

**DATE ISSUED:** October 5, 2008

**REPORT NO. PC-08-127**

**ATTENTION:** **Planning Commission, Agenda of October 16, 2008**

**SUBJECT:** CONDOMINIUM CONVERSIONS – FORESTALLING  
IMPROVEMENTS - AN AMENDMENT TO THE TO THE LAND  
DEVELOPMENT CODE AND LOCAL COASTAL PROGRAM  
(PROCESS 5)

### **SUMMARY**

**Issue(s):** Should the Planning Commission recommend approval to the City Council of amendments to the Land Development Code and Local Coastal Program to allow for applicants for condominium conversions to receive final map approval prior to making all required improvements provided that uncompleted improvements are assured prior to final map approval?

**Staff Recommendation:** That the Planning Commission recommend to the City Council denial of the amendments to the Land Development Code and Local Coastal Program that would allow final map approval prior to completion of all tentative map requirements.

**Environmental Review:** This activity is not a “project” and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

**Fiscal Impact Statement:** Amendments to the Land Development Code are funded as an overhead expense in the Development Services Department’s budget is a part of the Land Development Code Update Program.

**Code Enforcement Impact:** In order to receive final map prior to making all required improvements an applicant must enter into a Lien Contract and Covenant Not to Convey Condominium Units (covenant) to assure that all improvements are made prior to the sale of the first unit. It is unlikely, but nonetheless possible that a limited number of conversions with covenants to complete improvements could slip through the process without making all required improvements prior to sale. In such cases Neighborhood Code Enforcement would likely become involved. There is no way to calculate the potential for this to occur as the purpose of the covenant is to prevent such an occurrence.

**Housing Impact Statement:** The proposed amendment would not affect provision of housing units. The amendment addresses timing for completion of required improvements.

## **BACKGROUND**

**Land Use & Housing Committee (LU&H):** On July 17 and again on September 17, 2008 the Land use and Housing Committee discussed the issue of allowing final map prior to making all required improvements. On September 17 the Committee voted 3-0 to recommend approval of the draft regulations and to forward the draft regulations and a draft covenant to the Planning Commission and City Council for consideration. The LU&H proposal is discussed on page 7 of this report.

**Code Monitoring Team (CMT):** On September 10, 2008 the Code Monitoring Team, after extensive discussion voted 4-2-2 to support the proposed changes to the condominium conversion regulations. The CMT also raised a concern that adopting the amendment would create an inequity between buyers of condominium conversions. As the regulations and covenant are currently drafted, buyers of units in projects that receive final map through the forestalling provision will have an up-to-date Building Conditions Report, whereas buyers of units in projects that have processed extensions of time for their tentative maps could have Building Conditions Reports that are nearly 10 years old.

**Community Planners Committee (CPC):** On September 23, 2008, the Community Planners Committee, after significant discussion and many questions, voted 22-4-2 to maintain the current requirement to process extensions of time and not allow forestalling of improvements.

## **DISCUSSION**

Since the June 2006 adoption of the Condominium Conversion Regulations a number of applicants for condominium conversion have appealed their Planning Commission decision to the City Council in order to request that final map be approved prior to making required improvements (forestalling improvements). The applicants requesting to forestall improvements propose to make required improvements prior to the physical conversion of rental units to for-sale units. The requests to forestall improvements have been open ended in that they do not include a deadline for converting from rental to for-sale.

In January and again in June 2006 the City Council adopted amendments to the condominium conversion regulations. The amendments generally address the following:

- Health and safety;
- Tenant noticing and relocation;
- Consumer protections;
- Onsite affordable housing; and
- Community based improvements.

### *Health and Safety*

The majority of units approved for conversion do not comply with current building codes. Recognizing this, the condominium conversion regulations require specific improvements be made to make the units safer. Specifically, condominium conversions must make the following minimum upgrades prior to final map:

- Electrical system and equipment grounding;
- Electrical receptacle protection to include ground fault circuit interrupter (GFCI) protection;
- Each sleeping room below the fourth floor and basements to have at least one operable window or door approved for emergency escape or rescue consistent with prevailing code; and
- Smoke alarms to be installed consistent with prevailing codes and in sleeping rooms smoke alarms must include a visual notification device to notify the hearing impaired.

