

¹⁰⁸ *Id.*

¹⁰⁹ See *id.*

¹¹⁰ See, e.g., *id.* at 388-89 (holding that closing a gate and putting up a no-access sign to prevent coastal access constituted development); *Pac. Palisades Bowl Mobile Estates, LLC v. City of L.A.*, 288 P.3d 717, 721-23 (Cal. 2012) (holding that a mobile home park conversion constituted development); *Gualala Festivals Comm. v. Cal. Coastal Comm’n*, 106 Cal. Rptr. 3d 908, 913 (Cal. Ct. App. 2010) (holding that a fireworks display constituted a development).

¹¹¹ See *Martins Beach 1*, 221 Cal. Rptr. 3d at 394-95.

¹¹² See *id.* at 393-95.

¹¹³ See *Christensen & King*, *supra* note 36, at 3.

example, a family of five that would need two hotel rooms could instead rent one home on Airbnb, with the latter being the less expensive option.¹¹⁴ Some Airbnbs also include kitchens, which can reduce the cost of a coastal vacation further by allowing a family to cook their meals, rather than dine out.¹¹⁵ Short-term rental bans result in a reduction of the number of affordable overnight options in the coastal zone, and thus contribute to this major hurdle to coastal access for many Californians.¹¹⁶ Therefore, ordinances banning short-term rentals should also be included in this broadly construed definition of development because they similarly impact the intensity of land use and impose a barrier to coastal access.¹¹⁷

2. Misguided Criticisms of the Broad Definition of “Development”

In *Homeaway.com, Inc.*, concerns over a “slippery slope” informed the narrow construction of “development” adopted by the United States District Court for the Central District of California.¹¹⁸ The court determined that categorizing short-term rental ban ordinances as “development” would theoretically allow any law in the coastal zone to be regulated in the same way by the Commission, leading to a costly and time consuming burden.¹¹⁹ This concern is misguided.¹²⁰ The CCA

¹¹⁴ See Jonathan Ping, *Airbnb vs. Hotels Price Comparison Chart*, MY MONEY BLOG (June 7, 2018), <https://www.mymoneyblog.com/airbnb-vs-hotels-price-comparison-chart.html> [<https://perma.cc/B8PR-MXLV>] (demonstrating that Airbnbs are “often cheaper than hotels”); see also Dina Gerdeman, *The Airbnb Effect: Cheaper Rooms for Travelers, Less Revenue for Hotels*, HARV. BUS. SCH. (Feb. 26, 2018), <https://hbswk.hbs.edu/item/the-airbnb-effect-cheaper-rooms-for-travelers-less-revenue-for-hotels?cid=wk-rss> [<https://perma.cc/KRQ9-HEMZ>] (“You might find a . . . place by the beach at a more reasonable price than you would if Airbnb wasn’t an option. Or a listing might have additional amenities, like a kitchen. And if you still prefer a hotel room, competition from Airbnb means you’ll pay a lower price for it.”).

¹¹⁵ See Stephanie Jones, *12 Secrets Saving Even More Money with Airbnb*, SIX FIGURES UNDER (May 18, 2016), <https://www.sixfiguresunder.com/save-money-airbnb/> [<https://perma.cc/8WV5-6EUE>]; see also Gerdeman, *supra* note 114.

¹¹⁶ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 13-14 (explaining that short-term rentals are often “the most affordable option for overnight stays on the coast, particularly for groups and families”).

¹¹⁷ See *Martins Beach 1*, 221 Cal. Rptr. 3d at 394 (determining that a decrease in access to the coast was the key issue that made this conduct a “development” for purposes of the Coastal Act).

¹¹⁸ See *Homeaway.com, Inc. v. City of Santa Monica*, No. 2:16-CV-06641-ODW(AFM), 2018 WL 1281772, at *4 (C.D. Cal. Mar. 9, 2018).

¹¹⁹ See *id.*

¹²⁰ See CAL. PUB. RES. CODE § 30610(e) (2019) (exempting from the coastal development permit requirement any development that has “no potential for any

explicitly addresses this potential issue by exempting temporary events or developments from the permit requirement if there is “no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast”¹²¹ Therefore, an ordinance must impose a “significant adverse effect” on coastal resources, or access to or along the coast, in order to constitute a “development” that requires Commission approval.¹²²

For example, time, place, and manner restrictions often do not fall under the definition of “development” because they do not “adversely impact coastal resources” or infringe on cities’ power “to declare, prohibit, and abate nuisances.”¹²³ Time, place, and manner restrictions are designed to reduce public nuisances¹²⁴ by employing provisions such as parking requirements, quiet hours, and complaint response processes.¹²⁵ As long as a city is not attempting to avoid the requirements of the CCA, it is permitted to enact such restrictions.¹²⁶ The Commission has actually encouraged time, place, and manner restrictions in lieu of outright short-term rental bans for local governments trying to regulate short-term rental operations.¹²⁷ In fact, when city restrictions to abate nuisances are properly enacted in good faith, they are often fully consistent with the CCA’s main purpose of “[p]rotect[ing], maintain[ing], and, where feasible, enhanc[ing] and restor[ing] the overall quality of the coastal zone environment and its

significant adverse effect,” thus avoiding an unnecessary financial burden in these situations); *Martins Beach I*, 221 Cal. Rptr. 3d at 396 (rejecting the argument that a coastal development permit could theoretically be required for all activities, no matter how small, if they are in the coastal zone).

¹²¹ PUB. RES. § 30610(e).

¹²² See *id.*

¹²³ See *id.* § 30005(b) (“No provision of this division is a limitation on . . . the power of any city or county or city and county to declare, prohibit, and abate nuisances.”).

¹²⁴ A nuisance is “[a]nything which is injurious to health, . . . or offensive to the senses . . . so as to interfere with the comfortable enjoyment of life or property.” CAL. CIV. CODE § 3479 (2019).

¹²⁵ See Tracey McManus, *Outside Attorneys, Creative Ordinances Help Beach Cities Tackle Short-Term Rentals*, TAMPA BAY TIMES (Nov. 23, 2016), <https://www.tampabay.com/news/growth/outside-attorneys-creative-ordinances-help-beach-cities-tackle-short-term/2303693> [<https://perma.cc/8786-46NY>] (“Some cities are able to control disrupters through noise and garbage ordinances alone”); see, e.g., CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 2 (“[T]he Commission has been very supportive of STR-related LCP provisions that prescribe occupancy limits, parking requirements, quiet hours, complaint response processes, and other common-sense standards for STR operations.”).

¹²⁶ See *City of Dana Point v. Cal. Coastal Comm’n*, 158 Cal. Rptr. 3d 409, 431-32 (Cal. Ct. App. 2010).

¹²⁷ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 2.

natural and artificial resources.”¹²⁸ Prohibiting loud parties and improper garbage disposal, for example, benefits *both* residents and visitors of coastal areas who wish to enjoy the area’s natural beauty.¹²⁹ The broad definition of the term “development” is therefore appropriate, as it permits the Commission to implement its legal requirement to protect public coastal access under the CCA, without entirely usurping local governments’ ability to regulate potential nuisances.¹³⁰

B. The Scope of the California Coastal Commission’s Authority Should Extend to Short-Term Rental Bans

The Commission is expressly tasked with regulating and planning the use of land and water in the coastal zone pursuant to the CCA.¹³¹ The Commission is supposed to work with local governments to oversee development in the coastal zone and enforce the CCA,¹³² which leaves the scope of their ultimate discretion and limit of their authority subject to debate.¹³³ The Commission’s authority does not displace a local government’s ability to regulate land use, but it does preempt conflicting local regulations.¹³⁴ Critics have called Commission review of short-term rental bans an overreach of authority,¹³⁵ but in fact these ordinances fit neatly within the Commission’s discretion for the reasons discussed below.¹³⁶

¹²⁸ *City of Dana Point*, 158 Cal. Rptr. 3d at 433 (citing *Hines v. Cal. Coastal Comm’n*, 112 Cal. Rptr. 3d 354, 362 (Cal. Ct. App. 2010)).

¹²⁹ *See id.* (explaining that nuisances are “injurious to health, . . . offensive to the senses, . . . [and] interfere with the comfortable enjoyment of life or property” and that their elimination is therefore beneficial to the main purpose of the CCA); *see, e.g., CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, supra* note 20, at 2-3 (“[C]ommon-sense standards for STR operations . . . allow STRs while clearly addressing potential impacts of their operation.”).

¹³⁰ *See* CAL. PUB. RES. CODE §§ 30610, 30001.5 (2019).

¹³¹ *See id.* § 30001.5.

¹³² *Id.* § 30004(a).

¹³³ *See The California Coastal Commission’s Legal Authority to Address Climate Change: Coastal Commission Jurisdiction*, CAL. COASTAL COMM’N, <https://www.coastal.ca.gov/climate/whyinvolved.html#lcp> (last visited Dec. 24, 2019) [<https://perma.cc/37R3-5JT7>].

¹³⁴ *Homeaway.com, Inc. v. City of Santa Monica*, No. 2:16-CV-06641-ODW(AFM), 2018 WL 1281772, at *3 (C.D. Cal. Mar. 9, 2018).

¹³⁵ *See, e.g., Ryan McDonald, Short Term Vacation Rentals Still Possible in Hermosa Beach’s Nonconforming Units*, EASY READER NEWS (Apr. 7, 2017), <https://easyreadernews.com/stvr-possible-hermosa-beachs-nonconforming-units/> [<https://perma.cc/LJN7-TC2R>].

