

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



July 27, 2006

W3

To: Commissioners

From: Deborah Lee, Senior Deputy Director  
Rebecca Roth, Federal Programs Manager

RE: Hotel-Condominium Workshop

---

In preparation for the upcoming Coastal Commission workshop on condo-hotels, following is the listing of speakers that have either agreed or expressed an interest in participating on the panel. We are continuing to work with a couple of additional speakers who may contribute to the discussion. At this juncture, we believe we have assembled a panel of informed parties who will represent the broad array of interests raised by condo-hotel development. The difficulty lies in time constraints; at this point, we anticipate the panel presentation, including staff, will take about two hours. Then, our recommendation would be to open the discussion for the Commission to have a dialogue with the panelists and then proceed to public comments. We also recommend that following public comment, the Commission discuss next steps and workshop follow-up. Also attached are representative select articles pertaining to the topic (titles listed on page 2).

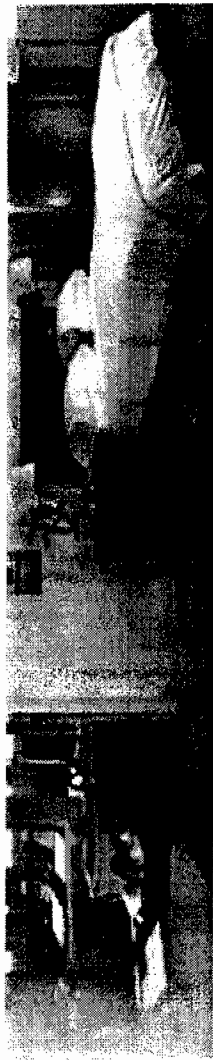
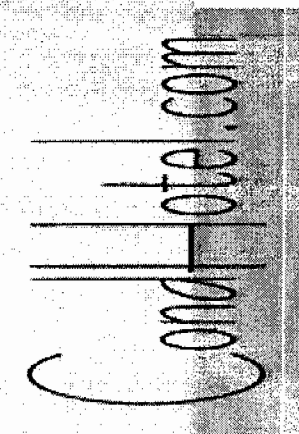
**Workshop Panel Members** (Panel members listed in order of presentation)

1. **Tom Fish, Ph.D**, Human Dimensions Specialist, National Oceanic and Atmospheric Administration's (NOAA's) Coastal Services Center (15 min). Dr. Fish will be presenting information on condo-hotel development from both the national and state perspectives, as well as hotel supply and demand information for the CZ and coastal counties.
2. **Bill Evans**, Evans Hotels & **Bob Lowe**, Lowe Enterprises (20 min total). Both Mr. Evans and Mr. Lowe will be addressing the hotel industry's perspectives on condo-hotel development, as well as the supply/demand for overnight accommodations in general.
3. **Grace Cherashore**, Evans Hotels (15 min). Ms. Cherashore will be providing information on the condo-hotel financing issues, as well as funding availability for traditional hotel accommodations.

4. **Shirley Dettloff**, former City Councilmember, City of Huntington Beach and former CC Commissioner (10 min). Ms. Dettloff will be discussing the trend to condo-hotel development from the local government's perspective, as well as what provisions local government may consider to secure them as long-term visitor amenities.
5. **Dwight Worden, Esq.**, Worden Williams, APC and former CC Commissioner (15 min). Mr. Worden has been asked to represent the general public as a stakeholder and how condo-hotel development may affect public access and the provision of lower cost visitor-serving uses.
6. **Matt Rodriguez**, Senior Assistant Deputy Attorney General, Attorney General's Office (20 min +). Mr. Rodriguez will be providing the policy framework of the Coastal Act to evaluate condo-hotel development, as well as discussing the enforceability, long-term security and oversight needs for condo-hotels over time.

#### **Attached Articles**

1. CondHotel.com: "Condotel: Frequently Asked Questions"  
<<http://www.condhotel.com/EN-FAQ-condhotel-condo-hotel-condotel.html>>.
2. Condo Hotels: "To Register as a Security Or Not to Register — Is There Really A Question?" By David Wang, Jim Norman, Lynn Cadwalader. October, 2005  
<<http://www.hklaw.com/Publications/Newsletters.asp?IssueID=611>>.
3. Condo Hotel Center: "Living Restrictions At Condo Hotels"  
<<http://www.condohotelcenter.com/ask-expert/livingrestrictions.html>>.
4. Bankrate.com: "Do condo-hotels make good investments?" By, Marilyn Bowden  
<<http://www.bankrate.com/brm/news/real-estate/20060504a1.asp>>.
5. "Can You Afford a Night On the Coast?" By, Steve Scholl. California Coast and Ocean, (Winter 2003).



## Condo Hotel : FAQ : Frequently Asked Questions

### What is a Condo Hotel?

**Condo hotel** are sometimes referred to as "condotel" or "condhotel". However, they are NOT timeshares.

A condo-hotel offers anyone the opportunity to own an elegant and exquisitely furnished hotel room in some of the most desirable locations in the world. Since this is a purchase, the buyer not only gets a deed to a property, which allows him to sell or transfer the room/suite whenever he chooses, but also profit from tax benefits and real estate appreciation. When the room/suite owner is using his room/suite, he has access to all of the amenities of the hotel including its restaurants and spas. When not in use, the owner can make his room/suite available to rent through the hotel's rental program.

The condo hotel concept allows you to purchase and obtain full ownership of a condominium in a luxury hotel/resort.

As an owner, you have the option to use your condo hotel suite when you choose. When you are not occupying your suite, you have the option of placing your unit in the hotel's rental management program and you will receive a percentage of the revenue. The management company is responsible for the housekeeping, maintenance, and rental services. A condo hotel suite is a hassle-free upscale vacation home.

### How do fractionals differ from condo hotels?

**Both offer luxurious accommodations and services for the person seeking a vacation home.** The condo hotel, however tends to be an individual room or suite located within a major hotel. Fractionals can be condos, townhouses, or single-family homes located in an exclusive community.

### How do hotel residences differ from condo hotels?

**Condo hotels offer a rental option. The owners can use their unit whenever they want. When they're not using it, they can place it in the rental program and receive a percentage of the rental revenue it generates. A hotel residence, on the other hand, is never offered for rent by guests. Therefore, owners can use their condo whenever they want without advance notice, and they can decorate it any way they like.**

Home
Contact Us
Condo Hotel
Condominiums
Pre-Construction
Luxury Homes
F.A.Q.
Case Study
Featured Properties
Buy
Sell
Financing
News
Glossary Terms
About Us
Current: \$9°



Featured (The Tides -

Featured (The Mayfair -



Featured (Royal Palm -



## How does owning a condo hotel differ from owning a traditional vacation apartment or condo?

**As** a condo hotel unit owner, you are privy to the opportunity of using the hotel and resort amenities. At a normal condo project or vacation apartment site, you have to find things to do with your time and plan a vacation within your vacation. In addition, there is no worry or hassle involved in condo hotel investments. Housekeeping, maintenance and inspections are handled by the management team.

## Who is buying condo hotel investments?

**Individuals** interested in worry-free investing. People examining the condo hotel concept are also interested in an entity that could appreciate in value and potentially pay for itself in their portion of rental revenue. It is a vacation destination and one of the best real estate investments.

## What is the typical arrangement between the condo hotel buyer and the hotel management company?

**Some of the items described in the agreement include:**

- The amount of revenue the condo hotel owner will receive.
- The amount of revenue the hotel management company will receive.
- Typical deductions before each of the parties receives their share. This would include money for a furniture fixture and equipment reserve.
- Who will pay for real estate taxes, insurance, capital improvements and debt service. It will usually be the individual condo hotel owner.
- Who will pay for operating expenses such as housekeeping, front office, administrative and general, and marketing. These are usually paid by the operator. Frequently, travel agents and credit card commissions are also split between the condo hotel owner and the operator.
- There may be a usage agreement which will outline the frequency and notice requirements when owners want to use their condo hotel units.

## **Is an owner required to participate in the rental program?**

**The rental program is always entirely voluntary, with no mandatory participation.**

## **What are the major benefits to an owner of a condo hotel?**

**The most important benefit is hassle-free ownership. When the owner, his family or friends want to use the room/suite, they simply call the hotel and schedule their visit. While at the hotel, they can enjoy all of the amenities and services. When the room/suite is not being used, the owner can rent the room/suite through the hotel's rental program and does not have to worry about maintenance and general upkeep. This is voluntary, not mandatory.**

## **What are the tax benefits?**

**In most cases, just like a conventional condominium, you will receive benefits for your interest on the mortgage and real estate taxes. In certain cases, an owner can receive tax benefits from interest and principal and real estate maintenance. In order to determine eligibility, a tax advisor or accountant should be consulted.**

## **What are the expenses of a condo hotel?**

**Usually, aside from real estate taxes, insurance and a mortgage payment (if the room/suite owner has one), monthly assessments are issued to cover maintenance of the rooms/suites and common areas, furniture replacement, utilities and a reserve fund.**

## **Who has the responsibility for the maintenance and repair of common space?**

**The responsibility is allocated among condo hotel unit owners based on their pro rata share. Charges to the owner typically cover reserves, common area maintenance, property insurance and utility expenses. The hotel operator pays for its costs of operations; that is, salaries and other direct hotel expenses.**

## **Can a condo hotel be financed?**

**v**

es it can, just like any other condominium. We have at CondHotel a list of Mortgage Brokers. They will help you to finance very easily your condo hotel. Please contact us for that.

### **Can a condo hotel be purchased under a corporation?**

**Yes** it can, just like any other condominium.

### **Are developers willing to guarantee the rental and the rates of the condo hotel units when not used by the owners?**

**No.** Developers are aware that there are potential security law issues that may arise out of the sale of condo-hotel units. In order to avoid coming under the scrutiny of any federal or state securities agencies, owners usually take several simple preventative measures. These include:

- Refraining from setting rental revenue expectations for prospective buyers. Instead, the developer's emphasis is on the Real Estate itself as per the marketing material and presentations. The developers avoid raising purchaser's investment expectations. Providing anticipated financial information may give the project the appearance of a security.
- Therefore, it is best to consider your purchase to be similar to the purchase of a second home or vacation home. If you buy right and choose a desirable building in a good location, there is likely to be appreciation of your investment over the years. Then, as icing on the cake, if you choose not to use your unit, you can receive income from its rental to help defray your ownership costs.
- Instituting a third-party agent to oversee the sales of condo-hotel units and distribute rental program information.
- A voluntary rental program participation which permits condo-hotel owners to either rent their units to third parties or not rent their units at all.
- Allowing owners to appoint a rental management company of their own to manage the rental of their unit, although selecting a manager other than the condo hotel's management company would likely be impractical in attempting to effectively maximize rental income.

### **When can owners use their condo hotel?**

**Each** condo hotel property is different but it generally depends on the home owners desire to occupy their residence or place their condo hotel into the hotel's rental program.

## What are the benefits to own a condo hotel?

**These types of developments can offer enhanced financial returns when owners choose to place their units in a rental program.** The revenue from being in an organized rental program may help defray the owner's expenses. During periods in which owners are not utilizing their units, the hotel operator manages the condo hotel.

- Unit owners are more likely to receive a higher level of rental income by being in a rental program with a recognized professional operator because of the hotel's national affiliation, its reservation system, brand recognition, and management expertise.
- The original developer intends to sell the units; thus, features are generally added to enhance the appeal of units to potential buyers. This could include hotel features like five-stars restaurants, spas, health and fitness centers, business centers and other amenities.
- Many potential owners shun purchasing a condominium because they may not have as much use of it as they would like. As a result, the absentee unit owners shutter their units for extended periods. Although some unit owners seek to rent their apartments through local realtors, many do not, either because of the effort involved or the fear that the unit will not be available when they want to use it. The condo hotel is suggested as the solution to this dilemma, giving unit owners a convenient way of managing the rental, yet insuring that the unit can be available when needed by the owner.
- As an added incentive, many developments offer an expanded array of hotel services that are available to owners when they are in residence. This could include valet, spa, room service, concierge and maid service.

## Can an owner of a condo hotel personalize his/her unit?

**Typically, the condo-hotel owner can do whatever he likes to personalize his unit as he wish.** However, and this is a big however, if the owner wants his unit to be rented out in the hotel's rental program, he will not be able to do it. The hotel's management company usually want all units in the program to conform to identical standards. The units are professionally decorated, so while they may not be personalized, they usually are beautifully and luxury appointed. By the way, some properties do have an owner's closet where you can leave your personal effects for you to pull out and use to decorate your unit while you are there. But not all of them. Other condo-hotel may then offer you a storage place to store your personal effects. But remember that it is a temporary home, not a permanent one.

## What are the living restrictions in a condo-hotel?

**Most of the time, due to city or county zoning ordinances, an owner cannot live full time in his condo hotel.** But, most of the time, the restriction will force the owner to "move-out" for one night,

and then he is eligible again for another stay. It sounds more like a legal restriction, than a really enforceable one.  
Another more important point is that you cannot claim a Homestead exemption in your condo-hotel.

### Can I make a 1031 exchange with a condo-hotel?

**Yes, actually the condo hotel has become a favored exchange property to effect tax free exchanges under Internal Revenue Code Section 1031 and to facilitate the enormously popular tenancy in common (or TIC) market.**

### MORE QUESTIONS ?

**We will be happy to answer all your questions. Our team of experts already knows everything about condo-hotels, and we will be happy to contact our partners, and do the researches to help you solve any of your problems. Just contact us, and you will get your answer.**

Home - About Us - Contact Us - Condo Hotel - Condominiums - Luxury Homes - Condo Hotel F.A.Q. - Condo Hotel Case Study  
Featured Properties - Pre-Construction - Buy Real Estate - Sell Real Estate - Finance Real Estate - Real Estate News  
Real Estate Glossary Terms - Disclaimers - Real Estate Links - Real Estate Resources - Legal Terms  
Miami Pre-Construction - Miami Brickell Pre-Construction - Miami Uptown, Winwood and Design District Pre-Construction Pre-Construction  
Miami Beach Pre-Construction: North Beach, Middle Beach, Millionaire Row - South Beach Miami Beach Pre-Construction  
Condo Hotel : a Hot Concept - The Tides Condo Hotel: South Beach - Miami Beach  
The Royal Palm Condo Hotel: South Beach - Miami Beach - The Mayfair Condo Hotel: Coconut Grove - Miami  
CondHotel : Condo Hotels - Indeed Realty  
1330 Ocean Drive - Second Floor - Miami Beach - Florida 33139 - USA  
Tel: +1.786.276.6959 - Fax: +1.786.276.6958 - Paris France: 01.72.77.00.78  
Email: [info@CondHotel.com](mailto:info@CondHotel.com) - Website: [www.CondHotel.com](http://www.CondHotel.com)

#### Resources

Real Estate: Condo Hotel - Condotel - CondHotel . W South Beach Hotel & Residences . W Fort  
Lauderdale Hotel & Residences . Condo Hotel Miami . Miami Condo Hotels . Florida Condominiums .  
Condominiums Miami . Miami Condominiums . Condo Fast .  
Internet for hotels: INNternet .  
Travel: FAB Production Receptif Travel Agency .



