

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370

Staff: Toni Ross-SD  
Staff Report: October 30, 2008  
Hearing Date: November 12-14, 2008



# Th 8.5a

## STAFF REPORT: DISPUTE RESOLUTION

**DISPUTE RESOLUTION**

**NUMBER:** City of Oceanside LCPA 2-08 (Downtown "D" District)-EDD

**APPLICANTS:** City of Oceanside

**AGENT:** Kathy Baker and Jane McVey

**DESCRIPTION:** Resolution of dispute regarding the Commission action on resubmittal of the City's request to revise the certified Zoning Ordinance for the D Downtown District to address permissible commercial and visitor-serving uses, condo-hotels and fractional units within the District and the Redevelopment Area. The dispute relates to whether the Commission intended to remove joint liability between all parties, or retain joint liability between the owner and operator of the hotel for compliance with the requirements of the Zoning Code related to hotel operation.

---

**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending the Commission adopt the language modifications removing joint liability between the hotel owner/operator and the individual condominium or fractional unit owners, but retain the language requiring joint and several liability between the hotel owner and hotel operator, if they are separate entities. Based on a review of the hearing tape and the substance of the amending motion regarding joint and several liability, Commission staff believes that it was the intent of the Commission's July action to remove joint and several liability only between the hotel owner/operator and the individual unit owners. The applicant disagrees and believes that the Commission's July action removed all joint liability between the owner/operator and the unit owners, and also between the owner and operator if they are separate entities. Because the record is unclear as to exactly what the Commission intended in its amending motion, staff has prepared two versions of Suggested Modifications Nos. 4 and 5, one in which joint and several liability is retained between the hotel owner and hotel operator if they are separate entities and one in which all joint liability is removed (ref. Attachments A & B). Staff seeks the Commission's guidance as to which version of the suggested modifications it intended to approve through its actions at the July 2008 hearing.

## I. STAFF RECOMMENDATION ON DISPUTE RESOLUTION

Staff recommends that the Commission adopt the following findings and resolution to determine that:

**MOTION:** *I move that the Commission reject the Executive Director's determination that the Commission retained joint and several liability between the hotel owner and hotel operator when it approved Oceanside's LCPA 2-08, with suggested modifications, on July 9<sup>th</sup>, 2008.*

Staff recommends a **NO** vote on the motion. Following the staff recommendation will result in the Commission upholding the Executive Director's determination that the suggested modifications for Oceanside's LCPA 2-08 include imposition of joint and several liability between the hotel owner and the hotel operator.

### **RESOLUTION:**

The Commission hereby finds that the suggested modifications for Oceanside's LCPA 2-08 include imposition of joint and several liability between the hotel owner and the hotel operator, if they are separate entities.

## II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

### A. Amendment Description and LCP Amendment History

At the December, 2007 hearing the Commission heard the City of Oceanside's proposed LCP Amendment #1-07 (Downtown "D" District). The proposed LCP Amendment amended Articles 4, 12, and 41 of the Certified Implementation Plan. These modifications allowed for Limited Use Overnight Accommodations within Subdistricts 1 and 12 of the Redevelopment Area. The amendment also identified those uses within the Downtown District that could be classified as "Visitor-serving", and eliminated certain uses in the redevelopment area that were no longer viable or desired, and defined and permitted new uses that have become desirable. Article 41 was amended to allow for the Economic Development and Redevelopment Director to approve administrative permits where currently only the Planning Director has the authority to do so.

A portion of the amendment was a project specific revision to allow for the development of a 384 room hotel, with some portion being utilized as fractional hotel and

condominium hotel units. To date, however, the specifics of the proposed hotel have not been finalized (i.e. number of fractional and/or condo hotel units). Some restrictions were suggested by the City to regulate the use of the proposed Limited Use Overnight Accommodations. However, Commission staff recommended a number of suggested modifications intended to more specifically address the conditions and restrictions necessary for such a proposed development. The Commission, in its December 2007 action, approved the LCP amendment with changes to these conditions and restrictions.

However, the language approved for the conditions of the condominium and fractional unit portion of the development raised serious concerns for the City and the project proponents. The Commission gave direction to all parties (City, project proponents and Commission staff) to work together to resolve these issues and come forward with language acceptable to all parties and reflective of the Commission intended action. Following this direction, the City and Commission staff attempted to develop adequate and mutually agreeable language. However, during the process it became apparent that the extent of modifications necessary would go beyond what was previously approved by the Commission. Commission staff directed the City to develop desirable language for the use restrictions on the condo- and fractional use hotel units and propose this as an LCPA resubmittal.

On May 27, 2008, the City of Oceanside resubmitted City of Oceanside LCP Amendment #2-08 with proposed changes to zoning ordinances Articles 4, 12, and 41 for Commission review. This proposal was the result of extensive coordination between City and Commission staff and legal counsel for the project proponent and incorporated the majority of modifications suggested and approved by the Commission in December 2007. Some modifications were newly proposed because the project's proponent felt that the Commission did not adequately address the conditions of use placed on Fractional Ownership hotel units, given how fractional use units function. The City and Commission staff worked together to develop language that still met the intent of the Commission's action and allowed for the necessary function of these types of overnight accommodations. The resubmittal also proposed the removal of the requirement for in-lieu fees associated with the demolition of lower cost overnight accommodation and the subsequent redevelopment of higher cost hotel/motel units, as approved by the Commission in December, 2007.

On July 9, 2008, the Commission approved the LCP Amendment #2-08 with various modifications, including the removal of the requirement for in-lieu fees; however, the Commission increased the City's existing LCP Policy protecting lower cost overnight accommodation in the Coastal Zone. The City's current policy protects 375 lower cost overnight accommodations. As approved by the Commission, the City would now be required to protect 400 units, as well as provide a study and/or finding as to how any future demolition of existing overnight accommodations would affect the required stock minimum and a method to assure the continued function and protection of existing lower cost overnight accommodations.

B. Remaining Dispute for Resolution – Joint and Several Liability.

As previously discussed, Commission staff has developed standard conditions/restrictions for condominium hotel developments, and applied these conditions/restrictions to the proposed condominium hotel units as well as the fractional use development portion associated with the subject development. The project's proponents expressed their concerns to Commission staff regarding the differences between how a Fractional Use and Condominium Hotel development differed. Based on these concerns and subsequent conversations, Commission staff and the project's proponents agreed to the majority of requested modifications as presented to the Commission in July. However, the inclusion of joint and several liability had remained unresolved and was addressed by the Commission at the July hearing. Commission staff felt that this type of accountability was necessary to ensure that the conditions that would be imposed in any coastal development permit to protect public access to such a facility could be adequately enforced.

At the July 2008 hearing, the Commission agreed with the applicant that holding individual unit owners accountable for the actions of the hotel owner/operator and vice versa would not be feasible and might result in the loss of funding for the hotel project in general. The Commission accepted the City's and project proponent's argument that such a condition might prevent a hotel operator from participating in the project. Thus, the Commission removed joint liability between the hotel owner/operator and the individual unit owners, but retained several liability for all parties.

What is less clear from review of the hearing and the content of the motion removing joint and several liability is whether the Commission also intended to remove joint liability between the hotel owner and hotel operator, if they are separate entities. The amending motion passed by the Commission removed joint liability from two of the suggested modifications but not from a third suggested modification where joint and several liability was imposed between the hotel owner and hotel operator if they become separate entities (see Suggested Modification No. 2). In addition, the vast majority of the Commission's discussion of the joint and several liability issue revolved around whether joint and several liability should be imposed between the hotel operator and the individual unit owners. Even the representative of the project proponent spoke exclusively about the practical and equitable issues raised if joint and several liability were imposed between the hotel operator and individual unit owners. He did not discuss joint and several liability between the hotel owner and hotel operator. There was very little discussion of the effect of joint and several liability between the hotel owner and hotel operator if they are separate entities.

When the City presented its concerns related to the joint and several liability issue, however, it clearly stated that it had concerns with and wanted to remove all joint and several liability in the suggested modifications, including that between the hotel owner and hotel operator. What is not clear is whether the Commission was intentionally silent on joint and several liability between the owner and operator and only acknowledged the

problems related to joint liability with multiple individual owners, or the Commission intended to eliminate joint liability between all parties.

In addition, while joint and several liability was imposed between the hotel owner and hotel operator in Suggested Modification No. 2, there were also references to such liability in Suggested Modification Nos. 4 and 5. It is thus possible that while the Commission only amended Suggested Modifications Nos. 4 and 5, it intended to make similar changes to Suggested Modification No. 2 in order to harmonize all of the suggested modifications. The other option is the Commission only intended to remove joint liability in Suggested Modification # 4 and 5 if it applied to the individual unit owners and the owner/operator.

Given that there are ambiguities raised by the Commission discussion and the content of the amending motion at the July Commission meeting with respect to the scope of changes it intended to make to the joint and several liability portions of the suggested modifications, Commission staff would like to seek further guidance from the Commission as to what it intended.

While staff believes the record supports the conclusion that the Commission only removed joint and several liability between the hotel owner/operator and individual unit owners, it acknowledges that the Commission may in fact have removed all joint and several liability in the suggested modifications. Staff has thus prepared for the Commission's review two versions of Suggested Modification Nos. 4 and 5 (ref. Attachments A & B). One version retains joint and several liability between the hotel owner and hotel operator if they are separate entities, and the second version removes joint liability entirely. Suggested modification #2, which also references joint and several liability can be modified, if necessary, for the revised findings hearing depending on the Commission's decision on the dispute resolution. In conclusion, staff is seeking the Commission's guidance, through this dispute resolution, to determine which version of the suggested modifications it intended to approve when it took its action at the July 2008 Commission meeting.

**ATTACHMENT A – DISPUTE RESOLUTION**  
**CITY OF OCEANSIDE LCP AMENDMENT #2-08 -**  
**EDD**  
**Coastal Commission Suggested Modifications 2, 4 AND 5 (adopted  
7/9/08)**

**Joint and Several Liability Retained Between Owner and  
Operator**

The underlined sections represent language that are added by staff recommendation, and the ~~struck-out~~ sections represent language that staff recommendations be deleted.

**Bolded strike-out and underline indicate changes made to reflect the Commission action of July 9, 2008.**

**2. Suggested Modification #2**

Revise Article 4a section 450 - Special Requirements - as follows:

**Visitor Accommodations-Special requirements**

1. Hotel Owner/Operator – For a Limited Use Overnight Visitor Accommodation, as defined below, a Hotel Owner/Operator is defined as the entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner, both shall be jointly and severally responsible for ensuring compliance with the requirements described in the Local Coastal Plan and/or recorded against the property, as well as jointly and severally liable for violations of said requirement and restrictions. The owner/operator shall manage all guestrooms/units as part of the hotel inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guest and owners. The owner/operator shall retain control of all land, structures, recreational amenities, meeting spaces, restaurants, “back of house” and other guestroom facilities.

**4. Suggested Modification #4**

Revise Article 4a section 450 - Special Requirements, Condominiums Hotels - as follows:

5. Condominium Hotels. Such development is subject to the following conditions/restrictions:

a) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of hotel rooms in an approved Limited Use Overnight Visitor Accommodation to timeshare, fractional or condominium-hotel units; provided that after any such conversion, the ratio of timeshare, fractional and condominium-hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project, with an approved amendment to the coastal development permit for the project.

b) A maximum of 25% of the total number of guestrooms/units in the total project as a whole may be subdivided into condominium hotel units and sold for individual ownership.

c) ~~The hotel owner/operator of a Condominium-Hotel~~ shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. The hotel operator must be the same entity for both the traditional hotel guestroom/units and the condo hotel units.

d) The Condominium Hotel facility shall have an on-site hotel operator to manage booking of all guestrooms/units (both traditional and condo hotel guestrooms/units). Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for use by the general public, either through the operator or a rental agent other than the operator, on the same basis as a traditional hotel room.

~~d~~e) As used in this Section 5, the term "to book" or "booking" shall mean the confirmation of a reservation request for use of a Condominium-Hotel unit by either the owner of the unit, the owner's permitted user or by a member of the public, and the entry of such confirmation in the operator's reservation data base.

Each owner of a Condominium-Hotel unit shall have the right, in its sole discretion, to engage either the operator or a rental agent of his or her choice ~~(other than the operator)~~ to serve as the rental agent for their unit, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis. The operator ~~of the Condominium-Hotel~~ shall have the right and obligation to

offer for public rental all time periods not reserved by a Condominium-Hotel unit owner for his or her personal use, or for the use of an owner's permitted user, or reserved for use by a public renter procured by an owner's rental agent who is not the operator. Whether or not the hotel operator is selected as an owner's exclusive rental agent, the operator shall manage the booking and the reservation of all units in the Condominium-Hotel. All Condominium-Hotel unit owners, and their rental agents, must comply with the following restrictions:

- i. ~~Except for their personal use, or use by their permitted users,~~ Condominium-Hotel unit owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units;
  - ii. As more fully described in Section 5(sp), below, Condominium-Hotel unit owners shall report and certify the rental rate and terms of any rental of the owner's unit made independently of the operator, and the operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the Condominium-Hotel unit owner a reasonable fee;
  - iii. Based on its own rentals and also those certified by those owners who have reported rentals made by them directly or by another rental agent they have selected, pursuant to Section 5(sp) below, the operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.
- e) The hotel operator shall market all rooms to the general public. Owners of individually owned hotel units may also independently market their units, but all booking of reservations shall be made by and through the hotel operator.
- f) The hotel operator shall manage all guestrooms/units as part of the hotel inventory of the Condominium Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing guestrooms/units for use by



guests/owners, a service for which the operator may charge the unit owner a reasonable fee.

- g) If the hotel operator is not serving as the exclusive rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill public demand, ~~at a rate similar to comparable accommodations in the hotel.~~ The owner or an owner's rental agent may not withhold units from use unless they have already been reserved for use by the owner, consistent with the owner's maximum use right, as set forth in Section 5(~~k~~), below. In all circumstances, the hotel operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- h) All guestrooms/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.
- i) All individually owned hotel units shall be rented at a rate similar to that charged for the traditional hotel rooms of a similar class or amenity level in the California coastal zone.
- j) The hotel operator shall maintain records of usage by owners and guests and rates charged for all guestrooms/units and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.
- ~~k~~) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) or their guests for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- ~~l~~) The occupancy limitations identified in Section 5(~~k~~) above, shall be unaffected by multiple owners of an individually owned hotel unit or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restriction as if they were a single, continuous owner.
- ~~m~~) No portion of the Condominium Hotel may be converted to full-time occupancy of a condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel, other than as provided for in Section 5(a), above.
- ~~n~~) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for a Condominium Hotel within the Downtown

"D" District, the landowner(s) of the property upon which the traditional guestrooms/units (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership (e.g. timeshares or condo-hotel units, except as provided in Section 5(a) above) without an approved Coastal Development Permit. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director and the Executive Director of the Coastal Commission prior to issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to, through recordation of a lease restriction, by any existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and any lessee(s), and on all successors and assigns of the landowner(s) and any lessee(s), including without limitation any future lien holders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections 5(a) through (~~m~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development Director and the Executive Director of the Coastal Commission that such an amendment is not legally required.

~~om~~) The hotel owner shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Economic and Community Development Director for review and approval and to the Executive Director of the Coastal Commission for review and comment, a Declaration of Restrictions or CC&Rs (Covenants, Conditions & Restrictions) which shall include:

1. All the specific restrictions listed in Sections 5(a) through (~~m~~) above;
2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
3. A statement that provisions of the CC&Rs (Declaration of Restrictions) that reflect the requirements of Sections 5(a) through (~~m~~) above, cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with Sections 5(a) through (~~m~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director that an amendment is not legally required. If there is a section of the CC&Rs (Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall

cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs (Declaration of Restrictions) on amendments.

pñ) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Condominium Hotel.

qø) The provisions of the CC&Rs (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 5(a) through (mñ), above, may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after a copy of the proposed amendments have been submitted to the Executive Director of the Coastal Commission for comment, that an amendment is not legally required.

r) The hotel owner/operator or any successor-in-interest ~~shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and~~ shall be responsible ~~in all respects~~ for ensuring that ~~through no act or omission will it assist, enable or in any other manner facilitate any other party all parties~~ subject to these restrictions ~~comply with the restrictions in violating any of these terms and conditions~~. Each owner of an individual guestroom/unit is ~~jointly and severally liable with the hotel owner/operator~~ for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

sø) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:

1. Each owner of any individual Condominium Hotel unit is ~~jointly and severally liable with the hotel owner/operator~~ for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and
2. The occupancy of a Condominium Hotel unit by its owner(s) and their guests is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that

the coastal development permit contains additional restrictions on use and occupancy; and

3. Each owner of a Condominium Hotel unit who does not retain the operator of the hotel as his or her rental agent shall be obligated by the governing documents of the Condominium Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.
- te) The hotel owner/operator and any successor-in-interest hotel owner or operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).
- uf) The hotel owner/operator and any successor-in-interest hotel owner or operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel guestrooms/units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual Condominium Hotel guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 5(a) through (n) above. The hotel owner/operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 5(vs) below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.
- ys) Within 120 days of the end of the first calendar year of hotel operations, the hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring by the hotel owner/operator ~~of the use of the hotel units.~~ The hotel operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied

upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.—

Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report regarding compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium Hotel to the Economic and Community Development Director and the Executive Director of the Coastal Commission. The audit required after the first year of operations and all subsequent reports shall evaluate compliance by the hotel operator and owners of individual Condominium Hotel guestrooms/units during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Economic and Community Development Director. The Economic and Community Development Director may grant such approval if each of the previous reports revealed compliance with all restrictions imposed above. The Economic and Community Development Director or ~~and~~ the Executive Director of the Coastal Commission may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Condominium Hotel shall require the operator and each owner of a condominium to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Condominium Hotel project.

w\*) **The hotel owner/operator, or any successor-in-interest, shall be responsible for complying with the terms and conditions stated above at all times in perpetuity and shall be liable for violating these terms and conditions.** If the hotel owner and the hotel operator are or at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring ~~monitoring~~ compliance with the requirements identified above, and for reporting material non-compliance to the Economic and Community Development Director. If the hotel owner and hotel operator are or become separate entities, they shall be jointly and severally liable for violations of ~~the operator shall be liable for its failure to monitor and to report non-compliance with~~ the terms and conditions (restrictions) identified above.

xy) A coastal development permit application for a Condominium Hotel shall include a plan specifying how the requirements outlined in Article 4 Section

450 of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&Rs (Declaration of Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Article 4 Section 450 of the Zoning Ordinance above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Condominium Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section Article 4 Section 450 of the Zoning Ordinance and this section including deed restrictions and CC&Rs (Declaration of Restrictions) shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after a copy has been delivered to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

#### **5. Suggested Modification #5**

Revise Article 4a section 450 - Special Requirements, Fractional Ownership Hotel - as follows:

6. The Fractional Ownership Hotel and the Traditional Hotel which together comprise a Limited Use Overnight Visitor Accommodation are subject to the following conditions/restrictions:

- a) As used in Section 6, the following terms are defined as:
  - (i) “booking” or “to book” shall mean the confirmation of a reservation request for use of a Fractional Ownership Hotel unit by either the owner of a Fractional Interest, his permitted user, an Exchange User or by a member of the public, and the entry of such confirmation in the operator’s reservation data base.
  - (ii) “Exchange Program” means the use of a unit in a Fractional Ownership Hotel by a member who is the owner of occupancy rights in a unit of a fractional project other than the Fractional Ownership Hotel, or in the Fractional Ownership Hotel during time periods other than the particular time period for which a unit in the Fractional

Ownership Hotel has been reserved for exchange, pursuant to a program:

- (a) in which the owners of fractional interests in fractional interest projects other than the Fractional Ownership Hotel is operated and/or managed by the operator of the Fractional Interest Hotel or by another entity, or
  - (b) which is operated by an entity that specializes in interval exchanges, where such member has exchanged their occupancy rights for the use of a Fractional Ownership Hotel unit during the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange.
- (iii) "Exchange Use" means the use of a unit in the Fractional Ownership Hotel pursuant to an Exchange Program.
  - (iv) "Exchange User" means a person who is occupying a Fractional Ownership Hotel unit for Exchange Use.
  - (v) "Fractional Interest" means a Timeshare in a Fractional Ownership Hotel where the undivided interest in a condominium conveyed to an owner is greater than a 1/26th undivided interest, or, if the Fractional Ownership Hotel is not subdivided into condominiums, in which the undivided interest conveyed to an owner is greater than a 1/26 x (the number of units in the Fractional Ownership Hotel) undivided interest in the legal parcel comprising the Fractional Ownership Hotel.
  - (vi) "Fractional Ownership Hotel" means the portion of a Limited Use Overnight Visitor Accommodation in which ownership of individual units is comprised of Fractional Interests.
  - (vii) "Traditional Hotel" means the portion of a Limited Use Overnight Visitor Accommodation that is operated as a traditional hotel (i.e. the guestrooms are not owned or operated as timeshares or fractional units).
- b) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Visitor Overnight Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of units in a Fractional Interest project or Condominium Hotel to Fractional Interest or Condominium Hotel units; provided that after any such conversion, the ratio of Fractional Interest and Condominium Hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project.

- c) A maximum of 15% of the total number of guestrooms/units in the project as a whole may be subdivided into Fractional Interests.
- d) Either the owner/operator of the Traditional Hotel or the owner or operator of the Fractional Ownership Hotel shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities for both the Traditional Hotel and the Fractional Ownership Hotel.
- e) The Fractional Ownership Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms/units in the Fractional Ownership Hotel. The on-site hotel operator for the Fractional Ownership Hotel may be a different entity from the on-site hotel operator for the Traditional Hotel in the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part.

