

ESSEX PROPERTY TRUST INC
Form S-3
January 20, 2006

As Filed with the Securities and Exchange Commission on January 20, 2006

Registration No. 333-_____

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-3

Registration Statement Under The Securities Act of 1933, As Amended

Essex Property Trust, Inc.

(Exact name of registrant as specified in its charter)

Maryland

*(State or Other Jurisdiction of Incorporation or
Organization)*

77-0369576

*(IRS Employer Identification
Number)*

**925 East Meadow Drive
Palo Alto, California 94303
(650) 494-3700**

(Address, including zip code, and telephone, including area code, of registrar's principal executive offices)

Keith R. Guericke
President and Chief Executive Officer
925 East Meadow Drive
Palo Alto, California 94303
(650) 494-3700

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to
Stephen J. Schrader, Esq.
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, California 94303
(650) 813-5600

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

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If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. "

If this Form is a post-effective amendment filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. "

CALCULATION OF REGISTRATION FEE				
Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Aggregate Offering Price Per Share (2)(3)	Proposed Maximum Aggregate Offering Price (2)(3)	Amount of Registration
Common Stock, \$.0001 par value	142,076 Shares	\$97.04	\$13,787,056	\$1,480

(1) Including an indeterminate number of shares which may be issued by Essex Property Trust, Inc. with respect to such shares of common stock by way of a stock dividend, stock split or in connection with a stock combination, recapitalization, merger, consolidation or otherwise.

(2) Based upon the average of the high and low prices of the common stock reported on the New York Stock Exchange on January 13, 2006, which was \$97.04 per share, pursuant to Rule 457(c) of the Securities Act of 1933, as amended.

(3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457 of the Securities Act of 1933, as amended.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES

AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933, AS AMENDED, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. THE SELLING STOCKHOLDERS MAY NOT RESELL THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND IT IS NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

SUBJECT TO COMPLETION, DATED JANUARY 20, 2006

PROSPECTUS

ESSEX PROPERTY TRUST, INC.

142,076 SHARES OF COMMON STOCK

This prospectus relates to 142,076 shares of our common stock. None of these shares of common stock are currently outstanding. All 142,076 shares of our common stock may be issued by us upon the exchange of outstanding partnership units on a one-for-one basis and offered and resold from time to time by selling stockholders named in this prospectus. We are registering the shares of common stock to provide the selling stockholders with freely tradeable securities, but this registration does not necessarily mean that the selling stockholders will offer or sell the shares.

We are filing the registration statement of which this prospectus is a part pursuant to contractual obligations. We will not receive any proceeds from the sale of the shares by the selling stockholders but we have agreed to pay certain registration expenses.

To facilitate maintenance of our qualification as a real estate investment trust for federal income tax purposes, subject to certain exceptions, we prohibit the ownership, actually or constructively, by any single person of more than 6.0% of the value of the outstanding shares of our stock.

Our common stock is listed on the New York Stock Exchange under the symbol "ESS." On January 17, 2006 the last reported sales price of our common stock on the New York Stock Exchange was \$97.30 per share.

INVESTING IN OUR COMMON STOCK INVOLVES CERTAIN RISKS. SEE "RISK FACTORS" BEGINNING ON PAGE 4.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OF THESE SECURITIES OR DETERMINED THAT THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is January 20, 2006.

Neither Essex Property Trust, Inc. nor the selling stockholders have authorized any person to give any information or to make any representation not contained or incorporated by reference in this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus as if we had authorized it. You should not assume that the information contained in this prospectus is correct on any date after the date of this prospectus, even though this prospectus is delivered or shares are sold pursuant to this prospectus on a later date.

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WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission. You may read and copy any document we file with the SEC at the SEC's public reference room at Room 1580, 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. The SEC also maintains a web site that contains reports, proxy and information statements, and other information regarding registrants that file electronically with the SEC (<http://www.sec.gov>). You can inspect reports and other information we file at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

We have filed a registration statement of which this prospectus is a part and related exhibits with the SEC under the Securities Act of 1933, as amended (the "Securities Act"). The registration statement contains additional information about us. You may inspect the registration statement and exhibits without charge at the office of the SEC at 100 F Street, N.E., Washington, D.C. 20549, and you may obtain copies from the SEC at prescribed rates.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to "incorporate by reference" the information we file with the SEC, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus. Any statement contained in a document which is incorporated by reference in this prospectus is automatically updated and superseded if information contained in this prospectus, or information that we later file with the SEC, modifies or replaces this information. We incorporate by reference the following documents we filed with the SEC:

- Annual Report on Form 10-K for the year ended December 31, 2004; and as amended on Form 8-K dated January 20, 2006.
- Quarterly Reports on Form 10-Q for the quarters ended March 31, 2005, June 30, 2005 and September 30, 2005;
- Current Reports on Form 8-K filed on February 14, 2005, April 13, 2005, October 25, 2005, November 2, 2005 (other than the current report furnished on such date under Item 2.02 of Form 8-K), December 1, 2005, January 4, 2006, January 9, 2006 and January 20, 2006;
- the description of our common stock contained in our Registration Statement on Form 8-A filed with the SEC on May 27, 1994, as amended on September 19, 2003; and
- all documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (other than current reports furnished under Item 2.02 or 7.01 of Form 8-K) after the date of this prospectus and prior to the termination of the offering.

To receive a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents), call or write Essex Property Trust, Inc., 925 East Meadow Drive, Palo Alto, California 94303, Attention: Secretary (650) 494- 3700).

Unless we indicate otherwise or unless the context requires otherwise, all references in this prospectus to "Essex" or the "Company" mean Essex Property Trust, Inc. and all references to the "Operating Partnership" mean Essex Portfolio, L.P. Unless we indicate otherwise or unless the context requires otherwise, all references in this prospectus to "we," "us," or "our" mean Essex and its subsidiaries, including the Operating Partnership and its subsidiaries. When we refer to Essex's "charter" we mean Essex's articles of incorporation, as amended and supplemented from time to time.

FORWARD-LOOKING STATEMENTS

This prospectus contains or incorporates by reference forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act, and are subject to the “safe harbor” provisions created by these statutes. All statements, other than statements of historical facts, that address activities, events or developments that we intend, expect, project, believe or anticipate will or may occur in the future are forward-looking statements. Such statements are characterized by terminology such as “anticipates,” “believes,” “expects,” “future,” “intends,” “assuming,” “projects,” “plans” and similar expressions or the negative of those terms or other comparable terminology. These forward-looking statements which include statements about our expectations, objectives, anticipations, intentions and strategies regarding the future, expected operation results, revenues and earnings, reflect only management’s current expectations and are not guarantees of future performance and are subject to risks and uncertainties, including those risks described under the heading “Risk Factors” in this prospectus, or in the documents incorporated by reference in this prospectus, that could cause actual results to differ materially from the results contemplated by the forward-looking statements. Forward-looking statements in this prospectus include, without limitation:

- Our expectations regarding our ability to finance all of our balloon payments when due under our mortgages and our line of credit borrowings;
 - Our intent to continue to acquire multifamily residential properties;
- Our expectation to finance future acquisitions, in whole or in part, under various forms of secured or unsecured financing or through the issuance of partnership units by the Operating Partnership or additional equity;
- Our intent to continue to use leverage to increase the rate of return on our investments and to provide for additional investments that we could not otherwise make;
- Our ability to obtain additional debt financing in the future through mortgages on some or all of our properties;
- Our ability to enter into business combinations with Messrs. Marcus and Millichap and The Marcus & Millichap Company, without compliance with the super-majority vote requirements and other provisions of the Maryland General Corporation Law;
- Our ability to establish one or more series of preferred stock that could delay, defer or prevent a transaction or a change in control;
 - Our expectation to engage in tax-exempt financings in the future;
 - Our anticipation to maintain sufficient influence over any joint venture to achieve its objectives;
- Our plan to hold contributed assets or defer recognition of taxable gain on their sale pursuant to like-kind exchanges under Section 1031 of the Internal Revenue Code and their impact on our financial position;
 - Essex’s expectation to continue to be a domestically controlled REIT;
- Our belief that the amount of our assets that are not qualifying assets for purposes of the 75% asset test will continue to represent less than 25% of our total assets and will satisfy the 5% and both 10% asset tests;
 - Essex’s belief that it is not, and it does not expect to become, a “pension-held REIT”;
- Our intention to structure any hedging transactions in a manner that does not jeopardize our status as a REIT;

- Our anticipation to maintain sufficient influence over the Essex Apartment Value Fund, L.P. to permit it to achieve its business objectives; and

- Our belief that Essex will continue to qualify as a REIT.