¹³⁶ *See Sierra Club v. Cal. Coastal Comm’n*, 111 P.3d 294, 307-08 (Cal. 2005) (determining that the Coastal Commission cannot leverage its coastal zone permitting

1. Statutory Basis for the Broad Scope of Commission Authority

The CCA requires that the Commission implement its provisions.¹³⁷ Commission authority must be expansive enough to provide it with “the necessary flexibility to manage the coastal zone environment so as to accomplish the statutory purposes [of the CCA].”¹³⁸ The legislature intended to grant the Commission jurisdiction over “any changes in the density or intensity of use of land, including any division of land” in the coastal zone.¹³⁹ This specific purpose sufficiently limits the scope of the Commission’s authority.¹⁴⁰ For example, the California Supreme Court has determined that the Commission cannot leverage its coastal zone permit authority to oversee projects outside of the coastal zone.¹⁴¹ The coastal zone is defined as the area extending along the coast of California, from the state’s outer seaward jurisdiction (including offshore island) to an inland area “1,000 yards from the mean high tide line of sea.”¹⁴² It extends further inland in rural and less developed areas, and stops much shorter in urban areas.¹⁴³ The Commission only has discretion over developments in cities and counties that fall within this specifically defined area.¹⁴⁴

authority to projects outside the coastal zone); Josh Bivens, *The Economic Costs and Benefits of Airbnb*, ECON. POL’Y INST. (Mar. 26, 2019), <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policy-makers-to-let-airbnb-bypass-tax-or-regulatory-obligations/> [<https://perma.cc/AJV3-M45V>] (explaining that an increased supply of available short-term rental units “can restrain price growth for short-term rentals and make traveling more affordable”); Memorandum from John Ainsworth, Exec. Dir., Cal. Coastal Comm’n, to Planning Dirs. of Coastal Cities and Counties, New Accessory Dwelling Unit Legislation (Apr. 18, 2017), https://documents.coastal.ca.gov/assets/rflg/CCC_guidance_memo_re_ADUs.pdf [<https://perma.cc/V22W-XD7K>] (outlining the Coastal Commission’s regulatory authority over ADUs); U.S. DEP’T OF HOUSING & URBAN DEV., ACCESSORY DWELLING UNITS: CASE STUDY 1 (2008), <https://www.huduser.gov/portal/publications/adu.pdf> [<https://perma.cc/GM3Z-URJZ>] [hereinafter ACCESSORY DWELLING UNITS: CASE STUDY] (“ADUs [are] an inexpensive way to increase the affordable housing supply . . .”).

¹³⁷ PUB. RES. § 30330.

¹³⁸ *Surfrider Found. v. Martins Beach 1, LLC*, 221 Cal. Rptr. 3d 382, 397 (Cal. Ct. App. 2017).

¹³⁹ *See La Fe, Inc. v. Los Angeles Cty.*, 86 Cal. Rptr. 2d 217, 223 (Cal. Ct. App. 1999).

¹⁴⁰ *See Sierra Club*, 111 P.3d at 306-08.

¹⁴¹ *See id.*

¹⁴² PUB. RES. § 30103(a). *See generally Maps & Jurisdictions*, CAL. COASTAL COMM’N, <https://www.coastal.ca.gov/maps/> (last visited Jan. 2, 2019) [<https://perma.cc/7DRJ-FVV6>].

¹⁴³ *See* PUB. RES. § 30103(a).

¹⁴⁴ *See Sierra Club*, 111 P.3d 294 at 302, 306-08.

In cases of short-term rental ordinances, the Commission only reviews local ordinances within the coastal zone.¹⁴⁵ For example, the City of Pacific Grove is partially within the coastal zone.¹⁴⁶ The Commission therefore only has discretionary review power over the part of the city that falls within the coastal zone.¹⁴⁷ Pacific Grove recently passed an ordinance that banned short-term rentals in the residentially-zoned areas of the city that also fall outside the coastal zone.¹⁴⁸ Short-term rentals are still permitted in the coastal zone and commercial areas of the city.¹⁴⁹ This ordinance is therefore not subject to Commission review, and the city did not need to seek Commission approval.¹⁵⁰ It should be noted, however, that the ordinance is currently being challenged for being improperly applied to a few residences *within* the coastal zone, and thus should have been subject to Commission review.¹⁵¹ This key factual dispute emphasizes that the availability of Commission review depends entirely on whether the area in question is in the coastal zone.¹⁵² The situation in Pacific Grove serves as an example of the sufficiently restrained scope of Commission authority.¹⁵³

¹⁴⁵ See CAL. COASTAL COMM'N, COMMISSION LCP ACTIONS ON STRS, *supra* note 7.

¹⁴⁶ See CITY OF PAC. GROVE, FINAL LAND USE PLAN 1 (2016), <http://www.cityofpacificgrove.org/sites/default/files/general-documents/local-coastal-program/land-use-plan-october-2016.pdf> [<https://perma.cc/74LZ-XFHF>].

¹⁴⁷ See *id.*

¹⁴⁸ See Pam Marino, *The Fight Over Pacific Grove Vacation Rentals Spills into the Ballot Box with Measure M*, MONTEREY COUNTY WKLY. (Oct. 4, 2018), http://www.montereycountyweekly.com/news/cover/the-fight-over-pacific-grove-vacation-rentals-spills-into-the/article_128188f2-c767-11e8-90e0-2713c3a50b10.html [<https://perma.cc/6YG2-5PZF>]; Dennis L. Taylor, *Sides Battle in Court Over Pacific Grove Rental Law*, MONTEREY HERALD (June 26, 2019, 3:06 PM), <https://www.montereyherald.com/2019/06/25/sides-battle-in-court-over-pacific-grove-rental-law/> [<https://perma.cc/XAU8-2XT9>].

¹⁴⁹ See Krista Almanzan, *Pacific Grove Voters Will Decide Whether to Further Restrict Short Term Rentals*, KAZU (Oct. 29, 2018), <https://www.kazu.org/post/pacific-grove-voters-will-decide-whether-further-restrict-short-term-rentals#stream/0> [<https://perma.cc/VBA7-KVGG>].

¹⁵⁰ See Carly Mayberry, *Pacific Grove Initiative to End Short-Term Rentals in Residential Zone Gets Certified*, MONTEREY HERALD (Sept. 11, 2018, 12:00 AM), <https://www.montereyherald.com/2018/05/24/pacific-grove-initiative-to-end-short-term-rentals-in-residential-zone-gets-certified/> [<https://perma.cc/GT5Q-2CAV>] (indicating that because the coastal zone is overseen by the California Coastal Commission, areas outside this zone are not overseen by the Commission).

¹⁵¹ See Dennis L. Taylor, *Stage Is Set for Appeal in Pacific Grove Short-Term Rental Suit*, MONTEREY HERALD (July 23, 2019, 11:09 AM), <https://www.montereyherald.com/2019/07/22/stage-is-set-for-appeal-in-pacific-grove-short-term-rental-suit/> [<https://perma.cc/4P9S-7CR2>].

¹⁵² See *id.*

¹⁵³ See Mayberry, *supra* note 150.

Its jurisdiction is firmly restricted to matters within the coastal zone.¹⁵⁴ Thus, Commission review of short-term rental bans in coastal cities does not represent an overreach of the Commission's authority.¹⁵⁵

2. Existing Commission Authority Over a Different Type of Restriction on Use

Further, the Commission's authority over other types of covenants, conditions, and restrictions ("CC&Rs") indicates the state legislature's regulatory preference for Commission discretion over short-term rental bans.¹⁵⁶ CC&Rs, like short-term rental bans, are restrictions on the use of private property.¹⁵⁷ For example, local governments may impose restrictive covenants that regulate the use of accessory dwelling units ("ADUs").¹⁵⁸ ADUs are small second dwellings that may be built in an existing home or garage and are commonly referred to as "granny flats" or "in-law units."¹⁵⁹ Cities' ordinances that govern ADUs must be

¹⁵⁴ See *Sierra Club v. Cal. Coastal Comm'n*, 111 P.3d 294, 306-07 (Cal. 2005); Mayberry, *supra* note 150.

¹⁵⁵ See *Sierra Club*, 111 P.3d at 306 (explaining that the California Coastal Commission only has jurisdiction over issues within the coastal zone); Letter from Steve Kinsey, *supra* note 7, at 1 (specifically providing guidance to cities implementing "vacation rental regulation in the coastal zone"); Bona Law PC, *supra* note 7 (explaining that short-term rental bans within the coastal zone are regulated by the California Coastal Commission).

¹⁵⁶ Compare *New Accessory Dwelling Unit Legislation*, *supra* note 136, at 1 (outlining the Coastal Commission's regulatory authority over ADUs), and U.S. DEP'T OF HOUSING & URBAN DEV., *ACCESSORY DWELLING UNITS: CASE STUDY*, *supra* note 136, at 1 ("ADUs [are] an inexpensive way to increase the affordable housing supply"), with Bivens, *supra* note 136 (explaining that increasing, rather than decreasing, the availability of short-term rentals like Airbnb makes traveling more affordable).

¹⁵⁷ See Stephen Fishman, *Legal Restrictions to Renting Your Home on Airbnb or Other Rental Services*, NOLO, <https://www.nolo.com/legal-encyclopedia/legal-restrictions-renting-your-home-airbnb-other-rental-services.html> (last visited Dec. 26, 2019) [<https://perma.cc/9HXM-AETV>]; *Amendments to Restrictive Covenants That Take Away Property Rights Need to Be Challenged*, LAW OFF. J. PATRICK SUTTON (Mar. 30, 2018, 10:41 AM), <http://www.jpatricksuttonlaw.com/blog/files/category-restrictive-covenants.html> [<https://perma.cc/AXC2-L3A6>].

