

STAFF REPORT



ITEM NO. 15

CITY OF OCEANSIDE

DATE: May 21, 2008

TO: Honorable Mayor and City Councilmembers
Chairman and Members Community Development Commission

FROM: Economic and Community Development

SUBJECT: **ADOPTION OF A RESOLUTION TO APPROVE REVISIONS TO THE
SUGGESTED MODIFICATIONS FOR THE LOCAL COASTAL PROGRAM
AMENDMENT LCPA-200-07**

SYNOPSIS

Staff recommends that the City Council adopt a resolution approving the revisions to the Suggested Modifications to the Local Coastal Plan Amendment (LCPA-200-07).

BACKGROUND

On April 11, 2007, the City Council approved the introduction of an Ordinance and adopted a Resolution approving several amendments to Articles 4, 12 and 41 of the Oceanside Zoning Ordinance and Local Coastal Plan Amendment. The California Coastal Commission held a hearing on December 12, 2007, where the Commission reviewed the City of Oceanside Local Coastal Plan Amendment and several "Suggested Modifications" that were submitted by Coastal Commission staff. The Coastal Commission made revisions to the Suggested Modifications; therefore, the findings had to be revised to reflect the changes made by the Coastal Commission and resubmitted for approval by the Coastal Commission. These revised findings were to be reviewed and approved by the Coastal Commission at their April 10, 2008, meeting; however, the Coastal Commission continued this item to a future meeting.

ANALYSIS

Staff has met with the Coastal Commission staff and expressed the City's concerns over the revised Suggested Modifications as approved by the Coastal Commission. In order for the Coastal Commission staff and Commission to consider any further amendments to the Suggested Modifications, the City has to submit our proposed language as a revision to our Local Coastal Program Amendment LCPA-200-07.

There were eight Suggested Modifications submitted by Coastal staff to the Coastal Commission. The City is proposing revised language to all of the suggested modifications. The revisions to the Suggested Modifications center around two major issues, an In Lieu fee for the redevelopment of existing visitor-serving accommodations and operational issues for Condo hotels and fractional timeshares.

Suggested Modification #6 imposes an In Lieu fee of \$30,000 for any existing visitor-serving accommodation that redevelops with new units which are not considered "lower cost". The City believes there should be no fee imposed on the City of Oceanside. As acknowledged by the Coastal staff, the City's Local Coastal Plan is required to protect 375 low-cost visitor-serving accommodations in the Coastal Zone. Therefore, the City of Oceanside already has a built-in mechanism for the protection of lower cost units, which most Cities do not have. In addition, the City provided evidence at the hearing and in its letter to the Coastal Commission that the City not only has the minimum, but an over abundance of low-cost visitor-serving accommodations.

The evidence presented showed that there were 562 rooms in the Coastal Zone as of October 2007 and 90.8 percent were low-cost. The nexus for the imposition of the fee was discussed by the Coastal Commission at its meeting in December 2007, and they questioned the nexus for the fee, as does the City, when Oceanside's percentage of inventory of low cost visitor accommodations is so large when compared to other cities.

In addition, the Land Use Plan (LUP) was not before the Commission in December 2007, only the Local Implementing Program (LIP/Zoning Ordinance). Therefore, the standard of review for the Commission is whether the LIP as amended carries out the policies of the LUP. The Coastal Commission acknowledged that the City has many more accommodations than are required and did not change the LUP or the LIP requirement for the 375 units.

When the Coastal Commission took action on the In Lieu fee at the December 2007 meeting, staff believes there was a great deal of confusion due to other issues and that many of the Commissioners did not understand they were imposing a fee for existing visitor-serving accommodations; therefore, staff is arguing against the fee and believes that the Coastal Commission will accept the City's arguments.

Suggested Modifications #6 and 7 are related to the operations and restrictions for both the Condo Hotels and Fractional Timeshare units. The City is proposing revised language based on consultation with experts in the field. The remaining Suggested Modifications were revised to reflect changes in #7 and 8 and clean-up items. Staff has incorporated all of the suggested modification language into Article 4, Section T. Visitor Accommodations, as strike-out and underlines in Exhibit "A" of the attached resolution.

If approved by the City Council, staff will submit the proposed language to the Coastal Commission for review and approval. The Coastal Commission will approve the language as submitted, make further revisions or deny the revisions. Depending on the outcome, these Suggested Modifications will need to come back to the City Council

once again for final approval and then be forwarded back again to the Coastal Commission for final certification of the LCPA.

Environmental Determination

A Certificate of Exemption has been prepared for the project. Under the provisions of the California Environmental Quality Act, the Community Development Commission will consider the exemption during its hearing on the project.

FISCAL IMPACT

By imposing a fee for existing properties to redevelop, property owners would not be inclined to redevelop or develop properties because it would be cost-prohibitive. This would result in a loss of potential increase in tax increment and TOT revenue.

COMMISSION/COMMITTEE REPORT

This item was reviewed by the Redevelopment Advisory Committee at its May 7, 2008 meeting.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the revisions to the Suggested Modifications to the Local Coastal Plan Amendment (LCPA-200-07).

PREPARED BY:



Kathy Baker
Redevelopment Manager

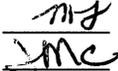
SUBMITTED BY:



Peter Weiss
City Manager/Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Jane McVey, Economic & Community Development Director



ATTACHMENTS/EXHIBITS:

Exhibit 1 – LCPA-200-07 Revisions to Suggested Modifications
Exhibit 2 - Resolution

CALIFORNIA COASTAL COMMISSION

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

Th21a

March 20, 2008

TO: COMMISSIONERS AND INTERESTED PERSONS

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

SUBJECT: REVISED FINDINGS ON CITY OF OCEANSIDE MAJOR AMENDMENT 1-07 (Downtown "D" District) for Commission Meeting of April 9-11, 2008.

SYNOPSIS**SUMMARY OF COMMISSION ACTION**

At the Commission meeting of December 12, 2007, the Commission reviewed the City of Oceanside LCP Amendment #1-07 pertaining to modifications made to the City's adopted Implementation Plan to update ordinances, as well as permit the development of limited use overnight accommodations including condominium hotels and fractional ownership developments within the redevelopment area of the City of Oceanside. This portion of the amendment was project specific. In its action, the Commission denied as submitted, and then approved the implementation plan ordinances with suggested modifications that address the protection of existing overnight accommodation as well as regulations for the operation of any approved overnight accommodation that includes a limited use (i.e. condominium hotels and/or fractional ownership) component. At the Commission hearing, revisions were made to the staff recommendation, thus requiring revised findings. The revisions include: the elimination of the in-lieu fee requirement for all new hotel/motel development within the redevelopment area of the City of Oceanside. There were also some minor revisions made to the specific language for regulating the operation of the proposed limited use overnight accommodation. These changes are intended to allow for new higher cost hotel/motel developments while protecting the existing stock of what can be considered low- and moderate-cost overnight accommodations and well as make the specific regulations for limited use overnight accommodations as "user friendly" as possible.

