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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA – ANACAPA DIVISION**

THEODORE P. KRACKE, an individual)	Case No.: 16CV05404
)	
Petitioner/Plaintiff,)	PETITION FOR WRIT OF MANDATE
)	AND COMPLAINT FOR CIVIL
v.)	PENALTIES FOR VIOLATION OF THE
)	CALIFORNIA COASTAL ACT
CITY OF SANTA BARBARA, a municipality)	
)	[Code of Civ. Proc. § 1085, § 1094.5 and
Respondent/Defendant.)	Public Resources Code § 30820(a)(1)]
)	

1. This petition is made pursuant to Code of Civil Procedure §§ 1085 and 1094.5. This honorable Court has jurisdiction to hear and decide this petition by virtue of said statutes.

2. Petitioner and Plaintiff THEODORE P. KRACKE (“KRACKE”) is an individual who, at all times relevant hereto, was a resident of the City of Santa Barbara, State of California.

3. Respondent and Defendant CITY OF SANTA BARBARA (“CITY”) is a California municipal corporation incorporated pursuant to applicable law on April 9, 1850.

4. At all times relevant hereto since October of 2012, KRACKE has been the owner of the real property commonly known as 16 East Arrellaga Street in Santa Barbara, California 93101, which he operates as a short term vacation rental (as defined below). KRACKE and his family have a separate primary residence in the City of Santa Barbara where they reside on a full-time basis.

1 5. At all times relevant hereto since 2007, KRACKE has been the proprietor of
2 Paradise Retreats World Class Vacation Rentals ("Paradise Retreats"), a local business
3 engaged in operating, managing and servicing vacation rentals in and around the CITY.
4 Paradise Retreats currently operates twenty-seven (27) rental properties within the CITY's
5 limits, ten (10) of which are located within the CITY's Coastal Zone, as defined under the
6 California Coastal Act. Paradise Retreats was duly issued a business license by the CITY
7 and pays the associated annual fee for each property it manages. Paradise Retreats has
8 regularly paid transient occupancy taxes to the CITY from all revenue derived from the
9 rental properties it manages and operates.

10 **SHORT-TERM VACATION RENTALS**

11 6. The properties managed and operated by Paradise Retreats within the CITY's
12 Coastal Zone provide lower cost accommodations, unique recreational opportunities, and
13 increased coastal access opportunities for visiting families or small groups with a range of
14 incomes who intend to stay over short periods of time, generally not exceeding thirty (30)
15 days. Short term vacation rentals ("STVRs") are prevalent in many California beach
16 communities, including Santa Barbara, where there is a high demand for a limited supply of
17 affordable accommodations situated near the coastline that provide access to the coast and
18 nearby visitor-serving commercial enterprises and recreational opportunities. In stark
19 contrast with hotels and motels in the CITY's Coastal Zone, STVRs customarily serve groups
20 of six or more guests, and offer free amenities such as wireless internet, bicycles to
21 promote alternative forms of transportation, full kitchen (refrigerator, stove, microwave,
22 cooking utensils, toaster, coffee maker and dishwasher), barbecue, washer and dryer, spa,
23 fire pits, parking, extra bedding for sofas, futons, roll away beds, baby and small child
24 furnishings and various recreational opportunities. STVRs offer families and small groups
25 a high degree of flexibility, convenience, and affordability which is notably absent from
26 traditional hotels and motels within the Coastal Zone. But for the existence of STVRs
27 within the CITY's Coastal Zone, the segment of the public who utilize STVRs would be
28 unable to access and enjoy the CITY's Coastal Zone with ease. Such a result would be

1 contrary to the goals of the Coastal Act (discussed below). The overwhelming majority of
2 guests who frequent KRACKE's STVRs within the CITY's Coastal Zone do not reside within
3 the County of Santa Barbara and, therefore, do not enjoy convenient access to the CITY's
4 unique Coastal Zone. Specifically, since January 1, 2015 through November 3, 2016,
5 approximately ninety three percent (93%) of the guests who stay at KRACKE's properties
6 located within the CITY's Coastal Zone reside outside of Santa Barbara County. These
7 percentages are derived from 577 total guest reservations, 535 of which the guests reside
8 outside of the County of Santa Barbara, and 52 of which the guests reside within the County
9 of Santa Barbara.

