Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: November 10, 2005

TO: Honorable Deputy Mayor and City Council
Gary Halbert, Development Services Department
Planning Commission

FROM: City Attorney

SUBJECT: Condominium Conversions--California Environmental Quality Act [CEQA] Compliance and Building Code Standards

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INTRODUCTION

The City of San Diego [City] is facing an unprecedented loss of rental property units due to conversion of rental units to condominiums. Applications to convert 11,422 rental units to condominiums were submitted to the City between February 1, 2004 and June 28, 2005. City Manager Report No. 05-163, July 20, 2005 [CMR 05-163] at 2. This is a staggering increase in condominium conversions in the City.[1] In addition, condominium conversions processed as "off the shelf" conversions do not require approvals from the City. *Id*. There is no system for tracking "off the shelf" conversions and, therefore, no reliable information on how many "off the shelf" conversions have taken place. CMR 05-060 at 1; CMR 05-163 at 2.

The City Council approved new regulations in March 2004 to address the impact of condominium conversions on the rental inventory. The regulations included requiring payment of three months rent to low-income displaced renters in years when the rental vacancy rate is less

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[1] "Between 1989 and 1998 no applications to convert existing rental units to condominiums were submitted in San Diego. From 1999 to January 2004, applications for condominium maps to convert 2,275 rental units were submitted." City Manager Report No, 05-060 Rev., March 4, 2005 [CMR 05-060] at 1.

than 7 percent.[2] Also, the City's inclusionary housing requirements were amended to apply to condominium conversions and to require developers who convert apartments to condominiums to provide affordable units on-site or pay an in-lieu fee.[3] In March 2005, the City Manager reported the existing shortage of rental housing and the impact of condominium conversion on rental housing:

> The rental vacancy rate has fluctuated between three and four percent during the past two years. *This is a historically low vacancy rate indicating that supply is failing to adequately meet demand.* The median monthly rent in San Diego in the fall of 2004 was $996.50, according to the SDCAA.
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> . . . .
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> The 2000 census identified 227,000 rental units in San Diego including single and multifamily homes. Condominium map applications for over 8,600 units and Certificates of Compliance requested for 2,600 units indicate that *at least five percent* of the total rental housing stock could be impacted by condominium conversions over the next few years.

CMR 05-060 at 3 (emphasis added).

The extent to which condominium conversions reduce the rental stock is unclear because many newly converted condominium units return to the rental market after conversion. *Id*. Of note, the highest concentration of condominium conversions is occurring south of Interstate 8 and in Districts 2 and 3. CMR 05-163, Attachment: Applications for condominium maps, 1999-June 2005.

All discretionary City projects are subject to environmental review under the California Environmental Quality Act [CEQA]. Cal. Pub. Res. Code § 21000. The State CEQA Guidelines

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[2] San Diego Municipal Code section 144.0503(b) obligates applicant to pay three months relocation assistance to low-income tenants displaced by the condominium conversion; San Diego Municipal Code section 144.0504(a) relieves an applicant of the obligation to pay relocation assistance in years when the average vacancy rate for residential rental units exceeds 7 percent.

[3] San Diego Municipal Code section 142.1306; San Diego Municipal Code section 142.1306(a) provides for "condominium conversion units affordable to and sold to households earning less than 150 percent (150%) of the area median income pursuant to an agreement entered into with the San Diego Housing Commission shall not be included in the dwelling units total for purposes of applying the ten percent inclusionary housing requirement."

[Guidelines] are prescribed by the Secretary for Resources to implement CEQA and are binding on all public agencies in California. Guidelines § 15000. Projects may be exempt from environmental review if they fall within a statutory or categorical exemption. Guidelines § 15061. The City currently processes condominium conversions under the categorical exemption for existing facilities.[4] All categorical exemptions are limited by Guidelines section 15300.2 which states in part:

> (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
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> (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The number of condominium conversions, concentrated largely in a portion of the City, raises questions of cumulative impacts. These impacts include the displacement of renters, significant impacts due to loss of rental housing, and growth inducing impacts both as significant environmental impacts and cumulative impacts that warrant additional environmental review for purposes of compliance with CEQA. The unusual circumstances of an extraordinary number of condominium conversions in the last eighteen months and the cumulative impact of successive projects warrant an exception from the exemption to require environmental analysis of significant adverse environmental impacts and cumulative impact analysis.

QUESTIONS

1. Are condominium conversions exempt from environmental review under the categorical exemption for existing facilities?

2. Is the loss of rental housing an adverse environmental effect of condominium conversions that requires environmental review as a potentially significant impact and cumulative impact analysis?

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[4] Guidelines § 15301. The Guidelines categorize existing facilities as a “Class 1” exemption consisting of “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination . . . . The key consideration is whether the project involves negligible or no expansion of an existing use.”

3. Are the social and economic effects caused by the displacement of renters significant impacts for purposes of environmental review of condominium conversion projects?

4. May the loss of rental housing have growth inducing impacts that must be analyzed as adverse impacts, both as a significant impact and as part of a cumulative impact analysis?

5. Do other California jurisdictions treat displacement and the loss of rental housing from condominium conversions as significant impacts that should be mitigated?

6. Should the City require condominium conversion applicants to bring the existing building into compliance with current building code regulations, including fire, electrical, and building standards?

SHORT ANSWERS

1. No. The categorical exemption for existing facilities is not applicable because the change in use from rental to condominium is qualitatively different to warrant environmental review. There are significant adverse impacts and cumulative impacts including displacement impacts to renters, loss of rental and low-income housing, and growth inducing impacts associated with condominium conversions.

2. Yes. The loss of rental housing, even when replaced with the same number or a higher number of owner-occupied housing, is an adverse effect that must be analyzed as a significant impact and for its contribution to cumulative impacts because of the City's declared affordable housing crisis, low vacancy rates, and vulnerable population of people served by rental housing.

3. Yes. The social and economic effects caused by the displacement of renters include overcrowding, job loss, poverty, stress, homelessness, and gentrification. These adverse social and economic effects are the indirect cause of adverse physical environmental impacts including ghettoization, increased transportation needs, and replacement housing needs.

4. Yes. The loss of rental housing, even when replaced with another type of housing, has potential growth inducing impacts. A need for affordable housing is created by the loss of one type of housing, and, when coupled with other related projects, that loss may be cumulatively significant.

