ATTACHMENT 6

APPELLANT'S POWER POINT PRESENTATION AND STAFF'S RESPONSES

APPEAL OF CITY OF SAN DIEGO EXEMPTION DETERMINATION
Item-356: 9404-9494 Carroll Canyon Road (Project no. 90632)
13 June 2006

Appellant Citizens for Responsible
Equitable Environmental Development

Cory J. Briggs
Briggs Law Corporation
99 East "C" Street, Suite 111
Upland, CA 91786
Telephone: 909-949-7115
Facsimile: 909-949-7121

1

OVERVIEW OF TODAY'S PRESENTATION

- Response to Staff Report (3)
- Review of CEQA Requirements
- Discussion of Key Evidence of Environmental Impacts (7)
  (Please see accompanying CD-ROM for all supporting evidence)

2

ATTACHMENT 6

RESPONSE TO STAFF REPORT

3

RESPONSE TO STAFF REPORT

Claim 1: "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." See* p. 3, ¶ 1.

Response: This assertion is misleading at best. The public doesn't even know that a project application has been submitted until the Notice of Right to Appeal Environmental Determination is given, at which point it's too late. The public's only right to "assist in [EAS's] evaluation" is to pay $100.00 per project and go through an appeal hearing.

4

Slide 4:
The statement that "the public doesn't even know that a project application has been submitted until the Notice of Right to Appeal Environmental is given, at which point it's too late" is not accurate. The public has three avenues for providing information to EAS staff. First, Sections 112.0301 and 112.0304 of the Municipal Code require the applicant to post a Notice of Application or Notice of Future Decision along the street frontage of the property that is the subject of the application. The Notice includes a City contact name and number. Second, the Notice of Right to Appeal the Environmental Determination is posted on the City's web site. The Notice also has a contact name and number. Anyone may call the contact listed to provide information regarding the potential significant environmental impacts of a project staff has determined is exempt from CEQA. If provided with substantial evidence of significant impact, staff has the ability to retract the exemption and prepare an appropriate environmental document. Third, in those cases where an environmental document is prepared, the Notice of Right to Appeal the Environmental Determination is not filed until final project approval. However, the public can participate in the entitlement process through commenting on the environmental document when it is out for public review and/or speaking at the project hearing and/or sending a letter to the decisionmaker prior to project approval.

ATTACHMENT 6

RESPONSE TO STAFF REPORT

Claim 2: "Staff is not aware of any city in California that does not use the categorical exemption for condominium conversions." *See* p. 4, ¶ 2.

Response: This statement is also misleading. While the staff report at least points out that other jurisdictions regulate condo conversions, the claim suggests that other jurisdictions approve condo conversions under the exemption at a rate comparable to San Diego's. That is false.

For example, San Francisco limits condo conversions to 200 per year. The number of conversions allowed in Riverside and La Mesa are but a *fraction* of the number of apartments built in their jurisdictions in the preceding year. Santa Monica prohibits them altogether.

5

Slide 5:
Staff does not agree that the statement is misleading. It was not intended to suggest that other jurisdictions approve condo conversions at a rate comparable to San Diego. In phoning other jurisdictions, staff asked the question "Are you experiencing a proliferation of condo conversions?" Several jurisdictions responded in the affirmative.

RESPONSE TO STAFF REPORT

Claim 3: "Staff is not aware of any substantial evidence that growth inducement or cumulative physical impacts would result [from condo conversions]." *See* p. 4, ¶ 4.

Response: "Substantial evidence" does not refer to the amount of evidence. It refers to the kind and quality of evidence, as today's staff report makes clear in the last paragraph on page 3. So, don't think that Appellant must provide you with "mountains of evidence" before CEQA review is triggered. One thing that the authors of today's staff report did get right is the recognition that there need only be a "fair argument" that is based on the right kind of evidence—namely, substantial evidence—before CEQA review is triggered. *See* p. 5, ¶ 3.

6

Slide 6:
Staff agrees that the quality of evidence is important in making a determination of fair argument. However, the appellant and his experts have not provided any substantiated evidence of significant physical impacts related to the subject projects.

ATTACHMENT 6

RESPONSE TO STAFF REPORT

"'Substantial evidence' as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, *even though other conclusions might also be reached.* Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. 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." *See* CEQA Guidelines § 15384(a).

