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February 5, 2008

Honorable Scott Peters, President
City Council
City of San Diego
202 "C" Street
San Diego, CA 92101

Subject: Kensington Terrace Project, PTS No. 105244 – Council Docket of February 5, 2008, Item 339

Dear Council President Peters and Members of the Council:

It is my professional opinion that the Mitigated Negative Declaration (MND) considered by the Planning Commission in approving the Kensington Terrace project was not adequate pursuant to the California Environmental Quality Act (CEQA) and that an Environmental Impact Report should be prepared.

DEFICIENCIES OF THE MITIGATED NEGATIVE DECLARATION

Purpose and Main Features (Project Description)

The Initial Study on page one describes the proposed project as a 56,643 square-foot, three-story mixed-use development that would include approximately 16,550 square feet of retail space, 16,255 square feet of office space, 19,614 square feet of residential use (9 units), and 4,224 square feet of ancillary uses. Similar statements are made in the Report to the Planning Commission (Report No. PC-07-140) and Planned Development Permit No. 360181.

The Initial Study on page 4 also states the following:

Based on the City of San Diego Trip Generation Manual for the project's proposed uses (emphasis added); it is anticipated that the project would generate approximately 2,479 average daily trips (ADTs)...

The Initial Study, however, fails to disclose the specific uses proposed by the project. The Traffic Impact Analysis (TIS) prepared for the project assumed the following uses in generating

the above ADTs:

- Multi-family Residential – 9 units
- Office - 18,000 square feet
- Restaurant – 3,000 square feet
- Bank – 1,500 square feet
- Supermarket – 8,000 square feet
- Retail – 5,500 square

Based on the conflicting information presented in the MND, neither the decision maker nor the public can understand exactly what is proposed for the site.

Environmental Setting

The Environmental Setting misrepresents the existing land uses on the project site. The fourth paragraph on page 2 states:

The project site has been previously graded and is currently developed with a gas station, convenience store (emphasis added), and four residential structures that would be demolished to prepare the site for development.

However, there is no convenience store on the site. This is a significant deficiency of the MND since the baseline for analyzing impacts of the project under CEQA is the existing condition. This error is incorporated into the Traffic Impact Study as discussed below under Traffic.

The Environmental Setting also misrepresents the land use designation north of the project site. The third sentence in the second paragraph on page 2 states:

Properties to the north are zoned RS-1-7 and designated for residential uses (11-15 dwelling units/acre (du/ac))...

In fact, the adopted Mid-City Communities Plan designates the properties north of the alley as single-family residential with a density of only 6-10 du/ac. The statement in the Environmental Setting clearly overstates the proposed density potential of the properties to the north.

Historical Resources (Architecture)

In regards to the Craftsman-style single-family residence, built in 1923 and located at 4166 Adams Avenue, the Initial Study on page 8 concludes “the proposed demolition of the existing structures would not have a significant impact on historical resources and no mitigation would be required.”

A memorandum from the City Attorney’s Office, dated November 14, 2007 and a letter from Ronald V. May of Legacy 106, dated January 6, 2008 refute this conclusion. The City Attorney’s memorandum concludes that a fair argument can be made that the destruction of the Adams Avenue Craftsman would significantly impact the environment and recommends that an EIR be

prepared in lieu of the existing MND. The Legacy 106 letter concludes that the 85-year old structure at 4166 Adams Avenue is a significant historic resource and that an EIR should be prepared to address the proposed demolition of the structure.

The Initial Study also fails to acknowledge the following recommendations as found on pages 58 and 86, respectively, of the adopted Mid-City Communities Plan.

- Commercial expansion should attempt to use existing structures or their historic character.
- Historic structures should be rehabilitated for reuse.

Aesthetics / Neighborhood Character

Bulk and Scale

Following are relevant excerpts from the “CEQA Significance Determination Thresholds” published by the Development Services Department in January 2007 (pages 74 and 75).

