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7 Attorneys for Petitioner **CITY OF DEL MAR**

*Fee Exempt -  
Gov. Code §§ 6103, 26857*

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN DIEGO - CENTRAL**

11 THE CITY OF DEL MAR, a California  
Charter City,

12 Petitioner,

13 v.

14 THE CALIFORNIA COASTAL  
15 COMMISSION, a public agency,

16 Respondent.

Case No.: 37-2018-00039254-CU-WM-CTL

**CITY OF DEL MAR'S PETITION FOR  
WRIT OF MANDAMUS AGAINST  
THE CALIFORNIA COASTAL  
COMMISSION**

**[CCP § 1094.5]**

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20  
21 **I.**  
**INTRODUCTION**

22  
23 1. Petitioner City of Del Mar ("City") hereby petitions this Court for the issuance  
24 of a Writ to inquire into the validity of an administrative decision made by Respondent  
25 California Coastal Commission ("Commission"), which became final on or about June 7,  
26 2018. The City challenges the legality of the Commission's rejection of the City's Local  
27 Coastal Program Amendment ("LCPA"), and adoption of a conditional approval stating that  
28 the City must allow Short Term Rentals ("STRs") in residential zones at a higher intensity



1 Commission stands as an inferior tribunal or board subject to this Court’s jurisdiction. (CCP  
2 §1094.5(a).)

3 5. Venue is proper because the City is located in San Diego County and the Coastal  
4 Commission has offices located within San Diego County. All of the matters alleged herein  
5 occurred within San Diego County.

6  
7 **IV.**  
**FACTUAL ALLEGATIONS**

8 6. The City limits are completely within the California Coastal Zone and therefore  
9 subject to Division 20 of the California Public Resources Code beginning at section 30000 *et*  
10 *seq.* (the “Coastal Act”) As required by the Coastal Act, the City adopted a Land Use Plan  
11 (“LUP”) which incorporates portions of the City’s General Plan and provides detailed  
12 prescriptions of land use within the City’s boundaries. (PRC § 30108.5.)

13 7. In March of 1993, the Commission certified the City’s LUP, with modifications,  
14 as consistent with the Coastal Act. (PRC § 30512.)

15 8. After LUP certification in March of 1993, the City submitted its Local Coastal  
16 Program to the Commission. (“LCP”) The City’s LCP includes its LUP, its zoning ordinances  
17 and its zoning maps. (PRC § 30108.6.) The LCP implements the provisions of the Coastal Act  
18 at the municipal “local” level (*Id.*) The Commission certified the City’s LCP as consistent  
19 with the Coastal Act in September, 2001 (PRC § 30513.)

20 9. Over the years, the City has routinely submitted amendments of its LCP to the  
21 Commission for certification. Such amendments are commonly referred to as Local Coastal  
22 Program Amendments or LCPAs. The Coastal Act requires Commission certification of  
23 LCPAs in the same manner used to certify LCPs. (PRC § 30514.) The Commission has  
24 certified each of the previously submitted LCPAs with the exception of the LCPA at issue  
25 here.

26 10. The LCPA at issue here concerns the use of residential property as Short Term  
27 Rentals. (“STRs”) STRs typically consist of either single or multi-family residences located  
28 within residential zones, and rented for less than 30 days. In November 2017, the City adopted

1 zoning ordinance regulating STRs (the “Ordinance”).<sup>2</sup> The Ordinance permitted STRs in  
2 certain residential zones subject to a minimum stay of seven (7) nights for a maximum of  
3 twenty-eight (28) days per calendar year.

4 11. On or about December 21, 2017, the City submitted the required LCPA  
5 application to the Commission because the City’s zoning ordinances are included in the LCP.

6 12. On May 24, 2018, the Commission issued a Staff Report concerning the City’s  
7 LCPA. The Staff Report recommended the Commission deny the City’s LCPA and instead  
8 require the City to adopt a different ordinance with more intense STR use as a condition to  
9 Commission certification. Staff recommended an arbitrary limit on STR use of a three (3)  
10 night minimum stay with a maximum STR use of one hundred eighty (180) nights per year.  
11 Staff’s purported rationale for this increase was the need to avoid “adverse impacts to public  
12 access, specifically overnight visitor-serving accommodations, especially more affordable  
13 opportunities...”<sup>3</sup> The Staff Report’s findings were not supported by evidence on the rationale  
14 behind increased intensity.

