



The applicant submitted an application on October 12, 2005 for a Preliminary Parcel Map to create two "air-space" condominium lots on the existing lot. As this project would create four or fewer condominium units, the application was processed as a minor subdivision. The intent of the minor subdivision was to convert each residential structure to ownership units. The underlying lot would not be subdivided, but would be owned by a single entity comprised of the owners of the residential buildings.

The application was deemed incomplete on November 22, 2005, based upon technical corrections to the map that were required prior to a public hearing. The applicant submitted corrections and the project was deemed complete in June, 2006. A public hearing was held on July 25, 2006 to accept public testimony on the map. Staff received comments from members of the public. A Director's Decision was prepared approving the map, which was signed on August 4, 2006. A copy of the approval letter is contained in Attachment B.

The project was appealed by Pria Graves on August 14, 2006. A copy of the appeal request letter is contained in Attachment C.

### **DISCUSSION**

Prior to the Director's Decision, staff had determined that the request for condominium conversion could be permitted within the RMD residential district. Staff determined that the requested subdivision would be consistent with the purpose of the Zoning Ordinance, Title 18.10.010(c), which states that the purpose of the RMD district is, "to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for multiple-family use by the Palo Alto Comprehensive Plan. The RMD district is intended to minimize incentives to replace existing single-family dwellings, maintain existing neighborhood character and increase the variety of housing opportunities available within the community. The maximum density in this zone shall not exceed seventeen dwelling units per acre."

The site contains two dwelling units on a single parcel. The subdivision would create two airspace condominium units that would exist on the single parcel. The parcel itself would not be subdivided. Although ownership of each condominium unit may be transferred to separate owners, the existing parcel would continue to be controlled by a single owner or entity. The existing structures, including a Category 2 Historic structure and the second dwelling unit constructed in 2003, would be retained. The second unit was reviewed and approved for neighborhood compatibility by the Architectural Review and Historic Resources boards. The addition of the second unit contributed to the housing stock of the city. The creation of the condominium units would increase the variety of housing, in that the two detached condominium units on a single lot represents additional ownership opportunities for lower-density housing in an area that already contains single-family, multiple-family and rental dwelling units. Based upon the project request, the review of the project for compatibility with the Zoning Ordinance, the Comprehensive Plan, and the Subdivision Map Act, staff processed an approval for the project.

Upon receipt of the appeal request and after further consideration of the Zoning Ordinance, it has been determined that the creation of air-space condominium lots would not be consistent with the

purpose of the RMD district, as described above. Although the underlying lot itself would not be subdivided and would remain under a single ownership entity, the air-space condominiums could be owned by two separate individuals. The individual ownership of each condominium unit would not be consistent with the intended purpose of the RMD district.

Staff's original interpretation of the RMD district purpose was based upon the existing language within the Zoning Ordinance, PAMC 18.10.010(c) and understanding of state law where a common parcel qualifies as a "single lot of record for a use or group of uses" with the group of uses being the two homes. The PAMC language implied that the creation of lots with dwelling units under different ownership would not be allowed. But because of state law, staff reasoned that if the lot itself was not being subdivided and would continue to exist under single, albeit common ownership, individual air space condominium units could be created, each having individual ownership.

The City Attorney's Office has prepared an urgency ordinance that would correct and clarify the purpose of the RMD district with regard to subdivisions and residential unit ownership. This urgency ordinance will be presented to the Commission on September 27, 2006 prior to the public hearing for the appeal of the Director's decision on 610 California Avenue.

If the urgency ordinance is adopted by the City Council, the Director's decision on 610 California Preliminary parcel map would not be consistent with the revised purpose of the RMD district. Staff would return to the Commission with a recommendation to overrule the August 4, 2006 Director's Decision. If the urgency ordinance is not adopted by the City Council, or if this project is exempted, the Commission would then consider the appeal on its merits.

## **POLICY IMPLICATIONS**

### **Zoning Ordinance Compliance**

Project approval was based on compliance, consistent with application of State law regarding the definition of a common parcel. It has been determined, however, that the project would not be consistent with the zoning ordinance, if the proposed urgency ordinance is approved by the City Council.

