

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370

# W 12a

## Addendum

July 7, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item W12a, City of Oceanside LCPA 2-08 (Downtown "D" District Resubmittal)**, for the Commission Meeting of July 9-11, 2008.

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Staff recommends the following changes be made to the above-referenced staff report: Additions are shown in underline and omitted language is shown in ~~strike through~~.

1. Modify Page 2, the last (5th) paragraph as follows:

~~The City letter, dated June 25, 2008, addresses more specific implementation measures for the Land Use Plan policy that requires maintenance of a minimum number of lower cost overnight accommodations in the coastal zone, as an alternative to the in-lieu fee. . The City's letter has not been addressed in this staff recommendation and will be addressed in an addendum to this staff report prior to the hearing.~~

The City submitted a letter dated June 25, 2008 which addresses the existing LUP policy that protects a minimum of 375 lower cost hotel/motel rooms in the coastal zone and the City's current stock of lower cost units in the coastal zone. The letter indicates the City is not supportive of the staff recommended in-lieu fee that would apply to 50% of demolished, unreplaced lower-cost units if the replacement units are high-cost overnight accommodations.

The City's letter identifies 12 existing lower-cost overnight accommodations within the coastal zone that provide a total of 516 units. Of the twelve existing motels, the City indicates 4 (providing 70 units total) are outside the Redevelopment Area on properties zoned General Commercial. The subject LCP Amendment only applies to the City's Redevelopment Area, thus, these four motels would not be subject to the provisions of this LCP Amendemnt, including the in-lieu fee. However, those units would be subject to the LUP policy that requires the City to maintain a minimum 375 lower-cost units in the coastal zone.



The City indicates of the remaining eight lower-cost motels in the coastal zone, two are on properties greater than two acres in size. One is the existing Motel 6 providing 106 units currently and the subject of a pending permit to add 17 units. Such redevelopment is supported by the policies of the Coastal Act and the City's LUP and would not trigger application of the in-lieu fee, as recommended by staff.

The second is the Guesthouse Inn which currently provides 80 lower cost units and is the subject of a pending permit to demolish and replace the motel with rooms the City indicates will most likely be in the moderate range. As such, this replacement project would also not be subject to the in-lieu fee as currently recommended by staff. Because the in-lieu fee would only address high-cost redevelopment projects, if any potential replacement units were 100% high-cost, the fee would apply to 40 units for a total of \$1.2 million to be used for actual construction of lower-cost overnight accommodations such as a hostel, cabins, campgrounds, etc. in the coastal zone.

The City indicates the remaining 6 motels (providing 260 units total) are on lots less than two acres in size which will make it more difficult for them to demolish and rebuild while meeting current standards for parking. The City argues these units are surrounded by existing development and are zoned commercial or visitor-serving commercial. They have low room counts due to their site sizes, and "the size constraints limit their ability to provide the amenity packages that would generate price points more reflective of higher priced motels and secure branded flag franchises". It is not entirely clear, but the City seems to be suggesting these sites could only redevelop as low or moderate cost accommodations. If that is the case, the in-lieu fee would not apply and the LUP policy which requires maintenance of at least 375 lower cost units would be implemented.

The City has suggested several other measures that could be implemented to address the Commission's concerns regarding protection of the existing stock and provision of new lower-cost overnight accommodations. These include:

- When reviewing applications for all projects in which an existing motel is proposed to be demolished and re-developed in the coastal zone, if the project is rebuilt at moderate or high cost room rates, 10% of the new total room count shall be reserved for lower cost accommodations.
- For all projects that require a coastal permit, within and outside of the Redevelopment Area, a current inventory of existing hotel rooms will be attached to the City staff report which will include a new section to identify the current supply of lower cost visitor serving accommodations and address whether the proposed project affects this supply. This information would be shared with Coastal Commission staff.

Staff has not modified its recommendation to incorporate the measures suggested by the City in its June 25, 2008 letter for several reasons. First, the City has not proposed language that would incorporate these requirements into the City's LCP Implementation



Plan to apply to development requiring a coastal development permit. In addition, the 10% requirement, as suggested by the City, would only apply to redevelopment projects that involve demolition of existing lower cost units. This policy, as well as the in-lieu fee requirement as currently recommended by staff, does not address the situation where the proposal might be to demolish the lower-cost overnight accommodations and replace it with something other than a visitor overnight accommodation. That scenario would represent lost units and must be addressed by the City in its review of such proposals in order to implement the LUP policy that protects 375 lower-cost units in the coastal zone. While the 10% requirement may help protect the existing stock, it alone would not protect the existing lower-cost units the City indicates are too small for redevelopment as high-cost, if they are allowed to be demolished and not replaced. The in-lieu fee applied to only high-cost redevelopment projects also, by itself, is not sufficient to protect the existing stock. However, it would establish a fund that would be used for actual provision of lower-cost overnight accommodations, when only high-cost units are being constructed in the Redevelopment Area.

2. Modify Page 24, the third paragraph as follows:

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

3. Add the following language to page 35 as the third paragraph:

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



STATE CAPITOL  
SACRAMENTO, CA 95814  
(916) 651-4038  
(916) 446-7382 FAX

DISTRICT OFFICES  
1910 PALOMAR POINT WAY  
SUITE 105  
CARLSBAD, CA 92008  
(760) 931-2455  
(760) 931-2477 FAX

27126A PASEO ESPADA  
SUITE 1621  
SAN JUAN CAPISTRANO, CA 92675  
(949) 489-9838  
(949) 489-8354 FAX

# California State Senate

SENATOR  
**MARK WYLAND**  
THIRTY-EIGHTH SENATE DISTRICT



COMMITTEES  
VETERANS AFFAIRS  
CHAIR  
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REVIEW  
HEALTH  
GOVERNMENTAL  
ORGANIZATION

June 18, 2008

California Coastal Commission  
Attention: Chairman Pat Kruer  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

RE: City of Oceanside Local Coastal Plan Amendment

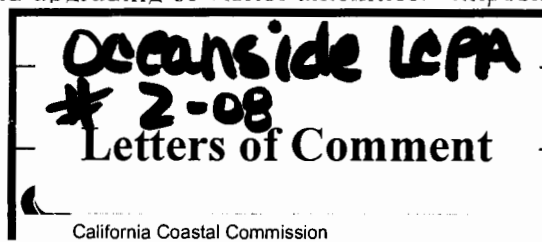
Dear Commissioners:

We respectfully request that you do not proceed with plans to impose an in-lieu fee of \$30,000 per unit for 50% of the new and remodeled overnight visitor accommodations. The City of Oceanside is currently composed of over 90% lower cost units, the largest percentage of inexpensive units in all of the cities inside the California Coastal Region.

Over the last decade, Oceanside has increased the number of reasonably priced units in the Coastal Zone. The city currently has 503 lower cost hotel and motel units, as well as 336 recreational vehicle/camping sites, thus exceeding the 375 hotel and motel units and the 220 recreational vehicle/camping sites required by Local Coastal Policy (LCP). Oceanside has an abundance of affordable accommodations and the proposed hotel project does not remove a potential site for low cost accommodations.

Furthermore, with the proposed fee, a substantial additional cost to developers of the Guest House Inn, would amount to \$1,920,000 in fees alone, rendering the project economically impractical. Such a punitive fee structure will severely discourage future businesses from redeveloping and make it financially impossible for most small business owners to improve their existing accommodations.

In addition, the imposition of the in-lieu fee will thwart Oceanside's ability to comply with LCP policy #10, which states that "the city shall continue to promote coastal tourism through the revitalization of the coastal area and upgrading of visitor amenities." Imposing this expensive fee



Received  
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California Coastal Commission  
San Diego Coast District

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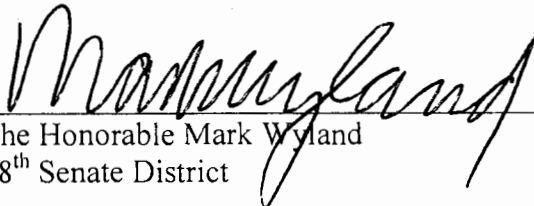


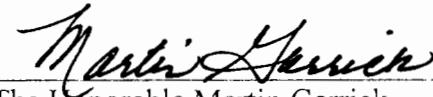
makes it highly unlikely that owners will be even remotely interested in redeveloping existing or developing new properties due to the excessive costs.

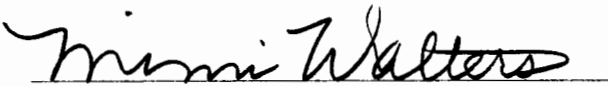
Finally, the development of high quality destination hotels along the coast is vital to the future of Oceanside and will be crippled by the proposed in-lieu fee. As state legislators representing the impacted coastal communities, we strongly urge the Coastal Commission to reconsider the imposition of the in-lieu fee on new and remodeled overnight visitor accommodations.

If you have any questions, please contact Caroline Massey, District Representative for Senator Wyland, at (760) 931-2455.

Sincerely,

  
The Honorable Mark Wyland  
38<sup>th</sup> Senate District

  
The Honorable Martin Garrick  
74<sup>th</sup> Assembly District

  
The Honorable Mimi Walters  
73<sup>rd</sup> Assembly District

cc:

Chairman Patrick Kruer  
Commissioner Steve Blank  
Commissioner Sara Wan  
Commissioner Dr. William A. Burke  
Commissioner Steve Kram  
Commissioner Mark K. Shallenberger  
Commissioner Bonnie Neely  
Commissioner Mike Reilly  
Commissioner Dave Potter  
Commissioner Khatchik Achadjian  
Commissioner Larry Clark  
Commissioner Ben Hueso  
Secretary Michael Chrisman  
Secretary Dale E. Bonner  
Mr. Paul Thager



W/2a

# Orange County Stakeholders

July 1, 2008

California Coastal Commission  
Attention: Chairman Pat Krueger  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

RE: City of Oceanside Local Coastal Plan Amendment

Dear Commissioners:

As business leaders and elected officials in Orange County, we are writing to you today regarding an item on your July 11<sup>th</sup> agenda, and respectfully requesting that you do not proceed with plans to impose an in-lieu fee of \$30,000 per unit for 50% of the new and remodeled overnight visitor accommodations.

Oceanside is a tourist destination for many of our Orange County residents. Only 15 miles from our Orange County border, many of us find this beautiful beachfront community to be a desirable vacation spot. Your plan to impose this in-lieu fee of \$30,000 per unit for 50% of the new and remodeled hotels would be a severe economical impact to the City. Furthermore, we understand that the City of Oceanside is currently composed of over 90% lower cost units, the largest percentage of inexpensive units in all of the cities inside the California Coastal Region.

Additionally, with the proposed fee, this would amount to \$1,920,000 in fees alone which is a substantial additional cost to developers of the Guest House Inn, and therefore rendering the project economically impractical. Such a punitive fee structure will severely discourage future businesses from redeveloping and make it financially impossible for most small business owners to improve their existing accommodations.

It would also appear that the imposition of the in-lieu fee will thwart Oceanside's ability to comply with the Local Coastal Policy (LCP) policy #10 which states that "the city shall continue to promote coastal tourism through the revitalization of the coastal area and upgrading of visitor amenities." Imposing this expensive fee makes it highly unlikely that owners will be even remotely interested in redeveloping existing or developing new properties due to excessive costs.

Oceanside has already increased the number of reasonably priced hotel units in the Coastal Zone over the past ten years. The city currently has 503 lower cost hotel and motel units, as well as 336 recreational vehicle/camping sites, thus exceeding the 375 hotel and motel units and the 220 recreational vehicle/camping sites required by the LCP. Oceanside has an abundance of affordable accommodations and the proposed hotel project does not remove a potential site for low cost accommodations.

200 Civic Center Dr • Mission Viejo, CA 92691 • (949) 683-8993

Oceanside  
LCPA # 2-08

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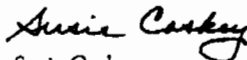


In closing, the development of high quality destination hotels along the coast is vital to the future of Oceanside and will be crippled by the proposed in-lieu fee. As representatives of the adjacent County, we strongly urge the Coastal Commission to reconsider the imposition of the in-lieu fee on new and remodeled overnight visitor accommodations.

