

## CALIFORNIA COASTAL COMMISSION

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# Th11c

**Prepared August 8, 2023 for August 10, 2023 Hearing**

**To:** Commissioners and Interested Persons

**From:** Kevin Kahn, Central Coast District Manager  
Mariana Filip, Coastal Planner

**Subject: Additional hearing materials for Th11c  
CDP Number LCP-3-CML-23-0022-1-Part B (Timeshare Provisions)**

This package includes additional materials related to the above-referenced hearing item as follows:

Additional correspondence received in the time since the staff report was distributed.

RECEIVED

AUG 01 2023

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COASTAL COMMISSION  
CENTRAL COAST AREA

**From:** [Filip, Mariana@Coastal](mailto:Filip, Mariana@Coastal)  
**To:** [Kahn, Kevin@Coastal](mailto:Kahn, Kevin@Coastal); [Butler, Katie@Coastal](mailto:Butler, Katie@Coastal)  
**Subject:** FW: Carmel LCP Question  
**Date:** Wednesday, August 2, 2023 9:06:49 AM  
**Attachments:** [Th11c & 14a CCC Briefing Materials.pdf](#)

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FYI.

**From:** Anne Blemker <[ablemker@mccabeandcompany.net](mailto:ablemker@mccabeandcompany.net)>  
**Sent:** Tuesday, August 1, 2023 6:02 PM  
**To:** Filip, Mariana@Coastal <[mariana.filip@coastal.ca.gov](mailto:mariana.filip@coastal.ca.gov)>  
**Subject:** Re: Carmel LCP Question

Hi Mariana,

Attached please find briefing materials we intend to share with Commissioners regarding the fractional ownership items being considered for Carmel and Newport Beach.

Please confirm receipt.

Let us know if you have any questions.

Thanks,  
Anne

Anne Blemker  
310-463-9888  
[ablemker@mccabeandcompany.net](mailto:ablemker@mccabeandcompany.net)

On Jul 5, 2023, at 4:08 PM, Filip, Mariana@Coastal <[mariana.filip@coastal.ca.gov](mailto:mariana.filip@coastal.ca.gov)> wrote:

Hi Anne,

Please see the attachments for the City's submittal.

Kind regards,

<image001.png> *Mariana Filip*  
California Coastal Commission  
Coastal Planner | Central Coast District  
725 Front St. #300, Santa Cruz, CA 95060  
[mariana.filip@coastal.ca.gov](mailto:mariana.filip@coastal.ca.gov) | +1(831) 427-4864



# **City of Carmel and City of Newport Beach LCP Amendments Regarding Time Share Uses**

Coastal Commission Hearing Aug. 10, 2023

Agenda Items Th11c & 14a

*These materials have been provided to Coastal Commission staff*

# What is the Pacaso Co-ownership model?

Pacaso homes present an opportunity for between four to eight individuals or families to co-own a home together

- 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

Co-ownership does not impact affordable housing stock

- Pacaso homes are about seven times more expensive than the average home

Currently, co-ownership is not regulated under Coastal Act, Newport Beach, or Carmel LCPs



# Carmel and Newport Beach Proposed LCP Amendments

Carmel and Newport Beach separately passed LCP amendments that treat all co-owned homes like timeshares

- Carmel's amendment is an outright ban on co-owned homes
- Newport Beach's amendment limits co-owned home to commercial zones

As written, the LCP amendments broadly prohibit a wide range of co-owned homes within residential areas of the Coastal Zone

- Thousands of homes up and down the coast are co-owned in LLC or trust and would be affected by these types of regulations
- According to Newport Beach's own estimates, ***56% of single -family homes in Newport Beach are owned in LLC or trust***
- About 15% (585) of single-family homes in Carmel are owned in LLC or trust by 3 or more co-owners.

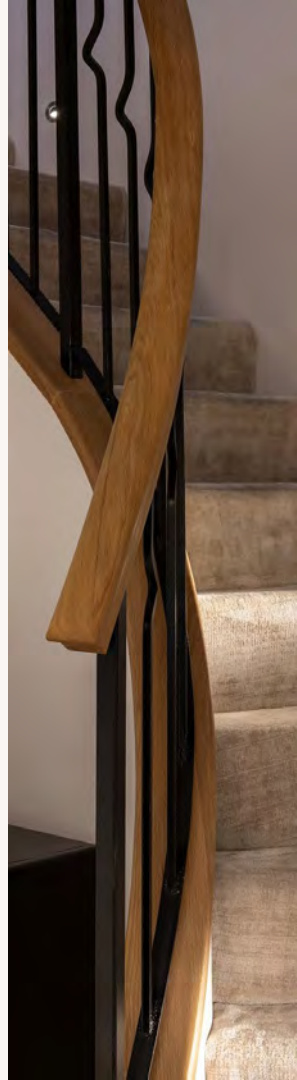
# Unintended consequences

The proposed LCP amendments do not distinguish between the Pacaso model and other co-ownership arrangements

- The LCP amendments would prohibit *any* shared property use by any type of co-owners—including arrangements among family and friends:
  - Friends purchase a vacation home to share among their families, agreeing to a schedule for the home's use
  - Siblings inherit a home, and one sibling sells their share to the others

Given the broad reach, any application of the LCP amendments to only the Pacaso model would be arbitrary and discriminatory

- Cities cannot detect when a co-owned property's owners enter into an arrangement for the property's use
- Commission does not yet have data about how many homes could be affected



