

VENTURA
SUPERIOR COURT
FILED

JUN 26 2017

MICHAEL D. PLANET
Executive Officer and Clerk
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Denise Cervantes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

THEODORE P. KRACKE, and individual,)	Case No.: 56-2016-00490376-CU-WM-VTA
)	
Plaintiff/Petitioner,)	RULING ON DEMURRER TAKEN UNDER
vs.)	SUBMISSION ON JUNE 8, 2017
)	
CITY OF SANTA BARBARA, a)	
Municipality,)	
)	
Defendant/ Respondent)	

The court, having taken the Demurrer under submission on June 8, 2017, now rules as follows:

Respondent and defendant, City of Santa Barbara ("City"), demurs to the first amended petition and complaint of petitioner and plaintiff, Theodore P. Kracke ("Kracke"). The demurrer is opposed.

Requests for Judicial Notice

1. *The City's Request for Judicial Notice*

The City asks the court to take judicial notice of (i) a certified copy of the City Council's Minutes for August 11, 2015 (see Request for Judicial Notice, Exh. A); and (ii) a certified copy of the City Council's Agenda Report for August 11, 2015 (id. at Exh. B). Those requests are granted. (Evid. Code, § 452, subd. (c).)

2. *Kracke's Request for Judicial Notice*

1 Kracke asks the court to take judicial notice of the City's Local Coastal Plan ("LCP").
2 The City has filed an opposition to that request. The City contends that the request should be
3 denied on the ground that Kracke fails to show how the LCP is relevant.

4 The City's objection is overruled and the court will take judicial notice of the LCP as an
5 "official act" pursuant to Evidence Code section 452, subdivision (c). Given that the amended
6 petition is premised, in part, on the requirements of the LCP and the terms thereof (see First
7 Amended Petition, ¶¶ 26, 27) and on allegations that the City failed to conform to those
8 requirements in issuing a short term vacation rentals ban (*id.*, at ¶¶ 32, 37), the terms of the LCP
9 are relevant.
10

11 3. *Additional Judicial Notice*

12 In addition to the parties' requests, the court will, on its own motion, take judicial notice
13 of the Chapter 28.44 of the Santa Barbara Municipal Code. (See Evid. Code, §452, subd. (b).)
14

15 Factual Allegations

16 The first amended petition asserts causes of action against the City for (1) a writ of
17 administrative mandate; (2) civil fines under the Coastal Act; (3) declaratory relief under the
18 Coastal Act; and (4) injunctive relief under the Coastal Act. The City demurs to each of these
19 causes of action on the ground that the facts alleged fail to state a basis on which relief may be
20 granted.
21

22 A demurrer based on an assertion that the facts alleged fail to state a cause of action must
23 be denied if those facts are actionable on any theory. (*Cochran v. Cochran* (1998) 65
24 Cal.App.4th 488, 493 [a trial court commits reversible error when it sustains a general demurrer
25 "if the facts alleged show entitlement to relief under any possible legal theory"]; *Sheehan v. San*
26 *Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998 [general demurrer may be upheld "only if the
27 complaint fails to state a cause of action under any possible legal theory"].)
28

1 In determining the sufficiency of the allegations of the amended petition, the court must
2 accept as true the facts which are properly alleged as well as the matters judicially noticed. "It is
3 not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the
4 accuracy with which he describes the defendant's conduct. A demurrer tests only the legal
5 sufficiency of the pleading. Thus, as noted, in considering the merits of a demurrer, the facts
6 alleged in the pleading are deemed to be true, however improbable they may be." (*Berg & Berg*
7 *Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034; citations and internal quotes
8 omitted.) To that end, the court now summarizes the facts alleged in the first amended petition.

10 Kracke owns real property located at 16 East Arrellaga Street in Santa Barbara
11 ("Property") which he operates as a short term vacation rental ("STVR"). He and his family also
12 have a separate primary residence in Santa Barbara where they reside on a full-time basis.

14 Since 2007, Kracke has been the proprietor of Paradise Retreats World Class Vacation
15 Rentals ("Paradise Retreats"), a local business engaged in operating, managing, and servicing
16 vacation rentals in and around the City. Paradise Retreats currently operates 27 rental properties
17 within the City's limits, 10 of which are located in the City's Coastal Zone.¹

18 STVRs are prevalent in many California beach communities, including Santa Barbara,
19 where there is a high demand for a limited supply of affordable accommodations located near the
20 coast. STVRs offer families and small groups a high degree of flexibility, convenience, and
21 affordability which is notably absent from the traditional hotels and motels in the City's Coastal
22 Zone. STVRs provide a lower-cost alternative to renting hotel or motel rooms for families and
23 groups seeking coastal access. But for the existence of STVRs within the City's Coastal Zone,
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25

26
27 ¹ "Coastal zone' means that land and water area of the State of California from the Oregon
28 border to the border of the Republic of Mexico . . . extending seaward to the state's outer limit of
jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the
mean high tide line of the sea." (Pub. Resources Code, § 30103.)

1 the segment of the public who use STVRs would be unable to access and enjoy the City's
2 Coastal Zone.