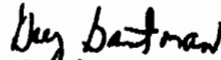
Sincerely,



Merv Anderson  
Vice President, Finance  
South Orange County  
Regional Chambers of  
Commerce



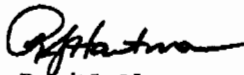
Susie Caskey  
Director  
South Orange County  
Regional Chambers of  
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Greg Gantman  
Past-President and  
VP Governmental Affairs  
Aliso Viejo Chamber of  
Commerce




Michael Grandy  
Director  
South Orange County  
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Randi Jo Hartman  
Vice Chair of  
Communications  
South Orange County  
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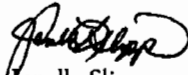
Dennis Javens  
Director  
South Orange County  
Regional Chambers of  
Commerce



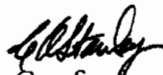
Jim Leach  
Chairman  
South Orange County  
Regional Chambers of  
Commerce



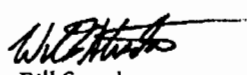
Sherric LeVan  
President  
Ladera Ranch Chamber of  
Commerce



Janelle Slipp  
President Elect  
Laguna Hills/Laguna  
Woods Chamber of  
Commerce



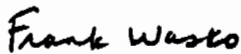
Curt Starkey  
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South Orange County  
Regional Chambers of  
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Bill Stracker  
Director  
South Orange County  
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Donna Varner  
Director  
South Orange County  
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Frank Wasko  
Director  
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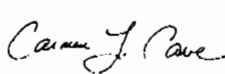
Doug Watt  
Director  
South Orange County  
Regional Chambers of  
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Jerry Zechmeister  
Vice Chair of Membership  
South Orange County  
Regional Chambers of  
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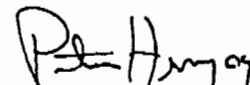
Neil Blais  
Mayor  
City of Rancho  
Santa Margarita



Carmen Cave  
Council Member  
City of Aliso Viejo

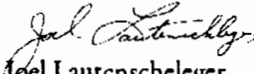


Jim Dahl  
Council Member  
City of San Clemente

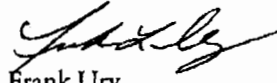


Peter Herzog  
Mayor Pro Tem  
City of Lake Forest



  
Joel Lautenschleger  
Mayor Pro Tem  
City of Laguna Hills

  
Lance MacLean  
Council Member  
City of Mission Viejo

  
Frank Ury  
Mayor Pro Tem  
City of Mission Viejo

cc: Chairman Patrick Kruer

Commissioner Steve Blank

Commissioner Sara Wan

Commissioner Dr. William A. Burke

Commissioner Steve Kram

Commissioner Mark K. Shallenberger

Commissioner Bonnie Neely

Commissioner Mike Reilly

Commissioner Dave Potter

Commissioner Khatchik Achadjian

Commissioner Larry Clark

Commissioner Ben Hueso

Secretary Michael Chrisman

Secretary Dale E. Bonner

Mr. Paul Thager



W12a

Wed 12a

July 5, 2008

California Coastal Commission  
San Diego Area  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4421  
Via FAX (619) 767-2384

RE: City of Oceanside LCP amendment No. 02-08 (Downtown "D" District) Resubmittal  
Recommendation - Support staff recommendation to approve with modifications

Dear Chairman Kruer and Commissioners:

On behalf of the Sierra Club North County Coastal Group, I urge you to support the staff recommendation of approval with modifications.

The item on the July agenda is a resubmittal of the LCPA that the commission acted on in December 2007. The commission approved the original submittal with modifications. The city has not accepted all of the modifications, leaving two areas of disagreement, the in-lieu fees associated with demolition of existing lower cost overnight accommodations and the joint and several liability of hotel owners and operators for upholding conditions associated with development.

At the December hearing, the commission voted on an amending motion that specifically addressed removing the requirement for an in-lieu fee for demolished units, which failed on a 6-6 vote. The city did not accept this result, and did not include the fee in their resubmittal.

The CA Coastal Act § 30213 states that, "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred."

It is a very bad idea to remove the in-lieu fee requirement from the LCP because it will allow the city to approve demolitions without any mitigation. The Coastal Commission will not be able to intervene, since the action will be consistent with the LCP. On the other hand, if the fee stays in the LCP, the commission would still be able to decide to waive the fee or not, based on the specifics of a particular future project or LCP amendment.

The joint and several liability is important because it helps to enforce all of the conditions that are imposed on quasi-residential uses to assure that the units are available to the public when not occupied by owners, and that restrictions on use by owners are enforced.

For these reasons, I urge you to support the staff recommendations on the City of Oceanside LCP amendment No. 02-08 (Downtown "D" District) Resubmittal to include the suggested modifications.

Sincerely,  
David Grubb, Chair  
North County Coastal Group  
Sierra Club San Diego

RECEIVED

JUL 07 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Oceanside  
LCPA# 2-08

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**CALIFORNIA COASTAL COMMISSION**

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



June 25, 2008

# W12a

**TO: COMMISSIONERS AND INTERESTED PERSONS**

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

**SUBJECT: CITY OF OCEANSIDE MAJOR AMENDMENT 2-08 (Downtown "D" District  
Re-submittal) for Commission Meeting of July 9-11, 2008**

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## SYNOPSIS

### SUMMARY OF RE-SUBMITTAL AND HISTORY OF COMMISSION ACTION

On May 27, 2008, the City of Oceanside resubmitted proposed changes to zoning ordinances Articles 4, 12, and 41 for Commission review. The Commission originally reviewed proposed modifications in December of 2007. The staff prepared Revised Findings for the April 2008 hearing, however the item was continued to allow staff and the City more time to resolve the remaining items of concern for the Commission. The Revised Findings are scheduled for the July hearing, same as this proposed re-submittal.

This proposal is a result of extensive coordination between City and Commission staff and legal counsel for the project proponent. The City has submitted language that incorporates the majority of modifications suggested and approved by the Commission in December of 2007. Some modifications have been proposed because the project's proponent felt that the Commission did not adequately address the conditions of use placed on Fractional Ownership hotel units, given how fractional use units function. The City and Commission staff having been working together to develop language that still meets the intent of the Commission's action and allows for the necessary function of these types of overnight accommodations. Further, the City Council voted to remove of the requirement for in-lieu fees associated with the demolition of lower cost overnight accommodation and the subsequent redevelopment of more expensive hotel/motel units, as approved by the Commission in December, 2007.

The original proposed LCP Amendment #1-07 (Downtown "D" District) would have amended Articles 4, 12, and 41 of the certified Implementation Plan. There were and are no changes to the City's certified Land Use Plan. The proposed modifications would allow for both Condominium Hotels and Fractional Ownership developments (termed Limited Use Overnight Accommodations) within Subdistricts 1 and 12 of the Redevelopment Area. Article 4a would identify those uses within the Downtown District



that could be classified as "Visitor-serving", eliminate certain uses in the redevelopment area that are no longer viable or requested, and define and permit new uses that the City wants to encourage. The proposed amendment would also update the permitted uses matrix, to become more "user-friendly." Article 41 would be amended to allow for the Economic Development and Redevelopment Director to approve administrative permits where currently only the Planning Director has the authority to do so. A portion of this amendment is a project specific revision to allow for the development of a 384 room hotel, with some portion being utilized as "fractional hotels". However, the specifics of the proposed hotel have not been finalized (i.e. number of fractional and/or condo hotel units). Some restrictions have been suggested by the City to regulate the use of the proposed Limited Use Overnight Accommodations. The development as proposed does not include any low cost visitor-serving overnight accommodations.

### **SUMMARY OF STAFF RECOMMENDATION**

Since the Commission's review of the City's proposed LCP Amendment 1-07 in December 2007, the City and project proponents have brought to Commission staff's attention a number of concerns related to the Commission's restrictions and actual operation of both fractional interest developments and condo hotels. As a result of extensive coordination between City and Commission staff and legal counsel for the project proponent, revisions have been made to the restrictions which would apply to both condo and fractional interest hotels. Because the City has chosen not to adopt the language approved by the Commission in December of 2007, this resubmittal includes all of the above discussed components, both the "house-keeping" changes and the large new use definitions etc. As discussed previously, the majority of the Commission's original concerns have been addressed by the City, however, a few items remain unresolved.

As most recently submitted, the City of Oceanside has removed the requirement for in-lieu fees associated with demolition of existing lower cost overnight accommodations and the proposed language also includes the removal of the hotel owner and operator being joint and severally liable for upholding the conditions associated with this development. The remaining items are mostly small scale differences in language. The staff recommendation retains the provisions previously approved by the Commission for restrictions on condo hotels and fractional units that require joint and several liability and responsibility between the owners and operators to assure compliance with the provisions of the certified LCP.

The staff recommendation includes a suggested modification that the LCP include policy language to discourage demolition of existing lower cost overnight accommodations; however, if demolition is authorized an in-lieu fee would be required as mitigation. Development of replacement units that are not lower cost shall be required to pay a fee in-lieu of providing lower cost units which is equal to 50% of the demolished, unreplaced lower cost units if the replacement units are high-cost overnight accommodations.

The City letter, dated June 25, 2008, addresses more specific implementation measures for the Land Use Plan policy that requires maintenance of a minimum number of lower



cost overnight accommodations in the coastal zone, as an alternative to the in-lieu fee. . The City’s letter has not been addressed in this staff recommendation and will be addressed in an addendum to this staff report prior to the hearing.

The appropriate resolutions and motions begin on Page 5. The suggested modifications begin on Page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 25. The findings for approval of the plan, if modified, begin on Page 35.

## **BACKGROUND**

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

## **ADDITIONAL INFORMATION**

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

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of Oceanside first submitted its Local Coastal Program Land Use Plan (LUP) to the Commission in July 1980, and it was certified with suggested modifications on February 19, 1981. This action, however, deferred certification on a portion of the San Luis Rey River valley where an extension of State Route 76 was proposed. On January 25, 1985, the Commission approved with suggested modifications the resubmitted LUP and Implementing Ordinances. The suggested modifications included ones related to the guaranteed provision of recreation and visitor-serving facilities, assurance of the safety of shorefront structures, and the provision of an environmentally sensitive routing of the proposed Route 76 east of Interstate 5. The suggested modifications to the Zoning/Implementation phase resulted in ordinances and other implementation measures that were consistent with the conditionally certified LUP policies.

With one exception, the conditionally certified LUP and Implementing Ordinances were reviewed and approved by the City on May 8, 1985. The City requested that certification be deferred on one parcel adjacent to Buena Vista Lagoon designated by the City for "commercial" use; the Commission's suggested modification designated it as "open space." On July 10, 1985, the Commission certified the City's Local Coastal Program as resubmitted by the City, including deferred certification on the above parcel. On December 17, 1985, the Commission approved the post-certification appeals maps for the City of Oceanside, and the City began issuing permits in March 1986.

In June of 2002, the Commission denied the City of Oceanside's proposed LCP Amendment 1-2000. This amendment included modification to the Land Use Plan and Zoning maps to accommodate redevelopment of the bluff top and beach area adjacent to Oceanside Pier. The proposed Oceanside Beach Resort included a 400-room hotel with 545,509 sq. ft. guest accommodations; 12,200 sq. ft. retail shops, 6,400 sq. ft. restaurants, 9,400 sq. ft. meeting rooms; and 19,500 sq. ft. ballrooms; a public promenade and two levels of subterranean parking. The proposed development would have created an auto-free zone on Pacific Street between Seagaze Drive and Pier View Way. The Strand public road would have also been closed. The amendment was denied due the scale of development and its impacts to public access among other issues. The currently proposed LCP amendment would modify the zoning ordinances at the location of this previously denied LCP amendment.

### **B. STANDARD OF REVIEW**

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



**C. PUBLIC PARTICIPATION**

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

**PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

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

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment for the City of Oceanside as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

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

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

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Oceanside and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

- II. MOTION II:** *I move that the Commission certify the Implementation Program Amendment for the City of Oceanside if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION:**

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

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:**



The Commission hereby certifies the Implementation Program Amendment for the City of Oceanside if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carryout the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

### **PART III. SUGGESTED MODIFICATIONS**

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

#### **1. SUGGESTED MODIFICATION #1**

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

##### **T. Visitor Accommodations.**

[....]

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

#### **2. Suggested Modification #2**

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

##### **Visitor Accommodations-Special requirements**

1. Hotel Owner/Operator – For a Limited Use Overnight Visitor Accommodation, as defined below, a Hotel Owner/Operator is defined as the entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner, both



shall be jointly and severally responsible for ensuring compliance with the requirements described in the Local Coastal Plan and/or recorded against the property, as well as jointly and severally liable for violations of said requirement and restrictions. The owner/operator shall manage all guestrooms/units as part of the hotel inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guest and owners. The owner/operator shall retain control of all land, structures, recreational amenities, meeting spaces, restaurants, "back of house" and other guestroom facilities.

### **3. Suggested Modification #3**

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

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

### **4. Suggested Modification #4**

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

5. Condominium Hotels. Such development is subject to the following conditions/restrictions:
  - a) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of hotel rooms in an approved Limited Use Overnight Visitor Accommodation to timeshare, fractional or condominium-hotel units; provided that after any such conversion, the ratio of timeshare, fractional and condominium-hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project, with an approved amendment to the coastal development permit for the project.
  - b) A maximum of 25% of the total number of guestrooms/units in the total project as a whole may be subdivided into condominium hotel units and sold for individual ownership.
  - c) The hotel owner/operator of a ~~Condominium Hotel~~ shall retain control through ownership, lease, easements, or other legal means,



of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. The hotel operator must be the same entity for both the traditional hotel guestroom/units and the condo hotel units.

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

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

Each owner of a Condominium-Hotel unit shall have the right, in its sole discretion, to engage either the operator or a rental agent of his or her choice ~~(other than the operator)~~ to serve as the rental agent for their unit, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis. The operator ~~of the Condominium-Hotel~~ shall have the right and obligation to offer for public rental all time periods not reserved by a Condominium-Hotel unit owner for his or her personal use, or for the use of an owner's permitted user, or reserved for use by a public renter procured by an owner's rental agent who is not the operator. Whether or not the hotel operator is selected as an owner's exclusive rental agent, the operator shall manage the booking and the reservation of all units in the Condominium-Hotel. All Condominium-Hotel unit owners, and their rental agents, must comply with the following restrictions:

- i. ~~Except for their personal use, or use by their permitted users,~~ Condominium-Hotel unit owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units;
- ii. As more fully described in Section 5(sp), below, Condominium-Hotel unit owners shall report and certify the rental rate and terms of any rental of the owner's unit made independently of the operator, and the operator shall book all unit reservations in



the operator's reservation database, a service for which the operator may charge the Condominium-Hotel unit owner a reasonable fee;

- iii. Based on its own rentals and also those certified by those owners who have reported rentals made by them directly or by another rental agent they have selected, pursuant to Section 5(sp) below, the operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.
- e) The hotel operator shall market all rooms to the general public. Owners of individually owned hotel units may also independently market their units, but all booking of reservations shall be made by and through the hotel operator.
- f) The hotel operator shall manage all guestrooms/units as part of the hotel inventory of the Condominium Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing guestrooms/units for use by guests/owners, a service for which the operator may charge the unit owner a reasonable fee.
- g) If the hotel operator is not serving as the exclusive rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill public demand, ~~at a rate similar to comparable accommodations in the hotel.~~ The owner or an owner's rental agent may not withhold units from use unless they have already been reserved for use by the owner, consistent with the owner's maximum use right, as set forth in Section 5(ki), below. In all circumstances, the hotel operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- h) All guestrooms/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.
- i) All individually owned hotel units shall be rented at a rate similar to that charged for the traditional hotel rooms of a similar class or amenity level in the California coastal zone.



j) The hotel operator shall maintain records of usage by owners and guests and rates charged for all guestrooms/units.

