

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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RECORD PACKET COPY

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September 29, 2005

TO: Commissioners and Interested Persons

FROM: Deborah Lee, Senior Deputy Director
Teresa Henry, South Coast Area District Manager
Karl Schwing, Orange County Area Supervisor
Fernie Sy, Coastal Program Analyst

SUBJECT: Amendment Request No. 01-04 to the City of Dana Point Certified Local Coastal Program (For Public Hearing and Commission Action at the October 12-14, 2005 Commission meeting in San Diego).

SUMMARY OF LCP AMENDMENT REQUEST NO. 01-04

Local Coastal Program Amendment (LCPA) No. 01-04, would amend the Implementing Ordinances (LIP) to allow fractional ownership/time-share development in specified zoning districts (Visitor/Recreational Commercial Zones and Specific Plan Districts). The City has taken the position that the LCPA does not necessitate an amendment to the Land Use Plan (LUP). The proposed amendment would conditionally permit fractional ownership/time-share developments in these zoning districts where a hotel, motel or similar accommodations are permitted. Approval of fractional ownership/time-share development (new or conversion of an existing unit or facility) would be subject to a Conditional Use Permit and a Development Agreement. The review process proposed would include the submittal of a Sales Plan, Management Plan, Contingency Plan, and occupancy tax payable to the City of Dana Point. No changes to the development standards are proposed. Any proposed development or conversion of existing hotels would be subject to the development standards (i.e. height, density, setbacks, parking, etc.) of the zone within which it is located. The proposed amendment to the LCP is contained in City Council Ordinance No. 04-05.

The subject amendment request was submitted on August 31, 2004 and was the City's first major LCP Amendment request for 2004. Pursuant to Section 30513 of the Coastal Act, the Commission must act on a proposed amendment to a certified LCP affecting the Implementation plan within 60 days of its receipt. Pursuant to Section 30510(b) of the Coastal Act, the submittal was deemed to be complete and in proper order for filing as of August 31, 2004. Subsequently, the Commission approved a request to extend the 60-day time limit for a period of one year, i.e. to October 30, 2005.

SUMMARY OF STAFF RECOMMENDATION

The proposed amendment would allow fractional ownership/time-share development in the recreation/visitor-serving commercial zones and specific plan districts. However, fractional ownership/time-share development is not considered to be high priority visitor-serving development. The City's LUP mirrors policies in the Coastal Act that encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. When the Commission has

authorized fractional ownership/time-share development elsewhere, it has been as a component of a larger development where traditional hotel uses were also being made available, thereby resulting in no adverse impacts on general public transient use opportunities. In addition, the current proposal is different from previously approved development in that the areas that the City of Dana Point is targeting for fractional ownership/time-share development are in the core visitor-serving areas consisting of the existing inventory of hotel rooms in the City. These visitor-serving districts are substantially built-out, contain the vast majority of the City's inventory of hotel rooms and are prime over-night accommodation areas for the public. The LCPA requires a Conditional Use Permit and Development Agreement for fractional ownership/time-share development, but would not require a Coastal Development Permit. The proposal also includes a provision that 25% of the units be rented to the general public. However, there is no requirement that the remaining 75% of the units be rented to the general public when not occupied by owners. Therefore, Commission staff recommends that the Commission **DENY** the proposed amendment. The motion to accomplish this recommendation is found below.

ADDITIONAL INFORMATION

Copies of the staff report are available at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact **Fernie Sy** in the Long Beach office at (562) 590-5071. Additional information may also be obtained from the City of Dana Point Community Development Department at (949) 248-3564.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission reject Implementation Program Amendment 1-04 to the Monarch Beach, Capistrano Beach and Headlands segments of the Dana Point LCP, as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby **DENIES** certification of Implementation Program Amendment 01-04 to the Monarch Beach, Capistrano Beach and Headlands segments of the Dana Point LCP, as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the

Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

II. STANDARD OF REVIEW

The standard of review for the proposed amendment to the LCP implementing ordinances, pursuant to Sections 30513 and 30514 of the Coastal Act, is conformance with, and adequacy to carry out, the provisions of the certified LUP. That is, the Commission can only reject the proposed amendment if it is not in conformance with, or is inadequate to carry out, the provisions of the certified LUP. The LUP for the Monarch Beach, Capistrano Beach, and Headlands areas of the City consists of the Land Use Element, Urban Design Element, and the Conservation/Open Space Element of the City's General Plan, as certified by the Coastal Commission.

III. SUMMARY OF PUBLIC PARTICIPATION

The City Planning Commission held a public hearing for the proposed LCP Amendment on May 19, 2004, and the City Council held a public hearing for the proposed LCP Amendment on June 23, 2004 (1st reading) and July 28, 2004 (2nd reading). This LCP amendment request is consistent with the submittal requirements of the Coastal Act and the regulations that govern such proposals (see, e.g., Sections 30501, 30510, and 30514 of the Coastal Act, and Sections 13551, 13552 and 13553 of Title 14 of the California Code of Regulations).

It should also be noted that since City action, approximately 242 objection letters and objection form letters to the proposed amendment have been received (Exhibit #2).

