

CALIFORNIA COASTAL COMMISSION

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November 18, 2008

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TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS, COASTAL PROGRAM ANALYST, SAN DIEGO COAST DISTRICT**

SUBJECT: REVISED FINDINGS ON CITY OF OCEANSIDE MAJOR AMENDMENT 2-08 (Downtown "D" District - Resubmittal) for Commission Meeting of December 10-12, 2008.

SYNOPSIS

SUMMARY OF RE-SUBMITTAL AND HISTORY OF COMMISSION ACTION

On July 9, 2008, the Commission reviewed the City of Oceanside's resubmittal for various Implementation Plan modifications for development within the Redevelopment Area. The City and Commission staff came to a mutually acceptable compromise on all but two of the suggested modifications: joint and several liability and protection of existing lower cost overnight accommodations. At the July, 2008 hearing, the Commission approved the resubmitted language with modifications addressing these two remaining items of disagreement. After the July hearing, it was unclear how the Commission determined joint and several liability between the hotel owner and hotel operator, if they are separate entities. Commission staff presented a dispute resolution report to the Commission to clarify what their intent was at the November, 2008 hearing. The Commission indicated that their original intention was to remove joint liability from both the individual owner and the hotel owner/operator *and* joint liability between the hotel owner and hotel operator if these were separate entities. These revised findings reflect the Commission's action at the July and November, 2008 hearings.

The subject amendment was originally approved by the Commission with suggested modifications in December, 2007. The Commission outlined a number of concerns that would require language modifications and additions. On May 27, 2008, the City resubmitted the proposed amendment with new language that incorporated the majority of modifications suggested and approved by the Commission in December of 2007. Additional modifications were also included in response to the project proponent's concern that the Commission did not adequately address the conditions of use placed on fractional ownership hotel units, given how fractional units function. Since this time, the City and Commission staff have been working together to develop language that still meets the intent of the Commission's original action and allows for the necessary function

of these types of overnight accommodations. The adoption of the revised findings and certificate review will be the final approvals required for the proposed amendment.

DATE OF COMMISSION ACTION: July 9, 2008 (and as clarified on November 13, 2008)

COMMISSION VOTES

City of Oceanside LCPA 2-08, approve if modified:

Commissioners Voting "Yes": Achadjian, Blank, Burke, Clark, Hueso, Kram, Neely, Kinsey, Shallenberger, Wan, and Kruer

Commissioners Voting "No": None

SUMMARY OF AMENDMENT REQUEST

The proposed LCP Amendment #2-08 (Downtown "D" District) would amend Articles 4, 12, and 41 of the certified Implementation Plan. There are no changes to the City's certified Land Use Plan. These modifications would allow for both Condominium Hotels and Fractional Ownership developments (termed Limited Use Overnight Accommodations) within Subdistricts 1 and 12 (totally 9 blocks) of the Redevelopment Area. Article 4a would identify those uses within the Downtown District that could be classified as "Visitor-serving", eliminate certain uses in the redevelopment area that are no longer viable or requested, and define and permit new uses that the City wants to encourage. The proposed amendment would also update the permitted uses matrix, to become more "user-friendly." Article 41 would be 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 this amendment is a project specific revision to allow for the development of a 384 room hotel, with some portion being utilized as "fractional hotels". [However, the proposed hotel is still undergoing CEQA review, and as such the specifics of the project have not been finalized.] Some restrictions have been suggested by the City to regulate the use of the proposed Limited Use Overnight Accommodations. The development as proposed does not include any low cost visitor-serving overnight accommodations.

The amendment most importantly includes a set of conditions and restrictions for the limited use overnight component of the proposed project, as well as a series of implementation policies to improve the protection of lower cost overnight accommodations within the City of Oceanside's coastal zone. Currently the City's Land Use Plan (LUP) requires that a minimum of 375 lower cost overnight accommodations with the coastal zone. However, to date, no method for implementing and/or enforcing this policy was included in the City's LCP. With the inclusion of these two major modifications all coastal issues have been addressed and the amendment can be found consistent with the City's LCP and ultimately the Coastal Act.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 5. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 25. The findings for approval of the plan, if modified, begin on Page 36.

BACKGROUND

The City of Oceanside's Local Coastal Program (LCP) was certified by the Commission in July of 1985 and the City assumed permit authority and began issuing coastal development permits in March of 1986. The City's certified LCP consists of a Land Use Plan (LUP) and Implementing Ordinances. The LCP contains the Downtown Redevelopment Area, which is 375-acres located in the northwest portion of the City where a Redevelopment Plan was approved in 1975 creating 13 subdistricts. In 1992, the Plan was amended to include 15 subdistricts (LCPA #1-91).

ADDITIONAL INFORMATION

Further information on the City of Oceanside LCP amendment 2-08 (Downtown “D” District) may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

B. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTION

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on July 9, 2008 concerning City of Oceanside LCPA 2-08.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the July 9, 2008 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for denial of the Local Coastal Program Amendment as submitted, and approval as modified on the ground that the findings support the Commission's decision made on July 9, 2008 and accurately reflect the reasons for it.

COMMISSIONERS ELIGIBLE TO VOTE

City of Oceanside LCPA 2-08, approve if modified:

Commissioners Voting "Yes": Achadjian, Blank, Burke, Clark, Hueso, Kram, Neely, Kinsey, Shallenberger, Wan, and Kruer

Commissioners Voting "No": None

PART III. SUGGESTED MODIFICATIONS

The underlined sections represent language that was added by staff recommendation, and the ~~struck-out~~ sections represent language that reflects the staff recommendation. The **bolded** section represent language that was approved by the Commission action on July 9, 2008.

1. SUGGESTED MODIFICATION #1

Revise Article 4a Section 450 of the Zoning Ordinance as Follows:

T. Visitor Accommodations.

[....]

7. Limited Use Overnight Visitor Accommodation: A ~~resort facility~~ providing overnight visitor accommodations that includes both traditional hotel lodging and some combination of fractional interests, time shares, or condo-hotel units. Limited Use Overnight Visitor Accommodations shall only be allowed in the Downtown "D" District, if no more than 25% of the total rooms in such facility consist of some combination of fractional timeshare or condo-hotel units; however, no more than 15% of the total rooms in a Limited Use Overnight Visitor Accommodation may be Fractional Interest units. A Limited Use Overnight Visitor Accommodation is exempt from any requirement that a substantial portion of its units be permanently reserved for transient overnight accommodations in the summer season, which is Memorial weekend through Labor Day.

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 joint 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.

3. Suggested Modification #3

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

2. Hotel Conversion - Any hotel rooms for which a Certificate of Occupancy has been issued at the effective date of adoption of this section shall not be converted to a Limited Use Overnight Visitor Accommodation ~~Integrated Resort~~.

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.

~~de)~~ 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(~~tsp~~), 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(~~ts~~) 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.
- fe) 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.
- gf) 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.
- hg) 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(~~lk~~), 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.
- ih) 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.
- ji) 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.
- kj) 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.

- l) 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.
- ~~m~~j) The occupancy limitations identified in Section 5(~~l~~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.
- ~~n~~k) 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.
- ~~o~~l) 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 (~~n~~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.
- ~~p~~m) 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 (~~nmn~~) 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 (~~nmn~~) 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 (~~nmn~~) 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.

~~qp~~) 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.

~~ree~~) 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 (~~nmn~~), 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.

~~s-f~~) The hotel owner/operator or any successor-in-interest shall maintain the legal ability to insure compliance with the terms and conditions state 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.

~~tsf~~) 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 any 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.

~~utq~~) 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).

~~yur~~) 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(~~wvs~~) 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.

~~wvs~~) 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.

~~xyz~~) **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.~~

~~yzxy~~) 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 insure compliance with the terms and conditions state 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 restriction.~~ 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.
- re) 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)

sf) 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.

y#) **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.

wv) 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.

6. Suggested Modification # 6

Add Article 4a (Redevelopment) section 450 Visitor Accommodations-Special Requirements, as follows:

Protection of Existing Overnight Visitor Accommodations - 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 converted to a Limited Use Overnight Visitor Accommodation. Demolition of existing lower cost overnight visitor accommodations shall be discouraged. If demolition of existing lower cost units is authorized, mitigation shall be provided as specified below:

a. Monitoring of Lower Cost Units in the Coastal Zone

The City shall monitor a LUP requirement to insure that a minimum of 400 lower cost units shall be maintained in the Coastal Zone by reporting the status of the current number of lower cost units within the Coastal Zone within all staff reports containing visitor serving accommodations a Regular Coastal Permit. This information which shall be forwarded to the Coastal Commission prior to issuance of the Coastal Permit.

b. Assistance to Existing Lower Cost units in the Coastal Zone

At such time as the inventory of lower cost units would be at 405, the City would pursue outreach to the existing property owners in an attempt to assure their short and long term survival. Resources that can be brought to bear to assist them could include the City's Façade Enhancement Program, in which matching funds can be made available for painting, awnings, signage and landscaping.

c. Restrictions to Protect Lower Cost Units in the Coastal Zone

Any project that is required to provide lower cost units shall be required to record a deed restriction against the property that requires the protection of the lower cost units, such that the demolition and re-build of lower cost units would not result in the total number of lower cost units to be less than a total of 400 units in the Coastal Zone.

a) In-lieu Fee Required

Development of replacement overnight accommodations that are not "lower cost" shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations within North San Diego County. The fee shall be \$30,000 per room multiplied by the number equal to 50% of the demolished, unreplaced lower cost units if the replacement units are high-cost overnight visitor accommodations. The fee (i.e. \$30,000 in 2007) shall be adjusted annually to account for inflation according to increases in the Consumer Price Index—U.S. City Average.

