

DATE ISSUED: November 30, 2005 REPORT NO. 05-232

ATTENTION: Honorable Mayor and City Council
Docket of December 6, 2005

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION FOR THE
363 PLAYA DEL SUR TENTATIVE MAP, PROJECT NO. 78405,
Council District 1

OWNER: Matt and Nancy Browar

APPLICANT: Sterling Land Services, Inc.

APPELLANT: Citizens for Responsible Equitable Environmental Development,
c/o Cory J. Briggs, Briggs Law Corporation

SUMMARY

Issues - Should the City Council AFFIRM staff's environmental determination of exemption No. 78405, prepared for the 363 Playa del Sur Tentative Map, Project No. 78405?

Manager's Recommendation - Deny the appeal and uphold the Environmental Determination.

Environmental Review – The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has determined that the project is exempt pursuant to State CEQA Guidelines Section 15301(k).

Fiscal Impact Statement: None with this action. All cost associated with the processing of this project are paid by the applicant.

Code Enforcement Impact – None with this action.

Housing Impact Statement – With the proposed conversion of 18 existing apartments to condominiums, there would be a loss of 18 rental units and a gain of 18 for-sale units. This project is subject to all current regulations regarding inclusionary housing and tenant relocation assistance.

BACKGROUND

The proposed project is a Map Waiver to waive the requirements of a Tentative Map to convert 18 existing residential units to condominiums on a 0.14-acre site located at 363 Playa del Sur in Zone 4 of the La Jolla Planned District, within the La Jolla Community Plan area.

Staff conducted the initial review of the proposed Map Waiver in accordance with the process set forth in Sections 15060 and 15061 of the State's California Environmental Quality Act (CEQA) Guidelines. Several issues were considered during this review, including traffic, parking, and visual quality. Physical impacts related to the loss of affordable housing was also raised as a question to be considered by the department in the evaluation of all of the discretionary condominium conversions; however, this issue was determined to be speculative. Staff determined that the subject project would not result in a direct or reasonably foreseeable indirect physical change in the environment. On September 6, 2005, City of San Diego staff determined that the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301(k), and this determination was appealed to the City Council on September 12, 2005, by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation.

While this Process 3 activity has not yet been to a public hearing for the purpose of deciding whether to approve or deny the project, this appeal is before the City Council because of an amendment to the California Environmental Quality Act (CEQA). Effective January 1, 2003, Section 21151 (c) CEQA has been amended as follows: *If a non-elected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or a mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.*

Pursuant to this amended legislation, Mr. Cory Briggs filed an appeal (Attachment No. 2) of the City of San Diego staff's determination of environmental exemption for project. This appeal applies only to the environmental determination.

DELEGATION OF RESPONSIBILITIES

In keeping with Section 15025 of CEQA, Section 128.0103 of the City's Land Development Code assigns the responsibility for implementation of the California Environmental Quality Act (CEQA) to the Development Services Department (DSD). The Environmental Analysis Section (EAS) of DSD evaluates all discretionary project proposals, including condominium conversions, to determine whether there is a potential for such actions to result in physical

impacts on the environment. Anyone can submit information to EAS to assist in its evaluation; but by law, the evaluation must be impartial and independent of any outside influences.

DISCUSSION

On the appeal form, the appellant states that “The project does not qualify for exemption under the CEQA Guidelines. Furthermore, the project does not qualify for exemption under the CEQA Guidelines based on exceptions to exemption arising from the cumulative and other potentially significant adverse environmental impacts of converting apartments to condominiums, especially in light of the numerous proposed conversions and the serious decline in affordable housing that the City of San Diego is facing.” Staff response is as follows:

The California State Legislature has determined that 33 categories of activities (Sections 15301 through 15333 of the State CEQA Guidelines) are generally exempt from CEQA because these activities do not have the potential to result in physical impacts. However, if there is a reasonable possibility that the activity will have a significant environmental effect due to unusual circumstances, or that there will be a significant cumulative impact from successive projects of the same type in the same place over time, the categorical exemptions may not be used (Section 15300.2).