5. Yes. Other California jurisdictions such as Los Angeles consider the net loss of existing low-income households as part of the CEQA threshold screening criteria.

6. Yes. The City should impose the requirements of the current California Building Standards Code on applicants who wish to convert rental housing to condominium conversions

to protect the public health, safety, and welfare. To phase in this requirement, the City may elect to adopt the Planning Department and Development Services Department "good neighbor" regulation standards.

ANALYSIS

I. Condo Conversions as a Categorical Exemption under CEQA

In order to ensure the long-term protection of the environment, CEQA mandates environmental review of discretionary projects prior to project approval in order to inform the public and the decision makers about environmental consequences and to require an assessment of how those consequences might be mitigated. Cal. Pub. Res. Code §§ 21000-21001. The Legislature intends that CEQA be interpreted to give the fullest possible protection to the environment within the reasonable scope of the statutory language. Cal. Pub. Res. Code § 21000(g); *Napa Citizens for Honest Government v. Napa County Board of Supervisors*, 91 Cal. App. 4th 342, 356 (2001).

The California Legislature directed the Secretary of the Resources Agency to adopt guidelines to include a list of classes of projects deemed to have no significant adverse impact on the environment. Cal. Pub. Res. Code § 21084(a).These classes of projects are exempt from CEQA review as categorical exemptions. Guidelines § 15300. The City currently processes condominium conversions under the categorical exemption for existing facilities. Guidelines § 15301. However, categorical exemptions based on existing facilities are precluded in the case of cumulative impacts or significant effects due to unusual circumstances. Guidelines § 15300.2.

The key question is whether the project falls within an exemption and it can be said with certainty that a project will not have a significant environmental impact. *Davidon Homes v. City of San Jose*, 54 Cal. App. 4th 106, 115 (1997) (An agency's finding that a project falls within an exempt class includes an implied finding that the project has no significant effect on the environment.) *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 74 (1974). Each categorical exemption is to be applied narrowly. *Santa Monica Chamber of Commerce v. City of Santa Monica*, 101 Cal. App. 4th 786, 793 (2002). Whether the activity falls within the definition of a categorically exempt project is a question of law, reviewed under de novo standard of review. *Id.* at 792; *Fairbank v. City of Mill Valley*, 75 Cal. App. 4th 1243, 1251 (1999).

If there is a fair argument of a significant effect, the agency must conduct an initial study. Guidelines § 15063. If the initial study finds no significant environmental effect, the agency must prepare a negative declaration. Guidelines § 15070(a). If the initial study finds the project may result in a significant effect, the agency must prepare an Environmental Impact Report [EIR]. Guidelines § 15064(a)(1). A lead agency must not rely on potential mitigation measures when

deciding whether a project falls within a categorical exemption. *Salmon Protection and Watershed Network v. County of Marin*, 125 Cal. App. 4th 1098, 1106 (2004). The fact that an impact may be mitigated is not relevant to the application of the categorical exemption. *Id.* at 1107. If the project may have a significant impact, whether or not that impact may be mitigated, the project does not qualify under any categorical exemption. *Id.*

The existing facility categorical exemption is not allowed where a project will expand or alter the use of the facility. *County of Amador v. El Dorado County Water Agency*, 76 Cal. App. 4th 931, 968 (1999). For example, an exception to the existing facility categorical exemption might apply when the number of replacement condominiums will exceed the number of existing rental units. Alternatively, where the new project will have fewer units than the existing facility, the loss of housing units could be a significant impact. *Concerned Citizens of South Central Los Angeles* v. Los Angeles Unified School Dist., 24 Cal. App. 4th 826, 837 (1994); *Sacramento Old City Association v. City Council*, 229 Cal. App. 3d 1011, 1038 (1991).

Even if condominium conversions are properly labeled under the categorical exemption for existing facilities for purposes of CEQA compliance, the lead agency must evaluate the conversion to see if there is a significant impact from the conversion. The lead agency must also determine whether the project is contributing to more cumulative environmental impacts. The significant impacts from condominium conversions are social impacts and loss of rental and low-income housing. The loss of housing and the growth inducing impacts due to 11,422 successive condominium conversions are cumulative impacts.

If the City continues to process condominium conversions as categorical exemptions, the burden of proving there is an exception to the exemption is on the party claiming the exception. *Davidon Homes v. City of San Jose*, 54 Cal. App. 4th 106, 115 (1997). The challenging party must provide substantial evidence that the project has the potential for a substantial adverse environmental impact. *Assoc. for Protection of Environmental Values in Ukiah v. City of Ukiah*, 2 Cal. App. 4th 720, 728 (1991). The challenging party has met its burden if it supplies a fair argument to support the conclusion that an exception to the exemption applies. *Id*.

There is a split of authority over the proper standard of review when a judge reviews an agency's decision to employ a categorical exemption. Some courts apply a "fair argument" test which provides a low threshold for demonstrating a potential significant adverse environmental

impact and de novo review. Other courts apply the stricter "substantial evidence" test to the express or implied findings of the agency.[5]

Substantial evidence includes "facts, reasonable assumption predicated upon facts, and expert opinion supported by facts." Guidelines § 15384(b). Substantial evidence takes into account the whole record before the lead agency and evidence sufficient to support a fair argument standard may exist even in the face of contrary evidence. Guidelines § 15384(a). However, an expert opinion that provides only that "it is reasonable to assume" a significant adverse impact "potentially" may occur is insufficient on its own to constitute substantial evidence. *Apartment Association of Greater Los Angeles v. City of Los Angeles*, 90 Cal. App. 4th 1162, 1176 (2001).