The required in-lieu fees shall be deposited into an interest-bearing account, to be established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: City of Oceanside, Hostelling International, California Coastal Conservancy, California Department of Parks and Recreation or a similar entity. The purpose of the account shall be to establish lower cost overnight visitor accommodations, such as new hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of North San Diego County. The entire fee and accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. All development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. Any portion of the fee that remains after ten years shall be donated to one or more of the State Park units or non-profit entities providing lower cost visitor amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. Required mitigation shall be in the form of in-lieu fees as specified herein or may include completion of a specific project that is roughly equivalent in cost to the amount of the in-lieu fee and makes a substantial contribution to the availability of

lower cost overnight visitor accommodations in Oceanside and/or the North San Diego County coastal area.

7. Suggested Modification #7

Add to the end of Article 4a (Redevelopment) section 450 Visitor Accommodations-Special Requirements, as follows:

d. Definition of Lower Cost Overnight Accommodations.

When referring to overnight accommodations, lower cost shall be defined by a certain percentage of the Statewide average room rate as calculated by the Smith Travel Research website (www.visitcalifornia.com). A suitable methodology would base the percentage on market conditions in San Diego County for the months of July and August and include the average cost of motels/hotels within 5 miles of the coast that charge less than the Statewide average or 82%. High cost would be room rates that are 20% higher than the Statewide average, and moderate cost room rates would be between high and low cost. The range of affordability of new and/or replacement hotel/motel development shall be determined as part of the coastal development permit process and monitored as part of the City’s inventory of visitor overnight accommodations.

**PART IV. FINDINGS FOR REJECTION OF THE CITY OF OCEANSIDE
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

This is the re-submittal of the City of Oceanside LCP Amendment (#1-07 Downtown “D” District) that would amend Articles 4, 12, and 41 of the certified Implementation Plan. These modifications would allow for Limited Use Overnight Accommodations within Subdistricts 1 and 12 of the Redevelopment Area. The amendment would also identify those uses within the Downtown District that could be classified as “Visitor-serving”, eliminate certain uses in the redevelopment area that are no longer viable or requested, and define and permit new uses that have become desirable. Article 41 would be 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.

In its May 21, 2008 action, the City Council only addressed the revisions to Article 4a of the submittal, and failed to authorize staff to resubmit Articles 12 and 41 and all of Article 4 as part of the LCP Amendment. The City Council took such action on July 2, 2008. All the revisions associated with Articles 12 and 41 are consistent with the City's certified LUP and as such no modifications have been suggested by staff.

The City's re-submittal of Article 4a incorporates many of the suggested modifications approved by the Commission at its December 2007 meeting. In particular, the City accepted the inclusion of Suggested Modifications #7 and #8, imposing conditions on the use and operation of Condominium Hotels and Fractional Ownership Hotels, respectively, although the City's re-submittal made numerous changes to the specific language of the Commission's suggested modifications.

The most significant changes were to the Fractional Hotel section, where the City's re-submittal included the following major changes: (1) Addition of a new definitions section defining terms of art used in the fractional timeshare industry; (2) Addition of language clarifying that individual Fractional Interest owners may engage a rental agent other than the hotel operator; (3) Limiting the public's right to reserve rooms in the Fractional Ownership Hotel to 60 days prior to occupancy (i.e. the public cannot reserve a room more than 60 days in advance of their stay); (4) Elimination of the joint and several liability requirements; and (5) Elimination of the Executive Director's right to review and approve the required deed restriction, CC&Rs and plan for implementing the conditions imposed through these LCP provisions.

The City also made several changes to the condo hotel section (former Suggested Modification #7), including: (1) Addition of language clarifying that individual condo hotel unit owners may engage a rental agent other than the hotel operator; (2) Elimination of the joint and several liability requirements; and (3) Elimination of the Executive Director's right to review and approve the required deed restriction, CC&Rs and plan for implementing the conditions imposed through these LCP provisions.

The City rejected the former Suggested Modification #6, which imposed an in-lieu fee on the demolition and reconstruction of existing lower cost overnight visitor accommodations, if the reconstructed facility would not be lower cost. The City's re-submittal includes new definitions of various types of overnight accommodations, such as bed and breakfast inns, hotels and motels and timeshares. Finally, the City accepted many of the Commission's other suggested modifications, including Modifications 1, 2, 3, 4 and 5, with a few changes to what was approved by the Commission in some instances, as discussed in more detail below.

B. FINDINGS FOR REJECTION.

SUMMARY FINDINGS FOR REJECTION. The amendment as proposed shall be rejected for the following reasons. The amendment as proposed permits the development of Limited Use Overnight Accommodation in an area reserved and zoned for visitor-serving uses located adjacent to the coast. The Commission has previously found that limited use overnight accommodations do not adequately protect the visitor-serving designation because such developments are innately restricting to the general population. The City has proposed certain restrictions on the development of a Limited Use Overnight Accommodation; however, the restrictions are not thorough enough to assure

the proper functioning of this type of development in a visitor-serving area, especially one located on the shorefront, and directly adjacent to Oceanside Pier.

1.) Purpose and Intent of the Ordinance.

The purpose of the “D” Downtown District is to promote the long-term viability and redevelopment of the downtown area. In addition, the ordinance seeks to maintain and promote an appropriate mix of uses while establishing necessary land use controls and development criteria. The “D” Downtown District establishes special land use subdistricts with individual objectives. The proposed LCP amendment includes modifications to three separate Articles within the City of Oceanside’s certified Implementation Plan. The specific modifications for each Article are discussed below.

Article 4a. Article 4a has been proposed by the City of Oceanside to update the definitions for uses within the Redevelopment Area of their City. These definitions will better describe projects within the Redevelopment Area. The addition of Article 4a will also introduce the various types of limited use overnight accommodations allowed in this area including condominium hotels and fractional ownership units. These definitions are necessary as a proposed project has been approved by the City that includes the development of a hotel in the redevelopment area with a component of the project including the development of fractional ownership units. The language proposed by the City also includes some restrictions to these types of overnight accommodations including time use restrictions, and allowable ratios for fractional ownership / condominium hotel to traditional hotel units. These definitions and restrictions would be applicable to the entire Redevelopment Area of Oceanside.

Article 12. The purpose and intent of Article 12 is to show in table form the allowable uses within the Downtown District of the City of Oceanside. As proposed, this matrix would be updated to include current trends in development, and eliminate the types of development that are no longer desirable. The intent of this amendment is also to make the City’s use matrix more “user-friendly.”

Article 41. Article 41 would be 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. The intent of this modification is to streamline the administrative permit process.

2.) Major Provisions of the Ordinance.

Article 4a. Article 4a will be added to the existing Implementation Plan. Article 4 currently includes definitions of allowable uses such as restaurants, day spas etc. Article 4a will resemble this existing Article 4; however, Article 4a will list definitions that are permitted only within the redevelopment area. These definitions include an espresso stand, a grocery neighborhood market, and live and work lofts, among others. Article 4a also includes the City’s proposed definitions under Visitor Accommodations including a definition for Bed and Breakfasts, Hotels and Motels, Timeshares, Fractional Ownership

Hotels Condominium Hotels, Resorts and Limited Use Overnight Accommodations. The City accepted the Commission's definition of Limited Use Overnight Accommodations with some minor changes, to replace the previous term Integrated Resort. However, in their revised action, the City did not replace the terms in all areas and some inconsistencies remain that must be addressed in the Commission's suggested modifications.

Article 4a also includes the City's proposed special requirements for these types of overnight accommodations. The City's proposed restrictions incorporate all of the Commission's suggested revisions related to conversion of existing hotels to limited term overnight accommodations, requirements for CC&Rs and limitations on occupancy. A definition is proposed for Hotel Owner/Operator which is essentially consistent with the Commission's previously suggested definition, however, the City has struck the language from the definition that requires, if the hotel operator is separate from the hotel owner, both shall be jointly and severally responsible for ensuring compliance with the requirements of the LCP and any violations of the LCP and/or restrictions recorded against the property. The City has removed any reference to joint and several liability from both the condominium hotel and fractional hotel sections.

Among other more minor changes, the City's re-submittal eliminates the Executive Director's ability to review and approve the deed restriction required by the condo hotel and fractional hotel use restrictions as well as the provision allowing the Executive Director to review and approve the CC&Rs for the condo and fractional hotels to insure that they accurately reflect the required use restrictions. In just the fractional hotel section, the City's re-submittal includes new definitions for terms used in relation to such developments, such as "Fractional Interest." The new fractional hotel section also limits the public's right to reserve fractional units to just 60 days prior to their intended stay in such units.

Article 12. Article 12 has been modified to update the Use Matrix in order to make it more "user friendly" and to eliminate all further restrictions as indicated by the letter "L" within the Use Matrix. The modifications also include a method by which to indicate those uses that should be considered visitor-serving.