10 7. STVRs serve as an alternate form of visitor-serving accommodations within
11 the Coastal Zone, that provide a lower-cost alternative to renting hotel or motel rooms for
12 families and small groups from diverse demographic sectors and range of incomes to
13 enjoy coastal access. In Santa Barbara, the average nightly rate for the STVRs managed by
14 KRACKE's business is approximately 62% less than the average nightly rate for a hotel
15 room. Accordingly, these alternative forms of lower cost visitor-serving living
16 accommodations offer flexible, family-oriented, lower-cost access to unique local coastal
17 resources, including but not limited to, Butterfly Beach, Andre Clark Bird Refuge, Santa
18 Barbara Zoo, Cabrillo Park and Arts Center, Dwight Murphy, East Beach, Funk Zone,
19 Stearns Wharf, Sea Center Museum, MOXI Museum, Santa Barbara Surf Museum, La
20 Entrada, Amtrak Station, West Beach, Santa Barbara Harbor, Santa Barbara Breakwater,
21 Santa Barbara Maritime Museum, Pershing Park, Ledbetter Beach, Shoreline Park, La Mesa
22 Park, Douglas Family Preserve Open Space, Arroyo Burro Beach, Elings Park, and Veronica
23 Meadows Open Space Park, along with access to nearby restaurants, shops, bars, services,
24 entertainment venues, educational institutions, historical points-of-interest, public
25 transportation, bicycle paths, recreational facilities, and beach-related leisure
26 opportunities. Additionally, because STVRs are located within residential areas, they
27 provide greater variation in areas typically not zoned for hotels or motels, such as easier
28 and more convenient access to the coastal resources for families with small children,

1 seniors, and people with disabilities. Further, the residential setting of many STVRs offer
2 visitors a unique glimpse into the daily life and culture of the people of Santa Barbara and
3 their neighborhoods that would otherwise not be conveyed if visitors were restricted to
4 hotels or motels within a commercially zoned area.

5 8. Some residents of Santa Barbara have complained to the CITY that STVRs
6 negatively impact neighborhood character and contribute to noise issues and on-street
7 parking issues. Opponents of STVRs also contend that the property owners' use of their
8 home as a short term rental contributes to an increased market value in rents by reducing
9 the amount of housing stock available to longer-term tenants. Such concerns are countered
10 by recent studies that analyze the effects of STVRs within the CITY and conclude:

- 11 a) The operation of STVRs has created \$471 million in overall economic
12 activity;
- 13 b) The operation of STVRs has created approximately 5,000 jobs;
- 14 c) The degree to which the long-term housing supply is impacted by STVRs is
15 negligible; and,
- 16 d) The presence of STVRs do not result in heightened nuisance issues in
17 residential neighborhoods, but may reduce the rate of nuisance complaints
18 (therefore, any claimed nuisance abatement action concerning STVRs by the
19 CITY is a pretext to avoid its coastal program obligations).

20 9. According to the CITY's Planning Division Staff Report dated June 23, 2015:

21 The trend of converting residential units into full- or part-time vacation
22 rentals has become increasingly popular, especially in vacation destination
23 communities such as Santa Barbara...Short-term rentals also provide
24 travelers and tourists with an alternative to traditional lodging and dining
25 establishments and provide a unique view into life in Santa Barbara. Guests
26 can select from a variety of housing options and have a unique experience of
27 staying in a home in a neighborhood...The growing industry of online
28 marketing sites such as Airbnb, VRBO, Homeaway, Vacasa and many others
are making short-term rentals more accessible to vacationers and travelers
than ever before.

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1 10. STVRs are the topic of national controversy. They are regulated, rather than
2 prohibited, in other nearby coastal communities including Goleta, Ventura, Malibu, Santa
3 Cruz, Morro Bay, San Luis Obispo, Carlsbad, Encinitas, Newport Beach, and Manhattan
4 Beach. The Coastal Commission has provided its written opinion that a prohibition of
5 STVRs is contrary to the California Coastal Act. According to the Coastal Commission, a fair
6 and narrowly tailored approach regulating STVRs will promote and expand affordable
7 coastal visitor opportunities but also address neighborhood concerns.

8 **THE ROLES OF THE CALIFORNIA COASTAL COMMISSION**

9 11. The California Coastal Commission (the “Coastal Commission”) was created
10 pursuant to the California Coastal Act of 1976 (the “Coastal Act”). Its purpose, *inter alia*, is
11 to promote and preserve public access to coastal resources and to balance the interests of
12 private property owners and the public interest in coastal resources. The Coastal Act
13 provides a comprehensive scheme to govern land use planning for the entire coast of
14 California. The Coastal Act creates a shared responsibility between local governments and
15 the Coastal Commission for the planning of coastal development. The Coastal Act reflects
16 strong rules of public policy adopted for the public’s benefit that implicate matters of vital
17 interest. A fundamental concern of the Coastal Act is to ensure state policies prevail over
18 the concerns of local government. Public Resources Code § 30000 et seq. One of the basic
19 mandates of the Coastal Act is to maximize public access and recreational opportunities
20 within coastal areas. Cal. Const. Art. 10, § 4, Public Resources Code § 30210.

