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Prepared July 21, 2023 for August 10, 2023 Hearing

To: Commissioners and Interested Persons **From:**

Kevin Kahn, Central Coast District Manager
Mariana Filip, Coastal Planner

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 the Implementation Plan (IP) component of its Local Coastal Program (LCP) related to timeshares. The LCP currently prohibits timeshares (or fractional ownership/use agreements of land/property for specified periods of time) and the amendment would not change this, rather it would add a complementary prohibition and penalties associated with marketing timeshares in the City, and it would also modify the definition of a timeshare to combine the existing LCP's various definitions into one singular definition. Thus, the proposed amendment builds upon and clarifies the existing LUP provision that prohibits these types of uses, which is the standard of review for this IP amendment. As such, the proposed amendment adds additional clarity on this point, including in terms of enforcement for potential violations, and thus can be understood as a minor change to make an established LCP provision even clearer. The effect 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 consistent with and adequate to carry out the policies of the LUP, and that the Commission approve the amendment as submitted. The motion and resolution are found on page 3 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 is September 14, 2023. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until September 14, 2023 to take a final action on this LCP amendment.

Therefore, if the Commission fails to take a final action in this case (e.g., if the Commission instead chooses to postpone/continue LCP amendment consideration), then staff recommends that, as part of such non-final action, the Commission extend the deadline for final Commission action on the proposed amendment by one year. To do

so, staff recommends a YES vote on the motion below. Passage of the motion will result in a new deadline for final Commission action on the proposed LCP amendment. The motion passes only by an affirmative vote of a majority of the Commissioners present.

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 to September 14, 2024, and I recommend a yes vote.*

TABLE OF CONTENTS

1. MOTION AND RESOLUTION 3
2. FINDINGS AND DECLARATIONS..... 3
 A. Proposed LCP Amendment Description 3
 B. Proposed LCP Amendment Consistency Evaluation..... 4
 C. California Environmental Quality Act (CEQA)..... 4

EXHIBITS

Exhibit 1: Proposed IP Amendment (shown in strikethrough and underline)

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 IP related to timeshares. The LCP currently prohibits timeshares,¹ and the proposed amendment does not change this, rather it would add a complementary prohibition and penalties associated with marketing timeshares in the City, and it would also modify the definition of a timeshare to combine the existing LCP's various definitions (e.g., separate definitions of the terms Time-Share Estate, Time-Share Occupancy, Time-Share Program, Time-Share Project, etc.) into one singular definition that specifies such use as:

...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.

In other words, timeshares are the private use of land or property in a fractional ownership scheme for an identified amount of time, and is differentiated from a full fee-simple ownership interest in a property, a rental agreement for more than 30 days for longer-term residential purposes, or a short-term rental agreement of use of property for

¹ The City indicates that it has prohibited timeshares since 1988, which actually pre-dates the LCP's certification in 2004.

less than 30 days for visitor-serving purposes. See **Exhibit 1** 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 must conform with and be adequate to carry out the policies of the certified LUP.

Applicable Land Use Plan Policies

The Carmel-by-the-Sea LUP includes a policy that prohibits timeshares in the City:

***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.*

Consistency Analysis

The proposed amendment builds upon and only further clarifies the existing LUP policy prohibiting timeshares, including by combining and updating the current series of LCP definitions, and adding a complementary provision prohibiting marketing of said prohibited timeshare use. As such, the proposed amendment adds additional clarity on this point, including in terms of enforcement for potential violations, and thus can be understood as a minor change to make an established LCP provision even clearer. The effect 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).