3 Some residents of Santa Barbara have complained to the City that STVRs negatively
4 impact neighborhood character, contribute to noise and on-street parking issues, and contribute
5 to increased rents by reducing the amount of housing available to longer-term tenants. Such
6 concerns are countered by recent studies that analyze the effect of STVRs within the City and
7 conclude that (1) STVRs in the Coastal Zone provide a substantially more affordable option than
8 hotels/motels in either the Coastal Zone or the City; (2) the lack of affordable overnight
9 accommodations was cited by 75% of surveyed Californians as a problem factor when visiting
10 the coast, and is even more of an issue for low-income families and "communities of color"; (3)
11 the operation of STVRs has created \$471 million in economic activity; (4) the operation of
12 STVRs has created approximately 5,000 jobs; (5) the degree to which the long-term housing
13 supply is impacted by STVRs is negligible; and (6) the presence of STVRs does not result in
14 heightened nuisance issues in the residential neighborhoods, but may reduce the rate of nuisance
15 complaints.
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17
18 STVRs are the topic of national controversy. They are regulated, rather than prohibited,
19 in other nearby coastal communities such as Goleta, Ventura, Malibu, Santa Cruz, Morro Bay,
20 San Luis Obispo, Carlsbad, Encinitas, Newport Beach, and Manhattan Beach. The Coastal
21 Commission has provided its written opinion that a prohibition of STVRs is contrary to the
22 California Coastal Act. According to the Coastal Commission, a fair and narrowly tailored
23 approach to regulating STVRs will promote and expand affordable coastal visitor opportunities
24 while addressing neighborhood concerns.
25

26
27 The Coastal Act requires local governments to develop local coastal programs, consisting
28 of a land use plan and a set of implementing ordinances. Under the Coastal Act provision stating

1 that authority for issuance of coastal development permits shall be delegated to local
2 governments, the Coastal Commission's duty to cede permitting authority to local governments
3 is conditioned each local government first establishing permitting procedures, adopting
4 ordinances prescribing them, and informing the Commission. Central to a city's delegated
5 authority under the Coastal Act is not only the adoption of a local coastal plan ("LCP"), but
6 enforcement of the policies set forth in a LCP when considering development permit
7 applications.
8

9 The City's LCP was adopted by the City Council and certified by the Coastal
10 Commission in 1971, when STVRs were virtually nonexistent. The City's Implementation Plan
11 ("IP") was adopted by the City Council and certified by the Coastal Commission in 1986. After
12 an LCP and IP are certified by the Coastal Commission, the development review authority is no
13 longer exercised by the Coastal Commission but rather it delegated to the local government that
14 implemented the LCP and IP. In 2014, the Coastal Commission awarded the City a \$123,000
15 grant to update its LCP in order to address "the very old LCP policies and development
16 standards." According to the City's website, it has not scheduled any public meetings about
17 updating its LCP.
18

19 Chapter 28.44 of the Santa Barbara Municipal Code ("SMBC") was established for the
20 purpose of implementing the Coastal Act and to ensure that all public and private developments
21 in the City's Coastal Zone are consistent with the City's LCP and the Coastal Act. Any
22 "development" within the City's Coastal Zone requires the submission of a Coastal Development
23 Permit ("CDP") Submittal Packet for the City to process. In order to approve a CDP, the City
24 must make findings that the project is both consistent with the policies of the Coastal Act and the
25 LCP. If successful, the applicant will receive a CDP from the City. Under the Coastal Act's
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1 legislative scheme, an LCP and CDP issued by the local government are not solely matters of
2 local law but embody state policy.

3 On December 6, 2016, the Coastal Commission issued a policy statement on the
4 regulation of STVRs within the Coastal Zone (“STVR Policy Statement”). The STVR Policy
5 Statement, authored by Coastal Commission Chair Steve Kinsey, was sent to all planning and
6 community development directors in the California Coastal Zone, including the City’s. The
7 STVR Statement contained the following language:
8

9 “...vacation rental regulation in the coastal zone must occur within the context of your
10 local coastal program (LCP) and/or be authorized pursuant to a coastal development permit
11 (CDP). The regulation of short-term/vacation rentals represents a change in intensity of use and
12 of access to the shoreline, and thus constitutes development to which the Coastal Act and LCP’s
13 must apply....”
14

15 The City’s LCP contains provisions and policies consistent with the goals under Chapter
16 3 of the Coastal Act. Where there are conflicts between the policies set forth in the land use plan
17 and those set forth in any other element of the City’s existing General Plan or existing
18 regulations, the policies of the land use plan take precedence. The SBMC states that where there
19 are conflicting regulations, the more restrictive law relating to coastal resources shall apply.
20

21 The City’s LCP has the following policy requirements: (1) that visitor-serving
22 commercial and recreational uses shall have priority over all other uses (except agriculture and
23 coastal dependent industry); and (2) that lower cost visitor-serving uses shall be protected and
24 encouraged. To comply with these policies, the City must ensure that existing visitor-serving
25 opportunities are protected; that land use policies give priority to visitor-serving uses in new
26 development decisions; and that lower cost visitor-serving uses are provided. In addition to
27 visitor-serving recreational uses, preservation of lower cost lodging and restaurants is important.
28

1 For decades, STVRs operated undisturbed in the City. The City issued business licenses
2 to STVRs and collected substantial Transient Occupancy Taxes. Further perpetuating the belief
3 that STVRs were legal in the City, in 2010 and 2014 the City went on a “campaign” to identify
4 STVR owners who had not paid Transient Occupancy Taxes to “bring them into compliance” by
5 offering an “amnesty program.”