### **Comprehensive Plan**

The proposed subdivision was found to be consistent with the following policies of the Comprehensive Plan:

Policy L-12: Preserve the character of residential neighborhoods by encouraging new or remodeled structures to be compatible with the neighborhood and adjacent structures. No changes are proposed for the existing structures, which include a Category 2 historic building and a second detached dwelling unit which was built in 2003. This second unit was reviewed by the Historic Resources and Architectural Review Boards and was found to be compatible with existing structures on the site and in the general vicinity of the neighborhood.

Program H-29: *Where a proposed subdivision or condominium would cause a loss of rental housing, grant approval only if at least two of the following three circumstances exist:*

- *The project will produce at least a 100 percent increase in the number of units currently on the site and will comply with the City's Below Market Rate (BMR) program (described in Program H-36); and/or*
- *The number of rental units to be provided on the site is at least equal to the number of existing rental units; and/or*
- *No less than 25 percent of the units will comply with the City's BMR program.*

Although the project would result in the loss of a rental housing unit (all units after the first unit are considered rental units), the number of non-rental units would increase by one (a 100% increase). Furthermore, projects that contain three units or fewer are not subject to Program H-29 (applies to multi-family district only). The project would also not be subject to additional BMR requirements.

**ENVIRONMENTAL REVIEW**

The California Environmental Quality Act (CEQA) lists a minor land division of property in an urbanized area into four or fewer parcels as exempt from CEQA if the subdivision is in conformance with all zoning regulations. As this is a project that would create two units, the project is exempt from the provisions of CEQA, Section 15303.

**NEXT STEPS**

The appeal would return to the Commission after the City Council reviews the urgency ordinance as described above.

**ATTACHMENTS:**

- Attachment A - Site Map
- Attachment B - Director's Decision, August 4, 2006
- Attachment C - Appeal Request, August 14, 2006
- Attachment D - Preliminary Parcel Map [Commission members only]