The problem is the City has not conducted an initial study, studied the impacts of condominium conversions on low-income and rental housing, and has no data to support any inference that an adverse environmental impact is occurring. The contention that no evidence has been presented to support a fair argument of environmental impacts due to condominium conversions does not relieve the City of its obligations under CEQA. The case law specifically addresses the failure of a lead agency to assess environmental impacts:

> The agency should not be allowed to hide behind its own failure to gather relevant data . . . . CEQA places the burden of environmental investigation on the government rather than the

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[5] The argument for applying a particular test rests on the interpretation of California Public Resources Code sections 21168 and 21168.5. *Association for Protection of Environmental Values in Ukiah v. City of Ukiah*, 2 Cal. App. 4th 720, 727-28 (1991). The two provisions are distinguished by whether a hearing on the environmental determination is required by law. The City process provides for staff level determination of categorical exemptions. Applications for condominium conversions are heard by a hearing officer, Planning Commission, or City Council based on other necessary approvals such as subdivision map approval. Therefore, the hearing is not necessary to the existing facility categorical exemption determination unless an argument could be made that the subdivision map and the condominium conversion are inexplicitly intertwined so as to necessitate a hearing on the determination. That does not appear to be the case. Accordingly, the applicable standard of review is substantial evidence.

While this analysis appears consistent with case law discussions of the split of authority, there is one irreconcilable point. If the lead agency fails to apply an exemption and processes a condominium conversion project with a negative declaration, the standard of review to challenge the sufficiency of the negative declaration is a fair argument standard. It seems incongruent to apply a lower threshold to a challenge to a negative declaration that follows from an initial study than the higher standard applies to a categorical exemption when the lead agency has no obligation to make findings or to conduct an initial study.

> public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.

Sundstrom v. County of Mendocino, 202 Cal. App. 3d 296, 311 (1988).

There is no basis for the conclusion that there is no evidence of environmental impact when there has been no analysis, the number of conversions is unprecedented, the conversions are concentrated in a few communities, and there is a historically low vacancy rate for rental properties.

Further, there is evidence that there are significant *physical* environmental impacts that arise from the condominium conversions, making the exemption inapplicable. Conversions displace persons. The "initial study" checklist includes "displacement" as an impact to be studied. This is evidence that the Office of Planning and Research considers displacement to be a *physical* environmental impact. Conversions create more demand for rental and low-income housing. Conversions indirectly lead to more traffic and demand for parking, both of which are physical environmental impacts. A substantial number of displaced persons use public transportation, whereas most of the persons who can afford to buy a condominium own vehicles. The increased number of vehicles at a condominium facility means that there will be worse traffic and more demand for already-scarce parking in the neighborhood. Apartment buildings have lower parking requirements than housing development projects. The fact that housing parking regulations are mores stringent than rental parking requirements implies either a lower demand for parking at rentals or a policy decision to allow a developer to provide less parking in exchange for providing a rental housing option.

Courts have assessed the change in use from apartment to condominium as significant and have not simply interpreted the change as a change in ownership. *Griffin Development Co. v. City of Oxnard*, 39 Cal. 3d 256, 265 (1985); *Norsco Enterprises v. City of Fremont*, 54 Cal. App. 3d 488, 498 (1976). Other California jurisdictions do not use the categorical exemption of existing facilities to process condominium conversion applications because the housing loss is a significant impact under that jurisdiction’s significance thresholds or because that jurisdiction has interpreted CEQA to require environmental review.

Use of the categorical exemption for existing facilities for condominium conversions is not proper because the change from rental to owner occupied use is qualitatively different to warrants additional environmental review. Even if condominium conversions fall within the categorical exemption for existing facilities, the exemption is not proper because of the significant impacts due to unusual circumstances and the cumulative impacts resulting from the conversions.

II. Condominium Conversions-- Significant Impacts

There is substantial evidence to support a fair argument that condominium conversions result in significant effects including the loss of low-income and rental housing and substantial adverse impacts on human beings including negative social and economic impacts. CEQA specifically considers the loss of housing, in this case low-income and rental housing, requiring construction of new housing and the displacement of people as potential adverse environmental impacts requiring analysis. CEQA Guidelines, Appendix G, Environmental Checklist Form. Under CEQA, social effects may be used to determine the significance of physical environmental changes. Guidelines § 15064(e); Guidelines § 15131(b).

A. Loss of Low-Income/Rental Housing

The courts differentiate the loss of low-income and rental housing from the loss of housing in general in assessing the environmental impacts of a project. There may be no net loss in housing units but still be significant impacts from the loss of a particular type of housing. On August 6, 2002, the City Council declared the existence of a state of emergency due to the severe shortage of affordable housing in the City of San Diego. San Diego Resolution R-296982 (Aug. 6, 2002). The City Council continues to find that an emergency exists and, pursuant to California Government Code section 8630, continues to declare a state of emergency due to the severe shortage of affordable housing in the City of San Diego. San Diego Resolution R-301003 (October 31, 2005). Also, Council Policy 600-27 declared a state of emergency due to lack of affordable housing. "Affordable" is defined as $1700/month or $240,000 purchase price for housing. City of San Diego, Affordable Housing Information, http://www.sandiego.gov/housing/whatis.shtml (visited 11/9/2005).

According to the National Association of Home Builders, San Diego County's high housing prices, coupled with its relatively low wages, make it the second least affordable area in the country. Roger M. Showley, *County 2nd-Worst in U.S. for Affording to Buy Home*, San Diego Union-Trib., Jan. 7, 2005, at C1.The average new detached home in San Diego County sells for $781,000, the average new condominium for $490,000 and the average condo conversion unit for $303,000. *San Diego Business Journal*/MarketPointe Realty Advisors, Feb. 28, 2005. San Diego County's resale single family homes are at a record high median price of $530,000; the median resale price for condos is $380,000. Roger M. Showley, *Condo Sales Weigh on Home Prices*, San Diego Union-Trib. *San Diego Union Tribune*/DataQuick Information Systems, Feb. 11, 2005.

The median price of housing in San Diego doubled between 2000 and 2004, but the median household income only increased 10.4 percent. Roger M. Showley, *Silence Hangs Over Housing Issue in Political Season*, San Diego Union-Trib., Oct. 31, 2004, at 11. Just 11 percent of households are able to purchase the median-priced home, according to the California

Association of Realtors. Wyatt Haupt, *Local Housing Affordability Levels Head Lower*, North Co. Times, Feb. 11, 2005. In San Diego, the median income for a family of four is $63,400, according to the U.S. Department of Housing and Urban Development. Families have to make nearly $135,000 to afford median priced homes in San Diego. *Id.* In San Diego County, one in every five renters spends at least 50 percent of his or her income on housing. *San Diego Union Tribune*, 8/27/04, citing U.S. Census Bureau.

