

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
301 E. OCEAN BLVD., SUITE 300  
LONG BEACH, CA 90802  
(562) 590-5071



# Th14a

**Date:** July 20, 2023

**To:** COMMISSIONERS AND INTERESTED PERSONS

**From:** KARL SCHWING, DEPUTY DIRECTOR, SOUTH COAST DISTRICT  
SHANNON VAUGHN DISTRICT MANAGER, SOUTH COAST DISTRICT  
ZACH REHM, DISTRICT SUPERVISOR, SOUTH COAST DISTRICT  
FERNIE SY, COASTAL PLANNER, SOUTH COAST DISTRICT

**Subject:** DE MINIMIS AMENDMENT DETERMINATION FOR PROPOSED CITY OF  
NEWPORT BEACH AMNEMEDMENT NUMBER LCP-5-NPB-23-0020-2-  
(Fractional Ownership & Time Share) for Commission Meeting of August  
10, 2023

## Proposed LCP Amendment

The City of Newport Beach requests to amend the certified Implementation Plan (IP) of the City's certified Local Coastal Program (LCP) to clarify that specific characteristics of Fractional Ownership uses are defined as a Time Share uses; and make minor cleanup revisions to existing time share regulations. The LCP amendment would modify time share related definitions (time share accommodation, time share project, time share estate, time share instrument, time share interval, time share plan, time share property, time share unit and time share use) to include Fractional Ownership arrangements as a defined category of time share.

Fractional Ownership is when multiple owners (usually 4-8) equally share property ownership through a formal agreement, often managed by a private company, or are self-organized. The time each owner has at the property is dependent upon on their paid share of the property. The time spent at the property is usually done in one- or two-week periods of time. The owners pay for their share of the home, as well as other associated home and maintenance fees. There are currently 12 Fractional Ownership homes located in Newport Beach, according to the City's findings.

This LCP amendment was initiated as a result of the City seeing an influx of fractional ownership and time share oriented uses of residential property, where ownership of the residence is equally shared among multiple non-related owners (Fractional Ownership). The City states that the rise of these Fractional Ownership uses operating as a short term vacation property instead of a full-time owner-occupied unit has caused a rise in increased traffic, parking congestion, and noise within the residential areas of the Coastal Zone. The City states that this LCP amendment would maintain the residential character of communities.

Time Share uses are prohibited in all residential land use areas and are only permitted in the visitor-serving land use areas: Recreational and Marine Commercial (CM), Visitor-serving Commercial (CV), Mixed-Use Horizontal (MU-H), and Mixed-Use Water Related (MU-W). The proposed LCP amendment would not modify the development standards or locations where Time Share uses are permitted, nor would the LCP amendment authorize new development or establish new uses within the Coastal Zone. The LCP amendment would classify Fractional Ownership uses as a Time Share use, and as a result reduce the stated impacts in the residential areas of the Coastal Zone, while Fractional Ownership uses would be allowed in designated visitor-serving land use areas.

The proposed LCP amendment requires that several conditions be met to trigger regulation and does not inadvertently capture non-time share uses like the purchase of an entire property between family and friends. The City states that the key to differentiating between Fractional Ownership and homes shared by family and friends is based in the LCP amendment's proposed definitions of time share accommodation, time share project, time share estate, time share instrument, time share interval, time share plan, time share property, time share unit and time share use. Collectively, these definitions make clear that the LCP amendment prohibits: (a) the use of an real property; (b) pursuant to an arrangement, plan, scheme or similar device (including a written plan); (c) whereby a purchaser, (d) in exchange for value, (e) receives the right to exclusive use the real property, (f) for a period of less than a full year during a given year, on a reoccurring basis for more than one year.

Furthermore, per the LCP amendment, there is a significant difference between a "fractional ownership home" and a home owned by family/friends. Family or friends who jointly acquire a home will typically do so as joint tenants or tenants-in-common and the owners each possess the full and unrestricted right to use and enjoy the property. They do not have the right to exclude their co-owners, which is in contrast with owners of interests in a "fractional ownership" home that expressly pay for *exclusive* rights to use the property; meaning only one interest-holder is permitted to use the property at a time. In addition, family or friends who buy a property together acquire unlimited rights to use and enjoy the property for the entire year and can co-occupy the property as a matter of right. However, owners of a fractional ownership interest in a home pay for exclusive rights to use a property for less than a year, and this arrangement is typically memorialized in a written instrument that all fractional interest holders agree to when they purchase their ownership interest.

The City states that proposed LCP amendment would not impact the ability of Community Land Trust to function and purchase property and sell/rent the unit on the property at an affordable price. The purpose of a Community Land Trust is to provide long-term housing, which would not fall under the updated definitions of time share.

See [Exhibit 1](#) for the Proposed LCP amendment Text.

## **De Minimis LCP Amendment Determination**

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is “de minimis” if the amendment meets the following three criteria:

- 1) The proposed amendment would have no impact, either individual or cumulatively, on coastal resources, and it is consistent with the Coastal Act Chapter 3.
- 2) The proposed amendment does not promote any change in use of land or water or allowable use of property.
- 3) The proposed amendment was properly noticed by the local government at least 21 days prior to submittal<sup>1</sup> to the Commission (i.e., by posting notice on-site and off-site in the affected area, publishing notice in the local newspaper, and/or mailing notice to owners and occupants of affected and contiguous properties).

