

The appeal filed by the appellant raises several issues. These have been separated for ease of discussion. Each issue is listed in bold, followed by the staff response.

1. The decision of the Planning Commission to certify the MND was in error based on the inadequacy of the Initial Study, the inability of the evidence to support the analyst's conclusions and the inadequacy of the proposed mitigation.

As the decision-maker for a Process 4 hearing, the City of San Diego Planning Commission has the discretion to certify the Mitigated Negative Declaration (MND) based on the information disclosed in the environmental document and testimony taken at the hearing. The Initial Study has been adequately prepared in accordance with the California Environmental Quality Act (CEQA). Staff analysis and conclusions of environmental issues were based on site specific technical reports (substantial evidence) which included a traffic impact analysis, historical assessment report, acoustical site assessment, preliminary hydrology study, Water Quality Technical Report, and a shade study, that were prepared by consultants with professional/trade licenses and certifications.

State CEQA, Statue 21082.2(2) states: "The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment. ... Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

The specific technical reports (traffic impact analysis, acoustical site assessment, preliminary hydrology study, etc.) prepared by professionals were reviewed by staff for each specific discipline based on local, state, and federal regulations and guidelines. The conclusions, as disclosed in the MND, include appropriate measures to mitigate potential impacts to Paleontological Resources, Human Health/Public Safety, and Transportation/Circulation and are abased on the substantial evidence in light of the whole record.

2. The Commission further erred in approving the Planned Development Permit because the requested height variance contributes to the overall bulk and scale of the project which is incompatible with the surrounding development and inappropriate for this location.

The fifth finding required to be supported to approve a Planned Development Permit (PDP) as required by the Land Development Code §126.0604 states,"Any proposed deviations pursuant to Section 126.0602(b) (1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development

regulations of the applicable zone.” The finding to approve a deviation addresses the appropriateness of the location and desirability of granting the deviation in the context of the whole project. The purpose of the PDP Regulations is to establish a review process for development that allows an applicant to request greater flexibility from the strict application of the regulations. The intent of the PDP Regulations is to encourage imaginative and innovative planning, to assure that the development achieves the purpose and intent of the applicable land use plan, and that the development would be preferable to what would be achieved by strict conformance with the regulations.

The project site is composed of two properties each being regulated by different zoning development regulations. Each property could be developed by right though ministerial building permits if the proposal were compliant with the relevant zoning regulation. Under these conditions there would be no CEQA analysis, no community participation and no mitigation of potential impacts. While a project approved under these circumstances would comply with the zoning development regulations, the design may not achieve the negotiated benefits reached through public participation.

On July 11, 2007, the applicant presented the eight-foot height deviation request to the Kensington-Talmadge Planning Committee, who voted 15-0-0 to recommend approval of the requested deviation.

Under the current zoning regulations, the eastern portion of the project site could develop to a maximum height of thirty feet. While this would be eight feet lower than the proposed project height, the western portion of the project site could build to a maximum height of fifty feet, or nine-feet four-inches higher than the proposed project. The proposed design, which reduces the potential height of the building on the western portion of the project site by over nine feet, could occur over the entire western portion of the site. The proposed increase in height by eight feet on the eastern parcel would occur only at limited and specific locations, as shown on the project elevations.

Through the discretionary review process, staff has confirmed that additional neighborhood impacts would result if these two portions of the project site were to develop by right in accord with applicable zoning regulations. Primarily, the shadows cast by a potentially taller building would increase the limits of shade cast onto properties to the north resulting in longer hours in shadow for those properties. The other potential impacts which may occur should the sites be developed by right would not be addressed through conditions of approval or by a Mitigation Monitoring and Reporting Program, as no discretionary permit nor environmental document would be required.

The compromise of height proposed by the applicant reduces the shadow impacts to other properties, results in a better balance of architecture over both properties, includes the public in

the process, and requires mitigation for potential impacts. Even if the potential impacts do not fully materialize the applicant will be responsible for complying with all required mitigation.

The Mid-City Community Plan designates commercial and mixed-use for a half block north and south of Adams Avenue from State Route Highway 15 to 43rd Street. From 42nd Street to just past Biona Drive the land use designation narrows to be only a half-block north of Adams Avenue. The zoning adopted for this block of properties are the CU-3-3 Zone and the CN-1-2 Zone. When examining the appropriateness of the proposed project at this location staff considered the existing zoning on the subject property, the Mid-City Community Plan and other policies adopted by the City Council to guide development of the City into the future. The properties along this commercial corridor could all be developed by right to 50 feet in height in the CU-3-3 Zone and to 30 feet in the CN-1-3 Zone, containing businesses with commercial and mixed uses. City staff has used these implementing ordinances and adopted City Council land use plans and other policies in preparing their recommendation.

The proposed project site is zoned for commercial and is not an isolated property surrounded by single family residential development. The site is one of thirty-four properties designated in the community plan and zoned for commercial development. In the context of adopted regulations and land use policy, the proposed project is appropriate for this location. The combined benefits of required mitigation for potential impacts, community participation on the design development process, and the dispersal of the building height across the entire site resulting in a lower average building height, result in a project more desirable than that resulting from a strict application of the zoning regulations. The height on the western portion of the property is reduced by nine-feet four-inches from the maximum allowable height. The deviation to allow the additional eight feet in height on the eastern portion of the site would only penetrate the height limit in limited and specific locations. The proposed deviation results in a more desirable project and is appropriate at this location, in that the design is consistent with the policies in the adopted community plan and regulations of the zoning ordinance in effect at this site.

