

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W 18a

Filed: 12/16/2005
49th Day: 2/3/2006
180th Day: 6/14/2006
Staff: Pam Emerson-LB
Hearing Date 9/13-15/2006
Commission Action:

REVISED FINDINGS MATERIAL AMENDMENT

APPLICATION NUMBER: A-5-RPV-02-324-A5

APPLICANT: Long Point Development, LLC

AGENTS: Michael Hardisty, Timi Hallem

PROJECT LOCATION: 6610 Palos Verdes Drive South, Rancho Palos Verdes, Los Angeles County

DESCRIPTION OF PROJECT ORIGINALLY APPROVED:

Construction of a 582 room resort: 400 hotel rooms (360 rooms in one structure plus 20 free-standing 2-room bungalows) and 82 other free-standing units consisting of 50 three-keyed "casitas" and 32 "villas", golf practice facility, club house, conference center, 4 restaurants, related commercial uses, public trails; 100 public parking spaces, open space and 784,550 cubic yards of grading on a 102.1 acre site. The proposed project includes Tentative Parcel Map No. 26073, which creates four parcels.

DESCRIPTION OF CURRENT AMENDMENT:

A-5-RPV-02-324-A5. Conversion of 106 guestrooms in a 582-room resort hotel into limited-occupancy resort condominiums, which will be operated by the hotel. The conversion would create 70 individual condominium units, which would include the twenty bungalows on the property, each of which be sold as a unit containing two guestrooms. The remaining 66 guestrooms would include rooms and suites in the hotel proper combined into 50 separate condominium units.

COMMISSIONERS ON PREVAILING SIDE: Commissioners, Clark, Kram, Krue, Padilla, Reilly, Shallenberger, Wright, Chairman Caldwell

COMMISSION ACTION: May 10, 2006

STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the revised findings in support of the Commission's approval of the conversion of 106 additional guestrooms into 70 condominium units, subject to a revised version of the condition the Commission adopted in its previous conditions of approval to ensure adequate public availability of all rooms in

A-5-RPV-02-324-A5
REVISED FINDINGS

Page 2 of 24

the resort to the public. These revised conditions will now apply to all such rooms. The condition limits the length of stays in the resort, and the number of days and consecutive days during which an owner can use his or her unit. While allowing the unit to be rented through an agency of an owner's choice, the condition requires that when the owner is not using the unit, it shall be available to the public through the hotel. As revised, the condition will now apply to all privately owned rooms. The motion to carry out the staff recommendation is found on **page 3**.

SUMMARY OF PREVIOUS AND RELATED ACTIONS

Description of Amendment 1. (Withdrawn on June 21, 2005)

A-5-RPV-02-324-A1 Convert 70 units (106 guest rooms) to condominium ownership.

Description of Amendment 2 (approved September 27, 2005.)

A-5-RPV-02-324-A2. Modifications to the project site plan including a reduction of the hotel building footprint, and relocation of the specialty restaurant, and adjustment of the boundary of the bluff top "Habitat Enhancement Area," Zone B, an "80 foot wide Coastal Bluff Scrub and Coastal Sage Scrub Zone" adjacent to the top of the bluff. The applicant proposed to provide a narrower buffer adjacent to a public parking lot at the northwest corner of the property, and adjacent to an emergency access road. The applicant proposed to balance these reductions in width by increasing the width of Zone B in areas adjacent to these modified areas to up to 150 feet. The applicant also proposed to widen an existing drainage in the southeast corner of the property in order to protect existing willows.

Description of Amendment 3 (approved August 9, 2005.)

A-5-RPV-02-324-A3. Authorize the conversion of 82 units (50 three-keyed "casitas" and 32 "villas") into 82 separate condominiums (with a total of 182 guestrooms), enabling each of the 82 units to be sold as an independently owned condominium, which would be operated by the hotel as limited occupancy resort condominiums.

Description of Amendment 4 (approved November 17, 2005.)

A-5-RPV-02-324-A4. Amend A-5-RPV-02-324 in order to provide funding to partially offset the Commission's costs for its consideration of the permit application and condition compliance. This funding pays for additional temporary Coastal Commission personnel so that a team of permanent Commission staff can expedite the review of documents that the permit requires the applicant to record, after receiving Commission staff approval, prior to issuance of documents finalizing amendment A-5 RPV-02-324-A4.

A-5-RPV-02-324-A5
REVISED FINDINGS

Page 3 of 24

Description of Amendment 6 (approved with conditions June 2006).

A-5-RPV-02-324-A6. Amendment to modify the hotel site plan, including reducing the hotel building footprint, reducing the number of villa buildings, but retaining the same number of units in the villa complex, eliminating the parking structure, reconfiguring the surface parking area, and eliminating the two tennis courts. The applicant also proposes to modify the golf amenity from a 3-hole practice facility to a 9-hole short game golf academy, and proposes changes in dimensions, surface treatment, and locations of some trails.

SUBSTANTIVE FILE DOCUMENTS.

1. City of Rancho Palos Verdes, Certified Local Coastal Program, 1981
2. City of Rancho Palos Verdes, Certified Local Coastal Program, Amendment 1-89
3. City of Rancho Palos Verdes, Coastal Development Permit No. 166. (Appealed)
4. City of Rancho Palos Verdes, Grading Permit No. 2229
5. City of Rancho Palos Verdes, Variance No. 489
6. City of Rancho Palos Verdes, Conditional Use Permit # 21, Revisions A, B and C, September 2004 through October, 2005
7. City of Rancho Palos Verdes, Long Point (Terranea) Resort Hotel Project: Zone 2006-00036 (Revision 'D' to CUP 215, *et. al.*) March 21, 2006
8. City of Rancho Palos Verdes, Tentative Parcel Map No. 26073, as amended October, 2005 to permit four parcels and 152 condominium units Coastal Development Permit A-5-RPV-02-324.
9. "Declaration of Restrictions," Draft Agreement between the City of Rancho Palos Verdes and the Applicant regarding the Management and Operation of the individually owned units
10. Declaration of Restrictions agreement A5-RPV-02-324-A3
11. Coastal Development Permit No. A-5-RPV-91-46 (York Assoc.)
12. Coastal Development Permit No. 5-96-282 (Seaview Development, Hermosa Beach);
13. Newport Coast Certified Local Coastal Program
14. Coastal Development Permit 6-92-203-A4 (KSL Enterprises.)