¹⁵⁸ See *Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)*, CAL. DEP'T OF HOUSING & COMMUNITY DEV., <http://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml> (last visited Dec. 27, 2019) [<https://perma.cc/L7ZP-3JZ2>]; *Accessory Dwelling Unit Regulations: Accessory Dwelling Units Ordinance*, CITY OF PASADENA, PLAN. & COMMUNITY DEV. (May 31, 2018), <https://ww5.cityofpasadena.net/planning/accessory-dwelling-unit-regulations/> [<https://perma.cc/B68M-YP65>].

¹⁵⁹ See Jondi Gumz, *New ADU Rules for Santa Cruz County Going to Coastal Commission*, SANTA CRUZ SENTINEL (Sep. 11, 2018, 12:00 AM), <https://www.santacruzsentinel.com/2018/01/23/new-adu-rules-for-santa-cruz-county-going-to-coastal-commission/> [<https://perma.cc/B9JB-AJHK>] [hereinafter *New ADU Rules*].

submitted to the California Department of Housing and Community Development, and are subject to additional requirements if the city is in the coastal zone and therefore falls within the Commission's jurisdiction.¹⁶⁰ Local governments in the coastal zone are required to "submit ordinances implementing second unit policies and procedures to the Coastal Commission," which then reviews these policies for compliance with the CCA.¹⁶¹ The Commission has authority over ADU restrictions because the presence of ADUs in existing residential areas increases the supply of lower-cost housing in the coastal zone with minimal impact to coastal resources.¹⁶² ADUs add to the available housing without the need for the significant construction that a new building or development would require.¹⁶³ In a memo drafted by the Commission to help cities navigate ADU regulations under the CCA, the Commission emphasized that "[t]he creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that avoids significant adverse impacts on coastal resources," thus indicating the Commission's preference for encouraging ADUs.¹⁶⁴

Allowing the operation of Airbnbs is a similarly "promising strategy" for increasing affordable housing in the coastal zone, but with the additional benefit of involving *even less* construction in the coastal zone.¹⁶⁵ ADU ordinances are designed to make ADUs easier and less costly to construct, as opposed to short-term rental ordinances that are designed to restrict or eliminate such rentals.¹⁶⁶ In light of its goal of

¹⁶⁰ See *Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)*, *supra* note 158.

¹⁶¹ LEGISLATIVE UNIT & LEGAL DIV., CAL. COASTAL COMM'N, LEGISLATIVE REPORT: NEW LAWS MEMO: 2016 CHAPTERED LEGISLATION 7 (2017), <https://documents.coastal.ca.gov/reports/2017/1/w6d-1-2017.pdf> [<https://perma.cc/9HLT-22E2>] [hereinafter LEGISLATIVE REPORT: NEW LAWS MEMO].

¹⁶² See *id.* at 6.

¹⁶³ See Patrick Sisson, *Why Tiny ADUs May Be a Big Answer to the Urban Housing Crisis*, CURBED (Jan. 16, 2018, 12:34 PM), <https://www.curbed.com/2018/1/16/16897014/adus-development-us> [<https://perma.cc/2FDM-6BZE>].

¹⁶⁴ See Memorandum from John Ainsworth, *supra* note 136, at 1.

¹⁶⁵ See Bivens, *supra* note 136 (explaining that an increased supply of available short-term rental units "can restrain price growth for short-term rentals and make traveling more affordable").

¹⁶⁶ Compare SUSAN CRAIG & RYAN MORONEY, CAL. COASTAL COMM'N, DE MINIMIS AMENDMENT DETERMINATION FOR SANTA CRUZ COUNTY LCP AMENDMENT NUMBER LCP-3-SCO-18-0023-1 (ACCESSORY DWELLING UNITS) 2 (2018), <https://documents.coastal.ca.gov/reports/2018/3/th13b/th13b-3-2018-report.pdf> [<https://perma.cc/VAU3-GLYJ>] (describing the determination by the Coastal Commission that Santa Cruz's amendment streamlining the process for acquiring ADUs is *de minimis* and thus will likely be

increasing affordable coastal access, the Commission is likely to approve ordinances that streamline the process for constructing ADUs and continue to reject ordinances banning short-term rentals.¹⁶⁷ For example, the Commission rejected Del Mar's Airbnb ban¹⁶⁸ and approved its ordinance streamlining the ADU licensing process.¹⁶⁹ Thus, the Commission's position favoring short-term rentals is consistent with the actions in the ADU context where it has also looked to the CCA goal of increasing affordable housing options with minimal coastal development.¹⁷⁰

3. Criticisms of Analogizing ADUs to Short-Term Rentals

Critics of Commission authority over short-term rental ordinances may argue that ADUs and short-term rentals are fundamentally different, and thus authority over one type of restrictive use does not justify authority over the other.¹⁷¹ ADUs have historically evoked

approved), *Accessory Dwelling Units (ADUS)*, CITY DEL MAR (2018), <http://www.delmar.ca.us/642/Accessory-Dwelling-Units-ADUs> [<https://perma.cc/R59G-LCHW>] [hereinafter *Del Mar ADUS*] (describing a Del Mar ordinance that makes it easier to acquire permits for ADUs was approved), and *Accessory Dwelling Unit Ordinance*, CITY NEWPORT BEACH (2018), <https://www.newportbeachca.gov/trending/projects-issues/accessory-dwelling-unit-ordinance> [<https://perma.cc/X7E3-C7QP>] [hereinafter *Newport Beach ADU*] (discussing the Commission's recommendation that the Newport ADU streamlining ordinance be approved), with Tash, *supra* note 6 (describing the Coastal Commission's denial of Del Mar's short-term rental ban), and Weiermann, *supra* note 6 (describing the Commission's denial of Laguna Beach's short-term rental ban).

¹⁶⁷ See, e.g., CRAIG & MORONEY, *supra* note 166 (describing the likely approval of an amendment streamlining the process for acquiring permits for ADUs); *Del Mar ADUS*, *supra* note 166 (describing Commission approval of a Del Mar ordinance making it easier to acquire permits for ADUs); *Newport Beach ADU*, *supra* note 166 (describing Commission recommendation that the Newport ADU-streamlining ordinance be approved).

¹⁶⁸ Diehl, *Coastal Commission Tells Del Mar to Expand Short-Term Rentals*, *supra* note 44; see Tash, *supra* note 6.

¹⁶⁹ See *Del Mar ADUS*, *supra* note 166.

¹⁷⁰ Compare *New Accessory Dwelling Unit Legislation*, *supra* note 136, at 1 (outlining the Coastal Commission's regulatory authority over ADUs), and U.S. DEP'T OF HOUSING & URBAN DEV., *ACCESSORY DWELLING UNITS: CASE STUDY*, *supra* note 136, at 1 ("ADUs [are] an inexpensive way to increase the affordable housing supply . . ."), with Bivens, *supra* note 136 (explaining that an increased supply of available short-term rental units "can restrain price growth for short-term rentals and make traveling more affordable").

¹⁷¹ Compare Gumz, *New ADU Rules*, *supra* note 159 (defining ADUs as "a small second dwelling on a piece of property"), with Cameron Lafontaine, *Short Term Rental vs Long Term Rental*, TRIPPING (Jan. 30, 2016), <https://www.tripping.com/owners/short-term-rental-vs-long-term-rental> [<https://perma.cc/W3G5-NWKW>] (defining short-

similar controversy and public outrage as short-term rentals.¹⁷² However, ADUs are typically geared toward long-term housing,¹⁷³ while short-term rentals promote hotel-style accommodations.¹⁷⁴ Long-term occupants are perceived to be less disruptive than short-term renters, who are associated with loud parties and other “nuisances.”¹⁷⁵ Critics

term rentals as “the renting out of a furnished home, apartment, or condominium for a short-term stay”).

¹⁷² See *Mount Pleasant Has Some Catching Up to Do on Short-Term Rentals*, POST & COURIER (May 9, 2018), https://www.postandcourier.com/opinion/editorials/mount-pleasant-has-some-catching-up-to-do-on-short/article_f4a9fd92-53ac-11e8-9b96-3fd683b61e84.html [https://perma.cc/R967-5DZB] (“And using accessory dwelling units — which are controversial enough as it is — for short-term rentals rather than as an affordable housing alternative means they provide little or no benefit to the community beyond being a source of income for the property owner.”); Gennady Sheyner, *New Accessory-Dwelling Units Law Brings Hope, Confusion*, PALO ALTO ONLINE (Jan. 15, 2018, 10:38 AM), <https://www.paloaltoonline.com/news/2018/01/15/new-accessory-dwelling-units-bring-hope-confusion> [https://perma.cc/H8DL-V4RG] (describing a controversial Palo Alto rule that encourages accessory dwelling units for existing homes only, with one resident arguing that “[b]y only allowing ADUs at owner-occupied properties . . . the city is basing the law on an ‘irrational fear’ of renters.” A different resident countered that “there is value in knowing your neighbors and not having heavy tenant turnover in residential neighborhoods”); Gennady Sheyner, *New Rules on Accessory Housing Sparks Debate*, PALO ALTO ONLINE (Apr. 17, 2017, 8:50 AM), [paloaltoonline.com/news/2017/04/17/new-rules-on-accessory-housing-spark-debate](https://www.paloaltoonline.com/news/2017/04/17/new-rules-on-accessory-housing-spark-debate) [https://perma.cc/6YAV-7259] (describing residents’ fears that ADUs will change the character of their single-family neighborhoods); see also Martin John Brown, *Will Short Term Rentals Actually Reduce Long Term Housing in Granny Flats?*, ACCESSORY DWELLINGS (Apr. 4, 2016), <https://accessorydwellings.org/2016/04/04/adustr/> [https://perma.cc/7ZLP-YPB7].