The March 2005 City Manager's Report describes the failure of the City to provide appropriate replacement housing:

> Recently, there has been very little affordable rental housing built in San Diego. Although there is little empirical data, it is likely that the large number of conversions now taking place will reduce the affordability of the remaining rental stock. If there is less rental supply, there will likely be more upward pressure on prices. In addition, many other factors impact rental housing prices including the status of the for-sale market, interest rates, condition of the job market, fluctuations in demand by military families, the amount of doubling-up that occurs, and the amount of construction in San Diego and surrounding communities. It is difficult to identify precisely how much each of these factors is influencing rental affordability at a given point in time.
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> It is not possible to determine exactly how much condominium conversions are contributing to the low-vacancy rate and rental rates now existing in San Diego. Rents for condominiums that have been converted tend to be higher than prior to conversion because most properties are upgraded during conversion and because individuals who rent their units need the rent to cover mortgage costs and condominium association fees.
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> The few new rentals being built today are primarily either luxury units for the upper end of the rental market or heavily subsidized units for the lower end of the market. Since 2000, the communities where the most new market rate rental units have been built are Centre City, University City and Mission Valley. Subsidized units are more widely dispersed with particular concentrations in Mid-City and the North City area where approximately 1,000 required "inclusionary" units have been built.

CMR 05-060 at 3-4.

The San Diego Municipal Code attempts to redress the loss of affordable rental units but is not designed to keep pace with replacement housing needs. Since inclusionary fees are not required to be paid until final map recordation, to date the City has only received $27,000 in inclusionary in-lieu fees from three condominium conversion projects. *Id.* at 7. Two first-time homebuyer programs were established for eligible tenants of units undergoing conversion who wish to purchase their units, although there have been no loans to date. *Id*.

An applicant seeking to convert apartments to condos objected to payment of park fees because the conversion did not add new residents to the city and created no new need for recreation facilities. *Norsco Enterprises v. City of Fremont*, 54 Cal. App. 3d 488, 493 (1976). However, the court found it was not unreasonable that an apartment owner be assessed park fees and cited excerpts of the municipal code that, "unlike apartments with rental units, condominium developments, with a 'lack of guaranteed effective and continuous centralized management' and often other shortcomings, present 'special land use problems involving potential slum and blight conditions.'" *Id.* at 498.

In another case, when 67 low-income homes were demolished to provide space for an elementary school, the environmental impact report properly examined loss of affordable housing based on this project loss and loss from other related projects in the area. *Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School Dist.*, 24 Cal. App. 4th 826, 837 (1994). The EIR addressed the housing issue, low vacancy rate, and economic and social problems in this low-income, minority neighborhood. *Id*. at 840. The court emphasized the nature of the housing as low-income housing and focused on social issues in analyzing the impacts. The social and economic consequences of the project provide evidence that additional mitigation measures to reduce housing loss were infeasible. *Id.* at 848.

A permit to convert an apartment building to condominiums was denied because the building did not meet new physical building standards in *Griffin Development Co. v. City of Oxnard*, 39 Cal. 3d 256 (1985). The court held:

> The city could reasonably conclude that over a period of time owner-occupied condominiums would serve a segment of the local population with distinct needs. Indeed, the planning director indicated this underlying concern in his memorandum: "Regulations which have been developed recognize the basic differences between owner occupied and rental housing . . . . our condominium standards are necessary to protect not only the buyer of that unit but to protect against overcrowding and impacts that adversely affect other units in the same complex."

Id. at 265-66. Impacts on housing demand are social and economic effects which can contribute to adverse physical impacts for purposes of CEQA analysis. *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 209 Cal. App. 3d 1502, 1521 (1989) (impacts on housing demand contribute to adverse changes in air quality).

Eliminating rental and low-income housing has economic consequences:

> Under traditional housing theory, every time a new house was built and somebody moved in, they would leave behind them a unit that would be less costly . . . . It could be seen as a ladder which is wide at the base and narrows at the top . . . . In the ladder analogy, condominium conversions force tenants to move down the ladder . . . . [C]ondominiums have the effect of raising the cost of housing, displacing tenants, removing housing choices and decreasing the amount of housing available for low-income tenants . . . . [W]ith no new housing being built because of the cost, opportunities do not open up on the housing ladder. Condominiums remove the dollars that would go to new housing and present costs do not provide for new low-income housing to replace substandard units. Instead of moving up the housing ladder and providing units below, the tenant is forced down. At each step, higher income tenants are competing for lower cost housing forcing the lower income tenant out or forced to pay higher rents for no change in the quality of the housing.

Victoria A. Judson, *Defining Property Rights; The Constitutionality of Protecting Tenants from Condominium Conversion,* 18 Harv. C.R.-C.L.L. Rev. 179, 230 n.41 (1983).

Loss of housing is a significant impact for purposes of CEQA analysis. Loss of rental housing and low-income housing are significant impacts for purpose of CEQA analysis, even when there is no net loss in overall housing totals.

B. Impacts on Human Beings - Social and Economic Impacts

Condominium conversions may have substantial adverse effects on human beings due to the displacement of renters, particularly low-income renters. A San Francisco conversion study found that shortage of rental housing is exacerbated by conversions because only 41 percent of the new condominium buyers had formerly been renters. Roger J. Illsley, *Municipal Regulation of Condominium Conversions in California*, 53 S. Cal. L. Rev. 225, 229 (1979-1980). In addition to diminishing the supply of available rental units, conversions have a direct impact on renters who cannot purchase the unit and cannot find replacement housing. Roger C. Vandeveer, *Conversion of Apartments to Condominiums: Social and Economic Regulations Under the California Subdivision Map Act,* 16 Cal.W.L.Rev. 466, 468 (1980). Research indicates:

> [W]hen a rental vacancy rate falls below 6 percent, market parity is destroyed and tenants are forced to pay higher rents than they can afford, accept housing below previous standards, or uproot their

> family and move to a different jurisdiction with a high vacancy rate. Other housing experts agree that when the rental vacancy rate falls below 5 percent it is difficult for low- or moderate-income persons to find replacement housing in the same community at the comparable cost or quality. When the rate falls below 3 percent this difficulty extend to the middle-income household as well.