15 13. On June 7, 2018, the Commission held a public hearing on the City’s LCPA.  
16 The hearing was held in Chula Vista, California. At the hearing, the Coastal Commission  
17 rejected the City’s LCPA and adopted a conditional approval stating that the City must allow  
18 STRs in residential zones at a much higher intensity than adopted by the City Ordinance. The  
19 Commission arbitrarily required the City to adopt an STR use with a three (3) night minimum  
20 stay for a maximum of one-hundred (100) nights per year.

21 14. The Commission’s purported reason for requiring the City to adopt the more  
22 intensive STR use was that STRs are more affordable than hotels, or other accommodations,  
23 for moderate income families. The Commission failed to cite any substantial evidence to  
24 support its claim that STRs provide more affordable accommodations. Further, the  
25 Commission failed to cite any substantial evidence that more intensive STR use in the City  
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27  
28 <sup>2</sup> See Ordinance No. 934 amending Del Mar Municipal Code (“DMMC”) Chapter 5.04 and Chapters 30.04, and 30.10  
through 30.22 and 30.24 through 30.26 and adding Chapter 30.96.

<sup>3</sup> See Coastal Commission Staff Recommendation dated May 24, 2018.

1 would have a beneficial impact on public access to the City's coast.

2 15. The Commission's findings are claimed to not have been supported by the  
3 evidence. Therefore, this Court is authorized by law to exercise its independent judgment on  
4 the evidence, and find an abuse of discretion because the Commission's findings were not  
5 supported by the weight of the evidence in light of the whole record. (CCP § 1094.5(c).)

6  
7 **V.**  
8 **FIRST CAUSE OF ACTION**  
9 **(WRIT OF MANDATE – CCP §1094.5)**

10 16. The City realleges and incorporates herein by this reference each and every  
11 allegation set forth in paragraphs 1 through 15 inclusive, as though fully set forth herein and  
12 made a part hereof.

13 17. When considering an LCPA, the Commission acts in a quasi-judicial role. That  
14 is, it determines whether the LCPA is consistent with the City's LUP. In determining whether  
15 an LCPA is consistent with the LUP, the Commission must make findings supported by  
16 substantial evidence.

17 18. For purposes of granting a Writ of Mandate, the court must determine whether  
18 the Commission proceeded without, or in excess of its jurisdiction; whether there was a fair  
19 hearing; and whether there was any prejudicial abuse of discretion. Abuse of discretion is  
20 established when the agency has not proceeded in the manner required by law; the order or  
21 decision is not supported by the findings; or, the findings are not supported by the evidence  
(CCP § 1094.5.)

22 19. The Commission processes both LCPs and LCPAs in the same manner. (PRC §  
23 30514.) The Standard of Review used by the Commission in considering certification of LCPs  
24 and LCPAs is the City's certified LUP (PRC § 30513; 14 CCR § 13542.) The Commission  
25 must consult the City's LUP and determine whether the proposed amendment conforms  
26 therewith. That is the Commission's sole authority in considering LCPAs. There is no  
27 statutory authority for the Commission to interpret the City's zoning code or to delve into the  
28 reasonableness of the City's own interpretation. There is no statutory authority for the

1 Commission to require a certain intensity of STR use in the City’s residential zones.

2 20. The City’s LUP contains no reference whatsoever to STRs. Further, the LUP  
3 makes no reference to affordability concerning overnight accommodations. The LUP does  
4 require that the City provide “quality” accommodations.

5 21. A California city may “make and enforce within its limits all local, police,  
6 sanitary and other ordinances and regulations not in conflict with general laws.” (California  
7 Constitution Article 11, §7). This power is well entrenched and fully recognized by the courts  
8 in this State.

9 22. In November 2017, the City adopted the Ordinance pursuant to its Constitutional  
10 police powers. In conformance with its obligations under the Coastal Act, the City submitted  
11 the Ordinance to the Coastal Commission in the form of an LCPA. The City expected the  
12 Coastal Commission to comply with state law and review the LCPA using the LUP as the  
13 standard of review without imposing specific requirements or conditions for certification.

