

Projects Involving Demolition of Units (2001-2006)

| Zone | Status | Existing | Demo | Project Units | Net New | Condos | Multi-Family (Non-condo) |
|-----------------------|--------------------------|----------|------|---------------|---------|--------|--------------------------|
| R-3/R-4 Totals | Concept Review | 32 | 23 | 50 | 19 | 48 | 2 |
| C-2/R-4 Totals | Pending | 3 | 3 | 11 | 8 | 11 | 0 |
| R-2 Totals | Pending | 5 | 4 | 6 | 1 | 3 | 3 |
| R-3/R-4 Totals | Pending | 8 | 8 | 16 | 8 | 16 | 0 |
| C, M Totals | Approved | 8 | 8 | 55 | 47 | 0 | 55 |
| R-2 Totals | Approved | 5 | 5 | 9 | 4 | 6 | 3 |
| R-3/R-4 Totals | Approved | 28 | 24 | 30 | 2 | 17 | 11 |
| C, M Totals | Building Permit | 20 | 18 | 33 | 13 | 31 | -5 |
| R-2 Totals | Building Permit | 8 | 5 | 11 | 3 | 6 | 3 |
| R-3/R-4 Totals | Building Permit | 34 | 21 | 72 | 38 | 36 | 33 |
| C, M Totals | Certificate of Occupancy | 15 | 13 | 25 | 10 | 7 | 15 |
| R-2 Totals | Certificate of Occupancy | 17 | 5 | 12 | -5 | 10 | -2 |
| R-3/R-4 Totals | Certificate of Occupancy | 43 | 34 | 83 | 40 | 53 | 28 |
| Totals | | 226 | 171 | 413 | 188 | 244 | 146 |

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CITY CLERK'S OFFICE
SANTA BARBARA, CA

July 14, 2006

Mayor Blum and Members of the City Council
City of Santa Barbara
P.O. Box 1990
Santa Barbara, California 93102-1990

**Re: Appeal to City Council of the Planning Commission's Approval of 9 Unit
Condominium Project located at 85 North La Cumbre Road; MST 2005-00295;
Appeal Hearing Scheduled for July 25, 2006**

Dear Mayor Blum and Members of the City Council:

I represent Wye Road Properties, LLC, the owner of the property located at 85 North La Cumbre Road in connection with the appeal to City Council of the Planning Commission's approval of a 9 Unit Residential Condominium Project on the North La Cumbre Road Property.

The purpose of this letter is to address the issues raised by the Appellant and to request the City Council to deny the appeal and to uphold the Planning Commission's approval of this 9 Unit Condominium Project.

In support of the Appellant's appeal, they have cited a few selected statements from the City's Housing Element.

However, the Appellants do not address several very important words which are set forth in the cited Goal and Implementing Strategies. These words are shown in **bold** below:

Policy 2.2: The City shall protect and preserve existing housing in all parts of the City
to the extent feasible under State Law.

Implementation Strategies

2.2.4 **Research legal and feasible** ways to regulate projects which propose to demolish rental units and re-build condominiums.

What the Appellants have ignored is applicable State law. Specifically Government Code Sections 7060-7060.9 (the "Ellis Act"). Government Code Section 7060 provides, in relevant part, as follows:

"§7060. Prohibition against compelling owner to lease accommodations

(a) No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer or to continue to offer, accommodations in the property for rent or lease..."

In *Reidy v. City and County of San Francisco* (2004) 123 Cal.App.4th 580, 589, the Court in discussing the Ellis Act stated as follows:

"Following the 1985 enactment of the Ellis Act, appellate courts uniformly concluded that the Act bars local ordinances that condition a residential landlord's right to go out of business on compliance with requirements that are not found in the Ellis Act. The courts also uniformly concluded that a city retains its traditional police power to regulate the subsequent use of the property after the property's removal from the rental market. Thus, for example, if an ordinance requires a residential landlord to obtain a removal permit before removing a rent-controlled rental unit from the rental housing market by demolition or conversion, and further requires that the landlord must satisfy specified criteria before the removal permit will issue, the ordinance infringes on the landlord's decision to go out of the rental housing business and conflicts with the Ellis Act..."

In *Johnson v. City and County of San Francisco* (2006) 137 Cal.App.4th 7, 14, the court summarized some of the important cases interpreting the Ellis Act as follows:

"*Reidy v. City and County of San Francisco* 123 Cal.App.4th at pp. 589, 593 [requirement that residential hotel owners provide replacement units or pay in-kind fee before removal of units from rental market preempted by Ellis Act], *First Presbyterian Church v. City of Berkeley* (1997) 59

Cal.App.4th 1241, 1252-1253 [69 Cal.Rptr.2d 710] [requirement that demolition of residential building be approved only where demolition would not detrimentally affect housing needs clearly conflicts with Ellis Act and is “facially preempted”]; *Channing Properties*, 11 Cal.App.4th at pp. 96-97 [requirement that landlords give tenants six months’ notice of Ellis Act eviction preempted by Act, with contemplates a 60-day notice]; *Javidzad v. City of Santa Monica*, 204 Cal.App.3d at p. 526 [requirement that landlord obtain removal permit before withdrawing controlled rental unit from housing market directly conflicts with Ellis Act.)...”

The Appellants, by asking the City Council to conclude that the City’s Housing Element provides a basis for denying this Project, are asking the City Council to interpret the Housing Element in a manner which directly violates the prohibitions set forth in the Ellis Act.

In furtherance of Policy 2.2.4 of the Housing Element quoted above, the Ordinance Committee of the City Council considered a Proposed Tenant Displacement and Assistance Ordinance on April 18, 2006, and is expected to again consider this issue later this month or in August.

On March 28, 2005, the Planning Division Staff sent a Memorandum to the Housing Policy Steering Committee which thoroughly analyzed what could and could not be included in a Tenant Protection and Relocation Ordinance. At Page 4 of the Planning Staff Memorandum, the Planning Staff, in relevant part, stated as follows:

“Under the State “Ellis Act,” Government Code sections 7060-7060.9, no public entity shall compel an owner of residential property to continue to offer the property for rent or lease. The owners have the right to remove residential rental units from the market without government regulations restricting the right to cease being a landlord.

.....

The Ellis Act only allows local ordinances that mitigate the adverse impacts on persons actually displaced, not the community in general. According to the Ellis Act, governmental regulations are prohibited from requiring the landlord/property owner to provide mitigation such as replacement units or in-lieu fees for replacement units.”

In response to the fact that the City is considering but has not adopted a Tenant Displacement and Assistance Ordinance, Wye Road Properties, LLC, voluntarily included Tenant Relocation benefits for Tenants of the Property in its Project Description. These benefits were considered by the Planning Commission and were slightly modified with the voluntary concurrence of Wye Road Properties, LLC.

Based on the above and the information contained in the Staff Report to the Planning Commission, Wye Road Properties, LLC, requests that the City Council deny the appeal and uphold the Planning Commissions 6-0 approval of the Project.

Sincerely yours,



Douglas E. Fell

DEF/cs

cc: Stephen Wiley (Via: Email)
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