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Prepared June 19, 2020 for July 9, 2020 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Mike Watson, Coastal Planner

**Subject: City of Carmel-by-the-Sea LCP Amendment No. LCP-3-CML-20-0006-1
(Short-Term Rentals)**

SUMMARY OF STAFF RECOMMENDATION

The City of Carmel-by-the-Sea has submitted the above-referenced Local Coastal Program (LCP) Implementation Plan (IP) amendment request, which would establish new regulations for short-term rentals (STRs) within residential units in the City. The amendment would prohibit STRs in the LCP's single-family residential district (R-1), but would allow a limited number of them in the multi-family and commercial/visitor-serving zone districts, including the multi-family (R-4), central commercial (CC), service commercial (SC), and residential and limited commercial (RC) zone districts. Currently, STRs are not explicitly addressed by the LCP, but the City has been regulating them as "transient uses" (i.e., lodging in residential units of less than 30 days). Based on their transient use regulations, the City has not allowed STRs in residential zones, but has approved 44 STRs in the LCP's CC, SC, and RC zones. The proposed amendment would carry forward the City's approach by explicitly prohibiting STRs in the R-1 zone, but would also change how STRs could otherwise be accommodated in the City. Specifically, the amendment would allow the existing 44 STRs as a special type of legal nonconforming use that may continue within the CC, SC, and RC zones, and would also allow additional STRs in the LCP's multi-family (R-4) zone at a rate of one STR for every three additional long-term rental units created, provided at least two of these long-term rental units are affordable rental units. The City expects that the number of STRs in the City is likely to hover around 50 under the proposed new rules. In sum, the proposed amendment would explicitly address STRs in the LCP for the first time, and would expressly authorize areas where existing legal non-conforming STRs are allowed (in CC, SC, and RC) and where potential new STRs are allowed (in R-4), while prohibiting STRs in the LCP's single-family residential zone (R-1).

STRs can provide an important visitor-serving function, including allowing groups and families a sometimes more convenient and less costly option for overnight

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accommodations near the beach and shoreline, including in areas lacking other overnight options and where residential communities frame visitor destinations. These types of overnight accommodations, particularly the way in which they may be able to facilitate more affordable access for families from inland areas of the state and beyond, are a high priority under the Coastal Act, and expressly a higher priority than residential uses. At the same time, STRs can raise a range of local issues, from resident concerns that such rentals can lead to localized problems (e.g., from noise, on-street parking, garbage, etc.) that can negatively impact residents and neighborhoods, to other broader concerns that such STRs may unduly burden strained public services. All of these concerns have been cited by the City in explaining their approach to STRs in this proposed amendment, as well as concerns regarding protecting Carmel's special community character under Coastal Act Section 30253 (where the City's white sand beach, eclectic mix of residential cottages, historic downtown shopping district, and forested landscape combine to make it a popular visitor destination). Statewide, the Commission has sought to balance these types of issues through context-specific LCP provisions that allow STRs subject to reasonable restrictions (e.g., requiring "good neighbor" best practices) and sometimes through geographic restrictions and caps on the total number allowed within any particular area.

In this case, the City of Carmel-by-the-Sea is known as a 'residential community within the forest', where its approximately 3,450 residences, many of them unique cottage-style architecture, are located on small lots (almost all at 4,000 square feet) along fairly narrow and tree lined streets without sidewalks and related infrastructure, and the City is fiercely protective of this aspect of the City's character. In addition, this character is not only a contributor to establishing a City identify that attracts a significant number of visitors (estimated at over two million visitors annually), but it is also protected by the LCP. The City also includes a large number, relatively speaking, of more traditional hotel, motel, and bed and breakfast visitor overnight rooms (about 1,000 rooms total), most of which are located in the City's downtown commercial core and the immediately surrounding area. While these rooms are not lower cost, and not geared towards groups or families per se, it still shows that a fairly small community (with about 3,800 residents), provides a fairly large number of visitor overnight possibilities. In that context, although the 44 (or roughly 50 over time) STRs is a relatively small number of STRs for such a popular visitor destination as Carmel, and although they would generally be limited to the commercial core of the City, these units would contribute to an overall healthy overnight unit supply in the City.