# Co-ownership is consistent with Coastal Act

Co-ownership promotes a number of important Coastal Act policies that the Commission must study

***Coastal Access and Lower -Cost Visitor Facilities*** —homeownership can take many forms, and the Commission has recognized how these varied forms promote coastal access

- In the short-term rental context, the Commission recognizes that a wider range of housing options has the ripple effect of increasing public coastal access overall
- Absent the co-ownership of homes, families may instead choose:
  - to occupy lower-cost short-term rental stock
  - to use coastal hotel accommodations for longer periods
  - to purchase less expensive condos/homes to use as second homes
- In sum, co-ownership relieves pressure on vacation rental supply and lower-cost housing stock – advancing coastal access policies

# Effect on the housing ecosystem

*Preserving Coastal Community Character and Sustainability* —co-owners are invested in the community and seek to maximize their home's use

- The Commission has recognized that vacation homes and rentals often remain empty for extended periods or even a majority of the calendar year
- These periods of vacancy tend to be concentrated in off-seasons, compounding the local economic impact
- Co-ownership is more likely to:
  - drive consistent year-round revenue for coastal businesses
  - avoid empty homes and neighborhoods
  - provide a more efficient use of real property and resources





# Need for more information and uniform approach

- The Commission must evaluate bans on co-ownership based on statewide policy goals
  - Need to evaluate data – which has not been developed
  - Need to consider housing, short-term rental and visitor accommodation “ecosystem”
  - Need to provide a uniform statewide approach to ensure consistency across the Coastal Zone
- To inform that approach, the Commission needs more information on second home ownership and co-ownership in the Coastal Zone



# Request for continuance

Proposed LCP Amendments raise significant issues about co-ownership that the Commission must study:

- Coastal accommodations and second homes
- Coastal access and support for visitor-serving uses
- Available housing stock and homeownership markets
- Barriers to access
- Community identity
- Arbitrary enforcement
- Consistency with the Coastal Act and each City's LCP and LUP

The Staff Reports do not address these issues in detail and approval would prohibit co-ownership without any in-depth study

We request these items be continued so the Commission can hold a workshop to consider the precedential effects of these Amendments throughout the Coastal Zone



Pacaso

August 2023



MCCAR  
MONTEREY COUNTY ASSOCIATION OF REALTORS

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AUG 04 2023

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

5 Harris Court, Building A, Monterey, CA 93940

August 4, 2023

California Coastal Commission,

Dear Chairman Brownsey and Honorable Commissioners and Staff,

On behalf of the Monterey County Association of REALTORS® (MCCAR), I am writing to request that the California Coastal Commission reject the Carmel-by-the-Sea ordinance pertaining to the co-ownership of homes. We believe this is an inappropriate policy by the city that infringes on selected individuals' rights to own property and limits accessibility to one of the best areas of California's coast.

MCCAR supports healthy, vibrant communities and equitable access to California's coast. Considering that out of 3,731 residential homes in the community, a minimum of 585 homes are owned "fractionally" through LLCs and Trusts, which means friends and family members have co-owned homes together for generations making this an established practice in Carmel.

In addition, we estimate that nearly half of residential housing in Carmel-by-the-Sea are vacation homes. Co-ownership, however, has the benefit of consolidating ownership into fewer luxury vacation homes, rather than multiple buyers purchasing less-expensive second homes individually. This preserves more housing for the City's permanent residents and middle-income individuals. In this way, co-owned housing offers a more affordable and equitable way to enjoy what this coastal community offers, and helps maximize local economic benefits.

We are concerned about artificially placing limits on people's ability to own property and dictating the structure in which they own it. MCCAR would like to offer ourselves as a resource in this discussion on how to mitigate concerns with co-owned homes and protect private property rights. We look forward to further discussion on this issue.

Thank you for your time and consideration.

Sincerely,

Adam Pinterits  
Government & Community Affairs Director,  
Monterey County Association of REALTORS®

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**AUG 04 2023**

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CALIFORNIA  
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August 4, 2023

**Agenda  
Item Th11c**

**VIA EMAIL**

Chair Brownsey and Honorable Commissioners  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

Re: Agenda Item Th11c: City of Carmel-by-the-Sea LCP Amendment Number LCP-3-CML-23-0022-1-Part B

Dear Chair Brownsey and Honorable Commissioners:

On behalf of Pacaso, Inc. (“Pacaso”), we write regarding the Coastal Commission’s consideration of the City of Carmel’s Local Coastal Program (“LCP”) amendment, LCP-3-CML-23-0022-1-Part B (the “LCP Amendment”). The LCP Amendment proposes to amend the LCP’s definition of “time share use” to include “fractional ownership” of real property, thereby prohibiting various types of co-homeownership uses entirely throughout Carmel’s Coastal Zone. Contrary to the Staff Report’s assertions, the LCP Amendment extends far beyond merely providing “additional clarity.” (See Staff Report, p. 1.) Instead, it proposes a substantial change to the allowable use of land that conflicts with the Coastal Act’s Chapter 3 policies and Carmel’s certified land use plan (“LUP”). Thus, the Commission cannot certify the LCP Amendment as proposed.