DATE OF COMMISSION ACTION: December 12, 2007

COMMISSION VOTES

City of Oceanside LCPA 1-07, approve if modified:

Commissioners Voting "Yes": Achadjian, Blank, Lowenthal, Hueso, Kram, Neely, Potter, Reilly, and Kruer

Commissioners Voting "No": Burke, Shallenberger, and Wan

SUMMARY OF AMENDMENT REQUEST

The proposed LCP Amendment #1-07 (Downtown "D" District) would amend Articles 4, 12, and 41 of the certified Implementation Plan. There are no changes to the City's certified Land Use Plan. These modifications would allow for both Condominium Hotels and Fractional Ownership developments (termed Limited Use Overnight Accommodations) within Subdistricts 1 and 12 of the Redevelopment Area. Article 4a would identify those uses within the Downtown District that could be classified as "Visitor-serving", eliminate certain uses in the redevelopment area that are no longer viable or requested, and define and permit new uses that the City wants to encourage. The proposed amendment would also update the permitted uses matrix, to become more "user-friendly." Article 41 would be amended to allow for the Economic Development and Redevelopment Director to approve administrative permits where currently only the Planning Director has the authority to do so. A portion of this amendment is a project specific revision to allow for the development of a 384 room hotel, with some portion being utilized as "fractional hotels". However, the proposed hotel is still undergoing CEQA review, and as such the specifics of the project have not been finalized. Some restrictions have been suggested by the City to regulate the use of the proposed Limited Use Overnight Accommodations. The development as proposed does not include any low cost visitor-serving overnight accommodations.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 4. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 19. The findings for approval of the plan, if modified, begin on Page 26.

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 1-07 (Downtown "D" District) may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

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.

This is the third proposed amendment to the Redevelopment Area. The last major amendment addressing the area was LCPA #1-91, approved by the Commission in February 1992. The LCP amendment included the current D Downtown District Ordinance which established Subdistricts 1, 12 and 15 comprising a 12-block area located one block north and two blocks south of the pier and extending from The Strand four blocks inland to Cleveland Street (west of the rail road right-of-way). Pacific Street is the first through coastal roadway in this area which currently provides both vehicular and pedestrian lateral access along the bluff top via the street and linear park adjacent to the street. As amended, the certified LCP required the City to submit a master plan for the three blocks constituting Subdistrict 12 and the six blocks of Subdistrict 1 in the City's Downtown District. The purpose of the master plan was to insure that eventual development of the entire nine-block area includes a minimum of 240 hotel rooms and 81,800 sq. ft. of visitor-serving commercial uses as specified by the master plan.

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.

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on December 12, 2007 concerning City of Oceanside LCPA 1-07.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the February 5, 2003 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

PART III. SUGGESTED MODIFICATIONS

The underlined sections represent language that was added by staff recommendation, and the ~~struck-out~~ sections represent language that was deleted by staff recommendation. The double underlined sections represent the language added by the Commission's action and the ~~double strike through~~ represents the language removed by the Commission's action.

SUGGESTED MODIFICATION #1

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

T. Visitor Accommodations.

4. Condominium Hotel – 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.

~~Condominium Hotel. A facility providing overnight visitor accommodations, where at least some of the guest rooms are in the form of separate condominium ownership interests. When a condo hotel unit is not occupied by its owner, that unit shall be made available to the general public through the hotel operator. If a Condominium Hotel includes traditional hotel units, the facility may use those rooms alone or in combination with its condo-hotel 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.~~

SUGGESTED MODIFICATION #2

Add Article 4a Section 450 Visitor Accommodation - Special Requirements of the Zoning Ordinance 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 an ~~Integrated Resort~~ Limited Use Overnight Visitor Accommodation.

SUGGESTED MODIFICATION #3

Replace Article 4a (Redevelopment) section 450 Visitor Accommodations, as follows:

7. Limited Use Overnight Visitor Accommodation: ~~Integrated Resort:~~ A resort that includes both traditional hotel lodging and some combination of timeshares, fractional time shares, or condo-hotel units. Up to 25% of the total rooms in Limited Use Overnight Visitor Accommodation ~~an Integrated Resort~~ may be timeshare, 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 units. A Limited Use Overnight Visitor Accommodation ~~Integrated Resort~~

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.

SUGGESTED MODIFICATION #4

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

Limited Use Overnight Visitor Accommodation Projects - will be required to prepare Covenants, Conditions, and Restrictions (CC& R's) 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, including how ~~the~~ any required in-lieu fees will be managed.

SUGGESTED MODIFICATION #5

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. Any proposal to demolish existing overnight visitor accommodations shall be required to demonstrate that rehabilitation of existing units is not feasible. If demolition of existing units is authorized, mitigation shall be provided for at least 50% of the total number of proposed new overnight visitor accommodations at the rate specified for in-lieu fees in ~~Section 4a, Section 450 of this ordinance~~ as follows:

a) In-lieu Fee Required

New 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 for 50% of the total number of overnight visitor accommodations in the redevelopment project. 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.

SUGGESTED MODIFICATION #6

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

~~In-Lieu Fees for Lower Cost Overnight Visitor Accommodations. An in-lieu fee shall be required for new development of overnight visitor accommodations in the coastal zone that are not lower cost. This in-lieu fee shall be required as a condition of approval of a coastal development permit, in order to provide significant funding to support the establishment of lower cost overnight visitor accommodations within the coastal area of North San Diego County. The fee shall be \$30,000 per room for 25% of the total number of proposed overnight visitor accommodations in the new development. 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.~~

SUGGESTED MODIFICATION #76

Add Article 4a (Redevelopment) section 450 Visitor Accommodations-Special Requirements, 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 Visitor Overnight 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 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 condominiums and sold for individual ownership.
- c) The hotel owner/operator shall retain control and through ownership, lease or easements of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. 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 rental/booking of all 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.
- e) The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise 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, 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.

- g) If the hotel operator is not serving as the 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 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. In all circumstances, the hotel operator shall have full access to the condominiums' 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 renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.
- l) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- m) The use period limitations identified in (l) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.
- n) No portion of the Condominium-Hotel may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel, other than as provided for in Section 5(a), above.
- o) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Condominium-Hotel, the landowner(s) of the property(is) within the Downtown "D" District upon which the traditional units/rooms (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations) without an approved Coastal Development Permit. The deed restriction shall be submitted for review and approval of the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(is) 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 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 subsections a) and n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission that such an amendment is not legally required.

- p) 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 Development and Redevelopment Director and the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) either of which shall include:
1. All the specific restrictions listed in 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 & R's/Declaration of Restrictions that reflect the requirements of 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 a) – n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director that an amendment is not legally required. If there is a section of the CC & R's/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 Declaration/CC & R's on amendments.
- q) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.
- r) The provisions of the CC & R's or 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 a) through p) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and Executive Director of the Coastal Commission 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 guest room/condominium 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) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC & R's and similar documents, shall notify buyers of the following:
1. Each owner of any individual 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 the units by owner(s) 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.
- u) The hotel owner/operator and any successor-in-interest hotel owner and 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 & R's or Declaration of Restrictions.
- v) The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in 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 City and the Executive Director of the Coastal Commission upon request and to the auditor required by section w below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Economic Development and Redevelopment Director and to the Executive Director of the California Coastal Commission of commencement of hotel operations.
- w) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Economic Development and Redevelopment Director, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions,

notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall 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 Development and Redevelopment 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 each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Economic Development and Redevelopment Director. The Economic Development and Redevelopment Director may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

x) If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of 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 & R's/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 deeds and CC &R's/Declaration of Restrictions shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director that an amendment is not legally required.