IV. FINDINGS

The following findings support the Commission's denial of the LCP Amendment as submitted. The Commission hereby finds and declares as follows:

A. Background and Amendment Description

1. Background

The City of Dana Point states that fractional ownership development is becoming increasingly popular in the hotel industry. Fractional ownership appears to be similar to time-share uses, which were popular in the 1980's. However, today the concept differs slightly as a result of luxury hotel and resort owners including fractional units as a component of their hotel properties. Fractional uses are regulated to address the operational impacts that were associated with time-share developments of the past. The City further explains that today's fractional ownership developments are typically more expensive and combine benefits of

home ownership with the amenities and exclusivity of a luxury hotel. Of the three luxury hotels (the Marriot, Ritz Carlton, and St. Regis) located in the Visitor/Recreational Commercial Zones and Specific Plan Districts of the City of Dana Point where fractional ownership is being proposed, interest in fractional ownership has been expressed by the St. Regis to offer fractional ownership of the residential units which would be located around the hotel and a smaller hotel on Green Lantern Road. According to the City, interest has not yet been expressed by the Marriot or Ritz Carlton.

2. Amendment Description

The proposed amendment would allow the City to review each project on a case-by-case basis and conditionally permit time-share developments in Visitor/Recreational Commercial Zones and Specific Plan Districts where hotel, motel or similar accommodations are permitted. Fractional ownership/time-share development uses would continue to be prohibited in other commercial and residential zoning districts in the City. Approval of fractional ownership/time-share development would be subject to a Conditional Use Permit and a Development Agreement. Key elements of this proposal are:

- a) *"Fractional Ownership Facility" is defined as: "a facility in which a person receives the right in perpetuity, for life, or for a "term of years," to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of real property, annually or in some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and includes but is not limited to fractional estate, interval ownership, vacation license, vacation lease, club membership, time share use, and hotel/condominium. Conventional fractional uses may also be considered timeshare ownership facilities."*
- b) Fractional ownership development would be conditionally permitted in visitor-serving zones, more specifically, Visitor/Recreational Commercial Zoning Districts and Specific Plan Districts.
- c) A Conditional Use Permit, subject to review by the Planning Commission would be required for a new fractional ownership use or conversion of an existing hotel. The application requirements would include:
 - 1. A Sales Plan that addresses the times, areas and methods that will be used to sell the fractional ownership project.
 - 2. A Management Plan that describes the methods employed by the applicant to guarantee the future adequacy, stability, and continuity of a satisfactory level of management and maintenance of a fractional ownership project.

For proposals in the Coastal Zone, the Management Plan would also need to demonstrate how a reasonable number of units within the fractional ownership resort project will be made available to the general public for overnight accommodations during the course of each calendar year or the plan shall identify that for a percentage of time all units are made available to the general public. The plan shall include an aggressive marketing program to maximize exposure of rental possibilities to a broad spectrum of the public.

3. A Contingency Plan that addresses the actions to be taken by the applicant if the fractional ownership project is an economic failure or fails to sell 50% of the fractional units or uses within two years of receiving a permit to occupy the unit.
 4. Also detailed information related to a proposed project will be submitted.
- d) The City and the fractional operator would enter into a Development Agreement that would detail the method of calculating the amount of tax payable to the City, appropriate development standards, such as occupancy restrictions and rental requirements.
 - e) Any fractional ownership development would comply with the development standards for the zone in which it is located.
 - f) To insure that public visitors are not affected by fractional ownership development, 25% of the rental units will be made available for rental to the general public year round.
 - g) The conversion of any type of existing unit or facility to fractional use shall be subject to the approval of a Conditional Use Permit and associated Development Agreement. The potential of a proposed conversion to significantly reduce the number of overnight accommodations within the City would also be considered in the review process. The effect of the conversion on the conventional overnight accommodations shall be quantified by means of a survey. The survey shall include a representative sample of the existing unit supply in terms of location, price, and type of unit.

B. Public Access and Visitor/Recreational Commercial-Serving Development

The proposed Local Coastal Program Amendment No. 01-04, would amend the Implementing Ordinances (LIP) to allow fractional ownership/time-share development in specified zoning districts (Visitor/Recreational Commercial Zones and Specific Plan Districts). The proposed amendment would conditionally permit creation of a new unit or facility or conversion of an existing unit or facility into fractional ownership/time-share developments in these zoning districts where a hotel, motel or similar accommodations are permitted.

As stated previously, the standard of review for the proposed amendment to the LCP implementing ordinances, pursuant to Sections 30513 and 30514 of the Coastal Act, is conformance with and adequacy to carry out the certified LUP. The LUP for the Monarch Beach and Capistrano Beach areas of the City consists of the Land Use Element, Urban Design Element, and the Conservation/Open Space Element of the City's General Plan, as certified by the Coastal Commission. Also, Monarch Beach has a Specific Plan. The City's LUP mirrors policies in the Coastal Act that encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. However, the proposed LCPA is not in conformity with the public access and recreation policies of the City's LUP relating to the provision of visitor-serving development as fractional ownership/time-share development could inhibit or exclude use by the general public. Applicable provisions of the City's LCP include the following:

Land Use Element, Goal 2, Policy 2.10

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry. In the Headlands, this prioritization of uses is satisfied by the provision of visitor-serving commercial recreational development on the private lands designated for visitor-serving commercial recreational facilities on the portions of the site that adjoin Pacific Coast Highway and Street of the Green Lantern in the vicinity of existing visitor-serving commercial recreational uses. (Coastal Act/30222).