The LCP Amendment also deserves substantially more robust study and thoughtful consideration by the Commission than is provided in the five-page Staff Report because it implicates serious issues of coastal access and recreation, and adversely affects the coastal home and visitor accommodations markets. Further, the LCP Amendment does not differentiate among different types of co-ownership – such as friends or family members who jointly own a home or multiple individuals who each own a fractional interest in a shared home. Therefore, any enforcement of the LCP Amendment’s time share restrictions against only fractional homeowners raises significant concerns of selective enforcement.

As a result, Pacaso strongly opposes the LCP Amendment in its current form. Because the LCP Amendment presents important issues that warrant further study, we respectfully request that the Commission vote to extend the time limit to act on Carmel’s LCP Amendment and continue this item for further consideration at a future hearing. A proposed alternate motion

**These materials have been provided to Coastal Commission Staff**

is attached as **Exhibit A** on the Pink Sheet.<sup>1</sup> We further request that the Commission hold an informational workshop to consider the precedential effects of this LCP Amendment and others on coastal resources and housing in the Coastal Zone.

**A. The LCP Amendment Is Inconsistent with Carmel’s Land Use Plan and the Coastal Act**

The Commission must evaluate an LCP amendment that proposes changes to an LCP’s zoning ordinances or implementation plan according to whether it conforms with or is inadequate to carry out the provisions of a certified LUP. (Pub. Resources Code, § 30513(b).) Further, a local government’s LCP and any amendments thereto must be consistent with the Coastal Act’s Chapter 3 policies. (See *Yost v. Thomas* (1984) 36 Cal.3d 561, 566; *McAllister v. Cal. Coastal Commission* (2008) 169 Cal.App.4th 912, 931.) Here, the LCP Amendment fails on both scores, falling short of conforming to Carmel’s LUP and the Coastal Act.

**1. The LCP Amendment Is Inconsistent with Carmel LUP Policy Regarding Timeshares**

The Staff Report recommends that the Commission finds the LCP Amendment consistent with the Carmel LUP, citing only one LUP Policy in support of its recommendation (see Staff Report, p. 4):

- 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.”

However, the Staff Report’s recommendation assumes that fractional ownership uses and time share uses are equivalent. They are not.

Carmel’s current Municipal Code exempts fractional homeownership from “time share uses” because fractional homeownership is “coupled with an estate in the [underlying] real property.” (See Carmel Mun. Code, § 17.70.020.) However, Carmel’s LCP Amendment now proposes to expand the definition of “time share use” to encumber uses “*regardless of whether they are coupled*” with ownership of a real property interest.” (See Staff Report, Ex. 1 [emphasis added].) Further, the LCP Amendment, for the first time, adds “fractional interest uses” to the Municipal Code’s time-share prohibitions. The Municipal Code’s current silence on fractional interest uses and the LCP Amendment’s explicit inclusion of fractional interest uses for the first time underscore that time share uses and fractional interest uses are *not* equivalent under Carmel’s existing law. Thus, the LCP Amendment does not conform to LUP Policy P4-64 regarding time share uses.<sup>2</sup>

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<sup>1</sup> Also enclosed with this letter are comments submitted by Pacaso to the City of Carmel regarding Carmel’s proposed time share ordinances.

<sup>2</sup> In fact, the LCP Amendment does not attempt to define “fractional interest uses.” Instead, the LCP Amendment defines “fractional interest uses” as equivalent to a “time share use.” (Staff Report, Ex. 1.) This is nonsensical. If such uses were truly identical, Carmel would not need to reverse the language limiting time share uses to those “not

**These materials have been provided to Coastal Commission Staff**

## 2. The LCP Amendment Is Inconsistent with the Coastal Act and Parallel Provisions of the Carmel LUP

The LCP Amendment raises important questions about potential impacts to coastal access, recreational opportunities, visitor accommodations, and coastal housing markets. As explained below, by restricting fractional homeownership, the LCP Amendment is inconsistent with the Coastal Act and Carmel’s corresponding LUP policies.

### a. Coastal Act § 30210 and Carmel LUP Goal G4-1

Coastal Act § 30210 provides that “maximum access . . . and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.” (Pub. Resources Code, § 30210.) Similarly, Carmel LUP Goal G4-1 states that Carmel shall “[p]rovide for maximum public access to, and recreational use of, the shoreline consistent with private property rights and environmental protection.” (Carmel LUP, p. 4-7.) The Coastal Commission has recognized that varied forms of coastal home ownership and visitor accommodations facilitate coastal access for all potential residents and visitors.<sup>3</sup> Indeed, “protect[ing] the public’s ability to recreate in and enjoy the coastal zone” is a “core goal of the Coastal Act” and is “particularly important for those not fortunate enough to live in coastal cities” on a fulltime basis.<sup>4</sup>

Every additional coastal accommodation and vacation home ownership opportunity benefits all potential coastal residents and visitors. The Commission has long acknowledged this ripple effect in the short-term rental context, where increased supply can “augment the stock of [all] overnight accommodations in coastal areas.”<sup>5</sup> The Commission explained that, by “increas[ing] the range of options available” and “providing a wider selection of overnight accommodations,” expanded supply in any one accommodation or housing type can “increase public coastal access” overall.<sup>6</sup> Fractional homeownership similarly expands total accommodations and coastal visitation opportunities for potential coastal visitors. Absent fractional coastal homeownership opportunities, individuals or families who cannot afford to purchase a fulltime coastal residence or vacation home may be excluded from the coastal real estate market entirely or may instead choose to occupy lower-cost short-term rental stock or

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coupled” with an estate in the underlying real property. These conflicting revisions undermine the Staff Report’s conclusion that the LCP Amendment conforms to LUP Policy P4-64.

