

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



W17b

Prepared September 5, 2023 for September 6, 2023 Hearing

To: Commissioners and Interested Persons

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

**Subject: Additional hearing materials for W17b
LCP Amendment Number LCP-3-CML-23-002-1-Part B (Timeshare
Provisions) Time Extension**

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.



City of Carmel-by-the-Sea

POST OFFICE BOX CC
CARMEL-BY-THE-SEA, CA 93921
(831) 620-2000

September 5, 2023

California Coastal Commission
Humboldt County Board of Supervisors Chambers
Humboldt County Courthouse
825 5th Street
Eureka, CA 95501

Subject: September 6, 2023, CCC Agenda Item 17.b – Carmel-by-the-Sea LCP Amendment No. LCP-3-CML-23-0022-1-Part B (Timeshare Provisions) on the September 6, 2023

Dear California Coastal Commissioners,

I am writing to formally request the esteemed California Coastal Commission consider the attached letter dated September 5, 2023, authored by Sergio Rudin of Burke, Williams, & Sorensen, LLP, on a matter of great importance to the City of Carmel-by-the-Sea.

The letter pertains to item 17.6 – Carmel-by-the-Sea LCP Amendment No. LCP-3-CML-23-0022-1-Part B (Timeshare Provisions) on the September 6, 2023, agenda.

We kindly request that this response letter be included in the official record for the upcoming Coastal Commission meeting scheduled for September 6, 2023.

We appreciate your dedication to preserving California's coastline while ensuring responsible and sustainable development.

Sincerely,

Dave Potter
Carmel-by-the-Sea Mayor

September 5, 2023

VIA EMAIL

CALIFORNIA COASTAL COMMISSION
c/o Kevin Kahn, Central Coast District Manager
CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060

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

Ladies and Gentlemen:

This office represents the City of Carmel-by-the-Sea, and the City wishes to respond to the issues raised by Pacaso, Inc. ("Pacaso"), in its August 4, 2023 correspondence and presentation. Pacaso contends that the Commission must approve a continuance on the proposed LCP amendment because it would prohibit "any shared property use by any time of co-owners" and therefore requires further study. The City disagrees that any further study is required by the Commission prior to taking action, and requests that the Commission take action on the proposed LCP amendment at the earliest opportunity.

First, the City agrees with the staff assessment that the City's existing regulations ban timeshare uses since 1988, that the existing LCP currently prohibits timeshare uses, and the proposed amendment does not represent a substantive change in the City's existing rules, but rather would modify the definition of 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. The amendment would also add a complementary prohibition and penalties associated with marketing timeshares in the City. The City further agrees with the staff recommendation to certify the proposed LCP amendment as submitted. The City also agrees with staff's conclusion that because the proposed LCP is not a substantive change in regulations, it would not result in any significant environmental effects under CEQA.

Pacaso has submitted specious comments on the LCP amendment which are intended to obfuscate what should otherwise be a straightforward decision for the Commission. Pacaso has argued before the Commission that it would be adversely

California Coastal Commission
c/o Kevin Kahn, Central Coast District Manager
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impacted by the LCP amendment in that its business model, based on “fractional ownership,” is somehow something different than a “timeshare.” This is fundamentally misleading, as there is no distinction other than in name only, and is branding by Pacaso to attempt to conceal that they are selling “time share” interests in residential properties. The Commission should recognize that Pacaso has admitted to the Department of Real Estate that it engages in offering of timeshares, but posited that it is not subject to oversight and regulation at the state level simply because it divides the ownership and use of property into fewer subdivisions than would trigger regulatory oversight by the DRE. (See Exhibit A, Correspondence Between Pacaso and DRE.) Furthermore, the City has already plainly informed Pacaso that its business operations in Carmel-by-the-Sea are already prohibited by local law and subject to the existing prohibitions. (See Exhibit B, Cease-And-Desist Letter By City to Pacaso; Exhibit C, Response Letter from Pacaso; Exhibit D, City Response to Pacaso.) Pacaso never provided a response to the City’s May 4, 2022 letter, indicating that Pacaso’s business model had to result either in a prohibited time-share use or a time-share estate under the City’s existing regulations.