3. The proposed development will cause significant impacts which are detrimental to the health, safety and welfare of the community, and would not be in conformance with the Mid-City Communities Plan.

All of the proposed project's potentially significant impacts would be mitigated to a level of insignificance through the design and development of the project, conditions of approval and requirements of the Mitigation Monitoring and Reporting Program. The proposed project conforms to the policies of the Mid-City Community Plan. The project would implement several goals and recommendations contained in the Urban Design, Transportation, Land Use, and Natural and Cultural Resources Elements of the Mid-City Community Plan. Additional information is presented in Finding No. 1 of the Planned Development Permit resolution approved by the Planning Commission and included as Attachment 18 to the Planning Commission Report.

4. Specifically; the City's adoption of the Final MND improperly relied on a traffic study that contained numerous factual errors and that did not study affected residential streets and alleys.

A Traffic Impact Analysis was prepared by LOS Engineering, Inc. dated June 12, 2007 and reviewed by the Development Services Department's Environmental Analysis Section and Transportation Development Review staff. The traffic report analyzed five scenarios: Existing, Near-term without Project Conditions, Near-term with Project Conditions, Horizon Year (2030) without Project Conditions, and Horizon Year (2030) with Project Conditions. The study area was established, including streets, alley and intersections, based on the adopted SANDAG Select Zone Assignment method. The study area included 10 intersections within the surrounding streets. These intersections included Adams Avenue, State Route 15, Terrace Drive, Kensington Drive, Marlborough Drive, Edgeware Road, alley north of Adams, Park Place, and El Cajon Boulevard and eight roadway segments.

Based on the City of San Diego Trip Generation Manual for the project's proposed uses, it is anticipated the project would generate an approximate maximum 2,479 average daily trips (ADT) with 133 AM peak hour trips and 254 PM peak hour trips. The cumulative trip generation was calculated at 1,413 ADT with 69 AM peak hour trips and 161 PM peak hour trips.

Based on the short-term and long-term traffic analysis for the project area intersections and roadways, the report concluded the project may have significant direct and cumulative impacts to the surrounding intersections and streets under the near-term with project conditions and horizon year (2030) with project conditions. To mitigate potentially significant transportation impacts as a result of the proposed development the applicant would be required to re-stripe Adams Avenue to a three-lane collector from State Route 15 to Aldine Drive, widen Marlborough Drive from Adams Avenue to the alley just north of the project site, install a new traffic signal at Adams Avenue and Kensington Drive, and limit the size and uses of the proposed development so that the ADT would not exceed 2,479 trips.

These recommended conditions, as described in the traffic impact study and required to be implemented as part of the Mitigation, Monitoring, and Reporting Program (MMRP), would mitigate potentially significant impacts to a level below significance and improve circulation and traffic in the area.

5. The Initial Study fails to properly analyze the potential environmental impacts from all phases of the project.

As required by CEQA Guideline No. 15063, the City of San Diego as lead agency conducted an Initial Study for all phases of the project, including construction and throughout the life of the project and the proposed uses on site.

The purpose of an Initial Study as outlined in CEQA Guideline 15063(c) is to: 1) provide the lead agency with information to use as the basis for deciding whether to prepare an Environmental Impact Report (EIR) or a Negative Declaration; 2) Enable an applicant or Lead Agency to modify a project and/or mitigate adverse impacts; 3) Assist in the preparation of an EIR, if one is required; 4) Facilitate the environmental assessment early in the design of a project; 5) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment; 6) Eliminate unnecessary EIRs; and 7) Determine whether a previously prepared EIR could be used with the project.

Based on the technical reports prepared by professional consultants, staff determined that all potentially significant impacts could be mitigated to a level below significance. Staff based their conclusion on the project revisions throughout the review process, implementation of the mitigation measures outlined in the Mitigation, Monitoring, and Reporting Program (MMRP), and specific conditions in the Planned Development Permit. Therefore, all potentially significant impacts to Paleontological Resources, Human Health and Public Safety, and Transportation/Circulation could be mitigated to a level below significance. During the Initial Study, staff did not identify any significant unmitigated impacts that would warrant the preparation of an Environmental Impact Report (EIR) and a Statement of Overriding Consideration (SOC) and therefore a Mitigated Negative Declaration would be the appropriate environmental document for the project. Staff also prepared an Initial Study Checklist, which is included in the environmental document, to identify potential impacts and substantiate staff's conclusions.

6. The finding that the project will not result in a potential adverse impact to community character and aesthetics is not supported.

The 0.78-acre project site is located in the Kensington-Talmadge community of the Mid-City Communities Planning Area. The Mid-City Communities Plan designates the proposed 0.78-acre site for Commercial and Mixed-Use at a maximum density of 29 dwelling units per acre. Additionally, the community plan provides a density bonus of 43 dwelling units per acre for mixed-use projects. Based on the existing land use designation, 23 dwelling units would be allowed on site and ultimately 34 would be allowed through the mixed-use density bonus.

The proposed project would implement several goals and recommendations contained in the Urban Design, Transportation, Land Use, and Natural & Cultural Resources Elements in the

Mid-City Communities Plan. The project as proposed would implement the goal of reinforcing and enhancing the historic, pedestrian-oriented character of Adams Avenue with thriving neighborhood serving and specialty businesses. This recommendation would be implemented through the creation of a 16-foot wide sidewalk that would include tree wells for street trees along Adams Avenue, as well as incorporate a plaza at the corner of Marlborough Drive and Adams Avenue and an internal courtyard. Additionally, bike racks would be provided at street level along Marlborough Drive and Edgeware Road. Other bicycle storage facilities would be provided within the underground 2-story parking structure to accommodate both patrons and workers of the proposed commercial-retail and office building.