6 SMBC Title 28 (“Zoning Ordinance”) contains regulations related to the planning,
7 zoning, and development review in the City. In 2015, the City Attorney determined that a STVR
8 is a “Hotel” within the meaning of SBMC §28.04.395. SMBC §28.04.395 was drafted in 1954,
9 was last amended in 1983, and does not specifically address STVRs. However, by classifying
10 STVRs as “Hotels” under the SMBC, STVRs are prohibited everywhere in the City including the
11 Coastal Zone, except in the City’s Commercial and R-4 Zones. While the City ostensibly offers
12 an approval process for the legal conversion of residential homes to STVRs solely in limited
13 commercially zoned areas, the restriction are so onerous as to effectively ban STVRs.
14

15
16 The City has determined that all STVRs in areas other than the Commercial and R-4
17 zones are unlawful and that the vast majority of the STVRs in the Commercial and R-4 Zones
18 are noncompliant. On June 23, 2015, a public hearing was held for the City Council to provide
19 direction to City Staff regarding regulation and enforcement of STVRs outside of the designated
20 Zones. The City Council unanimously approved a motion to “enforce existing regulations
21 prohibiting Vacation Rentals” in “tiered” priority levels, with the goal that all STVR properties
22 would be subject to enforcement by no later than January 1, 2017. Notwithstanding the City’s
23 claims that it was enforcing existing regulations, this vote was a fundamental change in policy
24 that, essentially, would eliminate approximately 99% of all STVRs within the City by January 1,
25 2017.
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1 On October 8, 2015, Kracke's business, Paradise Retreats, was subpoenaed by the City
2 Attorney to release the names of every client whose rental property was managed by Paradise
3 Retreats, for the purposes of enforcing the STVR ban. Paradise Retreats was forced to comply
4 with the subpoena in order to avoid facing contempt charges and substantial fines.

5 The City has issued 44 legislative subpoenas, it has entered into 32 settlement agreements
6 with owners of STVRs (with another 10 in the process of being finalized). Nineteen enforcement
7 cases have been closed, and 17 properties have voluntarily surrendered their business licenses
8 without the threat of enforcement. As of September 19, 2016, the City had prosecuted 1,011
9 STVR enforcement cases. In June 2015 there were 349 registered STVRs operating within the
10 City; as of September 23, 2016, there were 215 registered STVRs operating within the City.
11 Commencing January 1, 2017, the City initiated enforcement action against any unpermitted
12 STVR within its limits.
13
14

15 On an annual basis tens of thousands of people are being deprived of the option of
16 staying at an STVR in the City's Coastal Zone. Comparing the statistics of the properties
17 managed by Kracke within the Coastal Zone for the first quarter of 2016 with the first quarter of
18 2017, there has been an 87% reduction in the number of guests who have stayed at such
19 properties. The majority of the remaining owners will likely discontinue using their properties as
20 STVRs within the next year. Therefore, the City's implementation of the STVR ban and its
21 broad enforcement efforts has intentionally caused a substantial, direct, and quantifiable change
22 in the density and intensity of the use of the land and the intensity of use of water or access to the
23 coast for potentially hundreds of thousands of visitors on an annual basis. This change in
24 intensity of use of land/access to coastline is further evidenced by a 75% decrease in the
25 Transient Occupancy Taxes collected by the City during the month of January, 2017.
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1 The City's actions in enforcing the zoning ordinance against STVRs as of January 17,
2 2017, amount to a "development" under the Coastal Act and require a CDP or, alternatively, an
3 amendment to the City's LCP approved and certified by the Coastal Commission.

4 Discussion

5 This matter involves the interplay between statewide policy embodied in the Coastal Act
6 and local governance. "The Coastal Act 'was enacted by the Legislature as a comprehensive
7 scheme to govern land use planning for the entire coastal zone of California.' [Citation.]"
8 (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793.)

9 "The Coastal Act expressly recognizes the need to 'rely heavily' on local government [t]o
10 achieve maximum responsiveness to local conditions, accountability, and public accessibility....'
11 [Citation.] As relevant here, it requires local governments to develop local coastal programs,
12 comprised of a land use plan and a set of implementing ordinances designed to promote the act's
13 objectives of protecting the coastline and its resources and of maximizing public access.
14 [Citation.] Once the California Coastal Commission certifies a local government's program, and
15 all implementing actions become effective, the commission delegates authority over coastal
16 development permits to the local government. [Citation.] Moreover, '[p]rior to certification of
17 its local coastal program, a local government may, with respect to any development within its
18 area of jurisdiction, ... establish procedures for the filing, processing, review, modification,
19 approval, or denial of a coastal development permit.' [Citation.] An action taken under a locally
20 issued permit is appealable to the commission. [Citation.] Thus, '[u]nder the Coastal Act's
21 legislative scheme, ... the [local coastal program] and the development permits issued by local
22 agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state
23 policy.' [Citation.] 'In fact, a fundamental purpose of the Coastal Act is to ensure that state
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1 policies prevail over the concerns of local government.’ [Citation.]” (*Pacific Palisades Bowl*
2 *Mobile Estates, LLC v. City of Los Angeles, supra*, 55 Cal.4th at p. 794.)

3 1. *First Cause of Action for Traditional Mandate Pursuant to Code of Civil*
4 *Procedure Section 1085*

5 Kracke’s first cause of action for traditional mandate (see Code Civ. Proc., § 1085) is
6 based on allegations that the City’s alleged STVR ban² constitutes a “development” as that term
7 is defined in the Coastal Act. Based on this conclusion, Kracke argues that the City had a clear
8 legal duty to apply for a CDP prior to implementing the STVR ban, and since the City failed to
9 apply for such a CDP prior to implementing the ban, a writ of mandate should issue. (See First
10 Amended Petition, ¶¶ 39-41, 32, 37.)