Key Concepts: "relevant information," "reasonable inferences," and "fair argument." (*N.B.*: There is enough evidence to meet a higher standard.)

7

REVIEW OF CEQA REQUIREMENTS

8

Slide 7:
The appellant is asking Council to make a reasonable inference that there is a fair argument that condominium conversions result in physical and growth inducing impacts. CEQA requires that such an inference be supported by relevant facts. No such relevant facts have been provided by the appellant.

ATTACHMENT 6

REVIEW OF CEQA REQUIREMENTS

Guidelines § 15061(b)(2): A project is exempt from CEQA if (*i*) it is exempt pursuant to a categorical exemption under Guidelines § 15300 and (*ii*) application of that categorical exemption is not barred by one of the exceptions set forth in § 15300.2.

9

REVIEW OF CEQA REQUIREMENTS

Guidelines § 15301(k): CEQA does not apply to a project involving the "[d]ivision of existing multiple family or single-family residences into common-interest ownership . . . where no physical changes occur which are not otherwise exempt."

However, this exemption is further qualified by the requirement that the project involve "negligible or no expansion of use beyond that existing at the time of the lead agency's determination." *See* Guidelines § 15301.

[*N.B.*: CREED/AHCSDC dispute the applicability of this exemption by its very terms, but for purposes of this appeal only (and without prejudice to challenging the exemption in court) will assume that it applies to condo conversions.]

10

Slide 10:
The condominium conversions that are the subject of the appeals do not involve expansion of use. The existing use is residential, and the proposed use is residential. None of the projects propose any increase in units.

ATTACHMENT 6

REVIEW OF CEQA REQUIREMENTS

Guidelines § 15300.2: This appeal is based on two exceptions to the exemption at issue:

"(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.

"(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."

11

REVIEW OF CEQA REQUIREMENTS

Guidelines § 15131: This section covers economic and social impacts:

"(a) Economic or social effects of a project shall not be treated as significant effects on the environment. **An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes.** The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

"(b) **Economic or social effects of a project may be used to determine the significance of physical changes by the project.** * * *

12

Slide 12:
Lead Agencies have the discretion to include or exclude a discussion of social and economic changes. If included, social and economic changes must have a nexus to significant physical environmental impacts. No such nexus has been demonstrated by the appellant or his experts.

ATTACHMENT 6

REVIEW OF CEQA REQUIREMENTS

Guidelines § 15131 (cont.): This section covers economic and social impacts:

"Discussion: * * * Despite the implications of these sections, **CEQA does not focus exclusively on physical changes,** and it is **not exclusively physical in concern.** For example, in Section 21083(c), CEQA requires an agency to determine that a **project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly.**" [*N.B.*: The discussion also notes that that requirement was added in the same legislation that added the definition of "environment," adding further support to the notion that CEQA's concerns extend to harm to persons and not just to the environment.]

13

REVIEW OF CEQA REQUIREMENTS

Guidelines Appendix G, § XII: This section of the Initial Study Checklist asks whether a project has the potential to:

"(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?**"

14

Slide 13:
Practice Under the California Environmental Quality Act. Q. Act by CEB (Sections 6.56 and 13.8) cites several court decisions that clarify that "significant effect on the environment" is limited to substantial, or potentially substantial, adverse changes in physical conditions within the area as defined in Section 21060.5 of the Statutes. In this section, "environment" is defined as "...the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." To date, the appellant has not addressed any of the physical conditions mentioned in the CEQA definition of "environment."

Slide 14:
Condo conversions do not displace substantial numbers of existing housing. There is no evidence that condo conversions necessitate the construction of replacement housing elsewhere. There is no evidence that condo conversions would lead to approval of any new replacement housing projects. Section 15004 of the CEQA Guidelines addresses the appropriate timing for CEQA review. Any proposed new replacement housing would be subject to CEQA review. At this time, however, there are no such proposals before staff, and no proposals for replacement housing resulting from condo conversions have been submitted.

REVIEW OF CEQA REQUIREMENTS

General Rule for CEQA Exemptions:

"[W]here there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper." *Wildlife Alive v. Chickering*, 18 Cal. 3d 190 (1976).

15

REVIEW OF CEQA REQUIREMENTS

How does the "fair argument" standard work?