To further implement the goals of fostering a pedestrian environment, the project would also involve the removal of an existing gas service station and its associated curb-cuts along Adams Avenue and Marlborough Drive. The result would create a better and safer pedestrian connection to other existing commercial and mixed-use developments along the north side of Adams Avenue. Additionally, parking for the proposed project would be taken from the alley north of Adams Avenue.

The proposed project would implement the recommendation in the Land Use Element of the community plan of encouraging new market-rate housing construction in a variety of types, sizes, and costs to meet the needs of all residents in all socio-economic brackets. The project would include 6 penthouse units above commercial-retail and 3 craftsman-style townhomes at ground level along Edgeware Road. The proposed project would also meet the goal of providing a full range of commercial goods and services to the Mid-City population. The proposed project, which is located in close proximity to State Route 15, would provide additional commercial-retail space within the Kensington-Talmadge community and provide opportunities for more goods and services to be offered to residents. The addition of office space would also provide an opportunity to create additional employment within the community as well.

Although the Mid-City Communities Plan does not contain specific policies related to the incorporation of sustainable development measures within new development projects, it does refer to a vision in the Natural & Cultural Resources Element of the Community Plan of having development contribute to the environmental quality of the area. The project would meet this vision by incorporating a "green roof" feature that would reduce surface run-off. This "green roof" feature would be planted with drought tolerant grasses and herbaceous and succulent plant species. Additionally, the proposed project would self-generate 50 percent of its electrical needs through the incorporation of photovoltaic panels.

The project proposes to seek a deviation to exceed the height limit of the eastern portion of the project by 8 feet where the maximum height limit is 30 feet. Although the community plan does not regulate building heights it does encourage lower scale, two to three-story mixed-use developments with residential units above retail along Adams Avenue. The project would implement this recommendation and maintain the existing character along Adams Avenue by

constructing a three-story, mixed-use structure that would contain 6 units above commercial-retail and office space.

Additionally, in order to meet the recommendation of ensuring that new development reflects neighborhood character in elements such as height, setbacks, massing, landscaping, roofs, windows, front porches, street façade and other architectural details, the proposed project would incorporate setbacks at the third story and landscaping, as well as trellises and arched features similar to adjacent commercial buildings. The three townhomes proposed along Edgeware Road would include a Craftsman architectural style that would be compatible with similar residences along the street. Further, the proposed mixed-use building would utilize various materials and textures to further articulate the street façade and reduce the scale of the building. The rear of the proposed project would also incorporate an articulated façade with windows, varying setbacks, and landscaping to offset the bulk and scale of the proposed 3-story building from neighboring residences to the north.

Based on the proposed features that would be utilized throughout the proposed project, the proposed deviation would not have an adverse impact on the goals and recommendations of the community plan, nor would it result in a potential adverse impact to the community character. As proposed, the project implements many of the overall goals and recommendations of the Urban Design, Land Use, Transportation, and Natural & Cultural Resources of the Mid-City Communities Plan; and therefore, would not adversely affect the community, nor the Mid-City Communities plan.

As disclosed in the Visual Quality/Neighborhood Character Initial Study discussion, the analysis of the project's height, bulk, and scale to the surrounding neighborhood was fully supported by architectural design revisions and a shadow study that was prepared and reviewed in coordination with the community planning staff.

The western portion of the site adjacent to Marlborough Avenue is zoned CU-3-3 and the eastern portion of the site adjacent to Edgeware Road is zoned CN-1-3. The CU-3-3 Zone allows a maximum height of 50 feet and the CN-1-3 Zone allows a maximum height of 30 feet. The proposed building height on the western portion of the site is a maximum height of 40 feet, eight inches, well below the maximum allowable height limit. On the eastern portion of the site, the applicant is proposing a maximum height of 38 feet.

Rather than build to the maximum height allowed by the zones, the application proposes a deviation from the maximum height of the CN-1-3 Zone. On the western most portion of the project site, the height would be nine feet, four inches lower than the allowed maximum (40 feet 8 inches proposed, 50 feet allowed). On the eastern most portion of the site, the height would exceed the allowable height by eight feet for specific portions of the building (30 feet allowed, 38 feet proposed). The proposed increase in height by eight feet on the eastern parcel would occur only at limited and specific locations, as shown on the project elevations. To reduce the

visual appearance of the building height at the western most portion of the site, the project design proposes a public plaza at the corner of Adams Avenue and Marlborough Drive, to build to substantially less than the maximum allowed height, and to step back the third floor from the intersection of Adams Avenue and Marlborough Drive. In addition, approximately 80 percent of the third floor is stepped back 11 feet, creating a terraced effect. Combined, these design elements open up the massing of the building and reduce the bulk and scale. The project proposes this lower, terraced design on the western portion of the site in return for an eight-foot increase in height on the eastern part of the site.

Through the discretionary review process, staff has confirmed that additional neighborhood impacts would result if these two portions of the project site were to develop by right in accord with applicable zoning regulations. Primarily, the shadows cast by a potentially taller building would increase the limits of shade cast onto properties to the north resulting in longer hours in shadow for those properties. The other potential impacts which may occur should the sites be developed by right would not be addressed through conditions of approval or by a Mitigation Monitoring and Reporting Program, as neither a discretionary permit nor environmental document would be required.