Each Fractional Interest owner shall have the right, in its sole discretion, to engage a rental agent of his or her choice, other than the operator, to serve as the rental agent for their Fractional Interest, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis commencing sixty (60) days in advance of a time period the owner has a right to reserve and use under the governing documents for the Fractional Ownership Hotel. The operator of the Fractional Ownership Hotel shall have the right and obligation to offer for public rental all time periods not reserved by a Fractional Interest owner for his or her personal use, for "Exchange Use" or for use by an owner's permitted user sixty (60) days in advance of any such occupancy period.

On and within this sixty (60) day window, members of the public shall have reservation rights equal to those for owners, their permitted users and Exchange Users. The Fractional Ownership Hotel operator shall manage the booking of the reservation of all guestrooms/units in the Fractional Ownership Hotel. All Fractional Interest owners, and their rental agents, must comply with the following restrictions:

(A) except for their personal use, or use by an owner's permitted users or an Exchange User, Fractional Interest owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units during their fractional time periods;

(B) Fractional Interest owners shall certify the rental rate and terms of any rental of the owner's occupancy periods made independently of the operator, and the hotel operator shall book all unit reservations in the operator's reservation database, a service



for which the operator may charge the Fractional Interest owner a reasonable fee;

(C) The Fractional Ownership Hotel operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Fractional Interest owner a reasonable fee.

- f) The operator shall market the rental of available units in the Fractional Ownership Hotel to the general public and shall have a right to charge each Fractional Interest owner a reasonable fee for such marketing.
- g) Subject to the requirements of the California Business and Professions Code pertaining to management agreements for Timeshare plans, including, without limitation, restrictions on the term of such management agreements, the operator shall manage all units in a Fractional Ownership Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.
- h) The operator, as the non-exclusive rental agent for the owner of a Fractional Interest entitled to an occupancy period, shall offer for rent to the public any guestroom/unit which has not been reserved by its owner, his or her permitted user or an Exchange User commencing sixty (60) days in advance of such occupancy period, ~~at a fair rental rate established by that for comparable accommodations in the , as further described in Section 6(j) below.~~ No Fractional Interest owner nor such owner's rental agent may withhold units which have not been reserved by the owner or such owner's permitted users or an Exchange User sixty (60) days or less prior to the commencement of an occupancy period from rental to the public. Nothing in the preceding sentence shall mean that an owner of a Fractional Interest, or such owner's permitted users or an Exchange User, may not elect to reserve a unit in a Fractional Ownership Hotel at any time after the commencement of such sixty (60) day period, provided that the operator or the owner's rental agent has not then rented the unit to a member of the general public. In all circumstances, the Fractional Ownership Hotel operator shall have full access to the guestroom/unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- i) All guestrooms/unit keys shall be electronic and created by the operator upon each new occupancy to control the use of the individually owned Fractional Ownership Hotel units.

- j) All individually owned Fractional Ownership Hotel units shall be rented at a rate similar to that charged ~~by the hotel operator for the traditional hotel~~ rooms of a similar class or amenity level in the California coastal zone.
- k) Each individually owned Fractional Interest shall be used by its owner(s) or their guests to occupy a unit in a Fractional Ownership Hotel for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- l) The use period limitations identified in Section 6(k) above, shall be unaffected by multiple owners of a Fractional Interest or the sale of a Fractional Interest to a new owner during the calendar year, meaning that all such owners of any given Fractional Interest shall be collectively subject to the use restriction in this Section 6 as if they were a single, continuous owner. No portion of a Fractional Ownership Hotel may be converted to a full-time occupancy condominium or to any other type of a Limited Use Overnight Visitor Accommodation other than as provided for in Section 6(b) above
- m) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part, the landowner(s) of the property(ies) within the Downtown "D" District upon which the associated Traditional Hotel is developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director after delivery to the Executive Director of the Coastal Commission for review and comment, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership, except as permitted in Section 6(b) above. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director after delivery to the Executive Director of the Coastal Commission for review and comment, prior to issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by any existing lessee(s) of the affected property(ies), through recordation of a lease restriction, and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 6(a) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the

Executive Director of the Coastal Commission for review and comment, that such an amendment is not legally required.

- n) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Economic and Community Development Director and review and comment by the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC&Rs (Covenants, Conditions & Restrictions) which shall include:
  - 1. All the specific restrictions listed in Sections 6(b) through (l) above;
  - 2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
  - 3. A statement that provisions of the CC&Rs (Declaration of Restrictions) that reflect the requirements of Sections 6(b) through (~~l~~) above cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with Sections (b) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required. If there is a section of the CC&Rs (Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs on amendments.
- o) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Fractional Ownership Hotel.
- p) The provisions of the CC&Rs (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections 6(b) through (~~l~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

- q) The Fractional Ownership Hotel owner/operator or any successor-in-interest shall ~~maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall~~ be responsible ~~in all respects~~ for ensuring that ~~through no act or omission will it assist, enable, or in any other manner facilitate any other party all parties~~ subject to these restrictions ~~in violating any of these terms and conditions. comply with the restrictions.~~ Each owner of an individual guestroom/unit is ~~jointly and~~ severally liable ~~with the Fractional Ownership Hotel owner/operator~~ for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's Fractional Interest. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.
- r) All documents related to the marketing and sale of the Fractional Interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:
1. Each owner of a Fractional Interest is ~~jointly and~~ severally liable ~~with the Fractional Ownership Hotel owner/operator~~ for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's Fractional Interest;
  2. The occupancy of a Fractional Ownership Hotel unit by the owner of a Fractional Interest is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not reserved or in use by the owner, the owner's permitted user or an Exchange User, the owner's time shall be made available for rental by the operator and by the owner's own rental agent to the general public sixty (60) days in advance of an occupancy period pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and
  3. Each owner of a Fractional Interest who does not retain the operator as his or her exclusive rental agent is obligated by the governing documents of the Fractional Ownership Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

s)

- s¶) The initial owner of a Fractional Interest and any successor-in-interest owner of a Fractional Interest, and each future individual unit owner shall obtain, prior to sale of a Fractional Interest, a written acknowledgement from the buyer of that Fractional Interest that occupancy of a unit by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the operator and/or the buyer's rental agent to the general public at least sixty (60) days in advance of an occupancy period, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).
- ts) The operator and any successor-in-interest to the operator shall monitor and record the occupancy and use of the Fractional Ownership Hotel by the general public and the owners of individual Fractional Interests throughout each year. The monitoring and record keeping shall include specific accounting of all owner usage of each individual guestroom/unit in the Fractional Ownership Hotel. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 6(a) through (l) above. The owner/operator shall also maintain documentation of rates paid for hotel occupancy and of marketing efforts by the operator, and ~~from the certified reports submitted to the operator by the Fractional Interest owners,~~ by the rental agents of owners other than the operator. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 6(ut) below. Within 30 days of commencing hotel operations, the operator of the Fractional Ownership Hotel shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.
- ut) Within 120 days of the end of the first calendar year of hotel operations, the Fractional Ownership Hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the hotel owner/operator. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.

Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report to the Economic and Community Development Director and the Executive Director of the Coastal Commission, regarding compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Fractional Ownership Hotel. The audit required after one year of operations and all subsequent reports shall evaluate compliance by the Fractional Ownership Hotel operator and owners of individual Fractional Interests during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Economic and Community Development Director. The Economic and Community Development Director may grant such approval if each of the previous reports revealed compliance with all restrictions imposed above. The Economic and Community Development Director or ~~and~~ the Executive Director of the Coastal Commission may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Fractional Ownership Hotel shall require the operator and each owner of a Fractional Interest to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Fractional Ownership Hotel.

vñ) **The Fractional Ownership Hotel owner/operator, and any successor-in-interest, shall be responsible for complying with the terms and conditions stated above at all times in perpetuity and shall be liable for violating these terms and conditions.** If the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator at any point become separate entities, the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above.  
If the Fractional Ownership Hotel owner and Fractional Ownership Hotel operator become separate entities, they shall be jointly and severally liable for **their** violations of the terms and conditions (restrictions) identified above.

w✶) Prior to the issuance of a coastal development permit for a Fractional Ownership Hotel, an applicant shall submit a plan for approval specifying how the requirements outlined in Article 4 Section 450 of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&Rs (Declaration of

Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement that will be offered to the Fractional Interest owners by the Fractional Ownership Hotel operator. The plan must demonstrate that the applicant will establish mechanisms that provide the Fractional Ownership Hotel operator and any successor-in-interest Fractional Ownership Hotel operator adequate legal authority to implement the requirements of Article 4 Section 450 of the Zoning Ordinance above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Fractional Ownership Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Article 4 Section 450 of the Zoning Ordinance and this section including deed restrictions and CC&Rs (Declaration of Restrictions) shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

**ATTACHMENT B – DISPUTE RESOLUTION**  
**CITY OF OCEANSIDE LCP AMENDMENT #2-08 -**  
**EDD**  
**Coastal Commission Suggested Modifications 2, 4 AND 5 (adopted**  
**7/9/08)**

**Joint Liability Removed for All Parties**

The underlined sections represent language that are added by staff recommendation, and the ~~struck-out~~ sections represent language that staff recommendations be deleted.

**Bolded strike-out and underline indicate changes made to reflect the Commission action of July 9, 2008.**

**2. Suggested Modification #2**

Revise Article 4a section 450 - Special Requirements - as follows:

**Visitor Accommodations-Special requirements**

1. Hotel Owner/Operator – For a Limited Use Overnight Visitor Accommodation, as defined below, a Hotel Owner/Operator is defined as the entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner, **both each** shall be ~~jointly and~~ severally responsible for **ensuring compliance complying** with the requirements described in the Local Coastal Plan and/or recorded against the property, as well as ~~jointly and~~ severally liable for violations of said requirements and restrictions. The owner/operator shall manage all guestrooms/units as part of the hotel inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guest and owners. The owner/operator shall retain control of all land, structures, recreational amenities, meeting spaces, restaurants, “back of house” and other guestroom facilities.

**4. Suggested Modification #4**

Revise Article 4a section 450 - Special Requirements, Condominiums Hotels - as follows:

5. Condominium Hotels. Such development is subject to the following conditions/restrictions:



a) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of hotel rooms in an approved Limited Use Overnight Visitor Accommodation to timeshare, fractional or condominium-hotel units; provided that after any such conversion, the ratio of timeshare, fractional and condominium-hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project, with an approved amendment to the coastal development permit for the project.

b) A maximum of 25% of the total number of guestrooms/units in the total project as a whole may be subdivided into condominium hotel units and sold for individual ownership.

c) ~~The hotel owner/operator of a Condominium-Hotel shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities.~~  
The hotel operator must be the same entity for both the traditional hotel guestroom/units and the condo hotel units.

d) The Condominium Hotel facility shall have an on-site hotel operator to manage booking of all guestrooms/units (both traditional and condo hotel guestrooms/units). Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for use by the general public, either through the operator or a rental agent other than the operator, on the same basis as a traditional hotel room.

~~d~~e) As used in this Section 5, the term "to book" or "booking" shall mean the confirmation of a reservation request for use of a Condominium-Hotel unit by either the owner of the unit, the owner's permitted user or by a member of the public, and the entry of such confirmation in the operator's reservation data base.

Each owner of a Condominium-Hotel unit shall have the right, in its sole discretion, to engage either the operator or a rental agent of his or her choice ~~(other than the operator)~~ to serve as the rental agent for their unit, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis. The operator ~~of the Condominium-Hotel~~ shall have the right and obligation to

offer for public rental all time periods not reserved by a Condominium-Hotel unit owner for his or her personal use, or for the use of an owner's permitted user, or reserved for use by a public renter procured by an owner's rental agent who is not the operator. Whether or not the hotel operator is selected as an owner's exclusive rental agent, the operator shall manage the booking and the reservation of all units in the Condominium-Hotel. All Condominium-Hotel unit owners, and their rental agents, must comply with the following restrictions:

- iii. ~~Except for their personal use, or use by their permitted users,~~ Condominium-Hotel unit owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units;
  - iv. As more fully described in Section 5(sp), below, Condominium-Hotel unit owners shall report and certify the rental rate and terms of any rental of the owner's unit made independently of the operator, and the operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the Condominium-Hotel unit owner a reasonable fee;
  - iii. Based on its own rentals and also those certified by those owners who have reported rentals made by them directly or by another rental agent they have selected, pursuant to Section 5(sp) below, the operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.
- e) The hotel operator shall market all rooms to the general public. Owners of individually owned hotel units may also independently market their units, but all booking of reservations shall be made by and through the hotel operator.
- f) The hotel operator shall manage all guestrooms/units as part of the hotel inventory of the Condominium Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing guestrooms/units for use by

guests/owners, a service for which the operator may charge the unit owner a reasonable fee.

- g) If the hotel operator is not serving as the exclusive rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill public demand, ~~at a rate similar to comparable accommodations in the hotel.~~ The owner or an owner's rental agent may not withhold units from use unless they have already been reserved for use by the owner, consistent with the owner's maximum use right, as set forth in Section 5(~~k~~), below. In all circumstances, the hotel operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- h) All guestrooms/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.
- i) All individually owned hotel units shall be rented at a rate similar to that charged for the traditional hotel rooms of a similar class or amenity level in the California coastal zone.
- j) The hotel operator shall maintain records of usage by owners and guests and rates charged for all guestrooms/units and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.
- ~~k~~) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) or their guests for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- ~~l~~) The occupancy limitations identified in Section 5(~~k~~) above, shall be unaffected by multiple owners of an individually owned hotel unit or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restriction as if they were a single, continuous owner.
- ~~m~~) No portion of the Condominium Hotel may be converted to full-time occupancy of a condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel, other than as provided for in Section 5(a), above.
- ~~n~~) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for a Condominium Hotel within the Downtown

"D" District, the landowner(s) of the property upon which the traditional guestrooms/units (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership (e.g. timeshares or condo-hotel units, except as provided in Section 5(a) above) without an approved Coastal Development Permit. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director and the Executive Director of the Coastal Commission prior to issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to, through recordation of a lease restriction, by any existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and any lessee(s), and on all successors and assigns of the landowner(s) and any lessee(s), including without limitation any future lien holders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections 5(a) through (~~m~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development Director and the Executive Director of the Coastal Commission that such an amendment is not legally required.

~~om~~) The hotel owner shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Economic and Community Development Director for review and approval and to the Executive Director of the Coastal Commission for review and comment, a Declaration of Restrictions or CC&Rs (Covenants, Conditions & Restrictions) which shall include:

1. All the specific restrictions listed in Sections 5(a) through (~~m~~) above;
2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
3. A statement that provisions of the CC&Rs (Declaration of Restrictions) that reflect the requirements of Sections 5(a) through (~~m~~) above, cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with Sections 5(a) through (~~m~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director that an amendment is not legally required. If there is a section of the CC&Rs (Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall

cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs (Declaration of Restrictions) on amendments.

- pñ) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Condominium Hotel.
- qø) The provisions of the CC&Rs (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 5(a) through (~~mñ~~), above, may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after a copy of the proposed amendments have been submitted to the Executive Director of the Coastal Commission for comment, that an amendment is not legally required.
- r) The hotel owner/operator or any successor-in-interest shall ~~maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall~~ be responsible ~~in all respects~~ for ensuring that ~~it through no act or omission will it assist, enable or in any other manner facilitate any other party all parties~~ subject to these restrictions ~~comply with the restrictions in violating any of these terms and conditions~~. Each owner of an individual guestroom/unit is ~~jointly and severally liable with the hotel owner/operator~~ for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.
- sø) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:
1. Each owner of any individual Condominium Hotel unit is ~~jointly and severally liable with the hotel owner/operator~~ for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and
  2. The occupancy of a Condominium Hotel unit by its owner(s) and their guests is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that

the coastal development permit contains additional restrictions on use and occupancy; and

3. Each owner of a Condominium Hotel unit who does not retain the operator of the hotel as his or her rental agent shall be obligated by the governing documents of the Condominium Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.
- te) The hotel owner/operator and any successor-in-interest hotel owner or operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).
- uf) The hotel owner/operator and any successor-in-interest hotel owner or operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel guestrooms/units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual Condominium Hotel guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 5(a) through (n) above. The hotel owner/operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 5(vs) below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.
- ys) Within 120 days of the end of the first calendar year of hotel operations, the hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring by the hotel owner/operator ~~of the use of the hotel units.~~ The hotel operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied

upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.

Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report regarding compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium Hotel to the Economic and Community Development Director and the Executive Director of the Coastal Commission. The audit required after the first year of operations and all subsequent reports shall evaluate compliance by the hotel operator and owners of individual Condominium Hotel guestrooms/units during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Economic and Community Development Director. The Economic and Community Development Director may grant such approval if each of the previous reports revealed compliance with all restrictions imposed above. The Economic and Community Development Director or ~~and~~ the Executive Director of the Coastal Commission may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Condominium Hotel shall require the operator and each owner of a condominium to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Condominium Hotel project.

w\*) **The hotel owner/operator, or any successor-in-interest, shall be responsible for complying with the terms and conditions stated above at all times in perpetuity and shall be liable for violating these terms and conditions.** If the hotel owner and the hotel operator are or at any point become separate entities, the hotel owner and the hotel operator shall **each** be ~~jointly and~~ severally responsible for ~~ensuring~~ monitoring compliance **complying** with the requirements identified above, and for reporting material non-compliance to the Economic and Community Development Director. If the hotel owner and hotel operator are or become separate entities, they shall be ~~jointly and~~ severally liable for violations of the operator shall be liable for its failure to monitor and to report non-compliance with the terms and conditions (restrictions) identified above.

xy) A coastal development permit application for a Condominium Hotel shall include a plan specifying how the requirements outlined in Article 4 Section

450 of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&Rs (Declaration of Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Article 4 Section 450 of the Zoning Ordinance above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Condominium Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section Article 4 Section 450 of the Zoning Ordinance and this section including deed restrictions and CC&Rs (Declaration of Restrictions) shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after a copy has been delivered to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

#### **5. Suggested Modification #5**

Revise Article 4a section 450 - Special Requirements, Fractional Ownership Hotel - as follows:

6. The Fractional Ownership Hotel and the Traditional Hotel which together comprise a Limited Use Overnight Visitor Accommodation are subject to the following conditions/restrictions:

a) As used in Section 6, the following terms are defined as:

- (i) “booking” or “to book” shall mean the confirmation of a reservation request for use of a Fractional Ownership Hotel unit by either the owner of a Fractional Interest, his permitted user, an Exchange User or by a member of the public, and the entry of such confirmation in the operator’s reservation data base.
- (ii) “Exchange Program” means the use of a unit in a Fractional Ownership Hotel by a member who is the owner of occupancy rights in a unit of a fractional project other than the Fractional Ownership Hotel, or in the Fractional Ownership Hotel during time periods other than the particular time period for which a unit in the Fractional



Ownership Hotel has been reserved for exchange, pursuant to a program:

- (a) in which the owners of fractional interests in fractional interest projects other than the Fractional Ownership Hotel is operated and/or managed by the operator of the Fractional Interest Hotel or by another entity, or
  - (b) which is operated by an entity that specializes in interval exchanges, where such member has exchanged their occupancy rights for the use of a Fractional Ownership Hotel unit during the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange.
- (iii) "Exchange Use" means the use of a unit in the Fractional Ownership Hotel pursuant to an Exchange Program.
  - (iv) "Exchange User" means a person who is occupying a Fractional Ownership Hotel unit for Exchange Use.
  - (v) "Fractional Interest" means a Timeshare in a Fractional Ownership Hotel where the undivided interest in a condominium conveyed to an owner is greater than a 1/26th undivided interest, or, if the Fractional Ownership Hotel is not subdivided into condominiums, in which the undivided interest conveyed to an owner is greater than a 1/26 x (the number of units in the Fractional Ownership Hotel) undivided interest in the legal parcel comprising the Fractional Ownership Hotel.
  - (vi) "Fractional Ownership Hotel" means the portion of a Limited Use Overnight Visitor Accommodation in which ownership of individual units is comprised of Fractional Interests.
  - (vii) "Traditional Hotel" means the portion of a Limited Use Overnight Visitor Accommodation that is operated as a traditional hotel (i.e. the guestrooms are not owned or operated as timeshares or fractional units).
- b) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Visitor Overnight Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of units in a Fractional Interest project or Condominium Hotel to Fractional Interest or Condominium Hotel units; provided that after any such conversion, the ratio of Fractional Interest and Condominium Hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project.

- c) A maximum of 15% of the total number of guestrooms/units in the project as a whole may be subdivided into Fractional Interests.
- d) Either the owner/operator of the Traditional Hotel or the owner or operator of the Fractional Ownership Hotel shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities for both the Traditional Hotel and the Fractional Ownership Hotel.
- e) The Fractional Ownership Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms/units in the Fractional Ownership Hotel. The on-site hotel operator for the Fractional Ownership Hotel may be a different entity from the on-site hotel operator for the Traditional Hotel in the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part.

Each Fractional Interest owner shall have the right, in its sole discretion, to engage a rental agent of his or her choice, other than the operator, to serve as the rental agent for their Fractional Interest, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis commencing sixty (60) days in advance of a time period the owner has a right to reserve and use under the governing documents for the Fractional Ownership Hotel. The operator of the Fractional Ownership Hotel shall have the right and obligation to offer for public rental all time periods not reserved by a Fractional Interest owner for his or her personal use, for "Exchange Use" or for use by an owner's permitted user sixty (60) days in advance of any such occupancy period.