<sup>3</sup> Staff Report for City of Malibu LCP Amendment No. LCP-4-MAL-20-0083-2, (July 21, 2022), p. 2, <https://documents.coastal.ca.gov/reports/2022/8/F10a/F10a-8-2022-report.pdf> (“Malibu STR Staff Report”)

<sup>4</sup> Staff Report for City of Newport Beach Major Amendment No. LCP-5-NPB-20-0070-3 (Sept. 30, 2021), p. 15, <https://documents.coastal.ca.gov/reports/2021/10/W14b/W14b-10-2021-report.pdf>.

<sup>5</sup> Malibu STR Staff Report., p. 2.

<sup>6</sup> Staff Report for City of Morro Bay LCP Amendment No. LCP-3-MRB-20-0050-1 (Aug. 20, 2021), p. 4, <https://documents.coastal.ca.gov/reports/2021/9/Th15a/th15a-9-2021-report.pdf>; Staff Report for City of Del Mar Major Amendment LCP-6-DMR-17-0083-3 (May 24, 2018), p. 28, <https://documents.coastal.ca.gov/reports/2018/6/th14d/th14d-6-2018-report.pdf> (“Del Mar STR Staff Report”).

**These materials have been provided to Coastal Commission Staff**

hotel accommodations for longer periods, putting pressure on the supply of those accommodations available to others.

In fact, the Commission has rejected outright bans on particular types of coastal accommodations in the Coastal Zone, such as short-term rentals, stating that these bans would “restrict lodging opportunities” generally, “adversely impacting public access to beaches and shoreline areas.”<sup>7</sup> The Commission explained that, as a policy matter, “blanket prohibitions have not been found to be consistent with the Coastal Act and certified LCPs because of the broad mandate to maximize coastal access and provide affordable accommodations and support facilities to ensure general public access and use of the coastal zone.”<sup>8</sup> Instead, the Commission has endorsed more targeted regulation specifically designed to address the potential impacts of increased coastal visitation, such as noise and traffic.<sup>9</sup>

There is also no evidence that allowing fractional homeownership threatens coastal access by adversely affecting regional housing supply, long-term rental availability, or affordable housing. The Commission has repeatedly rebuffed claims that providing varied forms of coastal visitor accommodations endangers fulltime homeownership, long-term rentals, or affordable housing for coastal residents and visitors. For instance, in the short-term rental context, the Commission noted that short-term rentals are often “located in some of the most desirable areas . . . , where long-term rental would likely be out of reach for the vast majority of people even if those homes were made available that way.”<sup>10</sup> “Such homes,” the Commission has made clear, “do not provide affordable housing.”<sup>11</sup>

Similarly, fractional vacation home ownership would not impact affordable housing because fractionally owned homes are often higher than the local median home price. In Carmel, the median home price has increased by 84% since 2019, to nearly \$3 million,<sup>12</sup> which is out of reach for most individuals and families. While such prices form a barrier to entry and limit coastal access, fractional ownership can expand coastal access and provide multiple individuals and families with the opportunity to co-own a second home in Carmel by aggregating their buying power. Instead of prohibiting fractional ownership in residential areas outright, the

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<sup>7</sup> Staff Report for City of Carpinteria LCP Amendment No. LCP-4-CPN-16-0024-1 (Nov. 17, 2016), p. 10, <https://documents.coastal.ca.gov/reports/2016/12/th8b-12-2016.pdf>.

<sup>8</sup> Del Mar STR Staff Report, p. 21; see also Staff Report for City of Santa Cruz LCP Amendment No. LCP 3-STC-17-0073-2-Part B (March 23, 2018), p. 3, <https://documents.coastal.ca.gov/reports/2018/4/w20a/w20a-4-2018-report.pdf>.

<sup>9</sup> Del Mar STR Staff Report, p. 18.

<sup>10</sup> Staff Report for City of Oxnard LCP Amendment No. LCP-4-OXN-20-0008-1 (June 18, 2020), p. 16, <https://documents.coastal.ca.gov/reports/2020/7/F13a/F13a-7-2020-report.pdf>.

<sup>11</sup> *Ibid.*

<sup>12</sup> See ECONorthwest, Housing Feasibility Study (Jan. 27, 2023, received by Carmel City Council on Feb. 7, 2023), p. 7, [https://ci.carmel.ca.us/sites/main/files/carmel\\_housing\\_study\\_01\\_2023\\_final.pdf](https://ci.carmel.ca.us/sites/main/files/carmel_housing_study_01_2023_final.pdf) (“Carmel Housing Feasibility Study”).

**These materials have been provided to Coastal Commission Staff**



Commission should study the effect of fractional ownership on housing in the Coastal Zone, and how fractional ownership can help reduce barriers to entry and promote increased coastal access.