In addition, the amendment would further LCP objectives that emphasize the downtown commercial area as the City's visitor-serving focal point, and that prioritize protection of the City's residential village character elsewhere. And overall, given that STRs are not currently explicitly covered by the LCP, the amendment would also provide an LCP STR program for the first time, providing better LCP clarity. As is often the case with proposed STR regulations, and is no different here, the proposed amendment has both robust support and vocal opposition, with some saying it unduly restricts STRs in the City, and others advocating for an outright STR ban. These are complicated and controversial issues, and reasonable people may disagree on how best to regulate

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STRs under the Coastal Act. That is not uncommon. Nor is the idea of making sure STR regulations are context and place specific, and not a 'cookie cutter' approach up and down the state. In this case, staff believes that the City found a reasonable balance that seeks to maintain the City's vibrant tourism economy at the same time as ensuring preservation of the City's unique character, that itself is a visitor draw. While it is true that the amendment would pretty strictly limit STRs, both numerically and geographically, it can be found appropriate in this case, including in light of the visitor-accommodations mix and the City's special character, but also because of the unique manner of allowing new STRs in conjunction with new affordable rental options, something that is lacking in the City. For these reasons, and in this specific case, staff recommends that the Commission approve the amendment as submitted. The required motion and resolution to do so are found on page 5 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment application was filed as complete on May 27, 2020. The proposed amendment affects the LCP's IP only, and the 60-working-day deadline for the Commission to take action would normally be July 31, 2020. However, on April 16, 2020, California's Governor issued Executive Order N-52-20, which tolls this deadline for 60 calendar days (i.e., until September 29, 2020). Thus, unless the Commission extends the action deadline (it may be extended by up to one year by the Commission per the Coastal Act), the Commission has until September 29, 2020 to take a final action on this LCP amendment.

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EXHIBITS

Exhibit 1: Proposed IP Amendment

Exhibit 2: Maps of Areas Affected by Proposed IP Amendment

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I. Motion and Resolution

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment as submitted. The Commission needs to make the following motion in order to act on this recommendation.

Certify the IP Amendment as Submitted

Staff recommends a **NO** vote on the motion below. Failure of this motion will result in certification of the Implementation Program amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission reject Implementation Plan Major Amendment Number LCP 3-CML-20-0006-1 as submitted by the City of Carmel-by-the-Sea, and I recommend a **no** vote.

Resolution: The Commission hereby certifies Implementation Plan Major Amendment Number LCP 3-CML-20-0006-1 for the City of Carmel-by-the-Sea and adopts the findings set forth below on the grounds that the Implementation Plan conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan Amendment complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. Findings and Declarations

A. Description of Proposed LCP amendment

The proposed amendment would amend the Implementation Plan (IP) component of the City's Local Coastal Program (LCP) to establish new regulations for short-term rentals (STRs) within residential units in the multi-family residential (R-4), central commercial (CC), service commercial (SC), and residential and limited commercial (RC) zone districts, which are all generally centered around the City's commercial core along Ocean Avenue. Currently, STRs in these zone districts are not explicitly addressed by the LCP, but the City has been regulating them as transient uses.¹ Based on their transient use regulations, the City has not allowed STRs in the LCP's single-family residential zone (R-1) but has approved 44 STRs in the LCP's CC, SC, and RC zone districts. The proposed amendment would carry forward the City's approach by

¹ Section 17.08.060: Prohibited Uses. Uses such as transient bed and breakfast, hostel, hotel, inn, lodging, motel, hotel, resort and other transient lodging uses for remuneration, are prohibited in the residential districts, except as otherwise permitted by this code. Transient is defined as "a period of time less than 30 consecutive days."

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prohibiting STRs in the R-1 zone but would also change how STRs could otherwise be accommodated in the City. Specifically, the amendment would designate the existing 44 STRs as a special type of legal nonconforming use within the CC, SC, and RC zones, and would allow new STRs in the R-4 zone at a rate of one STR for every three additional long-term rental units created, provided at least two of these long term rental units are affordable rental units.² Existing legal non-conforming STRs would be allowed indefinitely.³ Finally, the amendment would prohibit advertising of unpermitted transient rentals regardless of zone district. Thus, the proposed amendment would expressly authorize where short-term rentals are allowed in the City (i.e., the R-4, CC, SC, and RC zoning districts), while precluding the possibility of STRs in the single-family residential zone (R-1).