21 12. As defined within the Coastal Act, “coastal zone” means:

22 [T]hat land and water area of the State of California from the Oregon border
23 to the border of the Republic of Mexico, specified on maps identified and set
24 forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular
25 Session enacting this division, extending seaward to the state’s outer limit of
26 jurisdiction, including all offshore islands, and extending inland generally
27 1,000 yards from the mean high tide line of the sea. In significant coastal
28 estuarine, habitat, and recreational areas it extends inland to the first major
ridgeline paralleling the sea or five miles from the mean high tide line of the
sea, whichever is less, and in developed urban areas the zone generally
extends inland less than 1,000 yards. The coastal zone does not include the
area of jurisdiction of the San Francisco Bay Conservation and Development

1 Commission, established pursuant to Title 7.2 (commencing with Section
2 66600 of the Government Code), nor any area contiguous thereto, including
3 any river, stream, tributary, creek, or flood control or drainage channel
4 flowing into such area.

5 13. The Coastal Act requires local governments to develop local coastal
6 programs, comprised of a land use plan and a set of implementing ordinances designed to
7 promote the Coastal Act’s objectives of protecting the coastline, its resources, maximizing
8 public access, and assure orderly, balanced utilization and conservation of coastal zone
9 resources taking into account the social and economic needs of the people of the State.
10 Public Resources Code §§ 30001.5, 30500-30526. Under the Coastal Act provision stating
11 that authority for issuance of coastal development permits shall be delegated to local
12 governments, the Coastal Commission’s duty to cede permitting authority to local
13 governments is conditioned on the local government first establishing permitting
14 procedures, adopting ordinances prescribing them, and informing the commission. (Public
15 Resources Code § 30600.5, subs. (a), (b), (e), (f).) Central to a city’s delegated authority
16 under the Coastal Act is not only the adoption of a local coastal plan (“LCP”), but
17 enforcement of the policies set forth in its LCP when considering development permit
18 applications. (Public Resources Code §§ 30000 et seq.) Local government entities within
19 the coastal zone are required to have a LCP which certifies that land use and development
20 within the jurisdiction of said local entities conforms to the policies of the Coastal Act. The
21 portion of the CITY lying within the Coastal Zone is shown on the map attached hereto as
22 Exhibit “A”.

23 14. The CITY’s LCP was adopted by the City Council and certified by the Coastal
24 Commission in 1981 when STVRs virtually did not exist. The CITY’s Implementation Plan
25 (“IP”) was adopted by the City Council and certified by the Coastal Commission in 1986.
26 After a LCP and IP are certified by the Coastal Commission, the development review
27 authority is no longer exercised by the Coastal Commission but, rather, is delegated to the
28 local government that implemented the LCP and IP. In 2014, the Coastal Commission
awarded a \$123,000.00 grant to the CITY to update its LCP in order to address “the very old

1 LCP policies and development standards.” Any update to the LCP will not be effective until
2 it is certified by the Coastal Commission. According to the CITY’s website, it has not
3 scheduled any public meetings about updating its LCP. By failing to advance its LCP
4 update, the CITY has missed a key opportunity in applying the Coastal Commission’s grant
5 award to hold public workshops, analyze the impact of STVRs from diverse perspectives,
6 seek and obtain Coastal Commission input, and employ reasonable and balanced regulation
7 designed to address the primary concerns of neighborhood compatibility and diminished
8 affordable housing stock while allowing for regulated STVRs in residential and other
9 zoning districts.

10 15. Chapter 28.44 of the Santa Barbara Municipal Code (“SBMC”) was
11 established for the purpose of implementing the Coastal Act and to ensure that all public
12 and private development in the CITY’s Coastal Zone is consistent with the CITY’s LCP and
13 the Coastal Act. Any “development” within the CITY’s Coastal Zone requires the
14 submission of a Coastal Development Permit Submittal Packet for the CITY to process. If
15 successful, the applicant will receive a Coastal Development Permit (“CDP”) from the CITY.
16 Under the Coastal Act’s legislative scheme, a LCP and CDP issued by the local government
17 are not solely a matter of local law, but embody state policy. Public Resources Code §
18 30000 et seq.

