

# SHORT-TERM RENTALS

## A WHITE PAPER ON PLANNING AND ECONOMIC CONSIDERATIONS

Prepared for Marin County, California

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# 1 INTRODUCTION

Short-term rental (STR) online hosting services such as Airbnb, Homeaway, and VRBO enable individuals to rent out real property as temporary lodging. These marketplaces are recognized as part of the sharing economy, which leverages internet applications to make peer-to-peer exchange of goods and services possible. Like other components of the sharing economy, STRs are a recent development, which has caused local governments to consider the costs and benefits of such property use largely in response to neighborhood complaints<sup>1</sup>. Because of its novelty, quantitative data on this topic is limited, and many local governments are exploring the issue to determine a course of action that best serves the public interest. This White Paper has been produced to inform the County of Marin in its consideration on the subject.

STRs occur throughout Marin County, often through the above-referenced online hosting services, which have implications for transient occupancy tax (TOT) revenues, lodging options, housing stock, and sense of community. There is currently no explicit regulation on STRs in Marin County, and since the County's Development Code does not clearly prohibit STRs, they are technically an allowed use. The issues surrounding STRs were initially brought to the County's attention by members of the public who were concerned with the potential impacts of these STRs in their communities. The California Coastal Commission (CCC) recognizes the public's concerns as legitimate and STRs potential impact on the community's housing stock and affordability as documented through a December 6, 2016 letter from the CCC to Coastal Planning/Community Development Directors. On February 9, 2016, the Board of Supervisors discussed the preparation of STR regulations that would better address these issues. This White Paper discusses key considerations, regulatory frameworks, and relevant case studies, including potential standards that could be adopted for STRs in Marin County.

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<sup>1</sup> Lara Williams, "When Airbnb rentals turn into nuisance neighbours", *The Guardian*, September 18, 2016, retrieved from <https://www.theguardian.com/technology/2016/sep/17/airbnb-nuisance-neighbours-tribunal-ruling>.

## 2 BACKGROUND

As background for the discussion of STRs, this Section provides a brief overview of Marin County and the sharing economy.

### 2.1 MARIN COUNTY

Marin County encompasses 828 square miles of coastal and mountainous land directly north of San Francisco. According to Marin County's Local Coastal Program (LCP), much of the County's land is made up of "federal, state, and county parks, which provide habitat protection and opportunities for public recreation". With a population of approximately 260,000 people, it has among the smallest population of any Bay Area county, yet is recognized as the most affluent with a median household income of \$91,529<sup>2</sup>. Approximately one third of its residents range in age from 40 to 59 years old and, therefore, make up the most dominant age group in the County<sup>3</sup>.

### 2.2 SHARING ECONOMY

The sharing economy is simultaneously a corporate and a grassroots phenomenon. Internet startups and individual providers and customers are estimated to drive the profits of this industry from \$15 billion in 2014 to \$335 billion in 2025<sup>4</sup>. Renting out apartments, automobiles, or even power tools are not novel endeavors, but were difficult for individuals given limited information and high transaction costs<sup>5</sup>. Online platforms developed by Airbnb (for lodging), Task Rabbit (household errands and skilled tasks) as well as Uber (for ridesharing) eliminated many of these hurdles and empowered individuals to earn income and enabled those companies to generate profits. Airbnb boasts 129 million annual room-night rentals nationwide by the end of 2016, which would outpace the largest hotel companies<sup>6</sup>. However, the untested nature of access, amount and frequency of activity in the sharing economy have raised concerns and presented challenges among local governments, established industries, and neighborhood groups.

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<sup>2</sup> Selected Economic Characteristics, 2010-2014 American Community Survey 5-Year Estimates.

<sup>3</sup> Profile of General Population and Housing Characteristics: 2010.

<sup>4</sup> "The Sharing Economy Doesn't Share the Wealth", *Bloomberg Businessweek*, April 6, 2016, <http://www.bloomberg.com/news/articles/2016-04-06/the-sharing-economy-doesn-t-share-the-wealth>.

<sup>5</sup> "The Rise of the Sharing Economy", *The Economist*, March 9, 2013, <http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy>.

<sup>6</sup> "Airbnb will soon be booking more rooms than the world's largest hotel chains", January 20, 2015, retrieved from <http://qz.com/329735/airbnb-will-soon-be-booking-more-rooms-than-the-worlds-largest-hotel-chains/>.

## 3 KEY CONSIDERATIONS

As Marin County contemplates regulations for STRs, the following key considerations serve as planning and economic guidelines:

- Housing supply and affordability;
- Quality of life; and
- Enforcement of requirements

The discussion of key considerations is not intended to provide conclusions or resolutions; rather to help the County facilitate a robust and comprehensive discussion and make informed decisions on the planning and economic issues related to STRs. Enforcement is discussed under Inland Area Regulatory Framework in Section 4.1.2.3.

### 3.1 HOUSING SUPPLY AND AFFORDABILITY

In some communities, concerns have been raised that STRs may negatively impact housing supply and affordability. As discussed in this Section, there are many factors to consider when examining the potential effect of STRs.

#### 3.1.1 IMPACT ON SUPPLY OF HOUSING

The unincorporated area of Marin County includes approximately 24,615 single family homes, 4,399 multi-family homes, and 567 mobile homes, according to Marin County's 2015-2023 Housing Element. As of 2010, the unincorporated County had only a 1.3% vacancy rate for owner occupied homes; however, countywide trends are also informative and relevant to this discussion. Overall, Marin County has 111,539 housing units.