On and within this sixty (60) day window, members of the public shall have reservation rights equal to those for owners, their permitted users and Exchange Users. The Fractional Ownership Hotel operator shall manage the booking of the reservation of all guestrooms/units in the Fractional Ownership Hotel. All Fractional Interest owners, and their rental agents, must comply with the following restrictions:

(A) except for their personal use, or use by an owner's permitted users or an Exchange User, Fractional Interest owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units during their fractional time periods;

(B) Fractional Interest owners shall certify the rental rate and terms of any rental of the owner's occupancy periods made independently of the operator, and the hotel operator shall book all unit reservations in the operator's reservation database, a service

for which the operator may charge the Fractional Interest owner a reasonable fee;

(C) The Fractional Ownership Hotel operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Fractional Interest owner a reasonable fee.

- f) The operator shall market the rental of available units in the Fractional Ownership Hotel to the general public and shall have a right to charge each Fractional Interest owner a reasonable fee for such marketing.
- g) Subject to the requirements of the California Business and Professions Code pertaining to management agreements for Timeshare plans, including, without limitation, restrictions on the term of such management agreements, the operator shall manage all units in a Fractional Ownership Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.
- h) The operator, as the non-exclusive rental agent for the owner of a Fractional Interest entitled to an occupancy period, shall offer for rent to the public any guestroom/unit which has not been reserved by its owner, his or her permitted user or an Exchange User commencing sixty (60) days in advance of such occupancy period, ~~at a fair rental rate established by that for comparable accommodations in the , as further described in Section 6(j) below.~~ No Fractional Interest owner nor such owner's rental agent may withhold units which have not been reserved by the owner or such owner's permitted users or an Exchange User sixty (60) days or less prior to the commencement of an occupancy period from rental to the public. Nothing in the preceding sentence shall mean that an owner of a Fractional Interest, or such owner's permitted users or an Exchange User, may not elect to reserve a unit in a Fractional Ownership Hotel at any time after the commencement of such sixty (60) day period, provided that the operator or the owner's rental agent has not then rented the unit to a member of the general public. In all circumstances, the Fractional Ownership Hotel operator shall have full access to the guestroom/unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- i) All guestrooms/unit keys shall be electronic and created by the operator upon each new occupancy to control the use of the individually owned Fractional Ownership Hotel units.

- j) All individually owned Fractional Ownership Hotel units shall be rented at a rate similar to that charged ~~by the hotel operator for the traditional hotel~~ rooms of a similar class or amenity level in the California coastal zone.
- k) Each individually owned Fractional Interest shall be used by its owner(s) or their guests to occupy a unit in a Fractional Ownership Hotel for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- l) The use period limitations identified in Section 6(k) above, shall be unaffected by multiple owners of a Fractional Interest or the sale of a Fractional Interest to a new owner during the calendar year, meaning that all such owners of any given Fractional Interest shall be collectively subject to the use restriction in this Section 6 as if they were a single, continuous owner. No portion of a Fractional Ownership Hotel may be converted to a full-time occupancy condominium or to any other type of a Limited Use Overnight Visitor Accommodation other than as provided for in Section 6(b) above
- m) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part, the landowner(s) of the property(ies) within the Downtown "D" District upon which the associated Traditional Hotel is developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director after delivery to the Executive Director of the Coastal Commission for review and comment, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership, except as permitted in Section 6(b) above. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director after delivery to the Executive Director of the Coastal Commission for review and comment, prior to issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by any existing lessee(s) of the affected property(ies), through recordation of a lease restriction, and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 6(a) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the

Executive Director of the Coastal Commission for review and comment, that such an amendment is not legally required.

- n) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Economic and Community Development Director and review and comment by the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC&Rs (Covenants, Conditions & Restrictions) which shall include:
1. All the specific restrictions listed in Sections 6(b) through (l) above;
  2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
  3. A statement that provisions of the CC&Rs (Declaration of Restrictions) that reflect the requirements of Sections 6(b) through (~~l~~) above cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with Sections (b) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required. If there is a section of the CC&Rs (Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs on amendments.
- o) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Fractional Ownership Hotel.
- p) The provisions of the CC&Rs (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections 6(b) through (~~l~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

- q) The Fractional Ownership Hotel owner/operator or any successor-in-interest shall ~~maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall~~ be responsible ~~in all respects~~ for ensuring that ~~through no act or omission will it assist, enable, or in any other manner facilitate any other party~~ ~~all parties~~ subject to these restrictions ~~in violating any of these terms and conditions. comply with the restrictions.~~ Each owner of an individual guestroom/unit is ~~jointly and~~ severally liable ~~with the Fractional Ownership Hotel owner/operator~~ for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's Fractional Interest. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.
- r) All documents related to the marketing and sale of the Fractional Interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:
1. Each owner of a Fractional Interest is ~~jointly and~~ severally liable ~~with the Fractional Ownership Hotel owner/operator~~ for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's Fractional Interest;
  2. The occupancy of a Fractional Ownership Hotel unit by the owner of a Fractional Interest is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not reserved or in use by the owner, the owner's permitted user or an Exchange User, the owner's time shall be made available for rental by the operator and by the owner's own rental agent to the general public sixty (60) days in advance of an occupancy period pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and
  3. Each owner of a Fractional Interest who does not retain the operator as his or her exclusive rental agent is obligated by the governing documents of the Fractional Ownership Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

- s¶) The initial owner of a Fractional Interest and any successor-in-interest owner of a Fractional Interest, and each future individual unit owner shall obtain, prior to sale of a Fractional Interest, a written acknowledgement from the buyer of that Fractional Interest that occupancy of a unit by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the operator and/or the buyer's rental agent to the general public at least sixty (60) days in advance of an occupancy period, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).
- ts) The operator and any successor-in-interest to the operator shall monitor and record the occupancy and use of the Fractional Ownership Hotel by the general public and the owners of individual Fractional Interests throughout each year. The monitoring and record keeping shall include specific accounting of all owner usage of each individual guestroom/unit in the Fractional Ownership Hotel. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 6(a) through (l) above. The owner/operator shall also maintain documentation of rates paid for hotel occupancy and of marketing efforts by the operator, and ~~from the certified reports submitted to the operator by the Fractional Interest owners,~~ by the rental agents of owners other than the operator. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 6(ut) below. Within 30 days of commencing hotel operations, the operator of the Fractional Ownership Hotel shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.
- ut) Within 120 days of the end of the first calendar year of hotel operations, the Fractional Ownership Hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the hotel owner/operator. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.

Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report to the Economic and Community Development Director and the Executive Director of the Coastal Commission, regarding compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Fractional Ownership Hotel. The audit required after one year of operations and all subsequent reports shall evaluate compliance by the Fractional Ownership Hotel operator and owners of individual Fractional Interests during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Economic and Community Development Director. The Economic and Community Development Director may grant such approval if each of the previous reports revealed compliance with all restrictions imposed above. The Economic and Community Development Director or ~~and~~ the Executive Director of the Coastal Commission may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Fractional Ownership Hotel shall require the operator and each owner of a Fractional Interest to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Fractional Ownership Hotel.

v\*) **The Fractional Ownership Hotel owner/operator, and any successor-in-interest, shall be responsible for complying with the terms and conditions stated above at all times in perpetuity and shall be liable for violating these terms and conditions.** If the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator at any point become separate entities, the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator shall **each** be ~~jointly and~~ severally responsible for ~~ensuring compliance complying~~ with the requirements identified above. If the Fractional Ownership Hotel owner and Fractional Ownership Hotel operator become separate entities, they shall be **jointly and** severally liable for violations of the terms and conditions (restrictions) identified above.

w\*) Prior to the issuance of a coastal development permit for a Fractional Ownership Hotel, an applicant shall submit a plan for approval specifying how the requirements outlined in Article 4 Section 450 of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&Rs (Declaration of Restrictions) that will be used to satisfy the requirements and the form of



the rental program agreement that will be offered to the Fractional Interest owners by the Fractional Ownership Hotel operator. The plan must demonstrate that the applicant will establish mechanisms that provide the Fractional Ownership Hotel operator and any successor-in-interest Fractional Ownership Hotel operator adequate legal authority to implement the requirements of Article 4 Section 450 of the Zoning Ordinance above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Fractional Ownership Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Article 4 Section 450 of the Zoning Ordinance and this section including deed restrictions and CC&Rs (Declaration of Restrictions) shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

# **CITY OF OCEANSIDE - ECONOMIC DEVELOPMENT AND REDEVELOPMENT DEPARTMENT**

## **City of Oceanside: Coastal Commission Meeting**

Exhibit 1

Coastal Commission July 2008 Hearing Transcript

City of Oceanside LCP Amendment # 2-08 (D Downtown District) Re-submittal – EDD  
[Dispute Resolution]

1 City of Oceanside: Coastal Commission Meeting 2

2 [START TAPE AGENDA\_ITEM12A\_45MINUTES30S SIDE  
3 A]

4 [background noise]

5 CHAIRMAN KREWARD: Roll said, let's get  
6 going again and start the meeting. And with  
7 that we'll start with item 12a, City of  
8 Oceanside's LTP amendment.

9 COMMISSIONER SHAWNBERG: Thank you Chairman  
10 Kreward. I'd like to refer you to the addendum,  
11 there are some revisions to the staff report in  
12 response to the City's letter that was dated  
13 6/25/08. That letter has also been distributed  
14 to the commission by the city along with a copy  
15 of the approved resolution of approval for the  
16 LCP amendment. There are three letters of  
17 comment, the two in the addendum are generally  
18 in support of the project without the mitigation  
19 fee. And there is an additional letter in the  
20 addendum in support of the staff recommendation.  
21 We've also received two additional letters  
22 yesterday in support of the staff recommendation  
23 that could not be copied and distributed to the  
24 commission but they have been made part of the  
25 record. This is a request by the City of

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 3  
2 Oceanside, and could I have the power point on  
3 this please. Request by the City of Oceanside  
4 to amend the implementation plan of its  
5 certified LCP to allow for both condo hotels and  
6 a fractional ownership development in sub  
7 districts of the redevelopment area. This also  
8 includes new article 4A title redevelopment  
9 project area, use classifications that applies  
10 to the entire downtown district, which is also  
11 the redevelopment area. Article 4A revises and  
12 defines uses permitted including visitor serving  
13 uses. This LCP amendment is a resubmittal of  
14 the amendment that was the subject of the  
15 commission action in December 2007, which the  
16 commission approved with suggested  
17 modifications, but all of those modifications  
18 were not accepted by the city, that's why this  
19 is a resubmittal. This submittal has  
20 incorporated all of the changes suggested by the  
21 commission except the city council action did  
22 not include any reference to a mitigation fee  
23 for a provision of lower cost overnight  
24 accommodations. In addition the city has made  
25 some changes to the language that establishes

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 4  
2 restrictions on the operation of condo hotels  
3 and fractional interest units. Most of these  
4 changes have been a result of extensive  
5 coordination between the commission staff and  
6 the city since the December action and are  
7 acceptable to staff. The exception is the  
8 language that requires the hotel operators and  
9 all potential owners to have joint in several  
10 liability and responsibility for compliance with  
11 the restrictions related to operation of the  
12 hotel facility, particular when the units are  
13 not owned or occupied.

14 This slide one shows the area that is the  
15 subject of this LCP amendment. It is shore  
16 front property consisting of two blocks on the  
17 inland side of Pacific Street, on the bluff top  
18 inland of the beach pier and amphitheater. It's  
19 the prime visitor serving destination point  
20 along the city's oceanfront, and specifically  
21 the LCP amendment would allow condo hotel and  
22 fractional interest hotels in sub districts one  
23 and two. This is a project driven LCP, and in  
24 this case there would be 336 hotel units and 48  
25 fractional interest units allowed in this

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 5  
2 location, the two blocks immediately inland of  
3 Pacific Avenue in Oceanside. And that project  
4 would be enabled by this LCP amendment.

5 Given the LCP amendment has been reviewed by  
6 the commission once, I'm going to try to focus  
7 my comments on the areas of non-disagreement.  
8 The primary issue discussed by the commission,  
9 the review of the LCP amendment previously was  
10 protection of lower cost to visitor overnight  
11 facilities in the coastal zone, and whether  
12 condo hotels and fractional interest units,  
13 which are not as available to the general public  
14 as traditional hotels should be allowed in areas  
15 designated for visitor serving uses, which are a  
16 priority use under the Coastal Act. The City of  
17 Oceanside has provided an inventory of the  
18 existing hotels and motels in the coastal zone,  
19 which indicates there are currently 516 units in  
20 12 facilities that provide rooms at less than  
21 \$100 a night. The commission has acknowledged  
22 the city has more lower cost overnight  
23 accommodations than most coastal cities. And  
24 the city desires to provide a high cost facility  
25 such as the one enabled by this LCP amendment

1 City of Oceanside: Coastal Commission Meeting 6  
2 that's well over range of affordability of units  
3 in their coastal zone.

4 For this reason the commission did not  
5 suggest a modification to the LCP that would  
6 require a fee in lieu of actual provision of  
7 lower cost units in association with new  
8 development of this high end hotel. However the  
9 commission did acknowledge that protection of  
10 existing lower cost--the existing lower cost  
11 stock, which is used as the rationale for not  
12 applying the fee to new development must be  
13 addressed.

14 In addition to the - - plan policy that  
15 protects a minimum 375 lower cost units in the  
16 coastal zone, the commission has required the  
17 fee be applied to loss of existing lower cost  
18 units that are not replaced. In this particular  
19 case staff is recommending the fee apply to 50  
20 percent of lower cost units that are demolished  
21 and not replaced only if the replacement units  
22 are high cost overnight accommodations. This  
23 requirement would apply in the redevelopment  
24 area only, which is the subject of this LCP  
25 amendment. And this is a departure from what

1 City of Oceanside: Coastal Commission Meeting 7  
2 was approved in December, because the fee would  
3 only apply to high cost replacement projects.

4 Also this is a departure from some decisions  
5 that have applied the fee to at least 25 percent  
6 of new units or to 100 percent of any lower cost  
7 units that are demolished and not replaced.  
8 This modification to the commission's more  
9 typical policy to protect and provide lower cost  
10 overnight accommodations in the coastal zone is  
11 in recognition of the city's existing lower cost  
12 inventory.

13 The staff recommendation also recognizes  
14 moderate cost units are a valuable coastal  
15 resource and also in demand in the coastal zone,  
16 and necessary to provide a range of  
17 affordability. So again staff is recommending  
18 the in lieu fee only apply to high cost  
19 development and only when it replaces existing  
20 lower cost inventory. And the fee is only  
21 applied to 50 percent of the units that are  
22 demolished and not replaced.

23 In addition I want to discuss what  
24 constitutes low, moderate and high cost  
25 overnight accommodations. The staff report



1 City of Oceanside: Coastal Commission Meeting 8  
2 includes a methodology that we are developing to  
3 define what are lower cost accommodations in the  
4 coastal zone. The formula or methodology was  
5 developed for San Diego but it is a dynamic tool  
6 that could be used elsewhere using similar data  
7 for any region or market area to establish rates  
8 for that area. It utilizes the statewide  
9 average room rate taken from the Smith Travel  
10 Research website. In this case in July and  
11 August which is a peak tourist month in San  
12 Diego, the projected statewide average price  
13 paid by visitors to hotels throughout California  
14 in the months of July and August for 2008 is  
15 \$132.90. This number is used as the baseline by  
16 which to compare the cost of hotel  
17 accommodations in the targeted region of the  
18 state, in this San Diego, and staff used the AAA  
19 website to locate one and two diamond rated  
20 facilities within five miles of the coast and  
21 determined their rates during the peak season.

22 Of the sample staff identified those that  
23 charged room rates less than statewide average  
24 and the average rate for those facilities in  
25 this case was \$108. And that was compared to

1 City of Oceanside: Coastal Commission Meeting 9  
2 the statewide average as the percentage, or 82  
3 percent of the statewide average. And that's  
4 the low cost market in San Diego and coastal  
5 area. So using this formula the lower cost  
6 overnight accommodations in the San Diego  
7 coastal area would be any establishment that  
8 costs less than 82 percent of the current peak  
9 statewide average. At some point a survey  
10 should probably be done for hotels charging more  
11 than the statewide average. But for now an  
12 estimate of higher cost we've defined as hotels  
13 with daily room rates 20 percent higher than the  
14 average. And then moderate would be in between  
15 the 108 to 160. And so above \$160 a night would  
16 be considered high cost.

17 The current staff recommendation does not  
18 incorporate this methodology into the city's LCP  
19 for purposes of defining what is low, moderate  
20 and high cost, and we think that could be a  
21 mistake given the recommended policies include  
22 those terms.

23 The implementation plan should reference the  
24 basic criteria used to determine affordability  
25 of hotel, motel units in a coastal zone, and we

1 City of Oceanside: Coastal Commission Meeting 10  
2 have distributed recommended language to be  
3 added as a suggested modification number seven  
4 to article 41, redevelopment section 450,  
5 visitor accommodations special requirements.  
6 And I'll read that suggested modification into  
7 the record.

8 When referring to overnight accommodations,  
9 lower cost shall be defined by a certain  
10 percentage of the statewide average room rate as  
11 calculated by Smith Travel Research website.  
12 The suitable methodology would base the  
13 percentage on market conditions in San Diego  
14 County for the months of July and August and  
15 include the average cost of hotel motels within  
16 five miles of the coast that charge less than  
17 the statewide average, or 82 percent.

18 High cost would be room rates that are 20  
19 percent higher than the statewide average, and  
20 moderate cost room rates would be between high  
21 and low cost. Low cost, that's a typo. The  
22 range of affordability of new and or replacement  
23 hotel motel development shall be determined as  
24 part of the coastal development permit process  
25 and monitored as part of the city's inventory as

1 City of Oceanside: Coastal Commission Meeting 11  
2 visitor overnight accommodations.

3 This was given to the city just this morning  
4 and so they may have some comments on the  
5 language for the commission.

6 And now I'd just like to focus on the last  
7 area of known disagreement. The commission has  
8 defined condo hotels and fractional development  
9 as limited use overnight visitor accommodations,  
10 and has found that limits and restrictions must  
11 be imposed on the number of units per hotel  
12 project, which limited overnight ownership  
13 rights may be created and sold, and on use of  
14 the units by separate owners, as well as on how  
15 the overall hotel is operated.

16 The proposed definition of limited use  
17 overnight accommodations is overnight  
18 accommodations that include both traditional  
19 hotel lodging and some combination of time  
20 shares, fractional time shares, or condo hotels.  
21 The city is proposing up to 25 percent of a  
22 hotel development may be time shares, fractional  
23 time shares, or condo hotels. However no more  
24 than 15 percent may be fractional timeshare  
25 units.

2 The city has included language in its  
3 submittal which requires that privately owned  
4 units not occupied by the owners or their guests  
5 must be available for overnight rental by the  
6 general public in the same manner as traditional  
7 hotel units. This achieves two ends. It  
8 increases the facilities visitor serving  
9 function by increasing the number of transient  
10 overnight accommodation units available to the  
11 general public. And it promotes the likelihood  
12 that the overall facility will be perceived as a  
13 facility available to the general public.

14 The commission has found that it's important  
15 that all units in a condominium hotel, both  
16 condominium hotel units and the traditional  
17 units be operated by a single hotel operator of  
18 their respective facilities. This includes  
19 booking reservations, check in, maintenance,  
20 cleaning services, and similar responsibilities  
21 of hotel management. This requirement is  
22 important as a means of assuring the hotel does  
23 not convert to a limited ownership only hotel,  
24 and to maximize its visitor serving functions.

25 These restrictions and requirements must be

1 City of Oceanside: Coastal Commission Meeting 13  
2 implemented as part the operations of the hotel.  
3 And consequently a specific entity responsible  
4 for implementing the restrictions and  
5 requirements must be identified. The  
6 appropriate entity would be one that has access  
7 and control over the entire facility. The  
8 facility's owner operator is in the position to  
9 implement the necessary restrictions and  
10 requirements. Therefore the suggested  
11 modifications reference the hotel owner operator  
12 as the entity responsible for implementing the  
13 restrictions and requirements.

14 However the language needs to also address  
15 the situation where the hotel is owned and  
16 operated by two separate entities. It must be  
17 clear then and such situations both the owner  
18 and operator are responsible and indeed liable  
19 for carrying out the requirements and  
20 restrictions imposed upon each facility. And  
21 this is reflected in the suggested  
22 modifications.

23 The commission has found that only through  
24 these use restrictions and other conditions  
25 requiring that these limited use facilities

1 City of Oceanside: Coastal Commission Meeting 14  
2 operate in such a manner that they will maximize  
3 public access and function to the extent  
4 possible as a traditional hotel. An effective  
5 enforcement mechanism is necessary to ensure  
6 that the hotel owner operator in an individual  
7 condo unit or fractional interest owners are  
8 complying with each of the conditions of the  
9 coastal development permit. And the suggested  
10 modifications impose joint and several liability  
11 on the owner and operators, so that they have an  
12 equal incentive and interest in complying with  
13 the conditions of the CDP.

14 The modifications also ensure that each  
15 individual condo owner unit or fractional  
16 interest owner is jointly and severably liable  
17 with the hotel owner and operator for any  
18 violations of the conditions of the permit with  
19 respect to each owners individual interest.  
20 Through imposition of joint and several  
21 liability the commission of the city may more  
22 effectively enforce the conditions of the CDP.  
23 That's insuring that the hotels are operated in  
24 such a manner as to maximize public access. We  
25 believe this requirement is a continued point of

1 City of Oceanside: Coastal Commission Meeting 15  
2 disagreement, it is consistent with what the  
3 commission has imposed on other condo  
4 developments and in the Huntington Beach LCP  
5 amendment will rely on the city of the project  
6 proponent to explain their specific issues with  
7 regards to this language. And that will  
8 conclude my comments at this time.