¹⁷³ See, e.g., MARTIN J. BROWN & JORDAN PALMERI, STATE OF OR., DEP’T OF ENV’T QUALITY, *ACCESSORY DWELLING UNITS IN PORTLAND, OREGON: EVALUATION AND INTERPRETATION OF A SURVEY OF ADU OWNERS 2* (2014) (“At any one time about 80% of ADUs are in use as long-term residences. The remaining 20% have alternative uses, but can be converted to housing with no further construction or permitting. Changing uses is part of the attraction for owners.”); Haisten Willis, *One Answer to the Lack of Affordable Apartments Might Begin at Home*, WASH. POST (Sept. 13, 2018, 3:00 AM), https://www.washingtonpost.com/real-estate/one-answer-to-the-lack-of-affordable-apartments-might-begin-at-home/2018/09/12/ef02e682-9025-11e8-8322-b5482bf5e0f5_story.html?utm_term=.151626f7af67 [https://perma.cc/7L6B-7HZL] (“A Portland State University study . . . found that 42 percent of ADU owners built them for long-term housing and that 35 percent planned to rent to family members or friends.”).

¹⁷⁴ See, e.g., Anthony J. Cordato, *How Airbnb is Empowering Boutique Hotels and B&Bs to Build Their Business*, LEXOLOGY (Dec. 30, 2016), <https://www.lexology.com/library/detail.aspx?g=d987274e-16ad-45c1-bf67-6c2cf5c1743a> [https://perma.cc/CAZ5-9XN2] (explaining that Airbnb describes its listings as bed and breakfasts, boutique hotels, and hostels).

¹⁷⁵ See, e.g., Will Van Vactor, *How Do I Stop Neighbors From Using Their House as an Airbnb or Other Type of Vacation Rental?*, NOLO, <https://www.nolo.com/legal-encyclopedia/how-do-i-stop-my-neighbors-from-using-their-house-vacation-rental.html>

may also argue that ADUs are closer to “development” than short-term rentals because they involve physical construction.¹⁷⁶ However, as discussed above, “development” in the context of the CCA does not necessarily involve physical changes.¹⁷⁷ These differences between ADUs and short-term rentals are inconsequential in terms of how they are regulated.

The recently enacted California Government Code section 65852.2 explicitly limits local governments’ ability to restrict ADUs.¹⁷⁸ The state legislature designed this law to combat the housing crisis in California.¹⁷⁹ Within this statute, subsection j specifically clarifies that the statute does not in any way supersede Commission authority in this area.¹⁸⁰ The law both limited what local governments can do to restrict ADUs and solidified the Commission’s authority to review any such restrictions.¹⁸¹ This law therefore limits the ways that people can object to ADUs.¹⁸² For example, people cannot call upon their local government to enact significant restrictions, as cities no longer have much power to restrict ADUs.¹⁸³ Furthermore, contesting the Commission’s authority to review these restrictions would not be fruitful because the Commission’s goals are aligned with the law and the law specifically strengthens its authority.¹⁸⁴

While there is no explicit statewide short-term rental law equivalent to the ADU law,¹⁸⁵ the CCA preempts conflicting local regulations in a

(last visited Dec. 27, 2019) [<https://perma.cc/6Y23-D9KV>] (discussing how to prevent a neighbor from renting out their home on Airbnb in response to a question of how to stop short-term renters who “stay up late enjoying the hot tub, drinking, and playing loud music”).

¹⁷⁶ See Gumz, *New ADU Rules*, *supra* note 159 (defining ADUs as “a small second dwelling on a piece of property”).

¹⁷⁷ See *Greenfield v. Mandalay Shores Cmty. Ass’n*, 230 Cal. Rptr. 3d 827, 830 (Cal. Ct. App. 2018).

¹⁷⁸ See CAL. GOV’T CODE § 65852.2 (2019); Keith Collins, *Limitation on City Regulation of Accessory Dwelling Units*, JONES & MAYER (Nov. 15, 2016), <http://www.jones-mayer.com/news/2016/11/15/limitation-on-city-regulation-of-accessory-dwelling-units/> [<https://perma.cc/XLU4-MSPU>].

¹⁷⁹ See Collins, *supra* note 178.

¹⁸⁰ See GOV. § 65852.2(j).

¹⁸¹ See GOV. § 65852.2.

¹⁸² See *id.*

¹⁸³ See *id.*

¹⁸⁴ See *id.*; LEGISLATIVE UNIT & LEGAL DIV., CAL. COASTAL COMM’N, LEGISLATIVE REPORT: NEW LAWS MEMO, *supra* note 161, at 6-8.

¹⁸⁵ There is not a comparable state law that limits how local governments can regulate short-term rentals. See Liam Dillon, *California Lawmakers Can’t Figure out What to Do with Airbnb. Here’s Why*, L.A. TIMES (Feb. 3, 2017, 12:05 AM), <https://www>.

similar manner.¹⁸⁶ As discussed previously, short-term rental bans often conflict with the CCA, and can therefore be rejected by the Commission.¹⁸⁷ ADUs face similar public controversy as short-term rentals and have been criticized for increasing population density and not providing truly affordable housing.¹⁸⁸ Concern for the statewide housing crisis outweighed this political opposition to ADUs and resulted in the enactment of section 65852.2.¹⁸⁹ It follows that the political opposition to short-term rentals should correspondingly give way to the statewide concern of coastal access in California and result in Commission authority over bans.¹⁹⁰

While state legislation regarding ADUs and short-term rentals serve different purposes, both are restrictions on use that address the CCA goal of increasing affordable access to the coast.¹⁹¹ Short-term rentals may even satisfy CCA goals more effectively, as they address the lack of affordable overnight accommodations *without* construction or

latimes.com/politics/la-pol-sac-airbnb-laws-california-legislature-20170203-story.html [https://perma.cc/9VAV-X6XN]; see also *California Statewide Airbnb Laws Coming?*, SCHORR L., <https://schorr-law.com/california-statewide-airbnb-laws-coming/> (last visited Dec. 27, 2019) [https://perma.cc/XX68-CJBV].

¹⁸⁶ See *Homeaway.com, Inc. v. City of Santa Monica*, No. 2:16-CV-06641-ODW(AFM), 2018 WL 1281772, at *3 (C.D. Cal. Mar. 9, 2018). AB 1731 — which was recently pulled from consideration by the authoring assemblymember — would have significantly limited short-term rentals in San Diego and served as a test for a statewide restriction. See Assemb. B. 1731, 2019-2020 Reg. Sess. (Cal. 2019); Lisa Halverstadt & Sara Libby, *Sacramento Report: Bill Would Sharply Limit Short-Term Rentals in Beach Neighborhoods*, VOICE SAN DIEGO (Apr. 19, 2019), <https://www.voiceofsandiego.org/topics/government/sacramento-report-bill-would-sharply-limit-short-term-rentals-in-beach-neighborhoods/> [https://perma.cc/ZDX6-L2GK].

¹⁸⁷ Compare CAL. PUB. RES. CODE § 30001.5 (2019) (delineating the Coastal Act's goal of increasing affordable access to the coast), and Christensen & King, *supra* note 36 (discussing a UCLA study demonstrating that three out of four people statewide reported that a lack of affordable overnight housing is one of the main barriers to their access to the coast), with Bivens, *supra* note 136 (explaining that increasing short-term rental availability makes travelling more affordable).

¹⁸⁸ See Sisson, *supra* note 163.

¹⁸⁹ See CAL. GOV'T CODE § 65852.2 (2019); Collins, *supra* note 178.

¹⁹⁰ See Dillon, *supra* note 185.

¹⁹¹ Compare Vactor, *supra* note 175 (discussing how to prevent a neighbor from renting out their home on Airbnb in response to a question of how to stop short-term renters who “stay up late enjoying the hot tub, drinking, and playing loud music”), with Andrea Fox, *More Cities Say Yes to Granny Apartments, ADUs*, EFFICIENTGOV (Nov. 7, 2017), <https://efficientgov.com/blog/2017/11/07/more-cities-yes-granny-apartments-adus/> [https://perma.cc/9V4C-LWSU] (discussing the political challenges that ADU proponents face, such as concerns about increased density).

additional coastal development.¹⁹² Therefore, the Commission's authority over ADUs presents a strong precedent for its authority over short-term rentals.