Pacaso’s August 4, 2023 letter asserts that the LCP Amendment “could directly restrict conduct that is common to individuals who co-own properties, regardless of the arrangement.” This is also not the case. To be subject to the timeshare prohibition, the text of the LCP Amendment makes clear that there must be a “time-share plan” that divides the use of the real property. The prohibition is applicable when there is (1) a purchaser, (2) who in exchange for consideration [i.e. something of value], (3) under the terms of a formal instrument, such as a membership agreement, sale, lease, deed, license, right-to-use agreement, articles of organization or incorporation, operating agreement or bylaws, or similar, (4) 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, (5) on a recurring basis for more than one year, but not necessarily for consecutive years. Accordingly, Pacaso is plainly incorrect – the LCP Amendment would not apply to all individuals who co-own property, regardless of arrangement. For example, it would not prohibit joint tenancy or tenancy-in-common. Family or friends who buy a property as joint tenants or acquire property as tenants-in-common normally acquire unlimited rights to use and enjoy the property for the entire year and can co-occupy the property as a matter of right, but will normally share the use of property through informal arrangements. Family or friends who jointly acquire a property do not necessarily pay for the right (i.e. purchaser in exchange for value) to exclusively use a property for a particular period. Other than recognizing that prohibited timeshares will occur whenever the right to exclusively occupy a piece of real property is established by a formal instrument and subdivided into scheduled periods of less than one year, the LCP Amendment has no effect on the rights of individuals to co-own property.

California Coastal Commission
c/o Kevin Kahn, Central Coast District Manager
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Lastly, Pacaso argues that the City's ordinance will necessarily result in selective enforcement or be arbitrary. This is incorrect — as is plain to everyone, Pacaso's business model involves the very public acts of marketing and sale of timeshare interests in real property that it calls "fractional ownership." Just because Pacaso can't continue to be lucrative in its business model without making its illegal conduct obvious (via marketing on its website and other means) does not in any way affect the legal ability of the City to adopt specific land use prohibitions when less obvious conduct by others would make violations more difficult to detect and punish. Pacaso's arguments are akin to challenging the City's legal ability to adopt an ordinance prohibiting fireworks during fire season, on the grounds that it would be too easy to enforce a fireworks prohibition against those who chose to light off fireworks every night, and somehow unfair to those same people if the City was not sending police officers to frisk every person in the city to ensure nobody else had fireworks that remain unlit in their pockets. Furthermore, Pacaso's comments assume that the City would not investigate and enforce alleged violations by others that are brought to the City's attention — that assumption is wildly speculative.

In conclusion, the City disagrees with Pacaso's assertion that the proposed amendment raises significant issues about its fractional ownership model that warrants further study. The reality is that its fractional ownership model is clearly a time share and the City already has regulations in place regulating time shares. The intent of the proposed amendment is merely to clarify and remove any ambiguity that exists in the City's outdated definitions.

Sincerely,

BURKE, WILLIAMS & SORENSEN, LLP



Sergio A. Rudin

SAR:jc

Attachments:

Exhibit A, Correspondence Between Pacaso and DRE
Exhibit B, Cease-And-Desist Letter By City to Pacaso
Exhibit C, Response Letter from Pacaso
Exhibit D, City Response to Pacaso

cc: Brian Pierik, City Attorney

EXHIBIT A

Attachment A

From: Andy Sirkin <dasirkin@gmail.com>

Sent: Saturday, July 24, 2021 10:19 AM

To: Aiu, Joseph@DRE <Joseph.Aiu@dre.ca.gov>

Cc: Bruce, David@DRE <David.Bruce@dre.ca.gov>; Neri, Chris@DRE <Chris.Neri@dre.ca.gov>;

Patrick Abell <patrick@pacaso.com>; David J. Willbrand <david@pacaso.com>

Subject: Re: Pacaso (DRE No. 121-0701-006)

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Dear Mr. Aiu,

Yes, I confirm that Pacaso Homes are within that exemption. We sincerely appreciate your prompt response and attention.