~~z) In lieu Fee Required~~

~~1. New development of 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 City limits. The specific dollar amount of the fee shall be \$30,000 in 2007 dollars which shall be adjusted annually to~~

- ~~account for inflation (i.e. according to increases in the Consumer Price Index — U.S. City Average) per room for 25% of the total quantity of proposed units.~~
2. ~~Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Oceanside, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within ten year of payment of the fee, the in lieu fee shall be made available to be applied toward lower cost overnight visitor accommodations.~~

SUGGESTED MODIFICATION #87

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

6. Fractional Ownership Hotel. 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 Visitor Overnight Accommodation.
 - b) A maximum of 15% of the total number of guestrooms/units may be subdivided into condominiums and sold for individual ownership.
 - c) The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. When the Fractional Ownership development is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the ~~Condominium-Hotel~~ Fractional Ownership Hotel exists.
 - d) The ~~Condominium-Hotel~~ Fractional Ownership Hotel facility shall have an on-site hotel operator to manage rental/booking of all 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.
 - e) The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise 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, 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.
- g) If the hotel operator is not serving as the 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 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. In all circumstances, the hotel operator shall have full access to the condominiums' 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 renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.
 - l) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
 - m) The use period limitations identified in (l) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.
 - n) No portion of the Fractional Ownership development may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Fractional Ownership development.
 - o) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Fractional Ownership development, the landowner(s) of the property(ies) within the Downtown "D" District upon which the traditional units/rooms (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) 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 subsections a) and n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission that such an amendment is not legally required.

- p) 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 Development and Redevelopment Director and the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) either of which shall include:
1. All the specific restrictions listed in 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 & R's/Declaration of Restrictions that reflect the requirements of 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 a) – n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission that an amendment is not legally required. If there is a section of the CC & R's/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 Declaration/CC & R's on amendments.
- q) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.
- r) The provisions of the CC & R's or 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 a) through p) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission 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 guest room/condominium 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) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC & R's and similar documents, shall notify buyers of the following:
1. Each owner of any individual 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 the units by owner(s) 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.
- u) The hotel owner/operator and any successor-in-interest hotel owner and 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 & R's or Declaration of Restrictions.
- v) The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in 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 City and the Executive Director of the Coastal Commission upon request and to the auditor required by section w below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Economic

- Development and Redevelopment Director and to the Executive Director of the California Coastal Commission of commencement of hotel operations.
- w) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Economic Development and Redevelopment Director, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall 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 Development and Redevelopment 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 each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Economic Development and Redevelopment Director. The Economic Development and Redevelopment Director may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.
- x) If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.
- y) A coastal development permit application for a Fractional Ownership 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 &R's/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 Fractional Ownership development. 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 deeds and CC&R's/Declaration of Restrictions shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic

Development and Redevelopment Director that an amendment is not legally required.

~~z) In lieu Fee Required~~

- ~~1. New development of 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 City limits. The specific dollar amount of the fee shall be \$30,000 in 2007 dollars which shall be adjusted annually to account for inflation (i.e. according to increases in the Consumer Price Index - U.S. City Average) per room for 25% of the total quantity of proposed units.~~
- ~~2. Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Oceanside, the California State Department of Parks and Recreation, Hostelling International USA, California Coastal Conservancy or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within ten years of payment of the fee, the in lieu fee shall be made available to be applied toward lower cost overnight visitor accommodations.~~

SUGGESTED MODIFICATION #98

Add Article 12 Section "L" Downtown District: Additional Development Regulations as Follows:

Permitted uses within the 100 year floodplain shall be limited to open space, passive recreational uses, public parks, limited horticulture, floriculture, uses permitted within sensitive habitat areas pursuant to the City's certified "Standards for the Identification and Protection of Sensitive Habitats" and private commercial recreational uses. Provided soil placement does not exceed a maximum level of 3 feet above existing grade and that such placement does not adversely impact the flood-plain hydrology of the San Luis Rey River as defined and evaluated by the Army Corps of Engineers, the following development may be permitted in the 100 year flood-plain:

Bicycle and pedestrian paths, landscape, fencing, hardscape, waterscape, pools, tennis courts, putting greens, volleyball courts, basketball courts, driving range, shuffle board courts, horse shoes, lawn bowling, gazebos and arbors.

Within the first 50 feet of the required 100 foot wetland buffer zone, only transitional upland, non-invasive, vegetation shall be permitted. Within the second 50 feet of said buffer zone, only non-invasive landscape, hardscape, fencing and pathways for bicycles/pedestrians may be permitted.

All floodplain development shall be capable of withstanding periodic flooding without the construction of flood-protective work. Existing environmentally sensitive habitat area will not be adversely affected. There will be no increase in the peak runoff rate from the developed site as compared to the discharge that would be expected once every ten (10) years during a six (6) hour period. There will be no significant adverse water quality impacts and no downstream bank erosion or sedimentation may result from site improvements. All development shall be reviewed for conformance with the policies and standards of the certified San Luis Rey River Specific Plan.

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

A. AMENDMENT DESCRIPTION

The proposed LCP Amendment (#1-07 Downtown "D" District) 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.

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 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 is currently being reviewed 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. Again this will be necessary for the approval of the proposed Westin Hotel currently being reviewed by the City. These definitions and restrictions would be applicable to the entire Redevelopment Area of Oceanside.

Article 12. The purposed 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 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 espresso stand, grocery neighborhood market, live and work lofts, among others. Article 4a also includes the City's proposed definitions for Limited Use Overnight Accommodations including a definition for Condominium Hotels, Integrated Resorts, Hotel Owner/Operator and

Fractional Ownership units. Article 4a also includes the City's proposed restrictions for these types of overnight accommodations.

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, based upon several precedents, 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 off-site mitigation.

The City of Oceanside is currently undergoing a period of redevelopment, and as such considerations need to be made for the redevelopment or new development of visitor-serving overnight accommodations, especially in areas designated and zoned for visitor-serving uses. 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. The Commission has recently interpreted low cost accommodations as those with costs of less than or equal to \$100 per night, and include 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 costs 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 development will most likely result in overnight visitor-serving accommodations that could not be considered as lower cost. As such, 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 within this staff report. 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 of these what 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 accommodation, 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 exasperating 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.

2. Limited Use Overnight Accommodation.

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 is partially a project driven amendment. The amendment, as submitted, includes definitions for Condominium Hotels and Fractional Ownership developments, 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 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 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.

Although the amendment contains policy language that encourages visitor-serving uses within the nine-block area, the proposed changes will diminish the area available within the coastal zone to provide lower cost visitor-serving overnight accommodation. The amendment as proposed does include restrictions for the percentage of rooms that can be designated for limited use overnight visitor accommodation and length of stay maximums for individual owners, as well as a prohibition on converting any existing hotel to a limited use overnight establishment. The definitions proposed, together with the lack of any provision or protection of lower cost overnight accommodation, could result in the eventual elimination or substantial loss of lower cost facilities in the Oceanside coastal area. Moreover, the specific project associated with this LCP amendment is located shorefront; and, therefore, this development could serve to replace the current deficit for shorefront lower cost overnight accommodation. And, as stated above, future development of lower cost overnight accommodations should be encouraged to help maintain the stock of available lower cost facilities as Oceanside redevelops and land costs and construction costs increase. As such, the amendment, as submitted, cannot be found consistent with the City's certified LUP.