19 16. Under the Coastal Act, Public Resources Code § 30106, “development” is
20 defined as:

21 ... [T]he placement or erection of any solid material or structure; discharge or
22 disposal of any dredged material or of any gaseous, liquid, solid, or thermal
23 waste; grading, removing, dredging, mining, or extraction of any materials;
24 change in the density or intensity of use of land, including, but not limited to,
25 subdivision pursuant to the Subdivision Map Act (commencing with Section
26 66410 of the Government Code), and any other division of land, including lot
27 splits, except where the land division is brought about in connection with the
28 purchase of such land by a public agency for public recreational use; change
in the intensity of use of water, or of access thereto; construction,
reconstruction, demolition, or alternation of the size of any structure,
including any facility of any private, public, or municipal utility; and the
removal or harvesting of major vegetation other than for agricultural

1 purposes, help harvesting, and timber operations which are in accordance
2 with a timber harvesting plan submitted pursuant to the provisions of the
3 Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

4 17. The California Supreme Court has rejected a narrow construction of the term
5 “development.” (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55
6 Cal. 4th 783.) An expansive interpretation of “development” is consistent with the mandate
7 that the Coastal Act is to be “liberally construed to accomplish its purposes and objectives.”
8 (*Id.* at 796-797; Public Resources Code § 30009.) A project that would decrease intensity of
9 use, such as limiting public access to the coastline, is considered “development” under the
10 Coastal Act. (*Id.* at 795.)

11 18. SBMC § 28.44.030 specifically states, in part, “Any person (including the City)
12 ... wishing to perform or undertake any development within the Coastal Overlay Zone of
13 the City of Santa Barbara must comply with SBMC Section 28.44.” An application for a CDP
14 shall be submitted prior to or concurrent with other necessary CITY permits or approvals
15 for said development. A CDP shall be required prior to commencement of any development
16 in the CITY’S Coastal Zone, unless an applicable exclusion applies. In order to approve a
17 CDP, the CITY must find the “development” is consistent with the Coastal Act and with the
18 applicable policies of the CITY’s LCP, all applicable implemented guidelines, and all
19 applicable provisions of the SBMC. (SBMC § 28.44.150.) Explicitly acknowledging the
20 Coastal Act’s broad definition of the term “development,” the CITY’s onerous permitting
21 process for the approval of STVRs in limited commercial zones (as set forth more fully in
22 Paragraph 25, below) specifically requires owners to obtain a CDP when converting a
23 residential unit to a STVR in the Coastal Zone. Notwithstanding this requirement, the CITY
24 has failed to obtain its own CDP as part of its implementation of the STVR Ban (defined
25 below) within the Coastal Zone.

26 19. Moreover, the Coastal Commission is empowered to oversee local coastal
27 municipal authorities whose interests are often in conflict with the Coastal Act’s policies of
28 protecting and maximizing public access to coastal resources. Specifically, local
municipalities have elected officials who both reside in the municipality and are elected by

1 their friends, neighbors and constituents who also reside in the municipality. Local officials
2 in beach communities are notorious for protecting and preserving the interests of local
3 residents, property and business owners at the expense of members of the public who
4 desire to access coastal resources, but are not fortunate enough to live there. Therefore,
5 the Coastal Commission is often at odds with local authorities in beach communities
6 because, in furthering the greater public interest, the Coastal Commission forces these local
7 authorities to allow public access to coastal resources despite inconvenience to and
8 disturbance of local residents.

9 20. Specifically relating to STVRs, the Coastal Act contains a policy outlined at
10 Public Resources Code § 30213, which provides, in part "Lower cost visitor and
11 recreational facilities shall be protected, encouraged, and, where feasible, provided.
12 Developments providing public recreational opportunities are preferred." Public Resources
13 Code § 30222, also states "The use of private lands suitable for visitor-serving commercial
14 recreational facilities designed to enhance public opportunities for coastal recreation shall
15 have priority over private residential, general industrial, or general commercial
16 development, but not over agriculture or coastal-dependent industry."

17 **THE CITY'S LOCAL COASTAL PLAN (LCP)**

18 21. The CITY's LCP contains provisions and policies consistent with the goals
19 under Chapter 3 of the Coastal Act.

20 22. The CITY's LCP has the following policy requirements: (1) that visitor-
21 serving commercial and recreational uses shall have priority over all other uses (except
22 agriculture and coastal dependent industry), and (2) that lower cost visitor-serving uses
23 shall be protected and encouraged. To comply with those policies, the CITY must ensure
24 that existing visitor-serving opportunities are protected; that land use policies give priority
25 to visitor-serving uses in new development decisions; and that lower cost visitor serving
26 uses are provided. LCP, page 61. In addition to visitor-serving recreational uses,
27 preservation of lower cost lodging and restaurants is important. Preservation of lower cost
28 uses can be achieved, in part, by: (1) ensuring that an adequate supply of lodging and

1 restaurant opportunities is available so that demand does not result in exclusive prices;
2 and (2) maintaining and encouraging a range of price and type of lodging units available.
3 Ensuring an adequate supply of overnight lodging and restaurants will require control of
4 conversions of visitor-serving uses to other uses, and encouragement of new visitor serving
5 uses in appropriate areas as demand increases. Similarly, for development of new
6 overnight accommodations, a possible condition of development should require a range of
7 accommodations. (LCP, p. 67.)