## Hospitality Industry

## Alert

October 4, 2005

**Condo Hotels: To Register as a Security Or Not to Register – Is There Really A Question?**

David Wang

Jim Norman

Lynn Cadwalader

These days it seems that almost every newly built hotel is in whole or part a condominium hotel. Much of the deal activity we are seeing in existing properties is part of the plan to profit from conversion to a condominium regime. Further, when the condominium structure is added to a hotel, "equity credits" earned through condominium unit pre-sales can provide debt financing of up to 90 percent of the construction costs (vs. 50-60 percent for a standard hotel), making the financing of condominium hotels very attractive.

In the condominium hotel, rental programs are essential in order to provide a sufficient number of available room nights to qualify for specific brands, and in some places, to satisfy transient occupancy or hotel-specific zoning requirements. If developers and managers had their way, participation in the rental program by condo hotel unit owners would be mandatory. Lawyers practicing in this area spend considerable time conditioning their clients and those who work for those clients against using the term "rental pool" instead of "rental program."

**Defining a Security: What's the Big Deal?**

Over the years, the entire real estate industry, and now that segment of it we call the hospitality industry, has done everything in its power to avoid the securities laws and regulations of the United States. This goes back to 1973 when the Securities and Exchange Commission (SEC) determined that selling resort condominiums through a sales pitch emphasizing economic benefits, such as the pooling of rents, mandatory participation in rental programs and even significantly restricting the owner's use of the condominium, made the sale an "investment contract" (and thereby a security) as described in a 1946 United States Supreme Court decision known as the "Howey" case. The essence of

that case is that if something is sold, whether it be stock or a condominium, under circumstances where the economic benefit to the purchaser is to come through the efforts of third parties, it is a security. If it is a security, then unless one of the very narrow exemptions exists (and they rarely do in the context of condominium hotels), then registration with the Securities and Exchange Commission is required. That process is long, expensive and requires periodic filings and disclosures.

The SEC formalized its position with respect to resort condominiums in a 1973 release, and from that point forward, attempts were made to separate the rental programs from the sale of condominiums by erecting the legal equivalent of the Berlin Wall.

**Just a Rental Agreement**

Since 1973, a series of "no action" letters have been issued by the SEC to various developers in response to specific inquiries regarding condominium hotel projects. These no action letters, together with the 1973 SEC release, set out the guiding principles to consider in structuring a condominium hotel as a "non-securities" offering. The end result is that in offering a condominium hotel unit, a developer cannot discuss the investment potential of the purchase (including benefits of participating in the rental program or potential appreciation in the value of the unit), cannot require that the purchaser participate in any rental program, cannot pool the rents among unit owners (rental income from each unit must be separately accounted for and allocated to the unit owner), cannot materially restrict the purchaser's occupancy or rental of their unit, and the rental program agreement cannot be entered into until a binding purchase contract has been entered into, with all applicable rescission periods having run. The only mention of a rental program verbally

or in written materials can be a statement that "ownership of a unit may include the opportunity to place your unit in a rental arrangement."

Sound restrictive? So here's the rub: You can't sell a condominium hotel unit as an investment, yet purchasers of these units are purchasing them largely for investment purposes. Due to the limitations imposed by the SEC on non-securities condominium hotel offerings, and the soaring popularity of condominium hotels across geographic and hotel product lines, some developers are asking, is it worth looking at the possibility of going through the time and expense of registering with the SEC? It is important to note that this is a "sale and resale" in the United States issue. Projects offered and sold exclusively outside the United States, even if the project is located in the United States may qualify under an exemption called Regulation S if certain stringent requirements are met.

Most of the limitations in the *Howey* case and the SEC releases and no action letters are eliminated if the sales program for the condominium hotel units is conceded to be a security and the registration process is completed. It is obvious why that would be tempting. With registration of the condominium hotel interests, the rental program can be made mandatory. A program also can be set up where all of the owners of units pool the rental income. Owners, including those not participating in the rental program, can be limited in their use of their condominium unit to whatever degree the developer chooses through the condominium documents, rather than the far more restrictive limitations available by using the rental management agreement signed by individual, participating owners in the rental program. Finally, the sale of these units can be specifically marketed as investments with a discussion of anticipated rates of return.

### **The Liabilities: Federal and State**

Sounds good so far? Let's look at the downside. The sales materials will look a lot like an initial public offering prospectus. When you read the warnings and disclaimers in a typical prospectus, you wonder why anyone would be crazy enough to invest in that offering.

In large projects, periodic disclosure reports will have to be filed with the SEC, much the same as is required of large, publicly-traded companies. If the securities are not registered and not publicly traded, then there are strict limits on resale, which will make the pool of prospective purchasers

much smaller, as they would be limited to accredited investors (who must have certain levels of income and assets), and general advertisement is prohibited. Another significant concern is the exposure to federal and state civil and criminal securities liability. Think of the Wall Street "perp walks" and class action suits. A further complication is that the sale or resale of the securities likely would require the involvement of registered securities broker dealers, rather than, or in addition to, real estate brokers, who are best suited to market and sell real estate products. Most scenarios would require that both be involved in sales and resales. To this point, we have talked about securities registration as a federal matter involving the SEC. Unfortunately, many states, including those which seem to be most attractive to condo hotel developers and marketing companies, also have state securities registration requirements.

In securities offerings, costs are also a major issue. For the federal filing, which requires a myriad of legal, accounting, printing, distribution and filing fees, expenses approaching or exceeding \$500,000 would not be out of line. In addition, similar registration costs at the state level (depending on which and how many states are involved) could easily exceed \$100,000. If the project falls into a category where the periodic reporting is also involved, then those ongoing annual expenses also must be taken into account.

### **What's Next?**

Is securities registration of a condominium hotel project worth considering? Certainly. Is it likely to become a common part of the condominium hotel universe? Highly unlikely.

A good case can be made that the securities laws were never really intended to regulate the sale of residential or hotel condominiums. Unfortunately, unless the laws and regulations are changed, we will remain in a "don't become a security" mode, tip-toeing to stay within the requirements when talking about benefits of participating in a rental program and stifling any temptation to show potential investment returns.

Will the law change? Should it? It's up to our legislators.

*For more information, e-mail David Wang, Jim Norman or Lynn Cadwalader at [david.wang@hklaw.com](mailto:david.wang@hklaw.com), [jim.norman@hklaw.com](mailto:jim.norman@hklaw.com) or [lynn.cadwalader@hklaw.com](mailto:lynn.cadwalader@hklaw.com), respectively, or call toll free, 1-888-688-8500.*

**The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.**

**Condo Hotel Center**  
CONDO HOTELS & FRACTIONALS



**FREE**

**GO!**

Subscribe to our  
Property Alert Newsletter.  
BONUS: Receive a copy of  
The Condo Hotel Report

**HOME**

**ABOUT US**

**CONDO HOTELS**

Overview  
Featured Properties  
FAQs

**FRACTIONALS**

Overview  
Featured Properties  
FAQs

**HOTEL RESIDENCES**

Overview  
Featured Properties  
FAQs

**REAL ESTATE CLUB**

**FOR DEVELOPERS**

Services  
Multiple Sales  
Conversions

**GET FINANCING**

**ASK THE EXPERT**

## LIVING RESTRICTIONS AT CONDO HOTELS

**Q: I've noticed that some condo hotels have living restrictions. Does this mean that you could never be a full-time resident, or that condo hotel owners could never decide to spend three winter months there?**

**A:** That depends on the management program of the individual condo hotel and also the living restrictions that may have been imposed by the city where the property is located.

In most cases, you cannot be a full-time or near full-time resident in a condo hotel with living restrictions. However, I probably shouldn't say this, but between you, me and the lamppost, there usually aren't any room-check cops who keep track of how long a person has been in their unit.

**Q: Why is there a limit of use of your unit?**

**A:** A condo hotel unit is intended to be used as a second home, not a primary one, and it is to be operated as a hotel. If everybody could use their own condo hotel units as much as they wanted, then there's a strong likelihood that the hotel would not have enough rooms to rent out to guests. This would greatly limit the revenue the hotel would make.

Plus, because the hotels could not pre-book units, since there might not be units to rent, it would be hard to get a good management company to take on the assignment.

Also, a city does not collect a hotel tax from owners using their own units. Cities

[PROPERTY ALERTS](#)[ARTICLES](#)[INDUSTRY NEWS](#)[BUYER AGENT](#)[TESTIMONIALS](#)[LINKS](#)[SITE MAP](#)[CONTACT US](#)

collect hotel taxes from hotel guests, and that factors that into their budget when they grant the developer the right to build a condo hotel when he may have preferred to build a straight condo.

Many cities are imposing living restrictions on condo hotels, even though the individual property may not have usage restrictions. Therefore, before buying a condo hotel unit, be sure you know the living restrictions that apply not only by the condo hotel's management company but also by the city in which the condo hotel is located.

**Q: What happens if I stay longer than the allotted time to stay in my unit?  
Or if I would like a friend to use my unit?**

A: Most condo hotels will permit you to stay beyond your allotted time at a discounted hotel rate.

As for a friend staying in your unit, that's not a problem. It counts towards your 90 days unless your friend is a paying guest.

**Q: Don't living restrictions hurt resale value?**

A: Not really. Many condo hotels have living restrictions so it's a commonly accepted practice. Also, most buyers of condo hotel units are investment minded. Otherwise, they could buy a straight condominium or even a hotel residence which is an individually-owned hotel room that is never put into the hotel's rental program.

**Q: I was under the impression from your website that the point of owning a unit in a condo hotel was maximum flexibility.**

A: It is, you can use your unit whenever you want. You don't ever have to put it into the program. You can rent it yourself or through a broker. A lot of flexibility. And, if you want to live there year-round, you probably could. Probably.

However and here's the real kicker, because of the condo hotel documents you would sign upon purchase, you could never claim your unit as your Homestead and get the tax exemption. Assuming that this was your permanent address, a

Homestead Tax Exemption lets you knock \$25,000 off your real estate taxes' appraised value before they compute the tax.

*The above question(s) were submitted via e-mail by a visitor to [www.condohotelcenter.com](http://www.condohotelcenter.com). The answer was prepared by Joel Greene, a licensed real estate broker with Condo Hotel Center which specializes in the sale of condo hotel units and fractional ownerships in private residence clubs.*

Condo Hotel Center | A Division of Sheldon Greene & Associates, Inc. | Licensed Real Estate Broker  
13499 Biscayne Blvd., Ste. 210 | N. Miami, FL 33181 | Ph: 305-944-3090 | Fx: 305-948-0460  
E-mail: [info@CondoHotelCenter.com](mailto:info@CondoHotelCenter.com)

Copyright © 2006 Susan Greene - [www.SusanGreeneCopywriter.com](http://www.SusanGreeneCopywriter.com) | [Terms & Conditions](#) | [Privacy Policy](#)

## Do condo-hotels make good investments?

By [Marilyn Bowden](#) • Bankrate.com

 [Print](#)  [E-mail](#)

Hoteliers in resort locations are offering guests a stake in the business by selling individual units as condominiums. Not only is this an opportunity to own a second home in some of the country's favorite playgrounds, promoters say, but owners can look forward to some income when the property's management rents the room out to guests.

Realtor Christian Charre, a senior vice president with Jones Lang LaSalle, markets hotels throughout the Americas and the Caribbean. "If you live and work in New York and buy a residence in Florida that you use maybe two to four weeks a year," he says, "having a professional company renting the room for you the rest of the time, when it would otherwise be empty, can offset some of the expense -- and you still own a piece of the beach."

It sounds like a pretty good deal, but the facts show condo-hotel consumers would be wise to check the closet for financial skeletons before signing on the dotted line. The hotel business can be notoriously unstable -- and if that room doesn't rent out, the buyer won't see any of the income from it.

### Where you'll find them

"Condo-hotels are usually upscale, full-service developments in the strongest hotel markets -- either popular vacation destinations or large cities where suburbanites frequent hotels for business or leisure purposes," says Tim Ford, vice president of operations at Lodging Econometrics, one of very few companies tracking the trend.

Some 43 condo-hotel projects containing 7,715 guest rooms are scheduled to open this year in the U.S., Ford says. Another 33 projects totaling 8,271 rooms will open in 2007. Of these, 70 percent will be built new, while 30 percent represent conversions of existing hotels. Nearly half are in Florida.

Hotels undergoing conversion run the gamut from the ultraluxurious to more modest family-style lodgings.

Ancient City Hospitality Group plans to convert the [Casa Del Mar Inn & Suites](#). The property is a Spanish-style waterfront luxury hotel in Vilano Beach near St. Augustine, Fla., the state's oldest city, and is set in prime golf country.

Sales prices for Casa Del Mar's 94 rooms, ranging from 350 to 500 square feet, start at \$329,000. The asking price for the 1,552-square-foot presidential suite is \$1.8 million.

Buyers who prefer something quaint can get a unit at [Tuckaway Shores Resort](#), in Indialantic, Fla., not far from Cape Canaveral. Developer Jacqui McPhillips says when she heard the 32-unit property was on the market, "I was tearing it down in my mind for high-rise condos. But when saw it, I realized it was much too nice to tear down."

Two-room suites in the L-shaped building are selling for \$244,900 to \$274,900. Most of the roughly 400-square-foot units offer breathtaking views of the Atlantic Ocean.

While independents were the first to latch onto the condo-hotel concept, major hotel chains are starting to get into the act. For example, Boston-based Sonesta International Hotels has four condo-hotels completed or underway, all in Florida, says Stephanie Sonnabend, CEO and president. "That's where they're popular now, but I believe that the trend will be growing in other similar destinations," she says.

**Next: "There will be restrictions on the amount of time owners can use it."**

Page | 1 | 2 | 3 | 

#### RESOURCES

- [Are time share trades a good deal?](#)
- [Fractional ownership](#)
- [Selling your time share](#)

#### TOP MORTGAGE STORIES

- [Buying home with your boyfriend?](#)
- [Excluding capital gains on two homes](#)
- [Web-based real estate marketing](#)

#### SPONSOR LINKS

**[Refinance or Home Equity Quotes](#)** -- Up to 4 free quotes - 1 form for refinance or home equity. Bad credit ok.

**[Refinance or Home Equity Quotes](#)** -- \$170,000 Refinance from \$656/month. Up to 4 free quotes. Intro terms.

**[Lower Mortgage Rates - E-LOAN](#)** -- Great Rates. Personal Service. No Lender Fee. Approval in Minutes.

**[Refinance Your Mortgage - Bad Credit OK](#)** -- Have Bad Credit? Need To Refinance Your Mortgage? Complete This Form & Get Up To 4 Quotes Now. Serious Inquiries Only Please.

**[Lending Tree](#)** -- Get 4 Free Offers In Minutes. Lock In A Low Fixed Rate.

#### [News & Advice](#) | [Compare Rates](#) | [Calculators](#)

[Mortgage](#) | [Home Equity](#) | [Auto](#) | [Investing](#) | [Checking & Savings](#) | [Credit Cards](#) | [Debt Management](#) | [College Finance](#) | [Taxes](#) | [Personal Finance](#)

[About Bankrate](#) | [Privacy](#) | [Online Media Kit](#) | [Partnerships](#) | [Investor Relations](#) | [Press/Broadcast](#) | [Contact Us](#)

[NASDAQ: RATE](#) | [RSS Feeds](#) | [Order Rate Data](#) | [Bankrate Canada](#)

\* Mortgage rate may include points. See rate tables for details. [Click here](#).