Please see **Exhibit 1** for the entire text of the proposed IP amendment. See **Exhibit 2** for the zoning districts affected by this amendment.

B. Consistency Analysis

Standard of Review

The proposed amendment affects the IP component of the City of Carmel-by-the-Sea LCP. The standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LCP Land Use Plan (LUP).

IP Consistency Analysis

Applicable LUP Provisions

The City of Carmel-by-the-Sea's LUP acknowledges the City's long history as a popular visitor destination and emphasizes the downtown core as the heart of the City's visitor-serving resources and appeal. Applicable LUP provisions include:

LUP Introduction (Land Use and Community Character). Carmel-by-the-Sea is internationally recognized as a unique small coastal community with a residential village character. Early development was predominantly residential. Commercial development began as small-scale village enterprises designed to

² One of the new long-term rental units on the site must be rented as "low-income" and a second long-term rental unit must be rented as "moderate income" as defined the LCP. The third new long-term rental unit may be rented at market rate. Two of the new long-term rental units must be a minimum of 650 square feet in size and all new long-term rental units created through the incentive program are subject to LCP density provisions. Any new STR created under the incentive program may be located at the same site as the three long-term rental units, or elsewhere in the CC, SC, RC, or R-4 districts. STRs permitted in this way must be maintained at the original site of approval and are not classified as non-conforming. One parking space is required for each STR unit in all zone districts.

³ Typically, under the LCP, whenever any non-conforming use has been discontinued for a period of six consecutive months, it is deemed abandoned and may not be re-established. The amendment would allow these 44 STRs to be abandoned as STRs (e.g., changed to a non-transient residential use), and they could still be re-established as STRs at a future date notwithstanding the normal non-conforming use provisions. In other words, STR is an allowed use for these 44 units permanently under the proposed amendment.

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serve the needs of the local residents. Through the years, these commercial uses have expanded to cater largely to visitors.

Located adjacent to Carmel Bay with gently rising slopes, the City has conscientiously retained its residential village character in a forest setting, dominated by Monterey Pines. The special character of this residential coastal community is considered a unique asset of statewide and national significance that should be maintained as a resource both for local residents and for visitors. The incorporated limits of the City of Carmel-by-the-Sea shall be designated a special community and a highly scenic area within the meaning of Coastal Act sections 30251 and 30253 and for the purposes of implementing section 30610 and corresponding regulation section 13250 of the California Code of Regulations. New development shall protect this special community and its unique characteristics. ...

LUP Introduction (Commercial Development). ...Carmel is host to hundreds of thousands of visitors each year who come to enjoy its unique character, its beautiful beach, its cultural attractions and other amenities. This visitor industry is consistent with the purposes of the Coastal Act and the commercial uses found in Carmel's commercial area reflect a predominance of visitor-serving commercial use. For example, in spite of its small population of 4,081 residents Carmel has: 32 jewelry stores; 50+ restaurants; 120+ art galleries; 120+ clothing stores; and 50 hostelrys with 948 authorized lodging units.

To provide visitors with overnight accommodations, 50 percent of all commercially zoned land in Carmel-by-the-Sea has been developed and occupied by hotel and motel uses. A significant number of single-family residences also accommodate visitors on a monthly rental basis to augment commercial motel and hotel lodgings. Along with the City of Monterey, Carmel-by-the-Sea has the highest ratio of hotel/motel rooms to residential housing units of any City in Monterey County. There is approximately one hotel or motel room for every three residential dwelling units in the City. ...

LUP Introduction (Preservation of the Central Business District). Ocean Avenue constitutes a major linear park through the heart of the commercial district. It has for years housed businesses that are attractive to both visitor and resident alike. It has been, and continues to be, the nucleus of visitor attention.

...

LUP Goal G1-1. Continue to preserve and maintain the predominance of the residential character in Carmel through appropriate zoning and land development regulations in all districts.

LUP Goal G1-2. Preserve the residential village character and perpetuate a balance of land uses compatible with local resources and the environment.

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LUP Policy P1-16. Periodically review the mix of business uses in all commercial districts to assess the progress in achieving the land use objectives of the community and the success of policies and ordinances in achieving those objectives.

LUP Policy P1-62. Continue to encourage the established mixed-use pattern (residential over commercial uses) in all commercial districts.