C. Fundamental Policy Considerations Weigh in Favor of Allowing Coastal Commission Discretion to Reject Short-Term Rental Bans

In addition to the legal precedent indicating the Commission has discretion over short-term rental bans,¹⁹³ there are three strong policy arguments that justify Commission discretion.¹⁹⁴ First, the Commission is in a better position than local governments to protect coastal access;¹⁹⁵ second, there is a growing trend in the state to limit what local governments can do to control housing issues;¹⁹⁶ and third, the Commission's position on short-term rentals may help long-term residents afford their homes.¹⁹⁷ While critics have voiced concerns over the impact of short-term rentals on affordable long-term housing, the two are not necessarily at odds with each other.¹⁹⁸

1. The Commission Is in the Best Position to Defend Fundamental Coastal Interests

Affordable access to coastal areas is more likely to be protected if bans on short-term rentals are subject to scrutiny by the Commission.¹⁹⁹ Encouraging and protecting affordable coastal access is an explicit goal the Commission is tasked with enforcing.²⁰⁰ The CCA addresses legislative findings that the California coast is a unique resource that has value for all Californians; that its protection is a "paramount

¹⁹² See CAL. PUB. RES. CODE § 30001.5 (2019) (identifying one of the goals of the CCA as "[p]rotect[ing], maintain[ing], and, where feasible, enhance[ing] and restor[ing] the overall quality of the coastal zone"); Lafontaine, *supra* note 171 (defining short-term rentals as "the renting out of a furnished home, apartment, or condominium for a short-term stay").

¹⁹³ See *supra* Parts II.A, II.B.

¹⁹⁴ See *infra* Part II.C.

¹⁹⁵ See *infra* Part II.C.1.

¹⁹⁶ See *infra* Part II.C.2.

¹⁹⁷ See *infra* Part II.C.3.

¹⁹⁸ See *infra* Part II.C.4.

¹⁹⁹ Compare CAL. PUB. RES. CODE § 30001.5 (2019) (setting forth the CCA's goal to protect affordable access to the coast), with Diehl, *Del Mar Takes State to Court*, *supra* note 48 (reporting the Del Mar local government's position that it has to be "sensitive to unique community concerns" and "balance that with the public's desire to experience what our coast has to offer").

²⁰⁰ See PUB. RES. § 30001.5(c).

concern” for ecological and intrinsic reasons; and that future uses and developments on coastal lands therefore need to be thoughtfully planned to ensure the economic and social well-being of all Californians.²⁰¹ These interests stem from environmental justice efforts and a desire among California voters to “remedy patterns of inequality and discrimination in coastal access.”²⁰² Careful planning and responsible development is even more important as California’s population continues to grow.²⁰³

While cities generally must balance various needs of their citizens, the Commission is free to focus on very specific goals designed to uphold the universal values protected by the CCA.²⁰⁴ The CCA is designed to protect state policies over local government concerns.²⁰⁵ Local governments are often susceptible to the political influence of affluent residents who tend to have anti-tourism and anti-short-term rental views.²⁰⁶ Commissioners, on the other hand, are insulated from competing local interests because they are appointed at the state level and tasked with carrying out the specific provisions of the CCA.²⁰⁷ This insulation from local influence puts the Commission in a better position

²⁰¹ *La Fe, Inc. v. Los Angeles Cty.*, 86 Cal. Rptr. 2d 217, 218-19 (Cal. Ct. App. 1999) (citing CAL. PUB. RES. CODE § 30001 (a) & (d)).

²⁰² *DIAMOND ET AL.*, *supra* note 2, at 10.

²⁰³ *See id.* at 6.

²⁰⁴ Compare PUB. RES. § 30001.5 (delineating specific goals of the CCA), with Diehl, *Del Mar Takes State to Court*, *supra* note 48 (demonstrating the Del Mar local government’s position of balancing various issues of public concern).

²⁰⁵ *See Charles A. Pratt Constr. Co. v. Cal. Coastal Comm’n*, 76 Cal. Rptr. 3d 466, 471-72 (Cal. Ct. App. 2008) (“In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government.” (quoting *City of Chula Vista v. Superior Court*, 183 Cal. Rptr. 909, 919 (Cal. Ct. App. 1982))).

²⁰⁶ *See, e.g.*, Mary O’Hara, *Get Off My Beach! How the Wealthy are Laying Claim to California’s Coast*, *GUARDIAN* (Oct. 2, 2015, 1:04 PM), <https://www.theguardian.com/us-news/2015/oct/02/california-wealthy-public-beaches-private-security> [<https://perma.cc/8LD5-BTVR>] (discussing how wealthy homeowners attempt to ban the public from beaches and have even had sheriffs called to escort “trespassers” from beaches); Rosanna Xia, *A Beach Behind Lock and Key is Turning Into a Fight Over Social Justice in California*, *L.A. TIMES* (July 9, 2018, 3:00 AM), <http://www.latimes.com/local/lanow/la-me-opal-cliffs-environmental-justice-2018709-story.html> [<https://perma.cc/8QLU-QQ3N>] (discussing how “for decades, county regulators let [wealthy] residents have their way” in Opal Cliffs); Rosanna Xia, *Soon You Can Visit This Pristine California Beach — If You’re a Nearby Landowner, On a Guided Tour or Willing to Paddle 2 Miles*, *L.A. TIMES* (May 22, 2018, 2:40 PM), <http://www.latimes.com/local/lanow/la-me-hollister-ranch-settlement-20180522-story.html> [<https://perma.cc/B2VG-MHCK>] (discussing recent efforts by homeowners in Hollister Ranch to ban the public from the beach).

²⁰⁷ *See Commissioners & Alternates*, *supra* note 41.

to protect the interests outlined in the CCA, including affordable coastal access and preservation of the coast.²⁰⁸

One of the Coastal Commission's tasks is to limit development in the coastal zone when reviewing local government efforts to increase the availability of affordable housing.²⁰⁹ Supporting short-term rentals allows the Commission to work toward this goal by encouraging the use of existing structures by a greater number of Californians.²¹⁰ Short-term rentals do not require additional development in the coastal zone,²¹¹ and thus have less of an environmental impact on the coast than the construction of new hotels.²¹² Additionally, the Commission takes into account the unique needs of individual cities and counties.²¹³ This is evidenced by the fact that the Commission discusses these issues in its hearings, and reaches different conclusions in different cities and counties.²¹⁴ For example, the housing crisis is particularly pervasive in Santa Cruz, and this was one of the main reasons the Commission

²⁰⁸ See generally PUB. RES. § 30001.5 (listing affordable coastal access and preservation of the coast among the goals of the CCA).

²⁰⁹ See PUB. RES. § 30001.5.

²¹⁰ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 13 (short-term rentals are often “the most affordable option for overnight stays on the coast, particularly for groups and families”); see also *Surfrider Found. v. Martins Beach 1, LLC*, 221 Cal. Rptr. 3d 382, 394 (Cal. Ct. App. 2017) (determining that a decrease in access to the coast was the key issue that made this conduct a “development” for purposes of the Coastal Act).

²¹¹ See Lafontaine, *supra* note 171.

²¹² Compare *id.* (defining short-term rentals as “the renting out of a furnished home, apartment, or condominium for a short-term stay”), with Jon Matsuoka & Terry Kelly, *The Environmental, Economic, and Social Impacts of Resort Development and Tourism on Native Hawaiians*, 15 J. SOC'Y & SOC. WELFARE 29, 31-35 (1988) (explaining the environmental impacts on the natural landscape and resources of the extreme development of hotels in Hawaii).

²¹³ See, e.g., *California Coastal Commission Meeting Agenda: April 11, 2018*, *supra* note 66, at 2:56:14-4:40:20 (discussing the unique and complex issues raised during hearing on Santa Cruz's short-term rental bans).

²¹⁴ See, e.g., *id.* Compare Chris McGuinness, *Pismo Beach Rolls Out New Short-Term Rentals Regulations*, NEW TIMES (May 24, 2018), <https://www.newtimeslo.com/sanluisobispo/pismo-beach-rolls-out-new-short-term-rentals-regulations/Content?oid=5166843> [<https://perma.cc/SR48-F5N9>] (Pismo Beach short-term rental ban approved by Coastal Commission), and Gumz, *Santa Cruz Vacation Rental Limits OK'd*, *supra* note 6 (Santa Cruz short-term rental ban approved by Coastal Commission), with Tash, *supra* note 6 (Del Mar's short-term rental ban denied by the Coastal Commission) and Weiermann, *supra* note 6 (Laguna Beach's short-term rental ban rejected by the Coastal Commission).

strayed from its typical position and approved the city's cap of short-term rentals.²¹⁵

2. Legislative Intent to Limit Local Government Power to More Uniformly Address California's Major Issues

The CCA is a reflection of voter interests²¹⁶ and the legislature has the ability to limit Commission discretion.²¹⁷ For example, the legislature has reduced the scope of the CCA's coverage in the past when it removed its affordable housing provisions requiring local governments to include affordable, long-term housing in their LCPs.²¹⁸ If the legislature intended for short-term rentals in the coastal zone to be exclusively controlled at the local level, then it presumably would have also removed the provision of the CCA that calls for affordable access to the coast.²¹⁹ However, the endurance of the coastal access and development provisions indicates a political preference in the state for broad protection of coastal resources.²²⁰

Additionally, there is currently a general trend in the law toward limiting local government power over housing issues in light of the worsening statewide housing crisis.²²¹ For example, the California

²¹⁵ See *California Coastal Commission Meeting Agenda: April 11, 2018*, *supra* note 66, at 2:56:14-4:40:20 (focusing on housing issues during Santa Cruz hearing).

²¹⁶ See *supra* Part II.C.1.

²¹⁷ See DIAMOND ET AL., *supra* note 2, at 6.

²¹⁸ See *id.*; *Bill Analysis: AB 663 (Bloom)*, in JOHN AINSWORTH & SARAH CHRISTIE, CAL. COASTAL COMM'N, LEGISLATIVE REPORT FOR MARCH, 2017, at 8, 8, available at <https://documents.coastal.ca.gov/reports/2017/3/w6d-3-2017.pdf> [<https://perma.cc/P9BJ-V4XU>].