\* To see the definition of overnight averages [click here](#).

Bankrate.com ®, Copyright © 2006 Bankrate, Inc., All Rights Reserved, [Terms of Use](#).

TABLE OF CONTENTS

NEXT STORY

TO CONSERVANCY

EARLIER ISSUES

COMING UP

SUBSCRIBE

CONTACT US

# CALIFORNIA COAST & OCEAN

VOLUME 19, NO. 4 WINTER 2003



MARSHA GRIMM

## Can You Afford a Night on the Coast?

STEVE SCHOLL

Back in 1976, the story goes, when Jerry Brown was California's Governor, he stopped at a hotel built on a sandy beach in Monterey County. Gazing out a window at the inky blue waters, he reflected: "That's why we need a Coastal Act: so we can have more places like this." "No," said Bill Press, Brown's director of planning and research. "We need a Coastal Act so we won't have more places like this."

The story is still relevant today because it captures a tension within California's coastal protection law, which Governor Brown signed that summer more than 27 years ago. The hotel was on the beach. The Coastal Act allows for, even encourages, hotels to be built along the coast, but it also requires protection for the beach. Communities and the state are to "maximize public access to and along the coast and



maximize public recreational opportunities,” while also protecting what the public comes to enjoy: beaches, scenic views, coastal farms, wild lands, and the special character of coastal communities. “Public access” includes places to stay overnight—for all members of the public, not only those who can afford the best. The law makes that clear: “Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided.”

That’s a tough assignment. How well has it been fulfilled? Are there enough hotels, inns, and other overnight accommodations that meet the needs of coastal visitors of all income groups without major damage to the coast?

The answer is mixed. The Coastal Act, as administered by the Coastal Commission under the watchful eyes of citizens, has spared California’s shoreline from the degradation inflicted on many other beautiful shorelines in this country and abroad. It prevented the construction of view-blocking high-rise beach hotels (a few, including those in Ventura and Santa Cruz, were built before the Coastal Act took effect). A sizeable number of new mega-hotel complexes have been built in recent years, but each has had to meet stringent design and environmental requirements. In addition, small inns have proliferated along the entire coast, particularly in central and northern California, most of them fitting easily into the landscape.

However, prices are steep. “From the beginning of the coastal protection movement in California, there was a concern that the coast would not be affordable,” says Peter Douglas, the Coastal Commission’s longtime executive officer. That concern has proved well founded.

### **A Place to Stay If You Can Pay**

In southern California, some major resort hotel complexes have been built since 2000, including the Bacara Resort in Santa Barbara County, with nearly 400 rooms priced at \$425 to \$895; the St. Regis Monarch Beach Resort and Spa, in Orange County, with 400 rooms and advertised rates of \$375 to \$435. The Montage Resort and Spa in Laguna Beach quotes rates at \$450 to \$625, with bungalows and suites going for \$950. The Lodge at Torrey Pines in San Diego opened in 2002 with 175 rooms priced at \$325 to \$625.

The Hyatt Regency Huntington Beach advertises somewhat lower rates, starting at about \$200 per night for its 575 rooms and suites. Perched on a bluff at Half Moon Bay in

northern California, the 261-room Ritz-Carlton, opened in 2001, advertises rooms from \$325 to \$695. Farther north, no coastal hotels of this scale have been built because of limited road, water, and sewage disposal capacity, as well as community resistance. These factors and lack of airports also exclude the convention trade. There you find the smaller inns, scattered north to the Oregon border.

The huge hotel complexes clearly serve a limited clientele. They cater to conferences and conventions, competing with similar complexes in Arizona, Hawaii, and other places endowed with natural beauty and benign climate. Guests tend to fly in and spend much of their time within the complex.

If you're looking for a place with fine amenities at a much lower price, you can now find it in the far north of the state, in Crescent City's new 54-room beachfront Hampton Inn. Opened in fall 2003, the hotel offers rates of \$100 to \$125—moderate for most of the coast, although considered high-end there, according to Diane Mutchie, the City's planning director. Crescent City is 750 miles from Los Angeles, 350 miles from San Francisco.

Among alternative accommodations—not exactly low-priced but more affordable and coast-friendly—are the bed and breakfast inns. Most are owned and operated by local residents who participate in their communities and have a self-interest in protecting coastal resources that attract their guests. B&Bs have mushroomed in coastal areas in the past two decades, with the Coastal Commission's blessing. In 1980 there were fewer than 50 in the whole state, but by 1986 there were some 500, according to Pat Hardy, former Santa Barbara inn owner and cofounder of the Professional Innkeepers Association. An internet search showed rates ranging from about \$135 to \$280 along the entire coast. Bed and breakfasts don't draw conventions; the attraction is usually the coast itself.

### **Why So Many Big, Pricey Hotels?**

Land use decisions are affected not only by the Coastal Act's goals but also by community preferences, potential tax revenues, market demand, and other factors. Hotels bring in money. They are economic engines for coastal communities, generating jobs, sales taxes, and income from transient occupancy taxes—nine to 10 percent of room receipts in most coastal counties (14 percent in San Francisco). That tax is one of the few sources of unrestricted

funds available to local governments. A large hotel with \$300 to \$400 rooms brings in much more, of course, than a more modest one with lower-priced rooms.

Not surprisingly, luxury hotels often get a friendly reception among impoverished local governments. Residents also tend to prefer them to more moderately priced hotels, according to Steve Bone, president and chief executive officer of the Robert Mayer Corporation, which built the Hilton and Hyatt Regency hotels in Huntington Beach. "If the neighbors are being asked whether they want a Best Western or a Hyatt Regency next door, they'll go for the Hyatt," he said.

### **Coastal Costs**

So what about the other side of the equation? Have the new hotels been built, and inns established, without major damage to coastal resources?

Coastal Commissioner Mike Reilly points to improvements in the quality of what has been built under the Coastal Act, including hotels. "In the last few years," he says, "we've had exponential growth in information about polluted runoff and water quality, wildlife corridors, and other resources. Projects are better now, because of the conditions that are placed on them."

There is no way to build anything large on the coast without damaging natural resources. How bad the damage is, what the trade-offs are, depends on the makeup of the Coastal Commission at the time the development takes shape and on what citizens demand. Not every large project is approved. Oceanside's Manchester resort project, for example, which would have closed off public streets and intruded on the beach, was turned down by the Coastal Commission in June 2002.

In 1997 the State Parks Department signed a lease with a developer who wanted to build a luxury resort in Crystal Cove State Park in Orange County, on a site occupied by a rambling array of small cottages. The plan was greeted with such protest that in 2001 State Parks bought back the lease with a grant from the Coastal Conservancy. The cottages will be restored, and about 90 lucky people a night will be able to stay there for \$25 each.

### **Experiencing the Coast**

As in the case of Crystal Cove, what's at stake is more than the price of rooms in new inns or hotels. "In the days when

Proposition 20 [the Coastal Initiative of 1972] was being written, those involved thought that tourism was a driver of the economy, but also that tourism was a way to encourage stronger support for conservation,” says Peter Douglas. The idea was that those who visited the coast and experienced its opportunities for recreation and learning would be likely to support protection of coastal resources.

That is more likely to happen among those who stay in the smaller establishments. The new high-profile coastal resorts seem to focus on opulent comfort rather than nearby attractions, including the natural world at their doorstep. Advertising features 400-thread-count bed linens, marble baths, and “relaxed luxury,” items that are presumably available at expensive resorts anywhere in the world. These hotels may not need coastal protection to make a profit. They are largely self-contained, like luxury liners, offering ocean views and the scent of salt water.

It’s different for smaller inns and bed and breakfasts. Pat Hardy, founder of the Professional Innkeepers Association, says bed and breakfast guests expect to be told about local resources, whether historical, natural, or other. “They don’t look for those little folders in the lobby,” she says. “They expect a packet of information in the room.” Barbara Reed, of Mendocino, says, “We are well aware that tourists come to our areas to enjoy the scenic beauty. It’s in our own self-interest to protect our environment.”

For now, the boom in major hotel construction seems to be over. With average occupancy rates of the southern California coastal resorts down from 76 percent to 63 percent over the last three years—perhaps reflecting the recent increase in the supply of rooms—new projects are looking less attractive, says Steve Bone. Large hotels require 10 to 20 years of planning, he says. The number of bed and breakfast inns has been growing at a rate slower than in the 1980s, but the overall room count has continued to grow, because inns have typically increased in size.

Meanwhile, ecotourism has taken hold in some communities, especially on the central and north coast, bringing modest new income and creating opportunities for hotel development that is harmonious with coastal resource protection. The City of Arcata has been supportive of a proposed overnight facility that combines camping options with a 30-to-50-room lodge, built using sustainable materials. A major tourist attraction is the Arcata Marsh and Wildlife Sanctuary, created on the site of a degraded marsh, as well as the community redwood forest and coastal trails.

“We have an economy in concert with protecting those areas,” said Michael Sweeney, director of the Institute for Ecological Tourism at Humboldt State University. Ecotourism is a way to encourage saving resources by supporting the local economy. California’s coastal protection program makes that possible. ♦

**STEVE SCHOLL** is a former deputy director of the Coastal Commission, with a background in city and regional planning.

The full text of this article is in the print edition of *Coast & Ocean*.

**[CLICK HERE](#)** to subscribe to *Coast & Ocean*.

**[CLICK HERE](#)** for more information about alternative accommodations and state park camping fees.

[Top of Page](#) | [Next Story](#) | [Table of Contents](#)  
[Subscribe](#) | [To Conservancy](#) | [Next Issue](#)

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



August 7, 2006

## ADDENDUM

## W3

To: Commissioners

From: Deborah Lee, Senior Deputy Director  
Rebecca Roth, Federal Programs Manager

RE: Condominium-Hotel Workshop

---

Since distribution of the mailing, we have been able to secure additional panelists, as well as a facilitator. The facilitator is Dale Schafer with the Center for Collaborative Policy at CSU Sacramento. The Coastal Conservancy has contributed to the workshop by covering the facilitator's cost. Below is the agenda, and the final listing of the panelists and the order of presentation. Attached are the lists of questions staff provided to each speaker.

Additional materials and background information have also been provided for your review. We still anticipate that the formal panel presentation will take about two hours, followed by an opportunity for the Commission to have a dialogue with the panel and then concluding with public comments and recommendations for the next steps.

### **PANEL PRESENTATION AND WORKSHOP AGENDA**

**Opening Remarks** – Co-Chairs/Vice-Chairman Pat Kruer & Commissioner Larry Clark

**Facilitator** – Process/Direction

1. **Tom Fish, Ph.D**, Human Dimensions Specialist, National Oceanic and Atmospheric Administration's (NOAA's) Coastal Services Center (15 min).
2. **Bruce Baitlin**, PKF Consulting (15 min).
3. **Bill Evans**, Evans Hotels & **Bob Lowe**, Lowe Enterprises – Hotel Industry (20 min total).

4. **Grace Cherashore**, Evans Hotels (15 min). – Hotel Financing
5. **James Butler**, Partner, Jeffer, Mangels, Butler & Marmaro, LLP (10 min.) – Legal Issues
6. **Shirley Dettloff**, former City Councilmember/City of Huntington Beach and former CC commissioner (10 min). – Local Government
7. **Dwight Worden, Esq.**, Worden Williams, APC and former CC Commissioner (15 min). – Public
8. **Matt Rodriquez**, Senior Assistant Deputy Attorney General, Attorney General's Office (20 min +). – Policy Overview

**Closing Comments** – Co-chairs/Vice-Chairman Pat Kruer & Commissioner Larry Clark

**Questions from the Commission to the Panelists**

**Public Comments**

**Future Steps**

## Speaker Questions

**1. Dr. Tom Fish, Human Dimensions Specialist, NOAA Coastal Services Center (15 min)**  
***Coastal Zone Management, National Perspective***

1. Please provide an overview of nation-wide data and cover the following points:

- Use of hotels in the Coastal Zone (or coastal counties).
- Average cost of a hotel night in the CZ.
- Hotel/Condo development and conversion trend summary.
- Number of coastal zone visitors.

2. Please provide an overview of State of California data and cover the following points:

- Demand for hotel rooms in the CZ or coastal counties.
- Available supply of coastal hotel rooms.
- Supply of luxury hotel rooms in the CZ or coastal counties.
- Population projections for CA.
- Socio-economic breakdown of residents as the context for understanding percent of population that can afford to stay at the coast.



<b>2. Bruce Batlin, Senior Vice President PKF Consulting (15 min.)</b> <b><i>Hospitality Industry</i></b>
--

1. Is there currently an excess inventory below the break-even point of hotel rooms along the coast? What is the break-even point (e.g., what percent of rooms must be occupied for the hotel to stay in business)? Does it differ between coastal California and inland, and does it differ between Southern CA, Central CA, and Northern CA?
2. Is there a way to quantify the demand for coastal overnight accommodations? What is demand for luxury accommodations? Is the demand the same whether the luxury accommodations are built in coastal communities versus other warm locations? (To what extent are the luxury accommodations sought after because they are on the beach?)
3. What affect would condo hotels have on supply of existing hotel rooms?
4. Is demand for hotel rooms correlated with increasing State population? In other words, are new rooms being constructed at the same rate as tourism and population growth?
5. How will the trend to condo-hotels affect the availability and affordability of overnight accommodations?
6. What percent of overnight accommodations are used by CA visitors versus out of state/country visitors?
7. Given that the national trend re. Hotel-condos has taken off, what are the projections for CA? Are people buying these because they are second homes or for investment purposes?
8. Would condo rentals actually be a more affordable means for visitors than regular hotel rooms?

**3. & 4. Bill Evans, Evans Hotels & Bob Lowe, Lowe Enterprises (20 min total)**  
***Hotel Industry***

1. Based on your experience and knowledge and from the perspective of providing and sustaining a overnight visitor-serving recreational uses along the California coast including lower cost accommodations, what do you see as the benefits and problems associated with condo-hotels? Issues include short- and long-term management, marketing and booking, permitting compliance and enforcement (i.e. who will be responsible for compliance with coastal and local development permits).
2. Do you see a difference in the significance of issues depending on such factors as the length of occupancy rights by the condo owner, CC&Rs, etc.?
3. What is the supply and demand for hotels accommodations in the CZ, both at the state level and nationally, for all price ranges?
4. Is there an excess inventory of hotel rooms along the coast? If so, in what price range?
5. How will the trend to condo-hotels affect the availability and affordability of overnight accommodations?
6. Will condo-hotels lead to higher room rates for visitors who do not own a condo?
7. Will condo-hotels result, in reality, in a diminishing supply of hotel rooms?
8. Is there funding available for traditional hotels?
9. Would condo rentals actually be a more affordable means for visitors than regular hotel rooms?
10. To what extent are these accommodations sought because they are at the beach?
11. The national trend has taken off, what is the projection in CA?
12. Is the industry prepared to manage condo-hotel units in a way that ensures they are kept available to the general public? What about seasonal restrictions?
13. Is there a minimum amount of time from the industry's perspective that an owner should expect to occupy/use their condo?
14. How will exchanges/secondary trading affect the general public's ability to utilize owner units in condo-hotels?