Staff and the community had concerns about the project's bulk and scale to the surrounding neighborhood. A shadow study was provided to determine if the proposed height, bulk, and scale of the project would significantly shade the adjacent single- and two-storied residences to the north and be incompatible with the community. The illustration indicated that the properties would be in the building's shadow for the majority of the day during the winter months; however, the proposed project would create less of an impact than the 50-foot and 30-foot building allowed by the underlying zone. Furthermore, the applicant worked with staff and the Kensington-Talmadge Community Planning Committee through several design reiterations to terrace the buildings at the corners and step the third floor back so the building's bulk and scale would be more compatible with the surrounding area.

7. The finding that the project's impact to traffic will be mitigated with restriping and the addition of a traffic signal is unsupported.

A Traffic Impact Analysis was prepared by LOS Engineering, Inc. dated June 12, 2007 and reviewed by the Development Services Department's Environmental Analysis Section and Transportation Development Review staff. The traffic report analyzed five scenarios: Existing, Near-term without Project Conditions, Near-term with Project Conditions, Horizon Year (2030) without Project Conditions, and Horizon Year (2030) with Project Conditions. The study area was established, including streets, alley and intersections, based on the adopted SANDAG Select Zone Assignment method. The study area included 10 intersections within the surrounding streets. These intersections included Adams Avenue, State Route 15, Terrace Drive, Kensington Drive, Marlborough Drive, Edgeware Road, alley north of Adams, Park Place, and El Cajon Boulevard and eight roadway segments.

As per the approved study, the proposed re-striping of Adams Avenue and the implementation of left turn pockets would improve the level of service and provide safer vehicular movements along the entire corridor of Adams Avenue between State Route Highway 15 and Aldine Drive. The proposed mitigation of widening and re-striping Marlborough Drive between Adams Avenue and the alley would substantially improve the segment operations under the near-term and horizon year (2030) conditions. The proposed re-striping of Adams Avenue would also address the Mid-City Community Plan recommendation to re-stripe Adams Avenue to a 3-lane collector. The installation of a traffic signal at the intersection of Adams Avenue and Kensington Drive would provide for safer pedestrian crossing while substantially improving the level of service at this intersection. Adams Avenue would operate at an acceptable level of service between SR-15 and Aldine Drive as a result of the proposed transportation mitigation measures described above.

8. The cumulative traffic impact analysis is improper and unsupported.

A Traffic Impact Analysis was prepared by LOS Engineering, Inc. dated June 12, 2007 and reviewed by the Development Services Department's Environmental Analysis Section and Transportation Development Review staff. The traffic analysis was conducted consistent with City of San Diego Traffic Impact Study Manual. The San Diego Association of Governments (SANDAG) 2030 forecast was used to incorporate the regional build out in order to address any future cumulative traffic impact in the area. The SANDAG 2030 traffic volumes were used to evaluate intersections and roadway segments located within the study area. The City of San Diego Trip Generation Manual was used in establishing the number of trips generated by Kensington Terrace development.

Traffic data was collected by a professional traffic engineering company registered with the State of California. Project traffic was added to the traffic volumes collected in order to evaluate potential project related traffic impacts on all surrounding roadway segments and intersections located within the study area.

The traffic study took a conservative approach when considering proposed uses on the project site, in that uses with the highest trip generation rates allowed within the CU-3-3 and CN-1-3 Zones were assumed in the calculations, and no credits were assumed for the existing uses. The 2,479 driveway trips with 133 morning trips and 254 afternoon trips calculated for the project site were used in evaluating roadway segments and intersections immediately surrounding the property. All other intersections and segments evaluated in the study area (outside those immediately surrounding the project site) were based on the net cumulative trips (proposed project cumulative trips minus a credit for the existing on-site uses). A total of 1,413 net cumulative trips with 69 morning trips and 161 afternoon trips would be generated by the proposed development. Therefore, staff believes the traffic study's cumulative impact analysis to be proper and supportable.

9. The public review and comment period for the draft MND was 19 days, not the 20 days required by CEQA.

Pursuant to CEQA Statute 21091, staff properly noticed the availability of the Draft Mitigated Negative Declaration for public review and comment for 20 days as shown in the figure below. As indicated on the Notice, the public review period started on Friday, September 7 and ended at the close of business day on Wednesday, September 26, 2007.

SEPTEMBER 2007						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1
2	3	4	5	6	7 DAY 1	8 DAY 2
9 DAY 3	10 DAY 4	11 DAY 5	12 DAY 6	13 DAY 7	14 DAY 8	15 DAY 9
16 DAY 10	17 DAY 11	18 DAY 12	19 DAY 13	20 DAY 14	21 DAY 15	22 DAY 16
23 DAY 17	24 DAY 18	25 DAY 19	26 DAY 20	27	28	29

Although staff did receive requests to extend the public review and comment period, staff can not extend the public review and comment period unless requested by the recognized community planning group pursuant to Land Development Code Section 128.0307. However, staff did receive several comment letters after the close of public review period on September 26, 2007. Pursuant to CEQA Section 15207, these letters were included in the environmental document and all comment letters were responded to in the final Mitigated Negative Declaration that was finalized October 22, 2007.

10. Inadequate study of pedestrian/vehicle interactions and conflicts. No traffic study performed for residential streets. No traffic study performed for freeway ramps even though threshold exceeded. Adams Avenue is not wide enough for 3 lane collector classification. No Congestion Management Plan study performed even though threshold exceeded.