8 **THE CITY'S BAN ON SHORT TERM VACATION RENTALS**

9 23. For decades, STVRs operated undisturbed in Santa Barbara. The CITY issued
10 business licenses to STVR owners and collected substantial Transient Occupancy Taxes.
11 SBMC Title 28 (the "Zoning Ordinance") contains regulations related to the planning,
12 zoning and development review in the CITY. In 2015, the City Attorney determined that
13 STVRs constitute a "Hotel" pursuant to SBMC § 28.04.395, which provides:

14
15 Hotel: 'A building, group of buildings or a portion of a building which is
16 designed for or occupied as the temporary abiding place of individuals for less
17 than thirty (30) consecutive days including, but not limited to, establishments
18 held out to the public as auto courts, bed and breakfast inns, hostels, inns,
19 motels, motor lodges, time share projects, tourist courts, and other similar
20 uses.'

21 24. SBMC § 28.04.395 was drafted in 1954, was last amended in 1983, and does
22 not specifically address STVRs. However, by classifying STVRs as "Hotels" under the SBMC,
23 STVRs are prohibited everywhere in the CITY, including the Coastal Zone, except the CITY's
24 Commercial and R-4 Zones. While the CITY ostensibly offers an approval process for the
25 legal conversion of residential homes to STVRs solely in limited commercially zoned areas,
26 the restrictions are so onerous as to effectively ban STVRs. For purposes of the CITY's
27 legalization process for these limited areas, each bedroom of a residence is considered a
28 "unit." Applicants seeking to convert more than one unit on a site require a Hotel
Conversion Permit, which requires significant steps, including review by a Development
Application Review Team and decision by the Planning Commission. In a City Council

1 meeting on June 23, 2015, Council Member Gregg Hart stated there was only one STVR
2 permitted in the entire CITY and it had taken two years to legalize.

3 25. The CITY has determined that all STVRs in areas other than Commercial and
4 R-4 Zones are unlawful and that the vast majority of STVRs in the Commercial and R-4
5 Zones are non-compliant. On June 23, 2015, a public hearing was held for the City Council
6 to provide direction to City Staff regarding regulation and enforcement of STVRs outside
7 of designated commercial and R-4 zones. The City Council unanimously approved a
8 motion to “enforce existing regulations prohibiting Vacation Rentals” in “tiered” priority
9 levels, with the goal that all STVR properties would be subject to enforcement by no later
10 than January 1, 2017. City Council directed Staff to develop and implement a
11 comprehensive enforcement program designed to completely eliminate all STVRs
12 impermissibly operating in all zones including STVRs operating within the Coastal Zone
13 (the “STVR Ban”). Notwithstanding the CITY’s claims it was enforcing existing regulations,
14 this vote was a fundamental change in policy that, essentially, would eliminate all STVRs
15 within the CITY on January 1, 2017.

16 26. KRACKE appeared before the CITY’s City Council on June 23, 2015 and
17 opposed the resolution to begin enforcing the CITY’s zoning ordinance as it applies to
18 STVRs.

19 27. On or about October 8, 2015, KRACKE’s business, Paradise Retreats, was
20 subpoenaed by the City Attorney and ordered to release the names of each and every client
21 whose rental property was managed by Paradise Retreats, for the purpose of enforcing the
22 STVR Ban. Paradise Retreats was compelled to comply with the subpoena in order to avoid
23 facing contempt charges and being levied with substantial fines.

24 28. The CITY’s Planning Division Staff Report dated October 11, 2016, describes
25 the comprehensive enforcement plan the CITY has implemented. In the past year, the CITY
26 has issued 44 legislative subpoenas, entered into 32 settlement agreements with owners of
27 STVRs (with another 10 in the process of being finalized), 19 enforcement cases have been
28 closed, and 17 properties have voluntarily surrendered their business licenses without the

1 threat of enforcement. As of September 19, 2016, the CITY is prosecuting 1,011 STVR
2 enforcement cases. In June of 2015, there were 349 registered STVRs within the CITY
3 (with approximately 97 registered STVRs located within the Coastal Zone). As of
4 September 23, 2016, there are 215 registered STVRs operating within the CITY.
5 Commencing January 1, 2017, the CITY will immediately initiate enforcement action
6 against any unpermitted STVR within its limits.