Identifying how a proposed development would fit or blend with the existing scale and character of the surrounding developed and natural environment is the key to determining significance. A project may meet all of its height, bulk, scale and zoning requirements and still have a significant visual impact on the environment if it is not in character with the surrounding development (emphasis added) and natural landforms.

Significance Thresholds

Neighborhood Character/Architecture:

Projects that severely contrast with the surrounding neighborhood character. To meet this significance threshold, one or more of the following conditions must apply:

- a. The project exceeds the allowable height or bulk regulations and the height and bulk of the existing patterns (emphasis added) of development in the vicinity of the project by a substantial margin.
- b. (not relevant)
- c. (not relevant)
- d. (not relevant)
- e. Analysts should also evaluate the potential for a project to initiate a cumulative effect by building structures that substantially differ from the character of the vicinity through height, bulk, scale, type of use, etc., when it is reasonably foreseeable that other such changes in neighborhood character will follow. (emphasis added)

The discussion in the MND fails to consider the thresholds presented above, and the Initial Study Checklist erroneously concludes on pages 1 and 2 that:

- The project's bulk and scale would be compatible with surrounding development.
- The project would not result in substantial alteration to the existing character of the area.

There are no facts presented in the MND to substantiate the above conclusions.

To determine the bulk and scale and the existing character of the area most directly impacted, a survey was conducted of the land uses and number of stories of buildings immediately surrounding the project site. The survey is detailed in Exhibit A. Of the 10 buildings surveyed immediately surrounding the project site, 7 (70%) are 1-story, 2 (20%) are 2-story, and only 1 (10%) is 3-story. The only 3-story building is in the CU-3-3 Zone; only 1- and 2-story buildings exist in the RS-1-7 and CN-1-3 zones.

To determine the bulk and scale and existing character of the core of Kensington, a survey was conducted of the land uses and number of stories of buildings in the CU-3-3 and CN-1-3 zones along Adams Avenue between I-15 and east of Vista Street. The survey is detailed in Exhibit A. Of the 34 buildings surveyed along Adams Avenue in the CU-3-3 and CN-1-3 zones, 26 (76.5%) are 1-story, 7 (20.6%) are 2-story, and only 1 (2.9%) is 3-story. The only 3-story building is in the CU-3-3 Zone; there are no buildings over 2 stories in the CN-1-3 Zone.

Contrary to the conclusions in the Initial Study, the project would not be compatible with the bulk and scale of surrounding development and would result in substantial alteration to the existing character of the area. Based on criteria a. in the "CEQA Significance Determination Thresholds", the project would severely contrast with the surrounding neighborhood character because the project would exceed by 8 feet the allowable CN-1-3 height limit of 30 feet and would exceed the height and bulk of the existing patterns of development in the vicinity of the project by a substantial margin since it would double or triple the number of stories of 90% of the buildings in the immediately surrounding 4 blocks and more than 97% of the buildings in the commercial zones along Adams Avenue.

Allowing an 8-foot height deviation in the CN-1-3 would set a precedent for the remaining CN-1-3 parcels. The project could initiate a cumulative effect by building a structure that substantially differs from the character of the vicinity through height, bulk, and scale when it is reasonably foreseeable that other such changes in neighborhood character would follow.

Shading of Adjacent Properties

In regards to shading of the adjacent properties, the Initial Study states the following on page 8:

In the same way a project may emit a significant amount of light and glare on adjacent light-sensitive receptors or land uses, a significant land use impact may be identified if a project casts a shadow on adjacent properties, light-dependent uses, or smaller single-family residences for a significant amount of time during the year because of excessive

height, bulk, or scale of buildings proposed. Single-family one-story and two-story residences are located directly north of the project site across the alleyway....

.... A shadow study was provided by the applicant which illustrated the proposed building's shadow effect to the properties to the north during the day at four times (seasons) during the year. The study illustrated that the structure would not significantly shade the adjacent residents for the majority of the year, and therefore the building's shadow effect would not be considered significant. The properties to the north during the winter months (winter solstice) would however be cast in a shadow during the majority of the day. A shadow analysis during the winter solstice indicated the proposed height of the structures would create a similar shadow effect as if the project were to be built at the allowable height of 30 feet and 50 feet. Therefore, it is also unlikely that the increase in height of eight feet within the CN-1-3 would create significant shading of the properties to the north.