**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 accommodation both within the City limits, as well as at the shoreline. Modifications have been suggested for the definition for Condominium Hotel Units to more appropriately define this type of development pursuant to California Civil Code section 1351(f). Further recommendations have been made to protect existing hotel units, ~~as well as by the development of a~~ the provision for the payment of fees in-lieu of providing lower cost units as a component for any ~~future development~~ demolition and reconstruction of an existing hotel/motel development that is not proposing to replace the existing lower cost units in kind to any future development within the redevelopment area. Although the Commission prefers the actual provision of lower-cost accommodations in conjunction with projects, where necessary, the Commission has used in-lieu fees to ~~provide~~ protect lower-cost accommodations.

In general, many moderately priced hotel and motel accommodations tend to be older structures that are becoming less and less economically viable. As more recycling occurs, the stock of lower cost overnight accommodations tends to be reduced, since it is generally not economically feasible to replace these structures with accommodations that will maintain the same low rates. In general, the Commission sees far more proposals for higher cost accommodations than for low cost ones. In an effort to stem this tide, and to protect lower cost visitor-serving facilities, the Commission has imposed in-lieu mitigation fees when the re-development proposes of an existing overnight accommodation is replaced by only higher cost ~~accommodations units~~. 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.

While the type of Limited Use Overnight Visitor Accommodation anticipated pursuant to this amendment will be visitor-serving, it is not expected to be lower cost. The provision of only higher cost accommodations would preclude provision of lower cost facilities, which, unless mitigated, would be inconsistent with the public access policies of Oceanside's LUP. ~~Unless the IP is modified to include provisions requiring mitigation of higher cost accommodations are adopted, there is no assurance that lower cost accommodations will remain available along the coast.~~ The intent of the City's LUP policy is to ensure a balanced mix of visitor and recreational facilities within the coastal zone, so as to provide recreational opportunities to all economic sectors of the public. In order to protect, encourage, and where feasible, provide lower cost overnight visitor accommodations, the relative supply of existing affordable hotel/motel units needs to be maintained. ~~a modification is suggested that would require payment of an in-lieu fee to support continued availability of lower cost overnight visitor accommodations in the general project vicinity~~ However, in this case, lower cost accommodation is not the most viable, or desired type of development, as the City of Oceanside already has a generous stock of lower cost facilities, it is in fact, the higher-end type of accommodations that are lacking. The need for a higher end hotel facility was included as a goal for the City of Oceanside within their certified LCP.

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 past actions, the Commission has imposed an in-lieu mitigation fee to be used to provide new lower cost overnight visitor accommodations. 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. Moreover, given the above stated provision to require mitigation (in-lieu fees) for the removal of existing overnight accommodation, the retention of the existing hotel/motel stock can be encouraged and if demolition is endorsed, the in-lieu fee can be utilized to maintain a range of affordability. These numbers have been included in the suggested modifications for the City's proposed amendment and would be applicable to all developments that cannot be considered lower cost and are located within the Redevelopment Area.

Because the Commission has historically interpreted the protection of lower cost facilities to include a range of affordable facilities, requiring an in-lieu fee for 100% of the units within a proposed development would be too high. It stands to reason that should the proposed development include a significant number of its rooms as lower cost, the protection of a range of affordability would still be possible. However, as stated above,

the current trend for development is to include 0% of a proposed development's rooms to function as lower cost. Therefore, a significant portion of these rooms would be required to pay fees in-lieu of providing facilities at lower cost.

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 proposed, includes 0% of the units serving as lower cost accommodation; ~~therefore, the suggested modification requires that an in-lieu fee be paid for 25% of the units, to account for the lack of these priority uses provided on site.~~ Therefore, a suggested modification has been recommended to protect overnight facilities. As stated above, the majority of lower cost facilities remaining within the coastal zone are older and often outdated facilities; therefore, demolition of these facilities is likely. If these more affordable facilities are demolished and then replaced by higher cost facilities, not only would existing affordable accommodations not be protected, they would not be replaced. Therefore, a modification has been suggested that requires that any demolition of existing hotel/motel units, to be replaced by newer more expensive units, would be required to pay an in-lieu fee for at least 50% of the proposed new units. These fees would mitigate for both the loss of existing units, as well as the lack of proposed lower cost units. This suggested modification also promotes the rehabilitation as opposed to the demolition of existing hotel/motel units, and therefore encourages the City of Oceanside to maintain its current range of affordability.

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 (ref. Exhibit #3 attached). 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.

~~A further suggested modification has been recommended to further protect existing lower cost overnight facilities. As stated above, the majority of lower cost facilities remaining within the coastal zone are older and often outdated facilities; therefore, demolition of these facilities is likely. If these lower cost facilities are demolished and then replaced by higher cost facilities, not only would existing lower cost accommodations not be protected, but they would not be replaced. Therefore, a modification has been suggested that any demolition of existing hotel/motel units, to be replaced by newer more expensive units (as opposed to being renovated), would be required to pay an in-lieu fee for at least 50% of the proposed new units. This increase in fees would mitigate for both the loss of existing units, as well as the lack of proposed lower cost units.~~

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 if 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 hotel, both fractional ownership/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 it may be likely the hotel will 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.

An additional modification has been suggested for the inclusion of language within the existing Zoning Ordinance Article 12 to address development within the floodplain and ensure the provision of adequate buffers from wetland habitat. This language was developed by the City of Oceanside and currently exists in their Zoning Ordinances. As a component of this LCP, the City of Oceanside requested the removal of this language. The Downtown District includes 15 subdistricts and comprises the same geographic area as the City's adopted Redevelopment Area. The District/Redevelopment Area includes both the San Luis Rey River valley itself and many parcels that abut the floodplain and river valley. Prospective development in those areas, as well as the need to establish appropriate resource protection measures, was one of the initial reasons that the City's LCP was delayed in being certified. In support of the deletion of those provisions, the City indicated that there are currently no areas adjacent to or within the floodplain, nor is there any wetland habitat, located in the Downtown District where development is being considered at the present time. However, given the importance and sensitivity of the resources present in the river valley, it is incumbent on the City's LCP to provide for the necessary resource protection measures. In addition, while there may not be any current development pressure evident, redevelopment issues may arise and there are vacant parcels remaining in the area. Further, the review of this policy has provided the Commission an opportunity to update the language of this provision to reflect and further requirements for the adequate protection of floodplains, buffers, and wetland habitats. As such, the suggested modification includes the requirement that only non-invasive species are permitted within the required 100 foot wetland buffer zone. Therefore, the Commission finds that this language should not be removed from the Zoning Ordinance and needs to be re-inserted as modified. The City agrees with this modification.

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 and future development 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 modifications for protection of ~~existing lower cost~~ overnight accommodations and for the demolition and redevelopment of existing hotel/motel units~~the provision for the requirement of fees in lieu of any future development that does not include a lower cost overnight accommodation component~~, lower cost overnight accommodations will be both protected and augmented. Further, with the suggested modification 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. Instead, the CEQA responsibilities are assigned to the Coastal Commission and 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 ATTEST:

27 _____
28 City Clerk

Mayor of the City of Oceanside

APPROVED AS TO FORM:



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)
- i) 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.

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

g) 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 $1/26 \times$ (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.~~
- qf) 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)

- r) 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)

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 ~~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.