Urban Design Element, Goal 4, Policy 4.7

Prohibit the conversion to exclusively private use of existing visitor-serving developments open to the public within the coastal zone. (Coastal Act/30210, 30213)

The proposed LCPA will have an adverse affect on priority visitor-serving development as it is not considered a high priority use such as traditional hotels or motels. The following discussion below explains how the proposed LCPA will not be consistent with the LUP policies addressing public access:

- 1) The City's LUP designation of Visitor/Recreational Commercial areas includes primarily visitor-serving uses and lists resort hotels and motel uses. Fractional ownership/time-share development uses are neither listed nor prohibited. Fractional ownership/time-share developments are not high priority uses because they require a substantial financial commitment in order to stay at the facilities. Thereby, making them unavailable to the general public. Therefore, since fractional ownership/time-share development, as proposed in the Implementation Plan Amendment, is not an allowable use in the underlying LUP, the proposed Implementation Plan (IP) Amendment would not conform with or carry out the

certified LUP.

- 2) The proposed amendment would allow fractional ownership/time-share development in designated visitor-serving commercial zones and specific plan districts. However, fractional ownership/time-share development is not considered to be high priority visitor-serving development. When the Commission has authorized fractional ownership/time-share development (i.e. Newport Coast LCPA 1-96 and City of Dana Point Local Coastal Program Amendment 1-03), it has been as a component of a larger development where additional traditional hotel uses were being made available, thereby maintaining traditional lodging, while adding optional accommodations. In addition, the current proposal is different from previously approved fractional ownership/time-share development in that the areas that the City of Dana Point is targeting for fractional ownership/time-share development are the core visitor-serving areas that contain the existing inventory of hotel rooms in the City. These visitor-serving districts in Dana Point are substantially built-out, contain the vast majority of the City's inventory of hotel rooms and are prime over-night accommodation areas for the public. The issues raised by fractional ownership/time-share development have been recognized by other coastal communities as well, such as the City of Laguna Beach. In their LCP, all time-shares within the City are prohibited. Additionally, the former Capistrano Beach segment of the City of Dana Point LCP discussed how "time-share" uses should not be allowed as "principal permitted uses" since they do not qualify as a principal use. Fractional ownership/time-share developments are not principal permitted uses because their impacts can be significant. These proposals need to be carefully reviewed and permitted as a component of a visitor-serving overnight facility.
- 3) The LCPA did not include an analysis of how fractional ownership/time-share development would impact the overall overnight accommodation market in the City of Dana Point. In addition, no initial surveys that analyze the existing Visitor/Recreational Commercial facilities in the City were done. Instead, the City requires such a survey at the time of Conditional Use Permit application submittal. Conducting a survey this late into the process does not address City-wide issues. In addition, a survey should be conducted now in order to determine whether there are sufficient quantities of hotel rooms in various cost categories to support existing and anticipated future demand in order to justify that conversion of some of the existing inventory of overnight rooms to time-shares will not adversely impact public access to the coast. Staff's cursory investigation discovered that 10 of the City's 13 existing hotels could be converted to fractional ownership/time-share development under the proposed LCPA. If all of the hotels chose to convert, significant public access impacts would occur.
- 4) Even though fractional ownerships/time-share developments are similar to hotels in many ways, there are significant differences that favor interpreting fractional ownerships/time-shares as a form of private residential development. Fractional ownership/time-share development cannot be considered to be a true visitor-serving development, like a hotel or motel, since it is ownership based and it would be

possible for owners to stay for significant periods of time. Fractional ownership/time-share development typically involves the "selling" of units to more affluent vacationers who often stay in the units for longer periods of time than overnight use. In fact, it would be possible for a time-share owner to buy enough time slots to cover an entire year, which would basically make the time-share owner a year round resident. Because they are occupied for longer periods of time by those who buy interests in them, they are considered to be a quasi-private use rather than a transient visitor-serving use. The ability for the general public to make use of the unit for overnight accommodations would be greatly limited or even foreclosed. Furthermore, the Commission recognizes that fractional ownership/time-share development, though it may be advertised as available to the general public, once purchased by an owner, would not promote maximum public access opportunities on a first come first serve basis such as provided by hotels or motels. Thus, fractional ownership/time-share development prevents the general public from using visitor-serving overnight recreational facilities.

