

DATE ISSUED: April 13, 2005 REPORT NO. 05-080

ATTENTION: Honorable Mayor and City Council  
Docket of April 19, 2005

SUBJECT: Appeal of the Paseo de Mission Hills Project; Vesting Tentative Map and Site Development Permit, Project No. 40292, Council District 2, Process 4.

REFERENCE: Planning Commission Report No. PC-05-017. Project Approved by the Planning Commission on January 27, 2005.

OWNER/  
APPLICANT: Friars Mission Hills, LLC/ Paseo de Mission Hills, LLC

SUMMARY

Issue - Should the City Council approve or deny the appeals of the Planning Commission's decision to approve the construction of a 61-unit residential condominium complex with retail and office space, which includes the restoration of two (2) existing buildings with eight (8) residential units which would be converted into affordable housing rental units located on West Washington Street within the Uptown Community Planning area?

Staff's Recommendation:

1. **DENY** the appeals ;
2. **CERTIFY** Mitigated Negative Declaration No. 40292, and **ADOPT** Mitigation, Monitoring and Reporting Program (MMRP); and
3. **APPROVE** Vesting Tentative Map No. 113679 and Site Development Permit No. 113680 with Revised Park Development Conditions (see page 5).

Planning Commission Recommendation - On January 27, 2005, the Planning Commission voted 4-1 to **Approve** Staff's recommendation which included a condition for the restoration of the two potentially historical existing buildings.

Community Planning Group Recommendation - On October 5, 2004, the Uptown Planners voted 10-3-1 to recommend approval of the proposed project with conditions (Attachment 17). See the Discussion Section of this report.

Other Recommendations – None with this action.

Environmental Review - A Mitigated Negative Declaration has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) guidelines, which address potential impacts to Historical Resources (Archaeological), Paleontological Resources and Transportation/Circulation. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

Fiscal Impact Statement: None with this action. All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact - None with this action.

Housing Impact Statement – This proposal would allow for a mixed-use development with 69 residential units (61 for-sale condominiums units and eight existing rental units). The proposed project, occupying 1.17-acres, could accommodate between 45 and 72 dwelling units based on the Uptown Community Plan. The eight existing rental units are located on the second floor within the “Funcheon” building and are to remain. The proposed new 61-unit residential condominium complex provides for a net gain of 58 residential units (61 units minus the demolition of three residential units) within the Uptown Community.

As a component of the application, the proposed project will conform to the Inclusionary Affordable Housing Requirements and Council Policy 600-27(A) criteria for the Affordable/In-Fill Housing Expedite Program by setting aside the existing eight rental units (seven studios and one one-bedroom) for households with an income at or below 50 percent Area Median Income (AMI) for a period of not less than 55 years. Currently the Affordable Housing rental rate of 50 percent AMI for a household of one (studio) is an annual income of \$24,000.00, and for a household of two (one-bedroom) is an annual income of \$27,400.00. The proposal would assist the City in addressing its shortage of affordable housing units during a time when the City Council has determined that the City of San Diego is in a Housing State of Emergency.

Water Quality Impact Statement – The proposed project complies with the City of San Diego's Storm Water Standards. A Water Quality Technical Report and Drainage Study were prepared to define Best Management Practices (BMPs) to minimize stormwater runoff pollutant loading. Site design and source control BMPs have been incorporated

into the project to reduce potential pollutants. Post-development runoff from the site will not exceed the runoff volumes under pre-development conditions. The post-development runoff will be discharged to the existing public storm drain system. Construction BMPs will be used to minimize potential pollutants in stormwater runoff during construction/grading activity.

## BACKGROUND

The proposed project site is located on the north side of the 800 Block of West Washington Street, bounded by Goldfinch Street, Falcon Street, and Fort Stockton Drive (Attachment 1). The proposed project site is located within the Mid-City Communities Planned District, and is currently zoned MR-1000 and CN-2A (Attachment 3). The northeast corner of the project site/block (Lots 17-24), bounded by Fort Stockton Drive and Falcon Street, is zoned MR-1000 (Residential - Multiple Unit; 1 dwelling unit per 1,000 square-feet of lot area). The remaining portion of the site/block (Lots 1-16) is zoned CN-2A (Mixed Use/Residential - Multiple Unit; 1 dwelling unit per 800 square-feet of lot area). The project as zoned, allows for a total of 59 units, however, the proposal includes an affordable housing density bonus request, which would allow up to an additional 25 percent density bonus. The project is only requesting an approximately 17 percent increase in density to allow for the development of ten additional units for a total of 69 units.

The proposed project site is located within the Uptown Community Plan that designates the 0.71-acre portion of the site for Mixed Use allowing 44-73 dwelling units per acre (dus/acre), and Medium to High Density Residential at 29-44 dus/acre on the 0.46-acre north-eastern portion of the site (Attachment 4). According to the Land Use Element of the Community Plan, the proposed project, occupying 1.17-acres, could accommodate between 45 and 72 dwelling units.

The surrounding development consists of a mixture of one- and two-story commercial structures; and two-, three-, and four-story multi-family structures. Currently, the south side of West Washington Street is developed with retail, office, restaurant, and a neighborhood bar. The development on the west side of Goldfinch Street contains two restaurants, retail, and commercial office uses. The development to the north of the project site on Fort Stockton Drive contains two single-family residences that have been converted into retail uses and a three-story structure over parking garage, multi-family complex. The development at the northeast corner of Falcon Street consists of a two-story structure over garage, multi-family complex, and the Mission Hills Commons complex is located directly to the east of the project site.