LUP Policy P1-75. Identify all existing non-conforming uses. Those determined to be both desirable and appropriate for the zones in which they are located should become allowed or conditional uses. Consider the amortization of all other non-conforming uses.

LUP Policy P1-78. Review and develop measures to restrict commercial short-term rental of single-family residences in the R-1 district.

LUP Goal G4-1. Provide for maximum public access to, and recreational use of, the shoreline consistent with private property rights and environmental protection.

LUP Objective O4-11. Establish standards that support the improvement and/or replacement of existing motel facilities while mitigating impacts and enhancing the aesthetic character of these uses. Maintain the existing balance between visitor serving, general commercial, and residential land uses.

LUP Policy P4-58. Establish a Citywide cap on hotel/motel units equal to the number of existing authorized hotel/motel units. If units are demolished or converted to other uses allow lost units to be reestablished on other sites up to the cap. Periodically evaluate (at least every ten years) whether an appropriate balance of land uses is being maintained.

LUP Policy P4-59. Encourage the conversion of existing, under-performing commercial space to visitor accommodations within the limits of the cap. Mitigate impacts of motel uses on the long-term livability of any nearby residential uses. Protect and conserve all existing residential units in all commercial districts.

LUP Policy P4-62. Lower cost visitor and recreational facilities shall be protected and encouraged and where feasible, provided. Developments providing public recreational opportunities are preferred.

LUP Policy P4-63. Retain measures to restrict commercial short-term rental of single-family residences in the R-1 district.

Analysis

As indicated above, the City's 44 existing STRs are located in the downtown commercially zoned areas in the City (CC, SC, and RC; see **Exhibit 2** for a map of

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these areas),⁴ and the City collects transient occupancy tax (TOT) for each STR. Although not provided for in the LCP, the City treats them as a legal non-conforming use. The LCP envisions and encourages visitor-serving uses in the downtown core and commercial areas, and the proposed amendment seeks to provide clarity and standards for STR use in the CC, RC, and SC zoning districts.

In all other areas of the City, including the single-family and multi-family residential zones, the City does not consider STRs to be allowed under the LCP and points to IP Section 17.08.060 that prohibits transient lodging use: “Uses such as transient bed and breakfast, hostel, hotel, inn, lodging, motel, resort, and other transient lodging uses for remuneration, are prohibited in the residential districts [R-1 and R-4], except as otherwise permitted by this code”. Although IP Section 17.08.060 does not explicitly reference vacation rentals or STRs, the City has managed its residential housing stock as if it did, including by hiring a third-party contractor to enforce a prohibition against STRs in those areas. The City’s proposed amendment came out of public outreach related to the need for long-term rental housing stock and the protection of the community’s residential village character.

STRs can provide an important visitor-serving function, including allowing groups and families a sometimes more convenient and less costly option for overnight accommodations near the beach and shoreline, including in areas lacking other overnight options and where residential communities frame visitor destinations. These types of overnight accommodations, particularly the way in which they may be able to facilitate more affordable access for families from inland areas of the state and beyond, are a high priority under the Coastal Act, and expressly a higher priority than residential uses. At the same time, STRs can raise a range of local issues, from resident concerns that such rentals can lead to localized problems (e.g., from noise, on-street parking, garbage, etc.) that can negatively impact residents and neighborhoods, to other broader concerns that such STRs may unduly burden strained public services. All of these concerns have been cited by the City in explaining their approach to STRs in this proposed amendment, as well as concerns regarding protecting Carmel’s special community character under Coastal Act Section 30253 (where the City’s white sand beach, eclectic mix of residential cottages, historic downtown shopping district, and forested landscape combine to make it a popular visitor destination). Statewide, the Commission has sought to balance these types of issues through context-specific LCP provisions that allow STRs subject to reasonable restrictions (e.g., requiring “good neighbor” best practices) and sometimes through geographic restrictions and caps on

⁴ The LUP states that the commercially zoned areas of the downtown are intended to provide a mixture of retail, office, and service uses along with apartments, condominiums, and other similar residential uses. The downtown core is clearly identified in the LUP as the visitor-serving center of the City given its close proximity to commercial uses and overnight accommodations.