LOCAL APPROVALS RECEIVED:

1. Tentative Parcel Map No. 26703
2. Conditional Use Permit No. 21 Revisions A, B, C, and D.

I. STAFF RECOMMENDATION.

Staff recommends the Commission adopt the following motion:

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on May 10, 2006 concerning A-5-RPV-02-324-A5.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for **A-5-RPV-02-324-A5** on the ground that the findings support the Commission's decision made on **May 10, 2006** and accurately reflect the reasons for it.

II. STANDARD AND SPECIAL CONDITIONS.

(The Commission amended existing Special Condition 5.D(8) in this action. Special condition 5.D(8) addresses the management of independently owned units. The full text of all the special conditions, many of which were amended in a subsequent amendment, amendment 6 is available in the files in the Commission offices. Special Condition 5.D(8) is shown below with the Commission's adopted changes shown: insertions are shown in **bold underline**, deletions are shown in ~~strike out~~.

5. MANAGEMENT /MAINTENANCE OF FACILITIES.

...

D. Public and commercial recreation facilities. The resort, including the restaurants, health spa, banquet facilities, clubhouse and golf practice facility will remain as commercial visitor-serving facilities open to the general public, and any proposed change in the level of public use will require an amendment to this permit. The trails and public parking areas as identified in Special Condition 2 shall remain open to the general public with no fee for use. The public shall receive equal priority with hotel guests for use of all public facilities. ...

...

(8) CASITA, VILLA, BUNGALOW AND INDEPENDENTLY OWNED HOTEL ROOM OCCUPANCY RESTRICTION. **There are 582 guestrooms/keys, maximum, available at the resort. Of these, 288 guestrooms/keys are within the 152 independently owned units (all 50 "casitas", all 20 "bungalows", all 32 "villas" and all 50 "independently owned units within the hotel.") These units, and the guestrooms/keys within them,** are to be operated by the hotel as limited-occupancy resort condominiums pursuant to a restriction whereby any

independently owned unit shall not be occupied by an owner for more than 29 consecutive days and no more than 60 days per year for the “Casitas,” **“Bungalows”, and “independently owned hotel units”** and no more than 90 days per year for the “Villas“. When not occupied by an owner, each unit and **each guestroom/key** will be available as a hotel accommodation. The hotel will be a designated booking agent for all unoccupied units/**guestrooms/keys**, including those under contract to a third-party company for rental services. The rental management company will be required to notify the hotel of its available inventory for all units under contract and shall be required to accept bookings made through the hotel for rental to the general public. **The hotel operator shall maintain records of owner use of all independently owned units and utilization of all guestrooms/keys, including the room rates charged.** Further conversions of any portion of this project, including the individually owned units approved in Amendments A3 **and A5**, to any time-restricted or multiple ownership programs including, but not limited to, condominium, time-shares or other type of project that differs from the approved limited occupancy project requires an amendment to this coastal development permit. Pursuant to this condition:

- (a) Prior to issuance of this permit, the applicant shall submit for the review and approval of the Executive Director a signed and recorded Declaration of Restrictions/Agreement with the City of Rancho Palos Verdes and the Coastal Commission that substantially conforms to the conditions of this permit and guarantees that the applicant and its successors in interest shall maintain all units **guestrooms/keys**, including the individually-owned units, as hotel units, which shall be available to the general public on an equal basis. The recorded Declaration shall not be revised without the consent of the Commission, either through the Executive Director or with an amendment to this permit. Pursuant to this condition, the applicant shall ensure the following:
 - (i) The operator of the hotel shall manage the condominiums as part of the hotel inventory, which management will include the booking of reservations through the rental agent, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing the units for use by guests/owners. In addition, if the hotel operator is not the owner’s rental agent, or if the owner is acting without a rental agent, then the operator shall have the right, working through the owner or its designated rental agent, to book any unoccupied room/**key** to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner’s rental agent may not withhold units/**guestrooms/keys** from use. In all circumstances, the operator shall have full access to the condominiums’

A-5-RPV-02-324-A5
REVISED FINDINGS

Page 6 of 24

reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder. The keys shall be electronic and created upon each new occupancy to control the use of the condominium units. The hotel operator shall provide monthly reports of owner and non-owner use to the City of Rancho Palos Verdes.

- (ii) The use of each “Casita, **“Bungalow” or “independently owned hotel unit”**” by the owner(s) (no matter how many owners there are) shall be limited to a maximum of 60 days per calendar year, no more than 29 consecutive days, and a minimum 7-day period between 29-day periods of owner occupancy. Each “Casita”, **“Bungalow” or “independently owned hotel unit”, and each separate guestroom/key within such unit** is required to be available as a hotel accommodation and managed by the hotel.
 - (iii) The use of each “Villa“, by the owner(s) (no matter how many owners there are) shall be limited to a maximum of 90 days per calendar year, no more than 29 consecutive days, and a minimum 7-day period between 29-day periods of owner occupancy. Each “Villa” is required to be available as a hotel accommodation and managed by the hotel.
 - (iv) The use of the hotel by any guest or owner shall be limited to no more than 29 consecutive days.
 - (v) All owners shall explicitly acknowledge that the public has access to the parks, trails, spa, restaurant, and other public amenities and facilities of the site.
- (b) In addition to the recordation of the Declaration of Restrictions referenced herein, and prior to the issuance of this permit amendment, the applicant shall submit a management plan that specifies the hotel operational procedures and condominium ownership restrictions that will ensure the on-going availability and retention of the resort units for public and visitor use. The management plan shall include the provision of an annual report to the Executive Director that aggregates the monthly reports of owner, non-owner and hotel use of the 582 ~~units~~ **guestrooms/keys**. The management plan shall be submitted to and approved in writing by the Executive Director. No changes to the management plan shall be made without an amendment to this permit unless the Executive Director determines that no amendment is required.

III. FINDINGS AND DECLARATIONS

(Staff note: Adopted changes are shown in ~~strike-out~~ and **bold underline** format; ~~strike-out~~ for deletions, **bold underline** for new language the Commission added as part of approving this amendment 5.)

The Commission hereby finds and declares as follows:

A. **Project Location, Description and History**

The project site is located at 6610 Palos Verdes Dr. South, in the City of Rancho Palos Verdes. The site forms a triangular peninsula that is seaward of Palos Verdes Drive South at the location of the former Marineland Aquatic Park. The site consists of flat graded areas and steep cliffs that support coastal bluff scrub habitat areas for the endangered El Segundo blue butterfly. The site has some existing development including large surface parking lots, vacant buildings, and the Catalina Room banquet facility. Urgency Ordinances adopted by the Rancho Palos Verdes City Council upon the closure of Marineland established a requirement for coastal access and public parking on the Long Point property. The parking and coastal access presently remains open during daytime hours: from 8:30 a.m. to 4:00 p.m. In late 1991, the Commission approved a 450-room hotel conference center and nine-hole golf course on the site, which were never built (A-5-RPV-91-046).