"To better illustrate the two approaches, we provide the following example. **Suppose that an agency is faced with two credible expert reports reaching different conclusions about whether a project will create a significant effect on the environment.** The first approach (the traditional approach) would have the agency *decide between* the credible expert reports and *make a finding*, after weighing the reports, as to whether a project will cause a significant effect. **The second approach (the fair argument approach) would have the agency take note of the fact that credible expert reports disagree, and without weighing the reports or making any further findings, conclude that there is necessarily a *reasonable possibility* of a significant effect, since at least one credible expert report reached that conclusion."** *See Banker's Hill &c Community Preservation Group v. City of San Diego*, 139 Cal. App. 4th 249 (2006).

16

Slide 15: Staff agrees with this statement. However, the appellant would like the Council to believe that the evidence presented suggests that the subject projects may result in physical effects on the environment. Even if Council believes this to be so, **the fair argument standard requires substantial evidence that they may result in significant impacts on the environment.** The appellant and his experts have not referenced the City's significance determination thresholds at all, much less provided facts to demonstrate that the thresholds could in any way be exceeded by the effects of condominium conversions.

Slide16:
The fair argument rule does not mean that the lead agency has no discretion concerning the evidence or the determination of significance. In fact, the agency must decide whether information relating to potential impacts is substantial evidence supporting a fair argument that significant impacts may occur (*Practice Under the California Environmental Quality Act*, CEB, Section 6.29).

Expert opinion must be supported by facts. According to *Practice Under the California Environmental Quality Act*, CEB, Section 6.33, "A lead agency may disregard expert testimony that lacks an adequate factual foundation or does not directly relate to the specific issue under review. The CEB publication cites several court decisions validating the fact that expert opinion may be disregarded if it relates to a subject outside the expert's field, if it is not based on an adequate foundation of specific information about the project, or because of the expert's interest in the matter. It is staff's belief that the appellant's experts have offered conclusions on matters outside their areas of expertise (e.g., effects on traffic and parking), and that none of the experts' opinions are substantiated by an adequate factual foundation that could lead to any reasonable conclusion regarding significant environmental impacts. Their arguments are based on a draft document that is subject to revision and documents that do not provide a demonstrable link between condominium conversions and significant environmental impacts. Their arguments do not provide any data that evaluating significant impacts using the City's own threshold criteria.

KEY EVIDENCE OF ENVIRONMENTAL IMPACTS

17

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 1: Condo conversions may displace substantial numbers of housing units or people, thus necessitating the construction of replacement housing elsewhere.

Authority: CEQA requires environmental review whenever a project may displace substantial numbers of existing housing or people, either way necessitating the construction of replacement housing elsewhere. *See* CEQA Guidelines, Appendix G, § XII-b & -c.

Evidence:

"It is true that when apartments convert to condominiums, a relatively small percentage of current renters buy their own apartment." *See* Ex. 16 (MarketPoint Realty Advisors).

18

Slide 18: This statement infers that because only a relatively small percentage of people buy their own apartments they will be displaced and unable to find alternate housing. Displacement does not mean that people will become homeless, but rather that they will need to relocate. Those who do not buy their own unit may in fact buy units in other buildings or rent elsewhere. No facts have been given to support the inference made by the appellant.

ATTACHMENT 6

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

"During the past five years there has been a very rapid increase in the number of rental units converted to condominiums and applications for condominium maps to allow more conversions. . . . [T]he condominium conversions have had the negative effect of reducing the rental housing supply." *See* Ex. 11 (San Diego Draft Housing Element (May 25, 2006)).

"Priority for the expenditure of funds from the Inclusionary Housing Trust Fund shall be given to the construction of new affordable housing stock." *See* Ex. 26 (San Diego Municipal Code § 98.0505(b)).

19

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

The City of Los Angeles prepared an EIR for the Lincoln Place Redevelopment Project, which dedicated an entire section to a discussion of the project's impacts on the loss of affordable housing, concluding that there would be "Net Unavoidable Adverse Impacts" on population and housing. *See* Ex. 18 (EIR).

The City of Glendale *routinely* prepares negative declarations for *any project* that involves the loss of affordable housing and uses that as an opportunity to impose mitigation measures; even the conversion of a couple of duplexes triggers environmental review. *See* Ex. 19 (dozens of MNDs).

20

Slide 19:
The appellant cites the City's Draft Housing Element (Ex. 11). This element is not an adopted land use document. It is subject to revision until it is adopted. It does not qualify as evidence. In fact, Market Pointe data indicates that vacancy rates are rising overall.