As of 2014, approximately 7.7% (8,635 units) of the units were considered vacant housing units<sup>7</sup>, which is among the highest percentage of vacant housing units in any Bay Area county<sup>8</sup>. According to the Department of Finance<sup>9</sup> estimate as of January 2017, the County had 7.8% vacancy rate, or total of 8,320 unoccupied homes. However, only 1,089 are available for rent and 3,078 are for seasonal, recreational or occasional use<sup>10</sup>. While this percentage may be higher given the County's large concentration of second homes, it still has nearly doubled since 2000, when the percentage of vacant housing units was only 4.1% (4,340 units). The increase in vacant housing units could be explained by a variety of factors, including, but not limited to: increased housing costs, a

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<sup>7</sup> A housing unit is vacant if no one is living in at the time of enumeration, unless its occupants are only temporarily absent. Units temporarily occupied at the time of enumeration entirely by people who have a usual residence elsewhere are also classified as vacant.

<sup>8</sup> Selected Housing Characteristics, 2010-2014 American Community Survey 5-Year Estimates.

<sup>9</sup> State of California, Department of Finance <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>

<sup>10</sup> Search Results American Community Survey (ACS) - U.S. Census Bureau 2011-2015 ACS data

disproportional jobs/housing balance, an increase in the number of second homes purchased, and/or misalignment of the unit types available compared to those in demand. While this trend in increased vacancy rates may mainly impact the incorporated jurisdictions in the County, unincorporated areas may be increasingly affected by this trend in the future.

In terms of rental housing, the County’s 2015-2023 Housing Element identifies the following statistics for the unincorporated County:

- 31% of households are renters (8,167 households)
- 5.2% of renter housing units are vacant (450 units)

Furthermore, County Planning Staff stated that there are approximately 4,254 units of multi-family rental housing in the unincorporated County.

STRs include hosted (i.e., the owner resides on the property) and un-hosted rentals. Dwelling units listed as un-hosted rentals might in some cases be otherwise available for full-time rental. This would occur if higher per-night rent, compared to pro-rated per-night rent of a monthly rental, caused property owners to exit the long-term rental market entirely, thus decreasing the number of dwelling units available from the housing stock.

Many jurisdictions have claimed that property owners in their communities are increasingly opting to exit the long-term rental market so that the owner can rent his or her unit on an online hosting service (e.g., Airbnb, Homeaway, VRBO); however this may not always be the case. It is possible that the number of available STRs might not have been part of the available housing stock to begin with (i.e., second properties or vacation homes). Additionally, it is possible that a significant number of available STRs could demand greater-than-affordable rents even in the long-term rental market. For example, consider a recent search on Airbnb with the following parameters:

- Location: Marin County, California,
- Dates: Friday, October 14, 2016 to Sunday, October 16, 2016, and
- Number of Guests: 2.

Table 3-1 shows the results for the above search.

**TABLE 3-1 AIRBNB LISTINGS FOR MARIN COUNTY, CA, OCTOBER 14-16, 2016, 2 GUESTS (AS POSTED SEPTEMBER 16, 2016)**

TYPE OF RENTAL	NUMBER OF LISTINGS <sup>(1)</sup>	AVERAGE PER-NIGHT RATE
Entire Place	213	\$399
Private Room	176	\$139
Shared Room	6	\$76
Total	395 <sup>(2)</sup>	\$205

<sup>(1)</sup> Not all listings analyzed were necessarily in unincorporated, County land.

<sup>(2)</sup> Overlap among rental types and/or previously booked rentals may account for inconsistency in the total number of listings.

It is likely that not all of the 395 units listed on the weekend in question are posted on Airbnb at the expense of Marin County's housing stock; 176 of these units are hosted private rooms and 6 of these units are shared rooms, which may be in the short-term and long-term rental markets. However, some of the 213 units listed as "entire place" could be at the expense of the County's housing stock, which could increase renter competition for the long-term units available. Absent further study, it is unclear whether the long-term rental rates of these dwelling units would constitute affordable housing if on the long-term market.

Although Airbnb claims that the majority of listings are hosted, and thus not part of the long-term rental market, in reality it is at the owner's discretion to decide whether or not a hosted unit (e.g., private room or accessory dwelling unit) is rented long-term. Additionally, research does not support Airbnb's claim that the *majority* of units are hosted. In Southern California, 35% of Airbnb revenue comes from users who rent more than one unit<sup>11</sup> and approximately 67% of units listed in San Francisco were for the entire unit. These figures may indicate such units are not primary residences. However, 86.4% of listings in San Francisco were for a single listing<sup>12</sup>, perhaps providing evidence that residents rent out their own home. From initial research, it is unclear what portion of listings for an entire home are all unoccupied, if the primary resident is on vacation, or if hosts listing a single unit are indeed primary residents.

### 3.1.2 IMPACT ON COST OF HOUSING

Under basic economic principles, scarcity increases the price of a commodity with a fixed (or not easily increased) supply. When the rental housing stock supply decreases, the perceived scarcity of supply encourages landlords to increase rents without fear of reduced demand. Increasing housing costs beyond household affordability leads to economic stress and overcrowding – when families are unable to afford appropriately-sized homes or individuals must move-in with family or friends to reduce housing costs. Additionally, STRs can have implications on the affordable housing market. According to a report by Dayne Lee from Harvard Law & Policy Review, "Airbnb likely reduces the affordable housing supply by distorting the housing market... this decreases the supply of housing and spurs displacement, gentrification, and segregation". Dayne Lee's report continues by summarizing the affordable housing problem, by stating "tourists and renters are non-overlapping populations with different needs, traditionally served by non-overlapping markets. But because 64% of its listings are [STRs] for tourists, Airbnb brings an increasing number of the forty-five million tourists who visit Los Angeles each year into direct competition with renters, distorting the housing market".<sup>13</sup> Renters must compete with visitors willing to pay higher premiums for short trips with rates in excess of what a monthly renter could afford. For example, as shown in Table 3-1, Airbnb rates in Marin County for a private room average \$139 per night (totaling \$4,170 per month if rented

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<sup>11</sup> "The Rise of the Sharing Economy", *The Economist*, March 9, 2013.