The Mission Hills Commons complex encompasses the entire block to the east of the project site. The development includes 65 residential units (50 apartments, eight rowhomes, and a retail structure with seven residential lofts above), with a height of 50-feet and 23 deviations to the development regulations. The Planning Commission recommended approval of the project on April 20, 2000, and the City Council approved the project on May 16, 2000. The Mission Hills Commons Planning Commission Report No. P-00-076 (with the Data Sheets and Exhibits) has been included within this report as Attachment 6. On October 28, 2004, the Planning Commission approved Tentative Map No. 96003 to convert the existing 50 apartments and the

retail structure with seven residential lofts above to condominiums (Planning Commission Report No. PC-04-171).

## DISCUSSION

The project proposes to demolish three commercial structures, one residential structure (currently being used as an office), two garages (one containing two-units on the second floor), and one kiosk for the construction of the Paseo de Mission Hills mixed use development. The project is proposing to restore the “Ace Drugstore” and “Funcheon” buildings along West Washington Street in accordance with the Secretary of Interior Standards for Restoration. In 1952, these buildings were joined with a third building (this building is proposed to be demolished) and “modernized” to create the Mission Hills Shopping Center. Once restored, both buildings may be eligible for listing on the National and/or Local Registers.

The project also proposes the construction of a five-story plus mezzanine building for retail and residential use, that contains 5,135 square-feet of retail and 120,779 square-feet of residential space in the form of 61 one-, two-, and three-bedroom condominium units that includes a two-level, 69,667 square-foot subterranean parking garage as well as the construction of a two-story, 4,979 square-foot retail and office addition to the “Ace Drugstore” building. The proposal includes restricting eight existing residential rental units, located on the second floor within the “Funcheon” building, as affordable housing units at a rate of 50 percent area median income (AMI). The project would also incorporate a public pedestrian path or “Paseo” and courtyard through the project site with access from approximately the mid-blocks of West Washington Street, Goldfinch Street, and Falcon Street. This Paseo would be landscaped with sitting and patio areas for the public, and private areas for the residents.

Development of the proposed project requires the approval of a Process 4 Vesting Tentative Map (VTM) and a Process 4 Site Development Permit (SDP). The SDP is required for development within the Mid-City Planned District Ordinance and due to requested deviations to the regulations of the underlying zone (setbacks, street yard, height, diagonal plan dimension, floor area ratio, visibility area, loading area, and turn-around area) and deviations from the Affordable Housing Density Bonus provisions.

### Community Group Recommendation:

On October 5, 2004, the Uptown Planners voted 10-3-1 to recommend approval of the proposed project with conditions (Attachment 17). To summarize, the Uptown Planners directed the applicant to continue working with the Uptown Partnership, City staff, Uptown Planners, the Mission Hills Business Improvement District (BID) and the Mission Hills community to maximize the amount of parking on and off-site, ensure that the new retail spaces conform to the existing scale and rhythm along Goldfinch Street, that funding be provided for enhancements to the West Washington Street median as well as ensuring that the entire site be improved with new historically-scored sidewalks, a consistent street tree palette and enhanced pedestrian “ladder style” crosswalks. The Uptown Planners also recommended that the existing neon signs be reincorporated and that the bungalow on Falcon Street be made available for moving and reuse.

Based on the Uptown Planners recommendations, the applicant worked with City staff as well as Mission Hills BID and community representatives to ensure that the requested revisions were incorporated into the project. These included revisions to the landscape plans and materials palette. The applicant has also agreed to make the bungalow available for moving and reuse.

Acknowledging the community's desire to include additional parking, the project is providing 177 parking spaces within the subterranean parking garage, where 162 parking spaces are required under the Land Development Code. The project also proposes to close four existing curb cuts. However, as designed due to the addition of corner pop-outs, the proposed project would have a net loss of two on-street parking spaces along Fort Stockton Drive and no on-street parking would be provided south of the project driveway on Falcon Street.

The intersection at the corner of West Washington and Goldfinch Streets currently has an approved and funded Capital Improvement Project (CIP No. 39-216.0) that includes constructing pedestrian pop-outs on all four corners of the intersection. The applicant has agreed to work with City staff to fund a portion of the median improvement through this CIP project.

#### Planning Commission Hearing:

On January 27, 2005, the Planning Commission heard the proposed project and voted 4-1 to approve staff's recommendation with a requirement that a condition be added requiring a restoration program for the two potentially historical buildings (Permit Condition 10-12 added).

The Commission discussion and public testimony centered primarily on historical resource impacts ("Ace Drugstore" and "Funcheon" buildings, and the proposed structures to be demolished); density; bulk and scale; height; community character and compatibility; traffic impacts; the Paseo and landscaping; land use and zoning; requested deviations; and affordable housing density bonus provisions.

#### Park Development Conditions:

After Planning Commission approval of the project on January 27, 2005, the Park Planning and Development Division of the Park and Recreation Department revised the Park Development Conditions identified as Condition No. 64-66 for Site Development Permit No. 113680. The site is designated for Mixed Use and Residential within the Uptown Community Plan and currently zoned for commercial, office and multi-family development, and is not requesting a Rezone or Community Plan Amendment.

The Park Planning and Development Division determined that the original conditions did not meet current regulations; therefore the proposed project shall be subject to per unit Development Impact Fees (DIF) at the time of building permit issuance. The current DIF as of July 1, 2004, is \$7,665.00 per unit, of which \$6,317.00 shall be allocated for Park Facilities. Therefore, the original permit conditions originally approved by the Planning Commission have been omitted and replaced with the following condition:

67. The park requirements for this proposed development will be satisfied through payment of the established per unit Development Impact Fees (DIF) at time of building permit issuance (Attachment 14)

Appeals:

Two appeal applications were received. The first application (Attachment 10) was received from the Mission Hills Heritage dated February 9, 2005. The reasons for the appeal were listed as Factual Error, Conflict with other matters, Findings Not Supported, and City-wide Significance. The package included a letter from the Law Offices of Everett L. Delano III dated December 21, 2004, which was previously submitted and responded to during the public review period for the Mitigated Negative Declaration (MND). The appeal was followed up by a letter dated February 10, 2005, from the Mission Hills Heritage which further explained their appeal issues (Attachment 11).