Condominium conversions do not displace existing housing units. The displacement of people as a result of conversions can result in the need to find other housing, but this is a social and economic issue, not a CEQA issue. There is no evidence that condominium conversions result in the need for the construction of new replacement housing. According to staff at the San Diego Housing Commission, there are no plans to construct replacement housing for people who have been displaced by condominium conversions.

Appendix G of the Guidelines is a sample initial study, which uses a checklist format. The sample is suggested and is not mandatory. With some exceptions (such as significant impacts to unique archaeological resources or protected plant and animal species), local agencies are free to determine the significance of impacts and the issues considered to be significant. Staff would do an environmental review of any new construction.

The appellant's statements do not lead to a reasonable conclusion that construction of replacement housing would result from the subject condominium conversions. People who are displaced as a result of these projects may rent or buy units in another building, or may make other living arrangements.

Slide 20:
Exhibit 18 addresses the demolition of 795 apartment units, not the conversion of existing apartments to condominiums. The City of Los Angeles exempts condo conversions. City of San Diego staff considers the lack of affordable housing to be a serious social and economic issue, but not a CEQA issue.

The statement about the City of Glendale is not accurate. Glendale exempts condominium conversions of up to 4 units. The environmental documents presented as exhibit 19 are all related to new construction projects. It is true that loss of affordable housing is addressed as a CEQA issue in these documents; however, with some exceptions (as discussed above) lead agencies are free to determine which issues are significant within their jurisdictions. In addition, the mitigation applied by Glendale is conformance with noticing requirements and other ordinances. City of San Diego staff do not consider compliance with existing laws and ordinances to be mitigation.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

Data collected by Todd Philips at the San Diego Housing Commission indicates that condo conversions through December 2005 have displaced 1,998 *households*. *See* Ex. 10.

Experts Nico Calavita, Richard Lawrence, Gregg Robinson, and Gabriel Elliott (planner) all conclude that condominium conversions displace people and create demand for replacement housing. *See* Exs. 13 and 41-43.

21

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 2: Condo conversions may conflict with San Diego's goal of ensuring an adequate supply of affordable housing, under the housing element, by making it harder to increase housing densities (due to multiple owners).

Authority: CEQA requires environmental review whenever the project may conflict with any applicable land-use plan, policy, or regulation of the city (including but not limited to the city's general plan) adopted for the purpose of avoiding or mitigating an environmental effect? *See* CEQA Guidelines, Appendix G, § IX-b. Such potential requires a *mandatory* finding of significance for achievement of short-goals term at the cost of long-term environmental goals. CEQA § 21083(b)(1).

22

Slide 21:
The need for displaced people to relocate is not the same thing as the construction of new housing, which would be subject to CEQA review. Market Pointe data indicates that there is an increase in vacancy rates overall.

The appellant offers the opinions of experts as substantial evidence that condo conversions result in physical impacts. However, Section 15384(b) of the CEQA Guidelines states "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinions **supported by facts**." (emphasis added). The opinions of the appellant's experts are not supported by facts. They are unsubstantiated opinions.

Slide 22:
Affordable housing goals are related to the provision of affordable housing goals for all of San Diego's citizens. The goals are social and economic in nature and are not related to significant physical impacts. The construction of new housing would be subject to CEQA review; however, there are no new housing proposals associated with the projects that are the subject of the appeals.

The appellant has offered no evidence that concominium conversions will conflict with San Diego's affordable housing goals. He has provided no evidence that other structures will not be built at higher densities, thereby supporting the City's goals. He has provided no evidence that converted buildings will not increase densities by adding additional floors and providing underground parking.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

"A question has come from the Planning Commission regarding what impacts are condo conversions having on the city's future supply of housing—as anticipated in the Housing Element. The concern is that once an apt. complex is converted, it will be more difficult to tear it down and replace it with denser development as allowed by existing zoning and plan designations and as anticipated in the Housing Element. [¶] Betsy McCullough and the Program Managers believe that this is potentially a negative impact of conversions because, while they still could theoretically be torn down and redeveloped, it will be much harder once there are multiple owners. * * * [¶] So we suggest adding another category of topics to the draft condo conversions study that looks at the impacts of conversion on the overall supply of housing. . . . *See* Ex. 34 (E-mail from Bill Levin to Bob Manis).