- 5) The LCPA definition of "fractional ownership facility" is very broad (Exhibit #1, page 5). The definition is so broad that it can allow many different types of fractional ownership/time-share development and thus reduces the availability of these facilities for general public use.
- 6) The LCPA would allow fractional ownership development in visitor-serving zones and specific plan districts, more specifically, Visitor/Recreational Commercial Zones and Specific Plan Districts. The LCPA is not proposing this change in non-visitor areas, where fractional ownership/time-share development is currently prohibited. The Visitor/Recreational Commercial Zoning District should be reserved for uses that allow the general public opportunities to enjoy the coast. But the LCPA would result in a limitation or decrease in the number of facilities available for the general public by allowing not only the development, but also the conversion, of existing hotel/motel units into fractional ownership/time-share development facilities. As is stated previously, fractional ownership cannot be considered to be a true visitor-serving development, like a hotel or motel, since it is ownership based and it would be possible for owners to stay for significant periods of time. In order to prevent potential impacts to public access, unless the supply of visitor-serving overnight accommodations can be shown to exceed the demand and the projected future demand for such facilities, the LCPA should not allow fractional ownership/time-share development in the Visitor/Recreational Commercial Zoning District unless such proposals won't decrease the overall inventory of hotel rooms City-wide and/or preferably are coupled with a plan that increases the total inventory of hotel rooms City-wide.
- 7) Fractional ownership/time-share development requires an initial buy-in to be an owner, which typically costs significantly more than a normal rental of a hotel or motel room. Thus, this adversely impacts public access to visitor-serving facilities by discouraging the public who are seeking affordable facilities, but then are limited to only higher cost fractional ownership developments. Limiting the general public to non-high priority quasi-private fractional ownership/time-share development uses

is inconsistent with the above-cited LUP policies.

- 8) Fractional ownership/time-share developments have multiple owners sharing a property. However, traditional hotel or motel uses provide facilities for a larger number of the public with fewer restrictions and typically are more affordable. Therefore, traditional hotels or motels would more clearly be consistent with the above-cited LUP policies as opposed to fractional ownership/time-share developments.
- 9) The proposed LCPA would also allow the conversion of any type of existing hotel or motel unit or facility to fractional ownership/time-share development subject to the approval of a Conditional Use Permit and associated Development Agreement. However, nothing is stated within the LCPA about upholding previous Coastal Development Permit conditions that prohibit time-shares. For example, in June 1982, the Commission approved Coastal Development Permit # 5-82-291 for the Ritz Carlton in Dana Point with a requirement for a deed restriction that prohibits time share use: "*... said deed restriction shall also insure that the development will be dedicated to hotel use, available in accordance with standard hotel/motel practice for use by the general public, and that under no circumstance will the development be used for private resort or time-share use which could inhibit or exclude use by the general public.*" Also, in August 1992, the Commission approved Coastal Development Permit #5-92-168 for the St. Regis hotel in Dana Point which also had a special condition imposed on the project that required a deed restriction that prohibited time-share use: "*The deed restriction shall also ensure that the hotel area will be dedicated to hotel use, available in accordance with standard hotel practice for the general public, and that the development will not be used for private resort or time-share use which would inhibit or otherwise exclude causal use by the general public.*" The Commission notes that conversion to fractional ownership/timeshare units of hotels approved by a coastal development permit approved by the Coastal Commission can only occur through a permit amendment approved by the Commission. The Commission's administrative regulations require that a permit amendment request that lessen or avoid the intended effect a permit be rejected. The areas targeted for fractional ownership/time-share development conversion have hotels that are prohibited, by previous CDP's, from doing just this sort of conversion. The same properties have now expressed interest in fractional ownership/time-share development.
- 10) The LCPA states that to insure that public visitors are not affected by fractional ownership/time-share development, 25% of the rental units will be made available for rental to the general public year round. However, it does not specify whether there will be any requirements on the remaining 75% of the units that they be rented out to the general public if they are not occupied by an owner. It is possible that the remaining units will be occupied by fractional development owners. When the Commission has been supportive of fractional ownership/time-share development, it was only when the inventory of the units available for fractional ownership/time-share development were also made available to the public for traditional overnight rental use when the fractional ownership/time-share

development owners were not occupying the unit. Thus, the proposed LCPA would have an adverse impact upon public access. Furthermore, the Commission has only been supportive of fractional ownership/time-share development when annual limits on the number of days per year that an owner or owners can occupy the units do not exceed 90 days with no more than 29 consecutive days.

- 11) Furthermore, it is unclear whether or not the LCPA's requirement to make "25% of the rental units available to the general public year round" prohibits 25% of the new or converted hotel, motel units from being sold as fractional ownership/time-share interest.
- 12) Item F10 of the Development Standard and Operational Requirements section of the LCPA, states that any development standard can be waived (Exhibit# 1, page 8). One such development standard is the 25% restriction as discussed above. Therefore, it appears that since the LCPA states that any development standard can be waived there is nothing that would actually prohibit the development or conversion of 100% of a development into fractional ownership/time-share development. More so, the 25% general public rental requirement could actually be waived, resulting in no provisions for the general public in terms of overnight facilities in the City's coastal zone.
- 13) The LCPA states that approval of fractional ownership/time-share development would be subject to a Conditional Use Permit and a Development Agreement. However, it does not state that a Coastal Development Permit is necessary for projects located within the Coastal Zone. It should be clarified that any proposed new or conversion of a facility to fractional ownership/time-share development located within the Coastal Zone should also obtain a Coastal Development Permit as well as other necessary approvals.