By attempting to eliminate fractional homeownership wholesale, the LCP Amendment contradicts Section 30210's policy and LUP Goal G4-1's mandate to maximize coastal access for all.

b. Coastal Act § 30213 and Carmel LUP Policy P4-62

Both Coastal Act § 30213 and Carmel LUP Policy P4-62 provide that “[l]ower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.” (Pub. Resources Code, § 30213; Carmel LUP, p. 4-15.) The Coastal Commission has recognized that a range of coastal home ownership and visitor accommodations facilitate access to the coast for potential residents and visitors, including those seeking more affordable accommodations and recreational opportunities. For example, in the short-term rental context, the Commission explained that short-term rentals should be viewed as “complementary lodging alternatives” to other types of coastal accommodations that enable enhanced public access beyond their target demographic.<sup>13</sup> Therefore, instead of prohibiting fractional homeownership outright, the Commission must evaluate how fractional homeownership affects total available accommodations and coastal visitation opportunities, including those seeking low-cost recreation.

In fact, fractional homeownership helps to support lower cost recreational facilities by increasing property utilization and maximizing local revenue from non-fulltime residents. The Commission has recognized that vacation rentals are often likely to remain empty and unrented for several extended periods or even most of the calendar year.<sup>14</sup> For instance, in Carmel, nearly 40% of houses are second homes.<sup>15</sup> However, fractional homeowners of second homes contract to use their homes for specified periods throughout the year. Therefore, these fractional homeowners help drive more consistent year-round revenue for coastal businesses and community resources than short-term rentals or traditional second homes – including those that provide low-cost recreational opportunities for all visitors.

Therefore, the LCP Amendment is inconsistent with Section 30213 and LUP Policy P4-62. The Commission should study these issues as part of a comprehensive review of homeownership and time share uses within the Coastal Zone statewide.

c. Coastal Act § 30253

Coastal Act § 30253 establishes that “[n]ew development shall . . . [w]here appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are

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<sup>13</sup> See Malibu STR Staff Report, p. 15.

<sup>14</sup> See Staff Report for San Luis Obispo County LCP Amendment No. LCP-3-SLO-21-0027-1-Part F (Jan. 11, 2022), p. 11, <https://documents.coastal.ca.gov/reports/2022/2/F16e/F16e-2-2022-report.pdf>.

<sup>15</sup> See Carmel Housing Feasibility Study, p. 8.

**These materials have been provided to Coastal Commission Staff**

popular visitor destination points for recreational uses.” (Pub. Resources Code, § 30253.) Instead of recognizing the potential benefits of more frequent and consistent second home use by fractional homeowners, the Staff Report ignores that fractional homeowners hold a significant investment in the community where their home is located. They are fundamentally different from short-term coastal visitors because they intend to stay in the home multiple times throughout the year and, as a result, they integrate into and invest in the community.

Robust fractional homeownership supports Section 30253’s policy toward development that protects special communities because fractional homeowners are likely to engage in their communities over extended, repeat visits. Accordingly, the LCP Amendment prohibition of fractional homeownership uses in the Coastal Zone is inconsistent with Section 30253.

**B. The LCP Amendment Would Prohibit Everyday Behavior Common to Co-Owners of Coastal Properties**

The LCP Amendment also requires more careful study than Commission staff has conducted because it could directly restrict conduct that is common to individuals who co-own properties, regardless of the arrangement. By its plain terms, Carmel’s LCP Amendment does not differentiate between different types of co-ownership arrangements, leading to significant unintended consequences that impact all co-ownership uses in the City’s Coastal Zone.

The LCP Amendment defines “time share uses” with reference to a “time share plan.” A “time share plan” is defined as “any *arrangement, plan, scheme, or similar device* . . . whereby a purchaser, in exchange for consideration, receives the *right to exclusive use* of real property . . . *for a period of time less than a full year* during any given year. . . .” (Staff Report, Ex. 1 [emphasis added].) This broad definition effectively bans common coastal visitor uses based on everyday behavior that are far from “time share uses.”

For example, the LCP Amendment does not define “arrangement, plan, scheme, or similar device.” Any communication between co-owners of a property could be an “arrangement, plan, scheme, or similar device,” including an email chain between siblings or friends setting forth assigned weeks at a co-owned vacation home. The LCP Amendment also fails to define “right to exclusive use.” Essentially any agreement between a shared home’s co-owners allowing one co-owner to use a property exclusively could fall within the scope of the LCP Amendment. Thus, an agreement among family or friends to annually allocate stays at a vacation home among different groups over Memorial Day, the Fourth of July, and Labor Day satisfies the LCP Amendment’s “time share plan” definition.

Finally, the LCP Amendment’s requirement that the use be for a “period of time less than a full year” is broad enough to capture various types of co-ownership arrangements. Like other second homeowners, co-owners of a shared vacation home likely do not intend to occupy the home at all times during the year. If they did, each purchaser would likely opt to instead purchase a vacation home for their sole use. Shared ownership offers to reduce payments, utilities, and upkeep costs for each purchaser in exchange for more limited rights to use the property during any given year. There is no difference between family, friends, or other types of co-owners purchasing and using a vacation home this way.

**These materials have been provided to Coastal Commission Staff**

Therefore, as proposed, the LCP Amendment not only regulates fractional homeownership, but also other co-ownership arrangements, including those among family and friends. The Staff Report ignores these unintended consequences completely. The Commission must study the LCP Amendment's potential consequences for all types of co-owners in the Coastal Zone.

**C. The LCP Amendment Can Only Be Enforced Against Fractional Homeowners Arbitrarily**

Because the LCP Amendment could be applied broadly to regulate a wide range of co-ownership arrangements, any application of the Amendment to fractional homeowners exclusively – but not to family and friends who co-own property – would be impermissibly arbitrary and discriminatory.