The Initial Study Checklist on page 2 states, “[t]he proposed structures would not substantially shade adjacent properties.”

The analysis and determination that the shading of the adjacent residents is not significant is faulty for the following three reasons:

- 1) The determination is purely subjective and without basis. The Draft Significance Determination Thresholds published by the Development Services Department do not address shading nor are any other studies cited that support the determination. For a single-family residence, shading may result in a greater impact during the winter months than the summer months.
- 2) The analysis only compares the impacts of the proposed project with the impacts that would result from a structure built at the maximum permitted heights of the CU-3-3 and CN-1-3 zones. A shadow study must also be presented based on the existing structures on the subject site; the existing condition is the baseline for determining the level of impact under the California Environmental Quality Act.
- 3) The shadow study showing potential buildout at 50 feet in the CU-3-3 Zone and 30 feet in the CN-1-3 Zone is misleading and without merit simply because it incorrectly assumes that there is no Floor Area Ratio (FAR) which restricts the development on the site.

Parking

The adopted Mid-City Communities Plan on page 25 includes the following issue for Kensington-Talmadge:

- Commercial parking is deficient with on-street parking overflowing into the neighborhoods.

The adopted Mid-City Communities Plan on 58 includes the following recommendation:

- Maintain on-street parking for the convenience of shoppers and the protection and comfort of pedestrians.

The Initial Study fails to recognize the above issue and recommendation, and compounds this failure by mis-representing the project's impact on existing parking. More specifically, the Initial Study Checklist asks the following question on page 11:

Would the proposal result in effects on existing parking?

The response incorrectly states "No." In fact, the proposed parking would remove existing on-street parking on both sides of Marlborough Drive. This information must be disclosed.

The Initial Study fails to provide the calculations for determining the number of parking spaces required to serve the project. Are the land uses assumed for parking consistent with the land uses assumed for the traffic projections?

Public Services

The adopted Mid-City Communities Plan on page 24 includes the following issues for Kensington-Talmadge:

- Schools are overcrowded and park space is deficient.
- The library does not meet General Plan standards....

The adopted Mid-City Communities Plan further states on page 141:

Mid-City has historically had a shortage of public facilities, especially, schools, parks, libraries, and regional transit. This shortage has been exacerbated by high levels of growth in the 1970s and 1980s, prompting the community to initiate this Plan update effort. The challenge is to stabilize growth in both the short-term and long-term to the point that facility needs can be fully addressed.

The Initial Study fails to recognize these issues. More specifically, the Initial Study Checklist asks the following question on page 10:

Would the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:

1. Fire protection?
2. Police protection?
3. Schools?
4. Parks or other recreational?
5. Maintenance of public facilities, including roads?

The responses state “No” and that “services in the area are adequate for the proposed development.” No information, however, is provided to substantiate these determinations. Furthermore, these determinations contradict the statements in the Mid-City Communities Plan.

Traffic

Section 5.1, page 14, of the Traffic Impact Analysis (TIS) describes the following methodology for calculating the project trip generation:

The project trip generation was calculated using trip rates from the City of San Diego *Trip Generation Manual*, May 2003. Based on direction from the City of San Diego staff, two trip generations were applied: a driveway rate for access points to the sites, segments fronting the property and the intersections adjacent to the property, while a cumulative rate (less pass-by trips for areas further away) was applied for all other intersections and segments analyzed (emphasis added).

As shown on **Table 8: Project Trip Generation**, page 14, the TIS gives credit for the following existing uses:

<u>Use</u>	<u>Trip Credits</u>
Gas station with 6 pumps and 2 repair stalls	-194
Convenience store – 650 square feet	-228
Multi-family Residential – 7 units	<u>-56</u>
Total	478

The convenience store, which presumably generates 228 ADTs (or 48% of all trip credits), however, does not exist. The limited items for sale in the office of the gas station do not qualify as a convenience store. And it should be noted that there are no signs on the premises advertising the sale of items in the station office. Therefore, the traffic study understates the project’s impacts on intersections and segments other than those fronting the property and the intersections adjacent to the property. This is a significant deficiency that must be corrected.