In June 2003, the Commission approved the construction of a 582-room hotel on the site. The hotel consisted of one 360- room structure and four clusters of freestanding small structures, termed "casitas", "villas," and "bungalows." The villas were large units, which the applicant expected to rent as one guestroom; the bungalows and casitas contained, respectively two and, three separate guestrooms within them. The 360 rooms within the hotel include some suites that could be further subdivided into additional guestrooms. (The applicant has used "Key", the industry term of art, to denote a guestroom in this application.) In addition to the hotel rooms, the applicant proposed to maintain, and the permit authorizes, an existing bluff top restaurant, and to provide other amenities including two restaurants, a golf facility, a conference facility, a spa, tennis courts, a pool on an existing bluff face bench, and trails. As a condition of both the City approval and the coastal development permit, the applicant was required to provide public bluff top trails, 100 public parking spaces, to preserve two long-existing trails to the beach over the southernmost bluff face, and to grade one of them, that had been used as a maintenance road, to provide handicapped access to the beach for the public and hotel guests. Restaurants and other facilities on the property (with the exception of the pools) were required by both the City and the Commission to be open to the public.

The applicant has applied for six amendments. The applicant withdrew the first amendment, amendment A-5-RPV-02-324-A1, in June 2005 pending discussions with the City and the Coastal Commission staff concerning the management of the units and

A-5-RPV-02-324-A5
REVISED FINDINGS

Page 8 of 24

procedural matters. Amendment A1 was a request to convert 70 units to condominium units. The Commission has approved three amendments. The first amendment approved (A3) allowed 82 units (with a total of 182 guestrooms), to be converted to condominium units, enabling each of the 82 units to be sold as a limited occupancy resort condominium, which would be operated by the hotel. The City and the applicant entered into an agreement as part of the Conditional Use Permit conditions, that the independently owned units shall be operated as part of the hotel and that buyers will be limited in terms of the maximum length of a stay and in the number of days that they can occupy their units per year. The Commission revised these requirements and incorporated them into its special conditions of approval of amendment A-5-RPV-02-324-A3. A second amendment, A-5-RPV-02-324-A2 (processed after amendment A3) changed the site plan, changing the location of a spa and other structures, and adjusting the width of an 80-foot wide Habitat Enhancement Area located between the hotel buildings and the edge of the bluff. The adjustment allowed the Habitat Enhancement Area to be as narrow as 40 feet in three locations to accommodate two fire access roads and the enlarged parking lot at the Pt. Vicente Fishing Access. To keep the Habitat Enhancement Area the same size, the revised plan shows a much wider buffer between the westerly casitas and the bluff top. This action substituted new site plans for the exhibits cited in the original approval. A third amendment, A-5-RPV-02-324-A4, allowed the applicant to pay for expedited processing of the documents it proposed to Commission staff for recordation pursuant to the permit conditions.

Two amendments are scheduled for the Commission's May, 2006 meeting or in the near future. This amendment, A-5-RPV-02-324-A5, would increase the number of for-sale units by 70 units (20 bungalows and 50 units in the main hotel) accommodating 106 guestrooms (including 66 in the main hotel). The applicant's **provided a** description of the limited occupancy condominium hotel, and how it would function, and **indicated that it was its intention to have the newly converted units subject to the same special conditions that the Commission adopted in its action on the initial 82 units.** The second pending amendment, A-5-RPV-02-324-A6, rescheduled to June, 2006, would make further changes in the site plan, re-design some trails, and substitute a nine-hole golf course for the golf practice facility. As part of amendment A-6, staff is recommending that Special Conditions 2 and 3, which require, respectively certain areas to be restricted for public access and for habitat protection be modified to reflect the revisions to the site plan that have occurred since the Commission's 2002 approval.

B. Public Access and Recreation

The Commission's review of the proposed project is governed by the policies of the certified Local Coastal Program. Because it is located between the first public road and the sea, Section 30604 (c) of the Coastal Act, requires that the Commission as part of its approval, find that it is also consistent with the public access and recreation policies of the Coastal Act, which include the following policies:

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, 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.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The certified Local Coastal Program reflects the linear nature of the Rancho Palos Verdes coastal zone, which is a row of steep bluffs overlooking the ocean, a row of bluff top lots, and a major road, Palos Verdes Drive South and West that provides access to those bluff top lots and is also the inner coastal zone boundary. The LCP establishes “Access Corridors”, “Natural Corridors”, and “Hazard Corridors” along this bluff top.

The access section of the Corridors Element of the LCP establishes a policy to develop combined access corridors—the road, joined to lateral loops, providing access to both pedestrian and bicycle trails that follow the bluff and then connect with historic trails that lead down the bluffs to the beach. The LCP requires as many bluff top public access trails as possible, and dedication of historic trails down the face of the cliffs. Roads in new developments are to remain public. The City’s objective, except where slide conditions may make it unsafe, is to connect the entire city with a jogging path and a bicycle trail. The LCP described this site, at the time developed with Marineland, a nationally recognized oceanarium that attracted thousands of visitors each year, as the site of a 2,300 car parking lot that could provide parking for visitors who intended to hike or bike on these trails.

A-5-RPV-02-324-A5
REVISED FINDINGS

Page 10 of 24

The project is also governed by the LCP policies that establish natural corridors, to be protected and developed, if possible, with trails and other public access ways. The Corridors (Natural Corridor) Element of the certified LUP states:

Natural Corridors should, where desirable and feasible, be utilized as pedestrian access corridors providing access to the coastal bluff area and public use areas, and should have appropriate design treatment to insure pedestrian safety as well as retention and enhancement of the natural features.

Project description – project features proposed to carry out the public access policies of the LCP.