23

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

Expert Gabriel Elliott agrees that such a potential conflict requires study under CEQA. *See* Ex. 42.

24

Slide 23:
The appellant, city staff, and various other stakeholders participated in discussions about a possible condominium conversion study. The intent of the discussions was to look at all topics to be included in the study, which was intended to gather data about conversions, but staff was very clear that it would not be a CEQA study. The referenced e-mail suggested a topic to be included in the study, not a conclusion that there was a potential environmental impact. Regarding the idea that condominium conversions could significantly interfere with the City's goals for density, as stated above, the appellant and his experts have not offered any evidence that other denser development will not occur, or that converted complexes will not later create additional units (for example, by adding additional floors).

Slide 24:
Mr. Elliott's opinion lacks an adequate factual foundation. He has not provided any factual basis for the conclusion that condominium conversions will prevent densification and interfere with the City's goals. There is no evidence that other structures will not be built at higher densities, thus supporting the City's goals. Please see also staff's response to slides 15 and 16.

The statements in the appellant's experts' declarations rely heavily on a draft City document that is still subject to revision and which is not an adopted land use document,. and a document entitled "Locked Out 2004: California's Affordable Housing Crisis." This document does not conclude that condominium conversions create a housing shortage. In fact, it states that affordable housing problems are caused by job growth (page 21). Staff believes that many of the opinions of the experts are declarant and that the individuals are not qualified to render these opinions. The declaration of Richard Lawrence does not include his credentials, so it is not clear what subjects he is an expert on, or why he is an expert. Staff believes that the appellant's experts have offered opinions on areas that are outside of their expertise, and that the experts' opinions should be excluded from the record.

ATTACHMENT 6

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 3: Condo conversions may have growth-inducing impacts.

Authority: CEQA requires environmental review whenever a project may have growth-inducing impacts. *See* CEQA § 21000(b)(5). This includes review "of the ways in which the **proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly,** in the surrounding environment." *See* CEQA Guidelines § 15126.2(d). One example is inducing substantial population growth directly (*e.g.*, by proposing new homes) or indirectly. *See* CEQA Guidelines, Appendix G, § XII-a. *See also* Gov't Code § 66583(a)(7) (requiring housing element to analyze opportunities for energy conservation with respect to residential development). *See also Terminal Plaza Corp v. City & County of San Francisco*, 177 Cal. App. 3d 892 (1986) (ruling that payment of in-lieu fee used for construction had potential for ultimate environmental impact).

25

Slides 25:
The appellant is asking Council to make a reasonable inference that condominium conversions are growth inducing. Such an inference must be based on facts. No facts have been presented to support this argument. No evidence has been produced to demonstrate that the displacement of renters due to condominium conversions leads directly or indirectly to the construction of new housing. The displacement of people does lead to the need for people to relocate, but relocation is not the same thing as new construction. The appellant's argument is clearly erroneous.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

"Priority for the expenditure of funds from the Inclusionary Housing Trust Fund shall be given to the construction of new affordable housing stock." *See* Ex. 26 (San Diego Municipal Code § 98.0505(b)).

"[T]he Affordable Housing Fund . . . help[s] subsidize the construction of below-market-rate homes." *See* Ex. 35 (San Diego Housing Commission's web site).

"[T]he priority for expenditure of Inclusionary Housing funds shall be for . . . [c]onstruction of new affordable housing." *See* Ex. 36 (San Diego Affordable Housing Fund Annual Plan (Fiscal Year 2006)).

26

Slide 26: The quotations presented as evidence are irrelevant. The City's affordable housing goals were in place before the City experienced a proliferation of condominium conversions, and they will remain in place during and after market corrections. The appellant has not demonstrated that the affordable housing goals are a result of condominium conversions.

ATTACHMENT 6

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

The current and proposed housing elements also support the conclusion that the loss of affordable housing leads directly or indirectly to the construction of more housing, as do experts Nico Calavita, Richard Lawrence, Gregg Robinson, and Gabriel Elliott. *See* Exs. 11-13 and 41-43.

27

Slide 27:
Please see response to Slide 24. No relevant facts have been presented demonstrating a link between condominium conversions and the construction of replacement housing.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 4: Condo conversions may expose sensitive receptors to substantial pollutant concentrations, such as asbestos and other public-health impacts, and directly or indirectly cause substantial adverse effects on humans.