## Speaker Questions

<b>5. Grace Cherashore, Evans Hotels (15 min)</b> <b><i>Hotel Financing</i></b>
--

1. How important do you think condominiums in association with a traditional hotel are for purposes of financing the construction and operations of a hotel?
2. What issues, problems or concerns do you see, from the perspective of the provider of financing, with condo-hotels?
3. Is there funding available for traditional hotels?
4. If there is a short fall in hotel rooms, do conversions re-direct dollars from potential of developing new rooms?
5. Are people buying these units because they are second homes or for investment purposes?
6. Are lenders concerned about restrictions on owner usage and/or hotel operational controls?

**6. Shirley Dettloff, Former City Councilmember, City of Huntington Beach, and  
Former Coastal Commissioner (10 min.)**  
***Local Government***

1. From local government's perspective, what are the pros and cons of condo-hotel development? Why are condo-hotels being approved at the local level in so many coastal jurisdictions?
2. Given the importance of transient occupancy tax (TOT) to most local governments, will condo-hotel developments adversely affect the provision and maintenance of public amenities and beach services?
3. What provisions for owner usage and hotel operations are reasonable and important at the local level?
4. Do you believe that continued condo-hotel development will lead to proposals for the conversion of existing hotel stock/units to condominiums?
5. Should local government be concerned about negative effects on non-hotel businesses that rely on traditional tourism funds (e.g., restaurants, etc.)

**7. James Butler, Partner, Jeffer, Mangels, Butler & Marmaro, LLP (10 min.)**  
***Private Attorney***

1. What are the most effective methods that the Commission may adopt to insure that the developer, the hotel management, and individual condo owners comply with coastal permit conditions that are designed to restrict individual occupancy or require that a unit be placed in a rental program? What methods should the Commission adopt to insure that future hotel management or successor condo purchasers are bound by the conditions imposed in the original permit?
2. Are there any legal impediments to a developer submitting a coastal permit application for a condo-hotel project in which owners are restricted to a certain number of days (e.g., 30, 60, or 90 days) of occupancy and must make a unit available for rent through a central booking service when not in use by the owner (in other words, is there any legal reason why these restrictions cannot be part of the project at the outset)?
3. If the developer does not incorporate these restrictions into the project at the outset but agrees to accept coastal permit conditions that impose these restrictions, are there any legal impediments to complying with these conditions? Is the answer the same if the permit conditions require the developer and all future owners to notify prospective buyers of the restrictions on occupancy and use?
4. If the coastal permit conditions that impose these restrictions trigger obligations to comply with federal law governing securities would the developer be able to comply with the permit conditions as well as the federal requirements? What would be the options for complying with the federal requirements? How would owners of individual units be affected if these federal requirements are enforced after some or all of the units have been sold to individuals?

## Speaker Questions

**8. Dwight Worden, Esq., Worden Williams, APC and former Coastal Commissioner (15 min).**  
***Public Interest***

1. How affordable is the coast?
2. What is the demand for lower cost visitor serving hotel accommodations?
3. What is the demand for other visitor serving amenities, such as parking, public transit, accessways, restaurants, scenic overlooks, trails, beach use etc.
4. What is the economic access to the coast for most people?
5. Who has access to coastal hotels and hotel-condos realistically and who doesn't?
6. In light of the changing cultural and economic demographic changes in California what effect do you see on public accessibility to overnight visitor-serving uses by the trend o hotel-condos?
7. What has the net effect of limited low cost accommodations been on access to the coast both physically and economically?
8. What types of overnight developments would satisfy the demand of the residents of the state?
9. How far are people likely to drive to visit the coast without a place to stay?
10. How does the change in coastal communities affect the public's comfort in enjoying the coast?
11. What legacy of coastal use should the Coastal Commission strive to leave future generations?
12. How well has the state implemented the public access and visitor serving policies of the Coastal Act?

## Speaker Questions

**9. Matt Rodriguez, Senior Assistant Deputy Attorney General, Attorney General's Office (20 min +)**  
***Commission's Legal Interest***

1. Provide Coastal Act Analysis of priority land uses with focus on visitor serving uses and public access.
2. Explanation of how Coastal Act analysis should be done relative to development of new hotel-condo projects and conversion of existing hotels to condos. (Why 90 days and X number of units?)
3. Are there limitations on conditions that the CCC might impose regarding duration of stay or requirements that vacant units are rented?
4. Consideration of LCP provisions.
5. What limitations should be imposed on hotel-condo developments?
6. Review past project conditions and opine on ways to improve.
7. What are the enforcement challenges?
8. What limitations will the Commission face in court trying to enforce use restrictions?
9. To what extent do private property rights of condo owners yield to permit conditions or other restrictions on use by the owner?
10. Do permit conditions/restrictions survive changes in ownership?
11. What about projects proposed on public trust lands?
12. Is the CCC required to consider economic feasibility?
13. Are condo-hotels legitimate visitor serving commercial uses?
14. If there are adverse impacts to the availability and/or affordability of overnight accommodations in the CZ, what kinds of mitigation should be considered?

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



August 8, 2006

**ADDENDUM****W3**

To: Commissioners

From: Deborah Lee, Senior Deputy Director  
Rebecca Roth, Federal Programs Manager

RE: Condominium-Hotel Workshop

---

**I. Overview**

In May 2006, the Commission directed staff to organize a workshop on the topic of condominium-hotel (condo-hotels). A hotel-condo is a development that has the outward appearance and amenities of a hotel but whose rooms (“units”) may be sold as condominiums to private individuals. The owners of these condo units may live in them or allow hotel management to rent the units to the public and receive a share of the rental proceeds. Because of the individual ownership component, and because the condo-hotels are proposed without use restrictions in place, the developments are considered quasi-residential with the possibility of functioning for part of the year as visitor serving. The Coastal Act provides for visitor-serving use as a higher priority land use than residential, and also states a preference for lower cost visitor-serving accommodations. This is the key public policy issue presented by these development proposals. Because hotel condos are proposed without restrictions on the owners’ use of the units, the burden is placed on the Commission to devise enforceable conditions that insure that the hotel condos are truly visitor-serving and that limit private residential use of the units.

The Commission raised many questions for the workshop to address that dealt with legal authority, supply and demand, financing, hotel operations, past Commission actions, public access, and relative affordability of overnight accommodations. This report contains general background information to provide a context for the Commission’s hotel-condo decisions. While the Commission generally makes decisions on a case-by-case basis, this workshop is intended to provide the Commission a better understanding of the national and state trend, and scope the context and public impact of these developments. The workshop objective is for the Commission to be better informed about individual and cumulative impacts when it considers future hotel-condo projects and LCP amendments. Staff notes, however, that much information about short and long term effects of condo-hotels on overnight accommodations and public access is not available, nor is it being researched per se by public policy/land use institutions. Thus, staff has made recommendations about additional analysis and research that would benefit the Commission in its future decision-making processes.



## **II. Past Coastal Development Permit History**

As early as 1989, the first hotel-condo development along the California coast was proposed in Santa Cruz County. Since then, the Commission has acted on, and either denied or conditionally approved, eleven condo-hotels, two of which were in the past five months. The other approved projects were located in the Counties of San Mateo (Half Moon Bay), Monterey (Monterey County, Marina), San Luis Obispo (San Luis Obispo County, Pismo Beach, Oceano), Los Angeles (Hermosa Beach, Rancho Palos Verdes), Orange County (San Clemente), and San Diego (Encinitas). The projects all contained special conditions that limited the length of time each year that owners could use their hotel-condo units. For example, in some instances, owners were limited to a maximum of seven to 14 days total in the summer months. In the instance of the Highlands resort in Monterey County, the Commission required the applicant to mitigate for the loss of hotel rooms available to the public by paying \$8,000 per room or a total of about \$700,000 to fund a hostel located on the region's state park's land. In addition, all projects were subject to special conditions that involved, for example, requirements for parking, water quality, scenic views, and public access.

In response to the Commission's inquiry about compliance with room use restriction, staff investigated condition compliance and owner usage. Most of the old permits (pre-2006) had imposed special conditions that required annual, and in one case, quarterly reports on owner usage to be submitted to the Commission. Staff requested use occupancy records of all condo-hotels that had been permitted, yet only received the records of four of the previously approved condo-hotels. Of the four records that staff reviewed, all appeared to be in compliance with the owner length of stay provisions. According to the responses, their occupancy levels as hotel units made available to the public were as high as 85%. The other requests were not responded to, and in one instance the operator claimed the information was *proprietary and confidential* even though the permit was conditioned to submit Transit Occupancy Tax records annually to the executive director. The majority of the condo-hotels had on-line booking systems for an overnight stay, with room costs ranging from \$99 to \$605 in the summer months.

Condition compliance of past projects continues to be a challenge for staff. The average number of total permits acted on annually by the Commission in the last five years is close to 1,000. When the sheer number of permits issued by the Commission is considered with staffing and travel budget reductions, it is understandable why it has not been feasible to consistently monitor permit conditions, especially those of complex projects. Because compliance with use restrictions of hotel condos is not externally visible and requires constant monitoring and the good faith of hotel management and the numerous owners of condo units, hotel condos present particularly difficult enforcement issues.

## **III. Analysis of Coastal Development Permit Conditions of Approval**

Commission legal staff was asked to review and revise past special conditions placed on approved coastal development permits to insure that a hotel-condo functions as a visitor-serving project. In a memorandum to the Commission's Executive Director and Senior Deputy Director, legal staff developed conditions that addressed three primary areas of concern (Attachment 1).

First, the conditions seek to restrict condominium owners' use and occupancy of their units so that the units will function as hotel units rather than residences or vacation homes. Next, the conditions also seek to reduce the possibility of noncompliance by requiring that condominium owners and potential purchasers be given notice of the restrictions and legal responsibilities. Lastly, the conditions establish the recordkeeping, reporting and auditing requirements that will assist the Commission with identifying violations and enforcing the restrictions.

In addition legal staff addressed the reality of limited staff time available to monitor condo-hotels to insure these developments remain available to the public. The conditions addressing recordkeeping and reporting include a new provision not previously contained in any prior approved coastal development permit, which is a requirement that the hotel owner-operator retain an independent auditor to regularly review records and audit compliance. Legal staff also noted that the restrictions on use and occupancy present an enforcement challenge for the Commission because the number of units involved and the fact that the restrictions relate to use and occupancy make it difficult for Commission staff to know whether owners are complying with the restrictions and make enforcement more complicated.

#### **IV. Local Coastal Programs**

The Commission has approved Local Coastal Program (LCP) policies in three instances that allowed for condo-hotels. All have been located in the central coast: Santa Cruz County, San Luis Obispo (unincorporated community of Oceano), and City of Pismo Beach. Different restrictions in terms of length of stay in the hotel-condo are allowed in all three LCPs (see chart below).

**Table 1: LCP Jurisdictions With Hotel-Condo Policies**

<b>Jurisdiction</b>	<b>Area Covered</b>	<b>Maximum Annual Stay</b>	<b>Maximum Consecutive Day Stay</b>
Santa Cruz County	Visitor Serving Districts	45 days per year	29 days consecutively
San Luis Obispo County	Unincorporated community of Oceano	84 days per year	29 days consecutively
City of Pismo Beach	Resort Commercial District	30 days per year	30 days consecutively

#### **V. General Background**

The following general background information is intended to answer questions and issues raised by the Commission with respect to overnight accommodations, such as: what is the projected demand; what are the national and state trends; what is the current supply, and what is the affordability of the existing stock?

### *What is the Potential for Increased Demand for Coastal Overnight Accommodations?*

Staff was unable to find statistics on demand for coastal overnight accommodations. Absent a vetted study that quantifies the demand of visitors to stay overnight along the coast, population statistics that show increased population, also suggest an increase in demand to stay overnight somewhere along the California coast. In 2000, 77% of California's population, or just over 26 million people, lived in coastal counties, which represent 25% of the land (NOEP). California's population continues to grow, with 36 million people statewide in 2005 and a projected growth rate of another 7 to 11 million people by 2025 (CA PPIC, 2005). Between 2005 and 2025, populations are projected to increase by 45% in inland counties, compared to 17% in coastal counties. Despite these uneven growth rates, even by 2040, 60 percent of the state's residents will still live in coastal counties.

In order to put the ability to pay for overnight accommodations in perspective, the median household income for California residents in 2003 was \$48,440. Nine of the 16 coastal counties have median household incomes that are higher than the state median household income.

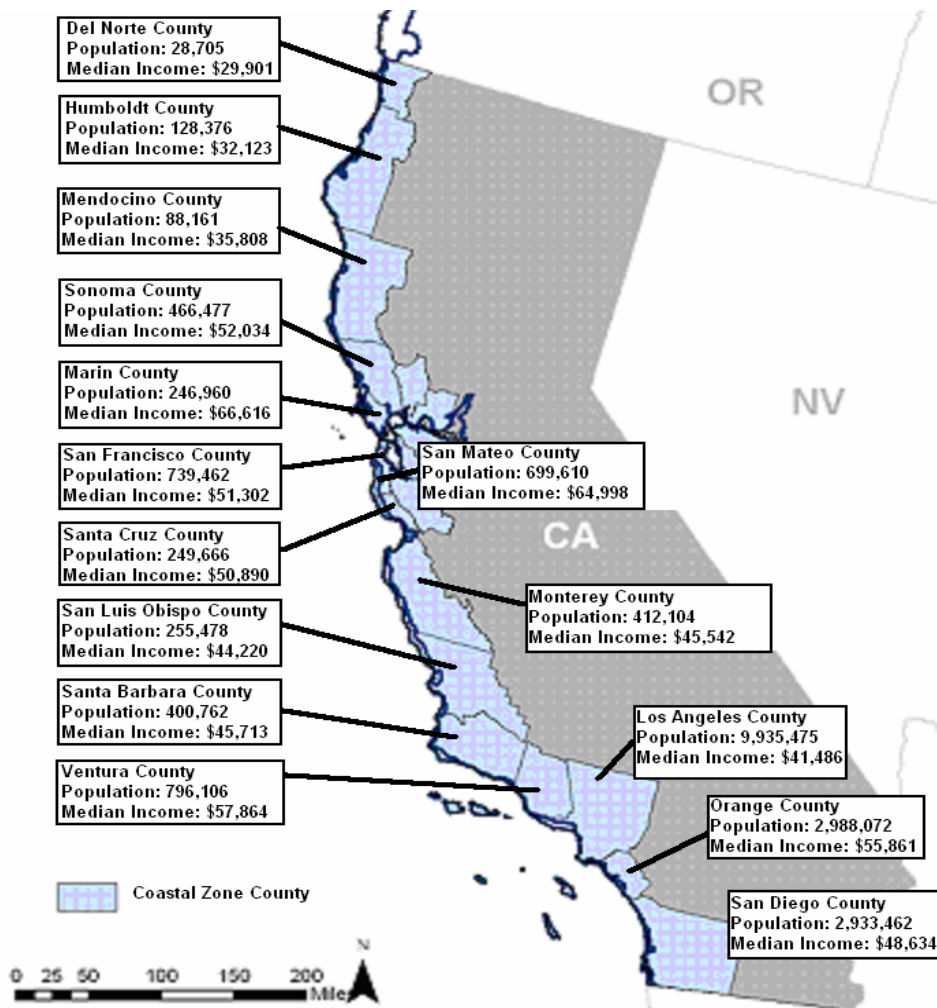


Figure 1: Population and Median Household Income by Coastal County

***What is the National Trend of Overnight Accommodations as Compared to California?***

There are more than 12,000 hotels, RV parks, and campgrounds in coastal counties nationwide, including the Great Lakes coast, available for residents and visitors seeking overnight accommodations along the coast (NOEP). Florida and California offer the most properties, with 2,178 and 1,742 respectively.

