# CITY OF SAN DIEGO
# MEMORANDUM

DATE: November 17, 2005

TO: Planning Commission

FROM: Robert Manis, Assistant Deputy Director
Land Development Review Division
Development Services Department

SUBJECT: Condominium Conversions- California Environmental Quality Act (CEQA) Compliance

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At the November 10, 2005, Planning Commission hearing, the Planning Commissioners were given copies of a memorandum (dated November 10, 2005) from the City Attorney's office. The subject of this memorandum is condominium conversions and compliance with the California Environmental Quality Act (CEQA). The Planning Commission briefly discussed the memo, continued the remaining condominium conversions on the agenda for that day, and asked the Development Services Department to return on November 17, 2005 to address the issues raised in the City Attorney's memorandum. This memorandum contains a summary of the Development Services Department's interpretation of CEQA as it applies to condominium conversions.

Section 128.0103 of the City's Land Development Code assigns the responsibility for CEQA determinations and analysis 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.

The City Attorney's memorandum contends that DSD is not applying CEQA to condominium conversions properly. It also states that condominium conversions result in social and economic effects and that these effects are the indirect cause of physical environmental impacts. For this reason, the memorandum concludes that condominium conversions should be subject to full environmental analysis and not be categorically exempted from CEQA.

DSD disagrees that CEQA is not being applied properly and that condominium conversions cannot qualify for a categorical exemption. 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. Condominium conversions that are exempted do not include any change or intensification of use, do not constitute a loss of housing, and will not result in any physical impacts on the environment.

CEQA focuses on physical impacts to the environment. Where social and economic effects are discussed, CEQA requires that those effects be related to physical impacts on the environment. Staff does not agree with the City Attorney's determination that social and economic effects from condominium conversions result in physical impacts on the environment. DSD does acknowledge that there could be some social and economic issues associated with condominium conversions; however, there has been no evidence provided (as required by Section 15131 and 15384 of the CEQA Guidelines) that there is a chain of cause and effect between condominium conversions and any physical impact on the environment.

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." No substantial evidence has been provided to DSD that would indicate that condominium conversions, individually or cumulatively, result in any physical impact to the environment.

DSD agrees that there are a number of issues associated with condominium conversions. There are existing policies and regulations that address some of these issues. Several revisions and additions to the condominium conversion regulations are presently being drafted at the direction of Council's Land Use and Housing Committee. The concerns raised in the City Attorney's memorandum are policy issues that will be addressed by the City Council as they consider these regulatory revisions.

Robert Manis
Assistant Deputy Director

cc: Karen Heumann, Assistant City Attorney