²¹⁹ See CAL. PUB. RES. CODE § 30001.5 (1982); see also *Bill Analysis: AB 663 (Bloom)*, *supra* note 218; DIAMOND ET AL., *supra* note 2, at 6. AB 663, which would have reinstated the Commission's authority to require local governments to include long-term affordable housing provisions in their LCPs, did not pass. *AB 663 Coastal Resources: Low- and Moderate-Income Housing*, CAL. LEG. INFO., https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB663 (last visited Mar. 25, 2020) [<https://perma.cc/U222-WM58>].

²²⁰ See PUB. RES. § 30001.5; *Bill Analysis: AB 663 (Bloom)*, *supra* note 218; DIAMOND ET AL., *supra* note 2, at 6.

²²¹ See Carolina K. Reid et al., *Addressing California's Housing Shortage: Lessons from Massachusetts Chapter 40B*, 25 J. AFFORDABLE HOUSING 241, 259 (2017); see, e.g., The Housing Element Law, CAL. GOV'T CODE §§ 65580-65589.8 (2019) (requiring all local governments to comply with state regulations for new housing developments); The Housing Accountability Act, CAL. GOV'T CODE §§ 65589.5-65589.6 (2019) (requiring local governments to speed up housing approvals); The Density Bonus Law, CAL. GOV'T CODE §§ 65915-65918 (2019) (permitting developers that meet state requirements to receive the density bonus and other benefits); CAL. GOV'T CODE § 65852.2 (2019) (limiting local governments' ability to restrict accessory dwelling units).

Legislature reduced local government power to restrict ADUs because of a pressing need to increase affordable housing availability throughout the state.²²² Similarly, the CCA reduces local government power to restrict short-term rentals because of an overriding state need to increase affordable access to the coast, while minimizing coastal development.²²³ The state must be able to balance these issues and make uniform decisions to address widespread problems.²²⁴

3. Extrinsic Benefits for Private Property Owners

Short-term rental bans are a unique area of regulation where the Commission's authority over the issue could inadvertently protect private property owner interests.²²⁵ The Commission has generally taken a position against short-term rental bans.²²⁶ This stance extrinsically protects property owners' ability to use their property as they please.²²⁷ This right to rent property through short-term rentals is one of the fundamental tenets of property law.²²⁸ Homeowners who wish to rent out their property will be able to supplement their income, which can help to alleviate some of the financial burdens of living in high-cost coastal areas.²²⁹ This additional source of income would in

²²² See Collins, *supra* note 178; see also Gov. § 65852.2.

²²³ See Reid et al., *supra* note 221, at 261-62.

²²⁴ See generally *id.* (explaining the difficulty of addressing the housing crisis in California through a series of local government regulations designed to increase affordable housing and suggesting that a statewide law would be more beneficial).

²²⁵ See Jamila Jefferson-Jones, *Can Short-Term Rental Arrangements Increase Home Values? A Case for AirBNB and Other Home Sharing Arrangements*, 13 CORNELL REAL EST. REV. 12, 19 (June 2015) ("The ability to rent one's property — even in the short-term — may be a tremendous aid to struggling homeowners.").

²²⁶ See, e.g., Keith Hamm, *Coastal Commission Rejects Limiting Short-Term Rentals*, SANTA BARBARA INDEP. (Aug. 20, 2018, 12:00 AM), <https://www.independent.com/2018/08/20/coastal-commission-rejects-limiting-short-term-rentals/> [<https://perma.cc/52SN-XG9F>] (discussing the rejection of Santa Barbara County's ban on short-term vacation rentals by the Commission); Tash, *supra* note 6 (discussing the opposition of Del Mar's short-term rental ban by the Commission); Weiermann, *supra* note 6 (discussing the rejection of Laguna Beach's short-term rental ban by the Commission).

²²⁷ See DIAMOND ET AL., *supra* note 2, at 9 (discussing the constant tension between public access goals and private property rights).

²²⁸ See Emily M. Speier, Comment, *Embracing Airbnb: How Cities Can Champion Private Property Rights Without Compromising the Health and Welfare of the Community*, 44 PEPP. L. REV. 387, 397 (2017) ("By imposing restrictions on short-term rentals, states and cities are severely limiting two very important 'sticks' within the property owner's bundle of rights: the right to lease and the right to license.").

²²⁹ See, e.g., Reyes, *supra* note 21 (discussing the equity of allowing long-term residents to benefit from the new economy created by short-term rental platforms).

many cases help long-term residents afford to continue living in these areas.²³⁰

4. Criticisms of These Policy Arguments

Critics of Commission review of local ordinances argue that allowing short-term rentals to proliferate would push long-term renters out of their homes because it is more profitable to lease to short-term renters.²³¹ In desirable coastal areas, property owners can sometimes charge higher rates for short-term rentals than long-term rentals.²³² Short-term renters can also be easier to find because of platforms like Airbnb.²³³ If profitable short-term rentals are unrestricted, some fear that there will be no incentive to lease property for long periods of time, and thus affordable long-term rentals will disappear from coastal areas.²³⁴

Concerns that short-term rentals will eliminate long-term rentals may not be entirely well-founded.²³⁵ For example, there is a lack of evidence to support the claim that short-term rentals are a major cause of Santa Cruz's housing shortage.²³⁶ Other factors, such as the growing UC Santa Cruz student community, coupled with the University's lack of on-campus housing, overshadow these few hundred short-term rentals.²³⁷ There is also no guarantee that the ban of short-term rentals will result in a meaningful impact on the housing supply.²³⁸ In Santa Cruz, for example, short-term rentals only make up 2.5% of the city's overall

²³⁰ See, e.g., *id.*; McGuinness, *supra* note 214 (reporting Pismo Beach residents' claims that renting out their homes through platforms like Airbnb helped them offset the increasingly high cost of living in the city).

²³¹ See Jennifer Sokolowsky, *10 Reasons to Invest in Short-Term Vacation Rental Property*, AVALARA (Mar. 8, 2018), <https://www.avalara.com/mylodgetax/en/blog/2018/03/ten-reasons-to-invest-in-short-term-vacation-rental-property.html> [https://perma.cc/KY96-UNC4]; see, e.g., Lori Weisberg & Rob Nikolewski, *No Big Deal or a 'Bloodbath'? Mission Beach Reacts to City Council Limits on Airbnb Rentals*, SAN DIEGO UNION-TRIB. (July 17, 2018, 7:40 PM), <https://www.sandiegouniontribune.com/business/tourism/sd-fi-airbnb-mission-beach-20180717-story.html> [https://perma.cc/8586-ZKPQ] (explaining that homeowners feel forced out of long-term ownership by proliferating short-term rentals).

²³² See Sokolowsky, *supra* note 231.

²³³ *Id.*

²³⁴ See Weisberg & Nikolewski, *supra* note 231.

²³⁵ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4.

²³⁶ Gumz, *Santa Cruz Vacation Rental Limits OK'd*, *supra* note 6.

²³⁷ See *id.*

²³⁸ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4.

housing stock — approximately 600 units.²³⁹ Banning short-term rentals does not necessarily mean that all or most of these units would become long-term rentals, as many may be second homes that wealthy owners would not be inclined to rent out for long-term periods.²⁴⁰ In Pacific Grove, for example, only 5.9% of owners of second homes said they would convert their units to long-term rentals if short-term rentals were banned.²⁴¹ If applied to Santa Cruz's short-term rental stock, this percentage indicates that less than 100 units would be converted to long-term housing.²⁴² This is a seemingly inconsequential number given the city's need for the addition of approximately 12,000 affordable rental units.²⁴³

Moreover, adding these short-term rental units back into the long-term market does not guarantee that they will be affordable options, especially given the high cost of living in Santa Cruz.²⁴⁴ Residents of hosted short-term rentals may rely on these rentals as a source of income, and could be pushed out of their homes if such rentals were restricted or banned.²⁴⁵ If these types of rentals are banned, the owners would either continue to live there if they can afford to, or the spaces would, generally speaking, become very expensive long-term housing.²⁴⁶ Moreover, non-hosted short-term rentals are mainly located in desirable areas where the long-term cost of living is prohibitively high for many Californians.²⁴⁷ If affordable short-term rentals are transformed into expensive long-term housing, then certain groups will essentially lose access to these coastal cities; they will not be able to live long-term *or* even visit these areas.²⁴⁸ Thus, there is reason to think that

²³⁹ *Id.* at 4; see *Santa Cruz City, California: Total Housing Units*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tableservices/jsl/pages/productview.xhtml?src=CF> (last visited Nov. 16, 2019) [<https://perma.cc/239F-3VXQ>] (estimating the total number of housing units in the City of Santa Cruz to be 21,657). This is a seemingly low percentage when compared to other cities like Mission Beach, where short-term rentals make up 44% of the city's housing stock. See Weisberg & Nikolewski, *supra* note 231.

²⁴⁰ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 20.

²⁴¹ *Id.*

²⁴² See *id.*

²⁴³ See Nicholas Ibarra, *Report: Santa Cruz County in Need of Nearly 12,000 New Affordable Rentals*, SANTA CRUZ SENTINEL (Sept. 11, 2018, 8:22 PM), <https://www.santacruzsentinel.com/2018/09/11/report-santa-cruz-county-in-need-of-nearly-12000-new-affordable-rentals/> [<https://perma.cc/3NR9-6YN2>].

²⁴⁴ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4.

²⁴⁵ See, e.g., Reyes, *supra* note 21 (describing how a long-term renter depends on the economic benefits of Airbnb to make ends meet in an area with a growing cost of living).