The proposed Local Coastal Program Amendment (LCPA) No. 01-04, that would amend the Implementing Ordinances (IOP) to allow fractional ownership/time-share development in specified zoning districts (Visitor/Recreational Commercial Zones and Specific Plan Districts) is inconsistent with the City's LUP, more specifically Land Use Element, Goal 2, Policy 2.10 and Urban Design Element, Goal 4, Policy 4.7. The proposed amendment will have an adverse effect on high priority "*visitor serving commercial recreational facilities.*" Therefore, LCPA 01-04 must be denied.

C. Alternatives

The proposed amendment would allow fractional ownership/time-share development in designated Visitor/Recreational Commercial Zones and Specific Plan Districts and allowing this amendment would have adverse impacts upon public access and visitor-serving recreational opportunities. Therefore, the amendment as submitted should be denied. There are other alternatives to the proposed amendment that would reduce the adverse impacts to public access and recreation. Among the many options are:

- 1) The LCPA could only allow fractional ownership/time-share development in non-

Visitor/Recreational Commercial Zones or Specific Plan Districts such as the general commercial zoning district. The Visitor/Recreational Commercial Zones and Specific Plan Districts should be reserved for uses that allow the general public opportunities to enjoy the coast. The LCPA would decrease facilities for the general public by allowing the development and conversion of existing hotel/motel units into fractional ownership facilities in Visitor/Recreational Commercial Zones and Specific Plan Districts. As stated previously, fractional ownership/time-share development cannot be considered to be a true visitor-serving development, like a hotel or motel, since it is ownership based and it would be possible for owners to stay for significant periods of time.

- 2) Also, in order to prevent potential impacts to public access, the LCPA could not allow fractional ownership/time-share development in the Visitor/Recreational Commercial Zoning District unless such proposals will not decrease the overall inventory of hotel/motel rooms City-wide and/or preferably are coupled with a plan that increases the total inventory of hotel/motel rooms City-wide.

D. California Environmental Quality Act (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a Local Coastal Program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. Additionally, the Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each Local Coastal Program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a Local Coastal Program Amendment to find that the Local Coastal Program as amended conforms with other provisions of CEQA.

Pursuant to the California Environmental Quality Act (CEQA) and the Coastal Commission's regulations [see California Code of Regulations, Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this Local Coastal Program Amendment must be based in part on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that for the reasons discussed in this report there are additional feasible alternatives or feasible mitigation measures available that could substantially reduce adverse environmental impacts of the proposal.

The proposed LCP Amendment has been found not to be in conformance with Land Use Plan Policies regarding public access and promoting visitor-serving uses. Thus, the LCP Amendment is not adequate to carry out and is not in conformity with the policies of the Land Use Plan. Furthermore, the proposed LCP Amendment would result in significant unmitigated adverse environmental impacts within the meaning of the California Environmental Quality Act. The Commission finds that there are feasible alternatives within the meaning of CEQA that would reduce the potential for significant adverse environmental impacts. Therefore, the proposed LCPA must be denied.

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ORDINANCE No. 04-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A ZONE TEXT AMENDMENT ZTA04-01 AND LOCAL COASTAL PROGRAM AMENDMENT LCPA04-01 ESTABLISHING FRACTIONAL OWNERSHIP DEVELOPMENT STANDARDS.

APPLICANT: Community Development Department
FILE NUMBER: 0610-15/ZTA04-01/LCPA04-01/Citywide

The City Council for the City of Dana Point does hereby ordain as follows.

WHEREAS, the City of Dana Point currently receives economic development benefits and other benefits from the resort uses existing in the City; and

WHEREAS, fractional ownership development are resort uses which the City finds additional regulation is required due to their commercial nature and unique patterns of use and occupancy and which is presently provided for in the Zoning Code; and

WHEREAS, the City of Dana Point recognizes that fractional ownership developments can adversely impact nearby residential uses in single family districts by increasing traffic, parking demand and noise. Therefore, the City seeks to provide for fractional ownership development in the designated districts with appropriate regulations to address their unique patterns of use and occupancy; and

WHEREAS, the City's proposed fractional ownership provisions are identified in Exhibit A as the City's Fractional Ownership Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dana Point as follows:

- A) That the above recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Council adopts the following findings:

Findings:

- 1) That the public and affected agencies have had ample opportunity to participate in the review of the Fractional Ownership Development Ordinance which will require an amendment to the City's Zoning Code (ZTA04-01) and Local Coastal Program (LCPA04-01). The City Council of the City of Dana Point reviewed the item at a public hearing **COASTAL COMMISSION** 2004.
- 2) In accordance with Chapter 9.61 of the City's Municipal Code, Notice for 1 the proposed action included a 1/8th page advertisement published in the **EXHIBIT #** 1 **PAGE** 1 **OF** 9

Dana Point News on June 10, 2004. Notices of the hearing were mailed to adjacent jurisdictions and other affected agencies. Notices were also posted on June 11, 2004 at the Dana Point City Hall, the Dana Point Post office, the Capistrano Beach Post Office, and the Dana Point Library.