STAFF REPORT



ITEM NO. 15

CITY OF OCEANSIDE

DATE: May 21, 2008

TO: Honorable Mayor and City Councilmembers
Chairman and Members Community Development Commission

FROM: Economic and Community Development

SUBJECT: **ADOPTION OF A RESOLUTION TO APPROVE REVISIONS TO THE
SUGGESTED MODIFICATIONS FOR THE LOCAL COASTAL PROGRAM
AMENDMENT LCPA-200-07**

SYNOPSIS

Staff recommends that the City Council adopt a resolution approving the revisions to the Suggested Modifications to the Local Coastal Plan Amendment (LCPA-200-07).

BACKGROUND

On April 11, 2007, the City Council approved the introduction of an Ordinance and adopted a Resolution approving several amendments to Articles 4, 12 and 41 of the Oceanside Zoning Ordinance and Local Coastal Plan Amendment. The California Coastal Commission held a hearing on December 12, 2007, where the Commission reviewed the City of Oceanside Local Coastal Plan Amendment and several "Suggested Modifications" that were submitted by Coastal Commission staff. The Coastal Commission made revisions to the Suggested Modifications; therefore, the findings had to be revised to reflect the changes made by the Coastal Commission and resubmitted for approval by the Coastal Commission. These revised findings were to be reviewed and approved by the Coastal Commission at their April 10, 2008, meeting; however, the Coastal Commission continued this item to a future meeting.

ANALYSIS

Staff has met with the Coastal Commission staff and expressed the City's concerns over the revised Suggested Modifications as approved by the Coastal Commission. In order for the Coastal Commission staff and Commission to consider any further amendments to the Suggested Modifications, the City has to submit our proposed language as a revision to our Local Coastal Program Amendment LCPA-200-07.

There were eight Suggested Modifications submitted by Coastal staff to the Coastal Commission. The City is proposing revised language to all of the suggested modifications. The revisions to the Suggested Modifications center around two major issues, an In Lieu fee for the redevelopment of existing visitor-serving accommodations and operational issues for Condo hotels and fractional timeshares.

Suggested Modification #6 imposes an In Lieu fee of \$30,000 for any existing visitor-serving accommodation that redevelops with new units which are not considered "lower cost". The City believes there should be no fee imposed on the City of Oceanside. As acknowledged by the Coastal staff, the City's Local Coastal Plan is required to protect 375 low-cost visitor-serving accommodations in the Coastal Zone. Therefore, the City of Oceanside already has a built-in mechanism for the protection of lower cost units, which most Cities do not have. In addition, the City provided evidence at the hearing and in its letter to the Coastal Commission that the City not only has the minimum, but an over abundance of low-cost visitor-serving accommodations.

The evidence presented showed that there were 562 rooms in the Coastal Zone as of October 2007 and 90.8 percent were low-cost. The nexus for the imposition of the fee was discussed by the Coastal Commission at its meeting in December 2007, and they questioned the nexus for the fee, as does the City, when Oceanside's percentage of inventory of low cost visitor accommodations is so large when compared to other cities.

In addition, the Land Use Plan (LUP) was not before the Commission in December 2007, only the Local Implementing Program (LIP/Zoning Ordinance). Therefore, the standard of review for the Commission is whether the LIP as amended carries out the policies of the LUP. The Coastal Commission acknowledged that the City has many more accommodations than are required and did not change the LUP or the LIP requirement for the 375 units.

When the Coastal Commission took action on the In Lieu fee at the December 2007 meeting, staff believes there was a great deal of confusion due to other issues and that many of the Commissioners did not understand they were imposing a fee for existing visitor-serving accommodations; therefore, staff is arguing against the fee and believes that the Coastal Commission will accept the City's arguments.

Suggested Modifications #6 and 7 are related to the operations and restrictions for both the Condo Hotels and Fractional Timeshare units. The City is proposing revised language based on consultation with experts in the field. The remaining Suggested Modifications were revised to reflect changes in #7 and 8 and clean-up items. Staff has incorporated all of the suggested modification language into Article 4, Section T. Visitor Accommodations, as strike-out and underlines in Exhibit "A" of the attached resolution.

If approved by the City Council, staff will submit the proposed language to the Coastal Commission for review and approval. The Coastal Commission will approve the language as submitted, make further revisions or deny the revisions. Depending on the outcome, these Suggested Modifications will need to come back to the City Council

once again for final approval and then be forwarded back again to the Coastal Commission for final certification of the LCPA.

Environmental Determination

A Certificate of Exemption has been prepared for the project. Under the provisions of the California Environmental Quality Act, the Community Development Commission will consider the exemption during its hearing on the project.

FISCAL IMPACT

By imposing a fee for existing properties to redevelop, property owners would not be inclined to redevelop or develop properties because it would be cost-prohibitive. This would result in a loss of potential increase in tax increment and TOT revenue.

COMMISSION/COMMITTEE REPORT

This item was reviewed by the Redevelopment Advisory Committee at its May 7, 2008 meeting.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the revisions to the Suggested Modifications to the Local Coastal Plan Amendment (LCPA-200-07).

PREPARED BY:



Kathy Baker
Redevelopment Manager

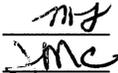
SUBMITTED BY:



Peter Weiss
City Manager/Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Jane McVey, Economic & Community Development Director



ATTACHMENTS/EXHIBITS:

Exhibit 1 – LCPA-200-07 Revisions to Suggested Modifications
Exhibit 2 - Resolution

CALIFORNIA COASTAL COMMISSION

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

Th21a

March 20, 2008

TO: COMMISSIONERS AND INTERESTED PERSONS

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

SUBJECT: REVISED FINDINGS ON CITY OF OCEANSIDE MAJOR AMENDMENT 1-07 (Downtown "D" District) for Commission Meeting of April 9-11, 2008.

SYNOPSIS**SUMMARY OF COMMISSION ACTION**

At the Commission meeting of December 12, 2007, the Commission reviewed the City of Oceanside LCP Amendment #1-07 pertaining to modifications made to the City's adopted Implementation Plan to update ordinances, as well as permit the development of limited use overnight accommodations including condominium hotels and fractional ownership developments within the redevelopment area of the City of Oceanside. This portion of the amendment was project specific. In its action, the Commission denied as submitted, and then approved the implementation plan ordinances with suggested modifications that address the protection of existing overnight accommodation as well as regulations for the operation of any approved overnight accommodation that includes a limited use (i.e. condominium hotels and/or fractional ownership) component. At the Commission hearing, revisions were made to the staff recommendation, thus requiring revised findings. The revisions include: the elimination of the in-lieu fee requirement for all new hotel/motel development within the redevelopment area of the City of Oceanside. There were also some minor revisions made to the specific language for regulating the operation of the proposed limited use overnight accommodation. These changes are intended to allow for new higher cost hotel/motel developments while protecting the existing stock of what can be considered low- and moderate-cost overnight accommodations and well as make the specific regulations for limited use overnight accommodations as "user friendly" as possible.