<sup>12</sup> Carolyn Said, "Window into Airbnb's Hidden Impact on S.F."

<sup>13</sup> Dayne Lee, *How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations*, (2016).



for 30 nights), whereas, according to the Housing Element, the average monthly rental price for a unit in Marin County is \$2,102 (as of 2013 adjusted for 2014 dollars).

Conversely, evidence suggests that STRs have an economic benefit to the host and the community. From 2004 to 2013, average rent in Marin County increased over 28% (from \$1,483 to \$2,066). Additionally, as of 2014, 47% of tenants in Marin County used over 35% of their income to pay for housing<sup>14</sup>. The U.S. Department of Housing and Urban Development (HUD) states that affordable housing costs should be 30% or less of a household's income for renters and 40% for homeowners. While STRs may drive up rental costs by removing units from the market, the additional income may increase housing affordability for some owners. Supplemental income from STRs can not only offset costs for owners, but also can make home ownership feasible for some income groups. Additionally, supplemental income from STRs can offset mortgage costs and may enable owners to spend more money in the local economy. However, depending on the jurisdiction, STRs tend to exist most predominantly in more affluent areas. For example, the higher-income North Oakland neighborhood of Oakland has a higher concentration of STRs, which generally could mean that owners in this neighborhood may not be using the supplemental income attained to allow them to afford their mortgage.<sup>15</sup>

Even though Marin County has seen an increase in vacant housing units over the years (as described in Subsection 3.1.1), the demand for the right type of housing unit remains strong. Marin County rents have increased significantly in the past three years, according to Novato based Real Answers the average rent in 2014 was \$2,329, in 2015 it was \$2,583 and in 2016 was \$2,640".

## 3.2 QUALITY OF LIFE

The impact of STRs may vary across communities, and between neighborhoods within each community. The impacts, if any, to the County should be considered within the context of the neighborhood in questions: impacts to rural areas, coastal areas and suburban centers may differ. Potential impacts to be considered include, but are not limited to:

- Sense of Community;
- Parking; and
- Life Safety and Noise.

According to an estimate by Host Compliance, a privately owned Silicon Valley STR compliance and monitoring consultant, there are approximately 1,126 rentals available in Marin County. While some of these rentals are beneficial to the property owner and the local economy, others may adversely impact their neighborhoods.

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<sup>14</sup> Selected Housing Characteristics, 2010-2014 American Community Survey 5-Year Estimates.

<sup>15</sup> Dessi Mia Carbajal, *The Impact of Short Term Rentals on Affordable Housing in Oakland: A Report and Recommendations*, (June 2015), 6.

### **3.2.1 SENSE OF COMMUNITY**

According to the 2007 Marin Countywide Plan, a key goal for Marin is to maintain the “community character, the architectural heritage of its downtowns and residential neighborhoods, and to preserve and enhance the vibrancy of its business and commercial centers”. Accordingly, the County should consider how STRs affect existing neighborhoods and conform to desired community attributes and built environments. Maintenance of unique-to-Marin communities is of utmost importance when tackling a new STR regulation.

Because of the attraction of Marin County’s Pacific Coastline, coastal communities benefit from and struggle with negative impacts of frequent vacation rental use. The high concentration of vacation rentals on and around the coast leads to steep competition for available housing options and the hollowing out of year-round, sustaining coastal neighborhoods. To combat this issue, some jurisdictions limit the amount of days per year that a STR unit can be rented (e.g., maximum 90 days per year), impose separation requirements (e.g., 200 linear feet or one per street frontage), or prohibit STRs in certain zones.

Concerned with potential alterations to neighborhood character, homeowner associations (HOAs) have restricted the ability of a homeowner to rent or lease the property as a STR. However, California’s Davis-Sterling Act limits the ability of HOAs to impose such restrictions upon members.

### **3.2.2 PARKING**

Highly trafficked areas with heavily used parking can be a nuisance, especially in neighborhoods where locals are faced with limited parking options. With the high nightly turnover rate and varying number of guests staying in STRs, parking supply can be a problem unless appropriately addressed by property owners or local regulation. The case studies in Sections 4.2 and 5.2 provide further detail on how various jurisdictions address parking regulations.

### **3.2.3 LIFE SAFETY AND NOISE**

STRs may present noise and safety concerns, especially in un-hosted STRs where the owner is not present to monitor activity. Some jurisdictions address the safety of the building or unit itself prior to allowing STRs to commence. They may accomplish this through an inspection and an approval process to ensure safety requirement compliance prior to approval of the unit as an STR.

Additionally, the lack of background screening or negligence of the STR owner can lead to nuisance guests. A STR owner often has very minimal contact with the visitor renting, especially if the stay is un-hosted. This can lead to a STR being utilized for any number of potentially excessively loud events or other inappropriate uses. The varying nature of this common neighborhood issue can be addressed by local regulation. For example, some jurisdictions place restrictions on outdoor activities from 10pm to 8am, require a 24-hour local contact to help address complaints, and/or require an event permit for special event/parties, such as weddings. Existing County standards

restrict most loud noises (e.g., radios, loudspeakers, yelling, shouting, etc.) between the hours of 11pm and 7am.