~~k)~~ Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) or their guests for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

~~l)~~ The occupancy limitations identified in Section 5(~~ki~~) above, shall be unaffected by multiple owners of an individually owned hotel unit or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restriction as if they were a single, continuous owner.

~~m)~~ No portion of the Condominium Hotel may be converted to full-time occupancy of a condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel, other than as provided for in Section 5(a), above.

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



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

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

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

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

r) The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guestroom/unit is jointly and severally liable with the hotel owner/operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the



use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

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

1. Each owner of any individual Condominium Hotel unit is jointly and severally liable with the hotel owner/operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and
2. The occupancy of a Condominium Hotel unit by its owner(s) and their guests is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and
3. Each owner of a Condominium Hotel unit who does not retain the operator of the hotel as his or her rental agent shall be obligated by the governing documents of the Condominium Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

te) The hotel owner/operator and any successor-in-interest hotel owner or operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).

uf) The hotel owner/operator and any successor-in-interest hotel owner or operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel guestrooms/units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual Condominium Hotel guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 5(a) through (n) above. The hotel owner/operator shall also maintain documentation of rates paid for hotel occupancy and of advertising



and marketing efforts. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 5(~~ys~~) below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.

- ys) Within 120 days of the end of the first calendar year of hotel operations, the hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring by the hotel owner/operator ~~of the use of the hotel units~~. The hotel operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.–

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



~~wx~~) If the hotel owner and the hotel operator are or at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring ~~monitoring~~ compliance with the requirements identified above, and for reporting material non-compliance to the Economic and Community Development Director. If the hotel owner and hotel operator are or become separate entities, they shall be jointly and severally liable for violations of the operator shall be liable for its failure to monitor and to report non-compliance with the terms and conditions (restrictions) identified above.

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

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

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

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

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

- (i) "booking" or "to book" shall mean the confirmation of a reservation request for use of a Fractional Ownership Hotel unit by either the owner of a Fractional Interest, his permitted



user, an Exchange User or by a member of the public, and the entry of such confirmation in the operator’s reservation data base.

- (ii) “Exchange Program” means the use of a unit in a Fractional Ownership Hotel by a member who is the owner of occupancy rights in a unit of a fractional project other than the Fractional Ownership Hotel, or in the Fractional Ownership Hotel during time periods other than the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange, pursuant to a program:
  - (a) in which the owners of fractional interests in fractional interest projects other than the Fractional Ownership Hotel is operated and/or managed by the operator of the Fractional Interest Hotel or by another entity, or
  - (b) which is operated by an entity that specializes in interval exchanges, where such member has exchanged their occupancy rights for the use of a Fractional Ownership Hotel unit during the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange.
- (iii) “Exchange Use” means the use of a unit in the Fractional Ownership Hotel pursuant to an Exchange Program.
- (iv) “Exchange User” means a person who is occupying a Fractional Ownership Hotel unit for Exchange Use.
- (v) “Fractional Interest” means a Timeshare in a Fractional Ownership Hotel where the undivided interest in a condominium conveyed to an owner is greater than a 1/26th undivided interest, or, if the Fractional Ownership Hotel is not subdivided into condominiums, in which the undivided interest conveyed to an owner is greater than a 1/26 x (the number of units in the Fractional Ownership Hotel) undivided interest in the legal parcel comprising the Fractional Ownership Hotel.
- (vi) “Fractional Ownership Hotel” means the portion of a Limited Use Overnight Visitor Accommodation in which ownership of individual units is comprised of Fractional Interests.
- (vii) “Traditional Hotel” means the portion of a Limited Use Overnight Visitor Accommodation that is operated as a traditional hotel (i.e. the guestrooms are not owned or operated as timeshares or fractional units).

- b) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Visitor Overnight Accommodation. Nothing in the preceding sentence



shall prohibit, on and after the effective date of adoption of this Section, the conversion of units in a Fractional Interest project or Condominium Hotel to Fractional Interest or Condominium Hotel units; provided that after any such conversion, the ratio of Fractional Interest and Condominium Hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project.

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

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

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

(A) except for their personal use, or use by an owner's permitted users or an Exchange User, Fractional Interest owners



shall not discourage rental of their units or create disincentives meant to discourage rental of their units during their fractional time periods;

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

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

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



Ownership Hotel operator shall have full access to the guestroom/unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

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



be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 6(a) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that such an amendment is not legally required.

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



to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

- q) The Fractional Ownership Hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guestroom/unit is jointly and severally liable with the Fractional Ownership Hotel owner/operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's Fractional Interest. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.
- re) All documents related to the marketing and sale of the Fractional Interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:
1. Each owner of a Fractional Interest is jointly and severally liable with the Fractional Ownership Hotel owner/operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's Fractional Interest;
  2. The occupancy of a Fractional Ownership Hotel unit by the owner of a Fractional Interest is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not reserved or in use by the owner, the owner's permitted user or an Exchange User, the owner's time shall be made available for rental by the operator and by the owner's own rental agent to the general public sixty (60) days in advance of an occupancy period pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and
  3. Each owner of a Fractional Interest who does not retain the operator as his or her exclusive rental agent is obligated by the governing documents of the Fractional Ownership Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.



s)

~~sf~~) The initial owner of a Fractional Interest and any successor-in-interest owner of a Fractional Interest, and each future individual unit owner shall obtain, prior to sale of a Fractional Interest, a written acknowledgement from the buyer of that Fractional Interest that occupancy of a unit by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the operator and/or the buyer's rental agent to the general public at least sixty (60) days in advance of an occupancy period, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).

~~ts~~) The operator and any successor-in-interest to the operator shall monitor and record the occupancy and use of the Fractional Ownership Hotel by the general public and the owners of individual Fractional Interests throughout each year. The monitoring and record keeping shall include specific accounting of all owner usage of each individual guestroom/unit in the Fractional Ownership Hotel. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 6(a) through (l) above. The owner/operator shall also maintain documentation of rates paid for hotel occupancy and of marketing efforts by the operator, and ~~from the certified reports submitted to the operator by the Fractional Interest owners,~~ by the rental agents of owners other than the operator. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 6(~~ut~~) below. Within 30 days of commencing hotel operations, the operator of the Fractional Ownership Hotel shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.

~~ut~~) Within 120 days of the end of the first calendar year of hotel operations, the Fractional Ownership Hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the hotel owner/operator. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.



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

y~~u~~) If the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator at any point become separate entities, the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above.

If the Fractional Ownership Hotel owner and Fractional Ownership Hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

w~~v~~) Prior to the issuance of a coastal development permit for a Fractional Ownership Hotel, an applicant shall submit a plan for approval specifying how the requirements outlined in Article 4 Section 450 of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&Rs (Declaration of Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement that will be offered to the Fractional Interest owners by the Fractional Ownership Hotel operator. The plan must demonstrate that the applicant will establish mechanisms that provide the Fractional Ownership Hotel operator and any successor-in-interest



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

#### **6. Suggested Modification # 6**

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

Protection of Existing Overnight Visitor Accommodations - Any overnight visitor accommodations for which a Certificate of Occupancy has been issued prior to or on the effective date of adoption of this section shall not be converted to a Limited Use Overnight Visitor Accommodation. Demolition of existing lower cost overnight visitor accommodations shall be discouraged. If demolition of existing lower cost units is authorized, mitigation shall be provided at the rate specified for in-lieu fees as follows:

##### a) In-lieu Fee Required

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

The required in-lieu fees shall be deposited into an interest-bearing account, to be established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: City of Oceanside, Hostelling International, California Coastal Conservancy, California Department of Parks and Recreation or a similar entity. The purpose of the account shall be to establish lower cost overnight visitor accommodations, such as new hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of North San Diego County. The entire fee and accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. All development funded by this account will require review and approval by the



Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. Any portion of the fee that remains after ten years shall be donated to one or more of the State Park units or non-profit entities providing lower cost visitor amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. Required mitigation shall be in the form of in-lieu fees as specified herein or may include completion of a specific project that is roughly equivalent in cost to the amount of the in-lieu fee and makes a substantial contribution to the availability of lower cost overnight visitor accommodations in Oceanside and/or the North San Diego County coastal area.

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

##### **A. AMENDMENT DESCRIPTION**

This is the re-submittal of the City of Oceanside LCP Amendment (#1-07 Downtown "D" District) that would amend Articles 4, 12, and 41 of the certified Implementation Plan. These modifications would allow for Limited Use Overnight Accommodations within Subdistricts 1 and 12 of the Redevelopment Area. The amendment would also identify those uses within the Downtown District that could be classified as "Visitor-serving", eliminate certain uses in the redevelopment area that are no longer viable or requested, and define and permit new uses that have become desirable. Article 41 would be amended to allow for the Economic Development and Redevelopment Director to approve administrative permits where currently only the Planning Director has the authority to do so.

In its May 21, 2008 action, the City Council only addressed the revisions to Article 4a of the submittal, and failed to authorize staff to resubmit Articles 12 and 41 and all of Article 4 as part of the LCP Amendment. The City staff anticipates the City Council to take such action on July 2, 2008. Formal incorporation of Articles 12 and 41 as adopted by the City Council on July 2, 2008 will be addressed in an addendum to this staff report.

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

The most significant changes were to the Fractional Hotel section, where the City's re-submittal included the following major changes: (1) Addition of a new definitions section defining terms of art used in the fractional timeshare industry; (2) Addition of language clarifying that individual Fractional Interest owners may engage a rental agent other than the hotel operator; (3) Limiting the public's right to reserve rooms in the Fractional



Ownership Hotel to 60 days prior to occupancy (i.e. the public cannot reserve a room more than 60 days in advance of their stay); (4) Elimination of the joint and several liability requirements; and (5) Elimination of the Executive Director’s right to review and approve the required deed restriction, CC&Rs and plan for implementing the conditions imposed through these LCP provisions.

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

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

## **B. FINDINGS FOR REJECTION.**

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

### **1.) Purpose and Intent of the Ordinance.**

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



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

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

Article 41. Article 41 would be amended to allow for the Economic Development and Redevelopment Director to approve administrative permits where currently only the Planning Director has the authority to do so. The intent of this modification is to streamline the administrative permit process.

## **2.) Major Provisions of the Ordinance.**

Article 4a. Article 4a will be added to the existing Implementation Plan. Article 4 currently includes definitions of allowable uses such as restaurants, day spas etc. Article 4a will resemble this existing Article 4; however, Article 4a will list definitions that are permitted only within the redevelopment area. These definitions include an espresso stand, a grocery neighborhood market, and live and work lofts, among others. Article 4a also includes the City’s proposed definitions under Visitor Accommodations including a definition for Bed and Breakfasts, Hotels and Motels, Timeshares, Fractional Ownership Hotels Condominium Hotels, Resorts and Limited Use Overnight Accommodations. The City accepted the Commission’s definition of Limited Use Overnight Accommodations with some minor changes, to replace the previous term Integrated Resort. However, in their revised action, the City did not replace the terms in all areas and some inconsistencies remain that must be addressed in the Commission’s suggested modifications.

Article 4a also includes the City’s proposed special requirements for these types of overnight accommodations. The City’s proposed restrictions incorporate all of the Commission’s suggested revisions related to conversion of existing hotels to limited term overnight accommodations, requirements for CC&Rs and limitations on occupancy. A definition is proposed for Hotel Owner/Operator which is essentially consistent with the Commission’s previously suggested definition, however, the City has struck the



language from the definition that requires, if the hotel operator is separate from the hotel owner, both shall be jointly and severally responsible for ensuring compliance with the requirements of the LCP and any violations of the LCP and/or restrictions recorded against the property. The City has removed any reference to joint and several liability from both the condominium hotel and fractional hotel sections.

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

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

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

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

**Coastal Access/Low Cost Visitor Serving Amenities/Priority Uses**

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

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

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

- a. New facilities should be sited in areas where they can be compatible with surrounding land uses.



- b. Tent camping spaces as well as recreational vehicle spaces shall be provided

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

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

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

### **Recreation and Visitor Serving Facilities - Summary of Major Findings**

#### **Public and Commercial Recreation:**

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

#### **Recreational and Visitor Serving Facilities - Policies**

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

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

#### **Nine Block Master Plan.**

##### **General Policy #12.**

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

- a. Tourist and visitor oriented hotels are to be constructed in 2 phases with 120-250 units per phase.