A. Judson, *Defining Property Rights, supra at 230 n.23.*

A project may have a significant effect on the environment if the environmental impacts of the project cause substantial adverse effects on human beings, either directly or indirectly. Cal. Pub. Res. Code § 21083(b)(3); CEQA Guidelines, Appendix G, Environmental Checklist Form (mandatory finding of significance). A chain of cause and effect using social and economic effects may be used to demonstrate physical environmental impacts. Guidelines § 15131. Further, economic and social project effects may be used to determine the significance of physical changes. Guidelines § 15131(b). The physical changes are the significant environmental impact, not the economic or social effects themselves. Guidelines § 15131(a). A lead agency has discretion to determine whether the consequences of social and economic changes are significant, but not the discretion to disregard the consequences. *Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School Dist.*, 24 Cal. App. 4th 826 (1994).

Although CEQA provides that economic or social effects are not to be treated as significant effects on the environment, those same economic or social effects can be used as an indication for resulting physical effects. They can also be used to help determine whether the physical effects of a project will be significant.

Lack of affordable housing disproportionately affects low-income and minority populations. City and County of San Francisco Department of Public Health, *The Case for Housing Impacts Assessment; The Human Health and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practice,* PHES Technical Research Report, May 2004, at *14.* If a project replaces low-income housing with market rate housing, this disproportionately and adversely impacts those with lower income. *Id.* The increasing shortage of rental housing affects low-income and elderly tenants more than it affects tenants with higher incomes who can purchase their units. *Defining Property Rights*, supra, at 189. Research shows that people who are displaced have difficulty finding adequate and affordable housing, particularly elderly, non-white, and lower income former tenants. *Report and Analysis of Proposal Changes to Oakland's Condominium Conversion Ordinance: Impacts on Affordable Housing and Low-Income Tenants,* May 25, 2004, at 5. In California, over two-thirds of qualifying low-income households remain on waiting lists for housing assistance. The Coalition to Protect Rental Housing, *The Case for Housing Impacts Assessment*, supra, at 4.

The dislocation problems associated with conversions are more severe for elderly and handicapped tenants because of financial difficulties and their psychological attachment to their particular units. *Municipal Regulation of Condominium Conversions in California,* supra, at 274. Elderly and disabled persons may require assistance to search for another rental, need accessibility and other amenities. *Conversion of Apartments to Condominiums,* supra, at 468. Medical studies indicate elderly suffer significant stress and adjustment problems in coping with the disruption, often want to stay in one place, and often become ill. *Id.* The effects of displacement as a result of the lack of affordable housing among seniors are worse for the lesbian, gay, bisexual, transgender community because their family support systems are not strong, they cannot share accommodations in some places, and they often have no spousal benefits. The Case for Housing Impacts Assessment, supra, at 13.

In California, 24 percent of renter households are overcrowded. San Francisco Department of Public Health, *The Case for Housing Impacts Assessment: The Human Health and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practice*, PHES Technical Research Report, May 2004, at 7. Families share housing because of cost. *Id*. There are health factors associated with overcrowding. *Id*.

The impacts of housing displacement include homelessness, violence, poverty, stress, segregation, overcrowding, unsafe housing, unmet transportation needs, arrested child development, decreased academic performance, loss of social support, and increased mortality. The Coalition to Protect Rental Housing, *Report and Analysis of Proposed Changes to Oakland's Condominium Conversion Ordinance: Impacts on Affordable Housing and Low Income Tenants*, May 25, 2004 at 6. Frequent family relocation leads to school disruption, longer commutes for low-income people, and job loss. *The Case for Housing Impacts Assessment*, supra, at 14. Loss of affordable housing and displacement may lead to residential segregation and ghettoization. *Id.* at 10. Unregulated conversion can displace entire socioeconomic segments of society and lead to development of neighborhoods segregated along socioeconomic lines. *Defining Property Rights, Supra,* at 191.

Twenty-three cities have reported that lack of affordable housing was the leading cause of homelessness in their jurisdictions. *The Case for Housing Impact Assessment*, supra, at 8. Though individual behaviors may play a role in causing homelessness, the primary causes of family homelessness are poverty and the lack of affordable housing. National Coalition for the Homeless, *Why are People Homeless*, September 2002. Increased homelessness among elderly persons may be attributed to entitlements, such as Social Security and Medicare, which do not increase at the same rate as the cost of living. National Coalition for the Homeless, *Homelessness among Elderly People*, June 1999. An equally significant cause of increased homelessness among elderly persons is the declining availability of affordable housing; of the 12.5 million persons in U.S. households, 1.5 million elderly people have been identified as having "worst case housing needs." *Id*.

Projects that have area or regional affects on the availability of affordable housing have direct and indirect adverse impact on human beings, including adverse health consequences. *The Coalition to Protect Rental Housing*, supra, at 11.The displacement of people from condominium conversions is a significant impact that warrants environmental review for purposes of CEQA compliance. The social and economic effects caused by the displacement of renters include overcrowding, job loss, poverty, stress, homelessness, and gentrification which are direct adverse impacts on human beings. These adverse social and economic effects are also the indirect cause of adverse physical environmental impacts including ghettoization, increased transportation needs, and replacement housing needs.

III. Condominium Conversions - Cumulative Impacts

There is substantial evidence to support a fair argument that condominium conversions result in cumulative adverse environmental impacts including the loss of low-income and rental housing and growth inducing impacts.

A. Cumulative Impacts

A lead agency must determine whether a project may have a significant effect on the environment based on "substantial evidence in light of the whole record." Cal. Pub. Res. Code § 21082.2(a). A project may have a significant impact on the environment from effects related to the project itself or because "the possible effects of a project are individually limited but cumulatively considerable." Cal. Pub. Res. Code § 21083(b); Guidelines § 15065(a)(3). The "incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." *Id.*

CEQA Guidelines section 15355 further provides:

> "Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.
>
> (a) The individual effects may be changes resulting from a single project or a number of separate projects.
>
> (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

If the incremental effect of the project is not "cumulatively considerable," the lead agency must provide an analysis of that incremental effect and the basis for concluding that the effect is not cumulatively considerable. Guidelines § 15130(a)(2).

If there is substantial evidence, either independently or cumulatively, that a project may cause a significant adverse environmental effect, the lead agency must employ an environmental impact report to document those environmental effects. Guidelines § 15063(b)(1).The purpose of an environmental impact report is to identify the significant adverse environmental effects of a project, to identify project alternatives, and to identify ways to mitigate those impacts. Cal. Pub. Res. Code § 21061.