The second appeal (Attachment 12) was received from Michael Wells, a resident of the Mission Hills community, dated February 10, 2005. The reasons for the appeal were listed as Factual Error, Conflict with other matters, and Findings Not Supported.

Below is a list summarizing the appeal applications, followed in bold by staff's response.

Mission Hills Heritage Appeal (Attachment 10):

- I. Introduction
- II. The Approvals were based on Factual Errors, were not Supported by Substantial Evidence, and were Contrary to the Municipal Code and State Law
  - a. San Diego Municipal Code

The project conflicts with several sections of the San Diego Municipal Code. The Municipal Code provides that the "purpose of the CN [Commercial-Neighborhood] zones is to provide residential areas with access to a limited number of convenient retail and personal service uses. The CN zones are intended to provide areas for smaller scale, lower intensity developments that are consistent with the character of the surrounding residential areas." (Municipal Code Section 131.0502) The Project is inconsistent with this purpose. It is large in scale, heavy in intensity and is inconsistent with the surrounding residential areas. There are no tall, bulky structures in the neighborhood that are comparable to the Project.

- **Staff Response:** The proposed project site is located within the Mid-City Communities Planned District, and is currently zoned MR-1000 and CN-2A. The CN zone within the Planned District is defined in Municipal Code Section 103.1507 as "Commercial Node" not "Commercial-Neighborhood" as defined in Municipal Code Section 131.0502. The Commercial Node (CN) zones are intended to provide pedestrian-oriented commercial and mixed-use districts in selected higher activity areas such as major intersections.

The project will entail at least 11 deviations for things such as setbacks, street yard, height, diagonal plan dimension, and architectural features. The cumulative effect of these deviations will be quite significant. They will allow a structure that overshadows the community in size. There is inadequate justification provided for these deviations.

- **Staff Response:** The Mid-City Communities Planned District Ordinance (PDO) allows for deviations to development regulations. Deviations up to 20 percent are processed administratively, without public review. The proposed height and setback deviations are greater than 20 percent and therefore the project requires a Mid-City Communities Development Permit. An application for a Mid-City Communities Development Permit shall be processed in the same manner as a Site Development Permit (Section 103.1504(h)(2)). Staff has determined the proposed use and design meet the purpose and intent of the PDO and the Uptown Community Plan, and is compatible with the existing and proposed land uses on adjoining properties. The design incorporates increased setbacks and height, which together provide for a balanced site. The deviations allow the buildings to spread the height and density more equally, instead of developing a taller structure on the portion of the site zoned CN-2A, which has a 150 foot height limit. In addition, the deviations are requested in order to retain and restore the potentially historic two-story structures along Washington Street, provide for a public walk and courtyard through the project, provide for open space for the residential units, and increase the pedestrian orientation of the buildings with the provision of ground floor entries and patios, wider sidewalks and new tree-lined parkways on all frontages.

Approval of the Tentative Map is in conflict with Municipal Code Section 125.0440(a), which requires, among other things, a finding that the Project “and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan.” Approval of the Site Development Plan conflicts with Municipal Code Section 126.0504(a)(1), which requires a finding that the Project “will not adversely affect the applicable land use plan.” The Project is inconsistent with the Uptown Community Plan, including the “Urban Design Guidelines” found at page 78 to 79 of that plan. The City has not provided findings supported by substantial evidence that deviations from these requirements are appropriate.

- **Staff Response:** The proposal for a mixed-use development with 69 residential units (61 for-sale condominiums units and eight existing rental units) occupying 1.17-acres, could accommodate between 45 and 72 dwelling units and would implement the Land Use Element of the Uptown Community Plan.

**With regard to the urban design guidelines of the Uptown Community Plan, a primary objective of the Urban Design Element is to maintain and reinforce mixed-use commercial cores that are urban in character and pedestrian in orientation. The Plan specifically recommends promoting the expansion of neighborhood commercial services and mixed-use development within the commercial node surrounding Washington and Goldfinch Streets, in addition to**

**improving the pedestrian quality of the area. In order to ensure that new mixed-use development is compatible with the community, the urban design guidelines suggest that new construction be compatible with the existing architectural detail and overall appearance or development quality in the surrounding neighborhood, and that multi-family development incorporate wall texture variations, facade offsets, upper floor setbacks and varied roof forms.**

**The guidelines also recommend enhancing the urban quality of commercial and retail activity nodes by encouraging individual buildings to be designed with a mixture of land uses and that larger projects should be designed with physical linkages between structures to help integrate building functions. Further, the guidelines recommend that structures be restored or adaptively reused either by themselves or as elements of larger development projects. Therefore, based on proposed design elements and public improvements, staff has determined that the project would not adversely affect the Uptown Community Plan.**

**[Conformance with the Progress Guide and General Plan, and the Uptown Community Plan are outlined on Page 4, 9-10, and Attachment 19 within the Planning Commission Report No. PC-05-017.]**

The Project Applicant has asked for the benefits provided under the Affordable Housing rules of the Municipal Code. The Applicant seeks to increase the number of units in the project by 17% and to expedite processing by City staff. The Applicant has sought deviations from the Municipal Code's requirements. There has been an inadequate showing to support deviations, and the granting of deviations conflicts with the Municipal Code.