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

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

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

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

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

The City of Oceanside is currently undergoing a period of redevelopment, and the City has acknowledged the current Land Use Plan policies addressing protection of lower-cost



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

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

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

An updated list of those facilities that could be considered shorefront was included at that time. When the City of Oceanside's LCP was certified; a minimum number of shorefront



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

Shorefront Lower Cost Hotel/Motel Units

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

Total: 118

Minimum required by LCP: 75

An updated survey of the current stock of lower cost hotel units was completed by PKF Consulting. As discussed above, the report indicates that the majority of available units within the City can still be considered lower-cost, however, the analysis did not include which of these units were still located shorefront. Staff has reviewed the submitted report and concluded that all of the above mentioned shorefront accommodations are still operating. Marina Del Mar and the Marina Inn, however, can no longer be considered as lower cost. Further, Robert's Cottages have a minimum week long stay and range in prices from \$660-\$1100/week and are individually owned vacation rentals that are periodically available for rent at the owners' discretion. Therefore, combining the increase in prices at Marina Del Mar and the Marina Inn, and the week minimum stay and individual ownership of Robert's Cottages, there are no longer any units available on Oceanside's shorefront that can be considered lower cost, thus inconsistent with the minimum number of affordable units protected by the City's LCP. While there are a number of facilities (overnight camping and the Harbor) that can be considered "shorefront," the City's LUP specifically requires that these units be in the form of either hotel or motel rooms, and not camping sites. The Commission recognizes that Oceanside does have a good supply of nearshore overnight accommodations, but the shorefront developments specifically protected by the LCP have been completely eliminated; and, as stated above, the project associated with this LCP amendment is for a development located shorefront, that is not proposing any low cost overnight accommodation further exacerbating the lack of low cost facilities at shorefront locations. Thus, as proposed, the LCP amendment cannot be found consistent with the City's certified LUP.

In its action on the previous submittal of the subject LCP amendment, the Commission acknowledged the City's existing inventory of lower cost overnight facilities in nearshore, but not necessarily shorefront, areas as significant, particularly when compared to other coastal communities. In addition, the City has an existing LUP policy



that protects a minimum of 375 lower cost hotel units in the City's coastal zone, 20% of which should be in shorefront locations. Therefore, the Commission did not suggest a modification to the City's LCP that would require a fee be collected in-lieu of actual provision of lower cost units in connection with new development of high-cost overnight facilities.

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

However, because the existing supply of lower cost overnight facilities in Oceanside is an important rationale for not imposing the fee on high-cost development, the Commission suggested a LCP implementation policy that would encourage rehabilitation of existing hotels rather than demolition. Also, if demolition of lower cost units was authorized, for replacement hotel development, if the new overnight accommodation is not low or moderate cost, an in-lieu fee would be attached to 50% of the new high-cost overnight accommodations to be used for development of hostels, cabins, campgrounds, etc. in Oceanside or the North County coastal zone which are inherently low cost. The City may also consider utilization of this fee to subsidize construction of lower-cost motel accommodations in the City's shorefront to meet the requirements of the certified LUP. The Commission's more typical policy is to apply the fee to 100% of the demolished and unreplaced lower cost units, and potentially to 25% of any new high-cost overnight accommodations. However, again, due to the existing supply of lower cost motel units in Oceanside, and the current LUP policy that protects 375 of those units, the Commission has required the fee to apply to a lesser percentage of new high-cost accommodations.

The existing LUP policy requires that the City shall not allow any demolition of affordable hotel/motel units which would allow the coastal zone inventory of such units to drop below the number required in the policy, i.e. 375 lower cost hotel and motel units and 220 recreational vehicle/camping sites within the coastal zone, with 20% of the hotel/motel units maintained in shorefront locations. This is an important policy that requires verification of compliance to include reporting the inventory of affordable hotel/motel units to the Coastal Commission on an annual basis. Through review of this LCP Amendment, it has become apparent the City has not been complying with all of the requirements of this policy, and questions have been raised as to how the City intends to protect at least 375 units of the existing stock of lower cost overnight accommodations. Additionally, in its May 21, 2008 action, the City Council did not accept the



Commission's suggested modifications requiring an in-lieu fee for demolition of existing lower-cost units. Since the LCP Implementation Plan currently lacks any specifics regarding the means to implement this LUP policy, the LCP Amendment, as submitted, is not adequate to carry out the certified Land Use Plan.

## **2. Limited Use Overnight Accommodation.**

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

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

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



raising questions about the adequacy of supply of lower-cost visitor-serving accommodations in the coastal zone.

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

In review of the previous LCP amendment in December 2007, the Commission did not suggest any modifications to the restrictions as they have been applied to fractional interest hotels in the past, such as in the Commission's action on the Huntington Beach LCP Amendment 2-06 in October 2006. Minor revisions were made to the Commission's previously-approved restrictions for condo hotel development. However, since December, the City and project proponents have brought to Commission staff's attention a number of concerns related to the Commission's restrictions and actual operation of both fractional interest hotels and condo hotels. As a result of extensive coordination between City and Commission staff and legal counsel for the project proponent, revisions have been made to the restrictions which would apply to both condo and fractional interest hotels. Therefore, the set of restrictions approved by the City Council is different than that approved by the Commission in December 2007. Also, since City Council action in May, additional changes have been identified and agreed to between the City, Commission staff and the project proponent which must be reflected in suggested modification to the re-submittal.

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



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

The City believes, however, that the Commission’s concerns regarding the need for joint and several liability can be addressed through imposition of reporting requirements on individual Condominium Hotel unit or Fractional Interest owners that require each owner to certify their marketing efforts and the terms of any rental agreements entered into by those owners for the use of their units. While the reporting requirements suggested by the City would likely make it easier for the operator to ensure that the conditions of the CDP are satisfied by each individual owner, it does not address all of the Commission’s concerns that are more effectively addressed through the imposition of joint and several liability, as explained above.

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

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

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



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

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

As a component of the City's permitting process, a preliminary study of low cost facilities was completed. The findings of this survey indicated that the City has ample low cost visitor-serving facilities. This study, however, does not exempt the City from encouraging additional low-cost facilities or maintaining current uses, especially in areas designated and zoned specifically for high priority visitor-serving uses. The demand for lower cost facilities is easily recognizable state-wide. For example, in Santa Monica, the average occupancy rate for its hostel was 96%, with the hostel completely full about half the year. Further, 77 million people visited California State Parks in the 2004-2005 fiscal year; 90% of which were parks located along the coast. Further, the demand for campsites within these parks grew approximately 13% between the years 2000 and 2005. According to the 2003 California Coastal Access Guide, only 12 properties were low-cost accommodations. The average daily room rate in San Diego County for 2005 was \$122, with a peak rate of \$136 in July. The average occupancy rate for the same year was 72.3%, with a peak rate of 86% in July. Because the proposed development is located at a site zoned for visitor-serving amenities, and lower cost recreational and overnight facilities are protected by the City's LUP, lower cost facilities are the priority development type at every site located within these zoning areas and protected by the City's LUP policies. The City did include a number of provisions to address this concern and to better assure that condo-hotel and fractional ownership hotel units will function, to the extent feasible, as traditional hotel units. As discussed in the prior section, however, these proposed provisions are inadequate to protect lower cost facilities in the coastal zone.



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

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

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

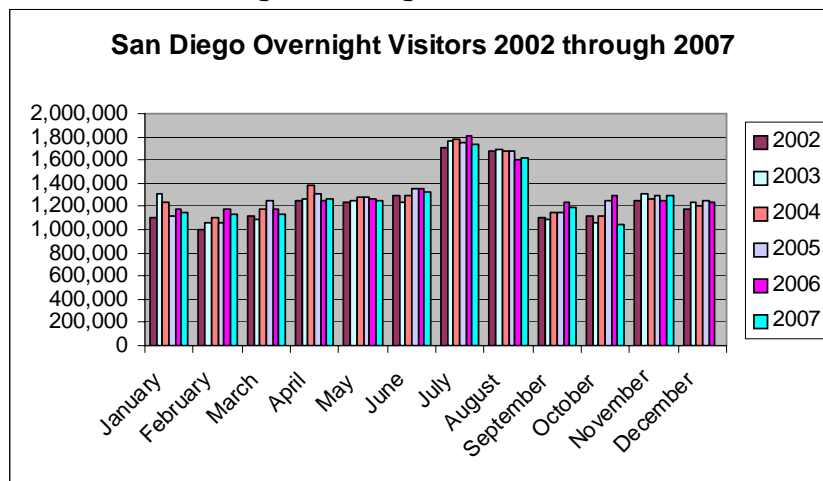
	2003	2004	2005	2006	2007	<b>Projected 2008</b>
January	\$95.39	\$92.07	\$96.64	\$104.32	\$112.12	<b>\$114.22</b>
February	\$95.16	\$97.35	\$100.62	\$108.30	\$118.07	<b>\$121.72</b>
March	\$93.70	\$96.42	\$100.33	\$109.68	\$116.64	<b>\$122.10</b>
April	\$93.18	\$95.03	\$102.25	\$110.49	\$117.31	<b>\$124.04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

Source: Smith Travel Research, *California Tourism*, June 2003 through June 2007. <http://www.visitcalifornia.com/page.php?id=526> [14 January 2008].  
\*2008 value projected using exponential regression based on 2003 through 2007 values.



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

Chart 1. San Diego Overnight Visitors



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

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

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

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

To develop a sample of lower cost hotels in the coastal zone, the AAA website was again used to obtain a stock of lower cost hotels within 5 miles of the coast. To be most



meaningful, peak season room rates are used. The peak visitor months in San Diego for both day and overnight visitors are July and August. The sample resulted in identification of 55 One or Two Diamond hotel/motel developments within this research area. Of the 55 hotels originally surveyed, 25 were within the coastal zone and 8 of these charged room rates less than the state average. The rates charged for the months of July and August of these 8 developments (ref. Table #2) were then determined and averaged. The average charge for a room of One or Two Diamonds (as rated by AAA) that were found within the coastal zone and were charging less than the state average is \$108.35. This number was then used to determine how San Diego County's average room rates compare to the state wide average of \$132.90. By dividing the average for San Diego (\$108.35), by the State average (\$132.90), a percentage is given that can be used in the future. This percentage represents what a reasonable difference ( $108.35/132.90 = .82$  or 82%) would be between the statewide nightly average rate and San Diego County's average for lower cost accommodation in the coastal zone.

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

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

This formula represents a comparison between two averages that will both reflect the current market trend, so that the most appropriate definition of lower cost is utilized. Using this definition, lower cost overnight accommodations in the San Diego coastal area would be any establishment that costs less than 82% of the current peak, statewide average (\$132.90). This percentage can then be taken to find what the appropriate



definition of "lower cost overnight accommodation" would be in the future. Any person wanting to determine whether or not the proposed development would meet the criteria of "lower cost" would simply access the Smith Travel website, obtain the current statewide average, and multiply this number by .82. If the development's proposed daily room rate is *less* than the computed number (current statewide average x .82), that development can be considered "lower cost". It may be appropriate to re-survey the entire county periodically to reflect any changes in the tourist market specific to San Diego County. This formula could be used for all coastal areas in the State, after an initial survey similar to the AAA survey discussed above has been completed.

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

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

The Commission has historically interpreted 25% as a reasonable amount of the total development to protect a range of affordability. Under the Coastal Act and specified in the certified LUP, each development on critical land reserved for visitor uses should provide some lower cost amenities to support public use and coastal access. As stated above, the current trend, and the project enabled by this LCP amendment, includes 0% of



the units serving as lower cost accommodation; however, the Commission is not suggesting a fee be applied to 25% of new high-cost accommodations. . As suggested by the Commission, in light of the City's current supply of lower cost units and the LUP policy which requires maintenance of that stock, the modification would only apply the fee to 50% of the demolished, unreplaced lower cost units in a high-cost overnight facility.

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

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

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



accommodation projects, thereby protecting lower cost visitor-serving accommodation within Oceanside's coastal zone, consistent with the City's LUP.

The City's LUP requires that lower cost facilities be protected, encouraged and provided, as well as the policy specific for the protection of lower cost overnight accommodation within the coastal zone and at shorefront locations. Therefore, for the reasons outlined above, the Commission finds that only if modified as suggested, can the proposed amendment be found consistent with the City of Oceanside's LUP.

## **2. Limited Use Overnight Accommodations.**

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

The City has included language in its submittal which requires that privately owned units not occupied by the owner(s) or their guests must be made available for overnight rental by the general public in the same manner as the traditional hotel units. This achieves two ends: 1) it increases the facility's visitor-serving function by increasing the number of transient overnight accommodations units available to the general public, and 2) it promotes the likelihood that the overall facility will be perceived as a facility available to the general public. The City also included maximum percentages for individual rooms to be utilized as limited use overnight accommodation. Condominium Hotels would be limited to a maximum percentage of 25% of the total rooms, and Fractional Ownership hotels would be limited to 15%. Also regulated by the City, the combination of timeshares, fractional ownership units and condominium hotels could not exceed 25% for any development. This is important because the initial cost of being an individual owner of any of these limited use accommodations is not considered low cost, as it is often well out of the affordable range for the public. If a development was proposed as 100% limited use overnight accommodations, those facilities would be restricted to only allow those who can afford this initial purchase cost to stay at the facility. As such, by restricting the percentage of limited use overnight accommodation allowed within any proposed development, these facilities will remain available to a larger portion of the public.

The City also included in their proposed language length of stay restrictions. These restrictions include a maximum stay of 90 days per calendar year, with a maximum of 29 consecutive days of use during any 60 day period. These restrictions prohibit individual owners from staying for extended periods of time, which would further restrict the visitor-serving uses within the facility. Lastly, the City prohibited the conversion of any existing hotel/motel units into Limited Use Overnight Accommodations. Thus, it



attempted to protect the existing stock of unrestricted overnight facilities. However, the City did not include detailed provisions for the maintenance of such restrictions, nor did it include provisions for the protection of the portion of the units operating as unrestricted overnight facilities.