This project, as approved by both the City and the Commission, will provide public streets, parking areas, which are set back from the bluff, and public trails to and along the top of the bluff, and in two locations where present trails exist, down the bluff face. It will provide one hundred new public parking spaces to serve these facilities – fifty **spaces** adjacent to an existing public beach access trail (the Point Vicente Fishing access) and fifty more spaces in a second lot at the top of an old supply road that leads down the bluff face. The developer proposed to improve the road as a handicapped accessible ramp leading to a public snack bar, view area and guest swimming pool located on a bench that Marineland had excavated on the bluff face. The project is required to provide major public access facilities, comparable to the two developed public bluff top parks found in Rancho Palos Verdes, Abalone Cove Park, and the Point Vicente Park and to a private development that provides trails and public viewing areas, the Trump (Ocean Trails) Golf Course on the eastern end of the City. Most other bluff top sites in Rancho Palos Verdes are developed with homes, or provide a narrow strip of public land just seaward of the road with no public serving amenities, or like Shoreline Park, an undeveloped park at the southern end of the City, can be reached only on foot, by steep trails. Only this site, the Point Vicente Park, Abalone Cove, and the Trump Golf Course provide parking areas, restrooms, and places to eat or picnic.

Land use provisions of the LCP addressing commercial recreation and this site

In its corridors section and in its section on Subregion 2, the LCP identifies this site as crucial to the City's public access policy, as the hub of the pedestrian and bike trail system, the location that can accommodate recreational users and provide support parking to beach goers and trails users. The LCP states that this site should be limited to commercial recreation.

The LCP addresses land use in detailed "Subregional Plans" which integrate land uses and the constraints found in the Hazards, View Corridor, Natural Resources, and Natural Corridors sections of the plan as they apply to particular geographic areas (subregions) of the City's coastal zone. The Subregion 2 section of the LCP addresses the former Marineland Aquatic Park property, which is the site of the present application as well as a vacant site and Point Vicente Park, Lighthouse and Fishing Access. The Subregion 2 Section of the LUP states in part:

**A-5-RPV-02-324-A5
REVISED FINDINGS**

Page 11 of 24

Any future development on the site will require City approval in the form of a Conditional Use Permit. Compatible uses could include those of a Commercial Recreational nature, visitor-oriented, such as additional oceanarium attractions, retail facilities, recreation uses, motel, convention facility, restaurants, museum, etc. Those considered not compatible are uses of a “carnival” nature.

The project site is the only designated commercial/recreational (CR) site in the City's certified LCP. Commercial recreation sites are not common in the Rancho Palos Verdes coastal zone. The LCP designated this site and a small site with a “floating retail” designation at a seven-acre school site¹ on what is now the Trump Golf Course for commercial recreation. The LCP provides that residentially zoned lots can develop with a commercial recreation use if a conditional use permit is granted, for example, the 272 acre Trump Golf Course site is actually designated for residential use, although partially developed with a commercial recreation use. In 1980 when the LCP was first certified, there were four large buildable vacant sites in Rancho Palos Verdes. Only this one was designated for commercial recreation. Two were subdivided for residential uses. The other, the 261-acre site now developed with the Trump National Golf Course, was designated for residential use, but allowed to develop with both commercial and residential uses with a conditional use permit.

To preserve this potential resource, the LCP, updated in 1989 after the closing of Marineland, does not allow commercial recreation (CR) designated lots to be developed with a residential use. Section 17.24 of the certified LCP² states in part:

Chapter 17.24 Commercial Recreation District.

17.24.010 Purpose. *This district permits those entertainment and recreational activities which are of a commercial nature.*

17.24.020 Uses and Development Conditionally Permitted. *The following uses may be permitted in the (CR) Commercial Recreational District subject to approval of a conditional use permit:*

- a. *Any new or reestablished use which is of an entertainment, visitor serving or recreational nature, including but not limited to a resort/conference hotel, restaurant, limited theme retail, tennis court, golf course and other entertainment and banquet facilities compatible with existing uses and the surrounding area. Such use, if located within the coastal specific plan district, shall be required to provide public access to and along the bluff and coastline;*

¹ (Then operated by a specialty vegetable grower.)

² Now renumbered and expanded as section 17.22.030 of the Municipal Code

- b. *Grower and produce stands, wholesale plant nurseries, and similar commercial/agricultural uses.*
- c. *Commercial antenna.*
- d. *Other uses determined by the director to be similar to the use described in section 17.24.020(a) with the exception of the following.*
 - 1. *Amusement Park.*

17.24.30 *Operation and maintenance.* *All uses shall be operated and maintained in a way that does not create a public nuisance.*

- a. *Buildings or structures that are not in use or operation may only be secured in a manner approved by the director of environmental services.*
- b. *Routine landscaping and ground maintenance shall continue whether or not the use is currently in operation or open to the public.*
- c. *Any use located within the coastal zone shall be operated and/or maintained to preserve public coastal access whether or not the use is current operation or open to the public. Such access may be restricted on a temporary basis with the approval of the director of environmental services, if necessary to protect the public health, safety, and welfare. Parking requirements for any proposed development shall be as specified in chapter 17.44. Ten percent of any required parking shall be designated as public parking for coastal access as indicated by the coastal specific plan (p. U-18 Policy No. 3).*

The certified LCP designates the former Marineland site as Commercial/Recreational and requires that future development shall be visitor serving or recreational, or agricultural. The City has approved the proposed condominiums as a conditional use consistent with the LCP, but it has attempted to assure consistency with the land use restrictions cited above by imposing conditions on its conditional use permit that require these condominiums to be operated by the resort as a hotel and that limit the length of stay of owners (and hotel guests) to twenty-nine consecutive days and to a total of two months in any year, with one exception. Owners of the villas, while limited to 29 consecutive days in any stay, with a seven-day interval between stays, may use their units up to three months in any year. **The Commission approved the initial condominium conversion subject to condition 5D(8), which restricted use of each privately owned unit by the owner(s) (no matter how many owners there are) shall be limited their use to a maximum of 60 days per calendar year for casita owners, and 90 days for villa owners. The condition limited owners' stays to no more than 29 consecutive days, and a minimum 7-day period between 29-day periods of owner occupancy. Each privately owned unit is required to be available as a hotel accommodation and managed by the hotel. In another provision, the condition also limited the use of the hotel by any**

quest or owner to no more than 29 consecutive days. The condition assured that the hotel would control the keys of the unit and would make any unit the owner was not using available for rent to the public subject to the agreement. Such restrictions would be imposed as CC&Rs; any change in those CC&Rs would be subject to review by both the City and the Commission. The applicant has provided **indicates that the** ~~draft deed restrictions~~ **drafted to** ~~that would carry out these requirements~~ **when the Commission approved the initial 106 units, would be extended to apply to the additional 70 units (106 guestrooms). The Commission finds that it can amend its present condition 5D(8) to incorporate the additional units approved for condominium ownership. The issue before it is whether increasing the percentage of such units within this resort that are privately owned would render the project as whole inconsistent with the applicable standard of review.**

The standard of review for the Commission on an amendment to an approved permit in an LCP-certified area is consistency with both the LCP and, in this location, the access, and recreation policies of the Coastal Act.

