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To: Commissioners and Interested Persons

From: Kevin Kahn, Central Coast District Manager
Katie Butler, Central Coast District Supervisor

Subject: City of Carmel-by-the-Sea LCP Amendment Number LCP-3-CML-23-0022-1-Part B (Timeshare Provisions)

SUMMARY OF STAFF RECOMMENDATION

The City of Carmel-by-the-Sea proposes to modify its Local Coastal Program (LCP) Implementation Plan (IP) provisions related to timeshares by updating timeshare-related definitions, by maintaining the LCP's existing timeshare prohibition, and by adding a similar prohibition and penalties for marketing of timeshares in the City. The LCP's existing timeshare prohibition (certified by the Commission when the LCP was first certified in 2004) is premised on maintaining the City's existing stock (and encouraging new such stock) of visitor-serving overnight accommodations and guarding against their conversion to pseudo-residential use, such as would be represented by a timeshare ownership arrangement. Thus, at face value, the proposed amendment only strengthens the LCP's current timeshare provisions.

However, the City also intends to make explicit that such timeshare prohibitions and related measures also accrue to forms of timeshare that are not related to the types of visitor-serving overnight accommodations for which the original LCP provisions were intended. In submitting this LCP amendment, the City believes that the existing timeshare prohibitions extend to timeshare/fractional ownership of other properties in the City, whether they are visitor-serving properties or not, and the City wants to make such a conclusion even more self-evident and explicit. Per the City's reasoning, such changes do not alter the base LCP prohibition, as it currently applies to all properties in the City, not just visitor-serving such properties. At least one property owner in the City, Pacaso, however, contends that fractional ownership of private residential properties (i.e., Pacaso's business model) is not currently prohibited by the LCP, and that the proposed amendment extends the LCP's timeshare prohibition to a type of timeshare/fractional ownership that is currently allowed. Thus, the City and Pacaso disagree as to whether the Pacaso model of ownership is already prohibited by the LCP or whether the proposed LCP amendment would prohibit it for the first time.

This disagreement, however, is largely immaterial to the proposed amendment at hand, which on this point is to explicitly include fractional/co-ownership constructs under the umbrella of 'timeshares.' In its discretion, the City is proposing to update the definition of

what a timeshare is, and there is nothing in the LUP, which is the standard of review in this determination, that would suggest it cannot also include co-housing and other forms of fractional ownership. These all appear to be some form of 'timeshare,' which can be reasonably construed to apply to Pacaso's type of fractional ownership. In other words, fractionalized home ownership like the Pacaso model, wherein individuals hold a form of fee title to property, and essentially establish, through a third party, their own parameters on when and how often each individual owner can use such private property, appears to be quite similar to a timeshare model, which similarly is premised upon being a type of private residential ownership with lengths of stay and other use parameters specified by the owners. That the City is making this point clearer does not raise any LUP consistency problems.

Perhaps most importantly, substantively, the City's proposal does not raise any coastal resource or LUP consistency concerns. As indicated, the intent behind the LCP's restrictions on timeshares is to guard against the loss of visitor-serving overnight accommodations, whether the LCP defines timeshares in ways that extend to private fractional ownership of private homes or not. The reason for this is because timeshares as applied to such overnight accommodations are a type of private residential ownership not open to the general public, so that when a hotel or other such overnight room is converted into a timeshare, it results in the incremental loss of that high Coastal Act and LCP priority public visitor-serving overnight accommodation offering. As such, the Commission has historically found – and found here in certifying the City's LCP originally in 2004 – that the primary coastal resource objective is to limit such ownership schemes by ensuring that bona fide visitor-serving overnight accommodations are not converted to timeshare/fractional ownership uses. The proposed amendment does not change this core provision, and in fact only strengthens it by adding additional enforcement and penalties associated with timeshare marketing, all of which is not only LUP consistent but also an improvement for coastal resource protection.