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

These restrictions and requirements must be implemented as part of the Fractional Ownership and Condominium-Hotel operations. Consequently, a specific entity responsible for implementing the restrictions and requirements must be identified. An appropriate entity would be one that has access and control over the entire facility. The facility's owner/operator is in the position to implement the necessary restrictions and requirements. Therefore, the suggested modifications reference the hotel owner-operator as the entity responsible for implementing the restrictions and requirements. Furthermore, although the hotel may be owned and operated by the same entity, this is not certain. Therefore, measures must be in place to address a situation where the hotel is owned and operated by two separate entities. It must be clear that, in such a situation, both the owner and the operator are responsible, and indeed liable, for carrying out the requirements and restrictions imposed upon each facility. This is reflected in the suggested modifications.

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

Because the City's proposal limits the Executive Director's authority to review the deed restrictions and CC&Rs, however, it is particularly important that he or she may request an audit of hotel operations, if he or she reasonably believes that the reports submitted by the hotel operators to demonstrate compliance with the special conditions of the CDP are



materially inaccurate. Through a third party audit of hotel operations, the Executive Director will be able to review and assess whether the hotel is being operated consistent with the conditions of the coastal development permit. The Commission therefore makes changes to Suggested Modifications 4 and 5 to retain the Executive Director's ability to request a third party audit of hotel operations.

It is only through the use restrictions and other conditions requiring these limited use facilities to operate in such a manner that they will maximize public access that these types of limited use facilities may be found consistent with the City's certified LUP. Thus, an effective enforcement mechanism is necessary to insure that the hotel owner, operator and individual condo unit or Fractional Interest owners are complying with each of the conditions of the coastal development permit. The Commission's suggested modifications impose joint and several liability on the owner and operator so that they have an equal incentive and interest in complying with the conditions of the CDP. The Commission also suggests modifications that insure that each individual condo unit or Fractional Interest owner is jointly and severally liable with the hotel owner and operator for any violations of the conditions of the CDP with respect to each owner's individual interest. Through imposition of joint and several liability, the Commission, or the City, may more effectively enforce the conditions of the CDP, thus insuring that the hotels are operated in such a manner as to maximize public access.

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

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



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

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, as amended, does conform with CEQA provisions. As outlined in the staff report, the IP amendment, as proposed is inconsistent with the land use policies of the certified LUP. However, if modified as suggested, the amendment can be found in conformity with and adequate to carry out all of the land use policies of the certified LUP. Therefore, the Commission finds that approval of the LCP amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP amendment 1-07 if modified as suggested herein.







1 WHEREAS, after duly noticing a public hearing for May 7, 2008, the Oceanside City  
2 Council and Community Development Commission continued the public hearing to May 21, 2008;  
3 and

4 WHEREAS, the Oceanside City Council finds that the revisions to the Local Coastal  
5 Program Amendment (LCPA-200-07) as amended by the City Council, conforms with and is  
6 adequate to carry out the land use plan of the Local Coastal Program.

7 NOW, THEREFORE, the City Council of the City of Oceanside DOES RESOLVE as  
8 follows:

9 1. Pursuant to Public Resources Code 30510 (a), the Oceanside City Council hereby  
10 certifies that Local Coastal Program Amendment (LCPA-200-07) is intended to be carried out in a  
11 manner fully in conformity with the Coastal Act and is hereby approved and adopted.

12 2. Pursuant to the California Environmental Quality Act of 1970 (Public Resources  
13 Code 21000, et seq.) and state guidelines thereto as amended to date, a Categorical Exemption has  
14 been issued by the City of Oceanside for this project.

15 3. Pursuant to Coastal Commission Local Coastal Program Regulation 13551 (b), this  
16 amendment shall take effect automatically upon unconditional approval by the Coastal  
17 Commission.

18 4. Copies of the originals of these revised documents shall be maintained and available  
19 for public review in the offices of the Economic and Redevelopment Department.

20 PASSED AND ADOPTED by the Oceanside City Council on this \_\_\_\_ day of May, 2008,  
21 by the following vote:

22 AYES:

23 NAYS:

24 ABSENT:

25 ABSTAIN:

26 \_\_\_\_\_  
Mayor of the City of Oceanside

27 ATTEST:

APPROVED AS TO FORM:

28 \_\_\_\_\_  
City Clerk

  
City Attorney



## Article 4(a) Draft Revisions

### T. Visitor Accommodations

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling, with incidental eating and drinking service for lodgers only provided from a single kitchen.
2. Hotels and Motels. Establishments offering commercial lodging on a less than monthly basis. This classification includes incidental eating, drinking, and banquet services intended for the convenience of guests.
3. Timeshare. A facility or arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.
4. Fractional Ownership Hotel. A facility providing overnight visitor accommodations where at least some of the guestrooms are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners. When a fractional ownership unit is not occupied by one of its owners, that unit shall be made available to the general public through the hotel operator. If a Fractional Ownership Hotel includes traditional hotel units, the facility may use those rooms alone or in combination with its fractional units to satisfy any requirement that a substantial portion of its units be permanently reserved for transient overnight accommodations in the summer season, which is Memorial weekend through Labor Day.
5. Condominium Hotel – Any Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate condominium ownership interests, as defined in California Civil Code section 1351(f).



The primary function of the Condominium Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

6. Resort. A resort is defined as a full service hotel of greater than 200 rooms with pool, spa, or similar amenities and full service restaurant.

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

#### **Visitor Accommodations-Special requirements**

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



2. Hotel Conversion - Any hotel rooms for which a Certificate of Occupancy has been issued at the effective date of adoption of this section shall not be converted to an Integrated Resort.
3. New Limited Use Overnight Visitor Accommodation projects will be required to prepare Covenants, Conditions, and Restrictions (CC&Rs) that shall be recorded concurrently with the recordation of all tract maps against all individual property titles reflecting the use restrictions and will conform to the restrictions outlined below.
4. Limited Occupancy. An owner of a timeshare interest, fractional interest or a condo hotel unit (or, if there are multiple owners of a condo hotel unit, all owners of that unit combined), and their guests, may occupy their unit no more than 90 days per calendar year with a maximum of 29 days of use during any 60 day period.
5. Condominium Hotels. Such development is subject to the following conditions/restrictions:
  - a) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of hotel rooms in an approved Limited Use Overnight Visitor Accommodation to timeshare, fractional or condominium-hotel units; provided that after any such conversion, the ratio of timeshare, fractional and condominium-hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project, with an approved amendment to the coastal development permit for the project.
  - b) A maximum of 25% of the total number of guestrooms/units in the total project as a whole may be subdivided into condominium hotel units and sold for individual ownership.
  - c) The hotel owner/operator of a Condominium-Hotel shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational



amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. ~~The hotel operator must be the same entity for both the traditional hotel guestroom/units and the condo hotel units. When the Condominium Hotel is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the Condominium Hotel exists.~~

~~d) The Condominium Hotel facility shall have an on-site hotel operator to manage booking of all guestrooms/units (both traditional and condo hotel guestrooms/units). Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room. Each owner of an individually owned hotel unit shall have the right, in its sole discretion, to engage either the hotel operator or a rental agent of his or her choice to serve as the rental agent for their unit, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis, as the operator shall have the right and obligation to offer for public rental all time periods not reserved by a unit owner for his or her personal use, or for the use of an owner's permitted user. Whether or not the hotel operator is selected as an owner's exclusive rental agent, the operator shall manage the booking and the reservation of all units in the Condominium Hotel.~~

d) As used in this Section 5, the term "to book" or "booking" shall mean the confirmation of a reservation request for use of a Condominium-Hotel guestroom/unit unit by either the owner of the unit, the owner's permitted user or by a member of the public, and the entry of such confirmation in the operator's reservation data base. ~~Each owner of a Condominium-Hotel unit shall have the right, in its sole discretion, to engage either the operator or a rental agent of his or her choice (other than the operator) to serve as the rental agent for their unit, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis. The operator of the Condominium-Hotel shall have the right and obligation to offer for public rental time periods not reserved by a Condominium-Hotel unit owner for his or her personal use, or for the use of an owner's permitted user, or reserved for use by a public renter procured by an owner's rental agent who is not the operator.~~



Whether or not the hotel operator is selected as an owner's rental agent, the operator shall manage the booking and the reservation of all units in the Condominium-Hotel. All Condominium-Hotel unit owners, and their rental agents, must comply with the following restrictions:

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



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

- g) If the hotel operator is not serving as the exclusive rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill public demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use, unless they have already been reserved for use by the owner, ~~consistent with the owner's maximum use right~~, as set forth in Section 5(4) 5(i), below. In all circumstances, the hotel operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.
- h) All guestrooms/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.
- i) ~~Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.~~
- j) ~~All individually owned hotel units shall be rented at a rate similar to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.~~
- k) ~~The hotel operator shall maintain records of usage by owners and guests and rates charged for all guestrooms/units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all guestrooms/units, a service for which the hotel operator may charge the unit owner a reasonable fee.~~
- l) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) or their guests for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- m)
- j) The occupancy limitations identified in Section 5(4) 5(i) above, shall be unaffected by multiple owners of an individually owned hotel unit or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restriction as if they were a single, continuous owner.
- n)
- k) No portion of the Condominium Hotel may be converted to full-time occupancy of a condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the



approved Condominium-Hotel, other than as provided for in Section 5(a), above.

e)

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

p)

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

1. All the specific restrictions listed in Sections 5(a) through (n) above;
2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
3. A statement that provisions of the CC&Rs (Declaration of Restrictions) that reflect the requirements of ~~Section (a)~~ Sections 5(a) through (n) above, cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent



coastal development permit amendment. However, minor changes that do not conflict with ~~Section (a)~~ Sections 5(a) through (n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director ~~and the Executive Director of the Coastal Commission~~ that an amendment is not legally required. If there is a section of the CC&Rs (Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs (Declaration of Restrictions) on amendments.

- q)
- n) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Condominium Hotel.
- r)
- o) The provisions of the CC&Rs (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 5(a) through (n), above, may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director ~~and~~ after a copy of the proposed amendments have been submitted to the Executive Director of the Coastal Commission for comment, that an amendment is not legally required.
- ~~s) The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guestroom/unit is jointly and severally liable with the hotel owner/operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.~~
- t)
- p) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:
  - 1. Each owner of any individual Condominium Hotel unit is ~~jointly and severally liable with the hotel owner/operator~~ for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's



unit; and

2. The occupancy of a Condominium Hotel unit by its owner(s) and their guests is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and
3. Each owner of a Condominium Hotel unit who does not retain the operator of the hotel as his or her rental agent shall be obligated by the governing documents of the Condominium Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

u)

- q) The hotel owner/operator and any successor-in-interest hotel owner or operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).

v)

- r) The hotel owner/operator and any successor-in-interest hotel owner or operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel guestrooms/units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual Condominium Hotel guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 5(a) through (n) above. The hotel owner/operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 5(w) 5(s) below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal



Commission of commencement of hotel operations.

- w)  
s) Within 120 days of the end of the first calendar year of hotel operations, the hotel owner/operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of by the hotel owner/operator of the use of the hotel units. The hotel ~~owner/operator~~ operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.

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

- x) If the hotel owner and the hotel operator are or at any point become separate entities, ~~the hotel owner and~~ the hotel operator shall be jointly



and ~~severally~~ responsible for ensuring monitoring compliance with the requirements identified above, and for reporting material non-compliance to the Economic and Community Development Director. If the hotel owner and hotel operator are or become separate entities, ~~they shall be jointly and severally liable for violations of~~ the operator shall be liable for its failure to monitor and to report non-compliance with the terms and conditions (restrictions) identified above.

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

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

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

- (i) "booking" or "to book" shall mean the confirmation of a reservation request for use of a Fractional Ownership Hotel unit by either the owner of a Fractional Interest, his permitted user, an Exchange User or by a member of the public, and the entry of such confirmation in the operator's reservation data base.
- (ii) "Exchange Program" means the use of a unit in a Fractional Ownership Hotel by a member who is the



owner of occupancy rights in a unit of a fractional project other than the Fractional Ownership Hotel, or in the Fractional Ownership Hotel during time periods other than the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange, pursuant to a program:

- (a) in which the owners of fractional interests in fractional interest projects other than the Fractional Ownership Hotel is operated and/or managed by the operator of the Fractional Interest Hotel or by another entity, or
  - (b) which is operated by an entity that specializes in interval exchanges, where such member has exchanged their occupancy rights for the use of a Fractional Ownership Hotel unit during the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange.
- (iii) "Exchange Use" means the use of a unit in the Fractional Ownership Hotel pursuant to an Exchange Program.
  - (iv) "Exchange User" means a person who is occupying a Fractional Ownership Hotel unit for Exchange Use.
  - (v) "Fractional Interest" means a Timeshare in a Fractional Ownership Hotel where the undivided interest in a condominium conveyed to an owner is greater than a 1/26th undivided interest, or, if the Fractional Ownership Hotel is not subdivided into condominiums, in which the undivided interest conveyed to an owner is greater than a  $\frac{1}{26} \times$  (the number of units in the Fractional Ownership Hotel) undivided interest in the legal parcel comprising the Fractional Ownership Hotel.
  - (vi) "Fractional Ownership Hotel" means the portion of a Limited Use Overnight Visitor Accommodation in which ownership of individual units is comprised of Fractional Interests.
  - (vii) "Traditional Hotel" means the portion of a Limited Use Overnight Visitor Accommodation that is operated as a traditional hotel (i.e. the guestrooms are not owned or operated as timeshares or fractional units).