11
12 The City argues that the first cause of action is deficient. It contends: (i) Kracke failed to
13 allege facts indicating that the City had a mandatory duty to obtain a CDP prior to issuing its
14 STVR ban; (ii) pursuant to Public Resources Code section 30802, the City’s decision to enforce
15 its zoning ordinances is not reviewable by way of traditional mandate; (iii) the City’s decision is
16 not the proper subject of traditional mandate because it did not involve the performance of a
17 clear, ministerial duty; and (iv) the remedy sought by Petitioner – namely, a writ of mandate
18 compelling the City to file an application for a CDP or amend its LCP and seek certification by
19 the Coastal Commission – is not a valid remedy under the Coastal Act. The court will address
20 each of these contentions below.

21
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23 (i) *Has Kracke Alleged a “Development” under the Coastal Act?*

24 Central to the City’s demurrer is the assertion that the City’s actions, as alleged, do not
25 amount to a “development” as that term is defined in the Coastal Act. The court previously
26

27
28 ² The City disputes that it has “banned” STVRs. On a demurrer the court must accept well-pled facts as true.

1 sustained a demurrer to the original petition on the ground that Kracke had not alleged a
2 “development.”

3 The term “development” has a specific and technical meaning as used in the Coastal Act.
4 It is not used in the ordinary sense in this context. (*Gualala Festivals Committee v. California*
5 *Coastal Com.* (2010) 183 Cal.App.4th 60, 67.) For example, an action may constitute a
6 “development” even though it involves no physical alteration to land. (See *Pacific Palisades*
7 *Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 796.)

9 A “development” is defined in Public Resources Code section 30106. As relevant here,
10 that statute states that a “development” means a “change in the density or intensity of use of
11 land” or a “change in the intensity of use of water, or of access thereto.” Courts have given this
12 definition an “expansive interpretation” consistent with the mandate of the Coastal Act that its
13 provisions be “ ‘liberally construed to accomplish its purposes and objectives.’ ” (*Pacific*
14 *Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra*, 55 Cal.4th at p. 796, quoting
15 from Pub. Resources Code, § 30009.)

17 In its ruling on the City’s prior demurrer, this court held that the facts alleged in the
18 original petition did not establish a “development.” The court came to this conclusion on two
19 grounds.
20

21 First, the court noted that Kracke’s allegation that “The CITY’s implementation of the
22 STVR Ban and its broad enforcement efforts change the density and intensity of use of land and
23 the intensity of use of water, or of access” did “little but recite the words of the statute” and the
24 court was “not required to accept Kracke’s conclusory allegations.” (See Court’s March 10,
25 2017 Ruling on Submitted Matter, p. 16.)

27 The court also questioned whether the City’s conduct, as alleged, was the type of
28 governmental action which could amount to a “development.” Specifically, this court wrote:

1 “Kracke has not presented the court with, and the court has been unable to locate, any
2 case holding that a governmental entity's zoning enforcement decision constituted a
3 ‘development’ within the meaning of [Public Resources Code] section 30106. Although Kracke
4 is correct that the definition of ‘development’ is to be read broadly (see *Pacific Palisades Bowl*
5 *Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 796), he would have the court
6 adopt an interpretation which would encompass virtually all of the City's decisions having some
7 impact the ‘intensity of use of land’ no matter how attenuated. The court is not persuaded that a
8 decision to appropriate funds to support the city attorney's election to step-up enforcement of an
9 existing municipal laws [*sic*] constitutes a ‘development’ within the meaning of section 30106,
10 even if it does have some unintended, minor, indirect and unquantifiable impact on the intensity
11 of use of land.” (Court’s March 10, 2017, Ruling on Submitted Matter, p. 16.)
12

13 Kracke contends the allegations of the amended petition overcome these defects by
14 including specific factual allegations outlining a course of conduct by the City which produced a
15 significant and demonstrable impact on the use of the land and access to water within the Coastal
16 Zone. He asserts that conduct is a “development.” Generally, what the salient allegations show
17 may be summarized as follows:
18

19 The city council’s staff reported to the council in connection with its June 23, 2015
20 meeting. (First Amended Petition, Ex. “J.”) Staff’s report was in response to a request to
21 investigate the City’s seemingly inconsistent policies with respect to STVRs. On the one hand,
22 the City had pursued enforcement actions against some owners of STVRs. The City had
23 interpreted its zoning ordinances to prohibit STVRs in residential areas. The report noted that
24 STVRs “exist[ed] throughout the City and that most [were] operating in residential areas where
25 they [were] not . . . allowed.” The authors of the report stated that enforcement actions were
26 being “taken only in response to neighborhood complaints.” On the other hand, the report
27
28

1 documented the fact that the City was collecting Transient Occupancy Taxes from owners of
2 STVRs who were operating STVRs in violation of the zoning ordinances. Indeed, the authors
3 noted that in 2010 the City “initiated an effort” to collect these taxes from non-paying owners.
4 That effort included an “amnesty program” whereby the City offered participating STVRs
5 owners forgiveness of up to three years of unpaid back taxes. Staff suggested a spectrum of
6 possible ways the council could treat STVRs, ranging from allowing and taxing STVRs to
7 prohibiting them entirely.
8