All forward-looking statements included or incorporated by reference in this prospectus are made as of the date hereof, based on information available to us as of the date hereof, and we assume no obligation to update any forward-looking statement or statements. It is important to note that such forward-looking statements are subject to risks and uncertainties and that our actual results could differ materially from those in such forward-looking statements. The foregoing factors, as well as those under the heading “Risk Factors” in this prospectus and in the Section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our most recent Annual Report on Form 10-K and Quarterly Report on Form 10-Q that we file with the SEC from time to time, among others, in some cases have affected, and in the future could affect, our actual operating results and could cause our actual consolidated operating results to differ materially from those expressed in any forward-looking statement made by us. You are cautioned not to place undue reliance on forward-looking statements contained in this prospectus.

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RISK FACTORS

Our operations involve various risks that could have adverse consequences including, without limitation, reductions in funds from operations, impairing our ability to make distributions to shareholders, and failure to qualify as a REIT. These risks include, among others, the following:

We depend on our key personnel

Our success depends on our ability to attract and retain the services of executive officers, senior officers and company managers. There is substantial competition for qualified personnel in the real estate industry and the loss of several of our key personnel could have an adverse effect on us.

Debt Financing

At September 30, 2005, we had approximately \$1.31 billion of indebtedness (including \$344.6 million of variable rate indebtedness, of which \$138.9 million is subject to interest rate protection agreements).

We are subject to the risks normally associated with debt financing, including the following:

- cash flow may not be sufficient to meet required payments of principal and interest;
- inability to refinance existing indebtedness, including on encumbered properties;
- the terms of any refinancing may not be as favorable as the terms of existing indebtedness;
- inability to comply with debt covenants which could cause an acceleration of the maturity date; and
- repaying debt before the scheduled maturity date could result in prepayment penalties.

Uncertainty of Ability to Refinance Balloon Payments

At September 30, 2005, we had an aggregate of approximately \$1.31 billion of mortgage debt and line of credit borrowings, most of which are subject to balloon payments of principal. We do not expect to have sufficient cash flows from operations to make all of such balloon payments when due under these mortgages and the line of credit borrowings. At September 30, 2005, these mortgages and lines of credit borrowings had the following scheduled principal payments:

- October 1 to December 31, 2005 — \$6.5 million;
- 2006 — \$26.2 million;
- 2007 — \$182.4 million (includes lines of credit balance of \$56 million as of September 30, 2005);
- 2008 — \$156.1 million;
- 2009 — \$147.7 million (includes lines of credit balance of \$93.7 million as of September 30, 2005);
- 2010 and thereafter — \$795.3 million.

We may not be able to refinance such mortgage indebtedness or lines of credit. The properties subject to these mortgages could be foreclosed upon or otherwise transferred to the mortgagee. This could cause us to lose income and asset value. Alternatively, we may be required to refinance the debt at higher interest rates. If we are unable to make such payments when due, a mortgage lender could foreclose on the property securing the mortgage, which could have a material adverse effect on our financial condition and results of operations.

The price of our common stock may fluctuate significantly.

The market price of our common stock may fluctuate significantly in response to many factors, including:

- actual or anticipated changes in operating results or business prospects;
 - changes in financial estimates by securities analysts;
- an inability to meet or exceed securities analysts' estimates or expectations;
 - conditions or trends in our industry or sector;
- the performance of other multifamily residential REITs and related market valuations;
- announcements by us or our competitors of significant acquisitions, strategic partnerships,
 - divestitures, joint ventures or other strategic initiatives;
 - hedging or arbitrage trading activity in our common stock;
 - changes in interest rates;
 - capital commitments;
 - additions or departures of key personnel; and
- future sales of our common stock or securities convertible into, or exercisable for, our common stock

Holders of our common stock are subject to the risk of volatile and depressed market prices of our common stock. In addition, many of the factors listed above are beyond our control. These factors may cause the market price of our common stock to decline, regardless of our financial condition, results of operations, business or prospects. It is impossible to assure holders of our common stock that the market prices of our common stock will not fall in the future.

Economic Environment and Impact on Operating Results

Both the national economy and the economies of the western states in which we own, manage and develop properties, some of which are concentrated in high-tech sectors, are subject to economic downturns. The impact of such downturns on our operating results can include, without limitation, reduction in rental rates, occupancy levels, property valuations and increases in operating costs such as advertising, turnover and repair and maintenance expenses. Reductions in occupancy and market rental rates could result in a reduction of rental revenues, operating income, cash flows, and the market value of our common stock. A prolonged downturn could also affect our ability to obtain financing at acceptable rates of interest and to access funds from the disposition of properties at acceptable prices.