- b) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Visitor Overnight Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of



adoption of this Section, the conversion of units in a Fractional Interest project or Condominium Hotel to Fractional Interest or Condominium Hotel units; provided that after any such conversion, the ratio of Fractional Interest and Condominium Hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project.

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

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

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

- (A) except for their personal use, or use by an owner's permitted users or an Exchange User, Fractional



Interest owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units during their fractional time periods;

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

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

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



Fractional Ownership Hotel at any time after the commencement of such sixty (60) day period, provided that the operator or the owner's rental agent has not then rented the unit to a member of the general public. In all circumstances, the Fractional Ownership Hotel operator shall have full access to the guestroom/unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

- i) All guestrooms/unit keys shall be electronic and created by the operator upon each new occupancy to control the use of the individually owned Fractional Ownership Hotel units.
- j) All individually owned Fractional Ownership Hotel units shall be rented at a rate similar to that charged by the hotel operator for the traditional hotel-rooms of a similar class or amenity level.
- k) Each individually owned Fractional Interest shall be used by its owner(s) or their guests to occupy a unit in a Fractional Ownership Hotel for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- l) The use period limitations identified in Section 6(k) above, shall be unaffected by multiple owners of a Fractional Interest or the sale of a Fractional Interest to a new owner during the calendar year, meaning that all such owners of any given Fractional Interest shall be collectively subject to the use restriction in this Section 6 as if they were a single, continuous owner. ~~No owner. No~~ portion of a Fractional Ownership Hotel may be converted to a full-time occupancy condominium or to any other type of a Limited Use Overnight Visitor Accommodation other than as provided for in Section 6(b) above
- m) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part, the landowner(s) of the property(ies) within the Downtown "D" District upon which the associated Traditional Hotel is developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director and after delivery to the Executive Director of the Coastal Commission for review and comment, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership, except as permitted in Section 6(b) above. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director and after delivery to the Executive Director of the Coastal Commission for review and comment, prior to



issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by any existing lessee(s) of the affected property(ies), through recordation of a lease restriction, and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections (a) 6(a) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director and, after delivery to the Executive Director of the Coastal Commission for review and comment, that such an amendment is not legally required.

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



CC&Rs on amendments.

- o) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Fractional Ownership Hotel.
- p) The provisions of the CC&Rs (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections (a) 6(a) through (m) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director and after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.
- q) ~~The Fractional Ownership Hotel owner/operator or any successor in interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guestroom/unit is jointly and severally liable with the Fractional Ownership Hotel owner/operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's Fractional Interest. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.~~
- gr) All documents related to the marketing and sale of the Fractional Interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:
  - 1. Each owner of a Fractional Interest is ~~jointly and severally liable with the Fractional Ownership Hotel owner/operator~~ for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's Fractional Interest;
  - 2. The occupancy of a Fractional Ownership Hotel unit by the owner of a Fractional Interest is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not reserved or in use by the owner, the owner's permitted user or an Exchange User, the owner's time shall be made available for rental by



the operator and by the owner's own rental agent to the general public sixty (60) days in advance of an occupancy period pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and

3. Each owner of a Fractional Interest who does not retain the operator as his or her exclusive rental agent is obligated by the governing documents of the Fractional Ownership Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

s)

- n) The initial owner of a Fractional Interest and any successor-in-interest owner of a Fractional Interest, and each future individual unit owner shall obtain, prior to sale of a Fractional Interest, a written acknowledgement from the buyer of that Fractional Interest that occupancy of a unit by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the operator and/or the buyer's rental agent to the general public at least sixty (60) days in advance of an occupancy period, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).

t)

- s) The operator and any successor-in-interest to the operator shall monitor and record the occupancy and use of the Fractional Ownership Hotel by the general public and the owners of individual Fractional Interests throughout each year. The monitoring and record keeping shall include specific accounting of all owner usage of each individual guestroom/unit in the Fractional Ownership Hotel. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections (a) 6(a) through (l) above. The owner/operator shall also maintain documentation of rates paid for hotel occupancy and of marketing efforts by the operator, and from the certified reports submitted to the operator by the Fractional Interest owners, by the rental agents of owners other than the operator. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section ~~6(x)~~ 6(t) below. Within 30 days of commencing hotel operations,



the operator of the Fractional Ownership Hotel shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.

u)

- t) Within 120 days of the end of the first calendar year of hotel operations, the Fractional Ownership Hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the hotel owner/operator. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.

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



such audit shall be payable by the owner's association for the Fractional Ownership Hotel.

v)

- u) If the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator at any point become separate entities, the Fractional Ownership Hotel owner and the Fractional Hotel Owner operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above.

~~If the Fractional Ownership Hotel owner and Fractional Ownership Hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.~~

w)-x)

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





# CITY OF OCEANSIDE

Economic & Community Development

June 25, 2008

Deborah N. Lee  
District Manager  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4421

**RECEIVED**

JUN 26 2008

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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

Dear Ms. Lee:

Thank you very much for continuing to meet with the City on the resubmitted Local Coastal Plan Amendment. Since the Coastal Commission in December, 2007, we believe that we have made significant progress narrowing down the issues. As we discussed at our last meeting, the last two outstanding issues are:

- The \$30,000 In Lieu Fee on existing low cost motels that would re-develop at a higher price not considered affordable to be used to develop hostels; and
- Joint and several liability between the hotel operator and individual owners of a fractional time share.

We would like to reiterate the City's position on these issues:

In Lieu Fee

The City of Oceanside is still in disagreement with the notion of a \$30,000 fee to be imposed on existing visitor accommodations if they are demolished and re-built but not as affordable or moderately priced units.

Based on our recent meeting, it is our understanding that the language you presented in the City of Carlsbad application now represents the staff position in attempting to define low cost visitor serving. As we understand the proposal, you would define "low cost" as rooms up to a \$108.35 and "moderate cost" as rooms up to \$159.48. It is our understanding that if an existing low cost motel is demolished and rebuilt, if the room rate does not exceed \$159.48, the proposed \$30,000 in lieu fee would not apply.

While we appreciate your acknowledgement of a price point more reflective of the market, the City of Oceanside is the only City in California that we are aware of that has

300 North Coast Highway, Oceanside, CA 92054-2885, P. 7  
[www.ci.oceanside.ca.us](http://www.ci.oceanside.ca.us)

**EXHIBIT #2**

Letter from the City dated June  
25, 2008

LCPA #2-08 Downtown "D" District  
Re-Submittal



California Coastal Commission



a policy within the City's Local Coastal Plan that protects 375 low cost visitor serving accommodations. The City believes that this is sufficient language to insure that these numbers are maintained, and that in the case of Oceanside, with 90.8% affordable at a \$100 ADR, the fee is not justified.

You have asked how the City plans to insure that the City will always maintain this minimum number of units. We have come up with a few different ideas and solutions for solving this.

The City proposes that in reviewing applications for all projects in which an existing motel is proposed to be demolished and re-developed in the Coastal Zone, if the project is re-built and room rates are at moderate or higher room rates, ten percent (10%) of the new total room count shall be reserved for lower cost rooms. We believe that this will insure that even if some accommodations are converted to moderately priced units, a portion of the rooms will be reserved for lower cost accommodations.

In addition, all projects that require a Coastal Permit, within and outside of the Redevelopment Area, shall attach to the City's staff report a current inventory of hotel rooms at that time (see attachment 1). The City would also add a new section within the current staff report format to identify the current supply of lower cost visitor serving accommodations, and whether the proposed project affects this supply (see attachment 2). This new and revised standard reporting format will insure that the Coastal Commission will be kept abreast of the City's supply of lower cost visitor serving units. In that way, not only is there an absolute prohibition against going below 375 units, but a system to monitor and manage that inventory would be shared with the Coastal Commission staff.

A list of all of the existing lower cost hotel/motels and their assessor parcel maps and zoning designations has been provided (see attachment 3) to demonstrate the constraints on many of these older properties. As you can see, there are four properties outside of the Redevelopment area, all are zoned General Commercial, all are adjacent to existing commercial uses to the north and south and all have high density residential behind. All four of these properties are under .25 of an acre in size. Therefore, these properties are heavily constrained in their redevelopment.

The remaining eight properties are within the Redevelopment area and all have zoning designations that are intended for visitor serving uses (7B, 6A & 4B). Two of the eight properties are on sites over two acres, the Guest House Inn and Motel 6. The Guest House Inn has an application on file to demolish and rebuild a new project at that location, and the resulting rooms will most likely be in the moderate range, (based on the definitions referenced above). In addition, the Motel 6 has an application in to add an additional 17 units, which will continue to be in the lower cost range.

All the other properties are less than two acres in size, which will make it more difficult for them to demolish and rebuild while meeting current standards of parking. As you can see from the aerial maps (see attachment 4) all of these lower cost properties are



surrounded by existing development, and are zoned commercial or visitor serving commercial. Most of these motels have low room counts due to their site sizes. Their size constraints limit their ability to provide the amenity packages that would generate price points more reflective of higher priced motels and secure branded flag franchises.

The motel inventory in the City of Oceanside is predominantly low cost visitor serving accommodations. As the northern most city in San Diego County, with most of the tourism traffic coming from the north, the City has an opportunity to meet the demand for a variety of price points of visitor serving accommodations. In addition to the City's location, visibility, and access which drive a large segment of low cost visitor serving accommodations, a unique segment of this market demand is created by the proximity to Camp Pendleton. This market segment creates demand for base personnel, "Certificates of Non Availability" when adequate housing facilities are not available on base and by friends and relatives coming to see Marine personnel assigned to the base. This demand is captured by many of the low and moderate cost motels and is also responsible for some of the new development.

The unique circumstances of Oceanside and the physical and economic constraints of many of the existing low cost motels should give comfort to the Coastal Commission that the required inventory of 375 low cost visitor serving accommodations will be maintained. In December 2007 there were a total of 562 rooms in the coastal zone and 516 or 90.8% were affordable. After the Motel 6 units are built this number would increase to 533 or 92%.

As another control mechanism, we would propose that at such time as the inventory would be at 405 units the City would pursue outreach to the existing property owners in an attempt to assure their short and long term survival. Resources that can be brought to bear to assist them could include the City's Façade Enhancement Program, in which matching funds up to \$10,000 can be made available for painting, awnings, signage and landscaping outside of the Redevelopment Area, and up to \$25,000 within the Redevelopment Area.

The City of Oceanside, is requesting that the \$30,000 in lieu fee not be imposed upon the City. As stated above, the City's existing Coastal Policy protects a minimum of 375 lower cost units. By working with the Coastal Commission staff, we believe we have developed a system to better monitor and manage the inventory of low cost visitor accommodations. In summary, the new system would require any existing motels/hotels seeking to demolish and rebuild, to keep 10% of the total units as lower cost; all Coastal Permit projects shall identify and report on the existing hotel inventory, and these staff reports shall be forwarded to the Coastal Commission; should the City ever reach the threshold of 405 rooms, we will outreach to the existing property owners to provide resources to aid in their economic success given their physical constraints to re-develop.

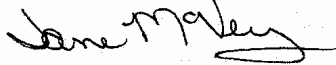


Joint and Several Liability

Mr. Scott Turner, of Cox Castle, is working with Coastal legal staff on the joint and several liability language. Based on your staff's position, including the Coastal legal staff, at the last meeting, it was not the Coastal Commission staff's intention that the individual owners of time shares be held liable for actions by the hotel operator. While we understand that you do want to have someone accountable for maintaining the operating conditions and requirements of this specific project, the S.D. Malkin project, the language previously submitted as a Suggested Modification is overly onerous for the hotel operator. Mr. Turner, in consultation with Coastal legal staff, is at this time working on modifications to the language that we hope will meet the needs of the Coastal staff to have some accountability and policing by the private hotel operator, in addition to all the review the City will have, and also be acceptable to the industry. That language is forthcoming.

The City has provided you with the Re-Submittal and attachments. We have previously provided you with two separate studies. The outstanding issues are significantly narrowed and we appreciate your deliberate consideration of our request. Should you have any questions please give me a call me at 760-435-3355 or Kathy Baker, Redevelopment Manager at 760-435-3547.

Sincerely,



Jane McVey  
Economic & Community Development Director

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



## OCEANSIDE HOTEL DATA

### Coastal Hotels

<u>Affordable Hotels</u>		<u>Total Rooms</u> <u>December 2007</u>	Pending
1. Beachwood Motel	Coastal	28	
2. Coast Inn	Coastal	27	
3. Dolphin Hotel	Coastal	25	
4. Hilltop Motel	Coastal	13	
5. Motel 6 Coastal Highway	Coastal	106	17
6. Ocean Breeze Inn	Coastal	11	
7. Ocean Inn & Suites	Coastal	21	
8. Pacific Inn	Coastal	59	
9. Days Inn at the Coast	Coastal	80	
10. Guest House Inn & Suites	Coastal	80	
11. Oceanside Travelodge	Coastal	28	
12. La Quinta	Coastal	38	
TOTAL		516	533

<u>Accommodations Over \$100</u>	<u>Total Rooms</u> <u>December 2007</u>
1. Oceanside Marina Inn Coastal	52
Total Coastal Accommodations	568

### Non-Coastal

<u>Affordable Hotels</u>		<u>Total Rooms</u> <u>December 2007</u>
1. Motel 9	Non-Coastal	44
2. Extended Stay America	Non-Coastal	101
3. Ramada Limited	Non-Coastal	66
4. Holiday Inn Express	Non-Coastal	62
5. Comfort Suites Marina	Non-Coastal	72
6. Quality Inn & Suites	Non-Coastal	72
7. Best Western Marty's Valley	Non-Coastal	107
8. Motel 6 Plaza Drive	Non-Coastal	136
9. Best Western Oceanside	Non-Coastal	80
10. Marriott Residence Inn	Non-Coastal	125
TOTAL NON-COASTAL		865

**Total Oceanside Accommodations 1433**



## **EXAMPLES OF STAFF REPORT LANGUAGE**

### **Example #1 (Motel 6 addition)**

#### **LOCAL COASTAL PROGRAM LOWER COST VISITOR SERVING POLICY**

Currently there are a total of 516 lower cost visitor serving units within the Coastal Zone. The proposed project will increase this number to 533. In addition, the current supply of lower cost units west of Coastal Highway is 495 and this project will increase the number to 512, (see attachment 5).