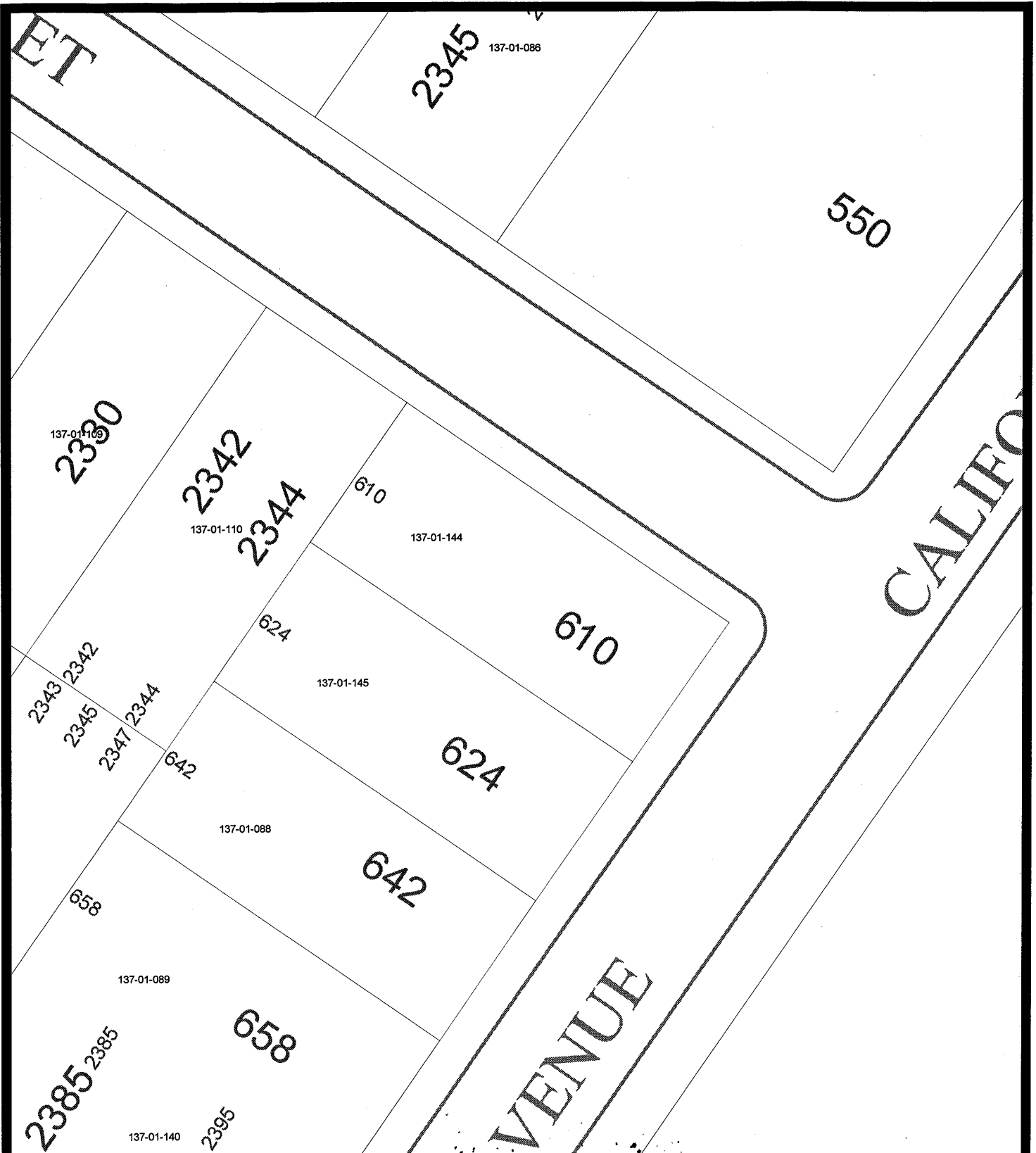
**COURTESY COPIES:**

- Brian Wilson, 2389 South Cliffview, Flagstaff, AZ 86001
- Pria Graves, 2130 Yale Street, Palo Alto, CA 94306

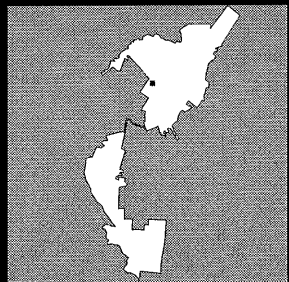
Prepared by: Steven Turner, Senior Planner

Reviewed by: Amy French, AICP, Manager of Current Planning

Department/Division Head Approval:   
**Curtis Williams**  
**Chief Planning and Transportation Official**



The City of Palo Alto



610 California Avenue

Location Map

This map is a product of the City of Palo Alto GIS





# City of Palo Alto

Department of Planning and Community Environment **Attachment B**

August 4, 2006

Brian Lee Wilson  
2389 South Cliffview  
Flagstaff, AZ 86001

**Subject: 610 California Avenue, Preliminary Parcel Map; 05PLN-00358**

Planning Division Dear Mr. Wilson:

I am writing to inform you of my decision on behalf of the Director of Planning and Community Environment (Director) regarding your request for approval of the Preliminary Parcel Map pursuant to the Palo Alto Municipal Code (PAMC) Sections 21.12 and 21.20 and the California Government Code (CGC) Section 66474.

Preliminary Parcel Map approval is granted for the creation of two airspace condominium units on a 5,662 square foot lot in the Two Unit Multiple-Family Residential District with Neighborhood-Preservation Combining District (RMD(NP)). This determination is based on the following outcomes: review of all information contained within the project file; all public comments received; the review of the proposal in comparison to all applicable zoning, subdivision, and other municipal code requirements and the presentation and discussion of this project in a public forum at the Director's Hearing on Thursday, July 25, 2006

## Consistency with the Two Unit Multiple-Family Residential District (RMD)

The requested subdivision would be consistent with purpose of the Zoning Ordinance, Title 18.10.010(c), which states that the purpose of the RMD district is, "to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for multiple-family use by the Palo Alto Comprehensive Plan. The RMD district is intended to minimize incentives to replace existing single-family dwellings, maintain existing neighborhood character and increase the variety of housing opportunities available within the community. The maximum density in this zone shall not exceed seventeen dwelling units per acre."

The site currently contains two dwelling units on a single parcel. The subdivision would create two airspace condominium units that would exist on the single parcel. The parcel itself would not be subdivided. Although ownership of each condominium unit may be transferred to separate owners, the existing parcel would continue to be controlled by a single owner or entity.