14 23. However, the Commission essentially ignored the provisions of the LUP and  
15 instead applied standards to the LCPA, including Public Resources Code sections 30221,  
16 30222 and 30213, which are not found in the certified LUP. The Commission then cited prior  
17 Commission decisions as well as the STR policies of other jurisdictions, none of which are  
18 included in the LUP. This far exceeds Commission authority for reviewing LCPAs. Further,  
19 the evidence in the administrative record does not support the Commission’s denial of the  
20 City’s LCPA, or support the Commission’s arbitrary and enumerated requirement of more  
21 intense STR uses.

22 24. The primary responsibility of the Commission is to grant or deny permits for  
23 coastal development, or to approve or disapprove of LCPs and LCPAs. Once the Commission  
24 certifies an LUP and LCP, the City becomes responsible for implementing and administering  
25 the LCP. (PRC §§ 30519, 30600.5.) The Commission has no legal authority to amend or  
26 modify the City’s certified LCP.

27 25. The City relied upon the Commission’s certification of its LCP and acted  
28 accordingly by proposing an amendment to its zoning code to allow STRs in zones where they

1 were not previously allowed. The Commission abused its discretion in that it failed in its duty  
2 to review the LCP in light of the LUP, and to adequately consider the City's Constitutional  
3 authority to adopt and implement its own zoning ordinances without outside interference.

4 26. Neither the Coastal Act nor the LUP mentions STRs. There is no requirement  
5 in the Coastal Act for a city to require an STR land use within its residential zones. The Coastal  
6 Commission exceeded its authority and its jurisdiction by requiring specific land uses within  
7 coastal jurisdictions, including the City, because the Coastal Act mentions no such specific  
8 uses.

9 27. The Commission's purported reasoning for requiring intense STR uses is that  
10 STRs provide affordable, overnight accommodations and are part of the Commission's  
11 mandate to provide coastal access. However, legally, the Coastal Act does not equate access  
12 with overnight accommodations. Requiring STRs, or specific levels of STR intensity are  
13 beyond the authority and jurisdiction of the Commission.

14 28. Del Mar does not restrict access to its coastline or beaches. It is in full  
15 compliance with its LUP policies through extensive provision of parks and recreation facilities,  
16 mostly at no cost, serving millions of visitors each year. Even though not required by the LUP,  
17 the City also offers extensive overnight accommodations in a variety of places. Through its  
18 LCPA, the City proposes to expand these overnight opportunities to include regulated STRs  
19 in its residential neighborhoods.

20 29. Despite the Commission's contention, no factual basis exists to conclude that  
21 the City's LCPA falls outside the bounds of its certified LUP. The Commission's requirement  
22 to intensify STR use beyond that proposed in the LCPA is based on other considerations than  
23 the LUP and exceeds the Commission's statutory authority and jurisdiction.

24 30. The City has no plain, speedy or adequate remedy at law to challenge the  
25 Commission's denial of its LCPA other than the relief sought in this petition.

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**VI.**  
**PRAYER FOR RELIEF**

WHEREFORE, the City prays that the Court enter judgment in favor of City and against the Commission as follows:

1. For a Writ of Mandate issued under Code of Civil Procedure section 1094.5:
  - a. That the Commission's denial of the City's LCPA is vacated in its entirety;
  - b. That the Commission either deem the City's LCPA approved pursuant to the Public Resources Code, or grant the City a new hearing on the LCPA;
  - c. That the Commission consider only the City's certified LUP when reviewing the City's LCPA;
  - d. That the Commission not require any specific level of STR use in the City as a condition of approving the City's LCPA;
  - e. That the Commission act in accordance with the Coastal Act and the City's
  - f. That the Commission not interfere with the City's Constitutional authority to adopt and enforce its own land use ordinances.
3. For statutory attorney fees pursuant to Code of Civil Procedure section 1021.5;
4. For the City's costs in this action; and
5. For such other relief as the court deems just and proper.

Dated: August 6, 2018

DEVANEY PATE MORRIS & CAMERON LLP

Bv.   
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