All the best,

Andy Sirkin

SirkinLaw APC

+1-415-462-5925 (US)

On Jul 24, 2021, at 5:37 PM, Aiu, Joseph@DRE <Joseph.Aiu@dre.ca.gov> wrote:

Dear Mr. Sirkin,

Thank you for your email response and explanation dated 7/21/21. Based on your response and explanation, we understand that your clients, Pacaso Inc. and Pacaso Homes, are selling time-share interests as defined in B&P Code section 11212(z), but are exempt from needing to file for a time-share public report since they fall below the reporting threshold of 11 or more units. Please confirm. Thank you.

Sincerely,

Joseph Aiu

Investigations & Compliance

From: Andy Sirkin <dasirkin@gmail.com>

Sent: Wednesday, July 21, 2021 2:28 AM

To: Aiu, Joseph@DRE <Joseph.Aiu@dre.ca.gov>

Cc: Bruce, David@DRE <David.Bruce@dre.ca.gov>; Neri, Chris@DRE

<Chris.Neri@dre.ca.gov>; Patrick Abell <patrick@pacaso.com>; David J. Willbrand
<david@pacaso.com>

Subject: Re: Pacaso (DRE No. 121-0701-006)

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Dear Mr. Aiu,

I received an email late yesterday from David Bruce saying that, since an investigation has been initiated by the Department, all correspondence should be routed to you. He also mentioned that I was welcome to “cc” him on that correspondence, so I will continue to do so.

Although you may already have a basic understanding of Pacaso’s business, I will begin with a brief explanation of the key elements. Pacaso only organizes group purchases of single-family residences. Each owner gets a 1/8th share along with the right to use the home for 1/8th of each year indefinitely. During each owner’s usage period, that owner has exclusive use of the entire house. All rentals are prohibited; only owners and their guests are permitted to use the house. Each owner pays regular assessments to fund the operating costs of the home and maintenance reserves. Once all eight ownership slots are filled, the eight owners own and control the house; Pacaso retains no ownership interest.

B&P Code Section 11212(z) defines “Time-Share Plan” as any “arrangement . . . whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year.” This description matches exactly the arrangement among owners of a Pacaso home. Specifically, each purchaser gets the right to use the home for 1/8th of each year on a recurring basis every year for as long as he/she is an owner. However, since each Pacaso offering involves only eight interests, each home is below the threshold for needing a Time-Share public report under Section 11211.5(b)(1).

B&P Code Section 11004.5(g) provides that “time-share plans . . . are not “subdivisions” or “subdivided lands” subject to this chapter.” Based on this language, I had always assumed that Time-Share offerings, regardless of size, did not require a subdivision public report under B&P Code Section 11000 et seq.; rather, large Time-Share offerings (more than 10 interests) require a Time-Share public report, and small Time-Share offerings (10 or fewer interests) require no public report.

Your communications suggest that Time-Share offerings too small to require a Time-Share public report instead need a subdivision public report. I am having difficulty understanding the logic of this position. As you may know, prior to 2004, California law required a Time-Share public report only for projects involving more than 12 interests. When the legislature enacted the Vacation Ownership and Time-Share Act Of 2004, it reduced the threshold from 12 to 10. This change shows that the legislature specifically considered the appropriate threshold for when a Time-Share offering needs a public report. The legislature did not choose nine, or eight, or six for the threshold; it specifically chose 10.

The idea that Time-Share offerings too small to require a Time-Share public report instead need a subdivision public report seems contrary to this legislative intent. What meaning could the 10-share threshold in Section 11211.5(b)(1) have if an offering below the threshold still had to obtain a subdivision public report?

Moreover, when the legislature enacted the Vacation Ownership and Time-Share Act Of 2004, the legislature could have said that Time-Share offerings require a subdivision public report under B&P Code Section 11000 et seq., and that the application for a Time-Share public report should be the same as the application for a subdivision public report. Instead, the legislature carefully specified the types of information it deemed appropriate for DRE to obtain and consider when “vetting” a proposed Time-Share offering. The application submittal for a Time-Share public report makes sense in the context of what a Time-Share offering is and what the purchasers buy.

If, as you suggest, Time-Share offerings too small to require a Time-Share public report instead need a subdivision public report, it would mean that the public report application for a small Time-Share offering would ignore the carefully-crafted specifics of the Time-Share law (which make perfect sense in the context of a Time-Share offering), and instead comply with the public report application requirements for a subdivision (which make no sense in the context of a Time-Share offering).