- 3) That all policies, objectives, and standards of the Fractional Ownership Development Ordinance (ZTA04-01/LCPA04-01) conform to the requirements of the Coastal Act, including that the land use plan as amended is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act. The proposed action would not result in any new development in that it only establishes regulations for fractional ownership development. The required discretionary review for new development will be conducted on a case-by-case basis.
- 4) That the Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. No changes in intensity of land and water uses would occur as result of the proposed action.
- 5) That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map. No changes to the level and pattern of development would occur as result of the proposed action.
- 6) That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. The proposed action would not result in development beyond what is identified in the existing General Plan. Noticing of impending development to occur after certification of the LCPA will be consistent with procedures detailed in the City's Zoning Code.
- 7) That zoning measures are in place (prior to or concurrent with the LCPA) which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The City's existing Zoning Code is in conformance and adequate to carry out the coastal policies of the General Plan.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, is for any reasons held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

COASTAL COMMISSION

EXHIBIT # 1
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PASSED, APPROVED, AND ADOPTED this 28th day of July, 2004.



JOE SNYDER, MAYOR

ATTEST:



SHARON STREET
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, SHARON STREET, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 04- 05 was duly introduced at a regular meeting of the City Council on the 23rd day of June, 2004, and was duly adopted and passed at a regular meeting of the City Council on the 28th day of July, 2004, by the following vote, to wit:

AYES:	Council Member Chilton, Mayor Pro Tem Lacy and Mayor Snyder
NOES:	Council Members Ossenmacher and Rayfield
ABSTAIN:	None
ABSENT:	None



SHARON STREET, CITY CLERK

COASTAL COMMISSION

EXHIBIT # 1
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STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

SHARON STREET, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 04- 05 , being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A ZONE TEXT AMENDMENT AND LOCAL COASTAL PROGRAM AMENDMENT ESTABLISHING FRACTIONAL OWNERSHIP DEVELOPMENT STANDARDS.

was published in summary in the Dana Point News newspaper on the 1st day of July, 2004, and the 5th day of August 2004, and in further compliance with City Resolution No. 91-10-08-1 on the 25th day of June, 2004, and the 30th day of July, 2004, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office
Dana Point Library



SHARON STREET, CITY CLERK
Dana Point, California

COASTAL COMMISSION

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EXHIBIT A
To City Council Ordinance 04- 05

9.07.180 FRACTIONAL OWNERSHIP DEVELOPMENT AND OPERATION STANDARDS.

A. Purpose The purpose of this Section is to establish the standards, regulations and circumstances under which fractional ownership uses may be established. Due to the mixed method of operation, hybrid ownership, the potential generation of large number of people and vehicles, and the potential impact on tourism-related facilities in the city, special development criteria are warranted.

B. Definitions. For purposes of this section, the following definitions shall apply:

1. "Fractional ownership facility" means a facility in which a person receives the right in perpetuity, for life, or for a "term of years," to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of real property, annually or in some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and includes but is not limited to fractional estate, interval ownership, vacation license, vacation lease, club membership, time share use, and hotel/condominium. Conventional fractional uses may also be considered timeshare ownership facilities.
2. "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
3. "Fractional ownership interval" means the period or length of time of occupancy in a fractional unit.
4. "Fractional ownership unit" mean each portion of the real property or real property improvement in a project that is divided into fractional intervals.
5. "Fractional ownership use" means a license or contractual or membership right of occupancy in a fractional facility.

C. Permitted Zones. A fractional ownership project shall be conditionally permitted in the Visitor Commercial Recreation (V/RC) zoning district, Specific Plan districts, and only if and when a Conditional Use Permit has been obtained from the Planning Commission.

D. Application Process. Approval of a Conditional Use Permit in accordance with the provision of Chapter 9.65 is required. In addition to the application requirements contained in Chapter 9.65, an application for a fractional project shall be accompanied by the following documents which shall be subject to the approval of the Community Development Director:

1. Sales Plan: A sales plan shall address the times, areas and methods that will be used to sell the fractional ownership project. Factors to be defined in the plan shall include, but not be limited to the location, length, and marketing methods that will be used, distinguishing on-site and off-site marketing and signage; and an estimate of the potential numbers of individuals and automobiles expected during various stages of the sales effort. The plan also

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shall describe measures that will be implemented to reduce traffic during peak hours.

2. **Management Plan:** A management plan shall describe the methods employed by the applicant to guarantee the future adequacy, stability, and continuity of a satisfactory level of management and maintenance of a fractional ownership project.

For proposals in the Coastal Zone, the Management Plan shall also demonstrate how a reasonable number of units within the fractional ownership resort project will be made available to the general public for overnight accommodations during the course of each calendar year or the plan shall identify that for a percentage of time all units are made available to the general public. The plan shall include an aggressive marketing program to maximize exposure of rental possibilities to a broad spectrum of the public. The appropriate number of units and specific criteria for the aggressive marketing program would be related to the specific project and would be reviewed and conditioned as a part of the Conditional Use Permit application.