That the City intends to also ensure that the LCP covers the Pacaso form of co-ownership does not raise any sort of significant LUP coastal resource concern, and rather can be understood as addressing residential ownership issues generally outside the LCP's coastal resource protection lens. Considering co-housing of this private residential nature as a type of timeshare in and of itself has no effect on coastal resources since it only addresses private residential ownership schemes, and it does not lead to any LUP coastal resource concerns. Further, to the extent that the amendment helps to further ensure that bona fide transient accommodations are not converted to this private co-housing model, that is a good thing under the Coastal Act and LCP. In the end, and despite Pacaso's claims that their private residential ownership arrangements somehow enhance public access and visitor-serving opportunities, such 'co-housing' models are simply private ownership structures that benefit the few individuals capable of buying into them (no matter the size of the scheme) and therefore such arrangements only benefit those few and not the public at large. Yes, those fractional owners of single-family residences are members of the public for whom their access might be improved, but the general public does not achieve better access as a result of Pacaso's efforts. In fact, for those not fortunate enough to be able to achieve residency in Carmel, including for those for whom such

residency is simply prohibitively expensive, the Pacaso ownership model does not lead to any sort of public access or visitor-serving improvement.

In short, the amendment's continued prohibition on traditionally understood timeshares, and its prohibition – whether a continuing prohibition or not – on fractional residential ownership arrangements akin to the Pacaso model, simply does not raise any LUP consistency problems and/or coastal resource issues. And in terms of that Pacaso model, as discussed above, the amendment on this point appears to center around how property can be owned, with whatever issues associated with it falling within the broader regulatory authorities of the City and outside the LUP's coastal protection lens. Importantly, prohibiting the Pacaso ownership model in the City would be expected to lead to no LUP coastal resource concerns, and thus the amendment can readily be found LUP consistent on such points. Furthermore, as a general rule, and in the manner in which the proposed amendment actually affects coastal resources (i.e., in terms of timeshares as they relate to visitor-serving overnight accommodations), the amendment adds additional clarity to the LCP's existing timeshare prohibition, including in terms of adding additional enforcement and penalties for potential marketing violations, and thus can be understood as a minor change to make an established LCP provision even stronger and clearer. The effect of the proposed amendment would be to continue to prohibit timeshares in the City, with similar LCP outcomes as a result as is currently the case.

Staff therefore recommends that the Commission find the proposed amendment leaves the IP consistent with and adequate to carry out the certified LUP, and that the Commission approve the amendment as submitted. The motion and resolution are found on page 5 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on June 20, 2023. The proposed amendment affects the LCP's IP, and the 60-working-day action deadline was September 14, 2023. On September 6, 2023, the Commission extended the deadline for Commission action by one year, to September 14, 2024. Thus, the Commission has until September 14, 2024 to take a final action on this LCP amendment.

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EXHIBITS

- Exhibit 1: City’s Adopted Ordinance
- Exhibit 2: Proposed IP Amendment (changes shown in strikethrough and underline)
- Exhibit 3: Opposition to Proposed IP Amendment
- Exhibit 4: Correspondence from City (including history of correspondence with opposition)

EX PARTE COMMUNICATIONS

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **certify the proposed LCP amendment as submitted**. The Commission needs to make one motion in order to act on this recommendation, and staff recommends a **NO** vote on the motion below. Failure of this motion will result in certification of the Implementation Plan 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 to Certify: *I move that the Commission reject Implementation Plan Amendment LCP-3-CML-23-0022-1-Part B as submitted by the City of Carmel-by-the-Sea, and I recommend a **no** vote.*

Resolution to Certify: *The Commission hereby certifies Implementation Plan Amendment LCP-3-CML-23-0022-1-Part B for the City of Carmel-by-the-Sea and adopts the findings set forth below on the grounds that the amended Implementation Plan conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the amended Implementation Plan 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 amended Implementation Plan 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.*