9 CHAIRMAN KREWARD: Thank you very much for  
10 those comments, and we'll go to ex parte  
11 starting on my left, Commissioner Kashian  
12 [phonetic].

13 COMMISSIONER KASHIAN: Thank you Mr.  
14 Chairman. Wednesday 2nd, 10:30 A.M. I met with  
15 Morgan Rafferty, executive director at the  
16 Environmental Center for SLO County, and Gordon  
17 Hill sly [phonetic] of San Luis Obispo Course  
18 Keepers, their concerns about the in lieu fees  
19 how they relate to it if the motion is  
20 authorized any in lieu fee would be required as  
21 mitigation. Development of replacement units  
22 that are not lower cost shall be required to pay  
23 a fee in lieu of providing lower cost units  
24 which is equal to 50 percent of the demolished  
25 or replaced lower cost units if the replacement



1 City of Oceanside: Coastal Commission Meeting 16  
2 unit are high cost overnight accommodations.  
3 And they encourage where feasible to provide  
4 developments providing public recreational  
5 opportunities. They prefer, and that commission  
6 shall not first require that overnight rooms,  
7 rentals be fixed within a month certainly for  
8 any privately owned and operated hotel motel, or  
9 other similar visitor serving facility located  
10 on the inner public or private lands. And to  
11 establish or approve any method for the  
12 identification of lower moderate income for  
13 instance, for the purpose of determining  
14 eligibility for overnight room rentals in any  
15 such facility.

16 The in lieu fee requirement could help  
17 provide a low cost alternative, \$10,000 to  
18 mitigate for the loss of low cost units to  
19 demolitions and--pretty much this is a summary  
20 of what we talked about and finally they  
21 recommend that we support staffs recommendation.  
22 Thank you.

23 CHAIRMAN KREWARD: Mr. Wayfield [phonetic].

24 COMMISSIONER WAYSO: In addition to those  
25 that are on file this morning, I met with Donna

1 City of Oceanside: Coastal Commission Meeting 17  
2 Andrews who expressed the City of Oceanside's  
3 alternative ideas for maintaining affordability  
4 in visitors serving accommodations. They  
5 believe they can insure affordability by  
6 requiring ten percent of new hotel rooms as  
7 affordable and they will be adjusting the staff  
8 report format to require analysis of existing  
9 affordable rooms every time a new project is  
10 considered. And they basically summed up that  
11 there are two points of disagreement. One  
12 having to do with the fee, another having to do  
13 with several liability and that they would speak  
14 to that at the hearing.

15 CHAIRMAN KREWARD: Mr. Clark.

16 COMMISSIONER CLARK: Thank you Mr. Chair.  
17 On July 3rd at 2 P.M. in the afternoon I had a  
18 ex parte telephone conversation with Penny Aliya  
19 [phonetic] of the Sierra Club, and Graham Forbes  
20 of Unite here local 30. They conveyed to me  
21 their position that they support and recommend  
22 support by the commission of the two conditions  
23 of issue that we're talking about here relative  
24 to the in lieu fees and the joint and severable  
25 liability. On July 7th at 2:30 P.M. in the

1 City of Oceanside: Coastal Commission Meeting 18  
2 afternoon I had a telephone conversation with  
3 Donna Andrews, and with Jane McFay [phonetic]  
4 the economic and community development director  
5 of Oceanside. They expressed concern, the  
6 city's concern with these two conditions as  
7 proposed by staff in the amendment on the in  
8 lieu fee issue, they're basically conveyed to be  
9 that they believe that it's unnecessary. City  
10 already requires keeping a minimum of 375 rooms  
11 affordable, which is 90.8 percent of the rooms  
12 in the coastal area. They also indicated to me  
13 that previously they had heard from Director  
14 Douglas who had previously stated in lieu fees  
15 were not appropriate because it was a public  
16 private partnership. The city they also  
17 indicated the city intends to insure that they  
18 not drop below the 375 unit affordable units  
19 through a monitoring mechanism. And then on the  
20 issue of the language of joint and severable  
21 liability for condo hotels they don't believe  
22 it's consistent with positions taken by the  
23 commission in Encinitas, Del Coronado, or  
24 Pacifica, and the city currently requires the  
25 owners to certify they will comply with the

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 19  
2 conditions associated with the condo hotel  
3 sellable units. That's my ex parte, Mr. Chair.

4 CHAIRMAN KREWARD: Other--, - - Neely.

5 COMMISSIONER NEELY: Thank you Mr. Chairman,  
6 my ex parte's are on file.

7 CHAIRMAN KREWARD: I had an ex parte  
8 telephone conference call and I got back in town  
9 on the seventh of July with Jamie Vay, Cathy  
10 Baker, Jeremy Cohen and Donna Andrews. And we  
11 discussed very much what Commissioner Clark and  
12 Commission Wayso [phonetic] had mentioned. We  
13 also like to just add, we talked about the,  
14 really the two issues that I had questions on  
15 that were staff and the city worked very hard to  
16 get down to really these two issues. And we  
17 discussed the joint and several liability issue,  
18 and we talked about the different intervals and  
19 time periods, and talked about the issue of  
20 previous hotels that we had got the joint and  
21 several or where we discussed like in Imperial  
22 Beach, etcetera. Those were 100 percent  
23 conversions. And we were talking about the fact  
24 from a pure operating viewpoint whether or not,  
25 what is the theory of concern would be a flag if

1 City of Oceanside: Coastal Commission Meeting 20  
2 you didn't have a big flag on a hotel like this  
3 that is a large hotel. What would be the  
4 likelihood for a flag to come in and agree to  
5 some kind of joint and several liability. And  
6 they discussed the issues of monitoring and  
7 because of their TOT tax and other issues they  
8 could assure that it would be in compliance. So  
9 there was a real concern from the marketplace  
10 with the slipping of real estate and credit  
11 market and everything of just what a flag or a  
12 large operator would do to that particular  
13 thing. And there was a big discussion on there  
14 because that is even a concern to myself, even  
15 though I want to make sure people have equity in  
16 the game, skin in the game as we've said, we did  
17 talk about that issue and I wanted to see why  
18 they feel they have skin in the game and why  
19 it's different then maybe Imperial Beach or  
20 Huntington Beach or etcetera. So we discussed  
21 that and it was I think those are the issues  
22 other than what was reported already. And also  
23 I got a phone call from a Councilman Kern, just  
24 a phone call asking to support the City of  
25 Oceanside, and a call from--that was on Monday

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 21  
2 and then that was just a message, voice message.  
3 And I got a call on Tuesday from Deputy Miraki  
4 Chavez [phonetic] and I did answer that call and  
5 I told him that I had already talked to people  
6 from his city and he was fine with that and said  
7 if he could support this, listen to what the  
8 city had, and they've worked hard on this. So  
9 those were my ex parte's. Anyone else?  
10 Commissioner Kinsey?

11 COMMISSIONER KINSEY: Just on Monday July  
12 7th, two members of the organization ORCA  
13 contacted me at my office and expressed support  
14 for the staff recommendation and suggested that  
15 in Bodega, up in Sonoma County there were  
16 similar issues as to the Oceanside issue.

17 CHAIRMAN KREWARD: Thank you. Mr. Blank?

18 COMMISSIONER BLANK: Thank you Mr. Chair.  
19 My ex parte with Donna Andrews is on file. I  
20 also have a conversation with Wendy Roberts from  
21 ORCA San Mateo, which she expressed her support  
22 of the staff recommendations that was on Monday.  
23 And this morning driving to the commission  
24 hearing I shared the car with Commission Wayso  
25 and Donna Andrews and basically heard the tail

1 City of Oceanside: Coastal Commission Meeting 22  
2 end of their ex parte. So I would kind of  
3 summarize whatever commissioner Wayso said I  
4 heard as well.

5 CHAIRMAN KREWARD: Okay, thank you  
6 Commissioner Blank. Anyone else? Commissioner  
7 Cram [phonetic] did you have any? No?  
8 Commissioner Burke?

9 COMMISSIONER BURKE: My ex parte is here in  
10 the file except the one that I had with - -  
11 [sound cut] two days ago in which they said the  
12 same things that Commissioner - -.

13 CHAIRMAN KREWARD: Okay, thank you. And  
14 with that we'll open up the public hearing. And  
15 we have three speaker slips, all from, well the  
16 applicant and two representatives of the city.  
17 And who would like to come up? Ms. Jane McFay  
18 [phonetic] would you like to, how much time do  
19 you want between the three of you?

20 MS. MCFAY: Mr. Commissioner. I would  
21 request 11 minutes and we'll keep nine for  
22 rebuttal please.

23 CHAIRMAN KREWARD: Okay, just so you know, I  
24 don't think there's any speaker slips in  
25 opposition. So you might want to take your time

1 City of Oceanside: Coastal Commission Meeting 23  
2 and not reserve for rebuttal because there won't  
3 be any rebuttal.

4 MS. MCFAY: All right, thank you very much.

5 CHAIRMAN KREWARD: So do you want more than  
6 11 minutes then?

7 MS. MCFAY: That would be great if we could  
8 have--

9 CHAIRMAN KREWARD: 15 minutes.

10 MS. MCFAY: 15 minutes, that would be good.

11 CHAIRMAN KREWARD: Yeah, that's fine. Okay.

12 MS. MCFAY: If I could have my power point  
13 brought up please? Well good morning, my name  
14 is Jane McFay. I work for the City of  
15 Oceanside, and we're here today on the LCP 1-07  
16 and 2-08, which are both the revised findings  
17 and the resubmittal. We last appeared before  
18 you in December '08 when we were in San  
19 Francisco. Also with me here today is Cathy  
20 Baker, our redevelopment manager, and Jeremy  
21 Cohen with SC Malken who is the developer for  
22 the project in question. Before we begin though  
23 I do want to clarify, this was not a project  
24 driven LCP. This all started with a major  
25 review of our zoning and the redevelopment area,



1 City of Oceanside: Coastal Commission Meeting 24  
2 because we couldn't get a Kinko's downtown  
3 because the zoning didn't permit it. So we did  
4 a year and a half long process and it was a big  
5 rezoning modification to some old zoning. So it  
6 really isn't and never was a project driven LCP.  
7 But we have been working very closely with the  
8 coastal staff including the executive director,  
9 and as Cheryl Lynn said, it's windowed down to  
10 these two big issues, and we have covered you  
11 know, 99 percent of this has been agreed upon.  
12 But these are two outstanding issues. One is  
13 the proposed fee. Am I going to click this  
14 someplace? Ah the danger of technology. Well I  
15 know that F is forward so let's try again. Oh  
16 here we go. So these are the two issues left,  
17 the proposed fee for hotels that demolish and  
18 rebuild or are not considered affordable. And  
19 the operational issue of joint and several  
20 liability. But let me put this into some sort  
21 of context for you.

22 I know that you were here in Oceanside or in  
23 Oceanside last year, but Oceanside has three and  
24 a half miles of beach ranging from the north  
25 side of the harbor there down to the lagoon

1           City of Oceanside: Coastal Commission Meeting 25  
2       between Oceanside and Carlsbad. Now the coast  
3       highway is only about the equivalent of three  
4       blocks, I mean they're the short sides of the  
5       blocks, but it's only about three blocks from  
6       the beach. And all of Coast Highway is  
7       commercial. The whole entire thing, and that's  
8       where most of the hotels are. In general let me  
9       just back up and show you that. In general from  
10      the harbor down to the river there, that's a  
11      pretty, a recreational area. Then from the  
12      river down to what we call the nine block master  
13      plan, which is the core area of downtown, on the  
14      ocean front it's quite a bit of residential,  
15      then the core area is the commercial area. And  
16      then south is a mix. Now this whole area, or  
17      the downtown area anyway is in the redevelopment  
18      area, and I haven't outlined the redevelopment  
19      zone for you. But pretty much it's west of  
20      coast highway and it jogs a bit up to the east,  
21      but principally it's west of coast highway. Now  
22      this area that you see outlined is the nine  
23      block master plan. This area is part of our  
24      certified LCP and it says that you have to have  
25      a minimum 240 rooms there, and it actually calls

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 26  
2 that a destination resort. So what happens in  
3 this nine block area, we have one project that's  
4 built, we own one block that we want to build a  
5 parking garage on, but you can't do anything in  
6 this unless you either build your fair share of  
7 the 240 rooms, you can't pull a permit, or until  
8 the 240 rooms are built. Now if you look around  
9 that red ring you'll see a lot of development.  
10 But what you see there is very little  
11 development in there because it's sort of the  
12 hole of the donut effect. The marketplace and  
13 the activities of our redevelopment manager,  
14 Cathy Baker, and just all the things that we do  
15 for the city has created a lot of activity and a  
16 lot of new development around there. We have  
17 new shops, we have some new restaurants, we're  
18 getting a micro brewery, we have some new  
19 clothing stores, we really do a lot, but what  
20 stalled is this central area because we can  
21 materialize this main hotel. Now we did get an  
22 RFQ, we did get a developer, and we have a  
23 commitment of \$27 million to our project. And  
24 this is the SC Malken Beach Resort. So out of  
25 that nine blocks, those two blocks are the ones

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 27  
2 in question. And again, Coast Highway has the  
3 bulk of our hotels. If you're thinking that  
4 this is going to become instantly a very high  
5 end area, this is probably our last hope for a  
6 four star, if not our only hope for a four star  
7 hotel, because we simply don't have the real  
8 estate and we don't have the land. And this  
9 project is actually going to produce more than  
10 is required in the LCP nine block master plan  
11 area of 240 rooms because we have 289  
12 traditional rooms, 47 boutique rooms, the rooms  
13 are a little bit bigger, it's in a separate  
14 building, and 48 fractional timeshares. We  
15 didn't close the street, we didn't do anything  
16 that the community didn't want to have happen.  
17 We already could do timeshares here but when we  
18 got the executive directors memo that said if  
19 you're going to do fractional timeshares, and  
20 all that is, is you can buy a month not a week.  
21 You need to change your LCP. Since we were  
22 already in process with the one to get the  
23 Kinko's in and change up our zoning, we added in  
24 some definition. We also limited it, it's only  
25 in those nine blocks and this is the only

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 28  
2 project in those nine blocks that this could  
3 actually happen. We limited it to 25 percent of  
4 total, so it's mostly a hotel project. And the  
5 only thing is there's just this wee bit of the  
6 fractional timeshares. Now in December you did  
7 not impose a \$30,000 fee on new projects, but we  
8 were told that in order that we would get these  
9 fractional timeshares that we would have to have  
10 this fee. And I want to share with you what  
11 we've got going right now. We require a minimum  
12 375 rooms, we got Motel 6 is proposing to add 17  
13 rooms which brings us up to 533. The LUP of the  
14 certified LCP requires 375, so we actually have  
15 30 percent more then is required. Now we're  
16 also 90.8 percent affordable. Most of the  
17 hotels on coast highway and all the hotels that  
18 likely will come are in the genre of the Motel  
19 6, La Quinta, Comfort Suites, and those are the  
20 ones that we have. Now we have had some  
21 questions about how are we going to maintain  
22 that 375. But the bigger issue is how are we  
23 going to keep the 375 from denigrating. So I  
24 want to show you what they are and how many  
25 rooms. These are small hotels, many of them are

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 29  
2 not branded, they're on very constrained sites.  
3 And let me just show you how they cluster. They  
4 pretty much cluster on coast highway, that's  
5 where you see the nine, 11, ten, five, and it  
6 goes all the way down to south coast highway.  
7 So you know, they were old motor courts, many of  
8 them from the 40s. So here are some pictures.  
9 This is what we've got, that's our inventory,  
10 they're definitely not fancy, people stay there,  
11 but this is what we've got and these are the  
12 pictures of some of them. So again the LCP  
13 requires that we have 375 rooms, well we  
14 wouldn't allow it to go below 375 rooms and the  
15 question keeps getting asked, well what are you  
16 going to do. Well we're just not going to allow  
17 it. But we understand that the coastal staff  
18 still has that concern and they have this new  
19 definition that moves it up to 159, which we  
20 really do appreciate because \$100 was abysmally  
21 low we though. And so we proposed was that we  
22 would in all of our future cases where a hotel  
23 is going to demo and rebuild, we would include  
24 it as an ordinance, we would require it, we'll  
25 put it in our staff report that we would update

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 30  
2 the inventory and we would be able to  
3 demonstrate at that time what our current  
4 warning would be. So it would be a warning  
5 mechanism, it would be a monitoring mechanism.  
6 So the bottom line of this one is that we really  
7 feel that these unique circumstances, we're next  
8 to Camp Pendleton, we've got all these old  
9 motels, that the fee should not be imposed, and  
10 we urge you to reject suggested modifications  
11 six and seven. But we will require the  
12 inventory, we will monitor this so you will be  
13 comfortable that it's being monitored. Now a  
14 lot of this before you, all of this before you  
15 is in the redevelopment area. And the whole  
16 purpose of redevelopment is to encourage our  
17 property - - to invest in the properties. And  
18 this \$30,000 fee is going to go diametrically  
19 opposed to all the things we do. We have a main  
20 street organization, façade enhancements, we've  
21 got an evening Farmer's Market, we got new  
22 street lights, we're doing all this stuff and  
23 this is going to go the opposite direction of  
24 where we're trying to get to. So let me move  
25 quickly to the second issue which is this joint

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 31  
2 and several liability issue. And again, let me  
3 put this in context. The only place that condos  
4 - - or fractional are allowed is the nine block.  
5 In the nine block it's only going to happen in  
6 the two blocks. And in the two blocks it's only  
7 48 out of the 384, so it's a small amount. And  
8 I want to share with you that we're putting \$27  
9 million into this and the reason that the  
10 fractionals are being allowed is so we don't  
11 have to put more then that. That was a bitter  
12 pill for the community and the council to  
13 swallow, but to materialize something that the  
14 agency hasn't been able to do, it was created in  
15 1975, 33 years later there still is no hotel.  
16 They put \$27 million into it and also added  
17 these controls, and many of them were with the  
18 concurrence and direction from the coastal  
19 staff, which you can see 29 days in a 60 day  
20 period, no more then 90 days in a year, the  
21 operators required to disclose, the owners have  
22 to certify, the booking is done by the operator,  
23 the operator has to keep records. There's  
24 conditions in the CC&R, and the bigger issue and  
25 the hammer in this is that we can audit and you

**Ubiquus Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302



1 City of Oceanside: Coastal Commission Meeting 32  
2 can audit. So we think that we really got a lot  
3 of controls. The other thing is we got a DDA  
4 and a lease on this project. The lease by the  
5 way is 214 pages long, they can barely change  
6 the petunia's without coming to the city for  
7 some kind of a conversation about it. So we're  
8 going to be in the game, it's a 75 year lease  
9 with a 24 year option. So there's very little  
10 that they're going to be able to do that we are  
11 not going to have some kind of ability. So we  
12 feel that like the belt and suspenders approach,  
13 we've got a very strong belt here, it's a very  
14 sturdy belt, we think we've got a ton of  
15 controls. The other issue that we really feel  
16 here is that when we met with the coastal staff  
17 on the issue of the joint and several liability,  
18 their intention was, who's going to monitor that  
19 all this is happening right. They want to make  
20 the individual owner liable for the operator and  
21 the operator liable for the individual owners.  
22 That language is still in there. However you  
23 can imagine if you were at Western or Hyatt how  
24 they would balk at being liable if an individual  
25 owner just lies about it. And it could ruin our

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 33  
2 deal, and we're extremely, extremely concerned  
3 about that. And this language although you  
4 allowed fractional timeshares and condo - - this  
5 language of joint and several from the  
6 marketplace standpoint and what we're hearing  
7 from the operators would likely eliminate our  
8 ability to do it. Now we've learned a lot about  
9 these hospitality types and I think that the  
10 coastal staff and our staff both together have  
11 done that. We've come to a lot of  
12 understanding, a lot of these issues, but based  
13 on our information from our developer this is a  
14 big issue for us. And we would ask you not to  
15 impose the joint and several liability that we  
16 already have sufficient controls in place, we're  
17 working with experienced developers, experienced  
18 hoteliers. So in suggested mod we would ask you  
19 not to accept staff suggested mod four and five  
20 and remove the joint and several language and  
21 accept the city's language. I'm happy to answer  
22 any questions you might have. I know I ran  
23 through that really, really fast. We've got  
24 Jeremy Cohen here who's operated hotels and  
25 knows this far better than I do. And on the

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 34  
2 concluding note I would share with you we really  
3 look forward to you coming back to Oceanside in  
4 August. So we will welcome you in August. And  
5 I'm happy to answer any questions you might  
6 have.

7 CHAIRMAN KREWARD: Any questions? Thank you  
8 Ms. McFay. Anyone else that would like to speak  
9 with Jeremy?

10 MR. COHEN: Just a couple of brief  
11 sentences. I won't speak to the fee because  
12 Jane has been very eloquent. And while it  
13 doesn't apply directly to our project that was  
14 decided at a December coastal commission  
15 meeting, we've been side by side with the city  
16 on this, because this is a redevelopment area.  
17 And they've got to get rid of some of the  
18 blight. And it does seem like double dipping to  
19 require them, to keep 375 affordable rooms and  
20 then to charge them, I saw since they're over on  
21 their inventory now, if they need to reduce any  
22 of those rooms to clean up some blight.