**Table 2: 2005 Coastal County Accommodations for Florida, California and Nation-wide**

<b>2004 Coastal County Accommodations</b>				
	<b>Hotels/ Lodging</b>	<b>RV Parks/ Campsites</b>	<b>Total Properties</b>	<b>Coastal County Population</b>
<b>Florida</b>	2,063	115	2178	17,397,161
<b>California</b>	<b>1,678</b>	<b>64</b>	<b>1742</b>	<b>27,261,347</b>
<b>Nationwide</b>	11,381	667	12048	110,888,430
Source: National Ocean Economics Project				

***What are the California-Specific Overnight Accommodations and Their Relative Affordability?***

Staff reviewed the total number of properties in the coastal counties and found information relative to the state's nine most sought after coastal visitor serving destinations. Out of more than 1,600 hotels, RV parks and campgrounds in California's coastal counties, only 134, or 7.9%, are low cost accommodations within the coastal zone (NOEP; Coastal Access Guide). The 134 low cost overnight accommodations include not only RV parks and campsites, but also lower cost hotels and hostels whose room rates are less than \$100 a night. The below Table 2 shows the average occupancy and room cost by county. On average all coastal *counties* exceed the \$100 per night affordable rate. Unfortunately data relative to overnight accommodations within the coastal zone, as opposed to the entire county, was not available.

**Table 3: Low Cost Visitor Accommodations for Nine Coastal Counties in 2005**

<b>2005 Low Cost Visitor Accommodations (LCVAs) for Nine Coastal Counties</b>								
<b>Coastal County</b>	<b>Total Properties</b>	<b>Total Rooms</b>	<b>Avg Occupancy</b>	<b>Avg Room Rate</b>	<b># LCVAs (Coastal Zone)</b>	<b>% Total LCVAs (Coastal Zone)</b>	<b>Population (2005)</b>	<b>Median HH Income (2003)</b>
<b>San Diego</b>	452	53,584	72%	\$123	12	8.9%	2,933,462	\$48,634
<b>Los Angeles</b>	980	95,681	76%	\$103	14	10.4%	9,935,475	\$41,486
<b>Santa Barbara</b>	123	8,764	-	-	12	8.9%	400,762	\$45,713
<b>Monterey &amp; Santa Cruz</b>	-	-	68%	\$118	19	14.2%	412,104 (M) 249,666 (SC)	\$45,542 (M) \$50,890 (SC)
<b>San Francisco &amp; San Mateo</b>	399	51,021	73%	\$125	3	2.2%	739,426 (SF) 699,610 (SM)	\$51,302 (SF) \$64,998 (SM)
<b>Humboldt &amp; Del Norte</b>	69	3,023	63%	\$65	4	3.0%	128,376 (H) 28,705 (DN)	\$32,123 (H) \$29,901 (DN)
<b>Statewide *add'l counties included</b>	-	-	70%	\$102	134	-	36,132,147	\$48,440
Source: VisitCA								

***What are the Low Cost Visitor Serving Accommodations Along the Coast?***

The California Coastal Guide lists 134 low cost accommodations within California's coastal zone. Low cost accommodations are those with costs of less than or equal to \$100 per night, and include hostels, campsites, RV parks, and low cost hotels. Attachment 2 is table depicting low cost visitor serving accommodations. Also attached as exhibits are maps depicting where these lower cost accommodations are located in Southern California (see maps 2 and 3) and in most of the Central Coast (see map 1).

***What is the Demand for Low Cost Overnight Accommodations Along the Coast as Evidenced by Hostel Use and State Park Demand?***

Hostels

There are 10 hostels along the coast between the Marin Headlands and San Diego, offering accommodations for approximately \$14 per person. Hostel locations include popular tourist destinations such as Marin, San Luis Obispo, Santa Cruz, Monterey, Long Beach and San Diego. In Santa Monica, the average occupancy rate in 2005 was 96%, with the *hostel completely full about half of the year*.

California State Parks

California State Parks owns 1.5 million acres of land, with over 295 miles of ocean front property. Coastal state parks provide half of the total coastal land open to the public in California. 77 million people visited California State Parks in the 2004-2005 fiscal year. Nine of the 10 most visited parks in 2004 were along the coast.

**Table 4: 10 Most Visited California State Parks in 2004-2005**

**\*Bold Type Indicate the Park is Within the Coastal Zone**

<b>10 Most Visited State Parks in 2004-2005</b>	
1.	Old Town San Diego State Historic Park
2.	<b>Huntington State Beach</b>
3.	<b>Sonoma Coast State Beach</b>
4.	<b>Seacliff State Beach</b>
5.	<b>Bolsa Chica State Beach</b>
6.	<b>San Onofre State Beach</b>
7.	<b>Doheny State Beach</b>
8.	<b>Oceano Dunes State Vehicular Recreation Area</b>
9.	<b>New Brighton State Beach</b>
10.	<b>Malibu Lagoon State Beach.</b>
Source: CA Parks	

State Parks Campsite Demand

The demand for campsites at California State Parks grew by approximately 13% between the years 2000 and 2005.

**Table 5: California State Parks Family Campsite Reservations**

<b>California State Parks Family Campsite Reservations</b>		
<b>Year</b>	<b>2000</b>	<b>2005</b>
<b>Reservations</b>	280,000	320,000
Source: CA Parks		

### State Park Campsites

There are over 6,000 campsites within California's coastal zone. 25% of the campsites are in San Luis Obispo and 14% in San Diego. In 2005, camping fees in the California State Park system ranged from \$9 to \$25 per night for a campsite (CA Parks).

**Table 6: Number of Campsites by County**

<b>California State Parks Campsites within the Coastal Zone</b>			
<b>County</b>	<b># Campsites</b>	<b>County</b>	<b># Campsites</b>
Del Norte	312	San Francisco	16
Humboldt	229	San Luis Obispo	1,488
Los Angeles	258	San Mateo	205
Marin	140	Santa Barbara	377
Mendocino	444	Santa Cruz	396
Monterey	276	Sonoma	201
Orange	373	Ventura	610
San Diego	864		
<b>Total Campsites within Coastal Zone: 6,173</b>			
Source: CA Parks			

### Non-Campsite Low Cost Overnight Accommodations: Crystal Cove State Park

The Crystal Cove State Park, located between Newport Beach and Laguna Beach, provides 13 low cost beach-side cottages for overnight visitors. There are 11 individual cottages that sleep between 4 and 9 people and range in price from \$115 to \$325 per night, or \$29 to \$36 per person per night. Rooms in the two dorm style cottages cost approximately \$25 per person per night.

Clear pent up demand for low cost beach-side accommodations in this area is seen in the reservation demand for Crystal Cove. 16,000 people tried to reserve a cottage on the first day for reservations, and within just a few hours the cottages were sold out for seven months (OC Register). The majority of visitors staying overnight at Crystal Cove came from Orange County and a few came from places such as Alabama and Chicago.

### ***What are Region Specific Case Studies?***

#### San Diego County

San Diego County has an overall population of 2,933,462 (US Census, 2005). The City of San Diego is California's second largest city with a city population of nearly 1.3 million in 2005. In 2005, more than 27 million people visited San Diego County, of which nearly 16 million stayed overnight (SDVCB). Approximately 40% of overnight visitors in 2005 were from California. San Diego County has over 70 miles of coastline along the Pacific with 11 public beaches.

In San Diego County, there are 452 hotels and lodging accommodations, with casinos and health spas adding another 82 (VisitCA). 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 (SDVCB). The average occupancy rate for the same year was 72.3%, with a peak rate of 86% in July. \*Note, as a general rule of thumb, properties need an annual occupancy rate of between 60% and 70% to break even.

**Table 7: San Diego County Accommodations Summary for 2005**

<b>San Diego 2005 Accommodations Summary</b>						
<b>2005 Visitors</b>	<b>2005 Overnight Visitors</b>	<b>% Overnight Visitors in Hotels</b>	<b>Avg Occupancy Rate</b>	<b>Avg Room Rate</b>	<b>Total Properties</b>	<b>Low Cost Properties</b>
27,151,000	15,800,000	55.1%	72.3%	\$122	452	12
*Source: San Diego Convention and Visitors Bureau						

#### Newport Beach, Orange County

In 2003, there were just over 7 million visitors to Newport Beach, of which less than 1 million stayed overnight at Newport Beach accommodations. In Newport Beach, there are 16 hotel and motel properties, providing a total of 2800 guest rooms. Three of the 16 properties are classified as “Low Cost” accommodations (<\$100 per night), four are classified as “Mid-market”, and nine are classified as “Luxury”. The average occupancy rate in 2000 was 74.5%, with peak occupancy rates of over 80% in July and August. Orange County overall had an occupancy rate of 74.3% in 2005.

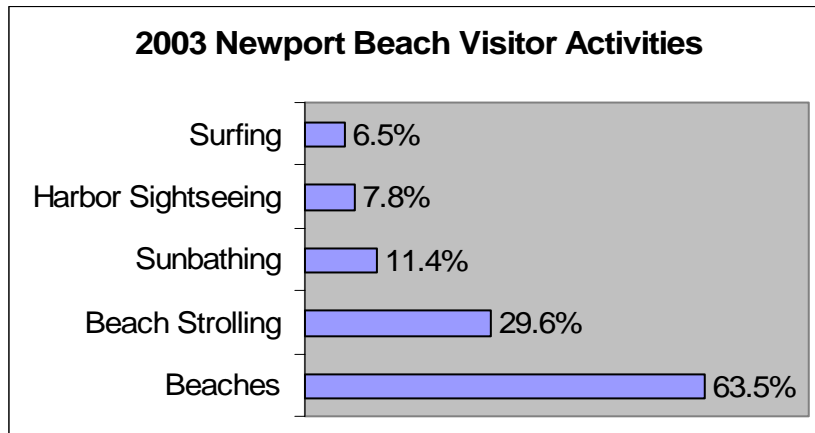
**Table 7: Newport Beach Accommodations Summary for 2000**

<b>Newport Beach Accommodations Summary for 2000</b>					
<b>2003 Visitors</b>	<b>2003 Overnight Visitors</b>	<b>Occupancy Rate</b>	<b>Avg Room Rate</b>	<b>Total Properties</b>	<b>Low Cost Properties</b>
7,058,440	869,440	74.5%	\$148	16	3
Source: Newport Beach General Plan Update					

The results of a 1998 Newport Beach visitor use survey revealed an average of 1.57 million visitors per beach-mile between the Santa Ana River and Newport Harbor (Chapman, Hanemann & Ruud). For 1998, that means approximately 7.8 million people (residents and visitors combined) visited this stretch of beach. Also, in 2003, 63.5% of all visitors to Newport Beach made a trip to its beaches to enjoy beach-related activities.



**Figure 2: Beach-Related Newport Visitor Activities in 2001**



## **VI. Information Gaps and Next Steps**

This workshop will be an important first step in educating the Commission, staff, and public about condo-hotels. Yet limited information was available to answer the many questions relative to the broader public policy issues invoked in this discussion. The below listed questions focus on areas where there are information gaps that have not been addressed by the workshop. Staff recommends that the Commission seek additional information on this important policy matter. .

### Information Gaps

- What is the supply/demand of coastal overnight accommodations by region and by cost?
- What will the cumulative effect be on the average Californian wishing to stay on the coast for vacation in terms of available and affordable overnight accommodations?
- What has been the effect over time on visitor use of the coast with less than eight percent of all coastal accommodations meeting the \$100 or less criteria of affordable?
- How should the Commission and local governments evaluate whether a region has adequate overnight accommodation supply to meet its current and projected demand?
- What is the demand for coastal access versus overnight accommodations, access along the shore, and visual access? (Could information be provided from an independent survey?)
- Region by region and statewide, is there a mix of economic levels of visitor serving uses throughout the coast?
- How can the Commission encourage and promote the development of lower cost visitor accommodations and other high priority uses?
- What kinds of partnerships are needed to address the apparent deficit in lower cost accommodations?
- Should LCPs provisions be amended to reflect standards requirements and mitigation needs for condo-hotels, given that they are not currently recognized as high priority visitor-serving uses in most LCPs?

**MEMORANDUM****August 7, 2006**

**TO:** Peter Douglas, Executive Director  
Deborah Lee, Senior Deputy Director

**FROM:** Hope Schmeltzer, Chief Counsel  
Amy Roach, Deputy Chief Counsel

**RE:** Conditions for Approval of Condominium-Hotels

---

You have asked us to recommend draft conditions that can be used to insure that a condominium-hotel project functions as a visitor-serving project. Three recommended conditions are attached. These conditions were prepared by reviewing and revising the conditions included in previously approved coastal development permits for condominium hotel projects. An explanation of the conditions is set forth below. In brief, the conditions restrict condominium owners' use and occupancy of their units so that the units will function as hotel units rather than residences or vacation homes. The conditions also seek to reduce the possibility of noncompliance by requiring that condominium owners and potential purchasers be given notice of the restrictions and legal responsibilities. Lastly, the conditions establish the recordkeeping, reporting and auditing requirements that will assist the Commission with identifying violations and enforcing the restrictions. The conditions addressing recordkeeping and reporting include a new provision not previously contained in any prior approved coastal development permit, which is a requirement that the hotel owner-operator retain an independent auditor to regularly review records and audit compliance.

The restrictions on use and occupancy present an enforcement challenge for the Commission. The number of units involved and the fact that the restrictions relate to use and occupancy make it difficult for Commission staff to know whether owners are complying with the restrictions and make enforcement more complicated. As a result, significant staff resources will likely be required to monitor and take steps to insure compliance with the restrictions on use and occupancy. The Commission should carefully consider whether it has sufficient resources to ensure compliance and enforcement, and if not, whether these conditions (or any conditions) will actually accomplish the goal of assuring that a condominium hotel functions as a visitor-serving facility.

**Restrictions on Use and Occupancy**

The first condition is intended to establish the visitor-serving nature of the facility. Key components of this condition are:

- a limitation on the number of days that an owner can occupy the unit,
- a requirement that rooms not occupied by an owner be available for rental to the general public,
- a requirement that all rooms be booked through the hotel operator and that rates for individually owned units be the same as rates for comparable traditional hotel rooms, and
- a prohibition on converting condominium units to time-shares, and/or full-time residences, etc.