Carmel has no way to discover when friends or family co-owners enter an exclusive use arrangement for a home, as defined by the LCP Amendment. Local government records usually shed light only upon a property's formal owner but shed no light on the organizational make-up of that owner or its internal agreements.<sup>16</sup> Carmel could, however, monitor property listings by fractional homeownership companies to enforce time share restrictions against them. This approach is plainly arbitrary and impermissibly distinguishes among types of homeowners based solely on their identity. (See *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 133 [*"In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users."*] [emphasis original].)

Finally, the LCP Amendment ignores that anyone who co-owns a shared property can generate turnover and disrupt a community. Nothing stops a co-owner from treating a shared vacation home as a party house on holiday weekends, even if another is more respectful of community norms. There is simply no evidence that the type of fractional ownership use that Carmel is seeking to ban outright is more disruptive of a local community than any other co-ownership arrangement. The LCP Amendment inappropriately tackles the common problems of noise and crowded streets by targeting fractional homeowners simply *because* they are fractional homeowners, even though any co-owner can cause disruptions and traffic.<sup>17</sup> If Carmel wished to impose stricter noise and parking regulations on fractional homeownership, it certainly could have done so.

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<sup>16</sup> See, e.g., City of Newport Beach, Newport Beach City Council Meeting: November 16, 2021, YouTube, at 41:28-41:53, <https://youtu.be/nk1QT25nAUQ?t=2488>.

<sup>17</sup> See *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 686-687 ("Owners and tenants are similarly situated with respect to the overcrowding problem—i.e., both groups can overcrowd a neighborhood."). "Noise . . . can be dealt with by enforcement of police power ordinances and criminal statutes. Traffic and parking can be handled by limitations on the number of cars (applied evenly to all households) and by off-street parking requirements." (*Id.* at pp. 687-688.)

**These materials have been provided to Coastal Commission Staff**

**LATHAM & WATKINS** LLP

Given the undefined line between types of co-ownership, the LCP Amendment's singling out of fractional homeownership is completely arbitrary. The LCP Amendment's selective and discriminatory enforcement against fractional homeownership deserves closer evaluation.

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We appreciate the Commission's consideration of Pacaso's comments on the LCP Amendment. The LCP Amendment deserves thorough study in the context of a broader state-wide approach to time share uses and homeownership in the Coastal Zone. Therefore, Pacaso respectfully requests that the Commission vote to extend the time it has to consider the LCP Amendment and continue the item to a future hearing.

Very truly yours,



Duncan Joseph Moore  
of LATHAM & WATKINS LLP

cc: Kevin Heneghan, Pacaso Inc.  
Purvi Doshi, Pacaso Inc.  
Naseem Moeel, Pacaso Inc.  
Susan McCabe, McCabe & Company  
Anne Blemker, McCabe & Company  
Natalie Rogers, Latham & Watkins LLP

Enclosures

**These materials have been provided to Coastal Commission Staff**

# **EXHIBIT A**

**EXHIBIT A**

**ALTERNATIVE MOTION TO: EXTEND TIME LIMIT TO ACT UPON LOCAL COASTAL PROGRAM AMENDMENT LCP-3-CML-23-0022-1-PART B AND CONTINUE THE HEARING TO A FUTURE MEETING**

Pacaso, Inc. requests that the Commission extend the time limit to act on Local Coastal Program Amendment LCP-3-CML-23-0022-1-Part B and continue the hearing on this item to a future meeting.

**To extend the time limit to act on Local Coastal Program Amendment LCP-3-CML-23-0022-01-Part B, and continue the hearing on this item to a future date, the following Motion is in order:**

**Motion:** I move that the Commission **extend the time limit** to act on City of Carmel-by-the-Sea Local Coastal Program Amendment Number LCP-3-CML-23-0022-1-Part B by one year, to September 14, 2024, and **continue** the hearing on this item to a future meeting.

**Moving Commissioner's Recommendation of Approval:** I recommend a YES vote.

**RESOLUTION TO EXTEND THE TIME LIMIT TO ACT ON LOCAL COASTAL PROGRAM AMENDMENT NUMBER LCP-3-CML-23-0022-1-PART B:**

The Commission hereby extends the time limit to act on Local Coastal Program Amendment Number LCP-3-CML-23-0022-1-Part B by one year, to September 14, 2024, and continues the hearing on this item to a future meeting.

**These materials have been provided to the Coastal Commission Staff**

**Agenda Item Th11c**

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April 19, 2022

Brian A. Pierik  
Burke, Williams & Sorensen, LLP  
2310 East Ponderosa Drive - Suite 25  
Camarillo, California 93010-4747

Dear Mr. Pierik:

We are in receipt of your letter dated April 7, 2022 on behalf of your client, the City of Carmel-by-the-Sea ("City").

As an initial matter, we were very disappointed to receive your letter. Pacaso has had numerous conversations with City officials. We thought these conversations were productive and that City officials understood our co-ownership model and that we wanted to be a good partner in the community. It is even more disappointing that you have demanded a draconian solution, i.e., that Pacaso cease its current operations in the City. This is especially egregious when one considers that Pacaso is only managing a single home in the City and, to our knowledge, there has not been a single complaint regarding the home.

## **Background**

Pacaso is a real estate service company that supports buyers who wish to co-own residential property together through a property-specific LLC. Co-ownership, whereby a small group of family members or friends co-own a second home together, is a common practice throughout California, the Monterey Peninsula, and in Carmel. According to our analysis, about 60% of the housing units in the City are not occupied on a full-time basis by their owners and over 2,500 of these are owned in an LLC or trust, which enable co-ownership arrangements.