Article 41. The modifications to Article 41 consist solely of inserting "Economic Development and Redevelopment Director" as the second person who can approve administrative permits. All other requirements and provisions remain identical.

SPECIFIC FINDINGS FOR REJECTION. The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The City of Oceanside has numerous LUP Policies regarding low-cost visitor-serving facilities as well as the need for a high cost tourist destination in the beach area:

Coastal Access/Low Cost Visitor Serving Amenities/Priority Uses

Lower cost visitor and recreational facilities shall be protected, encouraged and, where possible, provided.

In granting approvals for new development within the Coastal Zone, the City shall give priority to visitor-serving commercial recreational facilities over private residential, general industrial or general commercial uses.

New recreational vehicle and camping facilities shall be encouraged within the Coastal Zone, provided that the following criteria be met:

- a. New facilities should be sited in areas where they can be compatible with surrounding land uses.
- b. Tent camping spaces as well as recreational vehicle spaces shall be provided

The City shall continue to promote coastal tourism through the revitalization of the coastal area and upgrading of visitor amenities.

The City shall evaluate methods for improving transient tax collection. Where possible, transient tax revenues should be used to upgrade or maintain public amenities used by tourists.

The City shall protect a minimum of 375 lower cost hotel and motel units and 220 recreational vehicle/camping sites within the coastal zone. Twenty percent of those hotel/motel units shall be maintained in shorefront locations. The City shall not allow any demolition of affordable hotel/motel units which would allow the coastal zone inventory of such units to drop below the number required by this policy. In order to verify its compliance with this policy, the City shall report the inventory of affordable hotel/motel units to the Coastal Commission on an annual basis [emphasis added].

Recreation and Visitor Serving Facilities - Summary of Major Findings

Public and Commercial Recreation:

16. While there appears to be an adequate inventory of lower cost and moderate cost visitor accommodation on the beach, the City lacks a high quality tourist destination hotel in the beach area.

Recreational and Visitor Serving Facilities - Policies

10. The City shall continue to promote coastal tourism through the revitalization of the coastal area and upgrading of visitor amenities.

The following Land Use Plan policies are contained in Oceanside's Local Coastal Program and are directly applicable to the nine-block Master Plan Area. These policies were added to the City's LCP as part of an amendment approved by the Commission in 1992:

Nine Block Master Plan.

General Policy #12.

The development of visitor-serving commercial facilities shall be encouraged within the Strand Study Area, providing the following criteria are met:

- a. Tourist and visitor oriented hotels are to be constructed in 2 phases with 120-250 units per phase.
- b. Visitor-serving commercial facilities shall be provided at a minimum of 81,000 square feet
- c. Development in Subdistrict 12, the three blocks adjacent to the Oceanside Pier bounded by Pacific Street, Myers Street, Seagaze Drive and Civic Center Drive shall be required to be master-planned to insure a minimum intensity of visitor-serving commercial facilities to include at least:
 1. 92 hotel rooms, and
 2. 33,600 square feet of visitor-serving commercial space.

1. Provision and Protection of Lower Cost Visitor-Serving Overnight Accommodations.

There has been an increasing tendency to convert existing coastal recreational facilities available to the public into membership only facilities, or to other types of ownership or use patterns which restrict public access to shoreline areas. This tendency is most obvious in the case of new or existing hotel type accommodations.

Pursuant to the public access policies of the Coastal Act, and particularly section 30213, the relevant portions of which are included in the Oceanside LUP, the Commission has the responsibility to insure that a range of affordable facilities be provided in new development along the coastline of the state. The expectation of the Commission is that developers of sites suitable for overnight accommodations will provide facilities which serve people with a range of incomes. If development cannot provide for a range of affordability on-site, the Commission historically has required mitigation often in the form of in-lieu fees to be used to provide affordable accommodations off-site.

The Commission's policies addressing protection of existing and provision of new low and moderate cost overnight visitor accommodations in the coastal zone have been evolving over time to more specifically define what constitutes lower cost overnight accommodations and to also establish criteria for determining when a fee in-lieu of actual provision of lower cost units is appropriate. Also, in review of condo hotel and fractional ownership development in prime visitor-serving areas, such as is represented by the subject project specific component of this LCP amendment, the Commission has attempted to refine the restrictions on use of those types of facilities, to assure to the maximum extent possible they operate as traditional hotels units when not owner-occupied. In all cases, the amount of area designated and available for prime visitor-serving uses, as well as the existing inventory and range of affordability of overnight accommodations within the subject community, is a primary consideration.

The City of Oceanside is currently undergoing a period of redevelopment, and the City has acknowledged the current Land Use Plan policies addressing protection of lower-cost visitor-serving overnight accommodations, especially in areas designated and zoned for visitor-serving uses, need to be applied. In response, the City of Oceanside completed a hotel stock and market demand survey on April 19, 2007. This survey indicated that the City currently has a strong stock of lower cost overnight accommodations. For the survey, the City interpreted low cost accommodations as those with costs of less than or equal to \$100 per night, and included hostels, campsites, RV parks, and low cost hotels. The survey submitted by PKF indicated that there are currently 12 facilities located coastally (near-shore) whose average room rates are less than or equal to \$100. These 12 facilities totaled 555 rooms available to the public in 2007. There are 8 other facilities located further inland whose rates on average are also less than \$100, for a total of 740 additional units available to the general public. The City of Oceanside also has two recreational vehicle parks and 173 asphalt camping spaces that are available to the general public. Oceanside RV Park fees range from \$46-49/night and Paradise by the Sea RV Park rents for between \$49-75/night. The Harbor District's asphalt overnight parking spaces cost between \$10-15/night. All of these support a range of affordability and can be considered low cost. However, 5 additional projects are under review currently at the City of Oceanside and none of these proposed developments will serve as lower cost overnight accommodation.

These trends demonstrate that future redevelopment of these older hotel/motel units could result in replacement overnight visitor-serving accommodations that would not be considered as lower cost. As such, the Commission finds the current stock of lower cost overnight accommodations should be protected; and moreover, a mechanism by which to promote the future development of lower cost accommodation is also necessary. The City's amendment includes language for the protection of current hotel units from being converted to limited use overnight facilities (i.e. Condominium Hotels and Fractional Ownership developments), but does not protect these facilities from being demolished and replaced by visitor-serving overnight accommodations that could not be considered lower cost facilities. Furthermore, the City's proposal does not include a mechanism by which to insure that some portion of future visitor-serving accommodations will serve as

lower cost facilities. Therefore, the proposed amendment is not consistent with the LUP policy requiring the protection of lower cost accommodations.

The City of Oceanside has specific policies protecting a minimum of 375 lower cost hotel and motel units and 220 recreational vehicle/camping sites within the coastal zone. Twenty percent of these hotel/motel units (75 units) shall be maintained in shorefront locations. In 2000, the City of Oceanside proposed an LCP amendment, to allow for the development of a substantial hotel located shorefront and within the Nine-Block Pier Area Master Plan area. This amendment request was denied by the Coastal Commission on June 11, 2002 for numerous reasons. The available shorefront lower cost accommodations (as protected by the City of Oceanside's certified LUP) was reviewed as a component of the staff report. The staff report concluded that the City at the time had an ample supply of both nearshore and shorefront locations.

An updated list of those facilities that could be considered shorefront was included at that time. When the City of Oceanside's LCP was certified; a minimum number of shorefront low cost overnight accommodation was determined: 75 units. At the time of certification the Villa Marina, Marina Del Mar and Buccaneer were considered shorefront facilities. In 2001, the Villa Marina and Buccaneer were no longer available to provide these low cost accommodations. However, two other facilities (Oceanside Marina Inn and Robert's Cottages) were being considered as shorefront low cost overnight accommodation; therefore, the City's available accommodations were greater than the minimum established by the LCP. The following list of available lower cost shorefront overnight accommodations was included in the staff report for Oceanside LCPA 1-2001:

Shorefront Lower Cost Hotel/Motel Units

<u>Name</u>	<u>Location</u>	<u># of Units</u>
Oceanside Marina Inn	2008 Harbor Drive North	52
Marina Del Mar	1202 N. Pacific	42
Robert's Cottages	704 N. The Strand	24

Total: 118

Minimum required by LCP: 75

An updated survey of the current stock of lower cost hotel units was completed by PKF Consulting. As discussed above, the report indicates that the majority of available units within the City can still be considered lower-cost; however, the analysis did not include which of these units were still located shorefront. Staff has reviewed the submitted report and concluded that all of the above mentioned shorefront accommodations are still operating. Marina Del Mar and the Marina Inn, however, can no longer be considered as lower cost. Further, Robert's Cottages have a minimum week long stay and range in prices from \$660-\$1100/week and are individually owned vacation rentals that are periodically available for rent at the owners' discretion. Therefore, combining the increase in prices at Marina Del Mar and the Marina Inn, and the week minimum stay and individual ownership of Robert's Cottages, there are no longer any units available on

Oceanside's shorefront that can be considered lower cost, thus inconsistent with the minimum number of affordable units protected by the City's LCP. While there are a number of facilities (overnight camping and the Harbor) that can be considered "shorefront," the City's LUP specifically requires that these units be in the form of either hotel or motel rooms, and not camping sites. The Commission recognizes that Oceanside does have a good supply of nearshore overnight accommodations, but the shorefront developments specifically protected by the LCP have been completely eliminated; and, as stated above, the project associated with this LCP amendment is for a development located shorefront, that is not proposing any low cost overnight accommodation further exacerbating the lack of low cost facilities at shorefront locations. Thus, as proposed, the LCP amendment cannot be found consistent with the City's certified LUP.