- **Staff Response: On May 20, 2003, in an on-going effort to address San Diego's affordable housing crisis, the City Council adopted Council Policy 600-27, known as the "Affordable/In-Fill Housing and Sustainable Buildings Expedite Program". Over the past 18 months this Program has been extremely successful in processing both affordable housing and sustainable building projects twice as fast as the standard permit process allows.**

**The Paseo de Mission Hills project qualifies for the Expedite Program, and is eligible for all other affordable housing incentives under this program because it is setting aside at least 10 percent of the units for households at or below 65 percent area median income (AMI). In fact, this project exceeds the eligibility requirements for the Expedite Program because it is setting aside the required number of units at 50 percent AMI.**

**One of the other affordable housing incentives adopted by the City Council and associated with the Expedite Program included a new Municipal Code Section that allows eligible affordable housing projects, such as Paseo de Mission Hills, to deviate from development regulations. This Code section allows deviations to be requested through a Site Development Permit, and requires that the findings**



**in Code sections 126.0504(a) and 126.0504(m) be met. During the processing of this project, staff reviewed and analyzed the proposed deviations as well as the responses to the required permit findings, and found that those findings could be supported, and the project recommended for approval. All of these findings for the granting of the deviations and approval of the project were contained in the staff report, and considered by the Planning Commission at a public hearing on January 27, 2005. After listening to significant public testimony and considering all of the documents before them, the Planning Commission approved the project by a vote of 4-1.**

Under the Inclusionary Housing Requirements of Municipal Code Section 142.1309(b), affordable units must “be comparable in bedroom mix, design and overall quality of construction to the market-rate units in the development ...” The Project is not designed to meet this requirement. The Project’s variance from this requirement is in conflict with Municipal Code Section 142.1304, which outlines four criteria that must be met for a variance. There has been no showing of these criteria.

- **Staff Response: One of the deviations being requested as a part of this project includes a deviation from the Density Bonus “comparability” regulations of the Municipal Code. Section 143.0720 (b)(4) of the Municipal Code (Affordable Housing Density Bonus) requires that “*The affordable units shall be designated units which are comparable in bedroom mix and amenities to the market-rate units in the development and are dispersed throughout the development*”. The 8 affordable units proposed within Paseo de Mission Hills are not comparable in bedroom mix or amenities to the market-rate units, and are concentrated in one portion of the project instead of being dispersed throughout the development.**

**Since this project is utilizing the density bonus provisions of the Code, which are more restrictive than the Inclusionary Housing Ordinance requirements, the project is being subjected to the “comparability” regulations under Density Bonus. Therefore, contrary to the appellant’s statement, there is no conflict with Municipal Code Section 142.1304, the Inclusionary Housing Ordinance, as that section’s “comparability” requirements are not being applied.**

**Neither the Density Bonus or Inclusionary Housing Code sections specifically allow for deviations from the “comparability” requirements, nor do they establish a process for deviating from those requirements. Therefore, contrary to the appellant’s claims, Municipal Code Section 142.1304 (including the four criteria) can not be utilized.**

**Instead, Code section 143.0920 for Affordable/In-Fill Housing projects is being utilized because it specifically allows deviations from the Municipal Code’s applicable development regulations. This deviation section requires that the project meet Site Development Permit findings 126.0504(a) and (m). All of these findings for the granting of the deviations and approval of the project were**

**contained in the staff report, and considered and approved by the Planning Commission at a public hearing on January 27, 2005.**

The granting of a deviation from Municipal Code Section 143.0720(b)(4), requiring that the affordable units be comparable and be “dispersed throughout the development,” conflicts with Municipal Code Section 142.1304. There is no evidence that the four criteria for granting a deviation have been met for either of the requested deviations, and thus the approval of the Project is not supported by evidence provided to the Planning Commission.

▪ **Staff Response:** As indicated in the staff response above, Municipal Code Section 142.1304 (including the four criteria) can not be utilized since that section is: 1) not being utilized to apply the “comparability” requirements, and 2) does not contain a specific process for deviating from those requirements. Instead, Code section 143.0920 for Affordable/In-Fill Housing projects is being utilized because it specifically allows deviations from the Municipal Code’s applicable development regulations. This deviation section requires that the project meet Site Development Permit findings 126.0504(a) and (m). All of these findings for the granting of the deviations and approval of the project were contained in the staff report, and considered and approved by the Planning Commission at a public hearing on January 27, 2005.

City staff has indicated that the applicant must seek a deviation pursuant to Municipal Code Section 126.0504(a) and (m). However, Section 143.0750 requires that any deviation from Section 143.0720 also meet the requirements of Section 126.0504(l). Subsection 1 requires findings that the development will: (1) materially assist in accomplishing the goal of providing affordable Housing; (2) will not be inconsistent with the purpose of the underlying zone; and (3) the deviation is necessary to make it economically feasible for the applicant. The City has not established that these conditions are met.

▪ **Staff Response:** Section 143.0750 allows deviations from the development regulations of the underlying zone (Section 143.0740{c}), but does not allow deviations from the “comparability” requirements of the Density Bonus regulations. Therefore, the findings in Section 126.0504(l) can not be used to approve a deviation from the “comparability” requirements.

**Instead, Code section 143.0920 for Affordable/In-Fill Housing projects is being utilized because it specifically allows deviations from the applicable development regulations, without specifically limiting those deviations to regulations of the underlying zone. This deviation section requires that the project meet Site Development Permit findings 126.0504(a) and (m). All of these findings have been adequately addressed, are supported by staff, and the Planning Commission used these findings to support the deviations and approve the project.**

The Planning Commission was not provided a copy of the agreement for a housing density bonus, as required by Municipal Code Section 143.0720(a).