These restrictions are necessary to prevent owners from using and occupying their units in a manner that reduces or eliminates the visitor-serving aspect of the units. Limiting the number of days of owner occupancy and requiring that all rooms be booked through the hotel operator are intended to prevent owners from using their unit for extended periods of time and from renting solely to friends and relatives or renting to friends and relatives at a reduced rate. Owner occupancy for extended periods of time or renting the unit only to friends and family would mean that those units are not available to the general public. Requiring that a hotel operator book all room reservations should result in the rooms being handled as regular hotel rooms when not occupied by the owners.

#### Notice of Restrictions Via CC&Rs

The second condition is intended to inform condominium owners and potential buyers of the restrictions on use and occupancy through the CC&Rs. Key components of this condition are:

- a requirement that the CC&Rs identify occupancy and use restrictions imposed by the conditions of the coastal development permit, and
- a requirement that the CC&Rs contain a provision prohibiting amendment of CC&Rs without approval of a coastal development permit amendment.

The requirements of this condition are intended to reduce the possibility that someone will buy a condominium hotel unit with the expectation that the unit can be occupied like a residence or typical vacation home, i.e., as if it can be occupied whenever and for however long the owner desires. Because CC&Rs provide notice of all the rules, restrictions, owner obligations etc. relating to a condominium, owners and potential purchasers tend to review the CC&Rs and be familiar with the contents. Therefore, identifying the occupancy and use restrictions in the CC&Rs should increase the likelihood that owners and potential purchasers have actual notice of these significant restrictions. If buyers are informed of the restrictions, the potential for compliance is greater.

Typically, CC&Rs can be amended by a vote of a certain percentage of the owners. This means that restrictions in the CC&Rs can be modified or eliminated from the CC&Rs by vote of the owners, without the Coastal Commission's knowledge. The

condition requiring a coastal development permit amendment is intended to reduce the likelihood that the restrictions on use and occupancy will be eliminated from the CC&Rs by inclusion of a provision that states that the restrictions related to use and occupancy cannot be removed without approval of the Coastal Commission.

#### Recordkeeping, Reporting, Notice and Responsibility

The third condition is intended to obtain compliance with the restrictions, and to help the Coastal Commission monitor compliance and enforce the restrictions on use and occupancy. Key components of this condition are:

- a requirement that condominium marketing and sale documents inform buyers of occupancy and use restrictions,
- a requirement that the hotel owner and operator maintain the legal ability to enforce the conditions,
- a requirement that the hotel owner-operator maintain records sufficient to demonstrate compliance, including records of occupancy and rates charged for unit rentals,
- a requirement that the hotel owner-operator hire an independent auditor to evaluate compliance with the permit restrictions, and
- a requirement that the hotel owner and operator submit a plan demonstrating how it will comply with the permit conditions.

The restrictions on use and occupancy cannot be easily monitored and enforced by the Commission. The occupancy of the units is not something the Commission staff can readily observe and there will be numerous units subject to the restrictions. The fact that the units are marketed as vacation homes instead of investment property means that there is a potential that many owners may not have anticipated the occupancy and use restrictions, even though they were informed prior to purchase. Such owners may be less willing to comply. In addition, marketing materials concerning condominium hotels outside of the coastal zone suggest that occupancy limits are not generally enforced. Thus, potential purchasers may have expectations based on their knowledge of non-coastal zone condominium hotels that are directly contrary to the restrictions placed on coastal zone condominium hotels. As a result, notice to owners and potential purchasers, recordkeeping and reporting by the hotel owner and operator are critical to the Commission's ability to enforce the use and occupancy restrictions.

This condition requires the hotel owner and operator to keep records that are adequate to document compliance and to submit those records to the Commission for review. In addition, the condition requires the hotel owner-operator to retain an auditor to audit compliance with the restrictions on use and occupancy.

The condition also requires the hotel owner to submit plans for achieving compliance, such as the rental program agreement that is entered into between the hotel owner, hotel operator and condominium unit owners. This will enable Commission staff to determine whether there are adequate mechanisms in place for assuring compliance with the

restrictions on owner use and occupancy. Finally, this condition makes clear to the hotel owner, operator and unit owners that all of these entities are responsible for permit compliance. This is essential to the Commission's ability to address violations. The Commission's ability to enforce the permit conditions is much stronger if it can pursue action against the hotel owner and operator as well as individual owners. Also, the hotel owner and hotel operator are in a better position to monitor compliance and take action to address noncompliance than the Commission.

In sum, the attached conditions can be used when the Commission seeks to approve a condominium hotel as a visitor serving facility. Obviously the condition language can and should be modified to fit the circumstances of each permit application.

If you have any questions concerning the conditions or the above explanation, please let us know.

1. **Hotel Restrictions.**

- A. The permitted development is authorized to *[construct or convert]* no more than *[insert number]* hotel units *[insert "as" or "to"]* individually owned condominium hotel units. The following restrictions shall apply:
1. The project shall have an on-site hotel operator to manage rental of the *[insert the total number of units: traditional plus individually owned]* units. No fewer than *[insert number]* individual units shall exist at any time (a maximum of *[insert number]* condo hotel units and a minimum of *[insert number]* traditional hotel rooms). Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room, and its availability shall not be conditioned on a renter's willingness to rent any additional unit.
  2. The hotel operator shall market and advertise all *[insert number]* rooms to the general public. Unit owners may also market and advertise their units but all reservations shall be made by and through the hotel operator.
  3. Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.
  4. All individually owned hotel units shall be rented at the same or comparable rate to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.
  5. The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.
  6. Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for no more than *[insert number]* days per calendar year with a maximum of *[insert number]* days use during any immediately preceding *[insert number]*-day time period.
  7. The use period limitations identified in paragraph 6 above, shall be unaffected by multiple owners 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 use restriction as if they were a single, continuous owner.
  8. No portion of the project may be converted to time-share, full-time occupancy condominium, apartment, or any other type of project that differs from the approved *[insert number of units]* individually owned condominium hotel units and *[insert number of units]* traditional (non-condo) hotel units.

**2. CC&R's Modification.**

- A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT** *[insert permit or permit amendment number]*, the applicant shall submit for review and written approval of the Executive Director, the Declaration of Restrictions or CC&R's, which shall include:
1. All the specific restrictions listed in Special Condition Numbers *[insert condition numbers]*,
  2. An acknowledgment that these same restrictions are independently imposed as condition requirements of Coastal Development Permit Amendment #*[insert permit number]*.
  3. A statement that provisions of the CC&R's that reflect the requirements of Special Condition Numbers *[insert numbers]* shall not be changed without a Coastal Commission-approved amendment to this coastal development permit, unless it is determined by the Executive Director that an amendment is not legally required.
- B.** The CC&R's as approved by the Executive Director must be recorded against all individual property titles.
- C.** The provisions of the CC&R's that reflect the requirements of Special Condition Numbers *[insert condition numbers]* shall not be changed without a Coastal Commission-approved amendment to this coastal development permit, unless it is determined by the Executive Director that an amendment is not legally required.

**3. Condition Compliance and Enforcement.**

- A.** The applicant or any successor-in-interest as hotel owner-operator shall maintain the legal ability to ensure compliance with the terms and conditions of the permit at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to this permit comply with the terms and conditions of this permit. Each owner of an individual condominium unit is jointly and severally liable with the hotel owner-operator for violations of the terms and conditions of this permit. Violations of this coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.
- B.** All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&R's and similar documents, shall notify potential buyers of the following:
1. The owners of individual hotel units are jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of this coastal development permit; and



2. The occupancy of the units is restricted to *[insert number]* days per year, and when not in use by the owner, the unit will be made available for rental by the hotel operator and that the coastal development permit contains additional restrictions on use and occupancy.
- C. The applicant and any successor-in-interest as hotel owner-operator, and each future unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy is limited to *[insert number]* days per calendar year with a maximum of *[insert number]* days use during any immediately preceding *[insert number]*-day time period, that the unit must be available for rental by the hotel operator when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit.
- D. The applicant and all successors-in-interest as hotel owner-operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Special Condition *[insert number assigned to the Hotel Restrictions condition]*. 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 Executive Director upon request and to the auditor required by Paragraph E. of Special Condition *[insert number]*. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Executive Director of commencement of hotel operations.
- E.

On the first anniversary of the opening of hotel operations, and exactly every year thereafter, the hotel owner-operator shall retain an independent auditing company to perform an audit to evaluate compliance with special conditions *[insert special conditions regarding occupancy restrictions, notice, recordkeeping, monitoring]* of this coastal development permit. The audit shall evaluate compliance by the hotel owner, operator and owners of individual hotel units during the prior one-year period. The hotel owner-operator shall obtain the Executive Director's written approval of the independent auditor before the auditor is retained. Such approval shall be sought at least 3 months before the deadline for retaining an auditor (the first anniversary of hotel operations). The hotel owner-operator shall require 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 Executive Director within 6 months after the conclusion of each one-year period of hotel operations. After five years, the one-year audit period may be extended to two years upon written approval of the Executive Director. The Executive Director may grant such approval if each of the previous audits revealed compliance with the conditions.

F. If the hotel owner and hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally liable for violations of the terms and conditions of this permit.

**G. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT** [*insert number*], the applicant shall submit for review and written approval of the Executive Director, a plan specifying how the applicant will implement the requirements of this condition. The plan must include, at a minimum, the sale, deed and CC&R documents that will be used to satisfy the permit conditions and the rental program agreement entered into between individual unit owners and the hotel owner-operator. The plan must demonstrate that the applicant has established mechanisms that provide the applicant or any successor-in-interest as hotel owner-operator adequate legal authority to implement the requirements of this condition. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions of this permit including deeds and CC&R's shall be reported to the Executive Director. No change to the agreement and subsequent documents pertaining to compliance with and enforcement of the terms and conditions of this permit including deeds and CC&R's shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

**Low Cost Visitor Accommodations in CA's Coastal Counties**

<b>Low Cost Visitor Accommodation (LCVA)</b>	<b>Total LCVAs</b>	<b>County Population</b>	<b>Median Household Income (2003)</b>
<b>Del Norte County</b>	<b>1</b>	<b>28,705</b>	<b>\$29,901</b>
Jedediah Smith Redwoods State Park			
<b>Humboldt County</b>	<b>4</b>	<b>128,376</b>	<b>\$32,123</b>
Arcata Hostel			
KOA Campground			
Dead Mouse Marsh			
Humboldt County Fairgrounds Campground			
<b>Mendocino County</b>	<b>15</b>	<b>88,161</b>	<b>\$35,808</b>
Sinkyone Wilderness State Park			
Westport-Union Landing State Beach			
Wages Creek Beach			
MacKerricher State Park			
Jug Handle State Reserve			
Jackson State Forest			
Caspar Headlands State Beach			
Russian Gulch State Park (Mendocino County)			
Mendocino Headlands State Park			
Van Damme State Park			
Albion Flat/Schooner's Landing Campground			
Navarro River Redwoods State Park			
Paul Dimmick Wayside Campground			
Manchester State Beach			
Fish Rock Beach			
<b>Sonoma County</b>	<b>15</b>	<b>466,477</b>	<b>\$52,034</b>
Gualala Point Regional Park			
Salt Point State Park			
Ocean Cove Reserve			
Stillwater Cove Regional Park (Sonoma County)			
Timber Cove Campground and Boat Landing			
Fort Ross Reef Campground			
Rivers End			
Willow Creek/Pomo Canyon Campground			
Casini Ranch Family Campground			
Wright's Beach			
Bodega Dunes Campground			
Westside Regional Park			
Porto Bodega			
Doran Beach Regional Park			
Duncans Mills Camping Club			

<b>Marin County</b>	<b>11</b>	<b>246,960</b>	<b>\$66,616</b>
Point Reyes National Seashore			
Point Reyes Hostel			
Samuel P. Taylor State Park			
Steep Ravine Beach			
Mount Tamalpais State Park			
Marin Headlands			
Tennessee Valley			
Marin Headlands - Golden Gate Hostel			
YMCA Point Bonita Center			
Kirby Cove			
Angel Island State Park			
<b>San Francisco County</b>	<b>2</b>	<b>739,426</b>	<b>\$51,302</b>
San Francisco International Hostel			
Presidio of San Francisco			
<b>San Mateo County</b>	<b>3</b>	<b>699,610</b>	<b>\$64,998</b>
Montara Lighthouse Hostel			
East Breakwater			
Francis Beach			
Pelican Point R.V. Park (San Mateo County)			
Butano State Park			
<b>Santa Cruz County</b>	<b>6</b>	<b>249,666</b>	<b>\$50,890</b>
Big Basin Redwoods State Park			
Santa Cruz Hostel			
New Brighton State Beach			
Sea Cliff State Beach and Pier			
Manresa State Beach			
Sunset State Beach			
<b>Monterey County</b>	<b>13</b>	<b>412,104</b>	<b>\$45,542</b>
Marina Dunes R.V. Park			
Asilomar State Beach Conference Center			
Andrew Molera State Park			
Big Sur Campground			
Riverside Campground			
Fernwood Park Campground			
Pfeiffer Big Sur State Park			
Ventana wilderness			
Julia Pfeiffer Burns State Park			
Limekiln State Beach			
Kirk Creek Campground			
Plaskett Creek Campground			
Ventana Campground			

<b>San Luis Obispo County</b>	<b>9</b>	<b>255,478</b>	<b>\$44,220</b>
San Simeon State Beach			
Cambria Hostel/Bridge Street Inn			
Morro Strand State Beach (North)			
Morro Bay State Park			
Montana de Oro State Park			
Pismo Coast Village R.V. Resort			
Pismo State Beach North Beach Campground			
Oceano Memorial County Park			
Oceano Dunes Vehicular Recreation Area			
<b>Santa Barbara County</b>	<b>11</b>	<b>400,762</b>	<b>\$45,713</b>
Jalama Beach County Park			
Gaviota State Park			
Refugio State Beach			
El Capitan State Beach			
El Capitan Ranch Park			
Santa Barbara International Tourist Hostel			
Carpinteria State Beach			
San Miguel Island			
Santa Rosa Island			
Santa Cruz Island			
Santa Barbara Island			
<b>Ventura County</b>	<b>10</b>	<b>796,106</b>	<b>\$57,864</b>
Anacapa Island			
Hobson County Park			
Rincon Parkway North			
Faria County Park			
Rincon Parkway South			
Emma Wood State Beach			
McGrath State Beach			
La Jolla Valley Natural Preserve (Ventura County)			
Thornhill Broome Beach			
Circle X Ranch			
<b>Los Angeles County</b>	<b>14</b>	<b>9,935,475</b>	<b>\$41,486</b>
Leo Carrillo State Beach			
Malibu Beach R.V. Park			
Hostelling International Los Angeles			
Venice Beach Hostel			
Hostel California			
Dockweiler State Beach			
Los Angeles Surf City Hostel			
San Pedro Hostel International			
Hermit's Gulch Campground			
Black Jack Campground			

Two Harbors Campground (Little Fisherman's Cove Campground)			
Parson's Landing Campground			
Marina Hostel			
Venice Beach Cotel			
<b>Orange County</b>	<b>6</b>	<b>2,988,072</b>	<b>\$55,861</b>
Bolsa Chica State Beach			
Colonial Inn Hostel			
Huntington City Beach			
Doheny State Beach			
San Clemente State Beach			
Newport Dunes Resort			
Newport Channel Inn			
Little Inn by the Bay			
<b>San Diego County</b>	<b>12</b>	<b>2,933,462</b>	<b>\$48,634</b>
San Onofre State Beach North			
San Onofre State Beach South			
Camp Pendleton Beach Access			
Harbor Beach (Oceanside)			
South Carlsbad State Beach			
San Elijo State Beach			
Mission Beach Hostel			
Fiesta Island			
De Anza Cove			
Elliott (Point Loma) International Youth Hostel			
San Diego Hostel International			
Silver Strand State Beach (Coronado)			
<b>CA's Coastal Counties</b>	<b>134</b>	<b>20,340,135</b>	<b>\$48,199</b>
<b>STATEWIDE</b>		<b>36,132,147</b>	<b>\$48,440</b>

S. D. MALKIN PROPERTIES. INC.

835 Fifth Avenue, Suite 401

San Diego, California 92101

(619) 239-6716

FAX (619) 239-2444

August 4, 2006

Meg Caldwell, Chair  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

SUBJECT: Hotel Condominium Workshop

Dear Madam Chair:

S. D. Malkin Properties is a developer of mixed-use projects in the U.S. and Europe. We have operated in Southern California since 1989 and have offices in San Diego. Our California projects include the award-winning Hilton Gaslamp Quarter in downtown San Diego and Two Rodeo Drive in Beverly Hills. We are currently working in conjunction with the City of Oceanside to build an integrated resort on private property acquired by the Oceanside Redevelopment Agency to help create a focal point for their downtown redevelopment.