23 I do want to address the joint in several  
24 liability issue, it really should be more  
25 appropriately termed the joint liability issue

1 City of Oceanside: Coastal Commission Meeting 35  
2 because several liability is exactly what we're  
3 asking for, which is we have no problem with  
4 Hyatt or Westin as the operator of a hotel. And  
5 these are branded hotels and not one of the  
6 conditions, not one of the projects with the  
7 conditions of joint and several liability has  
8 ever gone forward with a branded hotel. The  
9 only one we know of at all that's gone forward  
10 is the 27 very luxurious cottages that were sold  
11 by the Del Coronado Hotel. Others have accepted  
12 them, those conditions. But have not yet tested  
13 them in the marketplace. But the idea of  
14 several liability is everyone's responsible for  
15 their own actions. The operator does not do  
16 everything in its power and it has a huge list  
17 of requirements, its responsible. If Joe Smith  
18 buys a fractional timeshare unit and doesn't  
19 adequately report, even though we've asked for  
20 certified reports, he is responsible. A company  
21 like Hyatt or Westin does not want to be  
22 responsible for the actions of Joe Smith. They  
23 already have--we have to use our best efforts to  
24 enforce the conditions that are there and we've  
25 all agreed as to what those conditions are,

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612  
Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 36  
2 there's no question about it. But it's simply  
3 trying to take a stick to the operator when it  
4 has no greater, you can give an incentive but if  
5 you have no ability to force someone to do  
6 something, you just can't make them do it.

7 Also I think that you want a situation where  
8 the operator of the hotel if he sees that an  
9 individual is violating would come forward,  
10 share that with the city, and be able to take  
11 enforcement action. And if we turn it around  
12 and we hit the operator with liability for Joe  
13 Smith's failure to comply, you're not giving the  
14 operator the right incentive to come out. Sort  
15 of like telling the policeman if he comes  
16 forward with someone who's not abiding by the  
17 law, he'll be punished for it. So we think that  
18 it's an unfair thing to do to the consumer to be  
19 responsible for the hotel operator and vice  
20 versa. I know our time is up.

21 CHAIRMAN KREWARD: Can you state your name  
22 for the record, I'm sorry.

23 MR. COHEN: Jeremy Cohen with SD Malken  
24 Properties.

25 CHAIRMAN KREWARD: Thank you very much.

2 Okay? Yes.

3 FEMALE VOICE: Do you have a question?

4 CHAIRMAN KREWARD: Oh.

5 FEMALE VOICE: - - question.

6 CHAIRMAN KREWARD: Not at this point. We  
7 probably will though so okay. But we'll have  
8 some questions so with that go back to--I'll  
9 close the public hearing and go back to staff.

10 MALE VOICE: Mr. Chairman, I'd just like to  
11 concur in what Jane said relative to our working  
12 together with the city to narrow the issues  
13 here. And we're very pleased with the progress  
14 we've made and that we have narrowed it down to  
15 the two issues that you heard before you  
16 presented here. And before Cheryl gets into  
17 those, let me just point out relative to the  
18 joint and several liability issue, it highlights  
19 one of the problems with these fractional  
20 ownerships, or multiple ownerships in a hotel  
21 setting. Our main concern there is enforcement.  
22 How do we deal with enforcement when we have a  
23 situation where we would have to try to track  
24 down multiple owners in these fractional  
25 ownership situations. The liability issue in

1 City of Oceanside: Coastal Commission Meeting 38  
2 terms of financial responsibility, that's not of  
3 major concern to us. It's the enforcement of  
4 coastal conditions. So let me ask Cherylan  
5 [phonetic] to make some observations and then we  
6 look forward to discussion with you on those two  
7 issues.

8 MS. BAKER: My comments are mainly just to  
9 clarify that the staff's recommendation  
10 regarding the fee, it would only apply to  
11 demolition of lower cost accommodations when  
12 they are replaced with high end accommodations.  
13 So in the city's letter, based on their  
14 representation, the fee would not apply to any  
15 of the projects that they have identified. That  
16 if the project is replaced as a moderate cost  
17 hotel the fee would not be triggered. They have  
18 identified a number of smaller units that the  
19 letter seems to suggest the only thing that they  
20 might be capable of doing would be redeveloping  
21 as lower moderate cost units. And again if  
22 that's the case the fee would not kick in. It's  
23 only if the goal is to demolish all of the  
24 existing lower cost units and replace them with  
25 high end units that this fee would be triggered.

2 And if that is what occurs then we think the fee  
3 would be appropriate. The city's LCP does have  
4 the policy that protects a minimum of 375 units  
5 in the coastal zone, and that is a minimum, they  
6 can't go below. They only have 100 some unit  
7 buffer between what exists and that minimum, and  
8 so the inventory that the city indicates is  
9 necessary to keep track of those units is  
10 necessary and is also required currently by the  
11 policy in the land use plan. And that would be  
12 true regardless of what the commission does on  
13 this LCP amendment.

14 MALE VOICE: I think relative again to the  
15 fee, the situation as we see it is that the fee  
16 would not apply in the projects that have been  
17 identified for us in the redevelopment area.  
18 And the city is saying then if it doesn't apply  
19 it should be in there. I think that's the  
20 message. Our concern is if it doesn't apply  
21 because of the formula that we're using then you  
22 should have to worry about it. But if for  
23 example it's deleted, and the plans change, and  
24 somehow along the way a high end project comes  
25 forward there, there would be no fee



1 City of Oceanside: Coastal Commission Meeting 40  
2 requirement. So that's the situation that we're  
3 trying to cover here. That it doesn't apply  
4 given what we understand as being planned, but  
5 if there are changes in the future and you do  
6 have a high end resort here, then it would apply  
7 using the formula. So that's the situation  
8 we're in.

9 CHAIRMAN KREWARD: Okay.

10 MALE VOICE: And council has a comment.

11 [sound cut]

12 [END TAPE AGENDA\_ITEM12A\_45MINUTES30S SIDE  
13 A]

14 [START TAPE AGENDA\_ITEM12A\_PART2\_75MINUTES  
15 SIDE A]

16 FEMALE VOICE: Thank you Mr. Chair. With  
17 regard to the joint and several liability I want  
18 to be clear about something because I think I  
19 heard in this statement from the city about the  
20 way the liability is written. The way it is  
21 written at the moment, there is no liability for  
22 individual owners for the action--for the owner  
23 of individual units or individual shares for the  
24 actions of the hotel or operator of the larger  
25 project, there is no liability for the

1 City of Oceanside: Coastal Commission Meeting 41  
2 individuals, the small owners. That's something  
3 we discussed in our call of June 18th and we  
4 both agreed that we were in agreement that that  
5 was correct.

6 MR. COHEN: What I heard was that they were  
7 talking about the hotel operator and the owner -  
8 - not the individual owner.

9 FEMALE VOICE: Okay, well I heard that they  
10 were saying both. We do have it written so that  
11 the hotel operator or the larger owner is  
12 responsible for violations of individual owners  
13 for much the reason that Executive Director  
14 Douglas identified. And every condo hotel that  
15 the commission has looked at since the workshop  
16 on condo hotels has had this provision in it.  
17 And it is part of the template of provisions  
18 that the commission has looked at and used since  
19 then.

20 CHAIRMAN KREWARD: Mr. Cohen, would you  
21 clarify something?

22 MR. COHEN: We did discuss that in our phone  
23 call but despite the conversation that we had  
24 afterwards, we don't think that the language  
25 reflects that second point. We still don't feel

1 City of Oceanside: Coastal Commission Meeting 42  
2 that it makes clear that individual unit owner  
3 would have no liability for failure to comply on  
4 the part of a Hyatt or Westin as an operator.  
5 So we agree in principal but we just don't think  
6 that the language--

7 MS. MCFAY: You just took my language.

8 MR. COHEN: It's on page 20, and right it  
9 says that each owner of a fractional interest is  
10 jointly and severally liable with a fractional  
11 hotel owner operator for any violations of the  
12 terms and conditions of the coastal development  
13 permit. So we feel that language is still in  
14 there, and we did discuss it, and we felt that  
15 was the intent but we haven't seen that language  
16 adequately reflecting it.

17 MS. MCFAY: I'm sorry, actually we talked  
18 about it and the language I'm reading that says  
19 that, it says with respect to the use of that  
20 owners unit. But on the 18th you did say that  
21 your attorney would get us language that you  
22 thought better reflected that and we have never  
23 received anything since then.

24 MR. COHEN: Well I believe it's an issue of  
25 even with respect to your own unit, if Joe Smith

1 City of Oceanside: Coastal Commission Meeting 43  
2 owns the unit he shouldn't be responsible if  
3 Hyatt hotels blew something and didn't do it on  
4 his unit. If we have agreement on that then we  
5 should just make sure the language works.

6 MALE VOICE: We do.

7 MS. MCFAY: We thought we did.

8 MR. COHEN: Okay, great. Then we'll be  
9 happy to work with to make sure it works and  
10 then we are limited to the issue of the  
11 operators liability.

12 CHAIRMAN KREWARD: Thank you Mr. Cohen.  
13 Thank you Ms. Schmelzer.

14 MALE VOICE: I just wanted to indicate, it  
15 seems that there was a communication issue here  
16 but we were in agreement on that point.

17 CHAIRMAN KREWARD: Okay.

18 MALE VOICE: And so we'll clarify the  
19 language to make sure that it reflects what Ms.  
20 Schmelzer said and what we just agreed on the  
21 record. Yes.

22 CHAIRMAN KREWARD: Yeah, okay.

23 MALE VOICE: It's the operator side that's -  
24 -.

25 CHAIRMAN KREWARD: Yeah, that's still in

1 City of Oceanside: Coastal Commission Meeting 44  
2 question. Okay, and with that, is that it from  
3 the staff at this point response? And with that  
4 I'll go to Commissioner Wayso first.

5 COMMISSIONER WAYSO: Thank you, and if you  
6 don't mind I'd like to ask some questions first  
7 if that's okay.

8 CHAIRMAN KREWARD: Sure.

9 COMMISSIONER WAYSO: I have questions  
10 regarding the intent of the LCP amendment. Was  
11 the original intent only to cover the nine block  
12 area that was in question, that you showed in  
13 the slide?

14 MS. MCFAY: Commissioner--

15 COMMISSIONER WAYSO: - - the amendments to  
16 the LCP would apply only to the nine block area?

17 MS. MCFAY: Commissioner, no that's not the  
18 case. The original LCPA was for the entire  
19 redevelopment area dealing with zoning of many  
20 things, everything from espresso carts to the  
21 Kinko's. So it included a complete redo of the  
22 zoning matrix, but at that time we did include  
23 the definition of the fractional timeshares  
24 because we were in process with the hotel, and  
25 we had received the letter from the executive

1 City of Oceanside: Coastal Commission Meeting 45  
2 director that we followed that direction.

3 COMMISSIONER WAYSO: So in terms of the fee  
4 and the way it's applied, it's only applied if a  
5 low cost serving accommodation is eliminated and  
6 replaced by a higher cost. Is that how you  
7 understand it?

8 MS. MCFAY: That's our understanding from  
9 the staff.

10 COMMISSIONER WAYSO: Okay, so right now,  
11 currently as of staff's report there are 516  
12 units under \$100, 516? And only the 375 are  
13 protected under your plan?

14 MS. MCFAY: We currently have 533 that are  
15 considered affordable at the under \$100.

16 COMMISSIONER WAYSO: 533.

17 MS. MCFAY: 375 are what are required in the  
18 LUP of the LCP so we believe we have in excess  
19 of the 375 requirement, and on a daily basis  
20 we're adding additional hotels like the Holiday  
21 Inn Express that's under construction right now.

22 COMMISSIONER WAYSO: That would be--

23 MS. MCFAY: In addition to the 533.

24 COMMISSIONER WAYSO: So that wouldn't be  
25 affected by the \$30,000?

2 MS. MCFAY: Well we don't know what their  
3 price point is but we would, we will have to  
4 wait and see.

5 COMMISSIONER WAYSO: Would it be affected by  
6 the 30,000?

7 FEMALE VOICE: Not as new development, no.

8 COMMISSIONER WAYSO: Not as new development.

9 FEMALE VOICE: Right.

10 MS. MCFAY: Right.

11 COMMISSIONER WAYSO: So it's because it's  
12 not illuminating low cost.

13 FEMALE VOICE: That's correct.

14 COMMISSIONER WAYSO: Okay, in the staff  
15 report it mentions that the fee applied to 50  
16 percent of the units in the redevelopment area.  
17 Does that mean that of the--how many units are  
18 in the redevelopment area? How many low cost  
19 units are in the redevelopment area?

20 MS. MCFAY: Mr. Commissioner, I believe that  
21 the 50 percent applies to 50 percent of the net  
22 new rooms in an individual unit, not 50 percent  
23 of the entire rooms in the redevelopment area.

24 COMMISSIONER WAYSO: I didn't understand  
25 that, can you explain that again? The 50

1 City of Oceanside: Coastal Commission Meeting 47  
2 percent of--

3 MS. MCFAY: The fee formula as I understand  
4 it, if you have a hotel and you demo it, and  
5 you're going to rebuild it, let's say you have  
6 50 rooms--

7 COMMISSIONER WAYSO: Okay, right.

8 MS. MCFAY: --you build 100 that you're  
9 going to pay 50 percent on either net new, so 50  
10 percent of the 50 or 50 percent of the 100,  
11 which is a different calculation.

12 [crosstalk]

13 COMMISSIONER WAYSO: 50 units would be  
14 subject to the \$30,000?

15 MALE VOICE: Let Cherylan explain or try.

16 MS. BAKER: The 50 percent applies to 50  
17 percent of the number of units that are  
18 demolished and not replaced in a high cost  
19 facility. So it's only 50 percent of the  
20 demolished unit. It is not 50 percent of the  
21 total number of new units on the site.

22 COMMISSIONER WAYSO: So if you demolish 100  
23 units, and build a 400 unit all high cost you  
24 destroy the 100 units let's say, the fee only  
25 applies to 50 percent of those?



2 MS. BAKER: That's correct.

3 COMMISSIONER WAYSO: Okay. So it's possible  
4 that they can--of the units that would probably  
5 be affected by this we're talking about 533  
6 minus 375, we're looking at eight, about 158  
7 units. So the fees would only apply to about 72  
8 units, somewhere around there? If we're only  
9 talking about 50 percent of those demolished,  
10 because you plan protects 375 and you have 533,  
11 but then we would have to go back to analyze  
12 which ones were in the redevelopment area.

13 MS. BAKER: Yeah.

14 COMMISSIONER WAYSO: Okay, so what's the  
15 likelihood that this fee would ever even be  
16 imposed.

17 MS. MCFAY: Well depending upon the location  
18 of the particular hotel, many of our properties  
19 are World War II era functionally obsolete motor  
20 courts who are on small lots that back up to  
21 alley's. You typically have utilities in alleys  
22 and you can't build buildings on them. Behind  
23 those alleys are residential, next to them is  
24 commercial, so they have extraordinarily  
25 redevelopment opportunities. There are a couple

1 City of Oceanside: Coastal Commission Meeting 49  
2 on North Coast Highway.

3 COMMISSIONER WAYSO: How many of those are  
4 there that you think would be replaced?

5 MS. MCFAY: None of the ones on South Coast  
6 Highway, I don't see in the long term  
7 redeveloping. On North Coast Highway, which is  
8 in redevelopment, we would have the Guest House  
9 Inn which does have an application in right now.  
10 And we would have the Coast Inn which is 27  
11 units I believe, and then we have a couple of  
12 other ones so.

13 COMMISSIONER WAYSO: Let's speak to just the  
14 redevelopment area, and what potentially can be  
15 affected in the redevelopment area that could  
16 face--I mean how many units are we talking about  
17 in the redevelopment area that could face this  
18 fee that you can?

19 MS. MCFAY: Probably about 150.

20 COMMISSIONER WAYSO: 150 units that could  
21 be demolished and replaced with higher cost  
22 units?

23 MS. MCFAY: Potentially.

24 COMMISSIONER WAYSO: So we're looking at  
25 about 75 units would be subject to a fee?

MS. MCFAY: Potentially.

COMMISSIONER WAYSO: Those in the redevelopment area. Has staff ever considered in terms of--instead of--well I guess that could still be done. In other words you can still protect those units using redevelopment funds to subsidize a project. We're looking at about 75 units that you can subsidize a hotel builder that comes in and builds high cost units. You can technically still provide those units using tax increment financing or bond financing of some sort in the redevelopment area?

MS. MCFAY: Technically we could, what we have chosen to do at this time, all the hotels that have been built to date have been market driven, and we have not put money in them in North Coast Highway to subsidize a high end hotel because of their adjacency to trailer parks that are not likely to be moved. So the likelihood of a high end hotel going next to either a trailer park or a nude bar is rather low, so we have not invested in hotels adjacent to those uses, and have chosen to allocate our funding to where we have a legitimate

1 City of Oceanside: Coastal Commission Meeting 51  
2 opportunity to create a high end hotel.

3 COMMISSIONER WAYSO: Okay, so what you're  
4 arguing here is if we had a project like those  
5 adjacent to a trailer park or a--

6 MS. MCFAY: Nude bar.

7 COMMISSIONER WAYSO: --a nude bar.

8 MS. BAKER: Also called a--we try to use it  
9 a non conforming use, it sounds a wee bit nicer.

10 COMMISSIONER WAYSO: Okay, it's non  
11 conforming is that consistent with your plan?

12 MS. MCFAY: Yes.

13 COMMISSIONER WAYSO: You just embarrassed me  
14 here. Anyway, so you're saying that because of  
15 the location and because of non conforming uses  
16 that it's unlikely that you'll be a high end  
17 hotel which means if they are demolished that  
18 you'll probably just build something that's  
19 within the income range of what's - -?

20 MS. MCFAY: Most likely.

21 COMMISSIONER WAYSO: So they probably won't  
22 pay the fee anyway. Is it--assuming, I mean  
23 we've created a range that comes up to about  
24 160,000. That would pretty much dictate the  
25 type of investment that's going to go there,

1           City of Oceanside: Coastal Commission Meeting 52  
2       because it seems that if it would require  
3       165,000, we're talking about five dollars and  
4       imposing a fee of 30,000 seems to somehow create  
5       somewhat of a burden on their ability to finance  
6       a project on a difference of five dollars. Some  
7       of these projects do get down to details.  
8       You're saying that this methodology has a  
9       sliding scale and it's adjusted based on room  
10      rates statewide, and that's suggested on a year  
11      basis?

12           MALE VOICE: I don't know exactly whether  
13      it's statewide, you do look at the particular  
14      area within a certain radius.

15           COMMISSIONER WAYSO: Right, your methodology  
16      is in the coastal zone.

17           MALE VOICE: Right, and there are statewide  
18      averages that are built into it.

19           COMMISSIONER WAYSO: But our methodology is  
20      coastal zone hotels statewide.

21           MALE VOICE: Right.

22           COMMISSIONER WAYSO: Okay.

23           MALE VOICE: The other part, the main point  
24      is that we think under our formula the fee  
25      simply wouldn't be triggered because the

1 City of Oceanside: Coastal Commission Meeting 53  
2 replacement units are going to be affordable.  
3 And they're not going to be high end. So I  
4 think what you just heard is there's a very low  
5 likelihood of a high end resort going in here  
6 and therefore we just don't see that that's  
7 applicable at this time. Who knows what will  
8 happen in ten years to the area but.

9 COMMISSIONER WAYSO: Right. Okay, so--and  
10 so I just want to reiterate the amount of units  
11 in question are about 150 that would be affected  
12 by this proposal of that 150, 75 would be--so  
13 we're really talking about 75 units here that  
14 maximum would fall under this LCP amendment?

15 MS. BAKER: That would only be if they are  
16 demolished and replaced with high end units.

17 COMMISSIONER WAYSO: Mr. Chair, I would like  
18 to make a motion following any questions that  
19 the commissioners would have.

20 CHAIRMAN KREWARD: Commissioner Clark?

21 COMMISSIONER CLARK: Thank you Mr. Chair. I  
22 do have a couple questions and a couple  
23 observations. Let me start with the in lieu fee  
24 and for staff in terms of--could you refresh my  
25 memory, maybe some of my colleagues memory in

1 City of Oceanside: Coastal Commission Meeting 54  
2 terms of our condo hotel projects that we have  
3 approved, which ones have we imposed the in lieu  
4 fee on? Any?

5 COMMISSIONER SHAWNBERG: I know that the KSL  
6 projects in Encinitas had the in lieu fee  
7 applied to it even as traditional hotel.

8 COMMISSIONER CLARK: Is it a new convention  
9 from a staff perspective where we're seeing now-  
10 -well this is a brand new proposed resort hotel  
11 within the redevelopment district correct?

12 COMMISSIONER SHAWNBERG: The project enabled  
13 by the - -.

14 COMMISSIONER CLARK: Right, okay. We didn't  
15 apply this to Tera Naya [phonetic] did we? The  
16 in lieu fee?

17 [background voices]

18 COMMISSIONER CLARK: Tera Naya, Rancho  
19 Palace Verdes, we didn't apply it to Del  
20 Coronado did we?

21 COMMISSIONER SHAWNBERG: The in lieu fee?

22 COMMISSIONER CLARK: I guess I'm really  
23 asking is this the first time we've applied it?  
24 You said Encinitas?

25 COMMISSIONER SHAWNBERG: No, this is not the

1 City of Oceanside: Coastal Commission Meeting 55  
2 first time. There was a surface point,  
3 timeshare development in Encinitas that was  
4 recently approved with the in lieu fee. There's  
5 been other projects in northern California where  
6 the in lieu fee has been applied. It is more  
7 typically applied to 25 percent of new  
8 development. But the commission specifically  
9 addressed that in their action in December in  
10 this case, and did not apply it to this new  
11 development proposal. And was only applying the  
12 fee to when there was demolition of the existing  
13 lower cost units that weren't replaced.

14 MALE VOICE: And there are at least two  
15 projects in Central Coast to which we applied  
16 it. The in lieu fee is not new, it is something  
17 that the commission has historically applied to  
18 insure that lower cost overnight accommodations  
19 are provided, whether it's in new campgrounds or  
20 whatever, so that's nothing new. But you have  
21 looked at it on a case by case basis. And as  
22 Cherylan just pointed out, in the case of the  
23 development that's proposed here you decided not  
24 to apply it.