The installation of a traffic signal at the intersection of Adams Avenue and Kensington Drive would provide safer pedestrian/vehicle interaction and an improved level of service at that location. The traffic signal at the State Route Highway 15 on- and off-ramp at Adams Avenue was included in the analysis of the project.

The re-striping of Adams Avenue is consistent with the current striping of the existing left turn pockets at the intersections of Adams Avenue and Kensington Drive and at Adams Avenue and Marlborough Drive. Adding the third lane to Adams Avenue by re-striping the street does not require a physical widening of the public right-of-way and is consistent with the Mid-City Community Plan designation of Adams Avenue as a three lane collector.

The average daily trips generated by the project do not meet the threshold to require a Congestion Management plan study. This was determined by considering the actual net trips generated by the project, which is the sum of the trips generated by the proposed uses minus the trips generated from the existing uses. The traffic analysis did conduct an arterial analysis study on Adams Avenue and Marlborough Drive and concluded that an acceptable level of service would result on both roadways. Further, a SANDAG select zone assignment method was used for the proposed project trip distribution and was included in the analysis.

11. Traffic Study contains numerous factual errors (pass-by reductions, credits, potential impact area). Without accurate traffic study data, no basis for mitigation of project traffic routing through intersections and residential streets. The Level of Service of Adams Avenue roadway segment after mitigation remains at unacceptable significant level under CEQA, State and City roadway standards.

A Traffic Impact Analysis was prepared by LOS Engineering, Inc. dated June 12, 2007 and reviewed by the Development Services Department's Environmental Analysis Section and Transportation Development Review staff. The traffic analysis was conducted consistent with City of San Diego Traffic Impact Study Manual. The San Diego Association of Governments (SANDAG) 2030 forecast was used to incorporate the regional build out in order to address any future cumulative traffic impact in the area. The SANDAG 2030 traffic volumes were used to evaluate intersections and roadway segments located within the study area. The City of San Diego Trip Generation Manual was used in establishing the number of trips generated by Kensington Terrace development.

Traffic data was collected by a professional traffic engineering company registered with the state of California. Project traffic was added to the traffic volumes collected in order to evaluate potential project related traffic impacts on all surrounding roadway segments and intersections located within the study area.

The traffic study took a conservative approach when considering proposed uses on the project site, in that uses with the highest trip generation rates allowed within the CU-3-3 and CN-1-3 Zones were assumed in the calculations, and no credits were assumed for the existing uses. The 2,479 driveway trips with 133 morning trips and 254 afternoon trips calculated for the project site were used in evaluating roadway segments and intersections immediately surrounding the property. All other intersections and segments evaluated in the study area (outside those immediately surrounding the project site) were based on the net cumulative trips (proposed project cumulative trips minus a credit for the existing on-site uses). A total of 1,413 net cumulative trips with 69 morning trips and 161 afternoon trips would be generated by the proposed development. Therefore, staff believes the traffic study's cumulative impact analysis to be proper and supportable.

In their analysis, LOS Engineering conducted an arterial analysis study on Adams Avenue and Marlborough Drive with the traffic mitigation measures. The analysis performed by LOS Engineering concluded that an acceptable level of service, level of service "D" or better, would result on both roadways after the implementation of the project and the required mitigation.

12. Impact of the removal of free on-street parking is not mitigated by applicant's pay-to-use parking garage.

The on-street parking would be reduced by a total of two parking spaces as a result of this project. However, the applicant is proposing an increase of 20 spaces above the San Diego Municipal Code requirement in the project's underground parking structure. The owner of the property may not charge users of the parking spaces in the subterranean garage during regular business hours for any business operating on the property and may not charge residents for the use of the residential parking spaces.

As a result of the project, three spaces would be added to the on-street parking on Adams Avenue by the removal of driveways and curb cuts associated with the existing gas station, and five spaces would be removed from the on-street parking through the widening of Marlborough Drive. The proposed development would provide 112 parking spaces, where the minimum requirement of the Land Development Code is 90 parking spaces. The proposed restriping of Adams Avenue would not eliminate on-street parking spaces, and would occur within the existing width of Adams Avenue.

13. The potential environmental impacts from all phases of the project, including the removal of 22,100 cubic yards of soil, some of which is contaminated from leaking underground fuel storage tanks, was not adequately addressed. Open Leaking Underground Storage Tank (LUST) Case was not disclosed in the MND.

As identified in the Initial Study and the Initial Study Checklist, all phases of the project have been analyzed by staff to determine the project's potential effect on the environment. Specific to the potential for contaminated soils from the existing gas station, specific mitigation requirements as outlined in the Human Health and Public Safety (Hazardous Materials) Mitigation, Monitoring, and Reporting Program (MMRP) are required to ensure that any contaminated soils have been removed during construction and no health risks associated with the hazardous materials would create a known health hazard to future occupants and surrounding neighbors.

Since the County of San Diego Department of Environmental Health (DEH) is the oversight agency for the removal of contaminated soils and underground storage tanks; staff coordinated with Mr. Darryl Fowler, Project Manager, County DEH Voluntary Assistance Program (VAP)/Site Assessment Mitigation Program (SAM) to draft appropriate mitigation that would be required by the County but can be reviewed by the City prior to construction, building permit, and occupancy. Specifically an approved (by County DEH) Community Health and Safety Plan,

a Work Plan, and a Health Risk Assessment are required prior to the City's issuance of any demolition or construction permits. Prior to a foundation inspection sign-off, a Letter of Concurrence/Approval from the County of San Diego stating that all the mitigation measures and site remediation as recommended in the Community Health and Safety Plan, Work Plan, and Health Risk Assessment have been implemented must be submitted to the City. And prior to the Issuance of Occupancy, a Letter of No Further Action from the DEH must also be submitted to ensure the site has been remediated and the buildings can be occupied.