### *Consumer Protections*

The regulations require that a Building Conditions Report, prepared by a licensed professional, be submitted with all applications to be reviewed and is to be accepted by staff as complete prior to tentative map approval. The report is intended to inform prospective buyers of the overall physical condition of the project when it receives Tentative Map approval. A copy of the Building Conditions Report is required to be provided to prospective buyers prior to the opening of escrow. The report must include the following:

- A analysis of project compliance with current health, safety, & construction codes;
- Identification of integral building components with a remaining life of 5 years or less;
- Actions taken to assure systems are safe & efficient prior to sale;
- A discussion of level of compliance with current energy efficiency standards;
- A description of the current and proposed level of compliance with accessibility standards;
- Scaled elevations of the proposed project; and
- A list of improvements intended to be made prior to sale.

### *Tenant Noticing and Relocation*

- The noticing requirements in the condominium conversion regulations simplified the notices for tenants, added predictability, and increased accessibility of information to affected tenants. Three new notices were created.
- The regulations require that all households displaced by a condominium conversion (from rental unit to for-sale unit) receive three months rent, based on the San Diego “fair market rent,” as established yearly by the U. S. Department of Housing and Urban Development. Payment occurs no later than the date the applicant receives the Notice to Terminate Tenancy.

### *Onsite Affordable Housing*

Condominium conversions projects of 20 or more units are required to satisfy their inclusionary housing requirement onsite for every whole number of units required under the Inclusionary Affordable Housing Regulations with the option for payment of the in-lieu fee for fractions of units.

### *Community Based Improvements*

The regulations address community concerns related to community character related to landscape and parking.

- Landscape must be provided in required front yards in compliance with the citywide landscape requirements.
- Projects with parking in required front yards and cannot otherwise comply with new minimum parking requirements cannot convert. These projects will eventually redevelop consistent with the community character policies of the General Plan and the applicable community plan.

### Forestalling Improvements

Housing sales and sales of condominium conversions especially have significantly declined in the past year. Condominium converters contend that the requirement to satisfy conditions of tentative map approval prior to final map will compel them to evict tenants in order to make improvements to structures they are not yet planning to offer for sale (convert) due to current market conditions. The condominium converters state that once the improvements are made the units will be rented out at higher rents until the market for condominium sales improve. Rather than applying for an Extension of Time, they are requesting the ability to receive final map approval prior to making all required improvements and forestalling the required improvements until the actual conversion from rental to for-sale housing. This would allow them to continue to rent the units to current tenants. The condominium converters propose that compliance with the conditions of approval could be assured through specific mechanisms, such as deed restrictions and bonding for required improvements.

**The decision of whether or not to allow condominium converters to forestall improvements will apply to the approximately 350 condominium projects accounting for approximately 13,700 units, and future applications for condominium conversion. These numbers include projects with approved tentative maps and projects that are currently in the review process.**

It is important to know that once approved; a tentative map has three years in which to receive final map approval. If at the end of three years a final map is not approved then the applicant may request an Extension of Time for up to five additional years. A request for an Extension of Time can not be denied or conditioned unless the decision maker can make one of the following findings in Section 125.0461(a)(3) of the Municipal Code:

- (A) The failure to conditionally approve or deny the request would place the residents of the subdivision or the immediate community in a condition dangerous to their health or safety; or
- (B) The condition or denial is required to comply with state or federal law.

The extensions within the Municipal Code provide applicants with a total of eight years in which to receive final map approval. Most applicants requesting forestalling of improvements have not requested an Extension of Time and therefore have not exhausted the administrative means for extending their timeline. It should also be noted that California lawmakers recently passed SB 1185 (Lowenthal) which extends the life of the initial tentative map approval from 3 years to 4 years, providing 9 years in which to receive final map approval. The legislature took similar action in 1993 and 1996 during the last downturn in the housing market.

Standard practice is to require all improvements prior to final map approval, except that public improvements may be forestalled provided the applicant obtains permits and posts bonds for the improvements. This standard practice guarantees, to the city's satisfaction, that all improvements necessary to serve the legal lot are made prior to final City approval of the final map. Allowing final map approval prior to completion of conditioned, private improvements (such as replacement of roofing, heating and air systems, and installation of front yard landscape) based on current market problems would be an exception to how the City guarantees that required improvements are made.