2. FINDINGS AND DECLARATIONS

A. Proposed LCP Amendment Description

The proposed amendment would modify the LCP's Implementation Plan (IP) related to timeshare provisions.¹ The LCP currently prohibits timeshares,² and the proposed amendment does not change this, rather it would modify the definition of what constitutes a timeshare, and it would add a similar prohibition and penalties for marketing of timeshares in the City. With respect to the former, existing IP Section 17.70.020 includes multiple timeshare definitions, including of Time-Share Estate, Time-Share Use, Time-Share Occupancy, Time-Share Program, Time-Share Project, and Vacation Time Sharing Project, all of which are generally based on similar definitions in state law.³ The City indicates that these existing definitions are overly complicated and

¹ The term 'timeshare' generally refers to a property ownership arrangement whereby multiple owners share ownership and 'share' time using the property. In the Commission's experience, timeshares have generally been understood to be a type of ownership associated with visitor-serving overnight accommodation products, such as hotels, whereby the hotel operates as a pseudo-residential product where rooms are used (at some times or all the time) exclusively by these owners and are not offered for overnight use in exchange for a room rate to the general public.

² The City indicates that it has prohibited timeshares since 1988, which actually pre-dates the LCP's certification in 2004.

³ The City indicates that the existing IP provisions essentially emanate from and are meant to conform to the Vacation Ownership and Time-Share Act of 2004, as set forth in California Business and Professions Code Section 11210 et seq.

overlapping, and that they introduce unnecessary complexity into the City's LCP that could limit the ability of the LCP's timeshare provisions to adequately protect coastal resources. The proposed amendment would combine the various definitions into one singular definition of a "Time-Share Plan" as follows:

"Time-Share Plan" means any arrangement, plan, scheme, or similar device, whether established by membership agreement, sale, lease, deed, license, right-to-use agreement, articles of organization or incorporation, operating agreement or bylaws, or by any other means, whereby a purchaser, in exchange for consideration, receives the right to exclusive use of real property or portion thereof, according to a fixed or floating time schedule, for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years. A timeshare plan shall be deemed to exist whenever such recurring rights of exclusive use to real property are created, regardless of whether such exclusive rights of use are a result of a grant of ownership rights, possessory rights, membership rights, rights pursuant to contract, or ownership of a fractional interest or share in real property, and regardless of whether they are coupled with ownership of a real property interest such as freehold interest or an estate for years in the property subject to the time-share plan.

"Time-Share Use" and "Fractional Interest Use" means the use of real property or any part thereof, pursuant to a timeshare plan.

As to the proposed timeshare marketing provisions, these are new proposed IP provisions that implement the IP's timeshare prohibition by extending it to marketing of such products, including introducing penalties for violating the prohibition. That proposed new IP text under Section 17.28.010 would state:

B. Any responsible person, including but not limited to an owner of a time-share interest, management entity, agent, or broker who uses, or allows the use of, or advertises or causes to be printed, published, advertised, or disseminated in any way and through any medium, the availability for sale or use of real property in violation of this section is guilty of a misdemeanor for each day in which such accommodation is used, allowed to be used, or advertised for sale or use in violation of this chapter. Such violation shall be punishable pursuant to Chapter 1.16 (General Penalty).

C. Any responsible person, including but not limited to an owner of a time-share interest, management entity, agent, or broker who uses, or allows the use of, or advertises or causes to be printed, published advertised, or disseminated in any way and through any medium, the availability for sale or use of real property in violation of this section is subject to administrative fines and/or penalties as set forth in Chapter 18.04 (Municipal Code and Ordinance Enforcement).

D. Each day a violation of this section occurs shall constitute a separate offense, and the remedies under this section are cumulative and in addition to any and all other remedies available at law and equity.