- **Staff Response:** Municipal Code Section 143.0720(a) states that “An applicant shall be entitled to a density bonus for any residential development for which an agreement is entered into by the applicant and the Chief Executive Officer of the San Diego Housing Commission as provided in Section 143.0720(b).” It does not require that the Agreement be provided to the Planning Commission. After the project receives final approval from the City of San Diego, and prior to the issuance of the first building permit, the Applicant is required to enter into a Density Bonus Agreement with the San Diego Housing Commission. The Housing Commission does not enter into Density Bonus Agreements until after projects receive final development approval from the City of San Diego.

There is no analysis of the Project’s consistency with the requirements of the Mid-City Community Development Permit process. (Municipal Code Section 103.1504.)

- **Staff Response:** Municipal Code Section 103.1504 provides guidelines and regulations on project review and processing of development within the Mid-City Communities Planned District. The proposed mixed-use development triggers the processing of a Mid-City Communities Development Permit based on the number of units and the requested deviations from the development regulations (Section 103.1504(h)(1)(B) & (D). An application for a Mid-City Communities Development Permit shall be processed in the same manner as a Site Development Permit (Section 103.1504(h)(2)).

[Conformance with the Progress Guide and General Plan, Mid-City Communities Planned District, and the Uptown Community Plan are analyzed on Page 4-10, and Attachment 19 within the Planning Commission Report No. PC-05-017.]

b. CEQA

The California Environmental Quality Act (“CEQA”) requires that, due to the significant impacts of the Project, the City prepare an Environmental Impact Report (“EIR”) before proceeding. Significant impacts of the Project include:

- Historical and cultural resource impacts, including demolition and alteration of historically and culturally significant buildings and structures.

- **Staff Response:** The Design Assistance Subcommittee (DASC) of the Historical Resources Board (HRB) reviewed the proposed project, the March 2004 assessment and the May 2004 addendum to that assessment, and raised no objections to the proposed demolitions, nor did the Subcommittee question the conclusions of those reports that the structures were not eligible for listing under

**the City of San Diego, Historic Resources Board Criteria. City Staff to HRB reviewed the report submitted by Legacy 106 and determined that the HRB Staff and DASC's original position was unchanged by that report, and that the buildings did not meet the criteria for designation.**

**As discussed in the MND, the buildings that are proposed to be restored following the Secretary of Interior Standards for Restoration are not potentially eligible for listing. Should the restoration be determined to be in compliance with the Secretary of Interior Standards, the buildings may then be eligible for local designation by the City's Historical Resources Board as described in the MND. Until they are eligible, no mitigation can be required under CEQA.**

**With regard to any potential archaeological resources, there are no known sites identified within the project boundaries, but the site is located near recorded sites. Therefore, monitoring of the project site during any soil disturbance activities would be a required mitigation measure of the proposed project. Because no impacts would result to any potential resources until the soils are disturbed, there is no basis to require this mitigation prior to project approval or prior to soil disturbance. This mitigation is consistent with the City of San Diego's Historical Resources Guidelines.**

**[These determinations/conclusions have been documented within Mitigated Negative Declaration No. 40292.]**

○ Community character/visual/aesthetic impacts, including the size of the Project altering the character of the community and overshadowing both historic buildings and residences, and blocking light and views of neighboring houses.

▪ **Staff Response:** The Mission Hills Commercial District, where the project is being proposed, is characterized by a varied mixture of development styles dating from the 1920's through 2000. Structures range from one-story bungalows to four- and five-story residential condominium projects. The Uptown Community Plan was revised in 1988 and incorporated the rezoning that was adopted in 1989. This major rezoning changed the vision for the corridor along Washington Street from policies and regulations that promoted general commercial development to land uses that encourage higher intensity mixed-use nodes that are pedestrian-oriented in nature and promote a variety of uses including commercial, office and high density residential at major intersections along Washington Street. The proposed project implements the purpose and intent of the zones (CN-2A and MR-1000) and the community plan by proposing a project that incorporates medium to high density residential development along with commercial and office uses at the major intersection of Washington Street and Goldfinch Street.

**The proposed project would vary in height from 22 feet to 65 feet. The requested deviation to allow for additional height within the MR-1000 zone was**

**determined to not be a significant increase in the allowable height, and would not result in significant shading and shadowing of adjacent properties. The proposed project would exceed the allowable height by approximately 15 feet in the MR-1000 zoned portion of the project site, while being below the height limit in CN-2A zoned portion of the project site by approximately 85 feet.**

**Further, it has been determined the proposed project would not result in substantial light or glare, nor would any vista or scenic view from a public viewing area be impacted. The City of San Diego does not protect private views or vistas, only public views from designated public view corridors as shown in adopted community plans, the General Plan, or a Local Coastal Program.**

**Pursuant to the City of San Diego Significance Determination Thresholds, it was determined that the project would not significantly impact the neighborhood character for the following reasons: the project would not exceed the allowed height or bulk regulations and existing patterns of development in the area by a significant margin; have an architectural style or use building materials in stark contrast to adjacent development where the adjacent development follows a single or common architectural theme; result in the physical loss, isolation, or degradation of a community identification symbol or landmark (e.g., a stand of trees, coastal bluff, historic landmark) which is identified in the General Plan, applicable to the community plan, or local coastal program; the project is located in a highly visible area (e.g., on a canyon edge, hilltop, or adjacent to an interstate highway) and would strongly contrast with the surrounding development or natural topography through excessive bulk, signage, or architectural projections; or have a cumulative effect by opening up a new area for development or changing the overall character of the area (e.g., rural to urban, single-family to multi-family).**

**[These determinations/conclusions have been documented within Mitigated Negative Declaration No. 40292.]**

- Land use impacts, including inconsistencies with the San Diego Municipal Code.