7 29. The CITY's implementation of the STVR Ban and its broad enforcement
8 efforts change the density and intensity of use of land and the intensity of use of water, or
9 of access. Therefore, it amounts to "development" under the Coastal Act and requires a
10 CDP or, alternatively, an amendment to the CITY's certified LCP approved by the Coastal
11 Commission. The CITY's decision to implement the STVR Ban is wholly inconsistent with
12 the Coastal Act, does not conform to the CITY's certified LCP (including its policy
13 requirements), and will unreasonably interfere with public access to valuable coastal
14 resources, lower cost housing alternatives, and unique recreational opportunities.

15 **FIRST CAUSE OF ACTION**

16 (Administrative Mandate Against CITY Per Code of Civ. Proc §1094.5)

17 30. KRACKE incorporates herein by reference each of the allegations contained
18 in paragraphs 1-29.

19 31. When the CITY passed the motion to enforce the zoning ordinance and
20 include STVR within the definition of a "Hotel", it committed a prejudicial abuse of
21 discretion inasmuch as, among other reasons:

- 22 a) The CITY failed to proceed in the manner required by law pursuant to Public
23 Resource Code §30600(a) requiring the CITY to first obtain a CDP before
24 passing its STVR Ban;
- 25 b) The CITY failed to proceed in the manner required by law pursuant to SBMC
26 § 28.44 requiring the CITY to first obtain a CDP before passing its STVR Ban;
- 27 c) The CITY failed to proceed in the manner required by law because the
28 Chapter 3 policies of the Coastal Act and policy requirements of the CITY's

1 LCP mandate that the CITY provide, where feasible, lower cost visitor-serving
2 commercial and recreational facilities and the CITY failed to establish the
3 lack of feasibility of doing so before passing its STVR Ban;

4 d) The CITY failed to proceed in the manner required by law because the STVR
5 enforcement motion violates Article I, Section 9 of the California Constitution
6 which provides, "A bill of attainder, ex post facto law, or law impairing the
7 obligation of contracts may not be passed."

8 e) The CITY failed to proceed in the manner required by law for other and
9 further reasons appearing in the administrative record.

10 f) The CITY's findings are not supported by substantial evidence in light of the
11 entire record, particularly, the CITY failed to establish the need for a STVR
12 Ban in lieu of reasonable and balanced regulations narrowly tailored at the
13 perceived adverse impacts of STVRs.

14 g) The CITY failed to proceed in the manner required by law because the STVR
15 Ban in the Coastal Zone requires the CITY to first amend its LCP under SBMC
16 Section 28.44.250.D and obtain certification by the Coastal Commission
17 under SBMC 28.44.250.E and Public Resources Code § 30514.

18 h) The CITY failed to proceed in the manner required by law because the CITY
19 failed to develop reasonable and balanced regulations through updating its
20 LCP that address neighborhood and affordable housing issues while allowing
21 for regulated STVRs in residential and other zoning districts.

22 32. KRACKE has exhausted his administrative remedies and has no plain, speedy,
23 or adequate remedy at law outside of administrative mandate.

24 33. KRACKE is obligated to pay his attorneys for the prosecution of this action
25 and will ask leave of the Court to amend this Petition to state the sum so paid when the
26 same has been ascertained. The actions of the CITY, alleged hereinabove, were arbitrary
27 and capricious within the meaning of Government Code § 800, and warrant a statutory
28 award of \$7,500.00 for attorneys' fees to KRACKE. By enforcing an important right

1 affecting the public interest, KRACKE is also entitled to a statutory attorneys' fees award
2 pursuant to Code of Civil Procedure § 1021.5.

3 34. KRACKE does not presently have a copy of the record of the proceedings
4 before Respondent/Defendant in this matter. As soon as practicable, KRACKE will prepare
5 and/or obtain a copy and enter it into the record or ask the Court to order such into the
6 record pursuant to Code of Civil Procedure §1094.5(1). At such time, if necessary, KRACKE
7 will ask this Court for leave to amend his Petition upon consideration of such record.

8 **SECOND CAUSE OF ACTION**

9 (Traditional Mandate Against CITY Per Code of Civ. Proc. §1085)

10 35. KRACKE incorporates herein by reference each of the allegations contained
11 in paragraphs 1 through 34.

12 36. The STVR motion, as alleged hereinabove, constitutes "Development" as
13 defined in the Coastal Act and the SBMC and, accordingly, is subject to the application
14 process for a CDP before it can be adopted by the CITY.

15 37. The CITY, acting by and through its City Manager, City Attorney, City Clerk or
16 other authorized agents or employees, has a clear legal duty to submit an application for a
17 CDP to the Planning Commission or the Staff Hearing Officer in order to obtain approval of
18 the STVR Ban.