9 At the June 23, 2015 city council meeting, the council directed staff to take additional
10 actions. (City’s Req. for Jud. Notice, 2/16/17, Ex. “A.”) Among other things, the council
11 instructed staff to “prohibit” STVRs in residential areas and to develop an “enforcement plan” to
12 implement that prohibition. (*Ibid.*)
13

14 In a report prepared for the August 11, 2015 city council meeting, staff offered a
15 proposed enforcement plan. (First Amended Petition, Ex. “I.”) Staff noted that, with the aid of
16 contract attorneys, “about 300 cases per year [could] be competently and aggressively managed.”
17 (*Ibid.*) It suggested that 30-40 cases could be prosecuted in each “6 week enforcement wave.”
18 (*Ibid.*)
19

20 The August 11, 2015 staff report confirmed that staff had been directed by the council “to
21 begin proactive enforcement” of zoning laws to STVRs in residential areas. (First Amended
22 Petition, Ex. “I.”) This represented a shift in enforcement philosophy from the previous practice
23 of only initiating enforcement actions based on “neighborhood complaints.” But the report also
24 stressed the independence of the city attorney in making prosecution decisions. “Thus,” the
25 report’s authors wrote, “Council cannot give case-by-case direction on code enforcement
26 matters.”
27
28

1 At its August 11, 2015 meeting, the city council authorized the expenditure of funds to
2 “augment existing zoning enforcement staff and cover the cost of increased zoning enforcement
3 related to [STVRs]” and to pay the “ongoing cost of staffing overtime costs related to increased
4 zoning enforcement of [STVRs].” (City’s Req. for Jud. Notice, 4/27/17, Ex. “B.”)

5 According to the allegations of the amended petition, the City’s stepped-up enforcement
6 activities had a significant impact to the availability of STVRs in Santa Barbara. Kracke makes
7 these allegations:
8

9 “34. In June of 2015, there were 349 registered STVRs within the CITY (with
10 approximately 97 registered STVRs located within the Coastal Zone). As of September 23,
11 2016, there were 215 registered STVRs operating within the CITY (or a reduction of 38%).
12 Commencing January 1, 2017, the CITY initiated enforcement action against any unpermitted
13 STVR within its limits in order to eliminate all STVRs that have not been legalized.
14

15 “35. Consequently, tens of thousands of people, on an annual basis, will be deprived of
16 the option to stay at STVRs in the Coastal Zone. In comparing the statistics of the properties
17 managed by [Kracke] within the Coastal Zone for the first quarter of 2016 (a period of time prior
18 to the full enforcement of the STVR ban on January 1, 2017) with the first quarter of 2017, there
19 has been an 87% reduction in the number of guests who have stayed at such properties. In the
20 first quarter of 2016, 156 guests stayed at properties [Kracke] managed within the Coastal Zone;
21 in the first quarter of 2017, the number of guests for the same properties was reduced to 21.
22 Upon information and belief, [Kracke] is informed that the majority of these owners will likely
23 discontinue utilizing their respective property as STVRs within the next year. Therefore, the
24 City’s implementation of the STVR Ban and its broad enforcement efforts has intentionally
25 caused a substantial, direct and quantifiable change in the density and intensity of use of land and
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1 the intensity of use of water, or of access to the coast for, potentially, hundreds of thousands of
2 visitors on an annual basis.

3 “36. The change in the intensity of use of land or of access to the coastline caused by
4 the CITY’s actions in banning all STVRs as of January 1, 2017, is further evidenced by a 75%
5 decrease in Transient Occupancy Tax collected by the CITY during the month of January in
6 2017.... Thus, it is apparent those visitors who would have stayed at STVRs elected not to stay
7 at hotels or motels in the CITY and, therefore, were deprived of access to the CITY’s Coastal
8 Zone.” (First Amended Petition, ¶¶ 34-36 [underling in original].)

10 These allegations go beyond the conclusory allegations of the original petition in laying
11 out the impact on the availability of STVRs within Santa Barbara and are sufficient for pleading
12 purposes to allege a “change in the density or intensity of use of land” and a “change in the
13 intensity of use of water, or of access thereto” within the meaning of Public Resources Code
14 section 30106.

16 The City argues that plaintiff’s allegations only establish that the city council determined
17 that the enforcement of then-existing laws needed to garner greater action. To that end, the city
18 council “directed” staff to develop an enforcement plan and funded the cost of the increased
19 enforcement. The City points out that the council did so understanding, as staff’s report noted,
20 that it had no authority to direct the city attorney as to “case-by-case” enforcement decisions.
21 And the council did not pass or amend any act, ordinance, resolution or regulation nor did it
22 grant, deny or amend any license, permit or other form of governmental authorization or
23 approval.
24

25 But this places undue emphasis on the way in which the City implemented its purpose, as
26 opposed to what the purpose was. The facts alleged establish that the City acted with a clear, and
27 indeed stated, intent to “prohibit” STVRs within the City’s residential areas, including those
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1 within the Coastal Zone. (City’s Req. for Jud. Notice, 2/16/17, Ex. “A.”) The allegations
2 describe an identifiable choice between two existing yet conflicting policies – to allow and tax
3 STVRs or prohibit them. The city council chose to prohibit them as a deliberative body after
4 public hearings. To implement the prohibition, the city council directed its staff to prepare a plan
5 and the council authorized the funds to bring the plan into action. Although it is true that the city
6 attorney could have chosen to decline to prosecute STVR owners, the allegations of the amended
7 complaint establish that he did not. To the contrary, the facts alleged show that these
8 prosecutions were, as the council intended, “competently and aggressively managed.” (First
9 Amended Petition, Ex. “I.”)