DATE OF COMMISSION ACTION: December 12, 2007

COMMISSION VOTES

City of Oceanside LCPA 1-07, approve if modified:

Commissioners Voting "Yes": Achadjian, Blank, Lowenthal, Hueso, Kram, Neely, Potter, Reilly, and Kruer

Commissioners Voting "No": Burke, Shallenberger, and Wan

SUMMARY OF AMENDMENT REQUEST

The proposed LCP Amendment #1-07 (Downtown "D" District) would amend Articles 4, 12, and 41 of the certified Implementation Plan. There are no changes to the City's certified Land Use Plan. These modifications would allow for both Condominium Hotels and Fractional Ownership developments (termed Limited Use Overnight Accommodations) within Subdistricts 1 and 12 of the Redevelopment Area. Article 4a would identify those uses within the Downtown District that could be classified as "Visitor-serving", eliminate certain uses in the redevelopment area that are no longer viable or requested, and define and permit new uses that the City wants to encourage. The proposed amendment would also update the permitted uses matrix, to become more "user-friendly." Article 41 would be amended to allow for the Economic Development and Redevelopment Director to approve administrative permits where currently only the Planning Director has the authority to do so. A portion of this amendment is a project specific revision to allow for the development of a 384 room hotel, with some portion being utilized as "fractional hotels". However, the proposed hotel is still undergoing CEQA review, and as such the specifics of the project have not been finalized. Some restrictions have been suggested by the City to regulate the use of the proposed Limited Use Overnight Accommodations. The development as proposed does not include any low cost visitor-serving overnight accommodations.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 4. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 19. The findings for approval of the plan, if modified, begin on Page 26.

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 1-07 (Downtown "D" District) may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

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.

This is the third proposed amendment to the Redevelopment Area. The last major amendment addressing the area was LCPA #1-91, approved by the Commission in February 1992. The LCP amendment included the current D Downtown District Ordinance which established Subdistricts 1, 12 and 15 comprising a 12-block area located one block north and two blocks south of the pier and extending from The Strand four blocks inland to Cleveland Street (west of the rail road right-of-way). Pacific Street is the first through coastal roadway in this area which currently provides both vehicular and pedestrian lateral access along the bluff top via the street and linear park adjacent to the street. As amended, the certified LCP required the City to submit a master plan for the three blocks constituting Subdistrict 12 and the six blocks of Subdistrict 1 in the City's Downtown District. The purpose of the master plan was to insure that eventual development of the entire nine-block area includes a minimum of 240 hotel rooms and 81,800 sq. ft. of visitor-serving commercial uses as specified by the master plan.

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.

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on December 12, 2007 concerning City of Oceanside LCPA 1-07.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the February 5, 2003 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

PART III. SUGGESTED MODIFICATIONS

The underlined sections represent language that was added by staff recommendation, and the ~~struck-out~~ sections represent language that was deleted by staff recommendation. The double underlined sections represent the language added by the Commission's action and the ~~double strike through~~ represents the language removed by the Commission's action.

SUGGESTED MODIFICATION #1

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

T. Visitor Accommodations.

4. Condominium Hotel – 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.

~~Condominium Hotel. A facility providing overnight visitor accommodations, where at least some of the guest rooms are in the form of separate condominium ownership interests. When a condo hotel unit is not occupied by its owner, that unit shall be made available to the general public through the hotel operator. If a Condominium Hotel includes traditional hotel units, the facility may use those rooms alone or in combination with its condo-hotel 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.~~

SUGGESTED MODIFICATION #2

Add Article 4a Section 450 Visitor Accommodation - Special Requirements of the Zoning Ordinance 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 an ~~Integrated Resort~~ Limited Use Overnight Visitor Accommodation.

SUGGESTED MODIFICATION #3

Replace Article 4a (Redevelopment) section 450 Visitor Accommodations, as follows:

7. Limited Use Overnight Visitor Accommodation: ~~Integrated Resort:~~ A resort that includes both traditional hotel lodging and some combination of timeshares, fractional time shares, or condo-hotel units. Up to 25% of the total rooms in Limited Use Overnight Visitor Accommodation ~~an Integrated Resort~~ may be timeshare, 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 units. A Limited Use Overnight Visitor Accommodation ~~Integrated Resort~~

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.

SUGGESTED MODIFICATION #4

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

Limited Use Overnight Visitor Accommodation Projects - will be required to prepare Covenants, Conditions, and Restrictions (CC& R's) 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, including how the any required in-lieu fees will be managed.

SUGGESTED MODIFICATION #5

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. Any proposal to demolish existing overnight visitor accommodations shall be required to demonstrate that rehabilitation of existing units is not feasible. If demolition of existing units is authorized, mitigation shall be provided for at least 50% of the total number of proposed new overnight visitor accommodations at the rate specified for in-lieu fees in Section 4a, Section 450 of this ordinance as follows:

a) In-lieu Fee Required

New 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 for 50% of the total number of overnight visitor accommodations in the redevelopment project. 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.

SUGGESTED MODIFICATION #6

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

~~In-Lieu Fees for Lower Cost Overnight Visitor Accommodations. An in-lieu fee shall be required for new development of overnight visitor accommodations in the coastal zone that are not lower cost. This in-lieu fee shall be required as a condition of approval of a coastal development permit, in order to provide significant funding to support the establishment of lower cost overnight visitor accommodations within the coastal area of North San Diego County. The fee shall be \$30,000 per room for 25% of the total number of proposed overnight visitor accommodations in the new development. 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.~~

SUGGESTED MODIFICATION #76

Add Article 4a (Redevelopment) section 450 Visitor Accommodations-Special Requirements, 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 Visitor Overnight 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 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 condominiums and sold for individual ownership.
- c) The hotel owner/operator shall retain control and through ownership, lease or easements of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. 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 rental/booking of all 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.
- e) The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise 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, 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.

- g) If the hotel operator is not serving as the 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 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. In all circumstances, the hotel operator shall have full access to the condominiums' 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 renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.
- l) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- m) The use period limitations identified in (l) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.
- n) No portion of the Condominium-Hotel may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel, other than as provided for in Section 5(a), above.
- o) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Condominium-Hotel, the landowner(s) of the property(is) within the Downtown "D" District upon which the traditional units/rooms (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations) without an approved Coastal Development Permit. The deed restriction shall be submitted for review and approval of the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(is) 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 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 subsections a) and n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission that such an amendment is not legally required.

- p) 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 Development and Redevelopment Director and the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) either of which shall include:
1. All the specific restrictions listed in 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 & R's/Declaration of Restrictions that reflect the requirements of 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 a) – n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director that an amendment is not legally required. If there is a section of the CC & R's/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 Declaration/CC & R's on amendments.
- q) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.
- r) The provisions of the CC & R's or 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 a) through p) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and Executive Director of the Coastal Commission 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 guest room/condominium 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) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC & R's and similar documents, shall notify buyers of the following:
1. Each owner of any individual 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 the units by owner(s) 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.
- u) The hotel owner/operator and any successor-in-interest hotel owner and 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 & R's or Declaration of Restrictions.
- v) The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in 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 City and the Executive Director of the Coastal Commission upon request and to the auditor required by section w below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Economic Development and Redevelopment Director and to the Executive Director of the California Coastal Commission of commencement of hotel operations.
- w) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Economic Development and Redevelopment Director, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions,

notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall 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 Development and Redevelopment 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 each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Economic Development and Redevelopment Director. The Economic Development and Redevelopment Director may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

x) If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of 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 & R's/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 deeds and CC & R's/Declaration of Restrictions shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director that an amendment is not legally required.