- **Staff Response: The proposed mixed-use development conforms to the purpose and intent of the PDO and Community Plan, and does not propose any significant impacts to the Land Use Plan. The proposed development is compatible with existing and planned land uses on adjoining properties and will not constitute a disruptive element to the neighborhood and community.**

**The development will not adversely affect the Community Plan in that the restoration of the potentially historic structures achieves the Plan's recommendations for integrating and restoring historical structures into project proposals. The commercial and residential uses as well as the density implement the Land Use Element of the Community Plan. Although there are deviations to development regulations (previously identified in this response letter), they meet**

**the purpose and intent of the PDO and the Community Plan policies and guidelines.**

**[Conformance with the Progress Guide and General Plan, Mid-City Communities Planned District, and the Uptown Community Plan are outlined on Page 4-10, and Attachment 19 within the Planning Commission Report No. PC-05-017.]**

○ Hazardous materials/toxic impacts, including the potential for hazardous materials under the parking lots and buildings on Block 54.

▪ **Staff Response: The project site is not listed on either the County’s or the State’s listings. As no known sites were identified, no impacts requiring mitigation were determined to result from the proposed project. A Phase I Environmental Site Assessment had been conducted on the project site at the time the property was acquired. That report included a summary of records searches performed for the project site, including the State Department of Toxic Substances Control Board (DTSD) and the County of San Diego Department of Environmental Health (DEH) Hazardous Materials listings, as well as a number of federal listings including the Federal Environmental Protection Agency’s Nation Priorities List (NPL), the EPA’s Comprehensive Environmental Responses, Compensation, and Liability Information System (CERCLIS) listings, the Federal Resource Conservation Recovery Act (RCRA) Notifiers List, the RCRA CORRACTS Corrective Action Sites List, RCRA regulated hazardous waste generator notifiers list, and CORTESE.**

**The report indicated that a gas station was located near the project site at the southeast corner of Fort Stockton Drive and Hawk Street prior to 1966 until prior to 1984, a former gas station was also present south of the project site at the intersection of W. Washington and Hawk Street from prior to 1921 to prior to 1980, and a dry cleaner was present at 4007 Goldfinch Street. The report concluded that “neither evidence nor suspicion of release(s) of petroleum products or chemicals onto the land surface, nor signs of stressed vegetation, disposals, ground settlement, or other similar conditions were observed during the site inspection. However, the preparer of the report did recommend a number of steps that should be taken related to the demolition of buildings, and that consultation with the County of San Diego, Department of Environmental Health may be necessary, should any contaminated soils be located on site. This is a standard construction action, and is required by the State and County as the regulatory authority over these concerns, and is therefore, not considered mitigation, as it is state regulation.**

○ Construction impacts, including impacts to traffic, noise and other areas associated with construction.

- **Staff Response:** Construction noise impacts must comply with Municipal Code Section 59.5.0404 which regulates the hours and days of construction. Construction noise impacts are temporary, and compliance with the municipal code would avoid significant impacts, therefore no significant impact was identified, and no mitigation is required (compliance with the regulations is not considered to be a mitigation measure). The project is required by the City to prepare a traffic control plan that must be approved by the City Engineer as part of the construction permit process. Again, traffic impacts related to construction are temporary, and compliance with the approved traffic control plan as required by the City would avoid any impacts.

- Traffic impacts, including degradation of traffic flow on certain roadway segments.

- **Staff Response:** All intersections evaluated in the Traffic Impact Analysis Report dated November 1, 2004, would operate at a LOS D or better during all peak periods under all scenarios. The roadway segment of Goldfinch Street between Fort Stockton Drive and Washington Street would function at LOS E or F at all scenarios. However, the addition of project trips would not cause this roadway segment to have a significant impact. Also, the roadway segment of Washington Street between Goldfinch Street and Falcon Street would operate at LOS E under Build-Out scenario, but would not have a significant impact due to the addition of the project. All other roadway segments evaluated in the study would function at LOS D or better.

[Reference to the Traffic Impact Analysis Report dated November 1, 2004, prepared by Kimley-Horn and Associates, Inc. that was prepared for the project.]

- Noise impacts, including noise from the vehicles, businesses, and other uses associated with the Project.

- **Staff Response:** The project would not expose people to current or future transportation noise levels which exceed the standards established in the Transportation Element of the General Plan. In addition, the proposed project is a mixed-use project, including residential and commercial uses, and those uses are not anticipated to result in noise levels that would require mitigation.

- Air and water quality impacts, including impacts from the potential hazardous materials on site.

- **Staff Response:** Pursuant to the City of San Diego Significance Determination Thresholds, it was determined that the project would not significantly impact the air quality for the following reasons: the proposed project would not conflict with or obstruct implementation of the applicable air quality plan; Violate any air quality standard or contribute substantially to an existing or projected air quality violation; Result in cumulatively considerable

**net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including release emissions which exceed quantitative thresholds for ozone precursor); Expose sensitive receptors to substantial pollutant concentrations including air toxics such as diesel particulates; Create objectionable odors affecting a substantial number of people; or Release air contaminants beyond the boundaries of the premises upon which the use emitting the contaminants is located.**

**The proposed project would not exceed the anticipated ADTs for the area, nor would the project impact any such roadways to create ‘hot spots’ for air quality impacts. Therefore, no mitigation would be required for the proposed project.**

**The proposed project complies with the City of San Diego’s Storm Water Standards. A Water Quality Technical Report and Drainage Study were prepared to define Best Management Practices (BMPs) to minimize stormwater runoff pollutant loading. Site design and source control BMPs have been incorporated into the project to reduce potential pollutants. Post-development runoff from the site will not exceed the runoff volumes under pre-development conditions. The post-development runoff will be discharged to the existing public storm drain system. Construction BMPs will be used to minimize potential pollutants in stormwater runoff during construction/grading activity. Therefore, no impacts would result to water quality and no mitigation would be required for the proposed project.**

○ Growth inducing impacts, including leading to further tall, bulky development in the area.