The cumulative impact analysis is integral to the environmental review process. The courts have emphasized the importance of cumulative impact analysis:

> Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

Communities for a Better Environment v. Ca. Resources Agency, 103 Cal. App. 4th 98, 114 (2002) (footnotes omitted).

B. Loss of Rental Inventory

The greater the existing environmental impact, the lower the threshold for examining the incremental contribution to the cumulative impacts. *Id.* at 119. For example, a proposal to replace an apartment building with twice as many condominiums was properly evaluated using an environmental impact report due to significant unmitigated environmental impacts in *Greenebaum v. City of Los Angeles*, 153 Cal. App. 3d 391, 412 (1984). Twelve rental units were to be replaced with 24 condominiums in any area where 93 related projects contributed to potential cumulative impacts. *Id.* The loss of only 12 units, particularly in light of the replacement housing, might at first appear not to warrant environmental review. However, the cumulative impacts of successive projects over time would clearly diminish the rental stock. *Id.*

Citing the potential domino adverse cumulative effect on rental units, a planning commission would not support the conversion of five apartment units to condominiums where the building failed to conform to zoning laws. *Rasmussen v. City Council of the City of Tiburon*, 140 Cal. App. 3d 842, 851 (1983). The court held there was sufficient basis to deny the

conversion application and cited the commission's concern that approval of the permit for a nonconforming building in area with many similar buildings would set a dangerous precedent. *Id.* at 847. It would create an impetus for other conversions and adversely affect the mix between condo and rental housing units. *Id.* The project would also undermine city housing policies, particularly where the housing element of the general plan expressed concern over reduction in rental units due to conversions. *Id.*

Alternatively, in another case, the decision maker did not deny a condo conversion from 32 apartments to 35 condominiums based on low rental vacancy rates because the relocation plan allowed each tenant to stay indefinitely until he or she found comparable housing. *Krater v. City of Los Angeles*, 130 Cal. App. 3d 839, 844 (1982). The city ordinance in that case allowed denial of the project if the conversion would have significant cumulative impact on housing—in this case the relocation plan was reasonable. *Id.* at 845.

Notably, there is a low threshold for considering loss of rental housing to have cumulative impacts. In San Diego, the loss of rental housing due to condominium conversions is profound. No studies have been conducted to measure the effects of this loss because of the rationale that elimination of one unit substitutes for introduction of another. The loss of overall housing is not the measure, particularly as indicated by case law finding impacts even where the rental housing is replaced with a greater number of alternative units. The specific issue is the loss of rental and low-income housing, concentrated in an area of the City, over a very short period of time, in a market with skyrocketing housing prices, successive projects, and no replacement housing.

C. Growth Inducing Impacts

A project cannot be assessed in isolation, but, must be considered with the development it may induce. *City of Antioch v. City Council*, 187 Cal. App. 3d 1325, 1336 (1986). Where there is a fair argument that a project will induce future development, that future development and its impacts must be assessed as part of the environmental review for the project. *Id.* at 1335. The fact that future development may be subject to further environmental review does not relieve the decision maker from the responsibility to consider that future development as part of the project

cumulative impacts. *Stanislaus Audobon Society, Inc. v. County of Stanislaus*, 33 Cal. App. 4th 144, 158-59 (1995). Where there is no ability to determine with precision where additional development will occur as a consequence of project approval, the lead agency may rely on a reasoned assessment of probable development patterns. *City of Antioch*, 187 Cal. App. 3d at 1337.

The CEQA Guidelines Environmental Checklist Form (Appendix G) provides the following questions to assess whether a project will have growth inducing impacts on the environment:

> [XII.] POPULATION AND HOUSING -- Would the project:
> a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
> b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?
> c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

A project for the construction of a road and sewer project did not have any independent significant impacts on the environment in *City of Antioch v. City Council*, 187 Cal. App. 3d 1325, 1337 (1986). However, the project was to serve as a catalyst for development in the area. *Id.* at 1338. Therefore, it was necessary to evaluate the associated environmental impacts, including growth inducing effects, to avoid piecemeal review which would have the effect of chopping projects to a point where only minimal environmental impacts are recognized and the cumulative impacts could be environmentally devastating. *Id.* at 1333.

An ordinance that required residential hotel owners to provide relocation assistance to residents before converting to another use had to have an EIR because of the cumulative effect of probable replacement construction projects. *Terminal Plaza Corp. v. City & County of San Francisco*, 177 Cal. App. 3d 892, 904 (1986). The city felt the impact of possible replacement construction was too conjectural because it was impossible to determine the number and location of replacement projects. *Id*. The court found "the ordinance reasonably portends possible future environmental impacts flowing from the cumulative effect of probable replacement construction projects . . . ." *Id* at 905 (emphasis omitted). Even before projects are proposed, the City can state in general terms that the ordinance will have an impact. *Id.*

An EIR for a project to develop the area around an airport had to discuss the project effect on housing because it would have growth inducing impacts outside the project area. *Napa Citizens for Honest Government v. Napa County Board of Supervisors*, 91 Cal. App. 4th 342, 368 (2001). The project would create a need and opportunity for employment that would result in increased area housing needs. *Id*. at 370.

The fact that the exact extent and location of growth cannot be determined does not excuse the lead agency from preparation of an EIR; the lead agency cannot wait until effects have manifested themselves through applications for approval of housing developments. *Stanislaus*, 33 Cal. App. 4th at 158-59. Also, EIR review cannot be avoided just because the effect on growth and housing will be felt outside the project area, although that is a factor for how much discussion is necessary. *Napa Citizens,* 91 Cal. App. 4th at 369. The lead agency must evaluate the impact on surrounding communities, identify the number and type of housing units needed, and identify the probable location of those units. *Id.* at 370.

The project does not have to be the first step in the development of an area to have growth inducing or related housing impacts. For example, a social impact such as overcrowding could necessitate environmental analysis if the overcrowding is so great that it has an effect on the physical environment, including the need for additional structures to alleviate the overcrowding. *Goleta Union School Dist. v. Regents of University of Ca.*, 37 Cal. App. 4th 1025, 1032 (1995). Overcrowding, in and of itself, is not an adverse environmental impact. *Id*.