To illustrate this point with just one of many examples, consider B&P Code Section 11234(c), under which a Time-Share public report requires “a description of the type of interest and usage rights the purchaser will receive” and “a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.” This requirement is perfectly logical for a Time-Share public report, since the fairness and adequacy of the usage assignment structure is absolutely critical from a consumer protection standpoint. So, why would the subdivision public report you suggest is needed for a small Time-Share offering not require this critical information? Is this information suddenly less important if the offering involves 10 or fewer Time-Share interests?

For all of these reasons, I respectfully suggest that Pacaso offerings do not require a Public Report. My assertion is based specifically on B&P Code Sections 11211.5(b)(1) and 11004.5(g), and on the legislative history and context of the Vacation Ownership and Time-Share Act Of 2004. To simplify your job when responding, you can ignore the other arguments made in my client’s letter of July 9.

Cordially,

Andy Sirkin

SirkinLaw APC

+1-415-462-5925 (US)

On Jul 17, 2021, at 1:28 AM, Aiu, Joseph@DRE

<Joseph.Aiu@dre.ca.gov> wrote:

Dear Mr. Sirkin,

Your request for an extension to the deadline imposed in my “Notice to show cause was taken under consideration and you are granted an extension until **July 23, 2021**. Please note the following. *The Department of Real Estate (DRE), investigates violations of the Real Estate Law (Licensees), the Subdivided Lands Act (Subdividers), the Vacation Ownership and Time Share Act (Developers), and endeavors to safeguard the public interests in real estate matters.*

In your initial response, your letter alluded to 11001.[a](b)(2), 11004.5(g), 11212.5(b)(1), and Pacaso Homes purchases are resales. Please be aware that your marketing concept is also under consideration.

Sincerely,

Joseph Aiu

Investigations and Compliance

From: Andy Sirkin <dasirkin@gmail.com>

Sent: Friday, July 16, 2021 3:04 PM

To: Aiu, Joseph@DRE <Joseph.Aiu@dre.ca.gov>

Cc: Bruce, David@DRE <David.Bruce@dre.ca.gov>; Neri, Chris@DRE <Chris.Neri@dre.ca.gov>; Patrick Abell <patrick@pacaso.com>; David J.

Willbrand <david@pacaso.com>

Subject: Pacaso (DRE No. 121-0701-006)

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Mr. Aiu,

Our office has been engaged by Pacaso in connection with your inquiry. Over the past four days, I have been corresponding with David Bruce about my analysis of the situation and potential options to move forward in a manner that would be satisfactory to DRE. I had hoped to provide a formal response to your email by this afternoon in accordance with your deadline. However, I have not yet received David's response to my most recent email (sent late yesterday), and I would very much like to get that before responding to you. Might I ask your indulgence in getting a short extension so that I might complete my interchange with David? I will commit to keeping you advised on the progress of that exchange.

Please be assured that resolving this matter to the satisfaction of DRE is Pacaso's highest priority. We are in no way interested in delaying a resolution; however, we want to make sure to proceed in the manner most likely to lead to a mutually acceptable outcome. Thank you in advance for your consideration.

All the best,

Andy Sirkin

SirkinLaw APC

+1-415-462-5925 (o)

+1-415-350-6296 (m)

----- Forwarded message -----

From: Aiu, Joseph@DRE <Joseph.Aiu@dre.ca.gov>

Date: Fri, Jul 9, 2021 at 11:42 AM

Subject: RE: Pacaso response to DRE notice letter (DRE No. 121-0701-006)

To: Patrick Abell <patrick@pacaso.com>

Cc: David Willbrand <david@pacaso.com>, Charlie Tanner <charlie@brokerzoo.com>, Aiu, Joseph@DRE <Joseph.Aiu@dre.ca.gov>

Dear Mr. Abell,

Thank you for your letter explaining the position of Paseo Homes as to its sales of "1/8th undivided interests in a residential homes." The key phrase in our letter is the sale of *undivided interest*. Please refer to Section 11000.1 of the Code. Further, your letter appear to allude to the "Exemption" pursuant to Subsection 11000.1(b)(2), which requires satisfactory evidence presented to DRE – this has not been done. Hence, Section 11010 is applicable.