Our firm wanted to offer comments to the Coastal Commission (hereinafter "Commission") in its consideration of the role of hotel condominiums, fractionals and timeshares in the Coastal Zone. Because we believe that these financing approaches provide greater access to the coast than would otherwise be available, we write to express our view.

First and foremost, it is important to understand that, except for a limited number of days per year, a condominium hotel or fractional hotel functions as a transient hotel. We are not advocating that CCC allow fractional **instead** of condo-hotel, but rather **in addition** to condo-hotel as a limited % of the total resort units.

The biggest benefit to these new approaches is that it allows hotels to be financed, and thereby respond to the ever-growing visitor-serving needs. For the last several years, a hotel/resort financed without a "for sale" residential, timeshare, fractional or condo-hotel component is the unusual exception.

There are about 150 fractional unit resorts in the United States. The concept was introduced in the early 1990's (initially at Ski resorts) and has grown exponentially in the

last 5 years. In California there are successful fractional projects in markets such as Lake Tahoe, Mammoth, Napa Valley, Big Bear Lake and La Quinta. In San Diego, Four Seasons and Rancho Valencia have fractional components. In all cases these developments provide considerable visitor choices.

Terms can often be confusing or lend the wrong impression to a development. We are, therefore, offering our working understanding of the various approaches for the Commission's consideration.

1. A fractional unit is the same as timeshare from a legal perspective. It is really an offshoot of timeshare that differs in the following ways:
  - \* Timeshare is sold in 1 week intervals; Fractional is typically sold in 2 to 13 week intervals (varies widely) with 6 weeks as the average interval. [In the coastal zone it might make sense to restrict each owner to no more than 60 days total, 30 consecutive].
  - \* Timeshares generally require great scale-- a larger number of units to justify a major sales and marketing operation since each unit must be sold 52 times in weekly intervals.
  - \* Fractional projects usually need a small unit count with a higher price per unit. The average number of units in a Fractional Project is in the 40 to 50 unit range. Therefore, fractional can be a small appendage to a larger transient hotel and yet make a considerable economic difference.
  - \* It is typical in timeshare for sales and marketing to cost 50% of the timeshare purchase price. Since there are fewer fractional units to be sold the sales and marketing is usually below 20% of the Fractional Unit sales price. For appropriate sites [usually better locations], this makes fractional more economically powerful per square foot than timeshares.
  - \* Fractionals tend to offer a higher service level than timeshares.
  - \* Fractionals (2 to 3 bedroom) tend to be larger units than timeshare (1 to 2 bedroom).
  - \* There are markets with large timeshare projects. The availability of fractional lets a hotel developer have another product that can be differentiated from timeshare.
  - \* Fractionals tend to work best when they are sold as part of a better quality resort. Many major hotel companies are in the fractional market including Ritz Carlton, Four Seasons, Starwood and Fairmont.



2. Both Fractional and Timeshare have a few common characteristics that make them important uses in the coastal zone:

\* Both can be rented to the public when the interval owner is not staying in the unit. Timeshare and fractional units are the type of accommodations favored by larger families who need a kitchen and multiple bedrooms and would otherwise need to rent two or three hotel rooms and eat all their meals in restaurants, which is not cost effective. I have 4 children and often bring my Mother or in-laws with us on vacation and we always need these type of accommodations. They are often difficult to find in vacation areas. Having a unit with a kitchen also helps families with special diets, such as diabetics, vegans, Jews who keep Kosher and Muslims who observe Hallal laws.

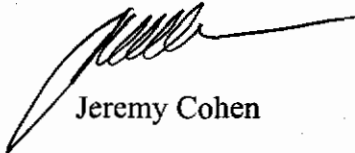
\* Both fractional and timeshare units can be exchanged with other resorts, so there are a wide variety of guests.

3. Our conclusion:

\* The CCC may logically restrict stand alone Fractional projects on land intended for transient hotels, but should allow a "Fractional Component" as part of a larger resort. If up to 50% of the total resort keys were allowed to be a mix of fractional and/or condo-hotel, the Commission would experience a greater number and variety of hotels in the Coastal Zone.

We hope that our comments are helpful to the Commission. We remain available as necessary to respond to questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Cohen', with a long horizontal flourish extending to the right.

Jeremy Cohen

## A beach building boom

As seaside condo hotels sprout, impact on tourists is a concern

By Terry Rodgers

SAN DIEGO UNION-TRIBUNE STAFF WRITER

August 7, 2006

From the cliffs of Big Sur to the sands of Coronado, the coast remains California's top tourist destination.

But will a proliferation of seaside condo hotels – the hot trend in luxury vacation real estate – make the Golden State's pricey oceanfront even more exclusive?

Condo hotels are numerous in Florida, New York and Hawaii. But the concept is new to California, especially along San Diego County's coast.

Hotel developers like the hybrid ventures because they can quickly raise millions of dollars in construction capital by selling individual rooms and suites as part-time vacation condos. Buyers can use the units for up to 90 days a year, with a maximum of 25 days each visit.

The condos come with resort amenities and, when vacant, can be rented to hotel guests. Owners share in the rental revenue with the hotel operator, which manages the site.

The seaside condo-hotel boom snuck up on California's Coastal Commission, which has a mandate under the 1976 Coastal Act to keep the coast accessible to everyone. The agency approved a smattering of projects before recognizing their potential impact.

"The truth is, it's the wild, wild West out there," said Patrick Kruer of Rancho Santa Fe, the sole real estate developer on the 12-member Coastal Commission. "There's been no history of this type of land use along the coast that allows us to see what problems or opportunities it may provide."

Commissioners now want to assess whether condo hotels will reduce the number of regular hotel rooms available to tourists. They're also concerned that a spate of luxury condo hotels will put room rates beyond the reach of budget-sensitive travelers.

At a public hearing scheduled for Wednesday in San Pedro, the agency will consider new standards for seaside condo hotels. Although commissioners view the fact-finding meeting as a first step, they've already talked about a cap on the number of owner-occupied units for future condo hotels.

The commissioners will evaluate whether condo hotels are appropriate in coastline zones designated as "visitor serving" commercial areas. In these zones, motels, hotels, hostels and campgrounds have priority over residential projects.

The policy could be undermined if a condo hotel is unsuccessful and owners move to convert the property to 100 percent residential condos.



JOHN GIBBINS / Union-Tribune  
Patrick Kruer, a member of the California Coastal Commission, walked at the site of a proposed condo-hotel project on the bluffs above south Ponto Beach in Encinitas last month. It is among many such projects under consideration along San Diego County's coastline.



HOWARD LIPIN / Union-Tribune  
Prices for condo-hotel units at the Hotel del Coronado are expected to range from \$780,000 to \$2.5 million.

"I think what the commission wants is a better understanding of the problems and the types of conditions we should attach to future permit approvals," said Peter Douglas, the agency's executive director.

"We're very concerned that this trend will result in an overall reduction of traditional hotel rooms for the tourist."

### High local interest

Nowhere is the condo-hotel trend more evident than in San Diego County.

In Encinitas, KSL Resorts plans to build the city's first oceanfront resort near Batiquitos Lagoon with 97 of the 126 rooms as condo-hotel units. Oceanside is considering a similar project near its municipal pier. A condo-hotel proposal is being contemplated in Solana Beach.

Owners of the Seacoast Inn, the only beachfront hotel in Imperial Beach, are planning to rebuild it as a 78-unit condo hotel. In downtown San Diego, developer Doug Manchester is considering a condo hotel as part of his proposal to replace the bayfront Navy Broadway Complex.

The condo-hotel business model is a financial godsend for developers of new hotels, who have seen construction costs rise by 30 percent to 50 percent in the past two years, said Robert Rauch, a hotel owner and part-time hospitality professor at San Diego State University. By selling hotel units as condos, developers can dramatically lower the amount they need to borrow to finance a high-end project.

"There's no doubt it creates leverage," Rauch said. "It's the only way to get a loan without huge amounts of equity."

Recently completed condo hotels overlooking San Diego Bay and at the La Costa Resort & Spa in Carlsbad have experienced soaring sales. The La Costa project is selling units for \$800,000 to \$1.2 million apiece.

At the Hotel del Coronado, KSL Resorts is building 11 beachfront cottages that will be sold as 37 ultra-luxury condo-hotel units. Prices are expected to range from \$780,000 for a one-bedroom studio to \$2.5 million for a 1,800-square-foot suite.

When the cottage units are not occupied by their owners, Hotel del Coronado will rent them on a nightly basis. Rental rates haven't been announced, but those at the existing hotel range from \$265 to \$1,700 a night.

"We are winding up with condo hotels that the average person can't go to," said Sara Wan, a coastal commissioner from Malibu. "The average family can't afford \$400 a night."

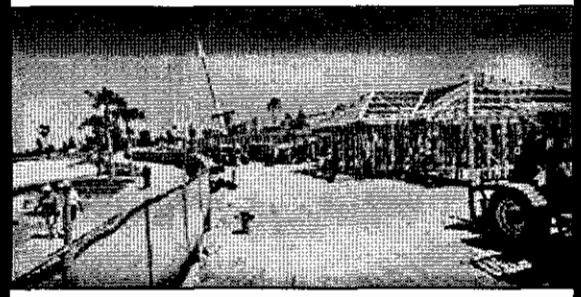
Supporters of coastal condo hotels maintain that consumers can still choose from a spectrum of traditional low-to high-end lodgings.

In addition, some experts in the hospitality industry argue that condo hotels will ultimately boost public access to the shoreline because their attractive financing method will foster the development of more hotels along the coast.

The commission need not worry that condo-hotel owners will monopolize their units during peak periods for tourism, Rauch said.

"Condo units typically go into the rental pool approximately 335 days a year," he said. "In practice, a hotel condo is 90 percent a hotel operation."

### Regulation history



HOWARD LIPIN / Union-Tribune  
KSL Resorts is building 11 beachfront cottages at the Hotel del Coronado that will be sold as 37 ultra-luxury condo-hotel units. When the units are not occupied by their owners, Hotel del Coronado will rent them on a nightly basis.

James R. Butler Jr., a Los Angeles attorney who specializes in condo-hotel projects, said state and local governments should resist the impulse to regulate them.

"We think the Coastal Commission should let the marketplace sort this out and not adopt inflexible and unnecessary rules," Butler said.

In the past, the state Legislature has rebuffed the agency's attempts to prevent gentrification of the coastline.

During the late 1970s, for example, state lawmakers thwarted the commission's efforts to force developers of seaside hotels to offer some rooms at affordable rates. The agency tried to make it a condition for getting a building permit.

Instead, the commission has required builders of upscale resorts to pay a mitigation fee that supports development of low-cost accommodations in the coastal zone.

KSL Resorts agreed to contribute \$220,490 toward a youth hostel or state campground before getting a green light from the agency for its proposed resort in Encinitas, where 75 percent of the resort's units will be sold as hotel condos.

Kruer, the commissioner from Rancho Santa Fe, said the agency isn't trying to over-regulate the condo-hotel industry.

"We're trying to build in appropriate restrictions so the hotel can continue to function," he said. "The operator and the developer need to have some skin in the game – equity in the project – to ensure it continues to operate as a hotel. A hotel is a business. It can't be run by a homeowners association."

*Staff writer Janine Zuniga contributed to this report.*

---

## Harbor Island time-share plan may be test case

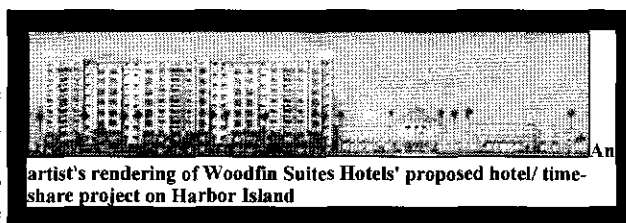
By Maureen Magee  
SaAN DIEGO UNION-TRIBUNE STAFF WRITER  
August 7, 2006

At first glance, the latest hotel planned for Harbor Island merely adds to the growing list of high-end lodging for tourists eager to take in San Diego's stunning coastline.

There would be a pool, a full-service spa, restaurants, well-appointed rooms with million-dollar views and all the amenities vacationers need. And the locale – a small stretch of San Diego's bayfront – provides access to a harbor, ocean and everything they offer.

But this is more than just another pretty hotel in paradise.

The proposal from Woodfin Suites Hotels LLC would be the first of its kind on California tidelands, once-submerged public property filled in the name of progress and for the people's benefit. In addition to 100 traditional hotel suites, 40 privately owned time-share units would exist within the eight-story resort.



Proponents see the inclusion of time shares as a way to help finance new hotels when construction costs are skyrocketing and securing loans is increasingly difficult. But critics argue allowing this hotel-hybrid on Harbor Island would spawn a development trend that further threatens access to the waterfront and turns the publicly owned real estate into a private and exclusive destination.

The state has long permitted development on public tidelands in the way of hotels, restaurants, parks and other attractions that draw people to the waterfront. Private residences of any kind, however, have traditionally been banned.

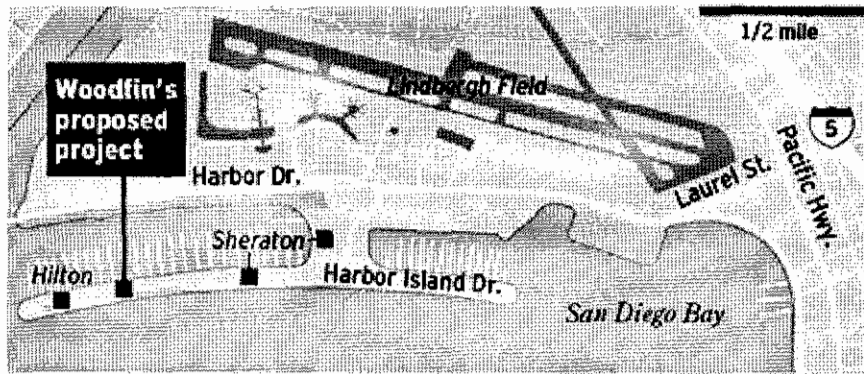
And now the question arises, do time shares encourage or exclude the public from enjoying the coast?