As confirmed by Mr. Fowler, the open LUST case stated by the appellant in the appeal was opened in 2006 when Mr. Allard Jansen (applicant) applied to be in the County's VAP in anticipation of developing the site. The case is identified on the County's Environmental Case Listing as "Preliminary Assessment" because the applicant is in the VAP and is currently coordinating with Mr. Fowler to provide the work plan to remove the underground storage tanks associated with the existing gas station and assess the soils and groundwater for any potential contamination prior to construction. The open case is not identified as a "Leak Being Confirmed" and therefore not a potential human health and public safety issue that needs to be addressed with this development.

Furthermore, if the project does not get approved, the County DEH would close the case since the applicant would be withdrawn from the VAP and no further work would be required to clean or further test the site for hazardous materials since the previous LUST violation cases were already remediated and closed.

14. Project bulk, scale and style are incompatible with the predominant characteristics of the surrounding area and existing commercial character and in conflict with the community plan.

The site is one of thirty-four properties designated in the community plan and zoned for commercial development. Other than the requested height deviation, the project bulk and scale are consistent with the development regulations of the CU-3-3 and CN-1-3 Zones. The esthetic of the Adams Avenue commercial corridor is an eclectic mix of style, material, color, and massing which contribute to the richness of the community. The unique character and style of Adams Avenue is found in its diversity as expressed in the uses and buildings created there through past development activity. The harmony of the commercial avenue is found in its contrast, its balance, and in its dissimilarity.

The proposed project would implement several goals and recommendations contained in the Urban Design, Transportation, Land Use, and Natural & Cultural Resources Elements in the Mid-City Communities Plan. The project as proposed would implement the goal of reinforcing and enhancing the historic, pedestrian-oriented character of Adams Avenue with thriving neighborhood serving and specialty businesses. This recommendation would be implemented through the creation of a 16-foot wide sidewalk that would include tree wells for street trees

along Adams Avenue, as well as incorporate a plaza at the corner of Marlborough Drive and Adams Avenue and an internal courtyard. Additionally, bike racks would be provided at street level along Marlborough Drive and Edgeware Road. Other bicycle storage facilities would be provided within the underground 2-story parking structure to accommodate both patrons and workers of the proposed commercial-retail and office building.

To further implement the goals of fostering a pedestrian environment, the project would also involve the removal of an existing gas service station and its associated curb-cuts along Adams Avenue and Marlborough Drive. The result would create a better and safer pedestrian connection to other existing commercial and mixed-use developments along the north side of Adams Avenue. Additionally, parking to proposed project would be taken from the alley north of Adams Avenue.

The proposed project would implement the recommendation in the Land Use Element of the community plan of encouraging new market-rate housing construction in a variety of types, sizes, and costs to meet the needs of all residents in all socio-economic brackets. The project would include 6 penthouse units above commercial-retail and 3 craftsman-style townhomes at ground level along Edgeware Road. The proposed project would also meet the goal of providing a full range of commercial goods and services to the Mid-City population. The proposed project, which is located in close proximity to State Route 15, would provide additional commercial-retail space within the Kensington-Talmadge community and provide opportunities for more goods and services to be offered to residents. The addition of office space would also provide an opportunity to create additional employment within the community as well.

The project proposes to seek a deviation to exceed the height limit of the eastern portion of the project by 8 feet where the maximum height limit is 30 feet. Although the community plan does not regulate building heights it does encourage lower scale, two to three-story mixed-use developments with residential units above retail along Adams Avenue. The project would implement this recommendation and maintain the existing character along Adams Avenue by constructing a three-story, mixed-use structure that would contain 6 units above commercial-retail and office space.

Additionally, in order to meet the recommendation of ensuring that new development reflects neighborhood character in such elements as height, setbacks, massing, landscaping, roofs, windows, front porches, street façade and other architectural details, the proposed project would incorporate setbacks at the third story and landscaping, as well as trellises and arched features similar to adjacent commercial buildings. The three townhomes proposed along Edgeware Road would include a Craftsman architectural style that would be compatible with similar residences along the street. Further, the proposed mixed-use building would utilize various materials and textures to further articulate the street façade and reduce the scale of the building. The rear of the proposed project would also incorporate an articulated façade with windows, varying

setbacks, and landscaping to offset the bulk and scale of the proposed 3-story building from neighboring residences to the north.

Based on the proposed features that would be utilized throughout the proposed project, the proposed deviation would not have an adverse impact on the goals and recommendations of the community plan. As proposed, the project implements many of the overall goals and recommendations of the Urban Design, Land Use, Transportation, Transportation, and Natural & Cultural Resources of the Mid-City Communities Plan; and therefore, would not adversely affect the community plan.

15. Single-story bungalows in the residential neighborhood immediately adjacent will be in the shadow of the building during several weeks before and after the winter solstice and no mitigation has been attempted.