Coastal Act provisions applicable to the site.

In addition, to the provisions of the LCP, the Coastal Act provides that visitor and recreation serving facilities be given priority over other private uses, and that such visitor-serving facilities include visitor-serving uses such as hotels.

This project was approved as a hotel, which is a priority use under Section 30222 of the Coastal Act. The question before the Commission in this amendment is whether the amendment allowing the conversion of additional guestrooms to private condominium ownership is consistent with the LCP and with the access and recreation policies of the Coastal Act. The question comes down to whether a hotel with approximately half of its guestrooms (rooms and suites) held privately can, in the long term, function as a public accommodation. **The Commission notes that in this case slightly over half of the guestrooms will continue to be owned by the hotel, so that the majority of the hotel rooms will remain as traditional hotel rooms.**

Permit history. Statewide, the Commission has considered at least ten such proposals in recent years, including 82 units (182 guestrooms) of this hotel, and most recently, in March 2006, the Commission considered a proposal to convert a 130-unit hotel in Encinitas to limited use condominiums, and allowed the applicant to convert 100 of its units. In each proposal the Commission has considered how, given the particulars of each project, it can assure that the hotel continues to serve as a public accommodation. In this case, as in other similar cases the Commission has been concerned with the consequences of the conversion. In this case, the Commission must consider both the statewide implications and the relationship to the LCP. As described above, the Rancho Palos Verdes LCP requires this site to be developed for Commercial Recreation (unless it is retained in agriculture). The Coastal Act gives priority to visitor serving recreation, which the City of Rancho Palos Verdes has achieved by reserving this particular site for commercial

recreation, and this development has been approved as a hotel providing many facilities open to the general public, from trails along the bluffs, to restaurants and a coffee shops to a spa to luxury hotel rooms.

The first question that the Commission must answer is: “Is the change consistent with long term operation of the site as a hotel” and therefore consistent with the Coastal Act and with the LCP? The Commission found that this was the case when it allowed about a third of the guestrooms to convert to private ownership.

The presently proposed project would allow about slightly fewer than half the guestrooms (or rentable spaces) to be owned privately. **The Commission considered and argument** Assuming that if a hotel books about 80 percent of it rooms during the busy season, if half the owners are also present prospective visitors who would occupy 5 percent of the rooms will be turned away. This means that if half the owners are present, as may be the case during the busy season, the hotel will be nearing capacity. **The Commission rejected that argument, finding that a 70 percent occupancy rate is far more likely, in the busiest season, and agreeing with the applicants that owners would have an incentive to rent their units during the busy season, when the room rents were highest. The Commission also considered that demand for space at this resort, which is removed from entertainment venues, would come from meetings and from vacationers looking for a quiet rest. Unlike visitors whose schedule is based on the school year, the attendance of such visitors would be distributed throughout the year. Similarly, the Commission found that use by owners is more likely to be distributed throughout the year. If occupancy is distributed throughout the year, including use by owners, who can lay claim to fewer than half the rooms, a significant number of rooms will always be available to the public.** ~~If half the owners are also present, prospective visitors who would occupy 5 percent of the rooms will be turned away. This means that if half the owners are present, as may be the case during the busy season, the hotel will be nearing capacity.~~

In response to this the issue **of the rate of owner-occupancy**, the applicant has provided statistics from other hotel projects that have a significant fraction of the units in private ownership. Based on these numbers, the applicant asserts that at any given time, most units in “investor owned” hotels are available for rental by the public. The applicant asserts that the high availability is a result of owners’ interest in income from the units. The applicant also provides the following information concerning annual owner occupancy in other resorts that its management company, Destination Development, operates:

Percent Owner Occupancy In Condominium Hotels Operated By Same Manager (Destination Development)				
Condominium Hotel	Location	Owner Occupancy (%)		
		2003	2004	Average
La Quinta Resort	La Quinta, CA	2.0%	1.9%	2.0%
Teton Mountain Lodge	Teton Village, WY	2.5%	2.3%	2.4%
Mountain Lodge at Telluride	Telluride, CO	3.8%	3.4%	3.6%

A-5-RPV-02-324-A5

REVISED FINDINGS

The Gant	Aspen, CO	9.9%	9.6%	9.7%
Seascape	Aptos, CA	7.1%	n/a	7.1%
Average		5.1%	4.3%	5.0%

The Commission notes **considered arguments** that many of these units **resorts** are in relatively remote communities. **Secondly, In addition,** the annual figure does not include corrections reflecting higher demand in vacation months: “spring break” and summertime. At times of high demand, high owner occupancy can exclude members of the general public. However, **Further,** this project, now identified as the Terranea Resort Hotel is located in a suburb of an urban area, where there is a demand for housing within commuting distance of employment centers, shopping and entertainment. This hotel is located in an urban area where there is a greater likelihood that owners would want to stay at the hotel year around. **The applicant argued and the Commission concurred that this accessibility, coupled with limitations on length of stay, would work to distribute the owners’ use during the year.** Third, in some of the studies of occupancy that the staff was provided when it reviewed the KSL proposal for a 130 unit hotel conversion in Encinitas, the reports speculated that the units were too small to be used as full time homes, some times 7-800 square feet. In this case, in the Terranea Resort, the units are larger--between 1800 and 2300 square feet, as large as or larger than the average residential unit in the greater Los Angeles area, although smaller than the typical luxury unit in the area. **With respect to this issue, the applicant countered that the larger units would represent a large investment. In order to realize a return, owners’ would be more attentive to renting the units.**

The applicant **also points out** counters that in the three accommodations in beach communities, most of the rooms are available most of the time, providing the following statistics concerning occupancy: The applicant has provided a brief Economic Research Associates report that provides the following figures.