### **Example #2 (Residential Development)**

#### **LOCAL COASTAL PROGRAM LOWER COST VISITOR SERVING POLICY**

Currently there are a total of 516 lower cost visitor serving units within the Coastal Zone (see attachment 5). The proposed project is within subdistrict 5, High Density Residential and does not displace any existing visitor serving accommodations, nor reduce any potential property that could provide additional visitor serving accommodations.

### **Example #2 (Commercial Development)**

Currently there are a total of 516 lower cost visitor serving units within the Coastal Zone (see attachment 5). The proposed project is within the CG, Commercial General Zoning Designation, and does not displace any existing visitor serving accommodations, nor reduce any potential property that could provide additional visitor serving accommodations.



# Beachwood Motel – Zoning 4B

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY IF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

N.S.J.  
7-10-69

MAP 14233 - NEPTUNE POINTE CONDOMINIUM PROJECT  
 MAP 12222 - PACIFIC STREET (CONDO)  
 MAP 11426 - RESIDENTIAL WATERFRONT PROJECT  
 PHASE 2 (CONDO)  
 MAP 344 - A. J. MYERS ADD  
 MAP 936 - STRAND TCT  
 ROS 12612

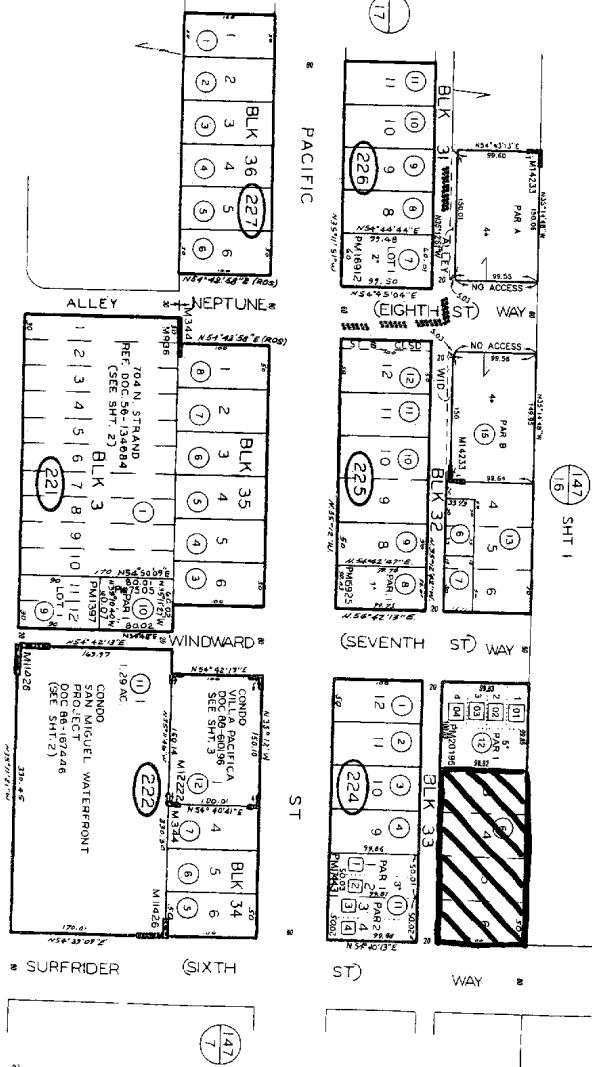
1\* CONDO  
PAR 1, PM 15925  
DOC01-278003  
(SEE SHT 3)

2\* CONDO  
SUN CHASE  
DOC03-680960  
(SEE SHT 3)

3\* CONDO  
VISTA PACIFICA  
DOC05-470820

4\* CONDO  
NEPTUNE POINTE  
PAR A & B MAP 14233  
DOC01-765637  
(SEE SHT 3)

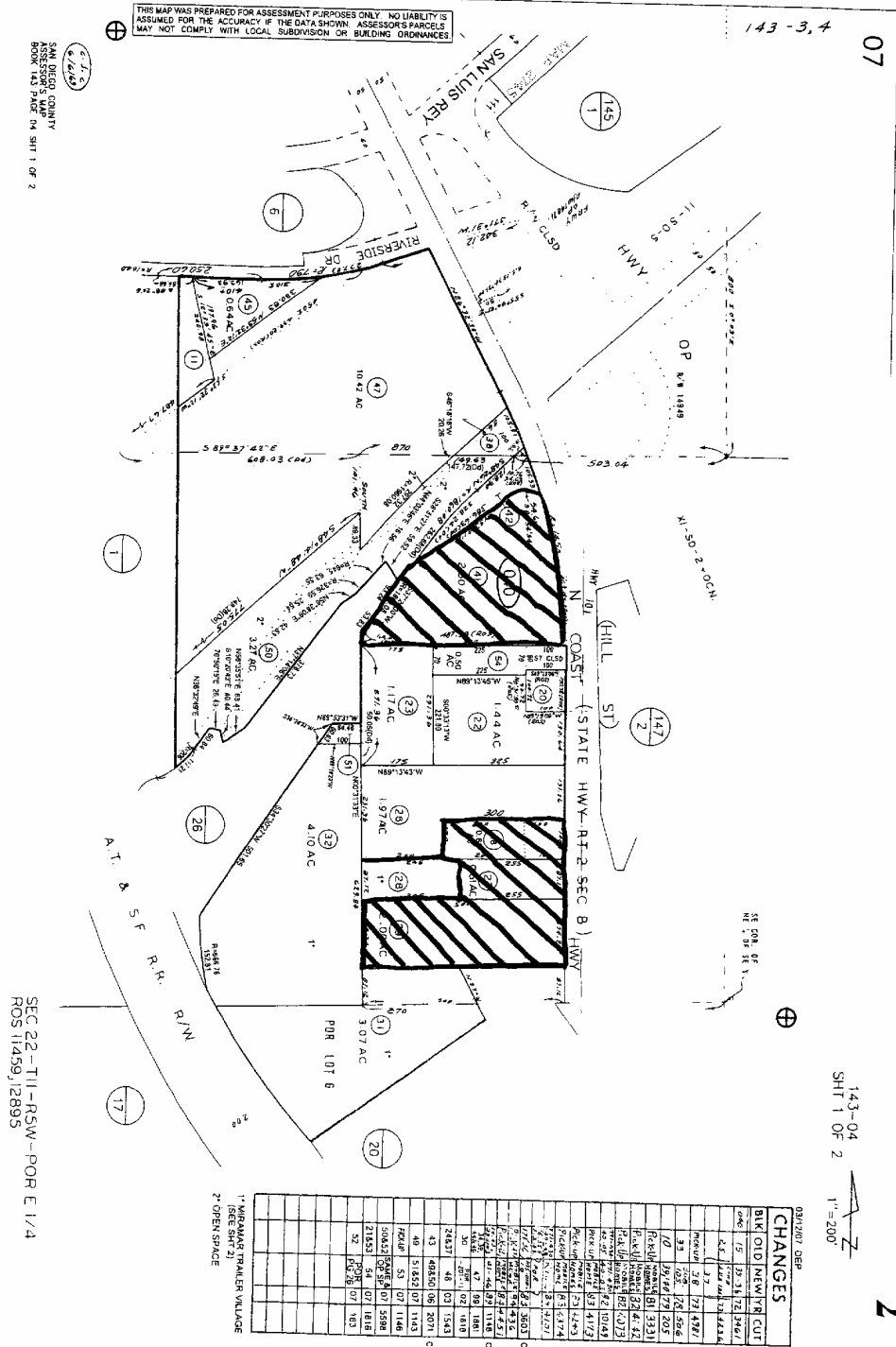
5\* CONDO  
WINDWARD WAY  
RESIDENCES  
DOC2007-0047438



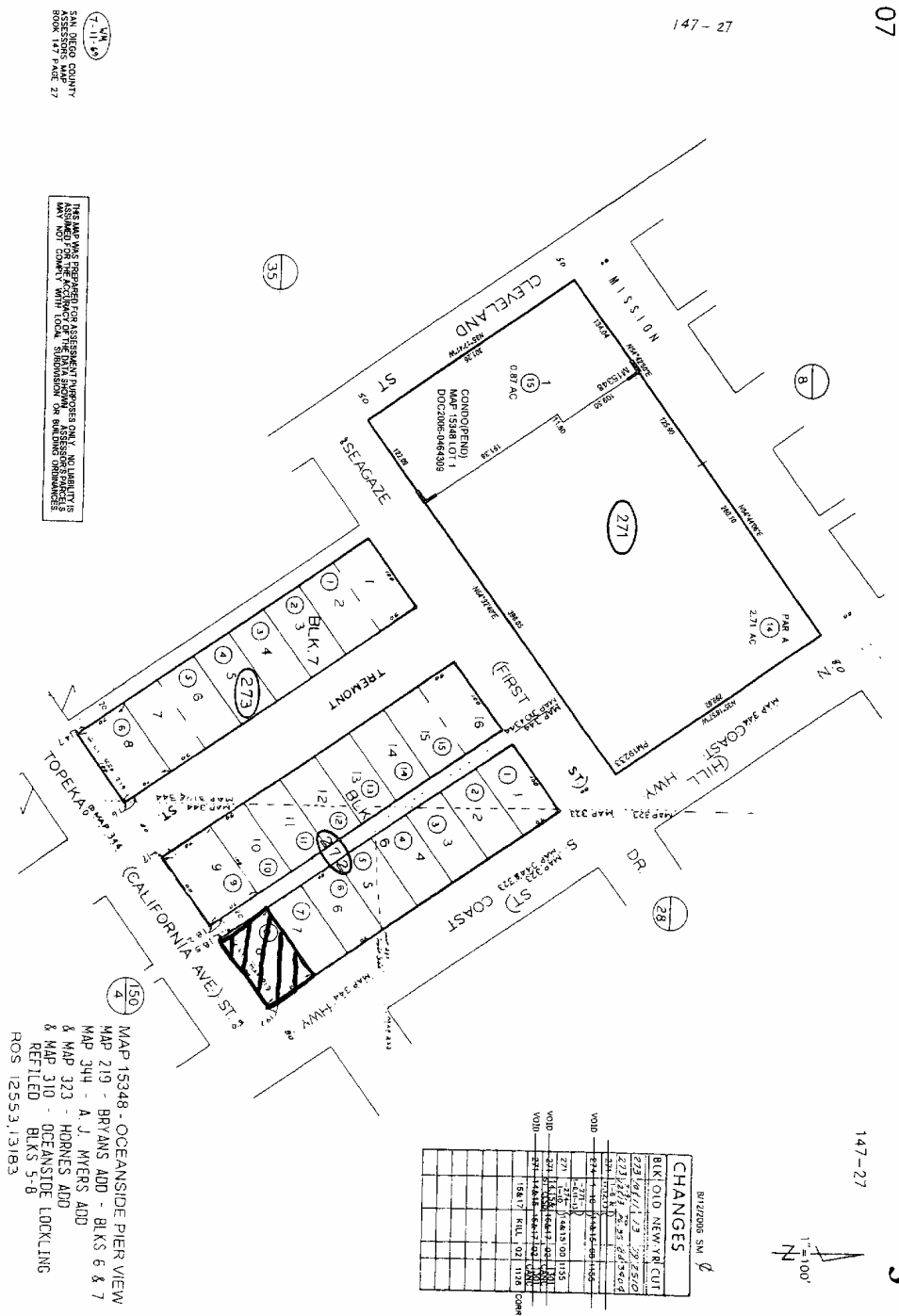
CHANGES		BLK OLD MEANING CUT	
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226	226	13	10
227	227	13	10
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230	230	13	10
231	231	13	10
232	232	13	10
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250	250	13	10