Please respond by **July 16, 2021** as to whether Pacaso Homes and its affiliates will comply with applying for a Public Report, since advertising the sales must have a Preliminary Public Report.

Sincerely,

Joseph Aiu

Statewide Subdivisions

Investigations & Compliance

(213) 576-6927 Direct

(213) 576-6942 Fax

Department of Real Estate

320 W. 4th Street, Suite 350

Los Angeles, CA 90013

joseph.aiu@dre.ca.gov

<image001.png>

EXHIBIT B

April 7, 2022

VIA E-MAIL TO
PATRICK@PACASO.COM and
ELLEN@PACASO.COM

Patrick Abell
Senior Legal Counsel
Pacaso, Inc.
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Ellen Haberle, Director
Government & Industry Relations
Pacaso, Inc.
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Re: Request to Immediately Cease and Desist Unlawful Operations

Dear Mr. Abell and Ms. Haberle:

This law firm serves as City Attorney for the City of Carmel-by-the Sea, California ("City"). In that capacity, we are writing to advise Pacaso Inc. ("Pacaso") that Pacaso's current operations within the City are unlawful and must cease immediately. The City has been made aware of at least one property sold by Pacaso within the City at Dolores 7 SW 13th, Carmel by-the-Sea, CA 93921. The sale of this property constitutes the sale of a timeshare prohibited by the Carmel-by-the-Sea Municipal Code ("CMC") Section 17.28.010.

City Prohibition on Timeshare Uses

CMC section 17.28.010 provides that "[t]imeshare projects, programs and occupancies are prohibited uses within all of the zoning districts within the City." Timeshare projects, programs and occupancies are further defined in CMC Section 17.70.020:

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- A “time-share program” is “[a]ny 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.”
- A “time share estate” is defined as “[a] right of occupancy in a time-share project that is coupled with an estate in the real property.
- A “time-share use” is “a license or contractual or membership right of occupancy in a time-share project which is not coupled with an estate in the real property.”
- A “time-share project” is “[a] project in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or segment of real property, annually or on some other periodic basis, 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.
- A “project” specifically includes “[a]ny proposal for a new or changed use.”

Pacaso’s Business Involves the Sale and Management of Prohibited Timeshare Uses

Pacaso’s website indicates that its business model involves sales of property held by an limited liability company in 1/8 ownership shares, with the associated right to exclusive use of the subject property by the owner of the share, with Pacaso managing among other things, the upkeep of the property and providing an app to arrange for periods of exclusive use by the share owners. Pacaso’s website further states that each owner of a 1/8 share is entitled to 6 “general stays,” booked at least 61 days in advance, which may range between 2 to 14 nights, and unlimited “short notice stays” booked less than 60 days in advance. However, maximum stay length is limited to 14 nights regardless of the method of booking. Owners of two shares have the option to book stays up to 28 nights.

Pacaso’s business model meets the City’s Ordinance’s definition of a prohibited “timeshare program,” because the ownership of the property through the LLC is an “arrangement for a project whereby the use, occupancy, or possession of real property

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has been made subject to a time-share estate, use, or occupancy,” and rights to periods of exclusive use are circulated among the owners of the shares, in specific intervals up to 14 nights per 1/8 share, “according to a ... floating schedule on a periodic basis for a specific period of time during any given year.” Additionally, division of the property into fractionalized ownership under Pacaso’s business model will create either a “time-share estate” or “time-share use” — either the owners of the shares of the LLC hold a “right of occupancy” and “an estate in the real property” which establishes a time-share estate, or if the LLC is deemed the sole holder of the “estate in the real property,” then such owners have a “time-share use” because they will hold a right to determine and establish their rights of occupancy pursuant to their right to operate and control the LLC under the terms of any membership or operating agreements.