Finally, of note, the City indicates that the proposed new timeshare definition is meant not only to continue to apply to the type of timeshare hotel and the like that is familiar to the Commission from past timeshare cases, but also to extend to certain other forms of fractional private residential ownership. The City indicates that this aspect of the proposed amendment is in response to recent activity in the City by Pacaso, a private company that purchases residential properties and then sells fractional interests in such properties to private parties, where such private parties then share use of that property.⁴ The City determined that such private residential fractional ownership arrangement is a form of timeshare already prohibited under the LCP, but the City indicates that the proposed amendment is intended to make this point more explicit, in addition to adding complementary enforcement and penalty provisions.⁵

See **Exhibit 1** for the City's adopted ordinance and **Exhibit 2** for the proposed amendment text.

B. Proposed LCP Amendment Consistency Evaluation

Standard of Review

The proposed amendment affects the LCP's IP, and the standard of review for IP amendments is that they (or the resulting version of the IP) must conform with and be adequate to carry out the policies of the certified LCP Land Use Plan (LUP).

Applicable Land Use Plan Policies

The Carmel-by-the-Sea LUP includes goals, objectives, and policies that mirror Coastal Act coastal resource protection requirements and are also tailored to address the City's unique 'village in the forest' context. Overarching requirements related to community character, public access, scenic views and visual quality, and beach and forest resources include:

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

LUP Objective O1-6. Recognize the natural resources and scenic quality of Carmel as a coastal community and allow uses in the community that are consistent with local needs, the Carmel Local Coastal Plan, and the California Coastal Act.

⁴ Pacaso indicates that their general business model is to buy a single-family residential property, offer it for sale to up to eight co-owners, and then manage that property and its use for those owners for a fee, where the owners can elect to sever ties with Pacaso. According to the City, there is currently one such Pacaso-owned property in the City.

⁵ And the City has already initiated enforcement proceedings against Pacaso, whereby the City alleges that Pacaso has violated its timeshare prohibition, and the City has demanded that Pacaso cease and desist their unlawful operations within the City. Pacaso maintains that it has not violated any applicable laws, and is currently actively defending itself against the City's allegations.

LUP Policy P1-27. *Continue to ensure that development, whether commercial or residential, does not diminish the village character by excessively blocking important public or private views and disturbing natural topography, mature trees, or native growth.*

LUP Goal G1-3. *Recognize the qualities and attributes that make up the unique architectural character of Carmel, retain these qualities in existing buildings, and encourage the use of them in new structures.*

LUP Objective O1-18. *Identify and protect archaeological resources within Carmel.*

LUP Goal G1-6. *Protect, conserve and increase Carmel's available water resources and water quality.*

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 Goal G4-4. *Provide for a wide variety of passive and active recreational experiences for all beach users while protecting the resource values of beach environs.*

LUP Goal G5-1. *New development shall minimize risks to life and property, assure stability and structural integrity over the life of the development, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.*

LUP Goal G5-3. *Protect, conserve and enhance the unique natural beauty and irreplaceable natural resources of Carmel and its Sphere of Influence, including its biological resources, water resources, and scenic routes and corridors.*

LUP Objective O5-8. *Protect, conserve and enhance designated open space, the urban Monterey pine forest, beach and shoreline, the sensitive habitats and the hillside areas, and acquire additional open space as deemed appropriate.*

LUP Goal G5-4. *Preserve and enhance the City's legacy of an urbanized forest of predominantly Monterey pine, coast live oak and Monterey Cypress.*

LUP Goal G5-12. *Identify, protect and manage Environmentally Sensitive Habitat Areas (ESHAs) to ensure their long-term integrity and the biological productivity of these habitats.*

LUP Goal G5-13. *Develop, preserve and enhance areas of scenic interest and determine methods to protect key scenic corridors and routes.*

In addition to the above coastal resource protection requirements, the LUP also seeks to maintain a balance of visitor-serving, commercial, and residential uses in the City, and to protect and provide for visitor accommodations and other visitor-serving facilities, with an emphasis on lower cost such accommodations/facilities. The LUP implements

such objectives through multiple provisions, including establishing that visitor-serving uses have access to scarce public services over other types of development, including private residential development. The LUP states:

LUP Policy P1-116. *Where existing public services including water can accommodate only a limited amount of new development, priority uses, including essential public services, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by services to other development.*

And the LUP specifically encourages and protects visitor-serving accommodations, including their physical upkeep and maintenance, as well as opportunities for replacement of any demolished units. Importantly, lower cost such opportunities are required to be protected, encouraged, and where feasible, provided. The LUP states:

LUP Objective O4-11: *Establish standards that support the improvement and/or replacement of existing motel facilities...*

LUP Policy P4-58: *Establish a City-wide 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....*

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.*

Finally, to guard against conversion of these high-priority visitor-accommodation uses, the LUP includes a specific prohibition against timeshares:

LUP Policy P4-64. *Continue to prohibit the sale of interests in and rights to use real property in the City on a timesharing basis.*

Thus, overall, the City's LUP protects coastal resources through a full suite of provisions that reflect and implement fundamental goals of the Coastal Act, including related to priority uses such as lower cost and other visitor-serving overnight accommodations, where the LUP explicitly prohibits their conversion to timeshare forms of ownership.

Consistency Analysis

As discussed above, the LUP's prohibition against timeshares is premised on maintaining the City's existing stock (and encouraging new such stock) of visitor-serving overnight accommodations and guarding against their conversion to pseudo-residential use, such as would be represented by a timeshare ownership arrangement. The Commission supported this timeshare prohibition in its 2004 certification of the LCP. And such prohibitions/restrictions on timeshares are not limited to Carmel; rather it is a concept with which the Commission is quite familiar, including to ensure the protection of important visitor-serving uses consistent with the Coastal Act. In fact, the Commission has routinely approved both LCP amendments and coastal development permits that prohibit the conversion of 'standard' hotel/motel units to timeshare/fractional

ownership constructs.⁶ The proposed amendment maintains this prohibition and carries it out with additional enforcement and penalty provisions. In this context, the proposed amendment does not make a significant material change to the LCP, but rather makes relatively minor changes to make established LUP provisions for protecting overnight accommodations from timeshare ownership arrangements even clearer and more enforceable. Thus, at face value, the proposed amendment is clearly consistent with and adequate to carry out the LUP in that sense.

However, as indicated above, the City also intends to make explicit that such timeshare prohibitions and related measures also accrue to forms of timeshare that are not related to the types of visitor-serving overnight accommodations for which the original LCP provisions were intended. In submitting this LCP amendment, the City believes that the existing timeshare prohibitions already extend to timeshare/fractional ownership of other properties in the City, and whether they are visitor-serving properties or not, the City wants to make such a conclusion even more self-evident and explicit. Per the City's reasoning, such changes do not alter the base LCP prohibition, as it currently applies to all properties in the City, not just visitor-serving such properties. At least one property owner in the City, Pacaso, however, contends that fractional ownership of private residential properties is not currently prohibited by the LCP, and that the proposed amendment on this point extends the LCP's timeshare prohibition to a type of timeshare/fractional ownership that is currently allowed.

Specifically, Pacaso has voiced concerns with the proposed amendment (see **Exhibit 3**), and the City has also responded to Pacaso's concerns (see **Exhibit 4**). Among Pacaso's concerns is that their model of fractional ownership, or 'co-housing' as they also call it, should not be understood as a timeshare, and thus should not be considered currently prohibited under the LCP. They also argue that their housing product furthers Coastal Act objectives in a variety of ways, including pooling multiple owners together for a single-family residential property (and thereby freeing up additional coastal housing for others since, ostensibly, those multiple owners do not separately pursue their own homes), protecting affordable housing (because Pacaso alleges that the average sale price of a Pacaso-owned home is seven times more expensive than an average home), as well as providing a type of visitor-serving use given that these types of ownership constructs necessarily results in multiple users (and thus can be understood as facilitating visitors to these communities). In other words, Pacaso argues that the ownership and property management ownership arrangements that they facilitate are a way to bring more people to the coast in a manner that not only does not