11 Neither party has directed the court to a precedent factually similar to this matter. Most
12 cases in which a “development” has been found have involved more substantial and discrete
13 conduct. (For example see *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*,
14 *supra*, 55 Cal.4th 783 [approval of mobile home park conversion]; *Gualala Festivals Committee*
15 *v. California Coastal Com’n* (2010) 183 Cal.App.4th 60, 67 [building a fireworks display]; *LT-*
16 *WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 776, 804–805, 60
17 Cal.Rptr.3d 417 [installation of gates with “no trespassing” signs]; *La Fe, Inc. v. County of Los*
18 *Angeles, supra*, 73 Cal.App.4th 231, 239–240, 86 Cal.Rptr.2d 217 [lot line adjustment]; *Stanson*
19 *v. San Diego Coast Regional Com.* (1980) 101 Cal.App.3d 38, 47–48, 161 Cal.Rptr. 392
20 [remodel of existing structure]; *California Coastal Com. v. Quanta Investment Corp.* (1980) 113
21 Cal.App.3d 579, 605–609, 170 Cal.Rptr. 263 [conversion of existing apartments into a stock
22 cooperative]; *Monterey Sand Co. v. California Coastal Com.* (1987) 191 Cal.App.3d 169, 176,
23 236 Cal.Rptr. 315 [offshore sand extraction].)

24 But, the provisions of the Coastal Act do not limit the scope of a “development” to
25 particular conduct. The action required is simply a “change.” The “change in the density or
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1 intensity of use of land” language of Public Resources Code section 30106 focuses on *the nature*
2 *of the impact* necessary to find a “development” and does not restrict *the manner in which the*
3 *change comes about.*”³ The same can be said of the language defining a “development” as a
4 “change in the intensity of use of water, or of access thereto.” This demonstrates a legislative
5 intent to apply the provisions of the Coastal Act to a wide range of actions impacting coastal
6 areas. The action need only affect a Coastal Zone in one of the ways identified in the Act –
7 which as applicable here, that means that it “change[s] in the density or intensity of use of land”
8 or it “change[s] . . . the intensity of use of water, or of access thereto.” And the allegations
9 establish that the City intended to, and did, just that.
10

11 The Legislature has declared that the provisions of the Coastal Act be construed
12 “liberally . . . to accomplish its purposes and objectives.” (Pub. Resources Code, § 30009.)
13 Interpreting the definition of “development” as the court has here complies with that mandate.
14 Two fundamental purposes of the Coastal Act are protecting California’s coastline and ensuring
15 state policies prevail over local government concerns. (*Kalnel Gardens, LLC v. City of Los*
16 *Angeles* (2016) 3 Cal.App.5th 927, 940; *Pacific Palisades Bowl Mobile Estates, LLC v. City of*
17 *Los Angeles, supra*, 55 Cal.4th 783, 794.) Requiring the City to obtain a CDP before
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22 ³ Public Resources Code section 30106 does identify certain conduct which, by definition, is a
23 “change in the density or intensity of use of land” – such as certain subdivisions and lot splits.
24 But these enumerated items do not reflect an intention to limit the definition of what is a
25 “development.” To the contrary, “by introducing a list of projects, including ‘subdivision,’ with
26 the phrase ‘including, but not limited to,’ the Legislature in Public Resources Code section
27 30106 has explained that each listed project is a change in the intensity of use for purposes of the
28 act, and by means of the list illustrates various species of changes in land use against which other
unspecified projects may be measured so it may be determined whether they, too, require coastal
permits. . . . [T]he Legislature intended ‘development’ to include all listed uses and *all changes*
in density or intensity of use whether or not the specific use was among those listed.” (*Pacific*
Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra, 55 Cal.4th at p. 795,
emphasis added.)

1 implementing a prohibition on STVRs in residential areas of Santa Barbara's coastline is in
2 harmony with both.

3 For these reasons, the court finds that Kracke has alleged facts constituting a
4 "development" within the meaning of Public Resources Code section 30106.

5 (ii) *Is the City's Enforcement Decision Reviewable by Traditional Mandate?*

6 The City contends that this matter is not reviewable by traditional mandate under Code of
7 Civil Procedure section 1085 ("Section 1085") because the Public Resources Code requires that
8 any such review be done pursuant to section 1094.5 of the Code of Civil Procedure ("Section
9 1094.5").

10 The City's argument is essentially that Public Resources Code section 30802 ("Section
11 30802") provides the exclusive remedy for "a person ... aggrieved by the decision or action of a
12 local government that is implementing a certified local coastal program." Specifically, that
13 section provides that an aggrieved person "shall have a right to judicial review of such decision
14 or action by filing a petition for writ of mandate in accordance with the provisions of Section
15 1094.5 of the Code of Civil Procedure within 60 days after the decision or action has become
16 final."

17 The City contends that because Kracke is an aggrieved person described in Section
18 30802, his remedy is limited to a writ of administrative mandate pursuant to Section 1094.5 and
19 that he may not pursue a traditional writ of mandate pursuant to Section 1085. However, this
20 contention does not persuade. Nothing in the language of Section 30802 suggests an intent to
21 foreclose other available remedies.