We are aware that Pacaso has asserted to other jurisdictions that the properties that they sell and manage are not timeshares, but rather “fractionalized ownerships.” According to Pacaso, a Pacaso home is no different from any other single family residence. However, this is simply not true. Regardless of what Pacaso wants to call its business model, the impact is the same — this type of commercially managed short-term vacation use has the same impacts on surrounding residential areas as short-term vacation rentals, which are generally prohibited by the City’s municipal code. (See CMC Sections 17.08.040, 17.68.030; 17.28.040.) The frequent, rotating occupancy of the owners is functionally akin to short-term rentals, and the City’s existing regulations on timeshare uses are specifically intended to minimize the impacts created by this type of use and occupancy of land. Similar prohibitions on short-term rotating occupancies have already found lawful under *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, which found that the City could lawfully prohibit short-term rental of residential property for transient occupancy in residential neighborhoods as an incompatible “commercial” use.

Finally, several significant policy reasons justify the City’s prohibition against timeshares. The City’s prohibitions on timeshares were first adopted in 1988 in order to preserve housing stock. The Housing Element of the City’s General Plan includes Goal G3-2, which is to “[p]reserve existing residential units and encourage the development of new multifamily housing in the Commercial and R-4 Districts.” Furthermore, Goal G3-4 specifically requires that the City “[p]rotect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement.” As part of this goal, the City has committed to “maintain and encourage the expansion of permanent residential housing stock,” because the Housing Element notes that “[a] substantial percentage of the City’s housing stock lies vacant much of the

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year as second homes occupied for weekends, vacations or on a reasonable basis” which “has the effect of reducing the number of permanent, year-round residents in the City.” To avoid depletion of residents and associated impacts on community, City services, Goal G3-4 of the City’s Housing Element specifically requires the enforcement of the prohibitions on short-term, transient rentals and timeshares in residential dwellings.

In sum, conversion of any existing housing stock into timeshares or “fractionalized ownerships” reduces the available supply of homes for occupation for full-time residency, and therefore reduces the affordability of housing in the City, based on basic laws of supply and demand.

Pacaso is Unlawfully Operating Without Required Business Licenses

Pursuant to CMC section 5.04.020, it is unlawful for any person employed by Pacaso to commence or carry on any kind of business in the City without first procuring a business license and pay the applicable business license tax. (CMC section 5.04.020.) Pacaso does not possess a City business license, nor has it paid any business license tax to the City. As a result, Pacaso’s operations within the City also are in conflict with the City’s business license ordinance. However, we note that even if Pacaso obtains a business license, the business may not operate in the manner described above due to the prohibitions in the City’s Municipal Code regarding timeshares.

Request to Cease Unlawful Operation

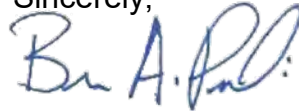
In conclusion, Pacaso’s current operations within the City are unlawful and must cease immediately. The City requests that Pacaso cease all advertising and sale of fractional ownership of residential properties within the City. Failure to comply may result in enforcement. Any violation of City zoning prohibitions is subject to administrative citation and imposition of new fines for each day of unlawful operation pursuant to CMC Chapter 18.04. Furthermore, any violation of CMC section 17.28.010 prohibiting timeshare uses is a misdemeanor subject to criminal prosecution, punishable by a fine not exceeding \$1,000 and imprisonment for a term not exceeding a period of six months. (CMC 1.16.010, 17.66.040.)

We are requesting your written response to this letter by April 21, 2022 which you may submit to me via email to bpierik@bwslaw.com

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Page 5

Thank you for your cooperation.

Sincerely,



Brian A. Pierik
City Attorney
City of Carmel-by-the Sea

BAP:SAR/jc

CAM #4855-3499-0355 v1

EXHIBIT C

Pacaso™

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."

Pacaso™

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,

A handwritten signature in black ink, appearing to read "Kevin Heneghan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin Heneghan

EXHIBIT D

May 4, 2022

VIA EMAIL: KHENEGHAN@PACASO.COM and
VIA FEDERAL EXPRESS

Kevin Heneghan, VP Legal
Pacaso, Inc.
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Re: Pacaso Operations in City of Carmel-by-the-Sea

Dear Mr. Heneghan:

This letter is in response to your April 19, 2022 correspondence, acknowledging receipt and responding to my letter of April 7, 2022 on behalf of the City of Carmel-by-the-Sea ("City") to immediately cease and desist unlawful operations in violation of Carmel-by-the-Sea Municipal Code ("CMC") sections 17.28.010 and 17.70.020 prohibiting timeshare uses, and CMC section 5.04.020 requiring business licenses for commercial operations within the City of Carmel-by-the-Sea.