⁶ See, for example, CDPs 3-19-0011 (Harborwalk Plaza) and 3-16-0287 (Front Street Cottages). In terms of LCPs, this type of timeshare provision is also increasingly more common, including as evidenced by recent certifications and major updates (see, for example, the recently certified Pacific Grove LCP (see LUP Policy PRA-11) and Morro Bay's recently certified updated LUP (see LUP Policy LU-6.1)) where provisions were put in place to ensure that new and/or modified hotels/motels and the like appropriately provide for overnight accommodations to the general public, and do not limit such general public use by virtue of some type of fractional ownership arrangement. Such provisions also exist in the City of Newport Beach, where timeshares are restricted to certain portions of the City under their LCP, and where the City is also pursuing a timeshare-related LCP amendment very similar to this one, also scheduled to be heard at the Commission's October meeting (item number Th15a).

impact housing stock, but actually relieves pressure on it by relieving some housing demand.

To respond to these points, it is first important to establish what Pacaso is and does with respect to housing. Per their submitted materials: "A Pacaso home is owned through a LLC that is owned by between four to eight individuals or families; Owners can tailor their financial investment based upon how much of the home they want to own and their expected use." Specifically, Pacaso purchases a single-family residential property and then transfers ownership to an LLC. Pacaso then sells between four to eight interests in that LLC to separate entities or individuals that collectively own the company. In the first four years, Pacaso serves as a property manager, both in terms of property uptake and managing the time each owner uses the property. After that initial period, the owners may elect to sever ties with Pacaso, or not. But the primary point is that the residence in question remains fully on the private marketplace and used for private residential use per the specifications of the owners. On this point it is a stretch to suggest, as Pacaso does, that such an arrangement constitutes and/or facilitates public access and visitor-serving use. On the contrary, the Pacaso model facilitates private residential use and ownership of private residential property, including as these properties are not available to the general public, and should not be understood as furthering LCP public access and visitor-serving use objectives.

As described previously, the City and Pacaso disagree as to whether the Pacaso model of ownership is already prohibited by the LCP or whether the proposed LCP amendment would prohibit it for the first time. This disagreement, however, is largely immaterial to standard that governs the Commission's review of the proposed amendment, which is to explicitly include fractional/co-ownership constructs under the umbrella of 'timeshares.' In its discretion, the City is proposing to update the definition of what a timeshare is, and there is nothing in the LUP, which is the standard of review in this determination, that would suggest it cannot also include co-housing and other forms of fractional ownership. These all appear to be some form of 'timeshare,' which can be reasonably construed to apply to Pacaso's type of fractional ownership. In other words, fractionalized home ownership like the Pacaso model, wherein individuals hold a form of fee title to private residential property, and essentially establish their own parameters on when and how often each individual owner can use the property, appears to be quite similar to a timeshare model, which similarly is premised upon being a type of residential ownership with lengths of stay and other use parameters that are specified by the owners. That the City is making this point clearer does not raise any LUP consistency problems.

But, and perhaps most importantly, substantively, the City's proposal does not raise any coastal resource concerns. As discussed previously, the intent behind the LCP's restrictions on timeshares is to guard against the loss of visitor-serving overnight accommodations, whether the LCP defines timeshares in ways that extend to private fractional ownership of private homes or not. The reason for this is because timeshares as applied to such overnight accommodations are a type of private residential ownership not open to the general public, so that when a hotel or other such overnight room is converted into a timeshare, it results in the incremental loss of that high Coastal Act and LCP priority public visitor-serving overnight accommodation offering. As such,

the Commission has historically found – and found here in certifying the City’s LCP originally in 2004 – that the primary coastal resource objective is to limit such ownership schemes by ensuring that bona fide visitor-serving overnight accommodations are not converted to timeshare/fractional ownership uses. The proposed amendment does not change this core provision, and in fact only strengthens it by adding additional enforcement and penalties associated with timeshare marketing, all of which is not only LUP consistent but also an improvement for coastal resource protection.