The existing structures, including a Category 2 Historic structure and the second dwelling unit constructed in 2003, would be retained. The second unit was reviewed and approved

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for neighborhood compatibility by the Architectural Review and Historic Resources boards. The addition of the second unit contributed to the housing stock of the city. The creation of the condominium units would increase the variety of housing, in that the two detached condominium units on a single lot represents additional ownership opportunities for lower-density housing in an area that already contains single-family, multiple-family and rental dwelling units.

## **PROJECT DESCRIPTION**

Request by Brian Wilson for a preliminary parcel map to create two air-space condominium lots for the two existing single-family residences. Environmental Assessment: The City as the lead agency for the project has determined that it is categorically exempt from the California Environmental Quality Act under Guidelines Section 15305—Minor Alterations in Land Use. Zone District: RMD(NP).

## **PRELIMINARY PARCEL MAP FINDINGS**

A legislative body of a city shall deny approval of a Preliminary Parcel Map, if it makes any of the following findings (CGC Section 66474):

1. *That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451:*

The site does not lie within a specific plan area and is consistent with the provisions of the Comprehensive Plan.

2. *That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans:*

The map is consistent with the following Comprehensive Plan policies: (1) Policy L-1 – Limiting future urban development to currently developed lands within the urban service area; (2) Policy L-12 – Preserve the character of residential neighborhoods by encouraging new or remodeled structures to be compatible with the neighborhood and adjacent structures.

3. *That the site is not physically suitable for the type of development:*

The site currently contains two dwelling units. Each dwelling unit is compatible with the neighborhood, in that the development of the second unit was reviewed by the Architectural Review Board and Historic Resources Board in 2002. The second unit was found to meet the required Architectural Review and Historic Resources findings

for Neighborhood Preservation Exception. The site also contains a structure ranked as Category 2 in the City's Historic Resources Inventory. This structure would remain on the site. The Preliminary Parcel Map, as conditioned, is suitable for the existing single-family residences to remain in the present condition and location.

4. *That the site is not physically suitable for the proposed density of development:*

The minor subdivision is consistent with the permitted density requirements of the RMD(NP) district. In addition, the subdivision does not alter the exterior site boundaries and site area.

5. *That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat:*

The minor subdivision will not cause environmental damage or injure fish, wildlife, or their habitat, as the site is currently developed with two single-family residences that would not be substantially changed as a result of this project. The existing structures would not cause substantial environmental damage to wildlife areas, in that the site is over 1,200 feet from the local creek along Stanford Avenue.

6. *That the design of the subdivision or type of improvements is likely to cause serious public health problems:*

The minor subdivision of the existing parcel will not cause serious public health problems, as it does not substantially affect the existing conditions and overall function of the property as a site for low density housing.

7. *That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.*

The minor subdivision of the existing parcel will not conflict with easements of any type, as there are no pre-existing easements on site nor are any easements required as a condition of this approval.

## CONDITIONS OF APPROVAL

### Planning Division

1. A Parcel Map, in conformance with the approved Preliminary Parcel Map, all requirements of the Subdivision Ordinance (PAMC Section 21.16), and to the satisfaction of the City Engineer, shall be filed with the Planning Division and the Public Works Engineering Division within two (2) years of the Preliminary Parcel Map approval date.
2. The Parcel Map submitted for review and approval by the Director shall be in substantial conformance with the Preliminary Parcel Map prepared by Lea & Braze Engineering titled "Preliminary Parcel Map for Condominium Purposes", consisting of 1 page, received August 3, 2006, except as modified to incorporate the conditions of this approval. This requirement shall be met, unless the applicant makes a request in writing to the Director for approval of a waiver of the above requirement. A copy of this plan is on file in the Department of Planning and Community Environment, Current Planning Division.

Should you have any questions regarding the Director's Hearing determination, please do not hesitate to contact the Project Planner, Steven Turner, at (650) 329-2155.