Owner occupancy in Condominium Hotels in California		
Project	Annual Owner Use Days Per Unit	Percent of Annual Capacity
Beach House, Hermosa Beach ³	14.5	4.0%
Beach House, Half Moon Bay	12.1	3.3%
Seascape, Santa Cruz	23.1	6.3%

Source: Kerkorian ERA, 2005, Provided by Applicant

³ In a report submitted to support the conversion of the KSL hotel in Encinitas to condominium use (6-92-203-A4), the owners of that project submitted similar information. The staff reports says: “To support this contention, the applicant has submitted documentation of use by owners of the Seaview Hotel in Hermosa Beach, a hotel previously approved by the Commission as a limited term occupancy condominium hotel (Ref. CDP Nos. 5-96-282/Seaview Hotel). According to this information, no more than 6% of the owners use their unit during the peak summer months with a yearly monthly range from a low of 1.5% in January to a high of 5.7% in August. The applicant indicates that “[t]he low rate of owner occupancy could stem from a number of factors, the most salient being that owners treat the hotel units as investments, and will realize higher dividends if their units are occupied to the greatest extent possible by regular guests” (Ref. “Response to Request for Information Regarding the Condominium Resort Hotel” from the applicant dated received September 13, 2005). (6-92-203-A4, Page 20.)

When staff reviewed the websites for these resorts, staff found that they did advertise villas, cabins, “homes”, and other accommodations similar to the units being converted as available to the public. It was clear that some of the homes marketed to individuals were in fact available to the public –the condo hotels are in operation elsewhere and the owners are marketing their units through the resorts for short term vacation use. The system appears to work as the applicant has described. What was not clear was how many of the units were available and how many had been withdrawn from the market, and neither the websites nor the research that the applicant has presented helped with this issue. Secondly, under the current proposal, one type of unit, the villas, will be able to be occupied by the owners for 90 days (with seven day interruptions **every 29 days**), potentially most of the summer.

With respect to the user statistics, the Commission notes that, as long as fewer than half of the units are converted, a significant number of units would be available to the public year-round. If occupancy of privately owned rooms at any one time were 70 percent, 381 rooms would still be available to the public. Given the owner’s interest in income and the limitations on length and amount of private use, the Commission found that with fewer than half of the rooms in private hands, a significant number of rooms would likely be available to visitors. With respect to the expectations of the owners, the applicant indicated that prospective owners are given very clear explanations of the requirements of the rental program. The Commission finds that in Rancho Palos Verdes, where there had been little interest in constructing or financing a hotel, the applicant’s argument that selling a portion of the units made the project feasible was convincing for the following reasons: 1) the site has been vacant a long time, 2) this project involves all new construction rather than the conversion of existing units, and requires sales of units to provide construction funds, and 3) recent escalation in the prices of construction materials has made it unlikely that a new visitor-serving facility would be provided in any other way in Rancho Palos Verdes.

~~The Commission notes that the applicant provides summaries of statistics but does not provide the data on which the conclusion is based. The summary is based on annual use. Rancho Palos Verdes is foggy in the winter. Peak use seasons for resorts are summer, spring break, and to a lesser extent holidays. Annual figures do not show how many rooms would be available during peak times.~~

To address this **the issue of potential conversion of the privately owned units to permanent residences**, the applicant has provided a plan to manage the units as hotel rooms, which includes limitations on the lengths of stay for any visitor, owner or guest to 29 consecutive days⁴, **a limit on the total days an owner could use the unit in any year**

⁴ All visitors to the hotel, including condominium units would be limited to 29 days per visit. This limit would apply both to visitors and to owners. After 29 days, the visitor would have to vacate for no fewer than seven days before returning. Owners of “Casitas” and “Bungalows” and of the 50 suites units in the hotel building would be limited to using their units for themselves or personal guests for not more than 60 days per year.

and retention of the key in the possession of the hotel and a ban on “personal” objects in the decor of the unit (standard furnishings and decorations). The Commission adopted conditions at the time of its approval of the first 82 units to memorialize this offer. (~~See Appendix A, special conditions~~). In approving the amended conditional use permit in October 2005, the Rancho Palos Verdes City Council also adopted special conditions to the amended CUP that limited length of any stay to 29 days, that requires a seven day interval between use of the units, requires management by the hotel, and limits in this proposal owner’s use of the unit for themselves or personal guests, to sixty days a year. The applicant indicates that this system of management will in its view assure that the hotel rooms are available as accommodations to the general public.

A second concern ~~objection~~ is that the presence of owners changes the equation.

1. While owners are legally committed by promises made by developers, they may not perceive the commitments as their own. Rather they may perceive the agreement as a formality to get through red tape having little applicability to them.
2. Owners may not perceive or understand operating their unit as a hotel room as being to their advantage.
3. Owners may not think it fair that there are restrictions on use of their homes.
4. The Commission has had an unsuccessful experience in attempting to regulate long-term use of units that were sold to individuals. In the 1970’s, developers provided several hundred “low and moderate income for-sale” units in southern Orange County to fulfill the requirements of Section 30213 of the Coastal Act, which prior to 1978 required the provision of housing for low and moderate-income individuals.

The developers provided the units subject to contracts with the owners that allowed the Commission and Orange County housing agency to control resale. The owners claimed that they believed they were buying the units, and did not believe or understand that their units must be sold at lower prices than their neighbors were receiving for their similar condominiums. Instead, buyers felt strongly that as owners, they should expect and hold the rights typically held by other owners, including the right to profit by a rising market. The third party supposed to be enforcing the contracts was a non-profit dissolved without passing on its obligation. The Commission discovered the sales several years after many of them had occurred. The Commission’s enforcement action had limited success.

Irrespective of the developers’ intentions, once the units are owned, there is a strong possibility that the individual owners will perceive and assert rights common to property

Owners of “Villas” would also be limited to 29 days per stay, would be subject to the same 7-day rule, but would be allowed to use their units up to 90 days per year. According to the “Declaration of Restrictions” which the City has required to be recorded as part of its conditional use permit, when not being used by its owner, each such unit “shall be available as a Hotel accommodation and shall be managed by the Operator as set forth in Section 1.1 hereof [of the Declaration of Restrictions]”. The Operator is the operator of the hotel. The applicant has provided a revised Declaration of Restrictions as part of this application, (Exhibit 3 of May 10 2006 staff report).

owners. The SEC rules require that unless the units are marketed as homes, with little mention of a rental program, the units must be registered as securities. To avoid the expense of registering as securities, the initial materials do not mention the rental program or the limitations on occupancy. While two-stage disclosure of the rental program does not provide any new rights to owners who buy the condos and sign the agreements, it may add to genuine confusion on the part of some owners as to their obligations. When the individual condo owners control a near majority of units, the hotel **could** ~~will~~ be perceived as providing an amenity to the owners, not a public accommodation. There **could** ~~will~~ be pressure to overlook or change rules that inconvenience owners or interfere with owners "rights". The requirements in the permit and the CC&Rs specific to this site protecting the public's rights to public accommodations in the hotel may be perceived as threatening to owners of units. ~~who reside there.~~

The applicant is engaged in marketing the first of the units by a system of "reservations". Staff examined the advertisements for the condominium units on the web. The advertisements were ambiguous. The Terranea website discussed "homes" that would be eligible for resort services. It did not define the for sale units as hotel accommodations.