While your correspondence characterizes our business as "timeshare," there are several key differences between the Pacaso co-ownership model and traditional timesharing plans. Pacaso sells ownership interests in residential real estate, unlike traditional timesharing plans, which often give purchasers a contractual right to use a resort property. Just like family members who own property together, Pacaso co-owners together own 100% of the property and employ Pacaso as a service provider to assist them with scheduling, property management and expense management. If Pacaso co-owners no longer desire Pacaso's services, they have the option to terminate Pacaso as a service provider; traditional timeshare owners typically do not enjoy that option. Furthermore, the co-owners can sell the home, dissolve the LLC and distribute the sale proceeds of the real estate asset to each co-owner on a pro rata basis. That is, they have all of the rights and optionality of any other single-family residence owners.

## **Pacaso Homes Are Not Timeshares**

Turning to the application of the City's timeshare ordinance, it is clear that the City's ordinance does not apply to a Pacaso home. Section 17.28.010 provides that: "[t]imeshare projects, programs and occupancies are prohibited uses within all of the zoning districts within the City."

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Times-hare project, program, and occupancy are defined in CMC Section 17.70.020 (emphasis added):

Time-Share Occupancy. An occupancy related to the situation wherein a purchaser receives the right or entitlement in perpetuity...**for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided.**”

Time-Share Project. A project in which a purchaser receives the right...to the recurrent, exclusive use or occupancy...**for a period of time that has been or will be allotted for the use or occupancy periods into which the project has been divided.**”

Time-Share Program. Any arrangement for a project whereby the use, occupancy, or possession of real property has been made subject to a time-share estate, use, or occupancy, whereby such use, occupancy, or possession circulates among **purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year**, but not necessarily for consecutive years.

As you can see above, the definitions of timeshare occupancy, project, and program only apply when usage rights in a property have been divided into increments of time. A Pacaso home is not divided into increments of time. Rather, the home is owned in its entirety, in fee simple, by the LLC and the property has not been divided into increments by a timeshare plan or by a timeshare instrument. It is analogous to when friends or family members co-own a second home today and the friends or family members decide how to share ownership and use of the property. The negotiation and cooperation by co-owners regarding how they want to use their second home does not create a timeshare because the property is owned in its entirety and not divided into time increments. In short, Pacaso owners are not purchasing a use right for a specific period time, but rather are purchasing a co-ownership interest and agreeing to equitably use the home with their co-owners.

The co-owners of the Carmel home use their home for residential purposes, which is a permitted use of the property and is similar to the manner in which other second home owners own and use homes in the City. We presume it is not the intention of the City or the aim of the City’s zoning code to regulate who may or may not co-own a real estate together, or dictate the vehicle through which they elect to co-own real estate. As the City has acknowledged in its Housing Element of its General Plan, “Cities have limited ability to influence second home ownership and use.” The co-owners of the Carmel home have elected to co-own their home in a multi-member LLCs, which is an ordinary practice in real estate. The co-owners have agreed to engage Pacaso as a service provider to assist them with the management of the home. As such, the co-owners of the home in question are owning the home in a way that is permissible under the City code and is similar to the manner in which other owners of second homes own and use homes in the City.

In addition, any attempt by the City to enforce its current ordinance against the Carmel home would run counter to the Coastal Act, in that it purports to restrict access to the City’s coastal



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zone in a way that has historically not been restricted for similarly situated co-owners of residential properties in the City.

## **Pacaso Homes Help the City Achieve Housing Goals**

We also note that the Pacaso model will help the City achieve two goals set out in the City' Housing Element - "Preserve the existing housing stock" (Goal G3-1) and "Protect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement" (Goal G3-4).

The sale of Pacaso homes in Carmel will help "[p]reserve existing housing stock" by giving second home buyers a better option than a whole home. (Goal G3-1.) Just one co-owned Pacaso home can remove up to eight buyers from local housing competition by pooling them into a single luxury home, since Pacaso makes use of one property that would have otherwise been eight separate second-homes. As a result, the City's embrace of the Pacaso model could actually help preserve existing housing stock. In short, by decreasing demand for second homes in Carmel, the Pacaso model will allow the City to preserve existing housing stock, based on the basic laws of supply and demand.

The sale of Pacaso homes will also help "...[p]rotect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement." (Goal G3-4.) Second home ownership can be inefficient, exclusionary and wasteful, as second homes owned by just one family typically sit vacant up to 80% of any given year. Pacaso homes are different - the homes offer a more sustainable way to own and enjoy a second home. In return, Carmel and its neighborhood could benefit from the year-round occupancy that Pacaso homes provide which create a more vibrant community filled with families with a long-term connection to the community, not empty homes with the blinds closed. In addition, local Carmel businesses would benefit from year-end occupancy as Pacaso co-owners will frequent Carmel's shops, restaurants, and coffee shops more frequently than a second home-owner who is only in town sporadically.

We look forward to being a good partner with the City and look forward to continuing our productive conversations with the City's elected officials.

Sincerely,



Kevin Heneghan

Dear Honorable City Councilmembers,

My name is Andreas Madsen and I am the Chief Revenue Officer of Pacaso, a real estate company that manages residential property that is focused on co-ownership.