Sincerely,



Amy French, AICP  
Manager of Current Planning

cc: Pria Graves, 2130 Yale Street, Palo Alto, CA 94306  
Joy Ogawa, 2305 Yale Street, Palo Alto, CA 94306

14 August 2006

Pria Graves

2130 Yale Street  
Palo Alto, CA  
94306

Office of the City Clerk  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94303

**Re: 610 California Avenue, Preliminary Parcel Map: 05PLN-00358**

To Whom It May Concern:

I am appealing the August 4<sup>th</sup> ruling granting approval of this Preliminary Parcel Map on three grounds:

- i. it is not consistent with the base RMD zoning,
- ii. it is not consistent with the intent of the NP Neighborhood Preservation Combining District overlay, and
- iii. it is not consistent with the Comprehensive Plan.

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CITY OF PALO ALTO, CA  
CITY CLERK'S OFFICE

First, this property is zoned RMD-NP. The RMD zoning states:

" The RMD two-unit multiple-family residence district is intended to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for multiple-family use by the Palo Alto Comprehensive Plan."

The ruling makes a distinction between the ownership of the "airspace" rights, a term not defined in Palo Alto's Zoning code but apparently referring to the right of occupation and use of the building, and the ownership of the underlying parcel. But the zoning does not speak of parcel ownership; it speaks of dwelling unit ownership.

The definition of dwelling unit is "a room or group of rooms including living, sleeping, eating, cooking, and sanitation/bathing facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy on a nontransient basis and having not more than one kitchen." Applying the "reasonable person" interpretation to this definition, it is impossible to see how ownership of an occupied group of rooms can be separated from the ownership of the right of occupancy.

It is particularly telling that the sections of the zoning code which address medium- and high-density areas (R-15, R-30 etc.) are silent as to ownership. From that, it is clear that the authors of the RMD (and R-2) zoning intended to distinguish these zones from the higher density areas where condominiums are common. I have been assured in discussing the issue with one of the code's authors that they did not intend this convoluted distinction between ownership of the parcel and ownership of the occupancy rights. To the authors, as to the "reasonable person", ownership of the dwelling unit was indivisible.

The second unit at 610 California was made possible by this uncommon zoning, which allows second units on these fairly small lots "to minimize incentives to replace existing single-family dwellings, maintain existing neighborhood character and

increase the variety of housing opportunities available within the community". The surrounding R-1 zoning makes no such provision. Having allowed a second dwelling to be built, it hardly seems onerous for the City to require that ownership be kept to one person as required by the zoning.

Second, the proposed subdivision undermines the intent of the NP Neighborhood Preservation Combining District overlay. The combining district is "intended to foster retention of existing single-family structures." The additional unit was constructed using several exceptions permitted under that overlay, which allows exceptions to the setback, daylight plane, and parking requirements. Among the findings necessary to support each exception is that it "**will facilitate the preservation of an existing residential structure on the same property.**" The preservation and repair of the original building on the site were made part of the conditions for granting the requested variances. However, once ownership of the two dwellings is separated (even if ownership of the underlying parcel remains intact), it seems to me that the City has no way to bind the new owner of the historic structure to any of the requirements imposed by the variance process. Despite the assurances of the applicant of his good intent, if the future owner of the historic structure condominium wishes to modify or even demolish it, we're left with only our pathetically weak historic preservation ordinance for "protection".

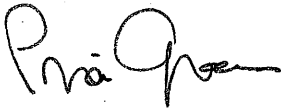
Finally, this subdivision is not consistent with Comprehensive Plan Program H-29 which states that where a proposed subdivision or condominium would cause a loss of rental housing, it should be granted only if it meets at least two of the following three sets of circumstances:

- *The project will produce at least a 100 percent increase in the number of units currently on the site and will comply with the City's Below Market Rate (BMR) program (described in Program H-34 or 35); and/or*
- *The number of rental units to be provided on the site is at least equal to the number of existing rental units; and/or*
- *No less than 25 percent of the units will comply with the City's BMR program.*

It is clear that creation of this condominium will result in a decrease of rental units (even if not during the current lease terms). And since it fails to meet **any** of the required sets of circumstances, it must, therefore, be denied as inconsistent with the Comprehensive Plan.

As a final note, let me state that I am very distressed by the fact that this ruling in favor of the proposed condominium parcel map was made in the face of these multiple reasons for denial, all of which the Current Planning Manager was made aware of prior to the date of the ruling. It is little wonder that the residents of Palo Alto distrust the City staff!

Sincerely,



Pria Graves

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