Authority: CEQA requires environmental review whenever a project may expose sensitive receptors (*i.e.,* people who are more susceptible than the average person) to substantial pollutant concentrations or may directly or indirectly have a substantial adverse effect on humans. *See* Guidelines, Appendix G, § III-d & § XVII-d. The latter requires a *mandatory* finding of significance. CEQA § 21083(b)(3).

28

Slides 28, 29, 30:
Asbestos removal is regulated by the San Diego County Department of Environmental Health. The asbestos citations are related to violations of the law. It would be inappropriate for staff to analyze projects based on an assumption that permittees or their contractors will violate the law.

ATTACHMENT 6

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

The project subject to today's appeal was built in 1977, before asbestos was banned for building materials. *See* Exs. 32 (United Title property profile) and 33 (CalEPA's information on asbestos).

Condo conversions have a bad history of exposing tenants and workers to asbestos, as reported in the press in June 2004 and again in May 2006. *See* Exs. 28 and 29 (news reports).

The County of San Diego began a public-education campaign last month "because of a *rise in violations occurring during the recent spate of condo conversions*. *See* Ex. 30 (*Union-Tribune* news report).

29

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

The County of San Diego has issued dozens of asbestos violations to condo converters in the last three years. *See* 31 (county's violation notices).

Asbestos is known to cause cancer in humans and is to be avoided in all types of residential construction. *See* Exs. 40 and 42.

Condo conversions have other adverse health impacts, especially as a result of "doubling up" and relocation stress. *See* Ex. 40.

30

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 5: Condo conversions may increase traffic due to persons commuting further to or from work, school, or other regular daily activities. Aside from air-pollution concerns, longer commutes result in increased fuel consumption.

Authority: CEQA requires environmental review whenever a project may cause a significant increase in traffic. *See* CEQA Guidelines, Appendix G, § XIV-a, -b & -c. *See also* Gov't Code § 66583(a)(7) (requiring housing element of general plan to analyze opportunities for energy conservation with respect to residential development). An EIR may include total estimated daily trips generated by the project and the additional energy consumed per trip by mode. CEQA Guidelines, Appendix F.

31

Slide 31: The appellant suggests that there may be physical effects related to condominium conversions. This is speculative -- it is equally possible that such effects could be offset by new owners moving closer to their jobs. Regardless, the fair argument standard requires the appellant to provide substantial evidence that condominium conversions may result in significant environmental impacts. No facts have been presented that could be compared to the City's significance determination thresholds, so it is not possible to conclude that significant effects may result.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

"People have responded to this situation [the loss of housing] in several ways, including doubling up, moving further from jobs and relocating away from the city and region. Increased homelessness, longer commute times, increased congestion, energy (gasoline) use and pollution are unwelcome results of the lack of affordable housing in San Diego." *See* Exs. 11 and 12 (San Diego Draft Housing Element (May 25, 2006)).

Experts agree that such consequences are attributable to the loss of affordable housing. *See* Exs. 13 and 41-43.

32

Slide 32:
This argument is not supported by any data regarding the number of renters displaced by condominium conversions who may need to move farther away from their jobs or schools. In addition, the argument does not take into account the fact that potential buyers may be moving closer to their jobs, thereby decreasing traffic effects. The argument is entirely speculative, is not based on relevant facts, and does not rise to the level of substantial evidence and should be excluded from the record.

The experts opinion's are based on a draft document which is still subject to revision, and on inferences drawn from the draft document. Their conclusions are not supported by factual data regarding the numbers of people who must move farther away, or even any proof that people will move farther away. They also do not take into account the number of people who will move closer, offsetting the effects of those who might move farther away. The experts have not attempted to used the City's significance thresholds to support their opinions. The opinions are speculative, some are outside the areas of the declarants' expertise, and they are not supported by an adequate factual base. They should be excluded from the record.

ATTACHMENT

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 6: Condo conversions may result in increased demand for parking.

Authority: CEQA requires environmental review whenever a project may result in inadequate parking capacity. *See* CEQA Guidelines, Appendix G, § XV-f.

33

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

"In a review of 73 recent condominium conversion projects, 36 would comply with the proposed parking standard." In other words, more than half would not meet the new requirements. *See* Ex. 37 (analysis of latest proposed regulations for condo conversions).

San Diego has been proposing parking-related regulations for condo conversions for more than a year, as many other jurisdictions have already adopted.