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the total number allowed within any particular area.⁵ The Commission has not generally supported across the board STR bans.⁶

The City of Carmel-by-the-Sea is known as a ‘residential community within the forest’, where its approximately 3,450 residences, many of them unique cottage-style architecture, are located on small lots (almost all at 4,000 square feet) along fairly narrow and tree lined streets without sidewalks and related infrastructure, much with a historical association with a past architect, artist, poet, or notable character, and the City is fiercely protective of this aspect of the City’s character. There are no neighborhood stores, restaurants, or corner shops in these areas. It is these things that collectively help to define the City’s unique residential character. In addition, this character is not only a contributor to establishing a City identify that attracts a significant number of visitors (estimated at over two million visitors annually), but it is also protected by the LCP (e.g., see LUP goals and policies G1-1, P1-78, and P4-63).

The City also includes a large number, relatively speaking, of more traditional hotel, motel, and bed and breakfast visitor overnight rooms, most of which are located in the City’s downtown commercial core and the immediately surrounding area. Specifically, there are 43 visitor-serving hotel/motel/inns, with 1,005 overnight rooms or approximately one overnight unit for every 3.5 residences. While these rooms are not lower cost, and not geared towards groups or families per se, it still shows that a fairly small community (with about 3,800 residents), provides a fairly large number of visitor overnight possibilities. In that context, although the 44 (or roughly 50 over time) STRs is a relatively small number of STRs for such a popular visitor destination as Carmel, and although they would generally be limited to the commercial core of the City, these units would contribute to an overall healthy overnight unit supply in the City. And although they would be characterized as legal non-conforming uses, the City has included measures to ensure they are treated differently and allowed to continue indefinitely.

Additionally, the City’s proposal to allow new STRs if new long term and mostly affordable rental units are also constructed presents a unique incentive. Although it does not appear that there would be so much incentive to create a large number of new STRs and new long-term rental units, it still provides an LCP tool designed to increase both, which is a good thing for this City, including as it suffers from a dearth of affordable housing. The amendment would also further LCP objectives that emphasize the downtown commercial area as the City’s visitor-serving focal point, and that prioritize protection of the City’s residential village character elsewhere. And overall, given that STRs are not currently explicitly covered by the LCP, the amendment would also provide an LCP STR program for the first time, providing better LCP clarity.

⁵ For example, Santa Cruz County’s vacation rental ordinance and subsequent amendments, which the Commission initially approved in 2011. That ordinance includes caps on the density of STRs per block and in certain neighborhoods, while also requiring limits on guests, parking, and noise, as well as a complaints hotline.

⁶ For example, Pismo Beach’s proposed STR ban was denied by the Commission in 2011.

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As is often the case with proposed STR regulations, and is no different here, the proposed amendment has both robust support and vocal opposition, with some saying it unduly restricts STRs in the City, and others advocating for an outright STR ban. These are complicated and controversial issues, and reasonable people may disagree on how best to regulate STRs under the Coastal Act. That is not uncommon. Nor is the idea of making sure STR regulations are context and place specific, and not a ‘cookie cutter’ approach up and down the state. In this case, the Commission believes that the City found a reasonable balance that seeks to maintain the City’s vibrant tourism economy at the same time as ensuring preservation of the City’s unique character, that itself is a visitor draw. While it is true that the amendment would pretty strictly limit STRs, both numerically and geographically, it can be found appropriate in this case, including in light of the visitor-accommodations mix and the City’s special character, but also because of the unique manner of allowing new STRs in conjunction with new affordable rental options, something that is lacking in the City. For the above reasons, the Commission approves the amendment as submitted.

C. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are *not* required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, the City of Carmel-by-the-Sea, acting as lead CEQA agency, determined that the proposed LCP amendment was exempt from the requirements of CEQA based on their conclusion that it would not have the potential for causing a significant effect on the environment.

The Coastal Commission is *not* exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission’s LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (14 CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that approval of the proposed amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA. Thus, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects due to approval of the proposed amendment that would necessitate such changes. Thus, the proposed amendment will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

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Appendix A – Substantive File Documents⁷

- *City of Camel-by-the-Sea Local Coastal Program Coastal Land Use Plan*, EMC Planning. June 3, 2003.
- *City of Camel-by-the-Sea Local Coastal Program Zoning Ordinance and Coastal Implementation Plan*, Dyett and Bhatia. May 4, 2004.

Appendix B – Staff Contact with Agencies and Groups

- City of Carmel-by-the-Sea
- Carmel Pine Cone

⁷ These documents are available for review in the Commission's Central Coast District office.