## 4 INLAND AREA

This Section summarizes regulatory framework and case studies pertinent to the inland area of Marin County. The discussion below is provided to assist the County in making an informed decision on appropriate STR regulations in the inland County area.

### 4.1 REGULATORY FRAMEWORK

The following Subsections describe the existing regulatory framework that impacts the inland area of the County. The purpose of this discussion is to identify key relevant information that will inform the creation of a STR regulatory program.

#### 4.1.1 MARIN COUNTYWIDE PLAN

Marin County adopted a Countywide Plan in November 2007, in which all City land use regulations, including the zoning or Development Code must be consistent. The Plan discusses goals that guide the County in maintaining a high quality of life.

The Marin Countywide Plan outlines 11 general goals that “reflect core community values and identify what fundamental outcomes are desired”. These goals help serve as a basis for creating desirable regulations. Several of the goals relate directly to potential positive and negative outcomes of STRs, including:

- **A High-Quality Built Environment:** Marin’s community character, the architectural heritage of its downtowns and residential neighborhoods, and the vibrancy of its business and commercial centers will be preserved and enhanced;
- **More-Affordable Housing:** Marin’s members of the workforce, the elderly and special needs groups will have increased opportunities to live in well-designed, socially and economically diverse affordable housing strategically located in mixed-use sites near employment or public transportation;
- **A Vibrant Economy:** Marin’s targeted businesses will be clean, be prosperous, meet local residents’ and regional needs, and provide equal access to meaningful employment, fair compensation, and a safe, decent workplace; and
- **A Creative, Diverse, and Just Community:** Marin will celebrate artistic expression, educational achievement, and cultural diversity, and will nurture and support services to assist the more vulnerable members of the community.

In addition to the above goals, the Built Environment Element and the Housing Element of the Countywide Plan outline goals that directly relate to the possible positive and negative outcomes of STRs.

## **Built Environment Element**

- **Goal CD-2 - Balanced Communities:** Maintain communities that house and employ persons from all income groups and provide the full range of needed facilities and services.
- **Goal DES-1 – Preservation of Community Character:** Perpetuate the unique character of each community, including the essential design characteristics that make it attractive and livable.
- **Goal HS-2 – Well-Designed Housing:** Maintain and enhance existing housing and blend well-designed housing into existing neighborhoods; ensure that existing affordable housing at risk of conversion to market rates will remain affordable.

## **Housing Element**

- **Goal 1 – Use Land Efficiently:** Use Marin’s land efficiently to meet housing needs and implement smart and sustainable development principles.
- **Goal 2 – Meet Housing Needs through a Variety of Housing Choices:** Respond to the broad range of housing needs in Marin County by supporting a mix of housing types, densities, affordability levels, and designs.

The main purpose of the Housing Element is “to achieve an adequate supply of decent, safe, and affordable housing for Marin’s workforce, residents, and special needs populations, with a particular focus on unincorporated areas of the County”. This directly relates to STRs as this use type impacts the supply and affordability of housing. As discussed in Section 3.1, STRs could enable tenants or property owners to stay in their homes by providing a source of supplemental income, or STRs could adversely affect the housing supply by eliminating units from the long-term rental market. Additionally, STRs have the ability, if properly regulated, to increase the “mix of housing types” by adding additional use(s) to a single property, and enable a housing environment that is potentially more accepting of multiple “affordability levels”, which would directly satisfy Goal 2.

### **4.1.2 MARIN COUNTY DEVELOPMENT CODE**

The Marin County Development Code serves as a key tool to implement the Countywide Plan. The Code outlines comprehensive standards for development throughout the County and appropriately addresses ways to implement the County’s goals.

#### **4.1.2.1 DEVELOPMENT CODE DEFINITIONS**

The Marin County Development Code does not directly address STRs, and the County considers STRs an allowed use. STRs do, however, share characteristics with uses directly addressed and defined in the Development Code, below.

**Bed and Breakfast Inns:** This land use consists of providing up to five guest bedrooms for overnight lodging, where the use is clearly secondary and incidental to the use of the property as a single-family residence. County requirements applicable to Bed and Breakfast Inns are in Section 22.32.040

(Bed and Breakfast Inns), and applicable Health Department regulations. A Bed and Breakfast Inn with more than five guest rooms is considered a hotel or motel, and is not permitted in a residential zoning district. Refer to the definition of “Room Rental” to distinguish between a Bed and Breakfast Inn and room rental in a “boarding house” situation.

**Guest House:** This land use consists of a detached structure that has a bathroom and that contains more than 400 square feet of floor area that is subject to building permit requirements under a residential occupancy code. To be a guest house, the structure cannot contain food preparation facilities.

**Hotel or Motel:** this land use consists of facilities with guest rooms and/or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging (less than 30 days). Hotels provide access to most guest rooms from an interior walkway. Motels provide access to most guest rooms from an exterior walkway. Also includes accessory guest facilities such as swimming pools, tennis courts, indoor athletic facilities, accessory retail uses, etc. In regards to neighborhood compatibility, hotel uses in neighborhoods are carefully scrutinized and typically prohibited given hotels’ commercial nature, high rates of tenant turnover, and imposition of physical structure.

**Room Rental:** This land use consists of the rental of three or fewer individual bedrooms within a dwelling or accessory structure, excluding a guest house, whether or not meals are provided. This use is subordinate to the primary residential use of the property and does not entail on-site advertising.