In its action on the previous submittal of the subject LCP amendment, the Commission acknowledged the City's existing inventory of lower cost overnight facilities in nearshore, but not necessarily shorefront, areas as significant, particularly when compared to other coastal communities. In addition, the City has an existing LUP policy that protects a minimum of 375 lower cost hotel units in the City's coastal zone, 20% of which should be in shorefront locations. Therefore, the Commission did not suggest a modification to the City's LCP that would require a fee be collected in-lieu of actual provision of lower cost units in connection with new development of high-cost overnight facilities.

In past actions, the Commission has imposed an in-lieu mitigation fee to be used to implement Section 30213 and to provide new lower cost overnight visitor accommodations in the coastal zone. Recent examples include 5-99-169 (Maguire Partners), 5-05-385 (Seal Beach Six), A-3-PSB-06-001 (Beachwalk Hotel), and A-6-ENC-07-51 (Surfer's Point). The most recent example included the requirement for a fee of \$30,000 per room for 25% of the proposed number of rooms. However, as discussed above, the City of Oceanside's certified LCP language expresses the need for a higher-end facility within its coastal zone. Further, the City has already invested a substantial amount of money into this development which; as proposed, is a public/private endeavor. Therefore, while lower cost accommodations are preferential, it is not always feasible or necessary; and, the City of Oceanside is one of the few cities where this situation is, in fact, the case.

However, because the existing supply of lower cost overnight facilities in Oceanside is an important rationale for not imposing the fee on high-cost development, the Commission suggested a LCP implementation policy that would mirror the existing LUP policy and encourage rehabilitation of existing hotels rather than demolition. Also, if demolition of lower cost units was authorized, for replacement hotel development, if the new overnight accommodation is not low or moderate cost, an in-lieu fee would be attached to 50% of the new high-cost overnight accommodations to be used for development of hostels, cabins, campgrounds, etc. in Oceanside or the North County coastal zone which are inherently low cost. The City may also consider utilization of this fee to subsidize construction of lower-cost motel accommodations in the City's shorefront to meet the requirements of the certified LUP. The Commission's more typical policy is to apply the

fee to 100% of the demolished and unreplaced lower cost units, and potentially to 25% of any new high-cost overnight accommodations. However, again, due to the existing supply of lower cost motel units in Oceanside, and the current LUP policy that protects 375 of those units, the Commission has waived the in lieu fee requirement at this time for the City of Oceanside. ~~has required the fee to apply to a lesser percentage of new high-cost accommodations.~~

The existing LUP policy requires that the City shall not allow any demolition of affordable hotel/motel units which would allow the coastal zone inventory of such units to drop below the number required in the policy, i.e. 375 lower cost hotel and motel units and 220 recreational vehicle/camping sites within the coastal zone, with 20% of the hotel/motel units maintained in shorefront locations. This is an important policy that requires verification of compliance to include reporting the inventory of affordable hotel/motel units to the Coastal Commission on an annual basis. Through review of this LCP Amendment, it has become apparent the City has not been complying with all of the requirements of this policy, and questions have been raised as to how the City intends to protect at least 375 units of the existing stock of lower cost overnight accommodations. Additionally, in its May 21, 2008 action, the City Council did not accept the Commission's suggested modifications requiring an in-lieu fee for demolition of existing lower-cost units. Since the LCP Implementation Plan currently lacks any specifics regarding the means to implement this LUP policy, the LCP Amendment, as submitted, is not adequate to carry out the certified Land Use Plan.

2. Limited Use Overnight Accommodation.

The proposed amendment is partially a project driven amendment to accommodate a 384 unit traditional hotel with a portion of the rooms to be fractional ownership hotel units. The amendment, as submitted, includes definitions for Condominium Hotels and Fractional Ownership Hotels to be conditionally permitted in Subdistricts 1 and 12 (Nine Block Pier Master Plan Area). The LCP includes development criteria applicable to these areas which addresses height limits, setbacks, view preservation, public use requirements and maximum density and intensity in order to provide for both public access and commercial recreational and visitor-serving facilities within the nine-block area. The purpose of the LCP policy language and master plan requirement was to assure that the area would be redeveloped with hotel and commercial development consistent with the public access and recreation policies of the Coastal Act and not allow the area to be redeveloped with lesser priority development, such as residential and/or office use. Subdistrict 12 is zoned for tourist and visitor-serving commercial uses. The objective of Subdistrict 12 is to provide a special tourist/visitor oriented subdistrict that relates to the pier, ocean, beach, marina and freeway. Permitted uses within this zone with a Conditional Use Permit (CUP) include hotels, time-shares, commercial recreation and entertainment, retail sales and eating and drinking establishments.

The project proponents have indicated that financing for traditional hotels is not economically feasible. Limited Use Overnight Visitor Accommodations are proposed as a means of financing a hotel-type facility. The project proponents have indicated that

their goal in proposing a Limited Use Overnight Visitor Accommodation is to acquire financial backing for the initial expense of constructing the hotel, which they assert could not otherwise be built. The City has indicated that Subdistricts 1 and 12 are the only areas they are proposing a Limited Use Overnight Accommodation, and given that Subdistricts 1 and 12 are only 9 blocks, the opportunity for development of numerous Limited Use facilities is minimal. In fact, given the size of the proposed development and the requirements for commercial space within these subdistricts, it is highly unlikely that any other Limited Use development would be feasible in these areas.

As cited above, Oceanside's LCP gives greater priority to visitor-serving uses, which include hotels and other uses that provide overnight accommodations and gives particular preference to lower cost visitor-serving accommodations. Because condo-hotel units are individually owned and subject to either no or varying length of stay restrictions, they can be considered a quasi-residential land use that only functions part time as an overnight visitor accommodation. As a quasi-residential land use, condo hotels raise concerns relative to the extent they actually constitute a visitor-serving land use. In addition, condo-hotels generally do not offer accommodations that can be considered "lower-cost," raising questions about the adequacy of supply of lower-cost visitor-serving accommodations in the coastal zone.

The proposed amendment would accommodate both condo hotels and fractional ownership hotels in the Redevelopment Area. By definition, in fractional ownership hotels, at least some of the guest rooms are owned separately by multiple owners on a fractional time basis. This means the owner receives an exclusive right to use an individual unit for a certain number of days per year and each fractional unit will have multiple owners. When a fractional ownership unit is not owner occupied by one of its owners, it is made available to the general public through the hotel operator or an independent rental agent hired by one of the individual owners. However, unlike condo hotel units which have only one ownership interest that could occupy the unit for a maximum 90 days per year, the fractional unit has the potential to be owner-occupied 100% of the time. Therefore, the City's proposal limits the number of fractional units in a limited term overnight accommodation to no more than 15% of the total number of units. Restrictions are included to address the relationship between the operation and rental of the traditional and fractional interest units and to assure all units function as a traditional hotel when not owner occupied.

In its review of the previous LCP amendment in December 2007, the Commission included a suggested modification imposing the same restrictions on Fractional Interest units as they had for fractional interest hotels in the past, such as in the Commission's action on the Huntington Beach LCP Amendment 2-06 in October 2006. It did not, however, make the same minor revisions that were made to the Commission's previously-approved restrictions for condo hotel development. However, the Commission did indicate that certain changes to the language might be necessary, as restrictions for condominium hotels may not translate accordingly to Fractional Interest units. Since December, the City and project proponents have brought to Commission staff's attention a number of concerns related to the Commission's restrictions and actual

operation of both fractional interest hotels and condo hotels. As a result of extensive coordination between City and Commission staff and legal counsel for the project proponent, revisions have been made to the restrictions which would apply to both condo and fractional interest hotels. Therefore, the set of restrictions approved by the City Council is different than that approved by the Commission in December 2007. Also, since City Council action in May, additional changes have been identified and agreed to between the City, Commission staff and the project proponent which must be reflected in suggested modifications to the re-submittal.

However, there is one area of remaining concern ~~disagreement that has not been adequately addressed through the proposed submittal~~. This relates to responsibilities between the owners and operators of any limited term overnight accommodation to assure compliance with the recorded use restrictions and terms of the LCP designed to require operation as a traditional hotel when not owner occupied. This is the single greatest concern related to granting private ownership interest to overnight accommodations in prime visitor-serving areas which must be reserved for priority visitor-serving uses available to the general public. As proposed, the City has removed all language that requires joint and several liability and responsibility between the owner and operator of the hotel, and individual unit owners for compliance with the LCP and recorded use restrictions.