3. **Contingency Plan:** A contingency plan shall address the actions to be taken by the applicant if the fractional ownership project is an economic failure or fails to sell fifty (50) percent of the fractional units or uses within two years of receiving a permit to occupy the first unit.

4. **Application Requirements:** In addition to any application requirements established by this Section and any other applicable requirements of this Code, the following information shall be submitted as part of any application to develop or establish a fractional ownership facility.

- (a) Typical floor plans for each fractional ownership unit.
- (b) The phasing of the construction of the fractional ownership use.
- (c) The type of fractional ownership method to be used (e.g., fee simple, leasehold, tenancy-in-common, license, membership) and how such use may be created.
- (d) The identification of fractional ownership intervals and the number of intervals per unit.
- (e) Identification of which units are in the fractional ownership program, the use of the units not included in the program, and the method whereby other units may be added, deleted or substituted.
- (f) A description of any ancillary uses which are proposed in conjunction with the fractional ownership facility.
- (g) A description of the availability of the fractional ownership project and ancillary facilities to the general public.
- (h) A description of the method of management of the project and indication of a contact person or party responsible for the day-to-day operation of the project.
- (i) The formula, fraction or percentage, of the common expenses and the voting rights assigned to each fractional unit and, where applicable, to each unit within the project which unit is not subject to the fractional ownership program.

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- (j) Any restrictions on the use, occupancy, alteration, or alienation of fractional units.
- (k) Copies of enabling documentation, including, but not limited to, articles of incorporation, bylaws, declarations of covenants, conditions, and restrictions, and membership of license agreements.
- (l) Copies of all State Department of Real Estate applications and permits, including any public report issued.
- (m) A description of the method to be used in collecting and transmitting the transient occupancy tax to the City.
- (n) Any other information or documentation the applicant, City staff or Commission deems reasonably necessary to the consideration of the project, including any require environmental documents.

E. Development Agreement. The City and the operator of any fractional ownership project shall enter into a development agreement under the provisions of Chapter 9.73, relating to the method of calculating and the amount of tax payable to the City by any fractional owner for the right of occupancy of any fractional unit. In addition, the development agreement shall reference appropriate development standards listed below, such as occupancy restrictions and rental requirements.

1. Units occupied as traditional hotel/motel rentals shall have a transient occupancy tax levied on the rent paid. Units occupied on a fractional basis shall have a tax levied on the basis of the equivalent rent which would be charged for that particular unit if it were to be rented as a traditional hotel/motel rental unit. The management of the fractional ownership facility shall provide sufficient data to the City to justify the equivalent rental rate used in calculating the transient occupancy tax or other similar and equal agreed upon payment.

F. Development Standards and Operational Requirements. Notwithstanding any other provision of this Chapter, the following conditions must be met by any fractional ownership development in any conditionally permitted zone. Additional requirements may be attached to a Conditional Use Permit or Development Agreement if found to be necessary to assure that the development meets the intent of this Chapter:

1. **Density:** Fractional ownership projects developed in commercial zones shall not exceed the density permitted in such zone for general commercial projects.
2. **Development Standards:** The fractional ownership project shall comply with all development standards for the zone in which it is located.
3. **Maintenance:** All maintenance agreements and conditions, covenants and restrictions must be approved by the City.
4. **Management:** The management of a fractional ownership facility shall be in accordance with the requirements established by the State Department of Real Estate for fractional uses.

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5. **Rental:** An on-site rental agency to manage rental of units shall be provided. A designated number of units shall be made available for rent to the general public and will not be offered for fractional use or all units shall be available for rent to the general public for a designated number of weeks each year.
6. **Occupancy:** Twenty-five percent of the units shall be made available for the general public at all times.
7. **Parking:** Parking shall be provided at a ratio of 1.2 spaces per unit, plus one per fifty (50) square feet of banquet seating or meeting area.
8. **Required amenities:** Fractional projects shall be developed with substantial recreation amenities or in close proximity to recreational amenities. Such amenities include, but are not limited to: golf courses, tennis courts, and swimming pools.
9. **Signs:** A Sign Program shall be included for all signs and be approved by the Planning Commission.
10. **Modification or Waiver for standards:** The Planning Commission may modify or waive one or more of the regulations contained in this section if it determines that strict compliance is not necessary to achieve the purpose and intent of this section.