A shadow study was provided which illustrated the proposed building's shadow effect to the properties to the north during the day at four extremes of the seasons during the year; summer and winter solstice and spring and fall equinox. The study illustrated the structure would not significantly shade the adjacent residents for the majority of the year, and therefore the building's shadow effect, in accordance with the City's adopted Significant Threshold Guidelines, would not be considered significant. A portion of the properties north of the project would however be cast in shadow during the majority of the day during the winter months and winter solstice. The shadow analysis was prepared to understand what the shadow pattern would be if the project were to be built to the maximum zoning height limits of 30 and 50 feet. The shadow study indicates that during the winter solstice the difference between the shadows created by the proposed project would be less than a shadow created from a building conforming to the height allowed by the zone. The evidence does not support a conclusion that the increase in height of eight feet in specific locations on the building within the CN-3-1 zone would create a significant addition to the shading of the properties to the north. Furthermore, the design of the structure on the third floor, the highest part of the building, was set back 11 feet horizontally from the edge of second floor along approximately 80 percent of the building length to reduce the shadow impacts of the building on adjoining properties during the winter months. In the worst case, during the weeks preceding and immediately after the winter solstice, a portion of the homes north of the alley would experience shade for a portion of the day, yet on no day would the entire home be in shade during all daylight hours.

16. No mitigation for loss of 75 year old eucalyptus that qualifies as Heritage Tree under City of San Diego Conserve a Tree Program

No mitigation is required for the removal of the tree. The tree does not have protection status under the regulations of the City of San Diego. Per Council Policy 900-19, Public Tree Protection, if a tree is located on private property, then it is at the option of the property owner to nominate a tree for designation to be included for the purpose of "tree inventory and for

protection status.” This is a voluntary action by the private property owners, not a requirement of any City Policy or the San Diego Municipal Code. Since the existing Eucalyptus tree is not in the public right-of-way and is not on public land, the property owner may remove it.

17. No mitigation for loss of 1923 Craftsman at 4166 Adams Avenue that had been previously recommended by Historical Resources Board staff as Historical Resource Site under HRB Criterion C (Architecture).

In conjunction with the conclusions made for a previous development application that would have demolished the residence at 4166 Adams Avenue, Development Services Department (DSD) staff concluded that the project would not be considered historically significant under CEQA and no mitigation would be required. The historical research as disclosed in the *Historical Assessment of the Buildings Located at 4166, 4168—4172, 4178 Adams Avenue and 4708-4712 Edgeware Road* (Kathleen A. Crawford, M.A., October 2002) state that structure at 4166 Adams Avenue would not be historically or architecturally significant under the four specific national, state, and local criteria which are A) *association with an event*; B) *person*; C) *distinctive construction or design (architecture) or*; D) *information potential*.

Furthermore, the issue regarding CEQA significance and the City’s Historical Resources Board (HRB) decision to not designate the residence at 4166 Adams Avenue, as stated in the appeal, was already vetted with the approval of the previous project, the Kensington/Adams Lofts (Project No. 5487) development in 2003. Although the *Historical Assessment Report* concluded that the residence would not be considered historical or architecturally significant under any of the four criteria, in March 2003, HRB staff (Teri Delcamp) did recommend to the Board (HRB) nomination of the Roy and Dora Bennett House located at 4166 Adams Avenue for local designation under HRB Criterion C (architecture). HRB staff can recommend any structure or site to the Board for local listing since “nomination” (not to be confused with “designation”) does not automatically determine that a resource is significant under CEQA. However, at the April 2003 HRB meeting, the Board’s motion to designate the property failed and the property was not designated as a historical resource for local listing.

Since then, the previous Kensington/Adam Lofts development permits have expired with the anticipation of developing the current Kensington Terrace project, which was submitted in June 2007. A *Disposition of the 4166, 4168-4172 & 4178 Adams Avenue and 4708-4712 Edgeware Road Properties As Potentially “Significant” Historic Resources* (Scott A. Moomjian, April 30, 2007) was submitted to DSD staff for discretionary and CEQA review of the current Kensington Terrace proposal. The disposition reiterated the Board’s action (not to designate the residence at 4166 Adams Avenue) and the report’s conclusion that “the Properties are not historically or architecturally significant.”

The future Kensington Historic District, which is identified in the Greater Historical Mid-City San Diego Preservation Strategy, has not been established. No further evidence in the public

record would validate consideration of the residence at 4166 Adams Avenue as an historically significant resource under CEQA.

Pursuant to CEQA Section 15064.5, the fact that a resource is not listed in or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources, or identified in an historical resources survey does not preclude a lead agency from determining that the resource may be an historical resources as defined in Public Resources Code sections 5020.1(j) or 5024.1.

DSD staff's determination was based on the records search prepared by the South Coastal Information Center, city directory listings, building records, site photos and historical research provided and disclosed in the historical report and disposition, and not solely on HRB staff's recommendation in 2003 to designate the site under Criterion C (architecture) which was based on their own site visit (field check), nor the Board's split vote (5-5-0), which by default, did not designate the site.

The site specific analysis prepared in the historical report is the evidence for staff's conclusion that none of the buildings meet any of the four significance criteria as stated above to be considered a significant historical resource under CEQA. And specifically, the residence at 4166 Adams Avenue is not considered historically significant, the demolition or loss of the structure as a result of the proposed development would not constitute an adverse change to an identified historical resource, and therefore no mitigation would be required in accordance with CEQA.

18. Recognized criteria were not employed to determine whether a significant or potentially significant historical resource exists, nor were specific procedures consistent with CEQA or the City's Historical Resources Guidelines for doing so.

Staff reviewed the project in accordance with the California Environmental Quality Act (CEQA) Statute 21084.1 – Historical Resource, Substantial Adverse Change; CEQA Section 15064.5 - Determining the Significance of Impacts to Archaeological and Historical Resources; the City of San Diego Significance Determination Thresholds – Historical Resources; and the Land Development Code Historical Resources Guidelines. As disclosed in the Mitigated Negative Declaration Initial Study Historical Resources discussion (page 7-8), any structure that is 45 years or older may considered a historical resource. However, to determine its significance in accordance with CEQA, substantial evidence for the public record must be provided to support such conclusions. For this project a site specific historical assessment was prepared and reviewed.