~~Commission staff believes these provisions are necessary to insure effective enforcement of the conditions and use restrictions included in the LCP that are necessary to insure consistency with the City's certified Land Use Plan policies protecting lower cost overnight accommodations and public access. Neither the City nor the Commission will be in a position to effectively monitor individual owners' use of their units and compliance with the conditions of the CDP, whereas the on-site hotel operator will be in a better position to assess such compliance. In addition, without the imposition of joint and several liability, enforcement against potentially dozens of individual owners will be exceedingly difficult for public agencies with limited enforcement resources. Thus, joint and several liability is necessary to insure that the hotel owner and operator as well as individual unit owners effectively comply with the conditions and use restrictions that will be included in any coastal development permit for this development.~~

The City believes, ~~however,~~ that the Commission's concerns regarding the need for joint and several liability can be addressed through imposition of reporting requirements on individual Condominium Hotel unit or Fractional Interest owners that require each owner to certify their marketing efforts and the terms of any rental agreements entered into by those owners for the use of their units. ~~While the reporting requirements suggested by the City would likely make it easier for the operator to insure that the conditions of the CDP are satisfied by each individual owner, it does not address all of the Commission's concerns that are more effectively addressed through the imposition of joint and several liability, as explained above. The Commission however, feels that several liability is still necessary. The main concern is that if the unit owner, project owner, or project operator does not have any legally binding requirements, he/she may not be inclined to require the~~

proper operation of the facility. Thus, the IP Amendment submitted by the City is insufficient to carry out the policies in the LUP.

As submitted, the proposed changes to Articles 12 and 41 present no coastal issues. Article 12 has been modified to reflect current uses and remove outdated uses in the downtown area. As proposed, all coastally dependent uses will remain and as such the LCP amendment can be found consistent with the City's certified LUP. Article 41 gives the Economic Development and Redevelopment Director the ability to approve administrative permits where prior only the Planning Director had the authority to do so. The intent of this amendment is to streamline the administrative permit process, as often the Economic Development and Redevelopment Director has better knowledge of the permit application and may be more equipped to determine the administrative permit's consistency with the City's certified LCP. As such, the amended Article 41 can also be found consistent with the City's certified LCP as submitted by the City.

PART V. FINDINGS FOR APPROVAL OF THE CITY OF OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED

1. Provision and Protection of Lower Cost Visitor-Serving Overnight Accommodations.

The City has proposed numerous changes to its Zoning Ordinances for both the Redevelopment Area and the Downtown District. The majority of these modifications are “house-keeping” changes and do not result in any inconsistencies with the City’s certified LUP. However, included in the City’s submittal is the introduction of Limited Use Overnight Accommodation, in the form of both Condominium Hotels and Fractional Ownership Hotel developments. While the City has stated that these definitions and proposed restrictions are project specific, the language used and the restrictions required should be developed so that they can be applied to future projects as well. The City of Oceanside, along with many other coastal cities, is not seeing any new lower cost accommodations being proposed and instead is seeing multiple higher cost accommodation requests within the coastal zone, thereby limiting the opportunities for individuals to visit the coast line. The City of Oceanside has policies protecting lower cost visitor-serving facilities as well as a specific policy protecting lower cost overnight accommodations both within the City limits, as well as at the shoreline.

In its December, 2007 action on the previous submittal of this LCP amendment, the Commission suggested modifications to protect existing lower-cost hotel units through payment of fees in-lieu of providing lower cost units as a component of any demolition and reconstruction of an existing hotel/motel development not proposing to replace the existing lower cost units with either low or moderate cost units within the redevelopment area. The Commission continues to maintain the City’s LCP should contain a policy that ~~requires a fee in-lieu of actual provision of lower cost units if demolition of a low cost facility is authorized and the replacement facility is a 100% high-cost accommodation.~~ protects lower cost overnight accommodation in the coastal zone in order to able to be

found consistent with the Coastal Act. However, at this time, in-lieu fees may not be the most appropriate form of "mitigation" for the City of Oceanside.

~~The Coastal Act protects and encourages the provision of lower cost visitor and recreational facilities in the coastal zone. However, given evolving demographics and an acknowledgement of demand for a range of affordability in the coastal zone, the Commission has acknowledged moderately priced accommodations are also an important coastal resource. As such, the proposed LCP implementation policy would only apply a fee in lieu of actual provision of lower cost units when the replacement project for demolition of a lower cost hotel is a high end facility. As suggested, the fee would apply to 50% of the demolished, unreplaced units in the redevelopment project. The City could consider use of any generated monies to subsidize the provision of lower cost motel units with the City's shorefront area. By doing so, a method is provided to assure that some degree of lower cost overnight accommodations will continue to be provided in the coastal zone, as is required by the City of Oceanside's certified LUP.~~

As a component of the City's permitting process, a preliminary study of low cost facilities was completed. The findings of this survey indicated that the City has ample low cost visitor-serving facilities. This study, however, does not exempt the City from encouraging additional low-cost facilities or maintaining current uses, especially in areas designated and zoned specifically for high priority visitor-serving uses. Additionally, the City has an existing LCP Policy requiring the protection of a minimum of 375 low cost hotel units. However, to date, how this policy is being implemented and/or enforced has not been developed. For example, the language of this policy requires the City to submit annual reports to the Commission that indicate how the stock of lower cost hotel units has been modified over the previous 12 months. To date, the Commission has received no such reports. In light of increasing construction costs and inflation in general, it is becoming increasingly important to provide real methods for protecting existing overnight accommodations.

The demand for lower cost facilities is easily recognizable state-wide. For example, in Santa Monica, the average occupancy rate for its hostel was 96%, with the hostel completely full about half the year. Further, 77 million people visited California State Parks in the 2004-2005 fiscal year; 90% of which were parks located along the coast. Further, the demand for campsites within these parks grew approximately 13% between the years 2000 and 2005. According to the 2003 California Coastal Access Guide, only 12 properties were low-cost accommodations. The average daily room rate in San Diego County for 2005 was \$122, with a peak rate of \$136 in July. The average occupancy rate for the same year was 72.3%, with a peak rate of 86% in July. Because the proposed development is located at a site zoned for visitor-serving amenities, and lower cost recreational and overnight facilities are protected by the City's LUP, lower cost facilities are the priority development type at every site located within these zoning areas and protected by the City's LUP policies. ~~The City did include a number of provisions to address this concern and to better assure that condo hotel and fractional ownership hotel units will function, to the extent feasible, as traditional hotel units. As discussed in the prior section, however, these proposed provisions are inadequate to protect lower cost facilities in the coastal zone.~~

Typically the Commission will approve such types of developments only if accompanied by some type of mitigation. While there have been numerous projects similar to the one supported by this LCP Amendment, the mitigation was tailored to the specific project, or what that location required. For example, in Rancho Palos Verdes, the development of a hostel served as mitigation for the conversion of standard hotel rooms to condominium hotels. Often, the project is required to pay fees in lieu of providing low cost overnight accommodation within the specific development. However, as previously discussed, mitigation is based on a case-by-case basis, and the City of Oceanside has proven to be different from most other coastal cities in California. As previously discussed, the City submitted a survey of their existing hotel units and the rates charged. The survey concluded that when defining lower cost as "less than a hundred dollars a night," rate over 90% of the City's existing facilities fits within that definition of low cost. Therefore, requiring the proposed project to provide in lieu fees for low cost development would not be appropriate given that the majority of the City's current facilities can be considered lower cost.

Furthermore, the City already has an LUP policy requiring the protection of 375 hotel units within the City's coastal zone. However, it is unclear how this number will be protected long-term. It doesn't seem likely that the City could wait until there are only 375 units left in the City and simply deny any subsequent project that will result in the loss of a lower cost unit. The policy also fails to address the hotel developments that simply go out of business. The City cannot prevent a business that is no longer viable from closing. Furthermore, as previously stated, some of the components of the *existing* policy language are not being followed by the City, i.e. the annual reporting. Therefore, language has been included in the City's Implementation Plan to better monitor and enforce this existing LUP policy (ref. Suggested Modification #6).

Suggested modification #6 has three components. The first component again requires the City to monitor lower cost units within the Coastal Zone. However, this language requires that the City monitor the number of existing stock by reporting the status of the current number of lower cost units within the Coastal Zone within all staff reports for any overnight accommodations, which will then be forwarded to the Coastal Commission. This requirement will provide up-to-date information when new permits are being sought. The additional language also requires the City to monitor the protection of a minimum of 400 low cost units in the Coastal Zone. The existing LUP policy requires the protection on 375 units. The protection of the additional 25 units will provide a buffer to help address any unforeseen circumstances that might result in the stock of low cost units dropping below 375. Furthermore, the additional number of units gives some leeway to the City for approval of projects, so that hypothetically, the last project reviewed by the City (perhaps removing units below the threshold) is not the only project penalized. This provides a greater time period for the City to begin reviewing how they intend to assure the protection of 375 rooms when the existing stock begins to decline.

The second component of the policy includes that when/if the inventory of lower cost units is at 405, the City will pursue outreach to the existing property owners. The City

may then provide resources, including their Façade Enhancement Plan which matches the business owner's funds, to be made available for paintings, awnings, signage and landscaping. This provides a method to encourage that the existing stock of hotel developments to remain viable and to prevent the closing of outdated low cost hotels.

The third and final component of the policy requires deed restrictions for lower cost units. In that, any project that is required to provide lower cost units (due to the minimum number of units being protected) shall be required to record a deed restriction against the property that will require the protection of the units as lower cost units and that any such demolition and reconstruction will not result in the total number of units to be less than a total of 400 units in the Coastal Zone.