19 38. At least one public hearing shall be held on each application requiring a CDP
20 pursuant to SBMC Section 28.44.120. In order to approve a CDP, it must be found that the
21 project is consistent with the Coastal Act and with the applicable policies of the CITY's LCP,
22 all applicable implementing guidelines and all applicable provisions of the SBMC.

23 39. KRACKE, by virtue of his ownership of the subject business which manages
24 and operates ten (10) rental properties within the Coastal Zone, has a beneficial interest
25 conferring standing on him to seek a traditional writ of mandate.

26 40. KRACKE has standing under a public right because the public interest will
27 suffer if the CITY is not compelled to perform. The Coastal Act authorizes any person to
28

1 bring an action to enforce the duties imposed by the Coastal Act. Public Resources Code §
2 30804.

3 41. KRACKE has exhausted his administrative remedies and has no plain, speedy
4 or adequate remedy at law outside of traditional mandate.

5 **THIRD CAUSE OF ACTION**

6 (Civil Fines Under California Coastal Act for Unpermitted Development)

7 42. KRACKE incorporates herein by reference each of the allegations contained
8 in paragraphs 1 through 41.

9 43. Pursuant to Public Resources Code section 30820, subdivision (a)(1) the
10 Coastal Act provides for civil fines as follows:

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

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

19 44. CITY violated the Coastal Act by (a) adopting the STVR Ban; and (b) adopting
20 an enforcement program in furtherance of the STVR Ban, both of which constitute
21 “development” under the Coastal Act, without first obtaining a CDP or amending its LCP
22 and obtaining certification by the Coastal Commission.

23 45. By virtue of its Coastal Act violation as described herein, under Public
24 Resources Code § 30820(a)(1), the CITY is liable for civil fines up to thirty thousand dollars
25 (\$30,000.00) per violation.

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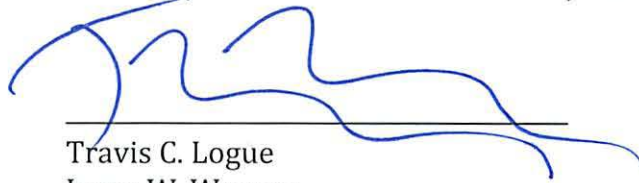
28 ///

1 **WHEREFORE**, Petitioner and Plaintiff THEODORE P. KRACKE prays for judgment
2 against Respondent and Defendant CITY OF SANTA BARBARA as follows:

- 3 1. For a writ of mandate enjoining Respondent from implementing and executing
4 the STVR enforcement program;
- 5 2. For a writ of mandate commanding Respondent to file an application for a
6 Coastal Development Permit pursuant to SBMC § 28.44.120, or, alternatively, to
7 file an application to amend its LCP and obtain certification by the Coastal
8 Commission;
- 9 3. For attorneys' fees pursuant to Code of Civil Procedure § 1021.5
- 10 4. For attorneys' fees pursuant to Government Code § 800;
- 11 5. For costs of suit incurred herein; and
- 12 6. For such other and further relief as this court deems just and proper.