### Analysis

If forestalling of improvements is allowed and applicants are allowed to bond and/or enter into deed restrictions, it will create future staff responsibilities associated with verification of required improvements, releasing bonds, and clearing deed restrictions. A fee system could be needed to recoup costs from the applicants. Additionally, the City would be involved in enforcement of bonds/deed restrictions if projects are somehow sold without making required improvements. If bonds need to be called, the City would be responsible for guaranteeing the private improvements. These costs would need to be absorbed or recouped.

Allowing condominium converters to receive final map approval while forestalling improvements to an unknown future time will change the outcomes that the condominium conversion regulations were intended to achieve. The following identifies potential consequences of first, approving final map while forestalling all improvements and second, requiring improvements prior to final map when the units continue to be rented (or are re-rented) until converting to for-sale at a future time.

### *Health and Safety*

- If final map improvements are forestalled, then compliance with existing codes for upgraded electrical safety features, emergency ingress and egress from bedroom windows, and smoke alarms will not be made until the project is converted from rental to for-sale at an unknown future date. These health and safety improvements would not be provided to the current tenants.

- If improvements are required prior to final map and the units are rented and not converted to for-sale until a future time, then health and safety improvements would be made and the resulting improvements would be available to future renters.

#### *Tenant Noticing and Relocation*

- If final map improvements are forestalled, the tenant noticing and relocation requirements would be implemented consistent with the regulations.
- If improvements are required prior to final map and the units are rented and not converted to for-sale until a future time then, existing tenants would not be required to receive the noticing and/or relocation payments required for conversion of units. The noticing and relocation would be provided to those tenants living in the improved units at the time of the future conversion from rental to for-sale. It should be noted that tenant relocation is not always required for improvements to be made. This is especially true for the conversion of recently constructed large scale apartment complexes.

#### *Consumer Protections*

- If final maps improvements are forestalled, then the consumer protection value of the Building Conditions Report will diminish with every year that passes. Building components that at tentative map application had a useful life of more than 5 years would continue to age and eventually need replacement. Such components would not be identified in the report and would not be required to be replaced at time of actual conversion from rental to for-sale.
- If improvements are required prior to final map approval and the units are rented and not converted to for-sale until a future time, then, as with forestalling improvements, the consumer protection value of the Building Conditions Report will diminish with every year that passes.

#### *Onsite Affordable Housing*

- If final map improvements are forestalled, then based on the currently approved tentative maps:
  - Approximately 1,230 affordable units could also be indefinitely forestalled; and
  - Inclusionary housing fees for the approximately 8,820 condominium units that are not providing onsite affordable housing units would be provided either at the time of final map approval at the prevailing rate or at some future time when the units are converted from rental to for-sale at the rate prevailing at time of conversion, but not less than the rate at time of final map.
- If improvements are required prior to final map approval and the units were then rented, then:
  - The required affordable units would be provided when units are converted from rental to for-sale according to a deed of trust and agreements entered into with the San Diego Housing Commission at the time of final map approval; and
  - The payment of inclusionary fees would be the same as with forestalling improvements.

### *Community Based Improvements*

- If final map improvements are forestalled, then community character improvements for front yard landscape could be forestalled indefinitely.
- If improvements are required prior to final map and the units are then rented, the required front yard landscape would be in place upon final map approval and assist in meeting General Plan and applicable community plan policies related to community character.

### LU&H Compromise Proposal

As stated in the background section of this report, LU&H held two hearings to discuss the issue of allowing final map prior to making all required improvements. The Committee recommended approval of regulations drafted to accomplish a compromise between the desires of the condominium converters to forestall all improvements and the Municipal Code requirement to make required improvements prior to final map. The LU&H compromise proposal for allowing final map prior to making all required improvements alleviates many of the issues raised in the analysis provided in this report. The draft regulations are Attachment 1 of this report.

The primary concern of the Land Use and Housing Committee relates to condominium converters that are not prepared to sell condominium units in the current market and want to get final map approval as soon as possible (they do not plan to apply for extensions of time). Under the current regulations these converters are required to make required improvements before they can get a final map. As discussed in the Tenant Noticing and Relocation analysis if tenants need to be evicted to make these required improvements and the units are rented afterward and not converted to for-sale, then existing tenants would not be entitled to relocation payments required for conversion of units. Instead the relocation payments would be made to tenants required to relocate at the time of the actual *condominium conversion* which is defined as the change from ownership of a single structure to individual ownership of units.