In a constantly changing market, it can be difficult to define what price point constitutes "lower-cost," "moderate," and "higher-cost" accommodations for a given area. ~~With~~ In ~~some these~~ recent Commission actions, lower cost was loosely considered to be less than \$100 per night. The Commission gave direction to staff to better define what accommodations can be considered lower cost. And, in response to this request, staff has been working on not only an appropriate definition of what price can be considered lower cost, but staff has also created a formula by which to determine what can be considered low, moderate, and high cost accommodations within a specific area, that will reflect the market, and any increase to costs, demand, etc.; thereby creating a dynamic tool for accurately determining what a feasible "lower cost overnight accommodation" is. The proposed formula is based on hotel accommodations (single room, up to double occupancy) in California.

Currently, the formula by which to determine the absolute price of "lower cost" overnight accommodations is still in its infancy, and Commission staff is continuing to work to refine the formula. In order to determine what could be considered lower cost within the entire state, information was taken from Smith Travel Research website (www.visitcalifornia.com). The research data available from this website is widely used by public and private organizations. The information on the website was used to obtain the average room rate for hotel bookings made statewide. Commission staff isolated the rates of what could be considered "peak time" (July and August) so that an accurate assessment of what a member of the public would actually pay could be determined. Data was collected from 2003 to 2007. Based on these figures an average rate for 2008 was projected (ref. Table 1).

Table 1. Statewide Average Room Rates for 2003 to 2007 projected through 2008

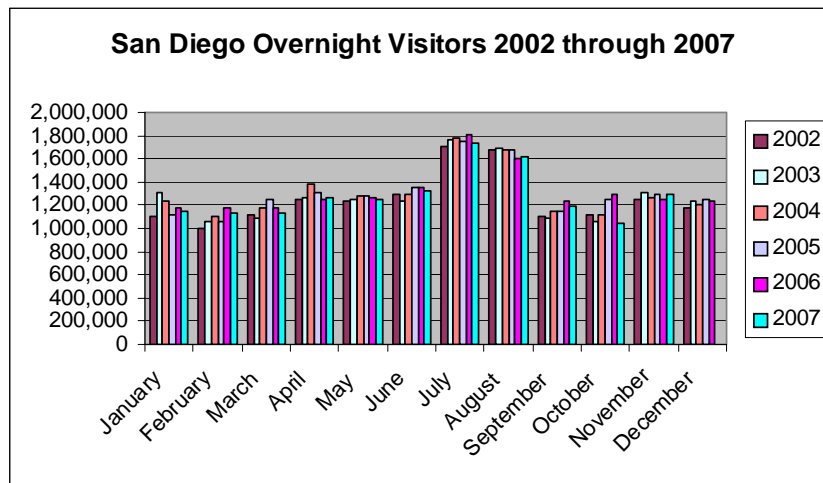
	2003	2004	2005	2006	2007	Projected 2008
January	\$95.39	\$92.07	\$96.64	\$104.32	\$112.12	\$114.22
February	\$95.16	\$97.35	\$100.62	\$108.30	\$118.07	\$121.72
March	\$93.70	\$96.42	\$100.33	\$109.68	\$116.64	\$122.10
April	\$93.18	\$95.03	\$102.25	\$110.49	\$117.31	\$124.04
May	\$93.88	\$96.65	\$102.39	\$112.08	\$119.02	\$125.82
June	\$92.46	\$95.86	\$102.82	\$111.96	\$119.01	\$126.73
July	\$95.09	\$98.70	\$106.31	\$116.39	\$124.45	\$132.92
August	\$96.28	\$100.18	\$107.37	\$116.81	\$124.82	\$132.88
September	\$92.56	\$95.48	\$105.66	\$112.45	\$119.84	\$128.41
October	\$94.65	\$98.32	\$104.60	\$115.48	\$123.43	\$131.40
November	\$91.10	\$93.86	\$101.67	\$110.55	\$118.38	\$126.12
December	\$86.19	\$90.51	\$96.12	\$103.92	\$110.06	\$117.05
ANNUAL AVERAGE	\$93.30	\$95.87	\$102.23	\$111.04	\$118.60	\$125.28

Source: Smith Travel Research, *California Tourism*, June 2003 through June 2007. <http://www.visitcalifornia.com/page.php?id=526> [14 January 2008].

*2008 value projected using exponential regression based on 2003 through 2007 values.

The projected price paid by visitors to hotels throughout California in the months of July and August for 2008 is \$132.90. This calculated number is then used as a baseline by which to compare specific coastal regions of the State. Staff researched San Diego region visitor data, and it was determined that July and August were the peak visitor months (ref. Chart #1) and as such, the hotel rates will be collected from those time frames, again to gain a more accurate assessment of what people are actually paying to visit San Diego County's coast.

Chart 1. San Diego Overnight Visitors



Source: San Diego Convention & Visitors Bureau, *San Diego County Visitor Industry Summary*.
<<http://www.sandiego.org/nav/Travel/ResearchAndReports>> [5 March 2008].

Staff then used the AAA website to research hotel/motels stock within San Diego County. All hotels surveyed were required to meet a certain level of quality, safety, and cleanliness. This was accomplished by requiring that all hotel/motel developments inventoried meet the criteria of one or two diamonds as rated by AAA. According to the AAA website, One and Two Diamond rated facilities can be described as:

One Diamond - These establishments typically appeal to the budget-minded traveler. They provide essential no-frills accommodations. They meet the basic requirements pertaining to comfort, cleanliness and hospitality.

Two Diamond - These establishments appeal to the traveler seeking more than the basic accommodations. There are modest enhancements to the overall physical attributes, design elements, and amenities of the facility typically at a moderate price.

To develop a sample of lower cost hotels in the coastal zone, the AAA website was again used to obtain a stock of lower cost hotels within 5 miles of the coast. To be most meaningful, peak season room rates are used. The peak visitor months in San Diego for both day and overnight visitors are July and August. The sample resulted in identification of 55 One or Two Diamond hotel/motel developments within this research area. Of the 55 hotels originally surveyed, 25 were within the coastal zone and 8 of these charged room rates less than the state average. The rates charged for the months of July and August of these 8 developments (ref. Table #2) were then determined and averaged. The average charge for a room of One or Two Diamonds (as rated by AAA) that were found within the coastal zone and were charging less than the state average is \$108.35. This number was then used to determine how San Diego County's average room rates

compare to the state wide average of \$132.90. By dividing the average for San Diego (\$108.35), by the State average (\$132.90), a percentage is given that can be used in the future. This percentage represents what a reasonable difference ($108.35/132.90 = .82$ or 82%) would be between the statewide nightly average rate and San Diego County's average for lower cost accommodation in the coastal zone.

Table 2.
***UNDER STATE
AVERAGE***

	Hotel Name	AAA Rating	Address	City	July Average	August Average
1	Ocean Inn	2 Diamonds	1444 N Coast Highway 101	Encinitas	\$109.65	\$108.68
2	Portofino Beach Inn	2 Diamonds	186 N Coast Highway 101	Encinitas	\$114.99	\$114.99
3	Days Inn Encinitas/Moonlight Beach	2 Diamonds	133 Encinitas Blvd	Encinitas	\$131.58	\$132.23
4	Southbay Travelodge	2 Diamonds	1722 Palm Ave	Imperial Beach	\$106.58	\$97.23
5	Motel 6	2 Diamonds	909 N Coast Hwy	Oceanside	\$83.89	\$84.54
6	Days Inn at the Coast	2 Diamonds	1501 Carmelo Dr	Oceanside	\$93.91	\$93.50
7	Days Inn Harbor View	2 Diamonds	1919 Pacific Highway	San Diego	\$126.84	\$107.39
8	Days Inn Mission Bay/Sea World	2 Diamonds	4540 Mission Bay Drive	San Diego	\$119.52	\$108.00
	AVERAGE				\$108.35	

This formula represents a comparison between two averages that will both reflect the current market trend, so that the most appropriate definition of lower cost is utilized. Using this definition, lower cost overnight accommodations in the San Diego coastal area would be any establishment that costs less than 82% of the current peak, statewide average (\$132.90). This percentage can then be taken to find what the appropriate definition of "lower cost overnight accommodation" would be in the future. Any person wanting to determine whether or not the proposed development would meet the criteria of "lower cost" would simply access the Smith Travel website, obtain the current statewide average, and multiply this number by .82. If the development's proposed daily room rate is *less* than the computed number (current statewide average x .82), that development can be considered "lower cost". It may be appropriate to re-survey the entire county periodically to reflect any changes in the tourist market specific to San Diego County. This formula could be used for all coastal areas in the State, after an initial survey similar to the AAA survey discussed above has been completed.

When attempting to define "lower cost," it becomes apparent that some developments are innately lower cost, and some are higher cost; however, not everything that is not lower cost automatically becomes high cost. The policies of Chapter 3 of the Coastal Act require the Commission to protect a range of affordability and; as such, a definition for what can be considered moderately priced accommodations are also necessary. The above discussed statewide average is \$132.90. Again this number was taken during the peak season for tourism. As such, this number represents what a *general populous* can and would be willing to pay. The San Diego County average for lower cost accommodation is 82% of the statewide average. Moderately priced overnight accommodations should reflect the local market, and as such, can be defined incorporating both of these averages. Because San Diego County rates are approximately 20% below that of the state, moderately priced accommodations would start at above this rate (statewide average x .82). At some point, a survey of hotels charging more than the statewide average could be undertaken. But for now, an estimate of "higher cost" can be defined as those hotels with daily room rates 20% (rounding up from the 18% baseline percentage to be conservative) higher than the statewide average of \$132.90, or \$159.48. Therefore, rates between \$108.35 and \$159.48 would be considered moderately priced and those above \$159.48 would be considered high cost.