13
14 Date: November 30, 2016

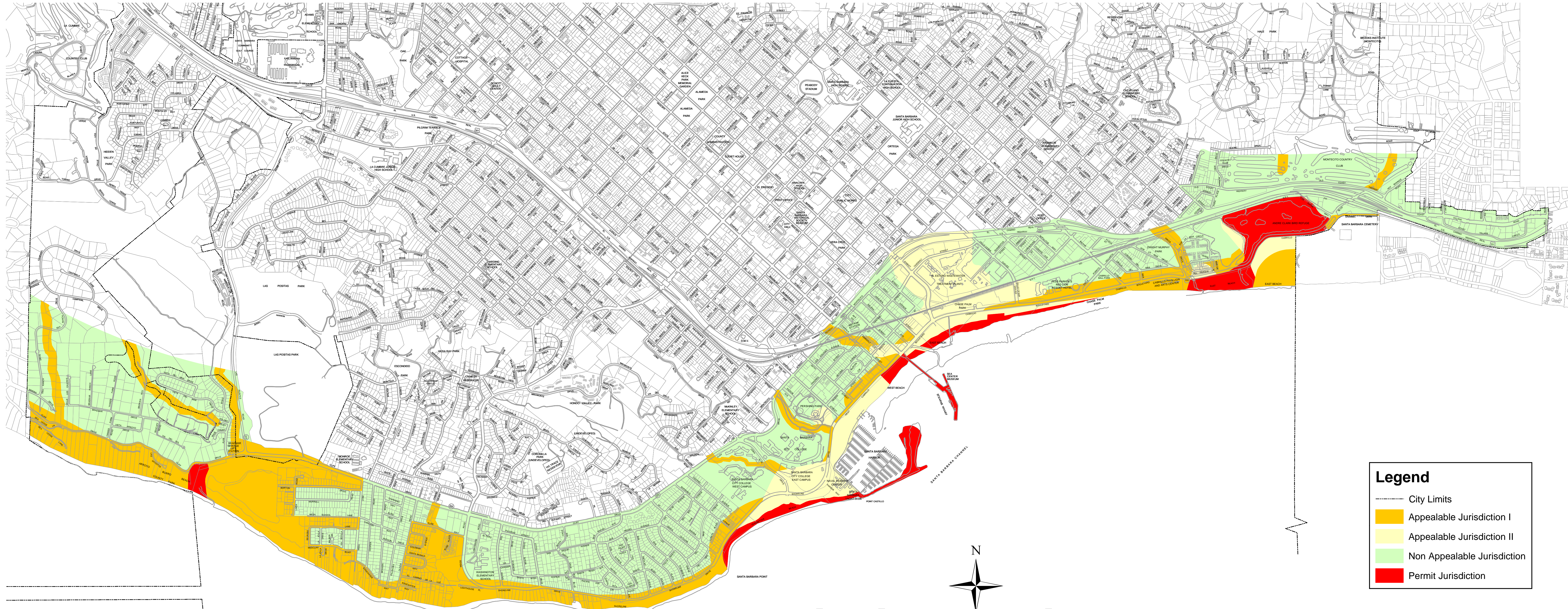
ROGERS, SHEFFIELD & CAMPBELL, LLP



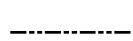


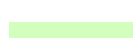

Travis C. Logue
Jason W. Wansor
Attorneys for Petitioner/Plaintiff
THEODORE P. KRACKE

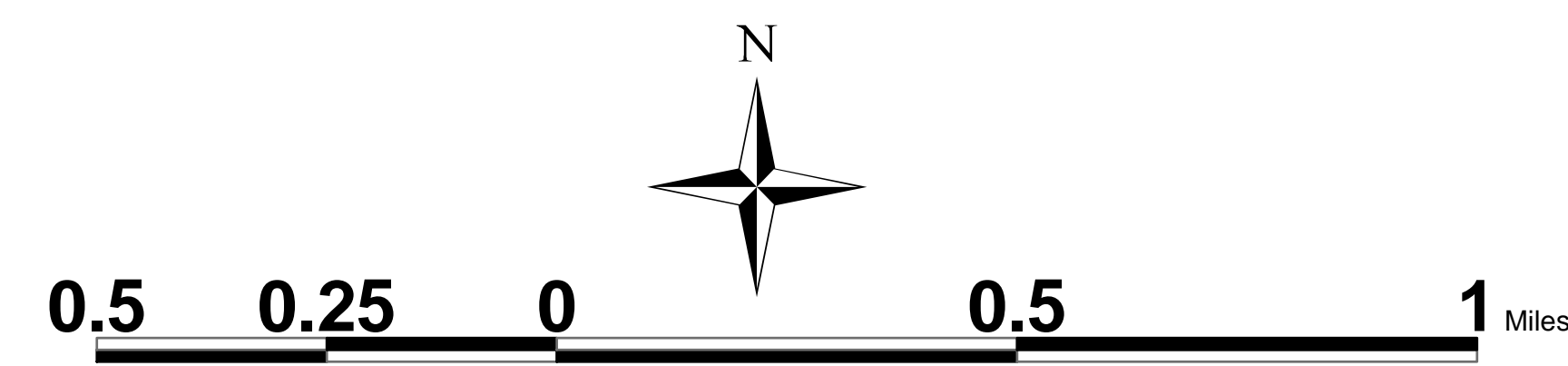
Exhibit A

Exhibit A



Legend

-  City Limits
-  Appealable Jurisdiction I
-  Appealable Jurisdiction II
-  Non Appealable Jurisdiction
-  Permit Jurisdiction



1:12,000

This map is deemed reliable but is not guaranteed. See Post-Certified LCP Map at the Planning Division for the official version.

Coastal Zone

Local Coastal Plan



April 2006
 Planning Division
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VERIFICATION

I, THEODORE P. KRACKE, am the Petitioner/Plaintiff in the above-entitled action. I have read the foregoing Petition for Writ of Mandate and Complaint for Civil Penalties and know the contents thereof. The same is true of my own personal knowledge, except as to those matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 30, 2016 at Santa Barbara, California


THEODORE P. KRACKE