Condo conversions have growth inducement impacts because the conversions create the need for more rental and affordable housing. Growth inducing impacts need to be evaluated as part of the environmental review process under CEQA as both significant and cumulative impacts. The 11,422 conversions of low-income, affordable, and other rental units to market-rate, owner-occupied units creates a need for additional housing to house those displaced renters.

IV. Environmental Review for Condominium Conversions in Other California Jurisdictions

Some of the measures municipalities have employed to curtail the negative consequences of condominium conversions and/or to mitigate the loss of rental housing from condominium conversion include temporary and permanent condominium conversion moratorium, restrictions on the number of conversions allowed each year, requiring conversion applicants to retain a number of rental units and/or affordable owner-occupied units, requiring applicants to provide on-site replacement housing or pay the direct costs of replacement housing within the community, and requiring conversion applicants to bring buildings into current building code compliance to slow the pace of conversions while providing new owner protections.

Many jurisdictions, including the County of San Diego, treat condominium conversions as having significant adverse environmental impacts, or as having enough potential for impacts to warrant an initial study in each instance. The following provides a glimpse at treatment of condominium conversions in other California jurisdictions.

A. Los Angeles

The Draft CEQA Thresholds Guide for the City of Los Angeles [Guide] considers population and housing displacement in the initial study checklist: Would the proposal displace existing housing, especially affordable housing? *Draft L.A. CEQA Thresholds Guide*, May 14, 1998, B.2-1 (The Los Angeles City Council is considering adoption of these draft guidelines). The Guide references CEQA Guidelines section 15064(f) to highlight the need to preserve, maintain, and expand affordable housing options to provide for that city's citizenry. *Id*.

One of the threshold screening criteria asks: Would the project result in the *net* loss of any existing housing units affordable to very low or low-income households (as defined by federal and/or City standards), through demolition, conversion, or other means? *Id. at B.2-2.* A

determination of significance would be made on a case-by-case basis, considering the total number of residential units to be converted to market rate or removed as a result of the project in terms of net loss of market rate and affordable units and the current and anticipated housing demand and supply of market rate and affordable housing units in the project area. *Id*. at B.2-3.

Additionally, cumulative impacts would be evaluated by determining the number and type of housing units to be eliminated and added as a result of related projects. The combined effect of the displacement from the project and the related projects would be compared to the current and anticipated housing demand and supply in the project area and adopted housing policies. *Id*. at B.2-5.

B. San Francisco

For the past 22 years, San Francisco has limited the number of conversions to 400 units each year with a requirement that at least half of the conversions be affordable units. San Francisco Planning and Urban Research Assn., *Promoting Homeownership through Condominium Conversion*, July 21, 2004, at 1. This limitation is based on a desire to balance housing needs, to avoid displacement, and to conserve the supply of rental housing. *Id.* (citing Policy 2.3, Housing Element, San Francisco General Plan).

C. Berkeley

The City of Berkeley's ordinance regulating condominium conversions states as its purpose to provide for the housing needs of all economic segments of the City and insure balance in the availability of rental and ownership housing, and to avoid the hardship and displacement of residents due to the shortage of low-income housing. Berkeley Municipal Code § 21.28.020(A). The Berkeley City Council found that there is a reasonable relationship between the conversions and the diminution in the supply of housing affordable to low-income families. Berkeley Municipal Code § 21.28.020(C). The City Council further declared that it would not permit conversion of rental property to condominiums without mitigation by an affordable housing fee and other limitations. Berkeley Municipal Code § 21.28.020(F).

The City of Berkeley limits the number of conversions to 100 units per year. Berkeley Municipal Code § 21.28.040(C). Only properties where at least half of the current tenants intend to purchase the converted condominium can be converted. Berkeley Municipal Code § 21.28.050(D). All conversions of rental units require payment of an affordable housing fee to the City to mitigate the loss of affordable rental housing units from the City's housing stock. Berkeley Municipal Code § 21.28.060. The fee is based on the market value of the unit, not less that 90 percent of the appraised value of the unit as a condominium at the time of conversion. Berkeley Municipal Code § 21.28.060(B). If a building is converted, the owner must give the

tenants two years to purchase their units before selling to someone else. Berkeley Municipal Code § 21.28.120(B)(1). Elderly, low, and moderate-income tenants cannot be evicted in order to allow an owner to move in. Berkeley Municipal Code § 21.28.120(B)(3).

D. City of Oakland

The City of Oakland processes applications for condominium conversions using the categorical exemption environmental determination. However, the City has a restrictive condominium conversion ordinance that requires one to one replacement of rental units converted to condominium in impacted areas. The City has a map of designated parcels that fall within the impacted area. An applicant may elect to purchase a conversion right, rather than provided replacement rental units. However, it is not clear what the conversion right is because once the new ordinance was established it essentially halted all condominium conversions. Additionally, the City of Oakland protects tenants age 62 or older from displacement by allowing them to remain as a renter with a lifetime lease and provides restrictions on rental increases. Oakland Municipal Code § 16.36.050(6).

E. Santa Monica

The City of Santa Monica prohibits residential condominium conversions, except tenant participating conversions allowed under the City Charter, unless the vacancy rate of rental housing units has exceeded five percent of the total rental housing inventory for a period of ninety days prior to the date of approval. Santa Monica Municipal Code § 9.04.16.02.010(i)(2). A condominium conversion is allowable, irrespective of the vacancy rate, if a new rental unit is added for the City housing inventory for each rental unit lost through conversion. Santa Monica Municipal Code § 9.04.16.02.010(i)(2).

V. Building Code Requirements for Condominium Conversions

Currently, the City of San Diego does not require applicants who wish to convert existing rental housing into condominiums to upgrade the building to meet current building code requirements. The existing building only must be in compliance with building code regulations in effect at the time the building was built. Therefore, new condominiums presented for sale to homeowners meet varying building code standards because converted apartment buildings may be a few years old to several decades old.

Other California jurisdictions require varying degrees of Building Code compliance for condominium conversions. The City of Oakland requires converted apartments meet California noise insulation standards. Oakland Municipal Code § 16.36.130. La Mesa requires noise insulation and fire protection standards. La Mesa Municipal Code § 22.03.030. El Cajon requires all separation walls, floors, and ceilings comply with California Building Code and California Fire Code. El Cajon Municipal Code § 17.54.290. The City of Escondido requires

converted condominium units meet all current building standards. Escondido Municipal Code § 33-955.