It is important to note that staff utilized the AAA website to obtain site specific information on the hotel/motel inventory for San Diego County. Staff acknowledges that not all hotel/motel stock for the County of San Diego is represented on the AAA website; however, given that the survey included a total of 55 different establishments within the survey boundaries, it can be fairly concluded that the AAA survey is a good representation of the types of and prices for hotel/motel units countywide. Furthermore, the rates do not reflect discounts for multiple night stays; each rate obtained was for one night only. The rates do not reflect discounts for exclusive groups, such as AAA members or AARP members. The formula does, however; develop a method by which a definition of low- and moderate-cost can be determined for any specific area within California that adequately reflects the current market conditions.

The Commission has historically interpreted 25% as a reasonable amount of the total development to protect a range of affordability. Under the Coastal Act and specified in the certified LUP, each development on critical land reserved for visitor uses should provide some lower cost amenities to support public use and coastal access. As stated above, the current trend, and the project enabled by this LCP amendment, includes 0% of the units serving as lower cost accommodation; ~~however the Commission is not suggesting a fee be applied to 25% of new high cost accommodations. As suggested by the Commission, in light of the City's current supply of lower cost units and the LUP policy which requires maintenance of that stock, the modification would only apply the fee to 50% of the demolished, unreplaced lower cost units in a high cost overnight facility. Typically a project such as the one proposed would be a perfect opportunity for the standard in-lieu fees to be required, thereby resulting in some type of protection of lower cost overnight accommodations. However, in this case, the LUP and IP policies~~

protecting 375 units will be sufficient to protect a reasonable number of affordable units within the Coastal Zone.

Historically, the Commission has considered 25% to be an adequate amount of the stock of available units to be defined as low cost. Currently, the City has 90% of its stock functioning as lower cost units. This number was determined by using \$100/night as the figure to define lower cost. As previously noted, since the survey took place, Commission staff has updated its definition of lower cost accommodation to include units up to the price of \$108.35/night. Therefore, some additional units may be considered low cost given the updated definition. Furthermore, because the policy protects low cost hotel/motel units, other low cost overnight accommodations such as camping have not been included. As previously mentioned, the City has two recreational vehicle parks and 173 asphalt camping spaces that are available to the general public. Oceanside RV Park fees range from \$46-49/night and Paradise by the Sea RV Park rents for between \$49-75/night. The Harbor District's asphalt overnight parking spaces cost between \$10-15/night. All of these support a range of affordability and can be considered low cost. As such, the City currently provides a much greater number of lower cost units (>90%), then previously accepted by the Commission (25%).

~~The fee of \$30,000 was established based on figures provided to the Commission by Hostelling International (HI) in a letter dated October 26, 2007. The figures provided by HI are based on two models for a 100-bed, 15,000 sq. ft. hostel facility in the Coastal Zone. The figures are based on experience with the existing 153-bed, HI San Diego Downtown Hostel. Both models include construction costs for rehabilitation of an existing structure. The difference in the two models is that one includes the costs of purchase of the land and the other is based on operating a leased facility. Both models include "Hard Costs" and "Soft Costs" and start up costs, but not operating costs. "Hard" costs include, among other things, the costs of purchasing the building and land and construction costs (including a construction cost contingency and performance bond for the contractor). "Soft" costs include, among other things, closing costs, architectural and engineering costs, construction management, permit fees, legal fees, furniture and equipment costs and marketing costs.~~

~~In looking at the information provided by HI, it should be noted that while two models are provided, the model utilizing a leased building is not sustainable over time and thus, would likely not be implemented by HI. In addition, the purchase building/land model includes \$2,500,000.00 for the purchase price. Again, this is not based on an actual project, but on experience from the downtown San Diego hostel. The actual cost of the land/building could vary significantly and, as such, it makes sense that the total cost per bed price for this model could be too high. In order to take this into account, the Commission finds that a cost per bed generally midrange between the two figures provided by HI is most supportable and likely conservative. Therefore, the in lieu fee included in the suggested modifications, is \$30,000.00 per bed.~~

~~These in-lieu fees are required to be managed in an interest bearing account, until a project has been approved by the City of Oceanside and the Executive Director of the~~

~~Commission to develop a lower cost visitor serving overnight accommodation. Developments such as campgrounds and youth hostels are both considered desirable projects to be funded by the in lieu fees. The suggested modifications include provisions that insure that if the fees are not used within 10 years, the funds will need to be donated to one or more of the State Park units or non-profit entities providing lower cost visitor amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. The suggested modification also includes the opportunity for an applicant to propose a specific lower cost overnight accommodation project to complete or contribute to, as opposed to payment of fees, subject to the approval of the City of Oceanside and the Executive Director of the Commission. These suggested modifications will serve as incentives to include lower cost accommodations within future projects, or to allocate funds to potential lower cost overnight accommodation projects, thereby protecting lower cost visitor serving accommodation within Oceanside's coastal zone, consistent with the City's LUP.~~

In conclusion ~~t~~The City's LUP requires that lower cost facilities be protected, encouraged and provided, as well as the policy specific for the protection of lower cost overnight accommodation within the coastal zone and at shorefront locations. A suggested modification has been included in the City's implementation plan assuring that 400 lower cost units are protected within the City's coastal zone. This will provide for a buffer to accommodate development, or existing hotels to close without resulting in a decrease in low cost units to below 375 units as specified in the certified LUP. Furthermore, the suggested modification includes language that provides additional means to protect existing hotel units through a Façade Enhancement Program, and through requiring future developments with lower cost requirements to record a deed restriction protecting these units as lower cost in perpetuity. This, in addition to considering the vast existing stock of lower cost units in the City, will be sufficient to protect the number of lower cost units within the Coastal Zone in the City of Oceanside. Therefore, for the reasons outlined above, the Commission finds that only if modified as suggested, can the proposed amendment be found consistent with the City of Oceanside's LUP.

2. Limited Use Overnight Accommodations.

The City of Oceanside has proposed to allow limited use overnight facilities within the Downtown District. Limited use overnight accommodations have consistently been considered semi-residential, and not the most desirable use within areas reserved and zoned for visitor-serving uses. Therefore, in order to maximize the visitor-serving use within these Limited Use Overnight Visitor Accommodations, limits and restrictions must be imposed on the number of units per hotel project for which limited use ownership rights may be created and sold, and on use of the units by separate owners, as well as on how the overall hotel is operated.

The City has included language in its submittal which requires that privately owned units not occupied by the owner(s) or their guests must be made available for overnight rental by the general public in the same manner as the traditional hotel units. This achieves two ends: 1) it increases the facility's visitor-serving function by increasing the number of

transient overnight accommodations units available to the general public, and 2) it promotes the likelihood that the overall facility will be perceived as a facility available to the general public. The City also included maximum percentages for individual rooms to be utilized as limited use overnight accommodation. Condominium Hotels would be limited to a maximum percentage of 25% of the total rooms, and Fractional Ownership hotels would be limited to 15%. Also regulated by the City, the combination of timeshares, fractional ownership units and condominium hotels could not exceed 25% for any development. This is important because the initial cost of being an individual owner of any of these limited use accommodations is not considered low cost, as it is often well out of the affordable range for the public. If a development was proposed as 100% limited use overnight accommodations, those facilities would be restricted to only allow those who can afford this initial purchase cost to stay at the facility. As such, by restricting the percentage of limited use overnight accommodation allowed within any proposed development, these facilities will remain available to a larger portion of the public.

The City also included in their proposed language length of stay restrictions. These restrictions include a maximum stay of 90 days per calendar year, with a maximum of 29 consecutive days of use during any 60 day period. These restrictions prohibit individual owners from staying for extended periods of time, which would further restrict the visitor-serving uses within the facility. Lastly, the City prohibited the conversion of any existing hotel/motel units into Limited Use Overnight Accommodations. Thus, it attempted to protect the existing stock of unrestricted overnight facilities. However, the City did not include detailed provisions for the maintenance of such restrictions, nor did it include provisions for the protection of the portion of the units operating as unrestricted overnight facilities.

It is important that all units in the condominium hotel, both condominium-hotel units, as well as traditional units, be operated by a single hotel operator (of their respective facilities). This includes booking of reservations, check-in, maintenance, cleaning services, and similar responsibilities of hotel management. This requirement is important as a means of assuring the hotel does not convert to a limited ownership-only hotel and to maximize its visitor-serving functions. Because the traditional hotel rooms are not limited only to those who have purchased ownership interests, they are available to a much larger segment of the population. Thus, it is important that the number of traditional guestrooms not decrease, because the greater number of traditional guestrooms, the greater the visitor-serving function of the hotel.

These restrictions and requirements must be implemented as part of the Fractional Ownership and Condominium-Hotel operations. Consequently, a specific entity responsible for implementing the restrictions and requirements must be identified. An appropriate entity would be one that has access and control over the entire facility. The facility's owner/operator is in the position to implement the necessary restrictions and requirements. Therefore, the suggested modifications reference the hotel owner-operator as the entity responsible for implementing the restrictions and requirements. Furthermore, although the hotel may be owned and operated by the same entity, this is

not certain. Therefore, measures must be in place to address a situation where the hotel is owned and operated by two separate entities. It must be clear that, in such a situation, ~~both~~ the owner and the operator are responsible, and indeed liable, for carrying out their individual responsibilities for implementing the requirements and restrictions imposed upon each facility. This is reflected in the suggested modifications through the language addressing several liability.

