

# PROSPECTS FOR TOURISM IN CUBA: REPORT ON THE RESIDENTIAL SALES/LEASES IN GOLF AND MARINA DEVELOPMENTS

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This report is partly based on two law review articles written by the author:

- 1 Real Estate Investment in Cuba: Back to the Future, 11 Florida Journal of International Law (University of Florida) No.3, 1997.
- 2 Real Estate Development in Cuba: Present and Future, 15 ILSA Journal of International & Comparative Law (Nova Southeastern University) No.3, 2009.

The Cuban constitution of 1976 formally established Cuba as a socialist country. In general terms, under that Constitution, all real estate should be owned by the State. When the Soviet bloc collapsed in the late 1980 the Cuban economy went into a deep depression which lasted most of the decade of the 1990.

Cuba recovered from the economic crisis by amending the 1976 Constitution in 1992, dollarizing the economy in 1993, adopting a new foreign investment law in 1995, promoting limited real estate development particularly in the tourism sector, modernizing its economy and normalizing to some extent the relationship with Cubans residing abroad.

The 1976 Constitution as amended in 1992 allows private ownership of real estate in certain cases. The new article 14 states: "The Republic of Cuba is governed by an economic system based on socialist prop-

erty of the people over fundamental means of production..." Therefore, the Constitution, as amended in 1992 allows private ownership of property in parts of the economy not considered "fundamental." Furthermore, Article 15 allows for state property to be transformed into private property owned by natural or corporate persons when deemed beneficial for the development of the country, or when the fundamental, political, social, and economic elements of the State are not affected. The Council of Ministers or its Executive Committee will have to approve all development proposals involving real estate.<sup>1</sup>

In September, 1995 a new Foreign Investment Code (Law 77), was enacted by the Cuban government replacing Law 50 of February, 1982. Law 77 has a section, Chapter VI, titled "Real Estate Investments" that includes:

Article 16c:

"Under the authorization of this Act, investments may be in the form of real estate and acquire ownership and other property rights over the real estate:

The real estate investments discussed in the previous paragraph may be used for: (a) Housing and other structures destined to private residence or tourism activities of persons that are not permanent residents in Cuba; (b) housing or offices of foreign companies; (c) real estate developments for tourism use."

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1. See the Nova Southeastern University Article cited above, page 609.

Article 17:

“Investments consisting of the purchase of real estate which constitute corporate activity are considered direct investments.”

Article 18:

“The conditions and terms under the purchase and transfer of real estate discussed in Article 16 of the Act are determined in the authorization, and must be in accord with current legislation.”<sup>2</sup>

These legal changes resulted in a modest real estate development boom during the mid and late 1990s. Commercial real estate in the form of office buildings and small shopping malls were built mostly in the Havana area. The effort to restore Old Havana and the development and construction of hotels went into high gear. There were also a number of residential condominium projects started in Havana. These condominiums projects offered fee simple sale of the units to foreigners.<sup>3</sup>

About 300 condominiums were sold in Havana mostly in the Miramar section. Many of these condominium projects were on or close to 5<sup>th</sup> Avenue. For instance: The Montecarlo Palace, the Habana Palace and Jardines de Quinta Avenida. Almost 2,000 condominiums were approved for construction and sale. Fewer than 1,000 apartments were actually built because the Cuban government put a moratorium on sales in April, 2000.

The reasons given for the moratorium were primarily legal and infrastructure problems. But there were also social and political reasons. However, in recent years sales have been allowed. For instance, the Edificio Atlantic in the Vedado section and the Edificio Vistamar in Santa Maria del Mar have sold a few units. Also, some re-sales have been approved. The individuals who bought the original 300 or so units have been allowed to keep and enjoy the properties.

In the last five or six years there has been an ongoing discussion on the benefits for Cuba’s tourism industry of developing golf and marina resorts. The proponents of golf and marina developments compare

Cuba with the Dominican Republic. Cuba which is much larger than the Dominican Republic and in some aspects a more attractive destination receives only about 2.2 million tourists per year. The Dominican Republic in contrast welcomes about 3.5 million tourists per year. The argument is that Cuba has only one 18-holes golf course and the Dominican Republic more than 20. Cuba also lags way behind the Dominican Republic in the number of marinas and boat slips.