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more Commissioners object to the Executive Director’s de minimis LCP amendment determination at that time, then the amendment is set for a future public hearing as a regular LCP amendment. If not, then the amendment is deemed approved and it becomes a certified part of the LCP ten days after the date it is reported to the Commission (in this case, it would be certified on August 10, 2023).

**The purpose of this notice is to advise interested parties of the Executive Director’s determination that the proposed LCP amendment is de minimis.**

## **De Minimis LCP Amendment Analysis**

Each of the de minimis criteria is discussed briefly below:

### **1. No impact to coastal resources and consistency with Coastal Act Chapter 3**

The proposed IP amendment would clarify that Fractional Ownership uses are defined as Time Share uses within the City of Newport Beach. Time share uses are prohibited in all residential land use areas and are only permitted in specific visitor-serving land use areas. The proposed LCP amendment would not change the permitted locations or development standards that apply to Time Share uses. In addition, the proposed LCP amendment would not authorize new development or establish new uses within the Coastal Zone and would not restrict any existing authorized residential or visitor serving uses within the Coastal Zone. The City of Newport Beach has a substantial inventory of visitor serving

---

<sup>1</sup> An LCP amendment is deemed to have been “submitted” when it has been determined that it includes all of the necessary supporting documentation and information required by the Coastal Act and the Commission’s implementing regulations, and is “filed” by Commission staff as complete.

opportunities in the Coastal Zone, including hotels, time shares, and short-term rentals, which are all regulated by the certified LCP. The proposed clarifications to the definition of time share uses will not reduce visitor serving uses within the coastal zone, but rather will clarify where a specific type of use is allowed. The proposed LCP amendment does not change the use or allowable impact on the natural environment; thus, there will be no impact to water quality, biological resources, or environmentally sensitive habitat areas. Therefore, the proposed amendment will not adversely affect coastal resources and is consistent with Coastal Act Chapter 3, thus meeting the first de minimis LCP amendment criterion.

## **2. No change in use of land or allowable use of property**

The City's existing LCP includes Time Shares as a permitted use in visitor-serving land use areas: Recreational and Marine Commercial (CM), Visitor-serving Commercial (CV), Mixed-Use Horizontal (MU-H), and Mixed-Use Water Related (MU-W) and prohibited in all residential land use areas. The proposed IP change would clarify that Fractional Ownership uses are defined as a Time Share use. There would be no change to the allowable uses within the Coastal Zone as established by the LCP. Thus, the proposed amendment does not change any LCP-allowed uses of land or LCP-allowed uses of property, and it meets the second de minimis LCP amendment criterion.

## **3. Provision of public notice**

The Newport Beach City Council held various study sessions from 2021 to 2023 (November 16, 2021, September 13, 2022, September 27, 2022, and March 14, 2023) to obtain public testimony in order to help formulate language for the LCP amendment. The Newport Beach Planning Commission did the same from 2022 to 2023 (October 6, 2022, October 20, 2022, and February 24, 2023). These study sessions were duly agendized and posted to the City's website 72-hours in advance of each study session.

Moving forward with the input obtained from the study sessions, the Planning Commission conducted a public hearing on April 20, 2023. Public notice of this meeting was published on April 8, 2023, in the Daily Pilot, a local newspaper. In addition, a Notice of Availability of a draft LCP amendment was posted in City libraries on March 21, 2023. The Newport Beach City Council also had a hearing to consider the proposed LCPA on May 9, 2023, and notice of this hearing was published in the Daily Pilot on April 29, 2023. Therefore, the 21-day noticing requirement has been satisfied, and the proposed amendment meets the third and final de minimis LCP amendment criterion.

## **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 states that the LCP amendment is not subject to environmental review under CEQA, pursuant to Section 15060(c)(2) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which states that an activity is not subject to CEQA if the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment or will not have the potential for causing a significant effect on the environment. The proposed LCP amendment will only clarify definitions associated with Time Share uses and not alter how Time Shares uses are regulated, and thus will not result in a direct or reasonably foreseeable indirect physical change in the environment and will not have the potential to cause a significant effect on the environment.

The coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal, and has concluded that approval of the proposed amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA. Accordingly, it is unnecessary for the Commission to suggest modifications (including thorough 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).

### **Procedural Note – LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on July 12, 2023. The proposed amendment affects the LCP's IP only, and the 60-working-day deadline for the Commission to take action on it is October 5, 2023. Thus, unless the Commission extends the action deadline (it may be extended by up to one year by the Commission per the Coastal Act), the Commission has until October 5, 2023, to take a final action on this LCP amendment.

Therefore, if three or more Commissioners object to the Executive Director's determination that this amendment is de minimis, then staff recommends that the Commission vote to extend the deadline for final Commission action on the proposed amendment by one year to allow Commission staff to conduct further analysis and work with the City on any modifications or clarifications suggested by the Commission. 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 the City of Newport Beach Local Coastal Program Amendment Number LCP-5-NPB-23-0020-2 to October 5, 2024, and I recommend a yes vote.*

**Exhibits**

[Exhibit No.1: Proposed LCP amendment Text](#)