By ensuring that each entity is liable for complying with their respective responsibilities, the suggested modifications insure that these obligations and responsibilities will be fulfilled.

Furthermore, both the City and the Executive Director of the Coastal Commission reserve the right to require a full-scale audit of the hotel. Because the suggested modifications make it clear that all parties are severally responsible for complying with the CDP, if one of the requirements imposed by the CDP for the hotel is not fulfilled by the responsible party, it would be a violation of the Coastal Development Permit, and can be pursued as such.

The City's proposal eliminates the Executive Director's ability to review and approve the deed restriction that is required to insure that none of the traditional hotel units in either the Condominium Hotel or as part of the Fractional Ownership Hotel development are converted to limited use units. The proposal also does not provide the Executive Director with the authority to approve the CC&Rs for either type of hotel, so the Executive Director will not have the ability to require changes to the CC&Rs that might better reflect the required use restrictions for these types of facilities. While these changes to the Commission's suggested modifications limit the Executive Director's oversight of the implementation of these conditions, they do not change the intent of these requirements which is to provide notice to any future owners of any type of interest in these projects that these hotels are subject to the restrictions outlined in the LCP.

Because the City's proposal limits the Executive Director's authority to review the deed restrictions and CC&Rs, however, it is particularly important that he or she may request an audit of hotel operations, if he or she reasonably believes that the reports submitted by the hotel operators to demonstrate compliance with the special conditions of the CDP are materially inaccurate. Through a third party audit of hotel operations, the Executive Director will be able to review and assess whether the hotel is being operated consistent with the conditions of the coastal development permit. The Commission therefore makes changes to Suggested Modifications 4 and 5 to retain the Executive Director's ability to request a third party audit of hotel operations.

It is only through the use restrictions and other conditions requiring these limited use facilities to operate in such a manner that they will maximize public access that these types of limited use facilities may be found consistent with the City's certified LUP. Thus, an effective enforcement mechanism is necessary to insure that the hotel owner, operator and individual condo unit or Fractional Interest owners are complying with each of the conditions of the coastal development permit. The Commission's suggested

modifications impose ~~joint and~~ several liability on the owner and operator so that they have an ~~equal~~ incentive and interest in complying with the conditions of the CDP. The Commission also suggests modifications that insure that each individual condo unit or Fractional Interest owner is ~~jointly and~~ severally liable ~~with the hotel owner and operator~~ for any violations of the conditions of the CDP with respect to each owner's individual interest. Through imposition of ~~joint and~~ several liability, the Commission, or the City, may more effectively enforce the conditions of the CDP, thus insuring that the hotels are operated in such a manner as to maximize public access.

In conclusion, the City of Oceanside's LUP requires that lower cost visitor and recreational facilities be protected. The subject of this LCP amendment is overnight accommodations within the Commercial Visitor district. Thus, the specific type of visitor-serving facility to be protected under this amendment is lower cost overnight visitor accommodations. The proposed amendment is partially a project driven amendment. The project driving the amendment is expected to include both limited use and high cost overnight accommodations. The City of Oceanside has proposed a number of definitions and restrictions to better serve the community. However, the amendment, as proposed, does not include adequate protection for the maintenance of its present hotel/motel inventory of lower cost overnight accommodation, especially given the City's requirement for protection of shorefront lower cost overnight accommodation. Also the amendment, as proposed, does not include adequate restrictions on the Limited Use Overnight Accommodations proposed within this amendment. However, with the suggested modification for protection of overnight accommodations and for the demolition and redevelopment of existing hotel/motel, lower cost overnight accommodations will be both protected and augmented. Further, with the suggested modifications for the operation of any Limited Use Overnight Accommodation, the visitor-serving opportunities within areas designated and zoned to serve visitor-serving uses will be protected. Therefore, the proposed amendment can only be found consistent with the City's certified LUP with the inclusion of the above discussed suggested modifications.

PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, as amended, does conform with CEQA provisions. As outlined in the staff report, the IP amendment, as proposed is inconsistent with the land use policies of the certified LUP. However, if modified as suggested, the amendment can be found in conformity with and adequate to carry out all of the land use

policies of the certified LUP. Therefore, the Commission finds that approval of the LCP amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP amendment 1-07 if modified as suggested herein.

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CITY OF OCEANSIDE

Economic & Community Development

November 6, 2008

Sherilyn Sarb
Deputy Director, San Diego District
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: City of Oceanside Revisions to LCP Amendment
LCPA-200-07/ZA-200-07 ("D" District)

Dear Ms. Sarb:

Thank you very much for continuing work with us on this last issue regarding the City's Local Coastal Plan Amendment. It was both the City of Oceanside's and the hotel developer's understanding that when the Coastal Commission took their action July 2008, it was to remove all references to "joint and several liability" from all parties. As this is not Coastal staff's understanding, it is necessary to get final clarification from the Commissioners.

We have attached a letter from Mr. Scott Turner, of Cox Castle, legal counsel for the developer, which outlines their concerns regarding the owner and operator being held jointly liable for each others actions. In addition, we have included the minutes from the July 2008 Coastal Commission meeting, where we believe the Commission intended on removing joint liability from all parties.

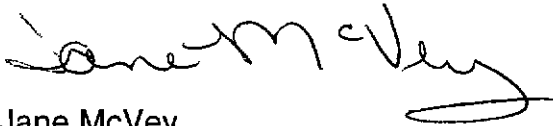
Since the Coastal Commission still needs to approve the Revised Findings from the July 2008 meeting, we are taking the Revised Findings to the Oceanside City Council November 19, 2008 for their approval. We will include the results of the Coastal Commission's Action on November 13, 2008, and will be forwarding the entire packet to you to expedite the final approval. We are hopeful that we could then be back to the Coastal Commission in December 2008, for our Revised Findings hearing and final certification in January 2009.

We have forwarded all of the documents to all of the Coastal Commissioners directly and will have extra copies available at the November 13, :

EXHIBIT #1
Correspondence from the City and Agent
LCPA #2-08 Downtown "D" District 1 of 3 pages
California Coastal Commission

have any questions please give me a call me at 760-435-3355 or Kathy Baker, Redevelopment Manager at 760-435-3547.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane McVey". The signature is fluid and cursive, with a large loop at the end.

Jane McVey
Economic & Community Development Director

cc: Peter Weiss, City Manager
Kathy Baker, Redevelopment Manager



Cox, Castle & Nicholson LLP
19800 MacArthur Boulevard, Suite 500
Irvine, California 92612-2480
P 949.476.2111 F 949.476.0256

D. Scott Turner
949.260.4627
sturner@coxcastle.com

November 6, 2008

Ms. Jane McVey
Economic and Community Development Director
City of Oceanside
300 N. Coast Highway
Oceanside, CA 92054

Re: **Oceanside LCPA**

Dear Jane:

Pursuant to our discussion this morning with the Peter Douglas and Sherilyn Sarb of the Coastal Commission, we have been asked to state the principal reason why the LCPA should not include joint and several liability of a hotel operator and a hotel owner of a condominium hotel project or a fractional interest project for the acts and omissions of one another which lead to non-compliance with the LCPA.

First, we believe that the Commission intended to eliminate the concept of joint and several liability between the hotel operator and the hotel owner at its July 9 hearing on the LCPA.

We further believe that the premise behind Staff's desire for such joint and several liability is based on an incorrect premise. This premise is that one party does have the power, contractually or operationally, to control the conduct of the other with respect to compliance. In fact, neither the hotel operator nor the hotel owner will have any such control over the other. For this principal reason, it is fundamentally unreasonable to hold one liable for the conduct of the other. Further, because the hotel operator and the hotel owner will, in our case, be separate parties, the requirement of joint and several liability will unreasonably complicate our arms length negotiations with a hotel operator without adding any significant assurance of compliance with the LCPA.

Very truly yours,

D. Scott Turner

DST/mwb

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

Date and time of communication: November 11th at 9:30 AM

(For messages sent to a Commissioner
by mail of facsimile or received as a
telephone or other message, date
time of receipt should be indicated.)

RECEIVED

NOV 12 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Location of communication: Conference call

Person (s) initiating communication: Jeremy Cohen, Jane McVey, Kathy Baker, and Donna Andrews

Person (s) receiving communication: Chairman Pat Krueger

Name or description of project: 8.5a City of Oceanside LCP Amendment # 2-08 (D Downtown District)

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Discussed the last remaining issue to confirm Commission's intent to remove joint and several liability of hotel operator and a hotel owner of a condominium hotel project on a fractional interest project. We support staff's version of Suggestion Modifications No. 4 and 5 referenced in Attachment B.

11/11/08
Date


Signature of Commissioner

If the communication was provided at the same to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.


If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the Commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form and provide the information orally on the record of the proceeding and provide the Executive Director with material that was part of the communication.

EXHIBIT #2

Ex Parte Communication

LCPA #2-08 Downtown "D" District

 California Coastal Commission