The City of San Diego Planning Department and Development Services Department recommend "good neighbor" regulation standards for condominium conversion applicants. These requirements include the following:

1. Electrical - require GCFI outlets and grounded outlets in certain areas

2. Plumbing - require efficient plumbing fixtures, do not require retroactive re-plumbing of the building

3. Smoke Alarm - require wired and interconnected smoke detectors

4. Window Replacement - replacement of windows providing emergency escape to meet current building code

5. Building Condition Report- should evaluate compliance with health and safety standards and current construction codes

CMR 05-163 at p.8.

The Planning Commission supported the building condition report but added additional report requirements:

1. The report should address building foundations and walls, roofs, electrical systems, plumbing systems, mechanical systems, recreational facilities, parking and paved areas, and drainage facilities.

2. Buildings over six years old must include in the report a Property Facilities Analysis completed by a licensed structural engineer. If this analysis shows any integral component to have a useful life of less than five years, it should be replaced prior to sale.

3. Plumbing, heating, electrical and roofing systems, should be proven safe and in good operating condition. Appliances and ceiling should be energy efficient.

4. A detailed list of intended improvements to the property should be provided and these should be appropriate to support any new appliances to be included in the converted units.

5. Elevations of all sides of the property should be provided showing improvements with scaled architectural drawings. Drawings should show the buildings with proposed structural and cosmetic improvements. Prospective purchasers should be provided with the report and drawings.

Id. at 7.

The California Constitution grants cities the power to make and enforce ordinances and regulations not in conflict with the State's general laws. Cal. Const. art. XI, § 11. The City of San Diego has broad discretion to adopt reasonable regulations to protect the public health, safety, and general welfare. *Carlin v. City of Palm Springs*, 14 Cal. App. 3d 706, 711 (1971). The City may require condominium conversions to conform to all building code regulations, including fire, electrical, and building standards as long as the purpose is a legitimate governmental purpose. *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 159 (1976). The issue is not imposing different building standards on condominium conversions which would require express statutory authority to impose more rigid standards on conversions than that imposed on other housing. *Building Industry Assoc. v. City of Livermore*, 45 Cal. App. 4th 719, 727 (1996). Rather, the issue is imposing the same building standards on conversions as is required for new housing.

Current building code regulations are more stringent than the building code requirements for many existing buildings. Existing rental buildings are converted and sold as new condominiums. However, the new units must meet the building requirements for the existing building, not the more stringent current building code requirements. Building code requirements become more stringent in response to new technologies, products, and knowledge about safety. Requiring condominium conversion applicants to have converted buildings meet current building code regulations would serve the public to protect public health, safety, and general welfare. Further, converted units sold as new would meet the same standards as other new housing units. It is reasonable to assume the public expects any new housing to meet current building standards. This change would be consistent with the public's expectation.

To phase in this requirement, the City may elect to adopt the Planning Department and Development Services Department "good neighbor" regulation standards. These regulation standards serve to address some safety concerns and focus on changes that are economically feasible. The desire to provide first time home buying opportunities is an important consideration when imposing these regulation changes. Of course, the loss of rental housing should not be balanced against the gain in home buying opportunities because both populations have unique housing needs. The City must address the need for replacement housing for the loss of rental units. The "good neighbor" regulation standards facilitate an economically feasible means to allow conversions and provide additional consumer protections. However, ultimately, condominium conversions should conform to current building code requirements, not simply

meet the "good neighbor" standards. Current building code regulations best serve the public health, safety, and general welfare.

CONCLUSION

Condominium conversions result in significant impacts due to the social and economic effects of displacement and the direct net loss of affordable and rental units. Condominium conversions also result in cumulative impacts when evaluated with prior, current, and probable future conversion projects. This deterioration in affordable housing stock is inconsistent with City Council Policies and the City's General Plan.

The use of the categorical exemption for existing facilities is not proper because the change in use from rental to condominium is qualitatively different to warrant environmental review and because of the significant and cumulative impacts associated with condominium conversions.

The social and economic effects caused by the displacement of renters include overcrowding, job loss, poverty, stress, homelessness, and gentrification which are direct adverse impacts on human beings. These adverse social and economic effects are also the indirect cause of adverse physical environmental impacts including ghettoization, increased transportation needs, and replacement housing needs.

The loss of rental housing, even when replaced with the same number or a higher number of owner-occupied housing, is an adverse effect that must be analyzed as a significant impact and for its contribution to cumulative impacts because of the affordable housing crisis, low vacancy rates, and vulnerable population of people served by rental housing. The loss of rental housing, even when replaced with another type of housing, has potential growth inducing impacts because a need for affordable housing is created by the loss of one type of housing and, when coupled with other related projects, that loss may be cumulatively considerable.

The City of San Diego has declared a state of emergency due to a severe shortage of affordable housing but does not treat the loss of affordable rental units as a significant impact warranting further environmental review. Condominium conversion mitigation measures do not provide replacement affordable housing. Other California jurisdictions such as Los Angeles consider the net loss of existing low-income households as part of the CEQA threshold screening criteria. The CEQA Guidelines Environmental Checklist. (Appendix G) cites the loss of housing as a significant impact.

Condominium conversions may not be evaluated under the categorical exemption for existing facilities. To comply with CEQA, condominium conversions must be evaluated using an environmental impact report or mitigated negative declaration to assess the significant and cumulative impacts due to loss of housing, displacement, and growth inducing impacts. A mitigated negative declaration would only suffice if the applicant voluntarily adopts mitigation

measures, such as retaining a portion of affordable units or providing replacement housing. If regulation changes or voluntary measures by applicants do not alleviate the impacts to rental and low-income housing, an environmental impact report is required for every condominium conversion project. The decision maker would be required to find overriding considerations to support the unmitigated loss of rental and low-income rental housing.

Additionally, the City should impose the requirements of the current California Building Standards Code on applicants who wish to convert rental housing to condominium conversions to protect the public health, safety, and welfare. To phase in this requirement, the City may elect to adopt the Planning Department and Development Services Department "good neighbor" regulation standards.

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