As stated previously, the report which included a records search prepared by the South Coastal Information Center, city directory listings, building records, site photos and historical research. The report, prepared by a professional consultant, concluded that none of the structures would be historically or architecturally significant under the four specific national, state, and local criteria

which are A) *association with an event*; B) *person*; C) *distinctive construction or design (architecture) or*; D) *information potential*.

19. The required finding to support the approval of the Planned Development Permit for height variance/deviation are not supported, specifically under Municipal Code §126.0604.

On November 15, 2007 and after considering the facts, the Planning Commission adopted the draft findings prepared for the project after concluding the findings were supported by the evidence in the record. Planning Commission Resolution No. 4333-PC-3 for Planned Development Permit No. 360181 contains all the required findings to approve the project as proposed, including the deviation to the maximum height of the CN-1-3 Zone to allow the height to reach thirty-eight feet in specific locations on the building. The necessary findings have been supported and the evidence may be found in Finding Nos. 3 and 5. Please refer to the Planning Commission Resolution No. 4333-PC-3, Attachment 3 of the City Council Report, for additional supporting evidence. In addition, On July 11, 2007, the applicant presented the eight-foot height deviation request to the Kensington-Talmadge Planning Committee, who voted 15-0-0 to recommend approval of the requested deviation.

20. The Planning Commission and the City have failed to adopt adequate objectives, criteria and specific procedures consistent with CEQA, including failing to adequately collect, process and adequately analyze information gathered from the community, and adequately investigate all relevant and credible issues brought to its attention during the public comment period.

Staff received approximately 92 emails, letters, and correspondence during the public review and comment period of the environmental document. All of the comments were taken into serious consideration, responded to (approximately 177 responses), and included in the final environmental document.

In accordance with CEQA Statute 21082.2, “argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Furthermore, CEQA Statute 21082.2(2) states: “The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.”

The conclusions, as disclosed in the Mitigated Negative Declaration (MND), Initial Study, Initial Study Checklist, and all of the responses to the comment letters received were based on local,

state, and federal regulations and guidelines; the specific technical reports (traffic impact analysis, acoustical site assessment, preliminary hydrology study, etc.) prepared by professional consultants and persons with licenses and certifications; project revisions and conditions which have been incorporated into the project design or to be implemented with project development; and specific measures, as described in the Mitigation, Monitoring, and Reporting Program (MMRP) that would mitigate identified impacts to a level below significance.

21. The MND states that the project will be restricted in size and uses so that the traffic generated will not exceed stated thresholds, yet the City provides no mechanism for enforcing this restriction.

A legal description is a part of the preamble of Planned Development Permit No. 360181 for the purpose of recording the permit onto the title of these properties. The permit grants specific rights, privileges and obligations to the owner of these properties and in return the City of San Diego has a legally binding agreement acknowledged by the owner's notarized signature to abide by these obligations or conditions. Further, the City retains the police power vested in land use law to enforce, revoke, rescind and terminate the permit for any breach of conditions or obligations of the owner/permittee. Planned Development Permit No. 360181 specifically states this under the section indicated as Standard Requirements, paragraph numbers three through six. Additionally, the second paragraph, first page of Planned Development Permit No. 360181 specifically describes the scope of the entitlement and limits of the project size. This is again further described in subparagraphs "a" through "g" on pages one and two. All uses allowed on the site are only those allowed by the CU-3-3 and CN-1-3 Zones. Planned Development Permit No. 360181 does not grant any deviation to permit uses not allowed in these zones and no use beyond those allowed by the CU-3-3 and CN-1-3 Zones would be allowed.

22. The City Project Manager stated that worst case scenarios were used to generate the ADT estimates, yet the City of San Diego Trip Generation Manual indicates that best case scenario ADTs were used.

Traffic data was collected by a professional traffic engineering company registered with the state of California. Project traffic was added to the traffic volumes collected in order to evaluate potential project related traffic impacts on all surrounding roadway segments and intersections located within the study area.

The traffic study took a conservative approach when considering proposed uses on the project site, in that uses with the highest trip generation rates allowed within the CU-3-3 and CN-1-3 Zones were assumed in the calculations, and no credits were assumed for the existing uses. The 2,479 driveway trips with 133 morning trips and 254 afternoon trips calculated for the project site were used in evaluating roadway segments and intersections immediately surrounding the property. All other intersections and segments evaluated in the study area (outside those immediately surrounding the project site) were based on the net cumulative trips (proposed

project cumulative trips minus a credit for the existing on-site uses). A total of 1,413 net cumulative trips with 69 morning trips and 161 afternoon trips would be generated by the proposed development.

The traffic analysis for the project was conducted consistent with City of San Diego Traffic Impact Study Manual. The San Diego Association of Governments (SANDAG) 2030 forecast was used to incorporate the regional build out in order to address any future cumulative traffic impact in the area. The SANDAG 2030 traffic volumes were used to evaluate intersections and roadway segments located within the study area and the City of San Diego Trip Generation Manual was used in establishing the number of trips generated by Kensington Terrace development. Therefore, worst case scenarios were used to generate the project's average daily trips, in that, uses with the highest trip generation rates allowed within the CU-3-3 and CN-1-3 Zones were assumed in the calculations, and no credits were assumed for the existing uses.