²⁴⁶ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4.

²⁴⁷ See *id.*

²⁴⁸ See *id.*

eliminating short-term rentals would not be an appropriate solution to the lack of affordable long-term housing in coastal areas.²⁴⁹

Even in cases where long-term housing is adversely impacted by short-term rentals, eliminating Commission review of short-term rental bans is not the solution. As demonstrated by the approval of the Santa Cruz ban,²⁵⁰ the Commission has authority to allow local governments to restrict short-term rentals when it determines there is a particularly devastating local housing crisis.²⁵¹ Instead of reducing Commission authority over short-term rentals, the legislature could hypothetically reinstate the provisions of the CCA that required affordable housing to be part of city LCPs.²⁵² In that scenario, the Commission would be required to more actively protect affordable long-term housing in coastal areas.²⁵³ For example, the Commission could require that a certain percentage of units in a coastal zone be maintained as affordable housing with re-sale controls to secure affordability.²⁵⁴ In that case, the Commission would not be restricted to rely on the vague “specific geographic impact” exception.²⁵⁵ Such a change that extends, rather than limits, the scope of Commission review would uniformly address concerns of long-term housing reductions.²⁵⁶ Therefore, Commission review of short-term rental bans is not in and of itself a primary cause of the lack of affordable long-term housing in coastal communities.²⁵⁷

²⁴⁹ See *id.*

²⁵⁰ See *California Coastal Commission Meeting Agenda: April 11, 2018*, *supra* note 66, at 2:56:14-4:40:20 (pointing to the housing crisis in the City of Santa Cruz as a justification for the Commission’s approval of the city’s short-term rental ban); Gumz, *Santa Cruz Vacation Rental Limits OK’d*, *supra* note 6.

²⁵¹ See *California Coastal Commission Meeting Agenda: April 11, 2018*, *supra* note 66, at 2:56:14-4:40:20.

²⁵² See *Bill Analysis: AB 663 (Bloom)*, *supra* note 218.

²⁵³ See *id.* (noting that the provision requiring affordable housing in coastal cities’ LCPs was repealed); see, e.g., CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4 (considering Santa Cruz’s lack of affordable long-term housing in the Commission’s review of the city’s LCP amendment, but not requiring affordable housing).

²⁵⁴ See, e.g., *Bill Analysis: AB 663 (Bloom)*, *supra* note 218, at 1 (discussing how the Commission secured affordable long-term housing in Orange County before the affordable housing provision was repealed from the Coastal Act).

²⁵⁵ See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 21, at 17.

²⁵⁶ See *Bill Analysis: AB 663 (Bloom)*, *supra* note 218, at 1 (discussing the purpose of the potential reinstatement of an affordable housing provision: “to protect, encourage and . . . provide affordable housing in the coastal zone”).

²⁵⁷ See, e.g., CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4 (discussing the relatively small impact that short-term rentals have on the long-term housing stock).

III. SOLUTION

The Commission's authority to review city ordinances addressing short-term rentals within the coastal zone is ad hoc and has led to confusion and frustration for local governments trying to pass regulations.²⁵⁸ The Commission reviews issues on a case-by-case basis, but does not currently publish its decisions regarding city actions that fall within the purview of the CCA.²⁵⁹ Additionally, Commissioners are subject to change, which creates an added level of uncertainty as these Commissioners' views may vary.²⁶⁰ In 2017 alone, five new Commissioners were sworn in due to election losses, term expirations, and one resignation.²⁶¹ The structure of the Commission thus makes it difficult for cities to predict how the Commission will decide short-term rental bans in their jurisdictions.²⁶² Additionally, this appointment and election structure makes the Commission more susceptible to extrinsic political interests that diverge from the goals of the CCA.²⁶³ A lack of accountability to precedent or being bound to staff recommendations makes it easier for Commissioners to make unexplained decisions based on "gut feelings" or undue political influence.²⁶⁴ Two potential

²⁵⁸ See, e.g., Diehl, *Del Mar Takes State to Court*, *supra* note 48 (detailing Del Mar's frustration with case-by-case decisions that result in "various lawsuits" and describing the City's decision to file a lawsuit to challenge the Coastal Commission's authority over short-term vacation rentals).

²⁵⁹ See CAL. COASTAL COMM'N, COMMISSION LCP ACTIONS ON STRS, *supra* note 7 (table of Commission actions on some short-term rental bans that "does not provide a comprehensive view of all regulatory parameters" and does not explain the Commissioners' reasoning in each case); *Web Streaming Full Coverage of California State Meetings: California Coastal Commission*, CAL-SPAN, <http://cal-span.org/static/meetings-CCC.php> (last visited Mar. 25, 2020) (video archives of Commission hearings).

²⁶⁰ See *Commissioners & Alternates*, *supra* note 41.

²⁶¹ See 2017 California Coastal Commission Conservation Report Card, ACTCOASTAL (May 6, 2018), http://www.actcoastal.org/wiki/2017_California_Coastal_Commission_Conservation_Report_Card [<https://perma.cc/VR5C-YLTA>].

²⁶² See, e.g., Diehl, *Del Mar Takes State to Court*, *supra* note 48.

²⁶³ See, e.g., Shelby Grad, *Political Drama Is Nothing New to California Coastal Commission*, L.A. TIMES (Feb. 11, 2016, 11:06 AM), <https://www.latimes.com/local/lanow/la-me-california-coastal-commission-political-drama-20160211-story.html> [<https://perma.cc/LZ79-ATQW>] (discussing how a previous commission member, Mark Nathanson, pled guilty to soliciting money from developers in exchange for leniency on coastal building permit approvals); Dan Weikel, *State Leaders Fill Three Vacant California Coastal Commission Seats*, L.A. TIMES (Mar. 16, 2017, 7:10 PM), <https://www.latimes.com/local/lanow/la-me-ln-commission-selections-20170316-story.html> [<https://perma.cc/4CPW-BQC6>] ("Environmentalists accused some commissioners of catering more and more to development interests.").

²⁶⁴ See, e.g., Dan Weikel, *Coastal Commission Slapped with 4 Lawsuits Over Alleged Secret Communications*, L.A. TIMES (July 8, 2016, 10:45 AM), <https://www.latimes.com/>

solutions to provide more clarity to cities would be for the Commission to either formally publish their decisions²⁶⁵ or adopt a formal policy on the issue.²⁶⁶

A. Publication of Commission Decisions

Given the Commission's case-by-case style of review, it would make sense for the Commission to publish its decisions in a similar manner as the judicial system.²⁶⁷ If this were to occur, the Commission would need to formally establish the factors that it will consider when reviewing short-term rental bans.²⁶⁸ These factors could include: available long-term housing stock, average long-term cost of living, the number of existing overnight accommodations and their prices, and the number of daily commuters.²⁶⁹ These are the elements that the Commission already considers when making short-term rental ban decisions.²⁷⁰ The Commission would then need to determine which factors outweigh the others and explain *why*.²⁷¹ For example, if the

local/lanow/la-me-ln-coastal-commission-20160630-snap-story.html [https://perma.cc/26WV-MMV7] (discussing multiple lawsuits “challeng[ing] Coastal Commission decisions partly on the grounds that its members have had improper private contacts with permit applicants — so called ex-parte communications”).

²⁶⁵ See *infra* Part IV.A.

²⁶⁶ See *infra* Part IV.B.

²⁶⁷ See BERKELEY LAW, THE COMMON LAW AND CIVIL LAW TRADITIONS 1 (2010), <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf> (last visited Mar. 25, 2020) [https://perma.cc/6LEA-Z8W4] (discussing how a judge in a codified legal system investigates a matter and decides on the case, and how they must work “within a framework established by a comprehensive, codified set of laws”); Martin Shapiro, *Codification of Administrative Law: The US and the Union*, 2 EUR. L.J. 26, 29-30 (1996) (“[A] court may look to the lawfulness of a rule itself as well as its application in a specific case . . .”).

²⁶⁸ See William B. Ewald, *What's So Special About American Law?*, 26 OKLA. CITY U. L. REV. 1083, 1087 (2001) (“[M]uch of American law is codified either by statutes or by administrative regulations.”); THE COMMON LAW AND CIVIL LAW TRADITIONS, *supra* note 267, at 1 (discussing how when a judge in a codified legal system investigates a matter and decides on the case, they must work “within a framework established by a comprehensive, codified set of laws”).

²⁶⁹ The Commission's staff report on the Santa Cruz ban focuses on and discusses these factors. See CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4.

²⁷⁰ See, e.g., *California Coastal Commission Meeting Agenda: April 11, 2018*, *supra* note 66, at 2:56:14-4:40:20 (discussing characteristics of the City of Santa Cruz, such as the number of hotels, high cost of living, lack of long-term housing, and workforce that commutes to the city on a daily basis).

²⁷¹ See TONI M. FINE, AMERICAN LEGAL SYSTEMS: A RESOURCE AND REFERENCE GUIDE, ch. 1 (Anderson Publishing 1997) (discussing how the judicial system in the United

Commission were to determine that the housing shortage in a city is severe enough to justify short-term rental bans, then they would need to formally state what makes those conditions pervasive enough to overcome the presumption against such bans.²⁷² If Commission decisions were written out in detail and published, local governments would have a more reliable source to use as guidance when developing short-term rental ordinances.²⁷³

B. Adoption of a Policy Letter on Short-Term Rental Bans

The added administrative and fiscal burdens of publishing Commission decisions may make such an endeavor impracticable.²⁷⁴ The Commission might instead be willing to adopt a policy letter that more clearly states its position on short-term rentals, which could be similar in structure and style to the Commission's Sea Level Rise Policy Guidance document.²⁷⁵ In that policy letter, the Commission provided guidelines on how to apply the CCA to the challenges presented by sea level rise through development permit decisions.²⁷⁶ The document discussed tools for compliance with the CCA for cities amending their LCPs²⁷⁷ and seeking development permits.²⁷⁸ For example, the document provides a general five-step framework for addressing sea level rise in development permits.²⁷⁹ These steps include consideration

States operates and that courts explain their interpretation of the law as applied to a specific set of facts).