Risk of Rising Interest Rates

At September 30, 2005, we had approximately \$194.9 million of long-term variable rate indebtedness bearing interest at floating rates tied to the rate of short-term tax-exempt revenue bonds (which mature at various dates from 2006 through 2034), and \$149.7 million of variable rate indebtedness under our lines of credit, of which \$56 million bears interest at 1.0% over LIBOR and \$93.7 million bearing interest at the Freddie Mac Reference Rate plus from 0.55% to 0.59%. At September 30, 2005, approximately \$205.7 million of our long-term variable rate indebtedness was not subject to any interest rate protection agreements. Accordingly, an increase in interest rates may have an adverse effect on our net income and results of operations.

Current interest rates are at historic lows and could potentially increase rapidly. Significant and rapid interest rate increases would result in higher interest expense on our variable rate indebtedness. Prolonged interest rate increases could negatively impact our ability to make acquisitions and develop properties at economic returns on investment and our ability to refinance existing borrowings at acceptable rates.

Risk of Inflation/Deflation

Substantial inflationary or deflationary pressures could have a negative effect on rental rates and property operating expenses, which would adversely affect our financial position and our results of operations.

Risk of Losses on Interest Rate Hedging Arrangements

We have, from time to time, entered into agreements to reduce the risks associated with increases in interest rates, and may continue to do so. Although these agreements may partially protect against rising interest rates, these agreements also may reduce the benefits to us when interest rates decline. We cannot assure you that we can refinance any such hedging arrangements or that we will be able to enter into other hedging arrangements to replace existing ones if interest rates decline. Furthermore, interest rate movements during the term of interest rate hedging arrangements may result in a gain or loss on our investment in the hedging arrangement. In addition, if a hedging arrangement is not indexed to the same rate as the indebtedness that is hedged, we may be exposed to losses to the extent that the rate governing the indebtedness and the rate governing the hedging arrangement change independently of each other. Finally, nonperformance by the other party to the hedging arrangement may subject us to increased credit risks. In order to minimize counterparty credit risk, our policy is to enter into hedging arrangements only with large financial institutions.

On February 16, 2005, the Company entered into a \$50.0 million notional forward-starting swap with a commercial bank at a fixed rate of 4.927% and a settlement date on or around October 1, 2007. This 10-year forward starting interest rate swap issued to hedge the cash flows associated with the forecasted issuance of debt expected to occur in 2007.

On August 18, 2005, the Company entered into a \$50.0 million notional forward-starting swap with a commercial bank as a fixed rate of 4.869% and a settlement date between January 1, and December 1, 2008. This 10-year forward starting interest rate swap is used to hedge the cash flows associated with the forecasted issuance of debt expected to occur in 2008.

At September 30, 2005, derivative instruments designated as cash flow hedges were recorded as a net derivative asset of \$91,000 and were included in prepaid expenses and other assets. The net change in fair value of the derivative instruments for the nine months was a net unrealized gain of \$91,000. Derivatives designated as cash flow hedges are separately disclosed in the statement of changes in shareholders' equity accumulated other comprehensive income. No hedge ineffectiveness on cash flow hedges was recognized during 2005. The Company did not have accumulated other comprehensive income in 2004.

Acquisition Activities: Risks that Acquisitions Will Fail to Meet Expectations

We intend to continue to acquire multifamily residential properties.

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There are risks that acquired properties will fail to perform as expected. Our estimates of future income, expenses and the costs of improvements or redevelopment that are necessary to allow us to market an acquired property as originally intended may prove to be inaccurate. We expect to finance future acquisitions, in whole or in part, under various forms of secured or unsecured financing or through the issuance of partnership units by the Operating Partnership or related partnerships or additional equity by Essex. The use of equity financing, rather than debt, for future developments or acquisitions could dilute the interest of Essex's existing stockholders. If we finance new acquisitions under existing lines of credit, there is a risk that, unless we obtain substitute financing, Essex may not be able to secure further lines of credit for new development or such lines of credit may be not available on advantageous terms.

Further, acquisitions of properties are subject to the general risks associated with real estate investments. For further information regarding these risks, please see "Adverse Effect to Property Income and Value Due to General Real Estate Investment Risks."

Risks that Development Activities Will Be Delayed, not Completed, and/or Fail to Achieve Expected Results

We pursue multifamily residential property development projects and these projects generally require various governmental and other approvals, which we cannot