Our office has reviewed your assertions that Pacaso is not a time-share and disagree that Pacaso is not in the business of advertising, selling, and operating time shares in the manner defined by CMC section 17.70.020. Pacaso does not dispute that it creates multi-member LLCs to hold property. Nor does it contest that it sells shares of such LLCs to individual owners. It also does not dispute that the owners of such shares of the LLC gain fixed rights to the exclusive use and occupancy of a property pursuant to a floating time schedule, under such rules and operating agreements created by Pacaso, as a result of becoming owners and members of the LLC.

Rather, in your response letter, you assert that "[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." You also assert that "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." However, this is directly

Kevin Heneghan, VP Legal
Pacaso, Inc.
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contradicted by statements on Pacaso's own website,¹ stating that owners are entitled to stay in a Pacaso property based on the number of shares in the property that they own, with each share giving the owner rights to entitling an owner to stay up to 44 nights per any given year, using either the six "general stays" that can last between 2 and 14 nights per year and be reserved 24 months in advance, to stay up to 44 nights per year, and rights to "short-notice stays" based on a floating schedule of availability.

Furthermore, the website states that each owner will be allotted a "general stay" that "falls on a special date (e.g. federal holidays or popular local events)." Pacaso's response letter entirely fails to provide any substantive response that a floating schedule, as created by Pacaso, constitutes a prohibited time-share program, whereby the "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 . . .*" (See CMC section 17.28.020 [defining "time-share program"].)

Granting each owner the right to use the property for up to 44 nights per year based on a rules created by Pacaso and having use established under a floating time schedule creates a time-share use prohibited by the CMC, regardless of whether the ownership of the property is held via an LLC or some other manner. This is because the City prohibits both time-share estates (where a user is party to a time-share program and owns an interest in the estate in real property) as well as time-share uses (where a user is party to a time-share program and exercises a right of occupancy pursuant to a license, *contractual or membership* right without having an estate in the real property).

Thus, Pacaso's argument that the properties it sells and manages are not time-shares because of ownership through a multi-member LLC is unavailing. Owners of Pacaso properties own an interest in the real estate through the LLC, and are using the property pursuant to a floating schedule, thereby using and occupying the property as a prohibited time-share estate. In the alternative, if such owners are deemed not to own an interest in the real estate, because the LLC is considered the sole legal owner, then they are owners of prohibited time-share uses. By buying shares and becoming party to operating agreements for the LLC, such owners gain *contractual or membership* rights to use the property based on the floating time scheduling system and rules created by Pacaso, constituting a prohibited time-share use.

¹ <https://www.pacaso.com/scheduling>

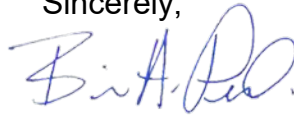
Kevin Heneghan, VP Legal
Pacaso, Inc.
Page 3

As a result, the City reiterates its requirement that Pacaso cease and desist from any advertising, operation, and/or sale of timeshare properties with the City. Any use or listing of property for unlawful time-share use in the City may result in enforcement, including issuance of citations, civil action for injunctive relief, or criminal prosecution.

We also wish to point out that any action by Pacaso to continue its operations in Carmel-by-the-Sea in the manner described above would expose its clients to potential jeopardy for violating the City's codes prohibiting time shares.

Finally, in the meeting Councilmember Jeff Baron had with Steve Thomas and Gabe Dina-Smith on March 22, 2022, Councilmember Baron was told he would be provided with: (1) a copy of the basic Pacaso LLC template so that the City can review it and determine its adherence to the City's Municipal Code regarding time shares and (2) investigating and reporting on how the parcel tax/property tax/accounting/reporting works in conjunction with the Monterey County Assessor's and Tax Collector's Office as shares of the LLC are created, then sold and resold, Councilmember Baron did not receive these documents and information and we renew that request at this time.