**Residential Second Unit:** This land use consists of a second permanent dwelling that is accessory to a primary dwelling on the same site. A residential second unit provides complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, food preparation sanitation, and parking. The primary criterion for defining a second unit shall be the existence of separate food preparation facilities which may include, but are not limited to, stove, oven, hot plate, refrigerator or sink. Additionally, it is important to note that residential second units are considered compatible with most residential zones. Unless referring specifically to existing residential second units or regulations, “accessory dwelling unit” is used in this White Paper consistent with recent State law.

The definition of STRs may seem self-explanatory and simply illustrated by an Airbnb listing; however, for purposes of furthering public discourse and County policymaking, STRs should be defined relative to the similar and regulated uses listed above.

#### **4.1.2.2 RELATION TO DEVELOPMENT CODE**

Like hotels, STRs generate income for the property owner or primary occupant and may increase neighborhood-wide tenant turnover. However, unlike hotels, STRs retain the neighborhood’s physical character (i.e., operating out of existing dwelling units) and are not necessarily as active as

hotels in terms of frequency of guest turnover and presence of related amenities (e.g., restaurants, gift shops, etc.).

Accessory dwelling units are intended to facilitate meeting the County's projected housing needs, provide diverse housing opportunities, and provide needed income for homeowners. This use type is recognized as being a key source of safe and decent affordable housing. Despite the intention that accessory dwelling units be utilized as part of the permanent housing stock (i.e., a dwelling with an accessory dwelling unit would provide housing for two households), the County's Development Code does not require that accessory dwelling units, or junior accessory dwelling units<sup>16</sup>, be rented for 30 consecutive days or more. While some accessory dwelling units may be utilized as STRs rather than long-term rentals, it is extremely variable and simply depends on the nature of the property and the property owner. Therefore, to implement the intent of accessory dwelling units, proposed STR regulation could include a requirement that prevents accessory dwelling units from being rented as STRs.

#### **4.1.2.3 ENFORCEMENT**

Enforcement of codes is a frequent challenge for jurisdictions considering adequate code enforcement resources. Unlike other provisions of the Municipal Code (e.g., public safety, welfare), zoning compliance is generally not monitored by patrolling officers. Zoning violations are typically communicated by complaints from neighbors and handled by a zoning enforcement officer (i.e., complaint driven enforcement). STRs are typically difficult for code enforcement staff to address because they are temporary in nature and some owners remain anonymous making it hard to track them down.

Given the relative anonymity of online hosting services (e.g., Airbnb, VRBO, and Homeaway), enforcement of ordinances pertaining to STRs may be difficult. Sites like Airbnb often keep listing addresses private until an arrangement is finalized between the provider and a tenant. Further, unlike Uber, which requires its drivers to place the Uber logo visibly in the car, the rental listings on Airbnb do not mark their homes to signify their participation in the marketplace. The number of hosting platforms adds time and expense to the investigation process.

Other Municipal Code standards, such as tax and business license requirements, also govern STRs. Limited transaction data provided by online hosting services creates additional challenges for verification of accurate TOT remittance and auditing. Furthermore, some hosting services have been unwilling to enforce mandates for listing TOT certificate and business license numbers in online unit listings.

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<sup>16</sup> A junior second unit is typically an in-home retrofit of an existing bedroom into an independent rental unit, including an efficiency kitchen. The County is currently allowing these units under the definition of a room rental with a snack bar or wet bar.

## 4.2 CASE STUDIES

There are several examples of best practices for jurisdictions to consider when crafting a STR regulation. The following case studies highlight various practices which may be applicable to the inland area of Marin County.

### 4.2.1 CITY OF SOUTH LAKE TAHOE

The City of South Lake Tahoe is a popular tourist destination that has adapted its regulation with the large and recent expansion of the sharing economy. According to the City, South Lake Tahoe has approximately 1,800 vacation home rental properties. Due to the rapid growth of online hosting services, the City had to rethink their regulatory framework, now issuing a STR permit that serves as a discretionary license. The permit/license process includes an initial \$545 fee and annual fee which ranges from \$150 to \$800 based on the maximum unit occupancy. The City's STR permit/license acts as registration to collect TOT, and the permit/license fees cover enforcement costs of the STR program itself. A separate business license is not required for single family vacation home rentals, but is required for multi-family vacation home rentals.

Additional STR requirements include 300-foot neighbor notification, inspection, mandatory local contact, exterior and interior signage, payment of TOT, STR permit number and maximum occupancy identified in all marketing of the unit, and other specific requirements. While the certain enforcement issues are largely response driven (noise, parking, etc.), the City's Police Department designated a STR enforcement officer, who is on duty from 4pm to 2am Friday through Monday. Also, a full time STR investigator/TOT auditor conducts investigations.

### 4.2.2 TOWN OF MAMMOTH LAKES

The Town of Mammoth Lakes is also a popular tourist destination that had a unique struggle with STRs. The controversy became so fierce that it led to the passage of an initiative (Measure Z) in 2015, that does not allow STRs to expand in zones where they are currently prohibited without voter approval. Most residential neighborhoods in Mammoth Lakes are prohibited from renting for fewer than 30 days; therefore, Measure Z severely restricts STRs. Following the approval of Measure Z, the Town adopted STR regulations to address community character type issues. These regulations were adopted as part of Title 5, Business Taxes, Licenses, and Regulations, of the Mammoth Lakes Municipal Code.

The Mammoth Lakes STR regulations require an inspection of the unit before it can be rented on a short-term basis. The Town-approved inspector reviews the unit for life safety items (e.g., smoke alarms, fire extinguishers, structurally sound stairs, clear exits, etc.) and also ensures an in-unit notice that outlines parking standards, trash requirements, an evacuation plan, and noise regulations. Other requirements include occupancy limits, 24-hour contact person, and any advertising of the unit to include the TOT certificate number. A business license and TOT certificate are required for STRs where allowed.