34

Slides 33, 34, 35, 36:
The baseline for environmental analysis is the condition that exists at the time the review is commenced. There is no factual evidence to support the claim that condominium conversions will lead to residents with more vehicles than are owned by tenants, thereby resulting in a worsening of the baseline condition. In fact, the appellant's own expert states "Middle class families tend to be smaller in size than those with lower incomes, and they are less likely to live with roommates. Given the relatively low incomes of most households in this sample, it is reasonable to assume that density would decrease if these residents are replaced by higher income condo owners." Using this argument, it is reasonable to assume that there are more cars in areas of higher density. It is also reasonable to assume that renters have more roommates and the roommates may have cars, and that parking availability may actually improve when a smaller middle class family with no roommates replaces a larger low income family with roommates. The appellant's argument is equally speculative and is not supported by fact and should be excluded from the record. Staff's belief is that the number of people and cars at any condominium or apartment structure will always be in flux, changing as people move in and out and buy and sell cars. Even if Council believes that condominium owners have more cars than apartment renters and that condominium conversions may result in increased demand for parking, the social inconvenience of scarce parking is not an environmental impact. In addition, no evidence has been provided of how much traffic or air quality effects could be generated by parking shortages, and there is no comparison to the City's significance thresholds. The appellant's and his experts' opinions are not supported by factual evidence.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

"Census data and Nationwide Personal Transportation Data indicate that a clear relationship exists between household income and number of cars owned. According to these sources, as income increases, the number of cars owned also increases. It is assumed that as the number of cars owned increase, demand for parking also increases. Literature and case studies on the subject also affirm that there is a relationship between income and car ownership, and therefore between income and parking demand. [¶] The results of the parking demand survey show that affordable [housing] projects require less parking than market-rate projects." *See* Ex. 38 (San Diego's Multi-Family Residential Parking Study).

35

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

Experts Gregg Robinson and Gabriel Elliott agree. *See* Exs. 42 and 43.

36

ATTACHMENT 6

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 7: Condo conversions may have cumulative environmental impacts.

Authority: CEQA requires environmental review whenever a project may have cumulative impacts. *See* CEQA Guidelines, Appendix G, § XVII-b. Such potential requires a *mandatory* finding of significance. CEQA § 21083(b)(2).

37

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

How many condo conversions have been approved since January 1, 2004? Somewhere around 20,000, with another 5,000 to 10,000 coming up for approval. *See* Exs. 25 and 27 (city records).

"We [the city] have not yet figured out a way to determine the total number of off the shelf units undergoing conversion. [¶] * * * Adding in the off the shelf conversions that do not need Certificates of Compliance leads me to believe that conservatively 10-15% of the entire rental stock has applied to be converted in past few years, mostly in past year [sic]. This is about 10 times the percentage claimed by Alan Nevin and Gary London in recent articles they have written extolling vitures [sic] of conversion." *See* Ex. 27 (e-mail between Bill Levin and Coleen Clementson).

38

Slides 37, 38, 39:
Staff acknowledges that there has been a proliferation of condominium conversion projects; however, this fact does not support a conclusion that condominium conversions result in significant physical effects on the environment. This argument is speculative and not supported by facts, and should be excluded from the record.

ATTACHMENT 6

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

Just look at the maps of pending appeals and approved projects. They don't even include all the projects in the categories they represent! *See* Exs. 3 and 4.

39

CONCLUSION

The evidence supports a fair argument that this condo conversion alone has the potential for significant impacts on the environment.

The evidence also supports a fair argument that this condo conversion and all the other conversions in the City of San Diego since January 1, 2004, have the potential for significant cumulative impacts on the environment.

Appellant's evidence is substantial, based on facts (usually from the city's own records), reasonable assumptions based on facts, and expert opinion supported by facts.

Therefore, this condo conversion must be subject to environmental review under CEQA.

40

Slide 40:
The appellant's and his experts' evidence infer that the subject condominium conversions may result in physical impacts on the environment. **This does not meet the fair argument standard,** which requires substantial evidence that these condominium conversions may result in significant physical impacts on the environment, either singly or cumulatively. The information provided by the appellant and the appellant's experts is not supported by facts or related in any way to the City's significance determination thresholds. The appellant's position is composed entirely of argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment, and therefore it should be excluded from the record.

ATTACHMENT 6