The theoretical argument was won by the pro-golf and marina proponents. To test the waters, about five years ago, foreign investors and developers were encouraged to present projects to Cuban companies and the Ministries of Tourism and Foreign Investment. Groups from Spain, England, Canada, Vietnam and other countries have responded favorably and presented several projects.

Different Cuban entities have reviewed the projects and made suggestions to both the government and the potential developers. On May 4, 2010, during the International Tourism Fair in Havana, Manuel Marrero, Cuba’s Minister of Tourism said that concept of real estate sales of residential units associated with golf and marinas had been approved. A few weeks later, at the conclusion of a meeting of the Cuban National Assembly, he made a similar statement.

Then, on August 13, 2010, the “Gaceta Oficial de la República de Cuba” published Decree Law Number 273 signed by President Raúl Castro. The new law allows foreign individuals to lease land, building and residential properties in Cuba for up to 99 years. It also allows the Cuban government to sell a perpetual lease<sup>4</sup> to Cuban commercial companies for the construction of houses and apartments for tourists. In the book by University of Havana Professor, Vicente Rapa Alvarez, *Propiedad y Otros Derechos Sobre Bienes*, Editorial Felix Varela, La Habana, Cuba, 1999, he describes the “derecho de superficie” as “a way to facilitate the construction of residential units.”

2. See Nova article.

3. See the University of Florida article cited above.

4. The term in Spanish is “derecho perpetuo de superficie.”

Law 273 is what the foreign investors and developers were waiting to go forward with their projects. The same is true of the Cuban companies and the government officials. There are a number of projects that are ahead of the pack because the developers have been working in Cuba for a long time and the projects are well researched and designed. Examples of those projects include La Altura, Bacunayagua and Carbonera.

- La Altura is located about 60 miles west of Havana. It is west of Bahia Honda, close to the town of Playa El Morillo. It has three golf courses, a two hundred slip marina, two hotels, almost 3,000 residential units and even a small airport. See site plans attached as Exhibit “A.”
- Bacunayagua is located about 40 miles east of Havana in Matanzas Province on the east side of the Bacunayagua River. The project has two 18 hole golf courses, a small marina, a hotel and close to 2,000 residential units. See site plans attached as Exhibit “B” and “C.”
- Carbonera is located about 60 miles east of Havana and just a few miles west of Varadero. Carbonera is actually just north of the Varadero International Airport. It has one 18 hole golf course, a hotel, a beach club and restaurant and almost 1,000 residential units. See site plan attached as Exhibit “D.”

In total there are some 15 projects in different states of preparation for development. These projects in-

clude more than 20 golf courses and some 20,000 residential units. Most of the projects have one or more hotels and several have marinas. See map of Cuba that shows existing and projected marinas and golf courses attached as Exhibit “E.” This map is presented as a courtesy of CubaNews.

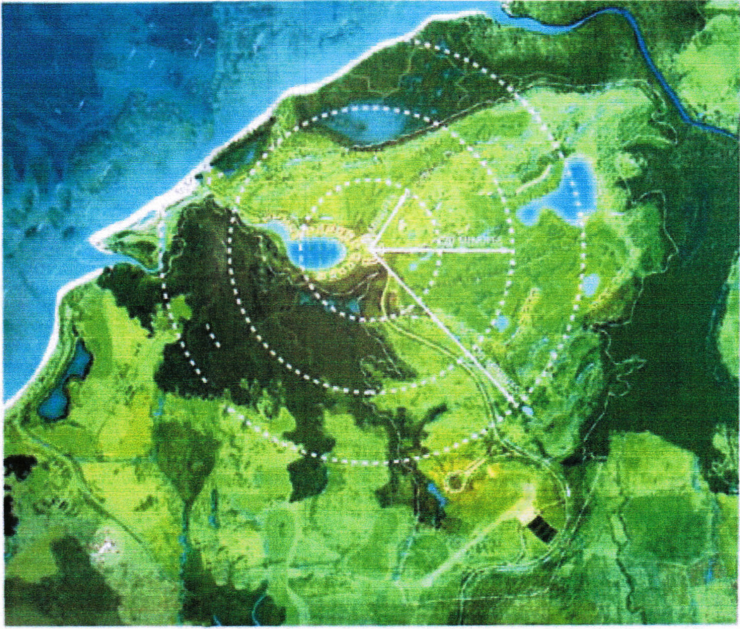
There are several marinas projected to have residential units also. For instance, Marina Dársena de Varadero will have 200 villas and 500 condominiums. The marina projected for Cayo Guillermo/Cayo Coco could have as much as 1,500 residential units. The marinas projected for Bahia de Nuevitas and Holguín could add another 2,000 residential units. The marinas projected to be developed will add about 4,000 boat slips to Cuba.