The components of the LU&H proposal are as follows:

- Require that the following improvements, consistent with current regulations, are made prior to final map with the understanding that these improvements could be made without evicting existing tenants:
  - Health and safety improvements
    - Electrical system and equipment grounding
    - Window replacement compliant with code for emergency ingress and egress
    - Smoke Alarms
  - Community based improvements
    - Front yard landscape
    - Parking
- Allow the following improvements to be forestalled to the future conversion from rental units to for-sale units:
  - Replacement of building components and systems with a useful life of five years or less as identified in the Building Conditions Report
  - Completion of any other improvements that were conditions of tentative map approval

- Require that, prior to final map, a Lien Contract and Covenant Not To Convey Condominium Units (covenant) as prepared by the City Attorney's Office be executed to provide for assurance of forestalled improvements. The covenant shall include, but not be limited to the following provisions:
  - Submittal and acceptance by the City of a new Building Conditions Report if the report is dated earlier than 180 days prior to the opening of escrow for the sale of the first condominium unit
  - Replacement of all building components and systems with a remaining life of 5 years or less, as identified in the Building Conditions Report
  - Completion of any other improvements conditioned in the tentative map
- The City Engineer will release the Covenant when all requirements have been completed.

### **OTHER JURISDICTIONS**

Staff has researched how other jurisdictions regulate improvements for condominium conversions. The jurisdictions researched are broken into two categories; those jurisdiction with populations at least one-quarter that of the City of San Diego and other jurisdictions within San Diego County.

Of the eight jurisdictions with populations ranging from 346,823 to 4,045,873 the practice of four jurisdictions are not applicable to this issue since the jurisdictions do not require private improvements as conditions of final map. Of the four remaining jurisdictions the process is as follows: San Francisco, which allows only 200 units a year to convert, allows forestalling of private improvements with adequate escrow or bonding requirements; Long Beach does not allow forestalling of private improvements; Sacramento, which also requires a special permit for condominium conversions, allows forestalling of private improvements with a performance bond; and Fresno allows forestalling of private improvements subject to a secured agreement as approved by the City Attorney.

Three local jurisdictions that provided information were Chula Vista, El Cajon, and Imperial Beach. Each City treats maps for condominium conversions differently. The City of Chula Vista regulates condominium conversion maps similar to San Diego; it requires tentative map conditions to be completed prior to final map approval (no forestalling). The City of El Cajon which requires a planned unit development permit in addition to a tentative map, does allow agreements to be recorded (several a year) to allow improvements to be made after final map approval. Imperial Beach requires only a tentative map for condominium conversions and it requires a Lien and Covenant Not to Convey.

### **Conclusion:**

Development Services recommends denial of the amendments to the Land Development Code and Local Coastal Program Amendment as proposed by the Land Use and Housing Committee that would allow tentative maps for condominium conversions to receive final map prior to completing all required improvements.



The San Diego Municipal Code provides extensions of time for applicants that are either unable to, or choose not to attain final map approval within the first three years (4 years with recent state legislation) following tentative map approval. Extensions of time provide an applicant up to 9 years before a final map must be filed. Applicants for tentative maps for condominium conversions should be directed to follow this procedure as are applicants for all other tentative maps. The current regulations require the City to determine that all requirements are made prior to final map. Once final map is granted the City has completed its involvement and the private sector moves forward. Forestalling would keep the City involved for an undetermined period of time. Allowing applicants to receive final map prior to making required improvements will result in the following:

- Creation of off-the-shelf condominiums that have not completed all required improvements and have no timeline for completing the improvements;
- Necessitate development of a system to track, process, inspect, and assess fees in order to review Building Conditions Reports that are no longer associated with a development review application and to verify that required improvements have been completed;
- Place the City in a position of responsibility for guaranteeing private improvements to buildings if projects should slip through the cracks and get sold without making the required improvements;
- Creation of the uncompleted off-the-shelf condominiums with problems similar to those that arose with the off-the-shelf conversions created by the previous market turndown because a number forestalled projects will likely be sold to individuals that may be unaware of, or possibly ignore, the requirements for improvements, tenant relocation, and noticing; and
- Encourage converters to continue to process conversions regardless of market conditions since a conversion using forestalling will add value to the property through creation of a map without providing all required improvements.

**Respectfully submitted,**

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Attachment: Draft Amended Condominium Conversion Regulations (LU&H Proposal)