This deficiency cannot not be dismissed since the TIS has determined that even with the unwarranted 228 trip credits the following intersections and segments other than those fronting the property and the intersections adjacent to the property would experience unacceptable levels of service (E or F) resulting in a significant impact in both the near term and the horizon year (2030):

- the intersection of Adams Avenue at Kensington Drive (LOS F),
- the segment of Adams Avenue between I-15 and Kensington Dr (LOS F),
- the segment of Adams Avenue between Kensington Dr and Marlborough Dr (LOS F),
- the segment of Marlborough Dr between Adams Avenue and Park Place (LOS F)

The following additional segment would also experience an unacceptable level of service in the horizon year (2030).

- the segment of Marlborough Dr between Park Place and El Cajon Blvd (LOS F)

Therefore, the traffic study should be revised to determine the correct volumes for these segments and intersection and to determine if any other intersections or segments would also experience unacceptable levels of service by deleting the 228 trip credits for the non-existent convenience store.

The Initial Study on pages 4 states the following:

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 Interstate 15 to Aldine, widen Marlborough Drive from Avenue to the project alley, install a new traffic signal at Adams Avenue and Kensington Drive, and limit the size and uses of the proposed development so that ADTs would not exceed 2,479 ADT.

These recommended conditions, as described in the traffic impact study could (emphasis added) mitigate potentially significant impacts to a level below significance and improve circulation and traffic in the area.

“Could” mitigate suggests that the measures may not mitigate all of the significant impacts, and, as discussed below not all impacts are mitigated to below a level of significance. Furthermore, there is no evidence to support the contention that the project’s mitigation will actually “improve circulation and traffic in the area”; in fact, the traffic will be worse.

Not all significant impacts would be mitigated to below a level of significance. As noted in the TIS, the following segments would remain significant even after mitigation measures are implemented:

❖ *Near Term*

- Adams Avenue between I-15 and Kensington Drive (Table 16, page 28)
- Adams Avenue between Kensington Drive and Marlborough Drive (Table 16, page 28)
- Marlborough Drive between Adams Avenue and Park Place (Table 18, page 32)

❖ *Horizon Year (2030)*

- Adams Avenue between I-15 and Kensington Drive (Table 21, page 35)
- Adams Avenue between Kensington Drive and Marlborough Drive (Table 21, page 35)
- Marlborough Drive between Adams Avenue and Park Place (Table 23, page 35)
- Marlborough Drive between Park Place and El Cajon Boulevard (Table 23, page 35)

The TIS identifies these segments as “significantly impacted with no mitigation necessary.” Unfortunately, the MND fails to address the above significant unmitigated impacts on Adams Avenue and Marlborough Drive.

Energy

The MND fails to address the loss of solar access to the residential properties to the north.

Mitigation Monitoring and Reporting Program (MMRP)

As defined by the State CEQA Guidelines (§15370), “Mitigation” includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

The MND inappropriately identifies several measures that will not mitigate impacts. Selected mitigation measures as found on page 6 of the MND follow along with comments.

1. Using the City of San Diego’s Trip Generation Manual, the project shall be restricted in size and uses so that the Average Daily trips (ADTs) shall not exceed these thresholds: 2,479 ADTs; AM Peak hours (101 ADTs in/32 ADTs out); and PM peak hours (112 in/142 out; to the satisfaction of the City Engineer.

COMMENT: Ironically, the above trips are the ones that generate the significant traffic impacts; under no circumstances can they be said to reduce or eliminate the impact.

2. The applicant shall close all driveways on both Adams Avenue and Marlborough Drive and replace them with full-height curb, gutter, and sidewalk, to the satisfaction of the City Engineer. The project shall not take vehicle access onto neither Adams Avenue nor Marlborough Avenue.