22 A petition for administrative mandamus under section 1094.5 is "the procedure generally
23 required when the validity or propriety of an action or determination by an administrative agency
24 is challenged." (*Patrick Media Group, Inc. v. California Coastal Com.* (1992) 9 Cal.App.4th
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28

1 592, 607.) But Kracke is not disputing the City's exercise of legislative judgment or discretion.
2 Rather, he contends that the City had a nondiscretionary duty to apply for a CDP but failed to do
3 so. A petition under Section 1085 challenges a public agency's "failure to perform an act
4 required by law rather than the result of an administrative hearing." (*Hagopian v. State of*
5 *California* (2014) 223 Cal.App.4th 349, 373.) "Mandamus ... is the traditional remedy for the
6 failure of a public official to perform a legal duty." (*Common Cause v. Board of Supervisors*
7 (1989) 49 Cal.3d 432, 442.)

9 Public Resources Code section 30804 provides, "Any person may maintain an action to
10 enforce the duties specifically imposed upon . . . any local government by this division." This
11 section "seems to envision the use of traditional mandamus." (*Pacific Legal Foundation v.*
12 *California Coastal Com.* (1982) 33 Cal.3d 158, 169.) "Where a petition [under Public Resources
13 Code section 30804] challenges an agency's failure to perform an act required by law rather than
14 the result of an administrative hearing, the remedy is by ordinary or traditional mandate pursuant
15 to Code of Civil Procedure section 1085." (*Hagopian v. State, supra*, 223 Cal.App.4th 349,
16 373.)

18 Therefore, Kracke may challenge the City's failure to apply for a CDP by traditional
19 mandate. This conclusion prompts the next question: Has Kracke alleged facts which support
20 review by traditional mandate? That is, do the allegations of the amended petition demonstrate
21 that the City was under "a clear, present and usually ministerial duty to perform" and did Kracke
22 have "a clear, present and beneficial—or in this case statutory—right to performance"?
23 (*Hagopian v. State, supra*, 223 Cal.App.4th 349, 373.)

24 (iii) *Has Kracke Alleged Facts Warranting Review by Traditional Mandate?*

26 Ordinarily, a writ of traditional mandate will only lie to compel performance of a
27 mandatory or ministerial duty, or to prevent an abuse of discretion. (See, e.g., *Common Cause v.*
28

1 *Board of Supervisors, supra*, 49 Cal.3d 432, 442.) “Whether [a statute] impose[s] a ministerial
2 duty, for which mandamus will lie, or a mere obligation to perform a discretionary function is a
3 question of statutory interpretation.” (*AIDS Healthcare Foundation v. Los Angeles County Dept.*
4 *of Public Health* (2011) 197 Cal.App.4th 693, 701.)

5 Kracke alleges the Coastal Act and the SBMC imposed on the City “a clear legal duty to
6 submit an application for a CDP to the Planning Commission or the Staff Hearing Officer in
7 order to obtain approval of the STVR ban.” (See First Amended Petition, ¶¶ 39, 40.)

8 SBMC section 28.44.030 provides: “Any person (including *the City*, any federal, state or
9 local government, or special district or any agency thereof) wishing to perform or undertake any
10 development within the Coastal Overlay Zone *shall comply* with the provisions of this Chapter
11 28.44....” (Emphasis added.)

12 The definition of “development” stated in SBMC section 28.44.030(H) appears to be
13 identical to the definition of “development” in Public Resources Code §30106. It follows that
14 the City’s implementation of a prohibition on STVRs in residential areas of the City’s Coastal
15 Zone, being a “development” for purposes of the Coastal Act, is also a “development” for the
16 purposes of SBMC Chapter 28.44.

17 The provisions of Chapter 28.44 include a requirement that the “person” (including the
18 City) wanting to undertake a “development” must first apply for a CDP. (See SBMC
19 §28.44.050(A).⁴) The language of this provision is mandatory (“an application for a coastal
20 development permit *shall* be submitted...”), not discretionary. (Emphasis added.)

21 Therefore, Kracke has alleged a ground on which traditional mandate review may be had.
22 The demurrer to the first cause of action is overruled.

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27 ⁴ “APPLICATION. Except for development involving emergency work subject to the
28 provisions of Section 28.44.100, an application for a coastal development permit shall be
submitted prior to the commencement of any development within the Coastal Zone.”

1 2. *Second Cause of Action for Civil Fines under the Coastal Act*

2 Kracke's second cause of action is for imposition of a civil penalty pursuant to Public
3 Resources section 30820, subdivision (a). That subdivision provides in pertinent part:

4 "Any person who violates any provision of this division may be civilly liable in
5 accordance with this subdivision as follows:

6 "(1) Civil liability may be imposed by the superior court in accordance with this article
7 on any person who performs or undertakes development that is in violation of this division or
8 that is inconsistent with any coastal development permit previously issued by the commission, a
9 local government that is implementing a certified local coastal program, or a port governing
10 body that is implementing a certified port master plan, in an amount that shall not exceed thirty
11 thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500)...."