One of the Class 1 CEQA categorical exemptions is Section 15301(k), **“Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt.”** The exemption specified in Section 15301(k) is used by EAS staff for condominium conversions of existing structures or proposed structures that have been permitted but not yet built, as long as there is no expansion of existing use and there are no physical changes involved that would not otherwise be exempt, and when the project would not contribute considerably to a cumulative impact.

The California Public Resources Code requires staff to base its determination that a project will have a significant environmental impact on substantial evidence (Section 21082.2). As defined in Section 15384(b) of the CEQA Guidelines, “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Section 15384(a) states: “Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate **or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment** does not constitute substantial evidence.”

CEQA focuses on physical impacts on the environment. Where social and economic impacts are discussed, CEQA requires that those impacts be related to physical impacts on the environment. Staff acknowledges that there is not sufficient affordable housing in San Diego, and that this lack may be considered to have social and economic components. After evaluation of the project, staff determined that there is no substantial evidence of a connection between any socio-economic effects resulting from condominium conversions and any physical impact on the environment. Therefore, for the reasons discussed in the BACKGROUND section above, it is

staff's professional opinion that the subject project qualifies for a Class 15301(k) categorical exemption as specified in CEQA.

Please note also that several other large jurisdictions within California, including San Diego County, the City of Santa Barbara, and Los Angeles also apply CEQA exemptions to condominium conversions. Staff is not aware of any city in California that does not use the categorical exemption for condominium conversions. Apart from CEQA, several jurisdictions also have enacted ordinances to regulate condominium conversions.

CONCLUSION

Several revisions to the Condominium Conversion regulations are presently in process, and direction on developing and expanding on these regulations has been provided by the Council's Land Use and Housing Committee. Staff agrees that limited availability of affordable housing in the City of San Diego is an issue of concern. Staff believes that the concerns with condominium conversions are policy issues within the purview of City Council. Revisions to appropriate policies and regulations are a better and more direct way to address the concerns raised by the Land Use and Housing Committee about condominium conversions.

The subject project does not include any physical changes in the environment or any intensification of use. There is no evidence that any growth inducement or cumulative impacts would result. Staff therefore recommends that Council deny the appeal and affirm staff's determination of environmental exemption for Project Number 78405 pursuant to Section 15301(k) of the State CEQA Guidelines.

The City Attorney has opined that a Program Environmental Impact Report (PEIR) should be prepared to address the cumulative impacts of condominium conversions. Staff believes that such a document would likely be challenged in court based on the speculative nature of the information provided regarding cumulative and growth inducing impacts. Staff also notes that a PEIR would probably take approximately eighteen months to complete.

ALTERNATIVES

1. Deny the appeal, uphold the determination of environmental exemption pursuant to State CEQA Guidelines Section 15301(k) and direct staff to bring forward revisions to the Condominium Conversion regulations and to analyze the result of such changes in an appropriate environmental document.
2. Grant the appeal, set aside the environmental determination, and remand the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate.
3. Grant the appeal and direct staff to prepare a Program Environmental Impact Report to

assess the physical cumulative effects of condominium conversions. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section 21082.2 of the California Public Resources Code, supporting a fair argument that condominium conversions result in significant environmental effects. In addition, should this alternative be chosen, staff estimates the fiscal impact to be one full-time equivalent senior planner to complete the PEIR.

Respectfully submitted,

Gary W. Halbert
Development Services Director

Approved: Ellen Oppenheim
Deputy City Manager

Project Management

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments:

1. Project Location Map
2. Full Copy of Appeal
3. Determination of Environmental Exemption Form
4. Ownership Disclosure Statement
5. Memo from City Attorney's Office, dated 11/10/05
6. Memo from Robert Manis, Assistant Deputy Director, dated 11/17/05