The advertisement on the website does not explain that owners' occupancy would be limited. It does mention resort management, but unless a person knows what resort ownership means, the buyer could assume that he or she was buying the condominium as a residence. **In response to these issues, the applicant indicates that it makes the responsibility of the owners clear in the marketing. All prospective owners, before closing, have a special meeting in which the restrictions and the requirement that the units be available for guests are explained. Moreover, the amenities – the restaurants, gym, pools, and golf course -- will depend on paying hotel guests to support them. Owners, then, will have an economic interest in renting their units.**

~~They~~ **The applicant stated and the Commission concurred that even though the advertisements** refer to Ocean Villa and Ocean Casita "Living," and they explain that ownership "entitles" one to the resort services and amenities ~~but not that it limits them in their use of the units,~~ at the close of the transaction prospective owners will be clear that their occupancy rights are limited and that they are obliged to make the hotel rooms available to hotel guests. ~~The website describes the villas and casitas without reference to the limitations. It states:~~

Rising from the magnificent bluffs on the wildly romantic Palos Verdes Peninsula comes Terranea Resort, an exquisite 400-room hotel featuring world-class amenities including a 25,000 sq ft spa, executive golf academy, meeting & event facility, gourmet dining and interactive children's center. **Terranea is now presenting a rare opportunity to own one of just 82 resort homes.** Enshrouded within the resort, this limited collection of Ocean Villa and Ocean Casita properties will provide owners an unparalleled seaside escape, as well as access to all of the amenities of this remarkable destination.

Situated within the gates of California's newest oceanfront luxury resort on the exclusive Palos Verdes peninsula, Terranea is hotel-serviced resort real estate at its absolute

finest. Ownership of an Ocean Villa or Ocean Casita entitles one to indulge in all of the world-class services and amenities of the resort.

Ocean Villa Living

Poised on the resort's uppermost terrace is a rare collection of just 32 **private villas**. Three unique floor plans reveal 1850 to 2800 square feet of generous indoor living space, ranging from two bedroom and den to a double master three bedroom and den. Private courtyards and terraces magically bring the outdoors in, while spacious Great Rooms and gourmet kitchens make entertaining a must. Ownership, as expected, entitles one to the world-class services and amenities of Terranea.

Ocean Casita Living

Nestled along the resort's east and west facing bluffs with breathtaking views of the Pacific is a limited collection of 50 ocean casitas. **Each 3-bedroom resort home features 2000 square feet of indoor living space, yet offers the flexibility of smaller living spaces.** One master suite connects to two guest suites with private entries offering a variety of ways to enjoy the Ocean Casita. Ownership, as expected, entitles one to the world-class services and amenities of Terranea. (Emphasis added, source, Terranea Website, April 20, 2006.)

The website says that the resort includes a 400 room hotel –the number of rooms that exist on the 582 guestroom site without counting the 182 guestrooms already approved for conversion to condominiums in the villas and casitas. Newspaper ads also described the units as “homes”. **The applicant explained at the hearing that the key word was “resort homes” –that the language indicated that the project was not intended for full time living and that its presentations to buyers also showed that the project was a good investment to a person who wanted to earn money from visitors.** Although the website does not describe the limitations, **the applicant testified that** ~~apparently~~ when buyers actually visit the on-site show room, they are provided a “fact sheet” that explains the limitations that the City and the Commission have imposed on occupancy of the condominium units.

Securities and Exchange Commission (SEC)

Some of the gaps of the presentation to buyers may derive from a contradiction between the SEC rules regarding investors in securities and the applicant's intention to sell the units for limited term occupancy and rental to the public. The Securities and Exchange Commission (SEC) has examined whether or not resort condominiums should be considered a security. The units are sold as commercial condominiums under a parcel map. The developer states that the units cannot be marketed based on earnings an owner can make off the units unless they are listed as securities, so the earnings from renting the units are not the reason to buy the unit. This means that renting the units and the income to be expected are not emphasized in promotional materials. The SEC concluded that condominium hotel rooms were not securities on the basis of rules that seem to conflict with the rules that the City and the Coastal Commission have imposed. The Commission

and the City in response to these rules allowed the owner to market (rent out) their units themselves so they would not be in a rental pool, and subject to SEC rules. However, the SEC rules also require that the units be marketed as homes, with limited information on the rental and income-producing program. The SEC decision that the applicant provided enlarges on owners' ability to use their unit as a home, on separation between the rental business and sales, and finds that "renting the units should be incidental". **In response to concerns that** these SEC requirements **are** is-not consistent with arguments that the developer is making, **the applicant argues that in fact most of the buyers are interested in the investment as a source of income or as part of their tax planning, and have no intention of occupying the unit as a home. In response to the SEC, the applicant has adjusted its CC&Rs to give the owners the option of choosing their own rental agent, but continues to make it clear to buyers that the units will be rented as hotel accommodations.** The applicant argues that features of ownership and limitations on occupancy, will make the units part of the hotel.

Department of Real Estate (DRE)

As part of the process of "reserving a unit", prospective owners pay a down payment and are provided a preliminary report from the Department of Real Estate (DRE). The preliminary report is a typical condominium report for a residential condominium development and does not address issues unique to this proposal, which are the limitations on owner occupancy and the availability of the units as public accommodations. The Department of Real Estate report does not discuss the limits on owners' rights established in a limited occupancy resort condominium. Instead, it concentrates on issues more typical to condominiums: high-density living and governance by a board. Staff discussed this matter with the Department of Real Estate Managing Deputy Commissioner, Robert D. Gilmore. Mr. Gilmore explained that the Department of Real Estate is required to issues a *pro forma* report within a limited number of days after an application for condominium is received, but in the coastal zone the final report will not be issued until the coastal development permit is issued. The report is available to people who are reserving a unit and describes the typical imitations on condominium ownership but doesn't describe the limitations of owning a limited occupancy condominium, although it does advise buyers to read the CC&Rs. The DRE concern is not the same as the Coastal Commission's – their concern is the viability of the development and the safety of the investments. In this case they perceive the viability of the development is dependent on the continued ability of the hotel to rent rooms that support the amenities that serve the condo owners. The DRE notes it does consider in its reports whether a condo hotel development would be successful as private condominiums if it failed as a hotel. The report on this development is not yet available.