COMMENT: There is no nexus between the above “mitigation” measure and any of the significant impacts as identified in the Initial Study or the Traffic Impact Study.

7. The applicant shall widen to 20 feet and pave the first alley north of Adams Avenue between Marlborough Drive and Edgeware Drive, to the satisfaction of the City Engineer.

COMMENT: There is no nexus between the above “mitigation” measure and any of the significant impacts as identified in the Initial Study or the Traffic Impact Study.

Unfortunately, the measures required by the MMRP do not mitigate all significant traffic impacts to below a level of significance. See discussion above under Traffic.

Alternatives

Because of the significant impacts of the project, an EIR should be prepared. The EIR should include alternatives or a combination of alternatives in the EIR that would accomplish the following:

- Reduce all traffic impacts to below a level of significance. This may be accomplished by reducing the size of the project or by providing more residential and less retail and/or office.
- Limit the height of the building to two stories, particularly within the CN-1-3 Zone, while still achieving the allowable Floor Area Ratio. For example, the site would permit the construction of 34,326 square feet on the ground floor and 22,317 on the second floor. Setbacks could be provided at the Adams Avenue corners and the building could still be limited to two stories.
- Incorporate the structure at 4166 Adams Avenue into the project.

CONCLUSION AND RECOMMENDATIONS

In conclusion, the Mitigated Negative Declaration as approved by the Planning Commission does not comply with the California Environmental Quality Act or the State CEQA Guidelines.

Therefore, I recommend the City Council take the following actions:

1. Uphold the appeal by the Heart of Kensington;
2. Do not approve/certify Mitigated Negative Declaration No. 105244;
3. Deny the project as presented;
4. Direct staff to prepare an EIR that addresses the deficiencies and issues as stated above and that focuses on Historical Resources, Aesthetics/Neighborhood Character (bulk and scale and shading), and Traffic, at a minimum.
5. Direct staff to include alternatives or a combination of alternatives in the EIR as discussed above.

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Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Potter". The signature is written in a cursive, flowing style with some overlapping letters.

David A. Potter, AICP

Exhibit A – Survey of Land Use and Number of Stories of Buildings

SURVEY OF LAND USES AND NUMBER OF STORIES OF BUILDINGS
IMMEDIATELY SURROUNDING THE PROJECT SITE AND
IN THE CU-3-3 AND CN-1-3 ZONES ALONG ADAMS AVENUE BETWEEN I-15 AND
EAST OF VISTA STREET
(January 26, 2008)

To determine the bulk and scale and the existing character of the area most directly impacted, a survey was conducted of the land uses and number of stories of buildings immediately surrounding the project site. The results of the survey follow.

- ❖ West side of Marlborough Drive between Adams Avenue and alley (CU-3-3 Zone):
 - 3-story mixed-use commercial and residential.
- ❖ South side of Adams Avenue between Edgware Road and Marlborough Drive (east to west) (CN-1-3 and CU-3-3 zones):
 - 2-story multi-family residential
 - 2-story commercial ground floor with residential above
 - 1-story commercial
 - 1-story single-family residential
 - 1-story commercial in front with 2-story multi-family residential in rear
- ❖ North side of alley between Edgware Road and Marlborough Drive (east to west) (RS-1-7 Zone):
 - 1-story single-family residential
 - 1-story single-family residential
- ❖ East side of Edgware Road between Adams Avenue and alley and (south to north) (CN-1-3 and RS-1-7 zones):
 - 1-story commercial
 - 1-story single-family residential
 - 1-story single-family residential

To determine the bulk and scale and existing character of the core of Kensington, a survey was conducted of the land uses and number of stories of buildings in the CU-3-3 and CN-1-3 zones along Adams Avenue between SR-15 and east of Vista Street. The results of the survey follow.

- 21 one-story commercial
- 5 one-story residential
- 5 two-story commercial with residential above
- 2 two-story residential
- 1 three-story mixed use commercial and residential