Coast Inn, La Quinta, Motel 6 - Zoning 7B





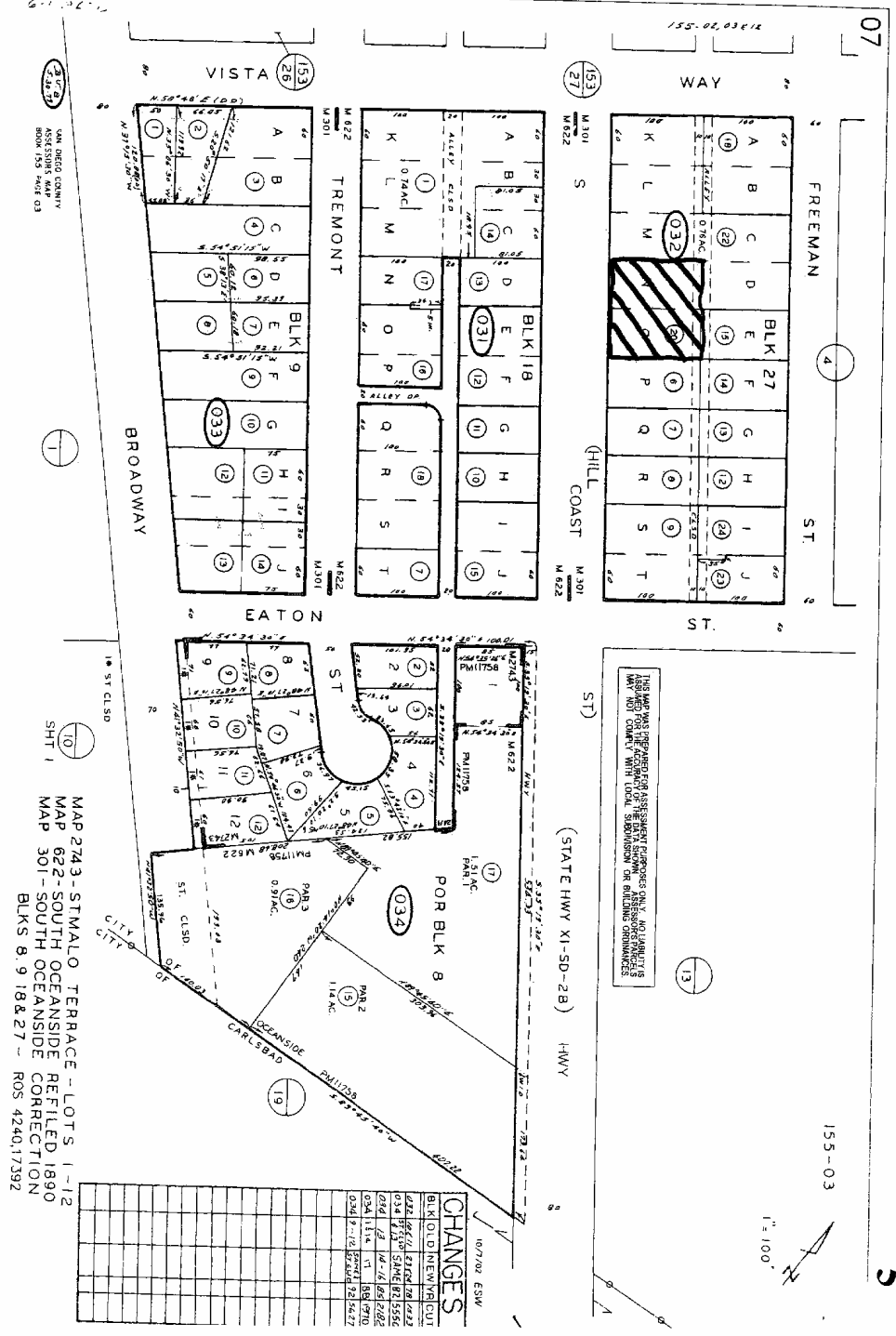








Ocean Breeze Inn - Zoning CG







CHANGES			
BLK	OLD	NEW	CUST
872	6	15/16	674855
371	17/21	23/24	704330
276	18/13	22	761636
277	23	25	4935
274	14/15	23	871722

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

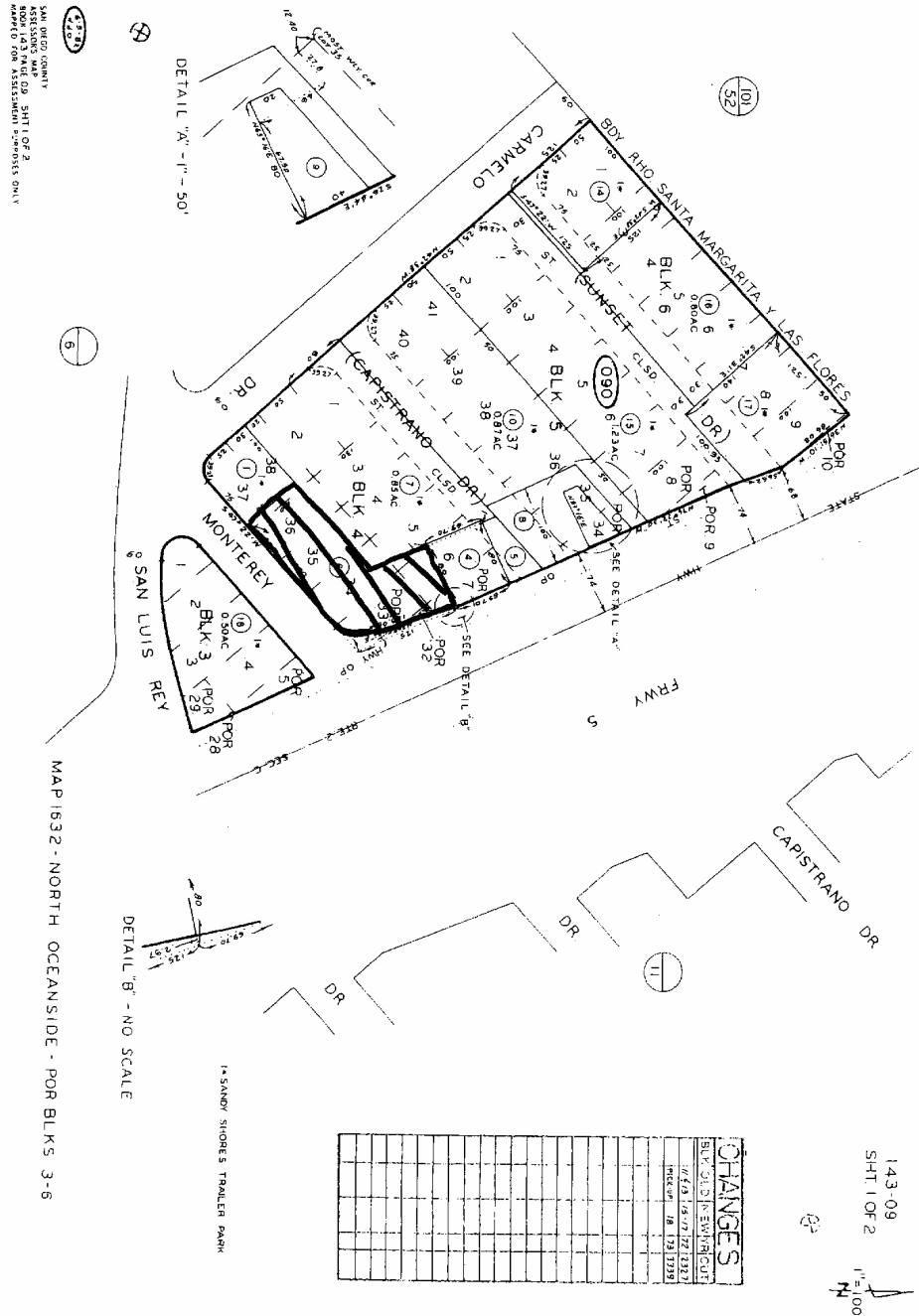














**Beachwood Motel**  
**210 Surfrider Way**  
**28 Units**







Coast Inn  
921 North Coast Hwy.  
27 Units



**Dolphin Hotel**  
**129 South Coast Hwy.**  
**25 Units**



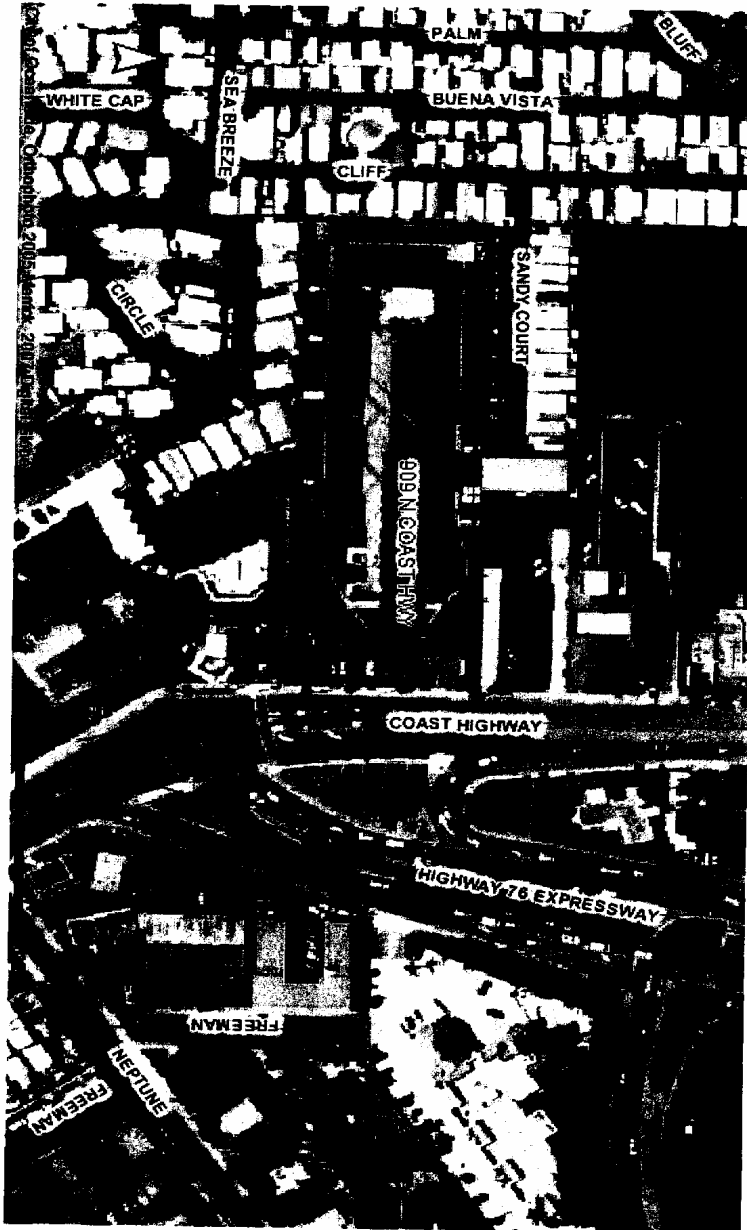


**Hilltop Motel**  
**1607 South Coast Hwy.**  
**13 Units**





**Motel Six**  
**909 North Coast Hwy.**  
**106 Units**





**Ocean Breeze Inn**  
**2020 South Coast Hwy.**  
**11 Units**





**Ocean Inn & Suites  
1820 South Coast Hwy.  
21 Units**





**Pacific Inn**  
**901 North Coast Hwy.**  
**59 Units**



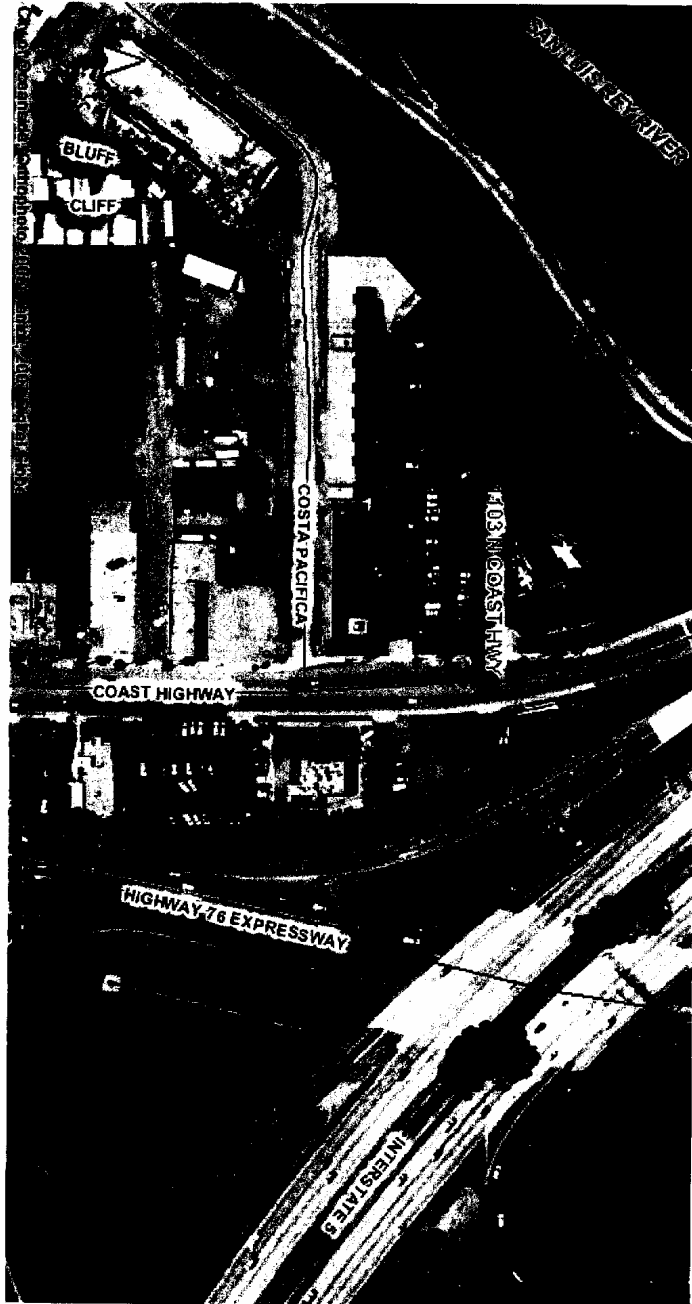


Days Inn at the Coast  
1501 Carmelo Dr.  
80 Units





Guest House Inn & Suites  
1103 North Coast Hwy.  
80 Units





Oceanside Travelodge  
1401 North Coast Hwy.  
28 Units





**La Quinta Inn**  
**937 North Coast Hwy.**  
**38 Units**