Sincerely,



Brian A. Pierik

BAP:dvdw
CAM #4888-4151-8110 v1



September 1, 2023

VIA EMAIL

California Coastal Commission
45 Fremont Street #2000
San Francisco, CA 94105
SouthCoast@coastal.ca.gov

RECEIVED

SEP 01 2023

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: Public Comment on September 6, 2023 Wednesday Agenda Item 17.b. Extension of Time Limit for Commission Action on City of Carmel-by-the-Sea Local Coastal Program (LCP) Amendment Number LCP-3-CML-23-002-1-Part B (Timeshare Provisions) – SUPPORT

Dear Honorable Chair Brownsey and Commissioners,

Better Neighbors is a coalition of hosts, tenants, housing activists, hotel workers and community members. We conduct data analysis and research on the short-term rental industry, including the industry’s impact on coastal communities. In addition, Better Neighbors works to promote short-term rental policies that foster true home-sharing, which ensures persons of low to moderate income can access both affordable overnight accommodations and housing in the Coastal Zone. We would like to express our support for the request for a time extension on the City of Carmel-by-the Sea Local Coastal Program Amendment No. LCP-3-CML-23-0022-1-Part B (“LCPA”) and urge the Commission to support the time extension and, once the LCPA is brought back to the Commission, approve it as submitted. Fractional ownership properties in the City of Carmel-by-the-Sea have been reported to have similar issues as short-term rentals, including causing nuisances and impacting community character.¹ Like short-term rentals (“STRs”), fractional ownership properties likely result in similar impacts on housing accessibility and affordability that we have seen STRs cause in other California cities.

First, fractional ownership properties do not preserve existing housing and remove housing from the market. In effect, fractional ownership properties can be compared to unhosted short-term rentals that do not have a primary residency requirement. Unlike hosted STRs where a host lives onsite, unhosted STRs do not function as housing. The same can be said of fractional ownership properties in which no owner is able to be present for more than a few weeks per year.

¹ https://www.montereycountyweekly.com/blogs/news_blog/the-carmel-city-council-takes-a-strong-stand-against-fractional-vacation-ownership/article_66d2862a-a8b0-11ed-8813-471365d9aea7.html

In addition, fractional ownership properties arguably remove housing stock from the market during the state's ongoing housing crisis. According to the California Department of Housing and Community Development's 6th Cycle Housing Element Report, Carmel must produce 349 units, more than 30% of which must be for the very low-income level and 33.8% must be for above moderate income.² While Better Neighbors believes it is important to ensure staff has adequate time to address this item, we also view this LCPA as a piece of the puzzle needed to preserve existing housing stock in the City as it attempts to meet its RHNA goals by 2031.

Second, fractional ownership properties can cause ripple effects on housing costs throughout the region. With a growth in the number of homes owned as fractional ownership properties, less homes may be available on the market for full-time residents. In addition, the corporatization of the fractional ownership market makes it even more difficult for single homeowners to afford to purchase housing. Better Neighbors has seen this impact in the City of Los Angeles. According to a 2022 report authored by David Wachsmuth of McGill University, 2,500 homes have been taken off the market as a result of commercial STRs, and STRs have raised rents citywide \$810 per year.³ In Carmel-by-the-Sea, according to the National Low Income Housing Coalition, the fair market rent for a one-bedroom unit is \$3,120, and \$3,800 for a two-bedroom unit.⁴ Should a similar situation occur as a result of the growth in fractional ownership properties, rents may become even more expensive in the City of Carmel-by-the-Sea.

In conclusion, Better Neighbors is pleased to see the Commission take another step towards safeguarding housing in the City of Carmel-by-the-Sea. For these reasons, Better Neighbors urges the Commission to approve the time extension and support the LCPA as submitted once appropriate. Should you have any questions, please contact rebecca@betterneighborla.org.

Sincerely,

/s/ Randy Renick

² 6th Cycle Housing Element Implementation and Annual Progress Report Dashboard: <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>

³ http://upgo.lab.mcgill.ca/publication/strs-in-los-angeles-2022/Wachsmuth_LA_2022.pdf

⁴ Available data for zip code 93921: <https://nlihc.org/oor/zip?code=92625>