The applicants indicate that the reason they are pressing for this second conversion is financial. Financing, they say, is difficult and construction costs have risen enormously, making it necessary for them to convert their units to condos. They state that in recent months, costs of building supplies and material have risen to such an extent that it is not possible for them to build a hotel that does not have a strong component of private owners.

The Commission acknowledges that the applicant indicates that the conversion is driven by its need to raise money to undertake construction in the atmosphere of rising costs. **To protect the site as a public access site, the Commission has imposed special conditions on the management and occupancy of the units, including requirements to limit duration of stays and total number of days of use per year, and requiring the operator to maintain records concerning the number of days of use of the units by the owners.** However, the Commission cannot make a long-term commitment of land use of a strategic public access site based on a temporary economic situation. There are alternatives, such as the construction of a less expensive structure, to reduce construction costs. **Therefore, the Commission finds that, with conditions to ensure that this project functions as a visitor serving use this project can be approved.**

If as a result of the conversion, the units become private residences, the development will be inconsistent with the Commission's original approval, with the Coastal Act public recreation policies and with the land use designations that apply to this site. **In this case, the Commission can** While the Commission supported the conversion of the initial 182 guestrooms, it cannot support conversion of 106 more guestrooms, including suites in the hotel building itself **to condominium ownership, by imposing conditions to ensure that they do not simply become private residences.** because the change, **As conditioned to restrict the length of stay, the number of days of private use and the availability of the units to the public, the conversion of fewer than half the guestrooms,** would **not** potentially change the character of an accommodation that was approved because it conforms with the Coastal Act policies giving priority to visitor serving uses. **As conditioned,** the conversion of **these 106 rooms, in addition to the 182 guestrooms previously converted, fewer than** half the guestrooms **in the hotel, will be** **to private** is inconsistent with Sections 30221 and 30222 of the Coastal Act, the public access **and recreation** policies of the Coastal Act and with the land use designations and policies of the Rancho Palos Verdes certified Land Use Plan, **as the hotel will be managed according to the special conditions described above.** and must be denied.

C. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect, which the activity may have on the environment.

The project is located on the only parcel in the City of Rancho Palos Verdes designated for visitor serving commercial use. It is one of the last shoreline parcels of any significant size in Los Angeles County that is available for development. Endangered species have been

**A-5-RPV-02-324-A5
REVISED FINDINGS**

Page 22 of 24

identified on the sea cliff on the site, potential geologic hazards have been investigated, and existing trails have been surveyed. Numerous studies have been undertaken concerning these issues, and the original permit and previous amendments have been conditioned to assure that the project will not have a significant adverse impact on coastal access or resources, and that it is consistent with the certified LCP policies relative to public access, recreation, habitat, and natural hazards.

The Commission in considering this application has taken note of the number of conversions of visitor-serving recreational developments to condominiums that it has approved statewide and the number of requests that are pending. While an individual development may be managed to assure a measure of continuing public use, the Commission must take note of the sheer number of requests for such conversions. If a third of California large coastal hotels convert to condos, and owners use their units for two weeks in the three-month summer season, almost 17 percent of the available nights in those hotels will not be available to the public. If a larger percentage of hotels increase, and users take advantage, under the present proposed restrictions, of a 29 day stay, almost a third of the hotel rooms subject to the programs could be occupied by private owners and their guests, and unavailable to the general public. While the rules of the game encourage rental of the units, they also reserve the right of owners to book the rooms themselves, diverting the hotel rooms by referral, to friends and acquaintances of the owners over the general public. When the Commission examines the potential cumulative impact of many such conversions, and the potentially increasing burden of enforcing multiple agreements with individual and unique arrangements, the possible cumulative impacts on availability of hotel rooms is potentially serious. Once the units have been converted and sold, they and their agreements are permanently committed to this system of managing public accommodations.

In this case, the Commission considered the alternative of denial. Instead the Commission found that ~~has considered~~ the alternative of approval with a condition requiring similar restrictions to those imposed on the conversion of the initial 82 units **is consistent with the public access, recreation and development policies of the Coastal Act and would not result in an individual or cumulative impact that could fairly be characterized as removal of the hotel as a visitor serving facility.** ~~However,~~ The Commission ~~is unable to find~~ **s** that the cumulative effect of the conversion of almost **the proposed 70 additional units to private condominium ownership, is that a total of 152 units will be in condominium ownership, which is fewer than** half the guestrooms on the site **(288 out of 582 guestrooms).** **This number of privately owned units** would not add to the difficulty of retaining this site as a genuine commercial visitor serving facility, even with such conditions imposed. The Commission finds that ~~there are feasible alternatives to conversion of~~ **the proposed 70** additional units to condominium **ownership,** ~~such a constructing a smaller hotel, or using less expensive materials available that would substantially lessen any~~ **would not have** significant adverse effects ~~that the activity may have on the environment.~~

**A-5-RPV-02-324-A5
REVISED FINDINGS**

Page 23 of 24

The Commission ~~cannot approve a~~ **finds the proposed** project that would **not** have significant impacts on the ability of the public to visit the coastline at a public hotel. The proposed development with the proposed amendment is ~~not~~ consistent with the access and public recreation policies of the Coastal Act and the policies of the certified LCP. There are **no** other feasible mitigation measures or alternatives that would lessen significant adverse impacts the proposed change would have on public access and public recreation, which have not been presented to the Commission for detailed examination. Therefore, the Commission finds that the proposed project is ~~not~~ the least environmentally damaging feasible alternative and **is** ~~cannot be found~~ consistent with the requirements of the Coastal Act to conform to CEQA.

**A-5-RPV-02-324-A5
REVISED FINDINGS**

Page 24 of 24

APPENDIX A

The text of one subsection of Special Condition 5 was amended in this action. The remaining standard and special conditions in effect are available for inspection in Commission offices. To avoid confusion since those special conditions were amended in a subsequent action (A-5-RPV-02-324-A6; June, 2006), the other conditions applicable to this project are not included in the appendix of these revised findings. The special conditions applicable at the time of the Commission's action are attached to the May 2006 staff report. The special conditions presently applicable to the project are found in the notice of intent to issue permit for A-5-RPV-02-324-A6, which is available in the Commission's office.