25 COMMISSIONER CLARK: Right. In December?



2 MALE VOICE: Yes.

3 COMMISSIONER CLARK: And now the staff is  
4 proposing to apply it?

5 MALE VOICE: No, you've acted on that.  
6 We're not changing that.

7 COMMISSIONER CLARK: Oh okay.

8 MALE VOICE: What we're saying is the  
9 remainder of the area, it would only apply if it  
10 were high end units that came in but we don't  
11 see that happening.

12 COMMISSIONER CLARK: Right, and I think on  
13 that point, what I take away from--

14 MALE VOICE: High end replacing lower cost.

15 COMMISSIONER CLARK: What I take away from  
16 the testimony before the commission today is  
17 just that Peter that the staff's position is  
18 given what is projected to occur, it wouldn't  
19 play. But by putting the in lieu fee in place  
20 it acts as an insurance mechanism if there is  
21 future high end development, is that correct?

22 MALE VOICE: That's correct.

23 COMMISSIONER CLARK: Okay, then I understand  
24 it. Let me turn to the joint and severable  
25 liability. If I understand it, and correct me

1 City of Oceanside: Coastal Commission Meeting 57  
2 if I'm wrong, the issue at play for us from  
3 staff's perspective and advocacy to the  
4 commission is holding now the owner operator  
5 responsible, is that correct?

6 MALE VOICE: For compliance with the coastal  
7 permit requirements, conditions, and - -.

8 COMMISSIONER CLARK: Right, and in that  
9 context, and I think I heard this but I just  
10 want to clarify that I did hear this, that we've  
11 had that joint and severable liability  
12 requirement in all of our other condo hotel  
13 projects is that correct?

14 MALE VOICE: I'm not sure. I don't think it  
15 was in all of them but it has been in some.

16 COMMISSIONER CLARK: And you mentioned, does  
17 anyone know which ones?

18 MS. BAKER: It's been in all since the condo  
19 hotel workshop.

20 COMMISSIONER CLARK: Well that's what I  
21 thought. I mean that's what I'm talking about.  
22 The argument I hear from the city and their  
23 applicant for this hotel is that this could be  
24 dealt with through what they consider sufficient  
25 controls being audits. And I guess that doesn't

1 City of Oceanside: Coastal Commission Meeting 58  
2 go to my main concern with respect to this, how  
3 do you really, if you don't have this language  
4 in there, how do you really deal with holding  
5 the operator accountable? So let me ask the  
6 applicant and the city to come back up and  
7 explain this a little more in detail.

8 MR. COHEN: The operator is liable. He's  
9 liable for not fulfilling his role or her role  
10 in the operate and fulfilling the conditions  
11 that have been set forth today which we all  
12 agree on what the condtions are.

13 COMMISSIONER CLARK: Well if that's the case  
14 sir, then why do you have a concern about the  
15 language proposed by staff?

16 MR. COHEN: Because it goes beyond holding  
17 people responsible for their failure, it goes to  
18 holding them responsible for the Ferrier of  
19 others that they can't control. And so we feel  
20 that it is not right for Hyatt to be  
21 responsible, or Westin to be responsible for Joe  
22 Smith's failure when the operators done  
23 everything they can to enforce, to monitor, to  
24 report, to audit, but people unfortunately can  
25 do things, the operator will take

1 City of Oceanside: Coastal Commission Meeting 59  
2 responsibility.

3 COMMISSIONER CLARK: Right, your position is  
4 somewhat contrary to other developers who have  
5 come before us when we've applied this language.

6 CHAIRMAN KREWARD: I think the issue here  
7 that we haven't discussed is and I just speak to  
8 this issue. The problem of joint and several  
9 liability, if you already have a flag or you're  
10 an existing project that's one issue. If you  
11 come in and you're building a couple hundred  
12 million dollar project and you don't have your  
13 flag down and you go to any of these flag  
14 players and say they got assigned joint and  
15 several. They're not going to build that hotel  
16 because they're not going to be able to get a  
17 flag or get their financing. And that's one of  
18 the areas that each one of these deals is  
19 different.

20 COMMISSIONER CLARK: Right.

21 CHAIRMAN KREWARD: You know, and I've always  
22 said let's keep some skin in the game and keep  
23 the thing. The people have all kinds of skin in  
24 the game on this project. The city has \$27  
25 million, God knows what the developer has, we've

1           City of Oceanside: Coastal Commission Meeting 60  
2       had deteriorating credit markets etcetera, that  
3       are going the other way. Everything's going to  
4       hell in a hand basket, they're still here going  
5       to build the hotel, and this \$30,000 fee in this  
6       case in my opinion it's irrelevant because it's  
7       relevant because it's in a redevelopment area,  
8       and for all you local government people  
9       etcetera, the problem is I've never--I'd rather  
10      have in every one of these districts where  
11      cities or counties put in a floor, the City of  
12      Oceanside has a floor, 375 units. That is  
13      really something because you can get \$30,000,  
14      take half the units, take 150 units, you might  
15      raise two million dollars, what are you going to  
16      do with that? You can't replace those floor  
17      units etcetera that you're based into the thing.  
18      To me the real issue here is maintaining that  
19      floor and--because that ten percent if you add  
20      to it that suggests - - and the city was going  
21      to do, does that increase your floor or is that  
22      just maintaining the floor? That ten percent?

23           MR. COHEN: If you--the proposal that you  
24      ask. I noticed - - for the commissioners, does  
25      that increase the floor?

2 MS. BAKER: Chairman Kreward that doesn't  
3 increase the language in the LUP and we offered  
4 that reluctantly only to request humbly that  
5 you not impose the fee on the city. And that  
6 was offered in lieu of the fee and the  
7 suggestion was made again reluctantly that  
8 should you see your way clear to not imposing  
9 the fee that the city would require any hotel or  
10 motel who is lower cost who demos and rebuilds  
11 to be required to maintain ten percent  
12 affordable.

13 CHAIRMAN KREWARD: Okay, the reason why I  
14 bring this up at this point and Mr. Clark you're  
15 on a good point and other commissioners here in  
16 raising these questions is to me Oceanside is  
17 different then what we did in Huntington Beach.  
18 Huntington Beach you remember we did really  
19 technically 100 percent conversion because they  
20 agreed, they already had their flag, they  
21 already had their flag the joint - - . Hotel  
22 Coronado, same thing. There wasn't this thing,  
23 and I think the applicant is correct here, it's  
24 one thing to be severally liable, but nobody, I  
25 never agree to be joint and several, I am not

1 City of Oceanside: Coastal Commission Meeting 62  
2 going to be responsible, you can imagine what a  
3 big corporation, a big flag that just gets a fee  
4 for operating your hotel, why would they ever  
5 agree to that. And in the case, if they don't--  
6 if they're building a new hotel and have to deal  
7 with these issues, I think that's a real concern  
8 that we should look at, and we might impede,  
9 might, I think could very well impede. I think  
10 the staff's done a wonderful job of getting it  
11 down to these last two points, they've dealt  
12 with these issues the best they can. But to me  
13 I like the floor, and I like the idea of that  
14 because if you collect \$30,000 for those  
15 replacement units, you're not even going to come  
16 close. You're going to go on a six to seven one  
17 ratio of the cost to build more affordable. So  
18 if you have ten percent, what they're offering--  
19 with those fees you're not even going to replace  
20 those ten percent of those units for the extra  
21 money.

22 COMMISSIONER CLARK: Mr. Chair I hear, and I  
23 appreciate your input here. Do I hear you also  
24 support what the city has indicated they would  
25 if we didn't require that language, include as

2 part of a potential motion, the ten percent?

3 CHAIRMAN KREWARD: Well you would have to  
4 hear it from other commissioners here. I would-  
5 -I think it's good to have the other ten  
6 percent, the devil's in the detail and you just  
7 have to make sure that the monitoring and  
8 everything else is correct, that we can maintain  
9 that and the different things because of the TOT  
10 tax they monitor and etcetera, as long as the  
11 language is stringent enough that's fine. I  
12 think the city in this particular case, again, I  
13 don't want to be repetitive, but the whole idea  
14 that sometime the commission did an incredible  
15 job to get this floor in, if we had a floor in  
16 everything, because that's where you really lose  
17 on affordable housing, or affordable hotel  
18 units, Oceanside is--I'll be you they have under  
19 this new formula that we just came up with  
20 staff, and I think it's a good formula, they  
21 might not have 91 percent, they might have 99  
22 percent of their hotel rooms in affordability  
23 then. All of them meet it. This is the poster  
24 child of affordable hotel rooms on the  
25 California coast, it really is. You spend any



1           City of Oceanside: Coastal Commission Meeting 64  
2           time in Oceanside and looking at all this ma and  
3           pop. And the last thing I want to say on it is  
4           that you've got to be careful with these \$30,000  
5           fees, because what you want to do if you're a  
6           redevelopment director, or somebody working in  
7           redevelopment and local government, you've got  
8           to be careful that you have a 20 unit project.  
9           And if you tell the guy look, you've got to  
10          upgrade this, just get this up to standard,  
11          still maintain in the affordability, but a  
12          better quality affordable unit, and you say I  
13          want \$30,000 unit for have those units because  
14          you're going to tear it down and built 20 more  
15          units back, guess what, I'm not building it. I  
16          can't afford to do it because you've just wiped  
17          out my residual land value.

18               COMMISSIONER CLARK: Thank you Mr. Chair, I  
19               appreciate your add here and I have no more  
20               questions.

21               CHAIRMAN KREWARD: Yes, Commissioner Wayso.

22               COMMISSIONER WAYSO: - - just to kind of--  
23               and this is for Jane McFay, I'm sorry.  
24               Regarding the history of the redevelopment--

25               MALE VOICE: Is your mike on?

2 COMMISSIONER WAYSO: Yeah it is.

3 MALE VOICE: Okay.

4 COMMISSIONER WAYSO: - - in the history of  
5 the redevelopment area, at the last hearing I  
6 asked questions regarding your affordable  
7 housing, set aside funds, you noted and you  
8 mentioned, I remember, I recall at the hearing  
9 that you mentioned that those funds were  
10 invested outside the redevelopment area.

11 MS. MCFAY: That's correct.

12 COMMISSIONER WAYSO: Do you have any plans  
13 to spend any future housing set aside within the  
14 coastal zone portion of your redevelopment area?

15 MS. MCFAY: Mr. Chairman and Commissioner  
16 Wayso, no we do not. And let me tell you why.  
17 The property values are so high and we are  
18 immediately adjacent to some neighborhoods that  
19 are quite low end that we have a lot of  
20 affordable housing immediately across the street  
21 from our redevelopment agency. And we have  
22 invested, and I do have some numbers, about 200  
23 units in the past several years have been paid  
24 for out of the housing set aside money. The  
25 agency just helped acquire a piece of property

1           City of Oceanside: Coastal Commission Meeting 66  
2           right outside of redevelopment that will  
3           probably create another 200 units. Our money  
4           goes farther if we go a mile away, so we've just  
5           chosen to--and we've produced a lot of  
6           affordable housing but it's outside of  
7           redevelopment.

8           COMMISSIONER WAYSO: Of this project that  
9           you anticipate constructing, how much tax  
10          increment will that project generate?

11          MS. MCFAY: The current project, I think--

12          COMMISSIONER WAYSO: The hotel.

13          MS. MCFAY: Do you remember the property  
14          tax? It's about a million dollars a year.

15          COMMISSIONER WAYSO: And of that 20 percent  
16          will be for affordable housing?

17          MS. MCFAY: 20 percent goes to affordable  
18          housing in our housing department.

19          COMMISSIONER WAYSO: But you can't invest  
20          that 20 percent on subsidizing low cost  
21          accommodations, that can only be applied to  
22          permanent residential?

23          MS. MCFAY: That's correct. The way the  
24          redevelopment law works for those of you who  
25          aren't familiar with it, the money comes in

1 City of Oceanside: Coastal Commission Meeting 67  
2 right across the top 20 percent goes out and  
3 it's been by every city that has a redevelopment  
4 agency on affordable housing projects. In our  
5 implementation plan because of the location of  
6 the agency it is very constrained, it's very  
7 small, it's only 375 acres, it's quite coastal,  
8 our implementation plan says that it can be  
9 within or without the redevelopment agency  
10 because our need is spread throughout the 42  
11 square miles of the city. So it's--we tried to  
12 create it where it's needed and where we can get  
13 it done.

14 CHAIRMAN KREWARD: Thank you.

15 COMMISSIONER WAYSO: Just one last thing,  
16 I'm sorry.

17 CHAIRMAN KREWARD: That's okay.

18 COMMISSIONER WAYSO: You're going to raise  
19 maybe 200,000 or whatever the sum--what's your  
20 budget - - and agency budget.

21 MS. MCFAY: Our tax increment on an annual  
22 basis is a little over six million.

23 COMMISSIONER WAYSO: Okay, so this would add  
24 about a million to your tax increment base?

25 MS. MCFAY: That's correct and then the deal

1 City of Oceanside: Coastal Commission Meeting 68  
2 that we have on the DDA, and the lease with the  
3 developer, the way we're making our 27 million  
4 back is through the property tax that gets  
5 created and the TOT, so that's our payback to  
6 get it done, it's a catalyst.

7 COMMISSIONER WAYSO: So you'll have  
8 somewhere close, just over a million dollars to  
9 invest in affordable housing every year. And  
10 you're saying--

11 MS. MCFAY: A million, yes, that's correct.

12 COMMISSIONER WAYSO: --with a million  
13 dollars you can't create affordable housing in  
14 the redevelopment area using the million to  
15 finance a project?

16 MS. MCFAY: Well we have limited land, and  
17 we just have made a policy decision that the  
18 money goes farther. I mean for what you would  
19 spend you know, maybe \$400,000 a door in  
20 redevelopment, you could spend maybe \$100,000 a  
21 door and create more units outside of  
22 redevelopment.

23 COMMISSIONER WAYSO: Okay.

24 CHAIRMAN KREWARD: Thank you. Commissioner  
25 Wan and Commissioner Burke.

2 COMMISSIONER WAN: I'd like to get back to  
3 the discussion that was going on about well,  
4 given the nature of the area and what surrounds  
5 the existing lower cost hotels, such that you  
6 would probably not trigger this requirement for  
7 the in lieu fees anyway. I'd like to point out  
8 that this is an LCP amendment which could be  
9 forever. And if at some point in the future you  
10 redevelop the area around those hotels so that  
11 now the area is much more desirable, in fact you  
12 could have a situation where those get  
13 redeveloped into higher end hotels. So I think  
14 that's the reason why staff is putting this  
15 mechanism in with a trigger for the possible  
16 consequences that might happen in the future.  
17 And when you're dealing with an LCP amendment  
18 you always have to think long term. You wanted  
19 to interrupt me? Go ahead.

20 COMMISSIONER BURKE: No I would never do  
21 that.

22 COMMISSIONER WAN: Right. But I do want to  
23 get to--and so I think in the long term it  
24 probably is a good idea to have it. But I do  
25 want to get back to the discussion that in part

1 City of Oceanside: Coastal Commission Meeting 70  
2 also Chairman Kreward brought up about the  
3 importance of protecting those--that 375 foot,  
4 foot; 375 unit floor, okay. And I'm looking at  
5 the city's letter, and they're adding, they're  
6 trying to add to it because we had a lot of  
7 discussion in December I believe about whether  
8 this was really enforceable, something that was  
9 enforceable, and realistically whether you can  
10 put it in there as a number, but whether unless  
11 as things happen as you go you deal with it,  
12 whether or not that's actually going to take  
13 place because it's one thing to say we've got a  
14 375 cap, but if you demolished everything and  
15 now you've got just the last remaining 375  
16 units, how do you deal with them differently  
17 then you've been dealing with everybody else.  
18 One of the things--and that's my concern with  
19 relying solely on that to deal with your  
20 affordable visitor serving facilities. But I  
21 would also point out that if the city talks here  
22 in terms of trying to add language, add some  
23 additional monitoring to make that more of an  
24 enforceable issue, but I don't see any language  
25 here. All they say is a promise, we promise you

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972 FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 71  
2 that we won't allow that to happen. But if this  
3 commission is going to be really serious about  
4 this, then at the very least we would need to  
5 see language that would satisfy me that in some  
6 way this was actually enforceable, because I  
7 don't see language. I see a promise but I don't  
8 see language to enforce that and that was my  
9 concern in December and it remains my concern.  
10 Yes I agree having that floor is very important,  
11 and it's a very good thing to do but unless it's  
12 enforceable I don't know what it means. Yes?

13 MALE VOICE: Commissioner Wan, that was our  
14 concern too and in response to that the city  
15 came up with this idea of if you get to a  
16 certain threshold that ten percent of the new  
17 units would have to be affordable. We think  
18 that's good, that's progress, but again the  
19 question is how do you make that work? How do  
20 you enforce the ten percent, I mean how is that  
21 going to work? And we don't know what the  
22 answer to that is.

23 COMMISSIONER WAN: I don't think that--the  
24 ten percent would be fine if it was in addition  
25 to the 375 units. But I have to tell you that



1           City of Oceanside: Coastal Commission Meeting 72  
2       ten percent is that ten percent doesn't mean  
3       anything because you talk about an enforceable  
4       nightmare and what does it mean.   Somebody  
5       decides they want to go to a high end hotel and  
6       there are ten percent of the rooms that are  
7       lower priced.   I don't know what it means,  
8       somebody picks up the phone, calls the hotel and  
9       says do you have lower cost visitor serving  
10      rooms in addition to the higher cost visitor  
11      serving rooms?   Most people out there on the  
12      open market aren't going to know that.   They're  
13      not going to know how to--and those rooms are  
14      not going to be reserved for the people who  
15      really need it because somebody who picks up the  
16      phone to call a high end hotel is not the same  
17      person who picks up a phone to call a Motel 6.  
18      So the average public is not going to be able to  
19      take advantage of those rooms.   So if it's in  
20      addition and it's a bonus that's fine.   But to  
21      in some way replace that 375 foot floor that is  
22      certainly not acceptable to me.   So these are  
23      the issues to me, one is the enforceability and  
24      the way to really make sure that we have that  
25      375 units available for both low and I would say

**Ubiquis Reporting**

2222 Martin Street Suite 212, Irvine, CA 92612

Phone: 949-477-4972   FAX 949-553-1302

1 City of Oceanside: Coastal Commission Meeting 73  
2 moderate income families, which I've said before  
3 is a major concern of mine. It's not just low  
4 end but it's the moderate, you know, the middle  
5 class family. And the need for something to  
6 deal with the issue in the long run, not two or  
7 three years from now, or even five years from  
8 now, but ten years, or 15 years when all of us  
9 are gone, and now the area is being gentrified  
10 and is coming in for high end hotels and the  
11 public is going to get shut out of those. So  
12 those are my concerns.

13 CHAIRMAN KREWARD: Ms. McFay, you want to  
14 comment on that?

15 MS. MCFAY: Mr. Chairman, we did prepare  
16 some language to the affect of the ten percent  
17 if that were the wisdom of the commission. And  
18 our sort of the bottom line premise is that  
19 today at 90.8 percent affordable with more  
20 affordable rooms then is required, we think even  
21 in the long term given the geography and the  
22 real estate that we have to work with, that in  
23 your long term which we also address and the  
24 long term already has been 33 years and we still  
25 don't have the one high end hotel. So we just

2 don't believe that we're going to have a  
3 plethora of them even in the long term, and  
4 that's just the reality of it.

5 CHAIRMAN KREWARD: To Commissioner Wan's  
6 question about the ten percent though, the issue  
7 is that can it be in addition? That is  
8 something that she's looking for, in addition to  
9 your 375, if you didn't have a fee, did you hear  
10 her point? Do you want me to make it again?

11 MS. MCFAY: If the mathematics would be that  
12 we have the LUP that states 375, and if what  
13 you're looking for is that in the instance when  
14 any hotel demos and rebuilds that the ten  
15 percent of the demolished rooms remaining  
16 affordable we could add that to the 375.

17 CHAIRMAN KREWARD: Then you'll agree to add  
18 that to the floor? Okay. Okay, that answers  
19 her question. Was there anyone else while Ms.  
20 McFay's up there on this issue, before I go to  
21 Commissioner Burke? Commissioner Burke.

22 COMMISSIONER BURKE: - - what I was going to  
23 say was basically - - about the whole issue, but  
24 - -. Is it on now? And this future thing, see  
25 I was told that it was 42 years they worked not

33. So if it's another 33 or 42 years, I'm willing to let the person who's sitting in this chair 33 years--now Sar [phonetic] will still be here. And you know, she can remind them of this. But there's a defacto situation going on with the lack of access to the beach in this area because of the current inventory that is on the surrounding properties. When you have the kind of activities that are going on, on that beach--I don't know another place in California, and I realize that I'm probably one of the younger members, junior members of this board, but I don't know another place in California where you have the kinds of activities going on the beach that we keep the average citizen from having access to the beach so they're going over there. These people are trying to clean up that activity and trying to make this beach accessible. Now this hotel is a, to me, a starting point for that activity. And to impose a fee of 35,000 a room on this whole project to get them out of the blocks I think would be unconscionable. And on the joint and several liability issue, as you may remember I was the

1 City of Oceanside: Coastal Commission Meeting 76  
2 guy who really put that out there. And I'm big  
3 on that, but in this case you know, this is not  
4 a suit that fits everybody. It doesn't work in  
5 this case.

6 MALE VOICE: Commissioner Burke's last point  
7 there is like an ad, it's very important. I  
8 mean if you were going to them and they had  
9 their flag and they want to convert some  
10 existing product and change it, it's like staff  
11 has dealt with those issues before, that's an  
12 issue to ask for.