At present there is a government sponsored commission drafting the rules and regulations that will apply to residential sales in golf and marina projects. The commission is looking at the form of ownership, immigration regulations, sales to Cubans living in Cuba and abroad, health insurance requirements, applicable taxes, importation of personal goods, purchases of cars, etc.

The first joint venture companies that will develop the projects are expected to be in place early next year. Specific projects could be approved by mid 2011 and actual construction of some projects could start by year end or in the first quarter of 2012.

Exhibit A.

DISTANCIAS A PIE WALKING DISTANCES




**Proyecto Parcela "La Altura"**


- 3 campos de golf de 18 hoyos cada uno
- Marinas con 200 atraques
- 200 Casas (villas)
- 1500 Apartamentos
- 28 060 metros cuadrados para obras
- 2 Hoteles con 320 Habitaciones
- Aeropuerto y Club del Aire

FOSTER AND PARTNERS

MARINA



LA ALTURA



LA ALTURA

Exhibit B.

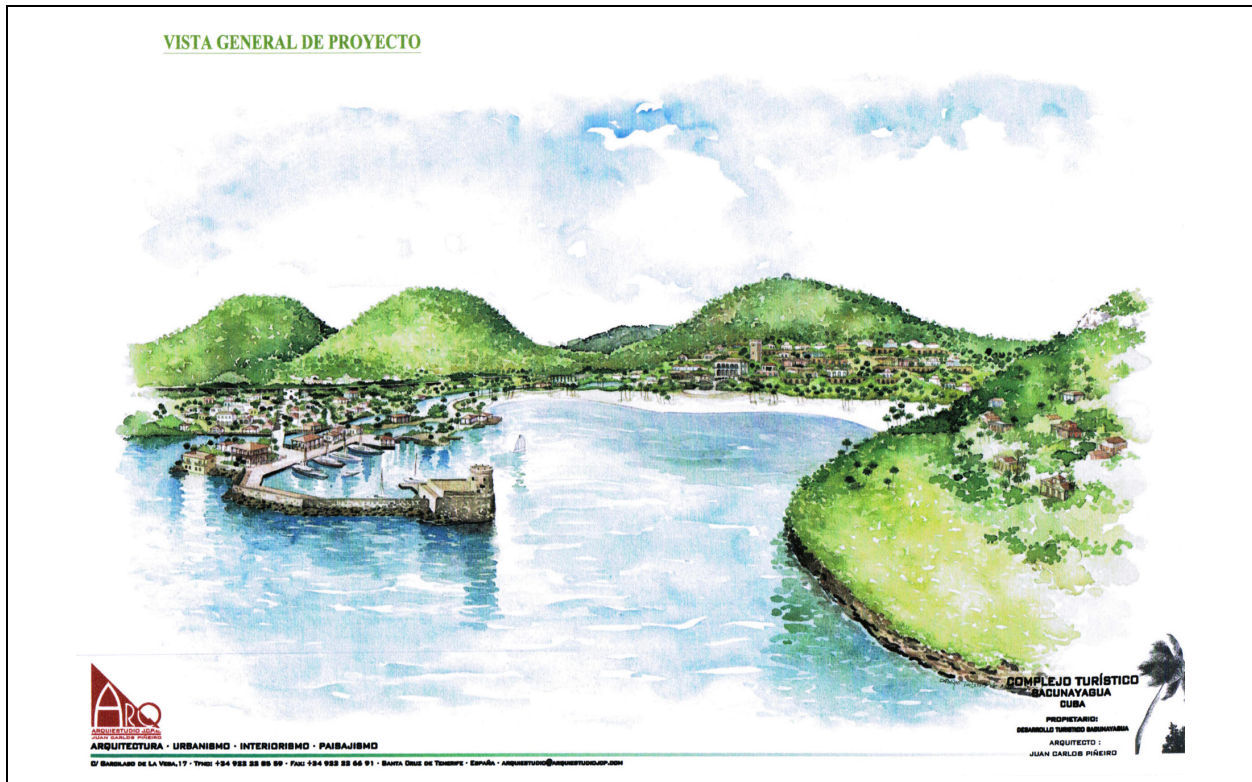


Exhibit C.



Exhibit D.

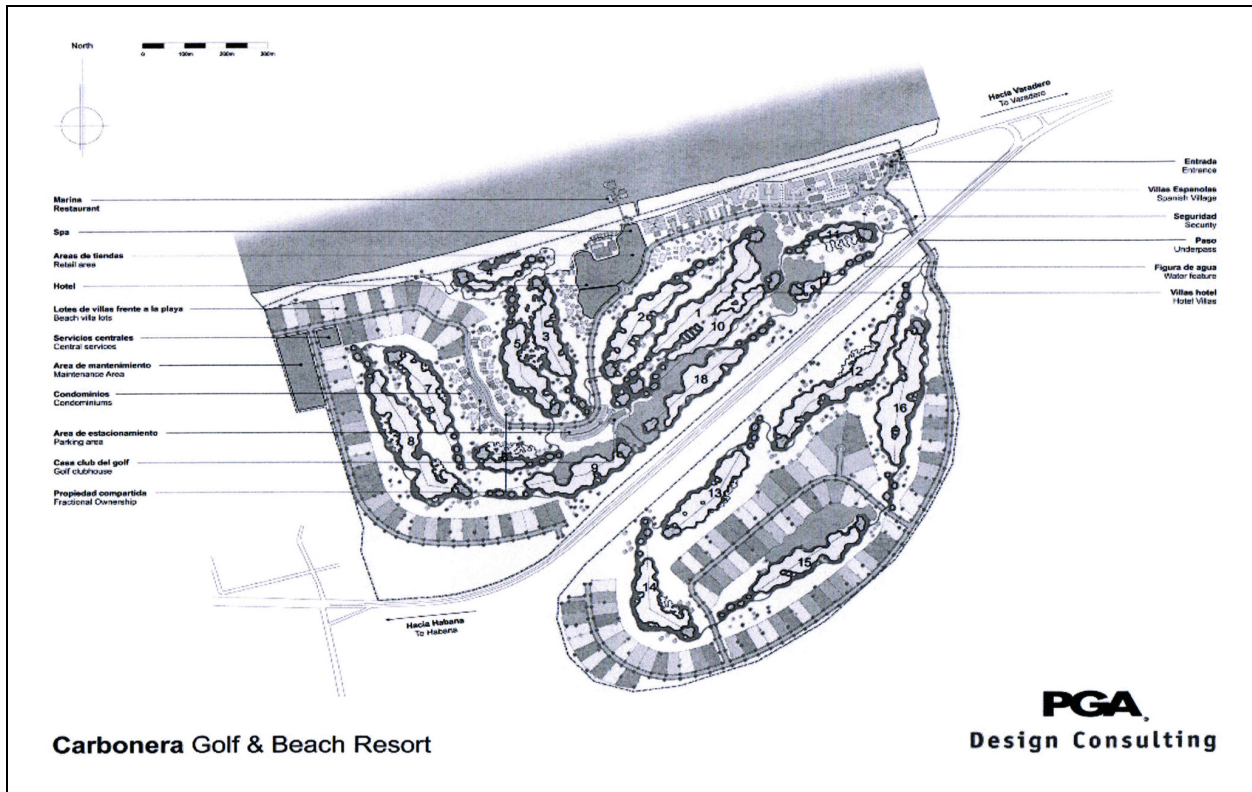


Exhibit E.