▪ **Staff Response:** The Uptown Community Plan was revised in 1988 and incorporated the Mid-City Communities Planned District rezoning that was adopted in 1989. According to the Uptown Community Plan EIR (EIR#87-0625 and Addendum EIR#88-0762), a general infilling and accompanying population increase is anticipated within the central urbanized area of the City, including Uptown. The overall dwelling unit capacity of 25,010 under the community plan is lower than permitted under the prior plan and allowed zoning, which was estimated to be 27,300 dwelling units. As such, anticipated growth in the Uptown Community resulting from infilling will occur, although the maximum development forecast under the Plan will be less than that allowed under prior zoning. Therefore, according to the EIR, the current community plan is not considered to be growth-inducing. The project, as proposed, is also not considered growth-inducing since it is not requesting a community plan amendment or rezone to increase density. Further, the site falls within an urbanized area where growth is expected.

○ Cumulative impacts, including impacts of the Project in relation to other approved projects.



- **Staff Response:** The CEQA Guidelines Section 15355 states that a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in an Environmental Impact Report (EIR) together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in an EIR. City Staff determined that the appropriate document to prepare for the proposed project was an MND, as all of the project impacts were either less than significant or mitigation was proposed that would reduce potential impacts to below a level of significance. The areas of impacts that were identified (traffic, historic (archaeological) and paleontological) were able to be mitigated for, including traffic impacts at build-out, therefore, no cumulative impacts were identified.

### III. The Approvals Have Citywide Significance

The approval of the Project will have citywide significance. The deviations from the affordable housing requirements set a troubling precedent and detract from the City's goal of offering truly comparable affordable housing units.

- **Staff Response:** The Applicant has requested a deviation from the Density Bonus and Inclusionary Housing comparability provisions. The comparability provisions are locally-mandated provisions. State density bonus law permits the density bonus units to be located in geographic areas of the development other than the areas where the units for lower income households are located and is silent regarding unit or bedroom sizes.

Since the Municipal Code sections regarding Inclusionary Housing and Density Bonus do not specifically allow for deviations from the comparability provisions (and therefore a process for deviation from these provisions), and since this project is considered an Affordable/In-Fill Housing Development, which does allow for deviations from the applicable development regulations, it is being processed under the Deviation Requirements for Affordable/In-Fill Housing found in Section 143.0920. This section allows applicants to request deviations from the applicable development regulations pursuant to a Site Development Permit decided in accordance with process Four provided that the findings of Section 126.0504(a) and 126.0504(m) are made.

Because the project does not strictly meet the comparability requirements of both the Inclusionary Housing Program and the Density Bonus Program, staff could not ministerially approve the density bonus. Staff have fully disclosed the requested deviations and required a Process Four Site Development Permit, along with the required findings, so that policy makers are provided the information necessary to determine whether the merits of the project are meaningful enough to grant the deviations requested.

The overall size and bulk of the project will lead to additional growth in the area, and will make approval of future large structures that are out of proportion with the existing community (thereby seeking numerous deviations) more likely.

- **Staff Response:** The Uptown Community Plan was revised in 1988 and incorporated the rezoning that was adopted in 1989. This major rezoning changed the vision for the corridor along Washington Street from policies and regulations that promoted general commercial development to land uses that encourage higher intensity mixed-use nodes that are pedestrian-oriented in nature and promote a variety of uses including commercial, office and high density residential at major intersections along Washington Street. The proposed project implements the purpose and intent of the zones (CN-2A and MR-1000) and the community plan by proposing a project that incorporates medium to high density residential development along with commercial and office uses at the major intersection of Washington Street and Goldfinch Street. According to the Uptown Community Plan EIR (EIR#87-0625 and Addendum EIR#88-0762), a general infilling and accompanying population increase is anticipated within the central urbanized area of the City, including Uptown.

[Conformance with the Progress Guide and General Plan, Mid-City Communities Planned District, and the Uptown Community Plan are outlined on Page 4-10, and Attachment 19 within the Planning Commission Report No. PC-05-017.]

The Project's impacts to historical and cultural resources will have a deleterious effect on important resources for the entire City of San Diego.

- **Staff Response:** The Design Assistance Subcommittee (DASC) of the Historical Resources Board (HRB) and City staff to the HRB reviewed the proposed project and determined that the existing buildings located on the site did not meet the criteria for designation. However, as a component of the application, the project will restore the "Ace Drugstore" and "Funcheon" buildings and may be eligible for listing on the National and/or local Registers should the facades be removed and the buildings restored in accordance with the Secretary of Interior Standards for Restoration. Therefore, the proposed project would not have a deleterious impact to any historical and/or cultural resources.

[These determinations/conclusions have been documented within Mitigated Negative Declaration No. 40292.]

Michael Wells Appeal (Attachment 12):

1. No Environmental Report Required.

- **Staff Response:** City Staff determined that the appropriate document to prepare for the proposed project was an MND, as all of the project impacts were either less than significant or mitigation was proposed that would reduce potential impacts to below a level of significance. The areas of impacts that were identified (traffic, historic (archaeological) and paleontological) were able to be mitigated for, including traffic impacts at build-out, therefore, no cumulative impacts were identified.

[These determinations/conclusions have been documented within Mitigated Negative Declaration No. 40292.]