13 CHAIRMAN KREWARD: I think the city is  
14 absolutely correct on this issue of the joint  
15 and several liability that becomes a real  
16 problematic problem to see the project develop.  
17 It could very well be the big issue. And the  
18 other issue again is if we--that we can get that  
19 floor, and with great monitoring, etcetera, I  
20 think staff's done an incredible job to work all  
21 these issues down to these two issues for the  
22 city. But we can add that new ten percent to  
23 that floor and build that floor up. That's a  
24 lot of units in an area like Oceanside because  
25 what I'm very concerned about is these little ma

1           City of Oceanside: Coastal Commission Meeting 77  
2           and pa operations that you don't create some  
3           kind of fee that they can not redevelop or  
4           rebuild their site and build it nicer because  
5           you want to get rid of all the rundown. There's  
6           some really rundown operations there, and they  
7           still redeveloped, they'll still, because  
8           they're so small, come under probably the  
9           affordable issue.

10           COMMISSIONER WAYSO: You know, I haven't  
11           seen the proposal of the ten percent.

12           MALE VOICE: Commissioner Wayfield she just-  
13           -

14           COMMISSIONER WAYSO: I haven't seen the  
15           proposal of the ten percent units. And what it  
16           means that any new hotel that's built that's  
17           high end would require ten percent of the units  
18           to be affordable, what's the proposal?

19           MS. MCFAY: Mr. Chairman, no. The  
20           suggestion that had been put forth is only in  
21           the case with an existing hotel with affordable  
22           accommodations that demos and rebuilds. Not a  
23           new one.

24           COMMISSIONER WAYSO: So if they demo let's  
25           say 100 units, and they want to build 400, or

1 City of Oceanside: Coastal Commission Meeting 78  
2 they want to build 100, or whatever the--they  
3 would only build ten percent of the units  
4 affordable?

5 MS. MCFAY: Ten percent fo the ones that  
6 have been demolished, so ten percent of 100.  
7 And I would also add I--

8 COMMISSIONER WAYSO: Only when it's  
9 demolished.

10 MS. MCFAY: --can't think of a location  
11 where we would be able to build 400 units other  
12 then the one we're talking about.

13 COMMISSIONER WAYSO: So it would be let's  
14 say 100 units, and it would demolish 100 units,  
15 and it would rebuild it as \$400 a night that  
16 would replace the \$135 a night?

17 MS. MCFAY: Ten percent of the original.

18 COMMISSIONER WAYSO: Ten of them so it would  
19 be ten units?

20 MS. MCFAY: That's correct.

21 CHAIRMAN KREWARD: Commissioner Blank was  
22 next and then Commissioner Kashian. No  
23 Commissioner Wayso.

24 COMMISSIONER WAYSO: I think that this  
25 question might be for the chair or staffs. I

1 City of Oceanside: Coastal Commission Meeting 79  
2 just want to understand, we have a current--  
3 [background noise]  
4 COMMISSIONER WAYSO: How about now?  
5 MALE VOICE: When it says mute you can  
6 speak?  
7 COMMISSIONER WAYSO: How about now?  
8 MALE VOICE: Thank you.  
9 COMMISSIONER WAYSO: If I understand  
10 correctly there is a current project being  
11 proposed correct?  
12 CHAIRMAN KREWARD: Yes.  
13 COMMISSIONER WAYSO: And the staff has used  
14 the opportunity of this LCP amendment to in fact  
15 not apply the 30,000 for this current project?  
16 CHAIRMAN KREWARD: Correct.  
17 COMMISSIONER WAYSO: But use it in the  
18 future since we happen to have the LCP open.  
19 CHAIRMAN KREWARD: That's correct.  
20 COMMISSIONER WAYSO: To put protections in  
21 place.  
22 CHAIRMAN KREWARD: That's correct.  
23 COMMISSIONER WAYSO: And that the reason  
24 we're doing this is there may not be another LCP  
25 amendment proposed in the future, so if we



1 City of Oceanside: Coastal Commission Meeting 80  
2 wanted to somebody impose a \$30,000 fee now is  
3 the time to do so, is that correct?

4 CHAIRMAN KREWARD: That's correct.

5 COMMISSIONER WAYSO: Okay. And so our  
6 choice today is not whether we want to impact  
7 this hotel or not, because a \$30,000 fee we all  
8 agree will not impact this current hotel  
9 correct?

10 MANY VOICES: Right.

11 COMMISSIONER WAYSO: And so what staff is  
12 asking the commissioners, I'm just trying to  
13 understand--

14 CHAIRMAN KREWARD: Right.

15 COMMISSIONER WAYSO: --is a future policy  
16 decision on what we want to do in the future for  
17 development in this area about a \$30,000 fee  
18 for--and Mr. Chair, I guess that's why the  
19 questions to you.

20 CHAIRMAN KREWARD: Right.

21 COMMISSIONER WAYSO: Is now I want to ask  
22 maybe you to help me understand, to put your  
23 comments in context about the future development  
24 and whether you think this will impede future  
25 development for high end hotels.

CHAIRMAN KREWARD: Well first of all as a developer, every time someone collects fees to do something like this, it's very difficult to trace them. It's always better if you can get, like increase the base, like the city has offered, where they are going to now put the ten percent in, build the base up, etcetera. Because by getting \$30,000 fee and getting the multiple units, that what's left up there is all these little ma and pa operations etcetera. It's kind of silly because the money is not going to create anything in Oceanside, we have to track whatever it is. And the issue is one of from the city's perspective, and one I think they have a very good point on is look, we came here, we have probably the only ones in this state and the coastal commission that have a floor built in where no one else has a floor, on top of we have the highest percentage of any project in the coastal California, and on top of it we're willing to give ten percent now, they're working with staff etcetera, and on top of it you want to now go back on the rest of the redevelopment area, which cities and local

1 City of Oceanside: Coastal Commission Meeting 82  
2 governments struggle with, and these credit  
3 market places, and they're enticing these  
4 operators to try and improve these facilities  
5 etcetera, and you're asking them to add \$30,000  
6 on top of it. I think the city has the stronger  
7 argument in this case because of Oceanside.

8 COMMISSIONER WAYSO: Got it, so if I just  
9 understood your position Mr. Chair, your point  
10 is that while the staff's recommendation is 30K  
11 going in the future, you feel the ten percent is  
12 actually a better alternative.

13 CHAIRMAN KREWARD: Right.

14 COMMISSIONER WAYSO: For this city and this  
15 development area and that the commissioners  
16 should actually suggest to staff that that's  
17 what our preference is, is that correct?

18 CHAIRMAN KREWARD: yes, because if you--only  
19 because of Commissioner Wan's comment, but  
20 building and increasing the base from the 375  
21 and adding that ten percent of the units on, in  
22 addition to goes much further then leveraging  
23 \$30,000 billed by half of the units, whatever,  
24 someday there might be a million, million and a  
25 half, or who knows, two million. You're not

1 City of Oceanside: Coastal Commission Meeting 83  
2 going to build any affordable units with a  
3 subsidy because you're going to need six, seven  
4 times that to build those affordable units.  
5 It's like lotto game but it really isn't going  
6 to do anything, building the base does,  
7 preserving the base does, and building that base  
8 up makes a big difference.

9 MALE VOICE: Mr. Chairman? Mr. Chairman?

10 CHAIRMAN KREWARD: Yes.

11 MALE VOICE: If I may I'm trying to get the  
12 gist of this discussion. I sense that what  
13 you're saying is that in exchange for  
14 eliminating any requirement for an lieu fee that  
15 the ten percent provision offered by the city  
16 would accommodate the concerns that we have  
17 raised under the coastal act. And we don't  
18 necessarily disagree with that, and we said the  
19 ten percent offer makes some sense, but the  
20 problem is enforceability. We just saw some  
21 language for the first time here dealing with  
22 that ten percent and it doesn't do it. So my  
23 suggestion is that you consider, I believe we  
24 still have the time, to give us direction to  
25 work on the language to implement the ten

1 City of Oceanside: Coastal Commission Meeting 84  
2 percent provision. And that I get the sense  
3 from the commission that if that's done that you  
4 would eliminate the in lieu fee requirement in  
5 the future, recognizing that it wouldn't apply  
6 to anything that's being proposed now, but it  
7 wouldn't be required for anything in the future  
8 if the ten percent is added to add to that floor  
9 number. And we could go along with that.

10 CHAIRMAN KREWARD: Okay, I'd like to hear  
11 from the city.

12 MS. MCFAY: Mr. Chairman would it be  
13 possible to postpone until tomorrow and we could  
14 work on it for the rest of the day?

15 MALE VOICE: No, no, no. The Chairman won't  
16 be here tomorrow.

17 CHAIRMAN KREWARD: I don't think it's - -  
18 can we - -.

19 MS. MCFAY: Could we just, instead could we  
20 continue this until tomorrow and we'll work on  
21 the language then?

22 MS. BAKER: We can't do that literally.

23 MALE VOICE: No we can't, can't do that.  
24 Cherylan is leaving and she's got other  
25 responsibilities, we're going to be in Oceanside

1 City of Oceanside: Coastal Commission Meeting 85  
2 next month. I don't see what harm would be  
3 done--

4 CHAIRMAN KREWARD: But if we do and it's up  
5 to my colleagues and friends here, if we do, and  
6 I'm just saying if we do continue this the next  
7 month in Oceanside, the single issue from the  
8 staff's perspective, is this issue of being able  
9 to make sure that it's--that we can preserve  
10 these units and that--

11 MALE VOICE: The ten percent works. That  
12 provision. You still have to deal with the  
13 joint and several liability issue, but at least  
14 relative to that other component we just can't  
15 do that here today. I mean looking at this  
16 language I don't understand what it means.

17 CHAIRMAN KREWARD: Well what about going  
18 through the project today and finishing the  
19 other issues, we're here, and then leave that  
20 condition so that condition can be worked out,  
21 and the city who's here today?

22 MALE VOICE: - - take a vote - -.

23 CHAIRMAN KREWARD: Yeah. I think we want to  
24 go forward, we've asked Oceanside to come  
25 forward, come forward, and we're going there

1 City of Oceanside: Coastal Commission Meeting 86  
2 next month, and I for one think we can deal with  
3 this right now, subject to again, it's important  
4 that we get the correct language the legal  
5 language. Is that something the city can work?

6 MS. MCFAY: Yes, we would prefer that to get  
7 it over with.

8 CHAIRMAN KREWARD: Commissioner Wan I'm  
9 sorry.

10 COMMISSIONER WAN: The problem is there's  
11 two sets of languages that concern me, one is  
12 what the ten percent is. Okay, if it's in lieu  
13 of the in lieu fees, we need to see that  
14 language, I certainly haven't seen that  
15 language. I don't know what it says and how  
16 it's enforceable. So it's highly inappropriate  
17 to add that in place of something when we  
18 haven't seen the language. And I don't know how  
19 you can do that in a hearing room right now, now  
20 maybe.

21 COMMISSIONER WAYSO: I have a question for  
22 city staff that might address that issue.

23 COMMISSIONER WAN: Okay, and then the second  
24 issue is that--

25 COMMISSIONER WAYSO: And it might address

1 City of Oceanside: Coastal Commission Meeting 87  
2 the issue of enforceability as well.

3 COMMISSIONER WAN: In your letter which also  
4 goes to enforceability and it has to do with new  
5 language or how you're going to deal with  
6 protecting the 375 units. And it says it's in  
7 attachment one but I can't find attachment one  
8 so I don't know what the language is relative to  
9 actually enforcing those 375 which has always  
10 been my concern. Yeah.

11 MALE VOICE: I just want to ask a question  
12 of Jane McFay concerning the 375 protected  
13 units, are you will to increase that to let's  
14 say 400 protected units if we waive the \$30,000  
15 fee?

16 MS. MCFAY: Mr. Chairman if I could have a  
17 minute to think about that. I don't want to cut  
18 a hotel in half. I want to kind of know what  
19 those are, but we do have 533, the current  
20 number is 375, so if what Commissioner Wayso is  
21 suggesting that you would be willing as an  
22 alternative motion to move no fee if the city  
23 increased the affordable to 400 with no fee no  
24 ten percent and then that gets the concern of  
25 how you're going to enforce it and all, I mean



2 we'd be done.

3 CHAIRMAN KREWARD: Right, but that would  
4 cover all the issues today.

5 MS. MCFAY: That would be the quickest  
6 easiest thing.

7 MALE VOICE: We wouldn't need the enforcing  
8 language because the enforcing language is only  
9 for new units that are created under a new  
10 project. Under this they have 375 units are  
11 already protected, under their plan we would  
12 increase that to 400 so they would only be able  
13 to produce units that are within that range.

14 COMMISSIONER WAN: We don't have language in  
15 my opinion to enforce even the 375 units.  
16 That's the issue that we dealt with in December.  
17 All we have is that there needs to be 375 units  
18 and a promise from the city that they won't  
19 destroy those. We don't have any sufficient  
20 language to protect the 375, or 400, or 512,  
21 whatever that unit is. And that's the language  
22 that we need to have.

23 CHAIRMAN KREWARD: Ms. McFay.

24 MS. MCFAY: Mr. Chairman the LUP of the  
25 certified LCP says that we shall maintain 375,

1           City of Oceanside: Coastal Commission Meeting 89  
2           so we have not issued coastal permits that would  
3           drive us below 375. So the items that we've  
4           offered were sort of the suspenders with that  
5           belt. I mean it's quite plainly stated that we  
6           cannot go below 375, shall protect 375. And we  
7           have, we haven't issued any permits. So the  
8           alternative idea I think would be acceptable to  
9           the city to increase it to three, from 375 to  
10          400 affordable units, which brings it up by 25  
11          units, no fee, and then eliminate the ten  
12          percent. So that would be very acceptable.

13           MALE VOICE: Mr. Chair I would like to make  
14          a motion if possible.

15           CHAIRMAN KREWARD: Okay.

16           MALE VOICE: All right, move that the  
17          commission reject the implementation program  
18          amendment for the City of Oceanside as  
19          submitted, recommend a yes vote.

20           CHAIRMAN KREWARD: There's been a motion and  
21          a second and that's per--

22           MALE VOICE: Mr. Chairman I believe we need  
23          a main motion and then an amending motion, and I  
24          don't think there's a main motion on the floor.

25           MALE VOICE: Well I'm making the main motion

1 City of Oceanside: Coastal Commission Meeting 90  
2 right now. I just made the main motion.

3 CHAIRMAN KREWARD: He just made the  
4 rejection--

5 MALE VOICE: Do you want me to restate it?

6 CHAIRMAN KREWARD: Okay. Sorry.

7 MALE VOICE: I'm making the motion that you  
8 recommended on the staff report, which is to  
9 move that the commission reject the  
10 implementation program amendment, the City of  
11 Oceanside as submitted and recommend a yes vote.  
12 And I'm going to make an amending motion  
13 following that.

14 CHAIRMAN KREWARD: And there's a second by  
15 vice chair Neely, both the maker and the  
16 seconder are asking for a yes vote, passage of  
17 this motion will result in the rejection of the  
18 implementation program and adoption of the  
19 resolutions and findings contained in the staff  
20 report. Commissioner Wayso would you speak to  
21 your motion please?

22 COMMISSIONER WAYSO: Not at this one I'll  
23 speak to my next motion.

24 CHAIRMAN KREWARD: Okay, vice chair do you  
25 have an amending motion?

1 City of Oceanside: Coastal Commission Meeting 91  
2 COMMISSIONER WAYSO: No, no, there are two  
3 motions.  
4 CHAIRMAN KREWARD: Two motions, okay, are  
5 you ready for your next motion?  
6 [crosstalk]  
7 MALE VOICE: We've got to take action on  
8 this one.  
9 CHAIRMAN KREWARD: Okay, let's take a--okay,  
10 I was going to come back to the main motion.  
11 Okay, you're asking for a yes vote. Would the  
12 clerk call the role please?  
13 FEMALE VOICE: Commissioner Astrashia  
14 [phonetic].  
15 MALE VOICE: Yes.  
16 FEMALE VOICE: Commissioner Blank?  
17 COMMISSIONER BLANK: Yes.  
18 FEMALE VOICE: Commissioner Burke?  
19 COMMISSIONER BURKE: Yes.  
20 FEMALE VOICE: Commissioner Clark?  
21 COMMISSIONER CLARK: Yes.  
22 FEMALE VOICE: Commissioner Wayso?  
23 COMMISSIONER WAYSO: Yes.  
24 FEMALE VOICE: Commissioner Cram?  
25 COMMISSIONER CRAM: Yes.

1 City of Oceanside: Coastal Commission Meeting 92

2 FEMALE VOICE: Commissioner Neely?

3 COMMISSIONER SHAWNBERG: Yes.

4 FEMALE VOICE: Commissioner Kinsey?

5 COMMISSIONER KINSEY: Yes.

6 FEMALE VOICE: Commissioner Shawsberger?

7 COMMISSIONER SHAWNBERG: Yes.

8 FEMALE VOICE: Commissioner Wan?

9 COMMISSIONER WAN: Yes.

10 FEMALE VOICE: Chairman Kreward?

11 CHAIRMAN KREWARD: Yes.

12 FEMALE VOICE: Unanimous.

13 CHAIRMAN KREWARD: Commission hereby denies

14 the certification of the implementation program

15 amendment submitted by the City of Oceanside and

16 adopts the findings that are set forth in the

17 staff report. Commissioner Wayso?

18 COMMISSIONER WAYSO: I move that the

19 commission certify the implementation program

20 amendment for the City of Oceanside if it is

21 modified as suggested in the staff report,

22 recommend a yes vote. And I have an amending

23 motion as well.

24 CHAIRMAN KREWARD: Okay, and you second it?

25 Okay. Commissioner Wayso made the recommended

1 City of Oceanside: Coastal Commission Meeting 93  
2 yes vote and Commissioner Wan recommended a yes  
3 vote, seconded the motion. The passing of the  
4 motion will result in the certification of the  
5 implementation program amendment with the  
6 suggested modifications and adoption of the  
7 resolutions and findings. Commissioner Wayso?

8 COMMISSIONER WAYSO: Yeah, I would like to  
9 amend the motion to remove special condition  
10 number six and replace it with a condition to  
11 require City of Oceanside to protect instead of  
12 375 units lift the protection envelope to 400  
13 units and to provide that the staff come back  
14 with the proper language in which to ensure that  
15 those 400 units are--that there's an enforcement  
16 mechanism, make sure the city does provide an  
17 inventory of 400 units that remain affordable  
18 within the LCP area in the City of Oceanside.

19 CHAIRMAN KREWARD: Okay, you reject six and  
20 seven, or just six?

21 COMMISSIONER WAYSO: And the LUP of this.

22 CHAIRMAN KREWARD: I'm sorry can you say--  
23 can you say that into the--

24 COMMISSIONER WAN: This is instead of the in  
25 lieu fee, suggested modification by staff.

1 City of Oceanside: Coastal Commission Meeting 94  
2 COMMISSIONER WAYSO: We remove the in lieu  
3 fee.  
4 [background voices]  
5 CHAIRMAN KREWARD: So that's just condition  
6 six not seven that you reject.  
7 COMMISSIONER WAYSO: Well I think condition  
8 seven regarding the joint and several has been  
9 resolved in terms of--  
10 MALE VOICE: No, no, no, it's not been  
11 resolved.  
12 COMMISSIONER WAYSO: I heard additional  
13 comments--  
14 MALE VOICE: Separate motion then on that.  
15 MALE VOICE: Yeah, it can be a separate  
16 motion.  
17 CHAIRMAN KREWARD: Well let's just deal with  
18 your six and then we can come back - - want to  
19 make an amendment.  
20 COMMISSIONER WAYSO: So you're saying seven  
21 wasn't resolved?  
22 MALE VOICE: No. No.  
23 COMMISSIONER WAYSO: Okay, then do we want  
24 to--  
25 MALE VOICE: It's a threshold.

1 City of Oceanside: Coastal Commission Meeting 95  
2 COMMISSIONER WAYSO: I want to, then let's  
3 modify that as well--  
4 COMMISSIONER KINSEY: Do it separately.  
5 CHAIRMAN KREWARD: Do it separately though,  
6 I think you need two--  
7 COMMISSIONER WAYSO: Okay.  
8 CHAIRMAN KREWARD: Let's start with the  
9 first amending motion, do you have a second for  
10 that?  
11 COMMISSIONER CLARK: Second.  
12 CHAIRMAN KREWARD: Seconded by Commissioner  
13 Clark, and both of you are asking for a yes vote  
14 on this motion?  
15 COMMISSIONER WAN: Yes.  
16 COMMISSIONER CLARK: Questionable.  
17 COMMISSIONER WAYSO: Yes.  
18 CHAIRMAN KREWARD: Commissioner Kinsey.  
19 COMMISSIONER KINSEY: Question to the  
20 commissioner perhaps, the motion talked about  
21 staff coming back with an enforcement mechanism,  
22 and I'm just curious how we would be able to  
23 have that have the enforcement of law if it  
24 comes outside of this hearing in our action  
25 today? And perhaps that's a question to Stan on



1 City of Oceanside: Coastal Commission Meeting 96  
2 the motion. I support the motion as stated  
3 because it does in fact include the idea that  
4 there would be an enforcement mechanism if we  
5 fall below the 400 number, but we don't have  
6 that today other than the market forces, and the  
7 character of the development in your community  
8 at the present time. So I'd be interested how  
9 we can get to that enforcement mechanism without  
10 having it in front of us today.

11 FEMALE VOICE: If the commission gives us  
12 direction on the type of enforcement mechanism  
13 they would like us to implement, the revised  
14 findings would implement the language of your  
15 decision today. So if your decision is that to  
16 increase the envelope to 400 with an enforcement  
17 mechanism and we have discussed several ideas  
18 for enforcement mechanisms here, we can come  
19 back with something that reflects your decision  
20 with the exact language that reflects your  
21 decision. - - of those findings and then you'll  
22 be able to vote on whether it accurately does  
23 that.