12
13 The City opposes Kracke's second cause of action on the ground that he has not alleged a
14 "development" under the Coastal Act. However, the court has found this contention to be
15 without merit. The demurrer to the second cause of action is, therefore, overruled.
16

17 3. *Third Cause of Action for Declaratory Relief*

18 Kracke's third cause of action seeks a judicial declaration that the City's actions
19 implementing an STVR ban "constitute a violation of the Coastal Act and the Santa Barbara
20 Municipal Code [by] conducting a 'development' in the Coastal Zone without obtaining a
21 Coastal Development Permit and/or amending and obtaining certification of its Local Coastal
22 Program." (First Amended Petition, ¶ 51.) The City contends that Kracke has not shown an
23 entitlement to declaratory relief.
24

25 Kracke's claim is based on Public Resources Code section 30803, which provides:

26 "(a) Any person may maintain an action for declaratory and equitable relief to restrain
27 any violation of [the Coastal Act] . . ."
28

1 Here, Kracke has alleged a violation of the Coastal Act. Nevertheless, the City cites
2 *Walter H. Leimert Co. v. California Coastal Com.* (1983) 149 Cal.App.3d 222 in support of the
3 proposition that Kracke's sole remedy is administrative mandate and, therefore, he cannot obtain
4 declaratory relief. In *Walter H. Leimert Co.*, the plaintiff sought a permit from a regional
5 coastal commission (a predecessor to the Coastal Commission). The permit was granted but
6 subject to conditions to which the plaintiff objected. Plaintiff sued seeking, among other things,
7 a declaration that the condition was invalid.
8

9 In that context, the court noted, "The law is well established that an action for declaratory
10 relief is not appropriate to review an administrative decision." (*Walter H. Leimert Co. v.*
11 *California Coastal Com.*, *supra*, 149 Cal.App.3d at p. 230.) "A declaratory relief action is an
12 appropriate remedy only if the party is seeking a declaration that a statute controlling
13 development of coastal lands is actually unconstitutional." (*Id.*, at p. 231.) In support of that
14 conclusion, the appellate court quoted from *State of California v. Superior Court (Veta)* (1974)
15 12 Cal.3d 237: " 'the Commission is correct that Veta is essentially seeking to review the
16 validity of an administrative action and, as discussed above, such review is properly brought
17 under the provisions of section 1094.5 of the Code of Civil Procedure rather than by means of
18 declaratory relief.' "

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21 To the same effect is *City of Santee v. Superior Court* (1991) 228 Cal.App.3d 713, which
22 involved a developer's objections to conditions placed on a building permit. The court in *City of*
23 *Santee* held, "Under the circumstances presented here, a proceeding under Code of Civil
24 Procedure section 1094.5 is the exclusive remedy for judicial review of the quasi-adjudicatory
25 administrative action of the local-level agency."
26

27 Each of these cases was a challenge to the exercise of administrative discretion. But, as
28 this court concluded above, Kracke is not limited to administrative mandamus because he does

1 not attack an administrative decision. Rather, he contends that the City failed to perform a
2 mandatory duty. For the same reasons that he may pursue traditional mandate relief, as
3 discussed above, he may sue for declaratory relief.

4 The demurrer to the third cause of action is overruled.

5 *4. Fourth Cause of Action for Injunctive Relief*

6 The City challenges the fourth cause of action on the ground that there is no cause of
7 action for injunctive relief. The City is correct: “ ‘Injunctive relief is a remedy, not a cause of
8 action. [Citations.] A cause of action must exist before a court may grant a request for injunctive
9 relief.’ [Citation].” (*Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 734.)

10 However, Kracke still may be entitled to injunctive relief if he prevails on his cause of
11 action for declaratory relief. (See Pub. Resources Code, § 30803; *City of San Jose v. Department*
12 *of Health Services* (1998) 66 Cal.App.4th 35, 46 [“Injunctive relief may be granted in a
13 declaratory relief action”].)


14 That he alleged his prayer for injunctive relief as a separate count is an error of form, not
15 substance. The court elects to read the third and fourth counts collectively, to state one cause of
16 action seeking declaratory and injunctive relief. Doing so, it overrules the demurrer to that cause
17 of action.

18 Conclusion

19 The demurrer is overruled. The City is to file and serve a responsive pleading not later
20 than 20 days from the date of posting of this order.

21 The clerk is directed to give notice.

22 Date: June 26 2017

23
24 
25 Mark S. Borrell
26 Judge of the Superior Court
27
28

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

3 STATE OF CALIFORNIA)
4 COUNTY OF VENTURA) ss.

5 **Case Number: 56-2016-490376-CU-WM-VTA** **Case Title: Kracke v. City of Santa**
6 **Barbara**

7 I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a
8 party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009.
9 On the **June 26, 2017**, I served the within:

10 **RULING ON DEMURRER TAKEN UNDER SUBMISSION ON JUNE 8, 2017**

11 on the following named party(ies)

12 Ariel P. Calonne
13 Tom R. Shapiro
14 John S. Doimas
15 Robin Lewis
16 740 State Street, Ste. 201
17 P.O. Box 1990
18 Santa Barbara, CA 93102

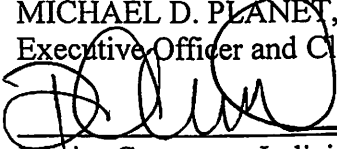
Travis C. Logue
Jason W. Wansor
ROGERS, SHEFFIELD, &
CAMPBELL, LLP
427 East Carrillo Street
Santa Barbara, CA 93101

19 **BY PERSONAL SERVICE:** I caused a copy of said document(s) to be hand delivered to the
interested party at the address set forth above on _____ at _____ a.m./p.m.

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

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

24 I declare under penalty of perjury that the foregoing is true and correct and that this document is
25 executed on **June 26, 2017**, at Ventura, California.

26 MICHAEL D. PLANET, Superior Court,
27 Executive Officer and Clerk
28 By: 
Denise Cervantes, Judicial Secretary