A 10-year-old ruling from the state Attorney General's Office concluded that time shares on tidelands are permissible under certain circumstances. Even so, the issue remains murky and the state has kept time shares at bay since the 1996 opinion.

The San Diego Unified Port District is determined to use the Woodfin project as a test case. Elsewhere in California, eager developers, trustees of the tidelands and environmentalists are watching this case closely.

The Port Commission pushed the project forward over objections from the state's two main regulators of the coastline, the State Lands Commission and the California Coastal Commission.

The State Lands Commission, which watches over development of tidelands and enforces the Public Trust Doctrine designed to protect them, disagrees with the 1996 ruling by then-Attorney General Dan Lundgren, said Executive Director Paul Thayer.



SOURCE: San Diego Unified Port District

UNION-TRIBUNE

"The commission is very concerned about access to the coastline," Thayer said. "Time shares are privately owned and they exclude the general public from being able to use them."

In a July 11 letter to the San Diego Unified Port Commission, Jennifer Lucchesi, staff counsel for the State Lands Commission, wrote that time-share developments "do not enhance the general public's enjoyment of trust lands, nor is a time-share development necessary or incidental to accomplish or promote such uses."

The letter went on to state that "the primary rationale leading to the promotion of time-share development is the desire of private developers to reduce their economic risk and maximize their financial return."

## Hotel economics

One of the prime responsibilities of the Port District is to administer the 4,422 acres of public tidelands along San Diego Bay that stretch from Imperial Beach to Shelter Island.

Only one San Diego port commissioner – Chairman Rocky Spane – objected to the Woodfin project out of concern that this kind of coastal development will price out the average visitor.

"What we are doing is selling off the public land so Woodfin can make a profit and I'm not sure that's our job," Spane told his colleagues at a meeting July 11. "We are taking a very big philosophical step in going against our bosses and I'm not seeing the payoff."

The proposed hotel would be built on about 4 acres along Harbor Island Drive, where the dated but well-kept Marina Cortez complex now sits – between a nearby Hilton and Sheraton. Woodfin would also construct a two-story marina services building, about 400 parking spaces, a public promenade, landscaping and a sea wall.

The Port District would lease, not sell, the property to Woodfin, as it does to other developers and tenants along San Diego Bay.

The developer initially agreed to build on Harbor Island with or without the time shares. But Woodfin has since backpedaled on plans for a traditional hotel, saying the company would likely require financial support from the Port.

Ultimately, the Port Commission voted to amend its master plan to allow Woodfin to develop a hotel where up to 40 percent of the rooms could be sold as time shares. Commissioners also certified the environmental impact report for the development.

Because interest in time shares is growing, some commissioners said it was time to get a firm decision from the state on whether or not they are allowed on the tidelands the commission administers.

"I'm not sure this is the best public policy, but I figure let's run it up the flagpole because we have many developers lined up that want time shares," Commissioner Steve Cushman said before voting in favor of the proposal.

### **Decision awaited**

In the next two or three months, the Coastal Commission must approve or deny the the port's master plan amendment application and determine whether the time-share element enhances public access to the coast. It could, however, approve the development as a traditional hotel and rule out any privately owned rooms.

The Coastal Commission staff shares some of the same concerns raised by the State Lands Commission, said Diana Lilly, a Coastal Commission planner. Time shares on tidelands, she said, appear to violate the 1976 Coastal Act.

"Nobody knows what's going to happen in the long term," Lilly said. "What if, over time, they become more and more residential?"

The State Lands Commission also will have a say about the project and will likely hold a hearing on the matter. If the Coastal Commission or State Lands Commission rejects the time-share project, the only recourse would be in court.

Woodfin CEO Sam Hardage shrugged off the criticism, saying his project will be a benefit to the community.

"Time shares are very popular with people who want to visit San Diego and stay awhile," Hardage said. "This opens up the tidelands to another population. To say (the time-share proposal) is less inclusive is not reasonable, not rational and I don't think it reflects the facts."

Mark Massara, a lawyer and director of coastal programs for the Sierra Club, said public tidelands have already been abused with the development of pricey hotels. He said adding privately owned time shares to the mix, "even for San Diego," would be a new low.

Posted date: 8/7/2006

## Proposed Condotel On Public Land May Face Rough Seas

**\$30M Hotel, Time Shares Could Get Harbor Island Address**

By CONNIE LEWIS

San Diego Business Journal Staff

The San Diego Unified Port District has given its nod for a proposed hotel at a Harbor Island marina that would contain a mix of time shares.

However, the local agency faces an uphill battle with the state Lands Commission, which has oversight on the public waterfront.

The way things stand, state law dictates that port controlled tidelands are to be used for marine businesses. While cargo enterprises, cruise line terminals, boat manufacturing and repair companies come under that heading, hotels, restaurants and stores also are allowed. Private dwellings, including apartment complexes and individual homes, however, are not.

According to the state Lands Commission, hotel time shares, as well as equity share units or condotels, which make hotel owners or hotel-room owners out of average investors, are considered residential property, since the general public is excluded from using them at certain times.

But the Port District's board of commissioners says the state law is vague.

Since high construction costs and a lack of sites on which to develop make it difficult for a hotel company, particularly an independent, to build on San Diego's waterfront without the benefit of financing from selling time shares, or condotels, the board wants the right to approve such proposals, said Port Commissioner Robert "Rocky" Valderrama. He heads the seven-member commission's Real Estate Committee.

### Testing The Waters

That's where Sam Hardage comes in, said Dan Wilkins, the port agency's executive vice president.

Hardage, who heads San Diego-based Woodfin Suite Hotels, a hotel management, franchise and development company, said he wouldn't venture a guess as to how the state agencies would vote. But he thinks the public would go for it.

"I think time shares are a good way to open up the waterfront in California to people who can't afford the high price of waterfront property right now," Hardage said. "It's pretty much closed to all except the wealthiest, and time shares allow the average citizen to be able to have a little opportunity to be on the waterfront. And I think we should be doing what people in the market want."

Wilkins said Hardage's proposal of a 140-unit hotel, including 40 time shares, at Cortez Marina on Harbor Island Drive, "is a means of finding out what is and isn't allowable."

Hardage estimated that it would cost \$30 million to build the proposed hotel, approved by the Port District late last month, on about 100,000 square feet of space at the marina.

First, the Port District must amend its master development plan to allow time shares. But that's where it gets rough, since such a move requires the blessing of both the state Lands Commission and the California Coastal Commission.

## A stand in the sand

**A movie star's former estate is the focus of a fight to keep California's coast open to the public.**

By Laura Mecoy -- Sacramento Bee Los Angeles Bureau  
Published 12:01 am PDT Saturday, July 29, 2006

**SANTA MONICA** -- The beach north of the Santa Monica Pier was once such an exclusive playground for America's elite that it became known as the Gold Coast.

Newspaper publisher William Randolph Hearst, his mistress, Marion Davies, and silent-screen star Norma Talmadge were among the rich and famous who built opulent estates here in the 1920s and 1930s.

Today, any Hollywood wannabe or everyday beachgoer can frolic in the surf or ride a bicycle on the Gold Coast.

Yet activists say wealthy landowners are trying to limit access to these storied sands by suing to stop a project that would restore Davies' former estate and open its pool, tennis courts and other facilities to the public.

The plan's supporters -- relying on a little-known provision of the state's Coastal Act that calls for affordable beachfront facilities for the public -- contend all Californians should have access to the same amenities at a public beach club that the wealthy enjoy at nearby private clubs.

For coastal access advocates, the Santa Monica project is a potential beachhead in long-running battle to keep the state's 1,100-mile coastline open and facilities along it affordable.

After years of fighting well-heeled celebrities to open pathways to the beach, access advocates say the Santa Monica beach club represents a rare opportunity for economical accommodations along a coastline where most hotels and other facilities are out of the reach of many Californians.

"The \$400-a-night hotel rooms are everywhere," said Mark Massara, California Sierra Club Coastal Programs director. "The new campgrounds are nowhere."

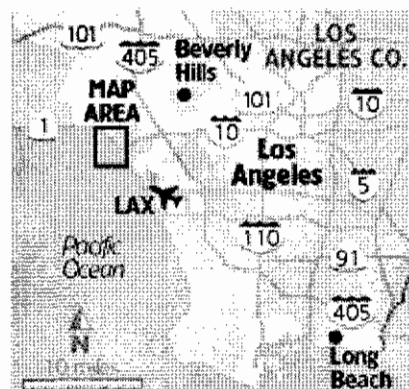
Disputes over access to the beach and lower-cost oceanfront facilities date back to 1972, when California voters approved the Coastal Conservation Initiative that created the Coastal Commission and sought to open the state's shoreline to the public.

The Coastal Act requires public paths to the beach and along the shore in new developments and some other projects.

This provision has triggered the most publicity because coastal property owners blocking those pathways are often among the state's wealthiest.

In Malibu, for instance, music mogul David Geffen generated headlines and jokes in "Doonesbury" when he refused to open a path to the shore alongside his Carbon Beach compound. He relented last year, and a local group opened the passageway.

Celebrities Goldie Hawn, Steven Spielberg and Dustin Hoffman were among the Malibu residents criticized for hiring security guards to shoo away beachgoers at Broad Beach and dredging a sand berm last year that



Map data: ESRI, TeleAtlas  
Sacramento Bee/Nathaniel Levine



temporarily blocked access to the shore.

Attracting less attention is the part of the Coastal Act's access provisions that says "lower-cost visitor and recreational facilities shall be protected, encouraged and, where feasible, provided."

The Coastal Commission and other state agencies have tried to ensure the public's access to these facilities. But coastal access advocates said the job has become increasingly difficult as coastal prices soared.

Almost all the large coastal proposals in recent years sought high-end luxury resorts, golf courses and other facilities serving the wealthy.

In exchange for development permits, the Coastal Commission often requires luxury resort developers to donate land or money for campgrounds and other affordable accommodations.

The California State Parks Department also scuttled plans for an expensive resort at Orange County's Crystal Cove because of the public outcry over the high cost of the proposed rooms.

Instead, the department restored 22 of 46 dilapidated Depression-era beach cottages on the cove and made 13 of them available to the public at below-market prices. The prices range from \$30 per night for a hostel-style room to \$165 per night for a two-bedroom cottage.

The cottages opened June 26 to such demand that they're booked within 10 minutes of becoming available at the first of each month. And that's for reservations seven months in the future.

"That just goes to show the depth of need for facilities of this kind because there are very, very few along the coast where you can go that are even reasonably priced," said Susan Jordan, California Coastal Protection Network director.

Coastal campgrounds are booked months in advance in the summer, and even modest beach motels are often expensive.

"We have an exploding population and an exploding inventory of luxury accommodations and nothing else," Massara said.

The Sierra Club coastal programs director said a new trend in coastal development -- hotel condominiums -- would deny even wealthy overnight guests access to some hotel rooms.

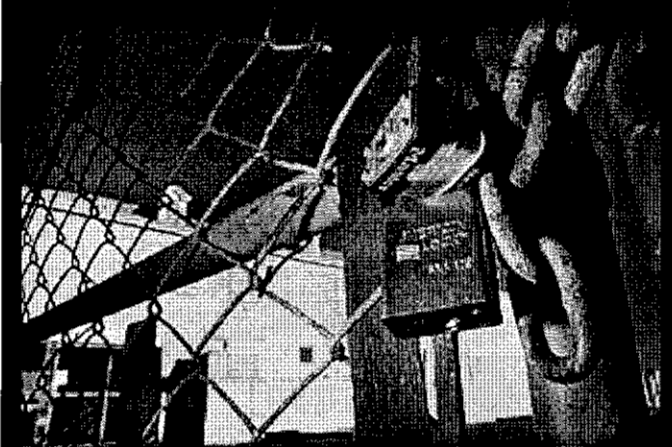
Developers of these projects sell part of their rooms as condominiums, giving the owners exclusive use of those rooms during part of the year. The hotel condominiums have created such controversy that the Coastal Commission has



A family enjoys a picnic at a cottage at Crystal Cove State Park in Orange County earlier this month. The state restored the cottages, and rents them out.



Coastal access advocates hope Marion Davies' Santa Monica Beach estate, top, will also be opened to the public.



The Davies' estate stays locked until the fate of a plan to make it public is decided.  
Sacramento Bee/Brian Baer

scheduled a public workshop in August on the subject.

Against this backdrop, coastal access advocates call the Santa Monica project a once-in-a-lifetime opportunity to create an affordable place for families and to preserve a piece of history.

The club would have a pool, paddle tennis courts, lockers, a snack bar and meeting rooms available for free or at affordable rates. It would also preserve the seven-bedroom guesthouse of the grand estate Hearst built in the 1920s and gave to his mistress, Davies. Julia Morgan, the architect behind the Hearst Castle at San Simeon, designed the buildings.

"It was the grandest house on the Gold Coast," said Hollywood historian Marc Wanamaker. "Hearst had been collecting for San Simeon ... and all the interiors were real antiques from English manors."

Later owners tore down portions of the estate. Only the original pool, the guesthouse and a sea wall remain. The 1994 Northridge earthquake caused such severe damage that almost all the property was red-tagged.

The Annenberg Foundation gave life to the city's plans to turn the site into a beach club when it pledged nearly \$30 million to the project last year.

Santa Monica officials made concessions to the neighbors, including round-the-clock security and limited hours of operation at the club.

Chuck Levy, the Palisades Beach Property Owners Association president, said homeowners sued when they realized they couldn't legally enforce the city's promises.

The homeowners have offered to drop the lawsuit if they get a binding agreement from the city, and the city requires a stoplight at the club's entrance.

"Go ahead and have a public club," Levy said. "But we live here, and we want to make sure some things are required in case the city pulls the rug out and says it can change (the operations) whenever it wants."

A spokesman for the California Department of Transportation, Dave White, said the agency has already agreed to the stoplight, although details remain to be worked out about its operation.

But Santa Monica City Councilman Bobby Shriver said the city wouldn't give the homeowners a legally binding agreement because it would set a precedent for future deals with residents.

The club's supporters claim the homeowners' demands are a smoke screen aimed at delaying the project long enough to drive up costs and kill it.

"Everyone knows there is a ticking clock on this project," said Joel Brand, chairman of the organization backing the beach club, Friends of 415 PCH.

He recently staged an afternoon rally on the beach outside the fenced-off Davies estate.

Youngsters played in the mud. Professional sandcastle builders created a 7-foot castle, and activists and neighbors shared pizza and hot dogs.

Ann Kashuk, a retired homemaker who owns a condominium next to the site, came to show her support. She said she shares many of the same concerns as the homeowners who sued. But she didn't join the lawsuit because she believes the city will fulfill its promises.

Surveying the rally's party-like atmosphere, Kashuk said she looks forward to sharing the Gold Coast with others.

"The club would be such an improvement for the beach and for the residents of Santa Monica," she said. "Hopefully, it will be a go ... and this beautiful beach can be open to more."