Furthermore, Mammoth Lakes only allows accessory dwelling units when the owner occupies either the primary or secondary unit as a permanent or seasonal residence, and requires a deed restriction to acknowledge and commit to the zoning requirements, including prohibitions on short-term rentals as applicable. With these regulations, the Town is able to better maintain neighborhood character and ensure accessory dwelling units remain on the long-term rental market.

### **4.2.3 CITY OF SAN FRANCISCO**

The City of San Francisco has consistently been on the forefront of grappling with the impacts of the sharing economy. Because of its foundation as a popular online hosting service destination, the City has attempted to require online hosting services, like Airbnb, to concede to City regulations. Conversely, Airbnb is the only Qualified Website Company operating in the City, which authorizes Airbnb to collect and remit TOT on behalf of the San Francisco property owners using Airbnb.

The City's Board of Supervisors has recently voted in favor of new STR regulations, stating now that un-hosted and hosted STR units that are rented out for less than 30-day increments can only be rented out for 60 days in total per year. In addition to the new restriction, the City maintains the requirement that residents pay a \$250 registration fee to the Office of Short-Term Rentals every two years. Additional requirements include primary residency requirement, liability insurance, and payment of TOT. This regulatory framework is relatively stringent in comparison to other jurisdictions, especially because hosted units are now included in this new 60 day cap.<sup>17</sup> San Francisco has obtained cooperation from Airbnb and Homeaway to incorporate registration and other compliance measures into their platforms.

### **4.2.4 SONOMA COUNTY**

Sonoma County recognized the importance of STRs and adopted an ordinance to be compatible with the benefits of this use. The ordinance states that most STRs are beneficial and operate without a problem; however, the largest issues are outlined as "excessive noise, parking, litter, and concerns regarding septic capabilities, security, public safety, and trespass." The ordinance outlines various provisions, including: specific definitions applicable to transient occupancy and vacation rentals, a permit requirement, a TOT license requirement, a designated 24-hour contact, a noise limit (quiet hours between 10:00pm and 9:00am), and specific parking requirements.

Since STRs vary in size and are rented in varying forms (i.e., shared room, private room, entire place), they have varying parking needs. Sonoma County incorporated clear standards that address this, stating that one on-site parking space is required for a rental of up to two guestrooms or sleeping rooms, two on-site parking spaces are required for rentals with three or four guestrooms, and larger rentals must demonstrate adequate parking of at least three spaces. These simple and clear parking

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<sup>17</sup> Bigad Shaban, "*SF Limits How Often Hosts Can Rent Out Homes on Airbnb, Other Websites*", NBC Bay Area, November 29, 2016.

standards are enforced only by complaint, which may or may not be the most effective enforcement tactic.

## 5 COASTAL ZONE

This Section summarizes regulatory framework and case studies pertinent to the Marin County Coastal Zone. The discussion below is provided to assist the County in making an informed decision on appropriate STR regulations in this unique and sensitive area of the County.

Coastal communities face additional challenges relative to inland areas of Marin County largely because vacation rentals are more widely used and at higher concentrations. According to data supplied by the County, STRs make up a substantial proportion of the lodging available on the coast<sup>18</sup>. County locals have expressed concern with the constant vacation rental presence impacting their neighborhoods and negatively affecting their sense of community. STR regulation for the Coastal Zone must consider the impacted coastal communities, the existing Coastal Zone, CCC, and how Marin County can effectively amend current regulations.

The California Coastal Zone is a specially regulated section of the State. It requires regulations aimed at maintaining the integrity of the coast that other State land does not require. The Coastal Zone stretches north/south along the State's coastline and generally extends inland 1,000 yards. Fifteen counties are included in the Coastal Zone (from north to south): Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, and San Diego.

### 5.1 REGULATORY FRAMEWORK

The following Subsections describe the existing regulatory framework that impacts the County's Coastal Zone. The purpose of this discussion is to identify key relevant information that will inform the creation of a STR regulatory program.

#### 5.1.1 COASTAL ACT

The California Coastal Act acts as the regulatory framework that governs the CCC's decisions. It outlines standards and regulations that influence development in the Coastal Zone. Any "development" activity in the Coastal Zone requires a Coastal Development Permit from the CCC or local government with a certified LCP. The Coastal Act defines "development" as "the placement or erection of any solid material or structure... change in the density or intensity of use of land... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility...". According to Steve Kinsey, the Chair of the CCC, "the regulation of [STRs]

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<sup>18</sup> Based on a comparison of VRBO Inventory to Overnight Accommodations in the Unit II Coastal Zone, 80% of total lodging establishments are short term rentals. This figure compares the direct number of vacation rentals to the number of inns, motels, hotels, or similar. However, since the number of available rooms in vacation rentals is normally fewer than the number of available rooms in inns, motels, or hotels, this number would be lower had the number of rooms been compared.

represents a change in the intensity of use... and thus constitutes development to which the Coastal Act and LCPs must apply”, therefore regulation imposed through a LCP amendment and/or Coastal Development Permit appears appropriate.

Additionally, the Coastal Act directly relates to STRs in Section 30213, when stating “the Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities”. The CCC has not historically supported excessive restrictions on STRs that would unduly limit visitor serving uses; those restrictions are typically found to be inconsistent with the Coastal Act. Because of this, Marin County’s regulatory options in the Coastal Zone must be treated differently than the regulatory options in the rest of the County.