That the City intends to also ensure that the LCP covers the Pacaso form of co-ownership does not raise any sort of significant LUP coastal resource concern, and rather can be understood as addressing residential ownership issues generally outside the LCP’s coastal resource protection lens. Considering co-housing of this private residential nature as a type of timeshare in and of itself has no effect on coastal resources since it only addresses private residential ownership schemes, and it does not lead to any LUP coastal resource concerns. Further, to the extent that the amendment helps to further ensure that bona fide transient accommodations are not converted to this private co-housing model, that is a good thing under the Coastal Act and LCP. In the end, such co-housing models are private ownership structures that benefit the few individuals capable of buying into them⁷ (no matter the size of the scheme) and therefore such arrangements only benefit those few and not the public at large. Pacaso, as the main opponent of this LCP amendment, argues these ownership schemes are akin to short term rentals and therefore do maximize public access. However, that is not accurate. A key difference between the two is that short term rentals are open to the general public to use, occupying a type of visitor-serving space in a residential context, whereas homes subject to the Pacaso model of ownership that would be impacted by the submitted LCP amendment represent private residential use of private residential stock that are not open to the general public to use. To the extent that Pacaso collaterally argues that the way in which their ownership model allows multiple parties to achieve homeownership status equates to achieving better public access and visitor serving outcomes for those people, and thus this is the manner that such ownership arrangements better maximize public access, Pacaso posits a false equivalency. Yes, those persons are members of the public for whom their access might be improved, but the general public does not achieve better access as a result of Pacaso’s efforts. In fact, for those not fortunate enough to be able to achieve residency in Carmel, including for those for whom such residency is simply prohibitively expensive, the Pacaso ownership model does not lead to any sort of public access improvement.

In short, the amendment’s continued prohibition on traditionally understood timeshares, and its prohibition – whether a continuing prohibition or not – on fractional residential ownership arrangements akin to the Pacaso model, simply does not raise any LUP consistency problems and/or coastal resource issues. And in terms of that Pacaso model, as discussed above, the amendment on this point appears to center around how

⁷ And, per Pacaso, where these residential properties typically cost seven times the average home sale, and where the median home sale in Carmel is some \$3 million (where seven times that is \$21 million, or split eight ways over \$2.5 million each), there is only a very limited portion of the population to which these types of arrangements are marketed.

property can be owned, with whatever issues associated with it falling within the broader regulatory authorities of the City and outside the LUP's coastal protection lens. Importantly, prohibiting the Pacaso ownership model in the City would be expected to lead to no LUP coastal resource concerns, and thus the amendment can readily be found LUP consistent on such points. Furthermore, as a general rule, and in the manner in which the proposed amendment actually affects coastal resources (i.e., in terms of timeshares as they relate to visitor-serving overnight accommodations), the amendment adds additional clarity to the LCP's existing timeshare prohibition, including in terms of adding additional enforcement and penalties for potential marketing violations, and thus can be understood as a minor change to make an established LCP provision even stronger and clearer. The effect of the proposed amendment would be to continue to prohibit timeshares in the City, with similar LCP outcomes as a result as is currently the case. The Commission thus finds the proposed amendment consistent with and adequate to carry out the policies of the LUP.

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 determined that the proposed LCP amendment is not subject to CEQA, arguing that it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and here the City determined that no possibility exists that the amendment may have a significant effect on the environment (citing to CEQA Section 15062).

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 (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal, has addressed all comments received, and has concluded that approval of the proposed LCP amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA.

Accordingly, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects that approval of the proposed amendment would necessitate. 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).