24 MALE VOICE: That's fine, I hadn't heard  
25 this commission giving direction on the

1 City of Oceanside: Coastal Commission Meeting 97  
2 enforcement mechanism.

3 FEMALE VOICE: That was a request for  
4 direction on the enforcement mechanism.

5 CHAIRMAN KREWARD: Commissioner Wan?

6 COMMISSIONER WAN: Well you mentioned and  
7 you won't know that the enforcement mechanism is  
8 very important to me, the question here is I  
9 haven't heard any suggestions from anybody, and  
10 maybe staff can make some suggestions as to how  
11 they could be enforceable. See that's been my  
12 concern all along is that I'm not sure how you  
13 could ever make this enforceable, so if you want  
14 to give me some suggestions as to what would  
15 make it enforceable, I'd like to hear those.  
16 And that's the kind of thing that we have to  
17 discuss because that's why I think we were  
18 talking about continuing this so that we could  
19 look at language, whether it's the ten percent  
20 or the 375, or now 400 units. Somebody want to  
21 tell me how it could be enforceable?

22 FEMALE VOICE: Chairman Kreward.

23 CHAIRMAN KREWARD: - - would you like to - -  
24 ?

25 MS. MCFAY: Thank you Mr. Chairman, what we

1           City of Oceanside: Coastal Commission Meeting 98  
2       had suggested in our letter to you were a couple  
3       of things. One was that we would offer to add  
4       as an ordinance if necessary in our staff report  
5       that if the hotel were going to demolish and  
6       rebuild that at that time the inventory would  
7       have to be updated, we would change our city  
8       staff report format to include it, and the  
9       inventory at the time with the change in the  
10      demolition would then be therefore recorded. So  
11      we and you would be on notice of where we were  
12      with relationship to the 400 and that we would  
13      not issue a coastal permit that would drive us  
14      below 400. In addition I would ask the chair to  
15      clarify whether the motion on the table is to  
16      deal with both six and seven or just six?

17           [crosstalk]

18           MALE VOICE: No, just one, and we're going  
19      to come back to seven.

20           MS. MCFAY: I see.

21           COMMISSIONER WAN: However, if you're going  
22      to create an ordinance then that ordinance would  
23      need--that specifies that language, that  
24      ordinance would need to come back to this  
25      commission for our review and approval. Because

1           City of Oceanside: Coastal Commission Meeting 99  
2       for you to create an ordinance that says that  
3       and then for us to have no way to look at that  
4       language to see whether or not it does what we  
5       say, what we think it should, you see what I'm  
6       saying. If you do an ordinance, that ordinance  
7       needs to come back for our review and approval.

8           MALE VOICE: That sounds - -.

9           FEMALE VOICE: Chairman Kreward.

10          CHAIRMAN KREWARD: Subject to our review?  
11       Yeah?

12          FEMALE VOICE: I believe that if they  
13       incorporated that language or if we incorporated  
14       that language into this implementation plan  
15       language, this section that all of these  
16       revisions are going into, that would be the same  
17       as an ordinance, and we could address that in  
18       the revised findings.

19          CHAIRMAN KREWARD: Yeah, that's fine.

20          FEMALE VOICE: Yeah.

21          CHAIRMAN KREWARD: I think that's fine, that  
22       works. Commissioner Clark?

23          COMMISSIONER CLARK: Yeah, just quickly on  
24       that point. What the city had just previously  
25       suggested is putting it in their staff reports,

1 City of Oceanside: Coastal Commission Meeting 100  
2 that's not good enough. Because a staff report  
3 is just that. So my conception was that they  
4 needed to institutionalize that in their  
5 development code. But if we deal with it by  
6 putting it in here that takes care of it.

7 COMMISSIONER SCHMETZER: Just as an  
8 enforcement point and something to consider.  
9 While I think procedurally that can occur, if  
10 these mom and pop hotels rather--if we get to a  
11 point where we're down to 400, that proposal  
12 only addresses a situation where there's a  
13 permit. If somebody goes out of business you've  
14 just gone under and there's no enforcement  
15 mechanism. And I think that's one of the things  
16 that your ten percent situation and the in lieu  
17 fee is trying to protect against that there  
18 isn't just--because of course the city can't  
19 just keep someone in business. So that is the  
20 type of situation that we were looking at as  
21 well, and that this proposed ordinance would not  
22 address.

23 CHAIRMAN KREWARD: Okay, Anybody else  
24 before I call on--yeah, Commissioner Shawnberg  
25 [phonetic].

2 COMMISSIONER SHAWNBERG: I think I am  
3 perhaps not clear on this because - -. Which  
4 mike works? I knew there was a reason - - it's  
5 so long. Currently they have 517 affordable  
6 rooms is that right staff?

7 COMMISSIONER SCHMETZER: 516.

8 COMMISSIONER SHAWNBERG: 516 sorry. And  
9 what the affect of what we're doing now would be  
10 to say that going into the future they can  
11 actually reduce the number of affordable rooms  
12 by 116. So this is going in the wrong direction  
13 if we're talking about providing affordable  
14 rooms in this area. So I think it's a terrible  
15 thing for increasing access, it will decrease--  
16 effectively it will be a decrease in access for  
17 affordable rooms, 516. So I would just urge my  
18 fellow commissioners to vote no unless somebody  
19 on the commission or staff can explain to me why  
20 I'm wrong on that.

21 MALE VOICE: I'm happy to comment after the  
22 city.

23 COMMISSIONER SHAWNBERG: I didn't ask the  
24 city, I would like to hear it from the staff or  
25 the commission please.

MALE VOICE: First of all right now they have a requirement to do 375, they have 500 and some units because a lot of these units are pretty rundown. Again what we don't want to do--they're not going the wrong way. What happens is we're trying to do is get the floor to build it up. The condition of these units are not exactly an asset for coastal access in some of these units, you wouldn't want to stay in them because of the condition of the units and how small they are in nature etcetera. The idea of moving the floor up higher whether it be the ten percent or what Commissioner Wayso suggested of an additional 25 units. Again the City of Oceanside is they say 91 percent, it's probably 98 percent using their new numbers. So their whole stock--is that's what's so interesting about this debate on this particular issue. They meet any and all tasks - - over any other coastal city in California, and what I am for one, I just don't want to see no good deed goes unpunished. I think the idea of a floor, if we could get the floor with it's 375, 400 now was suggested or other cities to do it, that's the

1 City of Oceanside: Coastal Commission Meeting 103  
2 direction you want to be going in. Don't get  
3 caught with this number whether it's 500 because  
4 it isn't exactly 500 units that you would  
5 actually occupy per se based on the condition of  
6 where they're at now. So it's more than a  
7 numbers game.

8 COMMISSIONER SHAWNBERG: Chairman Kreward.

9 CHAIRMAN KREWARD: Yes.

10 COMMISSIONER SHAWNBERG: Just and to try to  
11 respond, and I'm not necessarily going to help  
12 in this discussion. There are an existing 516  
13 units, the land use then requires that 375 units  
14 be maintained. What I'm hearing is you're  
15 suggesting that that floor be increased to 400  
16 units so the city's responsible for maintaining  
17 that number of lower cost units regardless of  
18 what we do here today.

19 CHAIRMAN KREWARD: That's correct.

20 COMMISSIONER SHAWNBERG: What the amendment  
21 is doing is it's suggesting--the amending motion  
22 is suggesting that there may be some additional  
23 measures that are incorporated into the LCP that  
24 would help ensure that that 400 units is  
25 maintained, that there may be some tools--



MALE VOICE: That's correct.

CHAIRMAN KREWARD: That's correct. That's correct.

COMMISSIONER SHAWNBERG: That the city might offer to do that. In my mind I had thought the ten percent suggestion was perhaps a tool that would help the city maintain that number of units, and that that was something that was independent of the in lieu fee. And I'm not sure but I think the city has taken that ten percent provision off the table.

CHAIRMAN KREWARD: Well they did.

MALE VOICE: We don't want it.

CHAIRMAN KREWARD: Yeah.

COMMISSIONER SHAWNBERG: And because there is an enforceability problem with that. But in terms of enforcement mechanisms I think staff would still be wanting to hear some other ideas that the commission might have for this suggested modification and these revised findings, at this point we're not clear on just what additional measures the city might propose to incorporate into the IP at this time.

COMMISSIONER WAYSO: If I can just add to

2 that.

3 CHAIRMAN KREWARD: Commissioner Wayso.

4 COMMISSIONER WAYSO: Every project if it  
5 destroys units, if it proposes no construction  
6 requires an environmental impact report of some  
7 kind under SEQUA. Wow, this is really--I can  
8 barely talk this is up on my lips. Well I get  
9 further away and--anyway, SEQUA requires an  
10 environmental analysis. You just wiped my nose  
11 for me thank you.

12 [background voices]

13 COMMISSIONER WAYSO: He's my volume control,  
14 thank you. If an ordinance is prepared by the  
15 city that they have to maintain 400 units, the  
16 environmental analysis required by SEQUA would  
17 have to incorporate that, am I incorrect on  
18 that?

19 MS. BAKER: Mr. Chairman, Commissioner  
20 Wayso, in all cases when a hotel is rebuilding,  
21 if it were a very modest number of rooms, an  
22 environmental analysis is not needed if you were  
23 doing like the--I don't believe that the Motel 6  
24 that's adding 17 rooms is doing a full SEQUA by  
25 any stretch of the imagination.

2 COMMISSIONER WAYSO: And I'm not saying a  
3 full EIR, I'm saying some level of environmental  
4 review. If you have an ordinance in your city  
5 that has a certain threshold, do you have to  
6 address that ordinance when a new construction--  
7 when a new project is proposed?

8 MS. BAKER: Yes.

9 COMMISSIONER WAYSO: Legally you should, is  
10 it possible that you won't? Is it possible that  
11 it may be overlooked?

12 MS. BAKER: No.

13 COMMISSIONER WAYSO: Why not?

14 MS. BAKER: We're very diligent, we meet,  
15 you know, we're very cognoscente of the SEQUA  
16 requirements, we make projects conductible  
17 EIR's, focused EIR, whenever the threshold's are  
18 triggered that require them we always do that.

19 COMMISSIONER WAYSO: So even if it was a  
20 mitigated negative declaration, or a negative  
21 declaration you would need--would you need to do  
22 that analysis for hotels maybe Ms. Schmelzer?

23 COMMISSIONER SCHMETZER: That analysis is  
24 not part of SEQUA. A local ordinance about the  
25 number of hotel rooms is not an environmental

1 City of Oceanside: Coastal Commission Meeting 107  
2 impact that's identified under SEQUA and would  
3 not be addressed in a SEQUA document looking at  
4 the discretionary decision in front of the local  
5 agency.

6 COMMISSIONER WAYSO: And even if the city  
7 ordinance said it should it wouldn't be  
8 addressed?

9 COMMISSIONER SCHMETZER: It might be, they  
10 would have a choice of where they might want to  
11 address that and whether they would address it,  
12 but it certainly wouldn't be part of their SEQUA  
13 obligation. That's a state obligation that does  
14 not incorporate that.

15 COMMISSIONER WAYSO: I'm not saying that  
16 it's a SEQUA obligation. I'm saying that there  
17 is already a review process that requires an  
18 environmental review.

19 [crosstalk]

20 CHAIRMAN KREWARD: I have another  
21 suggestion, because we're going in circles here.

22 MALE VOICE: Right.

23 CHAIRMAN KREWARD: Maybe what we should do  
24 is take ten minutes and see if the city can talk  
25 to staff or something and whether or not we can

1           City of Oceanside: Coastal Commission Meeting 108  
2       come up with some type of you know, more clarity  
3       whether we're going to do the 375 plus the ten  
4       percent which you offered or the motion now on  
5       the amending motion is the 400 units. You know,  
6       and that's one issue, the second issue is the  
7       enforceability of the issue etcetera, because  
8       we're just going around in circles on this. And  
9       maybe the city can talk to staff--

10           MALE VOICE: I think that's a good  
11       suggestion.

12           CHAIRMAN KREWARD: - - because otherwise  
13       this is going to--you know, we're not, so let's  
14       take a ten minute break and you guys make your  
15       best efforts to see if you can come so--  
16       otherwise if we can't, we might have to continue  
17       it if we can't get this going. So that's why I  
18       want to give you the time to do it because  
19       we're--okay.

20           [background voices]

21           [sound cut]

22           MALE VOICE: Mr. Chairman we're ready to go.

23           CHAIRMAN KREWARD: - - we're ready to go.

24           MALE VOICE: Director Douglas.

25           DIRECTOR DOUGLAS: If we could ask Ms. McFay

1 City of Oceanside: Coastal Commission Meeting 109  
2 to read into the record the language that we  
3 just agreed to and we'll make some comments  
4 after she does that.

5 MS. MCFAY: Mr. Chairman, thank you. And  
6 I'll read this slowly so it can be captured.  
7 This is a new paragraph B. The city shall  
8 monitor the LUP requirement to ensure that a  
9 minimum of 400 lower cost units shall be  
10 maintained in the coastal zone by reporting the  
11 status of the current number of lower cost units  
12 within the coastal zone within all - -  
13 containing a regular coastal permit, and shall  
14 be forwarded to the coastal commission.

15 A new paragraph C entitled assistance to  
16 existing lower cost units within the coastal  
17 zone. At such time as the inventory of lower  
18 cost units would be at 405 units, the city would  
19 pursue outreach to the existing property owners  
20 in an attempt to assure their short and long  
21 term survival. Resources that can be brought to  
22 bear to assist them would include the city's  
23 façade enhancement program, in which matching  
24 funds can be made available for painting,  
25 awnings, signage and landscaping.

2 A new paragraph D, any project that is  
3 required to provide lower cost units shall be  
4 required to record a deed restriction against  
5 the property that requires the protection of  
6 lower cost units such that the demolition and  
7 rebuild of affordable units would not result in  
8 a total number of lower cost units to be less  
9 than a total of 400 in the coastal zone.

10 CHAIRMAN KREWARD: That's good. Director  
11 Douglas, would you like to--it sounds very good.  
12 In ten minutes or even less you guys  
13 accomplished more then we discussed in the last  
14 hour and a half here.

15 DIRECTOR DOUGLAS: Well that's not unusual.

16 [laughter]

17 DIRECTOR DOUGLAS: Sorry. - - did I just  
18 say that?

19 CHAIRMAN KREWARD: Get ready for  
20 Commissioner Burke's response.

21 COMMISSIONER BURKE: Mr. Chairman, what we  
22 also agreed to is that when we come back with  
23 there revised findings, there may be some  
24 refinement of this. But the essence of the  
25 operative language is what Ms. McFay just read

1 City of Oceanside: Coastal Commission Meeting 111  
2 into the record. So we're satisfied with that.

3 CHAIRMAN KREWARD: Okay, Commissioner Wan.

4 COMMISSIONER WAN: I don't want to throw a  
5 monkey wrench in here okay, but when you come  
6 back and you are looking at the revised, at any  
7 kind of changes, I think one of the things that  
8 you added here that was quite good was how to  
9 keep those affordable units in actual use which  
10 is what has been my concern because if it's just  
11 the market that affects it, eventually those  
12 things will just sit there unoccupied and not  
13 run. So that's an important part of the  
14 enforcement and if you look at how you can  
15 actually ensure that those affordable units that  
16 are being maintained actually are serving as  
17 affordable units, hotel units, and not being  
18 allowed to just deteriorate and not serve, that  
19 would be very important.

20 MALE VOICE: We think that the city has  
21 proposed here, we'll do that.

22 CHAIRMAN KREWARD: Yeah, okay with that I'll  
23 call--Clerk call the role on the amending  
24 motion, the rejection of number six, and there  
25 has been a motion and a second correct? Mr.



1 City of Oceanside: Coastal Commission Meeting 112  
2 Wayso made the motion and who made the second?  
3 Commissioner Clark.

4 [unintelligible background voice]

5 CHAIRMAN KREWARD: And includes the language  
6 that was just incorporated in by staff and the  
7 city and everybody's in agreement. With that,  
8 is there any objection to a unanimous yes role  
9 call on that amending motion? Hearing none the  
10 commission approves that amending motion  
11 unanimously. Commissioner Wayso?

12 COMMISSIONER WAYSO: And I'd also like to  
13 make an amending motion to adjust special  
14 condition number seven to reflect the discussion  
15 that was being held here regarding the liability  
16 issue where liability is not--

17 COMMISSIONER SCHMETZER: Chair--Chairman  
18 Kreward, it's not - - modification number seven.  
19 - - modification number seven is the one that  
20 was added by the staff today and addresses the  
21 definition of low moderate and high cost  
22 accommodations.

23 COMMISSIONER WAYSO: Oh I'm sorry.

24 COMMISSIONER SCHMETZER: I believe it's  
25 suggested modification number five.

1 City of Oceanside: Coastal Commission Meeting 113

2 MALE VOICE: Five I thought we talked about,

3 the city mentioned seven

4 COMMISSIONER SHAWNBERG: Four and five. It

5 comes up in four and five.

6 CHAIRMAN KREWARD: Okay, four and five.

7 Thank you for that clarification. Okay, Mr.

8 Wayso. COMMISSIONER WAYSO: Well if I'd like

9 to--well I'd like to make the motion to adjust

10 special condition number four to reflect the

11 discussion that was - - by commissioners.

12 MALE VOICE: I don't know what that means.

13 Maybe we can--

14 COMMISSIONER WAYSO: In other words on the

15 several liability--

16 MALE VOICE: Oh joint and several--

17 COMMISSIONER SCHMETZER: I believe you want

18 to take out the word jointly and leave in

19 severally.

20 CHAIRMAN KREWARD: Yeah.

21 COMMISSIONER WAYSO: Yeah, yeah.

22 [crosstalk]

23 COMMISSIONER WAYSO: Yeah, that's what - -.

24 COMMISSIONER SCHMETZER: In both conditions

25 four and five.

2 CHAIRMAN KREWARD: Yeah, I think that's what  
3 you want to do.

4 COMMISSIONER WAYSO: That's exactly what I  
5 want to do.

6 CHAIRMAN KREWARD: Okay, that's motion's  
7 been made, and is there a second? You're asking  
8 for a yes vote?

9 COMMISSIONER KASHIAN: Second.

10 CHAIRMAN KREWARD: Second by Commissioner  
11 Kashian. And do you want to speak anymore to  
12 your motion?

13 COMMISSIONER WAYSO: No.

14 [crosstalk]

15 CHAIRMAN KREWARD: There's no questions?  
16 No? Is there any objection to a unanimous yes  
17 role call vote on that item? Hearing none the  
18 commission unanimously approves that amendment.

19 MALE VOICE: So what remains is several  
20 liability but not joint liability.

21 CHAIRMAN KREWARD: That's correct. Okay,  
22 and I think that's it. And I want to thank the  
23 staff, and the main motion we--

24 COMMISSIONER WAYSO: We made the main  
25 motion.

1 City of Oceanside: Coastal Commission Meeting 115  
2 COMMISSIONER WAN: You didn't  
3 CHAIRMAN KREWARD: No.  
4 COMMISSIONER WAN: No we had to go back,  
5 these are amendments.  
6 COMMISSIONER WAYSO: So you have to go back  
7 to the amending motion just for clarifications.  
8 As modified.  
9 COMMISSIONER WAN: Right.  
10 [background voices]  
11 CHAIRMAN KREWARD: Okay, Commissioner Wayso  
12 did you follow that?  
13 COMMISSIONER WAYSO: On 13A?  
14 CHAIRMAN KREWARD: No, no, no, we have to go  
15 back and on the main motion as modified and make  
16 that motion.  
17 MALE VOICE: Right I think what you need to  
18 do is vote on the main motion now as its been  
19 modified.  
20 CHAIRMAN KREWARD: Right.  
21 MALE VOICE: So you need to make a role  
22 call.  
23 CHAIRMAN KREWARD: That's what, that's what.  
24 COMMISSIONER WAYSO: - -  
25 CHAIRMAN KREWARD: Okay, so second to

1 City of Oceanside: Coastal Commission Meeting 116  
2 Commissioner Wayso's on the main motion.  
3 COMMISSIONER KASHIAN: Second.  
4 CHAIRMAN KREWARD: And they're both  
5 recommending a yes vote as modified right? Okay  
6 is there any objection to a unanimous yes role  
7 call vote on this item? Hearing none the  
8 commission unanimously approves. Okay. We'll  
9 go to 13A now. And before I do that I want to  
10 thank staff. What is there something else?  
11 COMMISSIONER WAN: It's 12B is next.  
12 CHAIRMAN KREWARD: Time extension, I'm  
13 sorry. What number is that?  
14 COMMISSIONER WAN: 12B.  
15 CHAIRMAN KREWARD: 12B I didn't catch that  
16 one yet. Thank you. Thank you. Okay, go ahead  
17 and--  
18 FEMALE VOICE: And 12B is the request for a  
19 time extension for the commission to - - City of  
20 San Diego LCP amendment 1-08. Staff needs  
21 additional time to work on this, the city is  
22 aware, and therefore all we recommend--  
23 [sound cut]  
24 [END TAPE AGENDA\_ITEM12A\_PART2\_75MINUTES  
25 SIDE A]

C E R T I F I C A T E

I, Alexis Scott certify that the foregoing  
transcript of Agenda Item12a was prepared using  
standard electronic transcription equipment and is a  
true and accurate record.

Signature\_\_\_\_\_Alexis Scott\_\_\_\_\_

Date \_\_\_\_\_October 30, 2008\_\_\_\_\_