H. Conversions to Fractional Uses. The following standards shall apply to conversions of existing facilities to fractional uses:

1. The conversion of any type of existing unit or facility to fractional use shall be subject to the approval of a conditional use permit and associated development agreement. Conversions shall be evaluated in terms of the physical suitability of the units or facilities for fractional use. Items to be considered shall include, without limitation, the general maintenance and upkeep of the structures; general physical condition of the facility; age of the structures; suitability of the units for the type of occupancy proposed; availability of kitchen facilities; the age, condition and general repair of any recreational facility; the potential impact on non-converted units with the facility; and conformance with appropriate zoning, building, safety or fire standards. Upgrading of the facility may be required to mitigate any identified deficiencies.
2. All facilities converted to fractional use shall meet all applicable City requirements, including zoning, building, safety and fire standards.
3. The conversion of apartments to fractional use shall be subject to the same relocation benefits as are or may be established for the conversion of apartments to condominiums.
4. Conversion to fractional use must be explicitly permitted by any covenants, conditions and restrictions which are recorded against the property proposed to be converted.
5. Conversion which would significantly reduce the number of conventional overnight accommodations for visitors in the City of Dana Point will be considered in the review process. The effect of the conversion on the conventional overnight accommodations shall be quantified by means of a

survey. The survey shall include a representative sample of the existing unit supply in terms of location, price, and type of unit.

THE ZONING CODE SHALL ALSO BE MODIFIED TO INCLUDE THE DEFINITION OF FRACTIONAL OWNERSHIP FACILITY AND TO UPDATE THE LAND USE MATRIX

Insert the following to Section 9.75.200

Fractional Ownership Facility - a facility in which a person receives the right in perpetuity, for life, or for a "term of years," to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of real property, annually or in some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and includes but is not limited to fractional estate, interval ownership, vacation license, vacation lease, club membership, fractional use, and hotel/condominium.

Modify Section 9.11.020(b) and Appendix C as follows:

	V/RC
(119) Fractional Ownership Facility	X <u>C</u>

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well
SAY

DO YOU KNOW????.....



THE CITY COUNCIL JUST CHANGED THE ZONING TO ALLOW TIMESHARES/FRACTIONAL OWNERSHIP AND CONVERSIONS CITY-WIDE!!!! THEY MADE A ZONE CHANGE TO THE GENERAL MASTER PLAN AND THE LOCAL COASTAL PLAN. THIS THREATENS OUR RESIDENTIAL NEIGHBORHOODS.

IF YOU AGREE, FAX YOUR OPPOSITION TO ME TO BE HEARD IN ONE VOICE!

MAIL OR FAX OPPOSITION NOW:

- Mail to:
Mary Jeffries 2 Ritz Carlton Dr. #201 Dana Point, Ca 92629
- Fax to:
(949) 488-9601
- TELL A NEIGHBOR!!
- CALL THE COASTAL COMMISSION:
(562) 590-5071 Carl Schwang
- FAX THE COASTAL COMMISSION:
(562) 590-5084 Carl Schwang

I OPPOSE ANY TIMESHARES/FRACTIONAL INTEREST IN DANA POINT. I OPPOSE ANY ZONE CHANGES IN THIS DIRECTION.

COASTAL COMMISSION Signed,

EXHIBIT # 2
PAGE 1 OF 2

Arthur R. Bolint
Citizen of Dana Point
33312 VIA LENTA
Home Address

Email Address

SAY

JOIN TOGETHER AND BE HEARD!

CONTACT ME AT: wethepeopledp@cox.net



This notice sponsored by Mary Jeffries
Concerned resident of D.P 1972

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DON'T RELAX!!!

THE CITY COUNCIL HAS A HEARING SCHEDULED TO BRING BACK TIMESHARES (Or) FRACTIONAL OWNERSHIP TO THE CITY OF DANA POINT. IT IS **NOT TOO LATE** TO VOICE YOUR OBJECTIONS TO THIS PENDING QUESTION. OUR EFFORTS GOT TIMESHARES RULED OUT OF THE GENERAL PLAN IN 1996, BUT THEY ARE BACK AT IT! COUNCIL HEARING SET FOR July 28, 2004. A TIMESHARE BY ANY OTHER NAME IS STILL A BAD SHARE FOR THE CITY.



Stick Together - Let the City Council Know What You Want - It's Still Your City.....Almost.....

- Mail or Fax Opposition now!!!

Mail to: City Council

33282 Golden Lantern, Dana Point, 92629

Fax to 949 248 9920

• TELL A NEIGHBOR!!!

CUT HERE

CUT HERE

CUT HERE

ATTENTION:

JOE SNYDER

RUSS CHILTON

JIM LACY

WAYNE RAYFIELD

BILL OSSENMACHER

THE CITY OF DANA POINT **REPEALED** THE TIMESHARE ZONING IN 1996 BY ORDINANCE No. 95 05. PLEASE CONTINUE TO **PROTECT OUR CITY** BY NOT APPROVING ANY FRACTIONAL INTEREST/ aka TIMESHARES.

FURTHER, PLEASE MAKE SOME DIRECTIVE TO PUT THIS MEASURE ON THE **CITYWIDE BALLOT** IN THE NOVEMBER, 2004 ELECTIONS TO FOREVER RID THE RESIDENTS OF THIS THREAT FROM DEVELOPERS AND

HOTELS
COASTAL COMMISSION

Signed, *Wilkenson*
Citizen of Dana Point

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ADDRESS *24826 Evening Star*

This notice sponsored by Mary Jeffries,
concerned resident of D.P. Questions: 949 493-2425

OC07241005-56

URGENT PUBLIC MESSAGE