## 2. Factual Errors

### ○ Driveway Location

- **Staff Response:** Location of the driveway is acceptable based on the results of the queuing analysis. Based on the queuing analysis, the southbound queue at the Falcon Street/Washington Street intersection would extend back to the project driveway under the 2030 Buildout scenario during peak hours. As a worst case scenario, the average queue during PM peak hour under the 2030 Buildout scenario without the project would be 136 feet and would increase to 148 feet with the project. The proposed mitigation measure to restripe southbound and northbound approaches at Falcon Street/Washington Street intersection for a separate left-turn and shared through-right turn lane will reduce queue length at the southbound approach to 116 feet, which is less than the 136 foot queue during PM peak hour under the 2030 Buildout scenario without the project.

### ○ Traffic

- **Staff Response:** All intersections evaluated in the study would operate at a LOS D or better during all peak periods under all scenarios. The roadway segment of Goldfinch Street between Fort Stockton Drive and Washington Street would function at LOS E or F at all scenarios. However, the addition of project trips would not cause this roadway segment to have a significant impact. Also, the roadway segment of Washington Street between Goldfinch Street and Falcon Street would operate at LOS E under Build-Out scenario, but would not have a significant impact due to the addition of the project. All other roadway segments evaluated in the study would function at LOS D or better.

[Reference to the Traffic Impact Analysis Report dated November 1, 2004, prepared by Kimley-Horn and Associates, Inc. that was prepared for the project.]

### ○ Parking

- **Staff Response:** The proposed project is providing 13 parking spaces in addition to the parking requirement provided by Municipal Code Sections 142.0525 and 142.0530, for a total of 177 off-street parking spaces.
- Sale price of units stated by developer.
  - **Staff Response:** The sale price of units is not a factor in the review of the project as required by Municipal Code, therefore staff has no response.

## CONCLUSION

According to the Land Use Element of the Uptown Community Plan, the proposed 69-unit mixed-use project implements the policies and recommendations which call for Mixed-Use and High Density Residential at 44 to 73 dwelling units to the acre. Further, the proposed project implements the Plan’s Urban Design Element which provides specific policy direction for the commercial area adjacent to West Washington and Goldfinch Streets. These policies encourage the expansion of neighborhood-serving commercial services and high density mixed-use developments that enhance and improve the appearance of existing commercial structures, as well as encourage the provision of housing opportunities in close proximity to major transportation corridors and employment centers. Further, the policies encourage enhancing the pedestrian atmosphere and promoting smooth traffic flow along West Washington Street in order to reduce auto/pedestrian conflicts.

The project proposes to restore two potentially historical landmarks along West Washington Street, provide pedestrian access to the commercial and residential uses from all sides of the site, significantly improve the public right-of-way through new historically-scored sidewalks, and add shade-producing street trees and enhanced landscaping as well as the provision of a public “Paseo” through the center of the site. Neighborhood-serving retail establishments are proposed along West Washington and Goldfinch Streets that incorporate a high degree of transparency as well as awnings to provide shelter and shade from the environment.

As a component of the application, the project would set aside eight existing rental units (seven studios and one one-bedroom) for households with an income at or below 50 percent Area Median Income (AMI) for a period of not less than 55 years. The proposal would assist the City in addressing its shortage of affordable housing rental units during a time when the City Council has determined that the City of San Diego is in a Housing State of Emergency.

## ALTERNATIVE

1. **DENY** the appeals and **CERTIFY** Mitigated Negative Declaration No. 40292, and **ADOPT** Mitigation, Monitoring and Reporting Program (MMRP); and **APPROVE** Vesting Tentative Map No. 113679 and Site Development Permit No. 113680 with modifications.
2. **APPROVE** the appeals and **Not CERTIFY** Mitigated Negative Declaration No. 40292, and **Not ADOPT** Mitigation, Monitoring and Reporting Program (MMRP); and **DENY**

Vesting Tentative Map No. 113679 and Site Development Permit No. 113680, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

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Gary W. Halbert  
Development Services Director

Approved: Patricia T. Frazier  
Deputy City Manager

HALBERT/JAP

Note: Attachments are not available in electronic format. A copy for review is available in the Office of the City Clerk.

Attachments:

1. Project Location Map
2. Aerial Photograph
3. Mid-City Communities Planned District Zoning Map
4. Community Plan Land Use Map
5. Surrounding Community Photos
6. Mission Hills Commons Planning Commission Report No. P-00-076 with attachments
7. Project Data Sheet
8. Project Site Plan(s)/Vesting Tentative Map
9. Project Plans
10. Copy of Appeal Application from Mission Hills Heritage dated February 9, 2005
11. Copy of a letter from Mission Hills Heritage dated February 10, 2005
12. Copy of Appeal Application from Michael Wells dated February 10, 2005
13. Draft SDP Resolution with Findings
14. Draft SDP Permit with Conditions
15. Draft Vesting Tentative Map Resolution with Findings
16. Draft Environmental Resolution, Exhibit A, and NOD
17. Community Planning Group Recommendation
18. Ownership Disclosure Statement
19. Planning Commission Report No. PC-05-017
20. Opposition letters and emails \*
21. Opposition Petitions \*
22. In Favor letters and emails \*
23. Applicant's Historical Assessment by Scott A. Moomjian \*
24. Opposition's Historical Resource Evaluation by Ronald May, Legacy 106 \*
25. Applicant's Traffic Impact Analysis by Kimley-Horn and Associates \*
26. Opposition's Traffic Study Letter by Darnell & Associates \*

\* Provided for City Council (Due to the size of these documents, Attachment 20-26 are available for review at the Office of the City Clerk.)