²⁷² See *id.*

²⁷³ See *id.* (discussing how the judicial system in the United States operates and that courts rely on prior precedent when making new decisions); Frank H. Easterbrook, *Stability and Reliability in Judicial Decisions*, 73 CORNELL L. REV. 422, 423 (1988) ("Precedent decentralizes decisionmaking and allows each judge to build on the wisdom of others.").

²⁷⁴ See *The 2017-18 Budget: Judicial Branch*, LEGIS. ANALYST'S OFF. (Feb. 14, 2017), <https://lao.ca.gov/Publications/Report/3557> [<https://perma.cc/UMY8-HRN3>] (indicating total funding for the state judicial branch for the 2017-2018 year of \$3.9 billion); MATTHEW E. GLASSMAN, CONG. RESEARCH SERV., JUDICIARY APPROPRIATIONS, FY2018 (2017), <https://fas.org/sgp/crs/misc/R44935.pdf> [<https://perma.cc/XEB5-YQMP>] (showing the federal judiciary requested a total of \$7.86 billion in funding for 2018).

²⁷⁵ See generally CAL. COASTAL COMM'N, CALIFORNIA COASTAL COMMISSION SEA LEVEL RISE POLICY GUIDANCE: INTERPRETIVE GUIDELINES FOR ADDRESSING SEA LEVEL RISE IN LOCAL COASTAL PROGRAMS AND COASTAL DEVELOPMENT PERMITS 5 (2018), https://documents.coastal.ca.gov/assets/climate/2018ScienceUpdate_website_7.20.18.pdf [<https://perma.cc/DH9G-G5RQ>] [hereinafter SEA LEVEL RISE POLICY GUIDANCE].

²⁷⁶ See *id.* at 14.

²⁷⁷ See *id.* at 68.

²⁷⁸ See *id.* at 98.

²⁷⁹ See *id.* at 100.

of: (1) the projected sea level rise for the project, (2) how sea level rise impacts might constrain the site of the project, (3) the impact of the project on coastal resources over time, (4) potential project alternatives, and (5) a finalized project design.²⁸⁰ The document does not apply to a specific geographic area, which means that all of the options discussed serve as suggestions, rather than a checklist of required actions.²⁸¹ This policy letter does not predetermine how a project will be reviewed by the Commission, but does provide some formalized guidance.²⁸²

A comparative policy letter on coastal access and short-term rental bans could specify relevant considerations such as: (1) the ordinance's projected impact on coastal access, (2) how long-term housing stock might be affected by the ordinance, (3) the impact on coastal access of the ordinance over time, and (4) potential alternatives, such as a ban only on non-hosted short-term rentals or a conservative cap.²⁸³ These are all factors that the Commission staff and Commissioners have discussed when reaching decisions about short-term rental bans.²⁸⁴ These considerations could involve sub-analysis, including evaluations of the city or county's existing long-term housing stock, average cost of living, existing number of overnight accommodations and their prices, and the number of people who commute to the city for work.²⁸⁵ This would not be a significant divergence from the existing staff recommendations that the Commission reviews, as it utilizes similar elements considered in the recommendations.²⁸⁶ However, these policy

²⁸⁰ *Id.*

²⁸¹ See *Sea Level Rise: Adopted Policy Guidance*, CAL. COASTAL COMM'N, <https://www.coastal.ca.gov/climate/slrguidance.html> (last visited Feb. 24, 2020) [<https://perma.cc/MB8L-7GDS>]; CAL. COASTAL COMM'N, SEA LEVEL RISE POLICY GUIDANCE, *supra* note 275, at 5.

²⁸² See CAL. COASTAL COMM'N, SEA LEVEL RISE POLICY GUIDANCE, *supra* note 275, at 5, 14 (discussing the general guidelines for compliance with the sea level rise provisions of the CCA).

²⁸³ See *id.* at 100.

²⁸⁴ See, e.g., CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4 (discussing the Commission's consideration of factors such as the number of short-term rentals in the city, costs of living in the area, and existing housing stock in determining whether short-term rentals are a significant influence on the city's housing shortage).

²⁸⁵ See, e.g., *id.*

²⁸⁶ Compare *id.* at 4, with KARL SCHWING, DEBORAH LEE & KAITLIN CARNEY, CAL. COASTAL COMM'N, STAFF RECOMMENDATION ON CITY OF DEL MAR MAJOR AMENDMENT LCP-6-DMR-17-0083-3 (SHORT TERM RENTALS) FOR COMMISSION MEETING OF JUNE 7, 2018, at 22-26 (2018), <https://documents.coastal.ca.gov/reports/2018/6/th14d/th14d-6-2018-report.pdf> [<https://perma.cc/A8VB-GQU9>] [hereinafter DEL MAR STAFF RECOMMENDATION].

guidelines are more general and comprehensive.²⁸⁷ A standardized policy letter would eliminate the need for cities to review numerous Commission staff reports and hearings in order to determine what issues the Commission finds most important.²⁸⁸

CONCLUSION

Protecting California's coast from development and ensuring equal public access to the state's iconic natural resource are among the main goals of the CCA.²⁸⁹ The Commission is tasked with carrying out and defending these goals.²⁹⁰ Recently, many cities have sought to ban short-term rentals like Airbnbs.²⁹¹ These bans are in direct conflict with the CCA because they reduce the amount of affordable overnight accommodations in coastal areas, and thus restrict public coastal access.²⁹² The Commission has rejected nearly all such bans,²⁹³ prompting cities and counties to call into question the scope of the Commission's authority.²⁹⁴

The Commission's authority over this issue is justified because short-term rentals are properly encompassed within the broad definition of

²⁸⁷ Compare CAL. COASTAL COMM'N, SEA LEVEL RISE POLICY GUIDANCE, *supra* note 275, at 23 (discussing a general set of options and potential issues for complying with sea level rise provisions of the CCA), with CRAIG & CARVILL, SANTA CRUZ STAFF RECOMMENDATION, *supra* note 20, at 4 (discussing the specific issues relevant to Santa Cruz's short-term rental ban), and SCHWING ET AL., DEL MAR STAFF RECOMMENDATION, *supra* note 286, at 22-26 (discussing the specific issues relevant to Del Mar's short-term rental ban).

²⁸⁸ See generally CAL. COASTAL COMM'N, SEA LEVEL RISE POLICY GUIDANCE, *supra* note 275 (formally providing the general guidelines for compliance with the sea level rise provisions of the CCA).

²⁸⁹ See CAL. PUB. RES. CODE § 30001.5 (2019).

²⁹⁰ See *id.* § 30330.

²⁹¹ See, e.g., Gumz, *Santa Cruz Vacation Rental Limits OK'd*, *supra* note 6 (discussing the Coastal Commission's approval of the Santa Cruz short-term rental ban); Tash, *supra* note 6 (discussing the Coastal Commission's denial of Del Mar's short-term rental ban); Weiermann, *supra* note 6 (discussing the Commission's rejection of Laguna Beach's short-term rental ban).

²⁹² See PUB. RES. § 30001.5.

²⁹³ See, e.g., Hamm, *supra* note 226 (discussing Santa Barbara County's ban on short-term vacation rentals in residential neighborhood and agricultural parcels rejected by Coastal Commission); Tash, *supra* note 6 (discussing the Commission's denial of Del Mar's short-term rental ban); Weiermann, *supra* note 6 (discussing the Commission's rejection of Laguna Beach's short-term rental ban).

²⁹⁴ See, e.g., Diehl, *Del Mar Takes State to Court*, *supra* note 48 (detailing Del Mar's frustration with case-by-case decisions that result in "various lawsuits" and describing the City's decision to file a lawsuit to challenge the Coastal Commission's authority over short-term vacation rentals).

“development,” which is subject to Commission review in the coastal zone.²⁹⁵ The acceptance of Commission authority over another type of restriction on use — in the context of ADUs — likewise provides support for Commission discretion in the area of short-term rentals.²⁹⁶ Finally, Commission review of short-term rental bans in the coastal zone makes sense as a matter of public policy.²⁹⁷

While the Commission has authority to review such bans, its ad hoc review style has left cities with little guidance in terms of developing short-term rental ordinances.²⁹⁸ To remedy this problem, the Commission should consider formally publishing its decisions.²⁹⁹ Alternatively, a policy letter like the Sea Level Rise Policy Guidance document would prove illuminating to local governments attempting to regulate short-term rentals.³⁰⁰ Either of these solutions would facilitate the cooperation of the Commission with local government interests, while preserving the fundamental values of the CCA.³⁰¹

²⁹⁵ See *supra* Part II.A.

²⁹⁶ See *supra* Part II.B.

²⁹⁷ See *supra* Part II.C.

²⁹⁸ See, e.g., Diehl, *Del Mar Takes State to Court*, *supra* note 48.

²⁹⁹ See *supra* Part III.A.

³⁰⁰ See *supra* Part III.B.

³⁰¹ See *supra* Part III.