~~z) In lieu Fee Required~~

~~1. New development of 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 City limits. The specific dollar amount of the fee shall be \$30,000 in 2007 dollars which shall be adjusted annually to~~

- ~~account for inflation (i.e. according to increases in the Consumer Price Index — U.S. City Average) per room for 25% of the total quantity of proposed units.~~
2. ~~Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Oceanside, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within ten year of payment of the fee, the in lieu fee shall be made available to be applied toward lower cost overnight visitor accommodations.~~

SUGGESTED MODIFICATION #87

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

6. Fractional Ownership Hotel. 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 Visitor Overnight Accommodation.
 - b) A maximum of 15% of the total number of guestrooms/units may be subdivided into condominiums and sold for individual ownership.
 - c) The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. When the Fractional Ownership development is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the ~~Condominium-Hotel~~ Fractional Ownership Hotel exists.
 - d) The ~~Condominium-Hotel~~ Fractional Ownership Hotel facility shall have an on-site hotel operator to manage rental/booking of all 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.
 - e) The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise 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, 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.
- g) If the hotel operator is not serving as the 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 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. In all circumstances, the hotel operator shall have full access to the condominiums' 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 renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.
 - l) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
 - m) The use period limitations identified in (l) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.
 - n) No portion of the Fractional Ownership development may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Fractional Ownership development.
 - o) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Fractional Ownership development, the landowner(s) of the property(ies) within the Downtown "D" District upon which the traditional units/rooms (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) 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 subsections a) and n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission that such an amendment is not legally required.

- p) 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 Development and Redevelopment Director and the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) either of which shall include:
1. All the specific restrictions listed in 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 & R's/Declaration of Restrictions that reflect the requirements of 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 a) – n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission that an amendment is not legally required. If there is a section of the CC & R's/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 Declaration/CC & R's on amendments.
- q) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.
- r) The provisions of the CC & R's or 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 a) through p) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development and Redevelopment Director and the Executive Director of the Coastal Commission 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 guest room/condominium 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) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC & R's and similar documents, shall notify buyers of the following:
1. Each owner of any individual 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 the units by owner(s) 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.
- u) The hotel owner/operator and any successor-in-interest hotel owner and 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 & R's or Declaration of Restrictions.
- v) The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in 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 City and the Executive Director of the Coastal Commission upon request and to the auditor required by section w below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Economic

- Development and Redevelopment Director and to the Executive Director of the California Coastal Commission of commencement of hotel operations.
- w) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Economic Development and Redevelopment Director, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall 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 Development and Redevelopment 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 each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Economic Development and Redevelopment Director. The Economic Development and Redevelopment Director may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.
- x) If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.
- y) A coastal development permit application for a Fractional Ownership 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 &R's/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 Fractional Ownership development. 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 deeds and CC&R's/Declaration of Restrictions shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic

Development and Redevelopment Director that an amendment is not legally required.

~~z) In lieu Fee Required~~

- ~~1. New development of 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 City limits. The specific dollar amount of the fee shall be \$30,000 in 2007 dollars which shall be adjusted annually to account for inflation (i.e. according to increases in the Consumer Price Index - U.S. City Average) per room for 25% of the total quantity of proposed units.~~
- ~~2. Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Oceanside, the California State Department of Parks and Recreation, Hostelling International USA, California Coastal Conservancy or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within ten years of payment of the fee, the in lieu fee shall be made available to be applied toward lower cost overnight visitor accommodations.~~

SUGGESTED MODIFICATION #98

Add Article 12 Section "L" Downtown District: Additional Development Regulations as Follows:

Permitted uses within the 100 year floodplain shall be limited to open space, passive recreational uses, public parks, limited horticulture, floriculture, uses permitted within sensitive habitat areas pursuant to the City's certified "Standards for the Identification and Protection of Sensitive Habitats" and private commercial recreational uses. Provided soil placement does not exceed a maximum level of 3 feet above existing grade and that such placement does not adversely impact the flood-plain hydrology of the San Luis Rey River as defined and evaluated by the Army Corps of Engineers, the following development may be permitted in the 100 year flood-plain:

Bicycle and pedestrian paths, landscape, fencing, hardscape, waterscape, pools, tennis courts, putting greens, volleyball courts, basketball courts, driving range, shuffle board courts, horse shoes, lawn bowling, gazebos and arbors.

Within the first 50 feet of the required 100 foot wetland buffer zone, only transitional upland, non-invasive, vegetation shall be permitted. Within the second 50 feet of said buffer zone, only non-invasive landscape, hardscape, fencing and pathways for bicycles/pedestrians may be permitted.

All floodplain development shall be capable of withstanding periodic flooding without the construction of flood-protective work. Existing environmentally sensitive habitat area will not be adversely affected. There will be no increase in the peak runoff rate from the developed site as compared to the discharge that would be expected once every ten (10) years during a six (6) hour period. There will be no significant adverse water quality impacts and no downstream bank erosion or sedimentation may result from site improvements. All development shall be reviewed for conformance with the policies and standards of the certified San Luis Rey River Specific Plan.

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

A. AMENDMENT DESCRIPTION

The proposed LCP Amendment (#1-07 Downtown "D" District) 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.

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 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 is currently being reviewed 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. Again this will be necessary for the approval of the proposed Westin Hotel currently being reviewed by the City. These definitions and restrictions would be applicable to the entire Redevelopment Area of Oceanside.

Article 12. The purposed 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 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 espresso stand, grocery neighborhood market, live and work lofts, among others. Article 4a also includes the City's proposed definitions for Limited Use Overnight Accommodations including a definition for Condominium Hotels, Integrated Resorts, Hotel Owner/Operator and

Fractional Ownership units. Article 4a also includes the City's proposed restrictions for these types of overnight accommodations.

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, based upon several precedents, 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 off-site mitigation.

The City of Oceanside is currently undergoing a period of redevelopment, and as such considerations need to be made for the redevelopment or new development of visitor-serving overnight accommodations, especially in areas designated and zoned for visitor-serving uses. 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. The Commission has recently interpreted low cost accommodations as those with costs of less than or equal to \$100 per night, and include 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 costs 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 development will most likely result in overnight visitor-serving accommodations that could not be considered as lower cost. As such, 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 within this staff report. 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 of these what 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 accommodation, 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 exasperating 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.

2. Limited Use Overnight Accommodation.

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 is partially a project driven amendment. The amendment, as submitted, includes definitions for Condominium Hotels and Fractional Ownership developments, 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 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 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.

Although the amendment contains policy language that encourages visitor-serving uses within the nine-block area, the proposed changes will diminish the area available within the coastal zone to provide lower cost visitor-serving overnight accommodation. The amendment as proposed does include restrictions for the percentage of rooms that can be designated for limited use overnight visitor accommodation and length of stay maximums for individual owners, as well as a prohibition on converting any existing hotel to a limited use overnight establishment. The definitions proposed, together with the lack of any provision or protection of lower cost overnight accommodation, could result in the eventual elimination or substantial loss of lower cost facilities in the Oceanside coastal area. Moreover, the specific project associated with this LCP amendment is located shorefront; and, therefore, this development could serve to replace the current deficit for shorefront lower cost overnight accommodation. And, as stated above, future development of lower cost overnight accommodations should be encouraged to help maintain the stock of available lower cost facilities as Oceanside redevelops and land costs and construction costs increase. As such, the amendment, as submitted, cannot be found consistent with the City's certified LUP.