### **5.1.2 MARIN COUNTY LOCAL COASTAL PROGRAM AND AMENDMENTS**

The purpose of Marin County’s LCP is to “carry out the coastal resource protection policies of the California Coastal Act of 1976”. To implement this, the LCP utilizes the “coastal permit”, which is required by the majority of development activities within the Coastal Zone of the County. The LCP “takes precedence over other local plans, policies and regulations, including conflicting provisions of the Countywide Plan, Community Plans and relevant sections of the Marin County Code”.

The Marin County LCP Implementation Program Amendments (2015-2016) are currently underway. The following policy and program statements are included in these amendments:

**“C-HS-6: Regulate Short-Term Rental of Primary or Second Units.** Regulate the use of residential housing for short-term vacation rentals.

#### **C-HS-6.a: Vacation Rental Ordinance:**

1. Work with community groups to develop an ordinance regulating short-term vacation rentals.
2. Research and report to the Board of Supervisors on the feasibility of such an ordinance, options for enforcement, estimated program cost to the county, and the legal framework associated with rental properties”.

Any new STR regulation applicable to the Coastal Zone would need to be appropriately addressed in the LCP and approved by the CCC.

### **5.1.3 INTERIM ZONING CODE**

The Interim Marin County Coastal Zoning Code provides development standards that implement the Countywide Plan and LCP. This Code does not explicitly address STRs, but it shares similarities to the inland Development Code in regards to Relation to Development Code (see Subsection 4.1.2.2) and

Enforcement (see Subsection 4.1.2.3). However, it includes definitions that are unique to the Coastal Zone and therefore differ from the previously mentioned relevant definitions in Development Code Definitions (Subsection 4.1.2.1).

As described in Subsection 4.1.2.1, the definition of STRs may seem self-explanatory; however, it is worth noting the following currently defined uses in the Interim Zoning Code.

**Bed and Breakfast (coastal):** means the providing of not more than five guest bedrooms and which may include providing limited meal service such as light breakfasts and late night snacks and other refreshments and which use is clearly secondary and incidental to the use of the property as a single-family residence. Prior to the establishment of any “bed and breakfast” operation, it shall be the responsibility of the operator to secure and/or satisfy all prevailing off-street parking, water supply, waste disposal and fire safety requirements as may be applicable. In those instances where a use permit is required prior to the establishment of a bed and breakfast operation, the county hearing officer shall give particular consideration to the following issues during review of use permit applications: safety of access, privacy of neighbors and environmental review aspects.

**Guest House (coastal):** means living quarters within a detached accessory building located on the same premises with the main building, for use by guests of the occupants of the premises, such quarters having no kitchen or cooking facilities and not rented or otherwise used as a separate dwelling.

**Hotel (coastal):** means any building or portion thereof containing six or more guest rooms used, designed or intended to be used, let or hired out to be occupied, or which may be occupied, whether the compensation be paid directly or indirectly.

## 5.2 CASE STUDIES

There are several examples of STR best practices to consider when crafting a STR regulation for Marin County. The following case studies offer summaries of potentially applicable practices for the Marin County Coastal Zone within the context of the Coastal Act and LCPs.

It is important to note that the CCC is the deciding entity for all LCP amendments. The CCC approved both the Santa Cruz County regulations and the San Luis Obispo regulations, described below. Based on other approved vacation rental LCP amendments (e.g., Humboldt County), the CCC tends to approve proposed vacation rental amendments that are “not to prohibit vacation rentals or to significantly diminish their visitor serving utility, but rather to provide a means and a framework to appropriately regulate their establishment and operation”.

## 5.2.1 SANTA CRUZ COUNTY

In 2011, Santa Cruz County implemented STR regulations by approving the use of a Vacation Rental Permit. According to the County's LCP amendment, the regulation "does not prohibit, or unduly restrict, the rental of residences to visitors in a manner that will diminish the public's ability to access and recreate on the coast by renting a coastal residence. Rather, [it] provides a means to appropriately regulate vacation rentals in a manner that continues to provide an important overnight visitor function at the same time as protecting coastal resources, including access to recreational opportunities and community character, consistent with the requirements of the LCP's Land Use Plan". These regulations were amended in 2015 and again by the County in 2016; this Section discusses the current amended regulations.

The Santa Cruz County STR regulations define vacation rentals as the rental of an entire dwelling unit that is not occupied by the owner or owner's agent while it is being rented, and where the rental period is no more than 30 consecutive days. Vacation rentals do not include ongoing month-to-month tenancy granted to the same renter for the same unit, one less-than-30-day period per year, or a house exchange for which there is no payment. Accessory structures and accessory dwelling units may not be used as vacation rentals.

Vacation rentals are allowed in all zones that allow residential use and only require Zoning Administrator approval if the vacation rental has four or more bedrooms. The regulations for vacation rentals require:

- Vacation rental permit;
- Registration and payment of Transient Occupancy Tax (TOT);
- Differentiated requirements for existing vacation rentals, new vacation rentals, and rentals in special designated areas;
- New vacation rentals in "common wall" developments to obtain adjoining property owners authorization;
- Signage identifying a structure as a vacation rental, including the name and phone number of a local contact person responsible for responding to complaints;
- Maximum occupancy limitations;
- Rental rules posted inside the unit;
- Number of vehicles must not exceed the on-site parking spaces by more than two vehicles;
- Amendment to a vacation rental permit if the number of bedrooms in the vacation rental is increased or if the square footage of the vacation rental is increased by more than 50%;
- Dispute resolution process; and
- That the property owner be subject to enforcement provisions.