But more importantly, I was raised right here in Carmel. I grew up on Dolores street spending most of my youth at my parents restaurant (Creme Carmel), dancing at the Carmel Ballet Academy, and in the spring/summer you could always find me at Larson Field playing baseball. I have such tremendous pride being from Carmel, this community, and all the people that helped me along the way. I knew how special of a place I got to call home, and how important it is to preserve its character and sense of community.

After high school I left Carmel to play baseball and pursue hospitality management. Growing up in a restaurant has always stuck with me in how impactful a job can be with its primary focus of simply putting a smile on someone's face. That's all I've ever wanted to do. That is why I helped start Pacaso, because I saw first hand how people's lives were enriched when they made memories together as a family in their second home. When I speak to buyers who are interested in co-owning a home in Carmel, they all share a similar story: they love Carmel, have a deep connection to our town, and want to continue to make memories with their families and loved ones.

For Pacaso, we currently manage one home in Carmel. We work with local real estate agents to understand existing demand for second homes and find properties that a few families can own through an LLC. Owning homes through multi-owner arrangements such as an LLCs or trusts is extremely common in Carmel, and covers about 15% of the housing ownership in the city today. Co-Ownership is a much more sustainable approach than for multiple families to buy individual homes and keep homes empty. The typical profile of a Pacaso homeowner is no different than that of a second homeowner in Carmel today: typically retired couples or middle aged business executives that want to spend more time with their families in this amazing place. These individuals act like owners, not renters (renting is NOT allowed), and care deeply about what it means to be a homeowner in Carmel like myself.

Earlier this year, Pacaso was served a cease and desist letter from the city without any previous code violations. Since then, representatives from our company attempted to work with the city on a regulatory framework for co-owned housing. After months of attempted outreach on our part, city staff recommended a modification to the city's timeshare ordinance at the October 12th Planning Commission meeting. The proposed ordinance expanded the definition of "timeshare" in the city's code to incorporate any fractional ownership arrangements by way of an LLC, trust, or similar vehicle. I am writing to you today to ask that you reject the proposed modifications to the timeshare ordinance passed by the Planning Commission and work with us (me) on a policy solution to address professionally managed co-owned housing in your community. It is our belief that working together, alongside Carmel's residents, neighbors, business owners, and our real estate community will produce the best result for Carmel. I recognize we (Pacaso) should have been having these conversations much earlier in the process with each of you and the local

community. That is a miss on our part, but please don't let that impact the opportunity we have now to connect and communicate openly.

I am more than happy to make myself or any willing Pacaso homeowners available to further explain Pacaso's business model and our approach to being good neighbors in communities like Carmel.

Thank you for your time and consideration.

*Andreas Madsen*

Carmel-by-the-Sea Planning Commission Meeting  
October 12, 2022

Dear esteemed members of the Planning Commission & Staff,

My name is Naseem Moeel and I am Public Affairs Manager for Pacaso supporting the homeowners of the single home we manage in Carmel-by-the-Sea.

I am here today to respectfully request the commission meet with Pacaso to develop a robust policy framework that truly solves the concerns you have, rather than rushing into amending your timeshare ordinance with broad language that will sweep hundreds of co-owned homeowners into its dragnet and will create unintended consequences because of a single home we manage in town. We are in the middle of litigation with another California city over this exact issue, and we would rather partner with the City on a common-sense solution.

This is the first opportunity we've had to meet, and I believe it would be beneficial to ensure your staff has been given all opportunities to review our model before making policy recommendations. You've afforded others on tonight's call the opportunity to present for consideration but when I called your office this week, I was denied an opportunity to publicly present to you during the public hearing.

While the staff's report is an interpretation of our business model based on language from our website, Pacaso is not a timeshare. It is co-ownership and it's been around for decades.

The LLC that holds title to a home does not limit the owner's use or access to the property. The owners delegate the coordination of the usage of the home to Pacaso and Pacaso uses our SmartStay technology in our app to enforce the stay limitations and ensure that the home is used equitably by the co-owners. Put another way, the stay limitations are not embedded in the Operating Agreement, but rather managed by Pacaso through the app. It is analogous to when friends or family members co-own a second home and the friends or family members use a Google calendar or a similar method to track who is using the home.

Brothers and sisters and family and friends have co-owned property together, self-managing all the hassles that come with owning a second home. Pacaso has simply modernized that approach, allowing families to enjoy more time together with less stress of managing the home. That's what we do. We professionally manage co-owned homes, and support homeowners in the communities they know and love. Carmel benefits from this higher utilization of second homes. Fractured and empty neighborhoods are revitalized with caring homeowners who make a large, long term investment to own a home here. Carmel also benefits by retaining primary, median homes for full time homeowners while Pacaso diverts demand for second home ownership into a luxury home instead. Downtown businesses see 10X more spending with Pacaso in a community, and store owners can shoulder the off seasons with consistently employed staff. Neighborhoods are revitalized with families, children and retiring couples looking to enjoy the twilight of their years in otherwise empty second homes.

Carmel-by-the-Sea Planning Commission Meeting  
October 12, 2022

In closing, Pacaso's co-ownership model is the inclusive, sustainable way to own a second home, revitalize empty neighborhoods and service the business districts year-round.

Esteemed members of the planning commission, once again I respectfully request that we meet in order to introduce you to our model and develop a regulatory framework to solve Carmel's co-ownership concerns together.

Thank you for your time.