**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 accommodation both within the City limits, as well as at the shoreline. Modifications have been suggested for the definition for Condominium Hotel Units to more appropriately define this type of development pursuant to California Civil Code section 1351(f). Further recommendations have been made to protect existing hotel units, ~~as well as by the development of a~~ the provision for the payment of fees in-lieu of providing lower cost units as a component for any ~~future development~~ demolition and reconstruction of an existing hotel/motel development that is not proposing to replace the existing lower cost units in kind to any future development within the redevelopment area. Although the Commission prefers the actual provision of lower-cost accommodations in conjunction with projects, where necessary, the Commission has used in-lieu fees to ~~provide~~ protect lower-cost accommodations.

In general, many moderately priced hotel and motel accommodations tend to be older structures that are becoming less and less economically viable. As more recycling occurs, the stock of lower cost overnight accommodations tends to be reduced, since it is generally not economically feasible to replace these structures with accommodations that will maintain the same low rates. In general, the Commission sees far more proposals for higher cost accommodations than for low cost ones. In an effort to stem this tide, and to protect lower cost visitor-serving facilities, the Commission has imposed in-lieu mitigation fees when the re-development proposes of an existing overnight accommodation is replaced by only higher cost ~~accommodations units~~. 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.

While the type of Limited Use Overnight Visitor Accommodation anticipated pursuant to this amendment will be visitor-serving, it is not expected to be lower cost. The provision of only higher cost accommodations would preclude provision of lower cost facilities, which, unless mitigated, would be inconsistent with the public access policies of Oceanside's LUP. ~~Unless the IP is modified to include provisions requiring mitigation of higher cost accommodations are adopted, there is no assurance that lower cost accommodations will remain available along the coast.~~ The intent of the City's LUP policy is to ensure a balanced mix of visitor and recreational facilities within the coastal zone, so as to provide recreational opportunities to all economic sectors of the public. In order to protect, encourage, and where feasible, provide lower cost overnight visitor accommodations, the relative supply of existing affordable hotel/motel units needs to be maintained. ~~a modification is suggested that would require payment of an in-lieu fee to support continued availability of lower cost overnight visitor accommodations in the general project vicinity~~ However, in this case, lower cost accommodation is not the most viable, or desired type of development, as the City of Oceanside already has a generous stock of lower cost facilities, it is in fact, the higher-end type of accommodations that are lacking. The need for a higher end hotel facility was included as a goal for the City of Oceanside within their certified LCP.

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 past actions, the Commission has imposed an in-lieu mitigation fee to be used to provide new lower cost overnight visitor accommodations. 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. Moreover, given the above stated provision to require mitigation (in-lieu fees) for the removal of existing overnight accommodation, the retention of the existing hotel/motel stock can be encouraged and if demolition is endorsed, the in-lieu fee can be utilized to maintain a range of affordability. These numbers have been included in the suggested modifications for the City's proposed amendment and would be applicable to all developments that cannot be considered lower cost and are located within the Redevelopment Area.

Because the Commission has historically interpreted the protection of lower cost facilities to include a range of affordable facilities, requiring an in-lieu fee for 100% of the units within a proposed development would be too high. It stands to reason that should the proposed development include a significant number of its rooms as lower cost, the protection of a range of affordability would still be possible. However, as stated above,

the current trend for development is to include 0% of a proposed development's rooms to function as lower cost. Therefore, a significant portion of these rooms would be required to pay fees in-lieu of providing facilities at lower cost.

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 proposed, includes 0% of the units serving as lower cost accommodation; ~~therefore, the suggested modification requires that an in-lieu fee be paid for 25% of the units, to account for the lack of these priority uses provided on site.~~ Therefore, a suggested modification has been recommended to protect overnight facilities. As stated above, the majority of lower cost facilities remaining within the coastal zone are older and often outdated facilities; therefore, demolition of these facilities is likely. If these more affordable facilities are demolished and then replaced by higher cost facilities, not only would existing affordable accommodations not be protected, they would not be replaced. Therefore, a modification has been suggested that requires that any demolition of existing hotel/motel units, to be replaced by newer more expensive units, would be required to pay an in-lieu fee for at least 50% of the proposed new units. These fees would mitigate for both the loss of existing units, as well as the lack of proposed lower cost units. This suggested modification also promotes the rehabilitation as opposed to the demolition of existing hotel/motel units, and therefore encourages the City of Oceanside to maintain its current range of affordability.

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 (ref. Exhibit #3 attached). 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.

~~A further suggested modification has been recommended to further protect existing lower cost overnight facilities. As stated above, the majority of lower cost facilities remaining within the coastal zone are older and often outdated facilities; therefore, demolition of these facilities is likely. If these lower cost facilities are demolished and then replaced by higher cost facilities, not only would existing lower cost accommodations not be protected, but they would not be replaced. Therefore, a modification has been suggested that any demolition of existing hotel/motel units, to be replaced by newer more expensive units (as opposed to being renovated), would be required to pay an in-lieu fee for at least 50% of the proposed new units. This increase in fees would mitigate for both the loss of existing units, as well as the lack of proposed lower cost units.~~

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 if 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 hotel, both fractional ownership/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 it may be likely the hotel will 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.

An additional modification has been suggested for the inclusion of language within the existing Zoning Ordinance Article 12 to address development within the floodplain and ensure the provision of adequate buffers from wetland habitat. This language was developed by the City of Oceanside and currently exists in their Zoning Ordinances. As a component of this LCP, the City of Oceanside requested the removal of this language. The Downtown District includes 15 subdistricts and comprises the same geographic area as the City's adopted Redevelopment Area. The District/Redevelopment Area includes both the San Luis Rey River valley itself and many parcels that abut the floodplain and river valley. Prospective development in those areas, as well as the need to establish appropriate resource protection measures, was one of the initial reasons that the City's LCP was delayed in being certified. In support of the deletion of those provisions, the City indicated that there are currently no areas adjacent to or within the floodplain, nor is there any wetland habitat, located in the Downtown District where development is being considered at the present time. However, given the importance and sensitivity of the resources present in the river valley, it is incumbent on the City's LCP to provide for the necessary resource protection measures. In addition, while there may not be any current development pressure evident, redevelopment issues may arise and there are vacant parcels remaining in the area. Further, the review of this policy has provided the Commission an opportunity to update the language of this provision to reflect and further requirements for the adequate protection of floodplains, buffers, and wetland habitats. As such, the suggested modification includes the requirement that only non-invasive species are permitted within the required 100 foot wetland buffer zone. Therefore, the Commission finds that this language should not be removed from the Zoning Ordinance and needs to be re-inserted as modified. The City agrees with this modification.

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 and future development 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 modifications for protection of ~~existing lower cost~~ overnight accommodations and for the demolition and redevelopment of existing hotel/motel units~~the provision for the requirement of fees in lieu of any future development that does not include a lower cost overnight accommodation component~~, lower cost overnight accommodations will be both protected and augmented. Further, with the suggested modification 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. Instead, the CEQA responsibilities are assigned to the Coastal Commission and 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 ATTEST:

27 _____
28 City Clerk

Mayor of the City of Oceanside

APPROVED AS TO FORM:



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)
- i) 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.

o)

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

g) 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 $1/26 \times$ (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.~~
- qf) 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)

- r) 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)

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 ~~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.