As described above, the Santa Cruz County example offers both strict and inclusive regulation of the STR market. It defines clearly that vacation rentals are un-hosted units, meaning that any hosted unit need not go through the permitting process. Additionally, as these regulations were amended in 2015 and 2016, it serves as an example of regulatory action that was amended over time.

## 5.2.2 SAN LUIS OBISPO COUNTY

San Luis Obispo County first adopted a residential vacation rental ordinance in 2003, and amended it in 2013. The amendment was found not to unduly restrict STRs from accessing the coastal area and was therefore approved by the CCC. San Luis Obispo County defines residential vacation rentals as “the use of an existing residence, or a new residential structure that has been constructed in conformance with all standards applicable to residential development, as a rental for transient use”. Some of the most pertinent regulations for residential vacation rentals are as follows:

- **Permit requirements:** Zoning clearance, business license, and TOT registration is required for each residential vacation rental.
- **Location:** Each listed San Luis Obispo County coastal community has different locational requirements that attempt to prevent high concentrations of vacation rentals on the coast. For example, Cambria does not allow residential vacation rentals within 200 linear feet of a parcel on the same side of the street as a vacation rental, 200 linear feet of the parcel on the opposite side of the street from the vacation rental, and 150-foot radius around the vacation rental. However, in Avila Beach, residential vacation rentals are simply not allowed within 50 feet of another parcel with a residential vacation rental and/or visitor-serving accommodation. Unless approvals from the County have term limits, these types of locational requirements can create concerns with first-come, first-served policy.
- **Vacation rental tenancy:** A residence shall not exceed four individual tenancies per calendar month. This cap limits a large neighborhood character issue: high nightly turnaround rate, but may pose enforcement challenges.
- **Number of occupants allowed:** The maximum number of occupants shall not exceed the number of occupants that can be accommodated consistent with on-site parking requirements, and shall not exceed two persons per bedroom plus two additional persons.
- **Appearance, visibility and location:** To maintain a cohesive neighborhood character, residential vacation rentals shall not change the residential character of the outside appearance of the building (e.g., colors, materials, lighting) or by the emission of noise, glare, flashing lights, vibrations or odors.
- **Signs:** The availability of the rental unit to the public shall not be advertised on site, which is quite different than the signage requirements of Santa Cruz County, where a physical sign with contact information is required on-premises. In other jurisdictions, concerns have been raised in regards to signage on vacation rentals. Often, HOAs do not allow exterior signage, which would complicate the process. Additionally, identified vacation rentals could be targeted for theft.
- **On-site parking required:** All parking associated shall be entirely on-site, in the garage, driveway or otherwise out of the roadway. Tenants shall not use on-street parking.
- **Local contact person:** Similar to Santa Cruz County, all residential vacation rentals shall designate a local property manager that is available 24 hours a day to respond to tenant and neighborhood questions or concerns.

As described above, the San Luis Obispo County example offers clear and unique regulations that vary depending on the specific characteristics of each unincorporated coastal community. Additionally, it serves as an example of regulations that evolved to be compatible with the sharing economy trend and the Coastal Act.

### 5.2.3 OTHER JURISDICTIONS

As indicated earlier, the CCC tends to approve STR regulations that continue to allow STRs in the Coastal Zone with reasonable regulation. Table 5-1 summarizes various LCP amendments and whether or not they were approved in identified Coastal Zone jurisdictions.<sup>19</sup>

**TABLE 5-1 SUMMARY OF OTHER STR REGULATIONS IN COASTAL ZONE JURISDICTIONS**

JURISDICTION	SUMMARY	APPROVED?
City of Trinidad	Addresses licensing of STRs as “vacation dwelling units”; includes various other requirements and restrictions (e.g., signage, parking, occupancy limitations, restrictions on water use to avoid overtaxing septic system capacity)	Yes (2011); however, a moratorium was enacted in 2015 and extended in 2016 due to community concerns
County of Humboldt	Proposed STRs in specific area only	Yes (2005) (but County did not accept CCC modifications; expired)
City of Pismo Beach	Proposed a ban on STRs in all residential zones	No (2011)
City of Dana Point	Allows STRs in all zones where residential uses are allowed subject to certain criteria	Yes (2016)
City of Encinitas	Allows for STRs in specific area adjacent to the coast	Yes (2006) (but City did not accept CCC modifications; expired)

<sup>19</sup> California Coastal Commission, Sample of Commission Actions on Short Term Rentals, (July 19, 2016), 1-3.



City of Solana Beach	Permits STRs in all residential zones but specifies a 7-day minimum stay	Yes (2012)
City of Imperial Beach	Defines "short-term rental" as the renting of residential property for less than 30 days; adds short-term rentals as a permitted use in two commercial and one mixed use overlay zones; also adds new definition of "time share"	Yes (2004)

## 6 CONCLUSION

STRs are, and will continue to be, a controversial topic in Marin County and elsewhere. As stated in a guidebook from the Sustainable Economics Law Center, “sooner or later, nearly every city will need to address the rapid spread of short-term rentals”<sup>20</sup>. The considerations, regulatory frameworks, and case studies described in this White Paper are intended to assist the County in making the most informed decision possible regarding this potential regulatory program. As noted, the key problem with crafting beneficial STR regulations is doing so with a lack of consistent and timely data due to the novel nature of the sharing economy. This White Paper is meant to supply the County with a general understanding of the potential impacts STRs can have on the community and to inform the County’s direction and next steps in developing STR regulations through case studies.

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<sup>20</sup> Sustainable Economics Law Center, *Regulating Short-Term Rentals: A Guidebook for Equitable Policy*, March 2016, 6.