

Memorandum

TO: HONORABLE MAYOR
AND COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 5, 2012

Approved

Date

11/14/12

COUNCIL DISTRICT: 9

SUBJECT: PUBLIC HEARING ON THE APPEAL OF THE PLANNING DIRECTOR'S ADOPTION OF THE MITIGATED NEGATIVE DECLARATION FOR THE HARKER SCHOOL (4525 UNION AVENUE) AND ON THE APPEAL OF THE PLANNING DIRECTOR'S APPROVAL OF THE PLANNED DEVELOPMENT PERMIT, FILE NO. PD12-027.

RECOMMENDATION

- (a) Conduct an Administrative Hearing on and consider an Appeal of the Planning Director's adoption of the Mitigated Negative Declaration (MND) for the proposed project, The Harker School, File No. PD12-027, a Planned Development Permit to allow redevelopment of the existing 7.7 acre former Santa Clara County Children's Shelter campus including demolition of two existing 4,800 square foot buildings, construction of a new 17,500 square foot multi-purpose building, a 2,500 square foot accessory structure, and other site improvements for a private elementary school for up to 600 pre-Kindergarten through 5th grade students. In addition, consider adoption of a resolution to uphold the Planning Director's adoption of the MND and its Mitigation Monitoring and Reporting Program, and certify that:
- (1) The City Council has read and considered the Mitigated Negative Declaration;
 - (2) The Mitigated Negative Declaration has been completed in compliance with the California Environmental Quality Act (CEQA);
 - (3) On the basis of the whole of the administrative record that there is no substantial evidence that the project will have a significant effect on the environment;
 - (4) The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of San José; and
 - (5) The Director of Planning, Building and Code Enforcement shall transmit copies of the Mitigated Negative Declaration to any other decision-making body of the City of San José for the project.

- (b) Conduct an Administrative Hearing and consider an Appeal of the Planning Director's decision to approve a Planned Development Permit for The Harker School project, File No. PD12-027, and consider adoption of a resolution approving this Planned Development Permit.

OUTCOME

Rejection of the appeal and adoption of the Mitigated Negative Declaration will allow Council to consider the approval of the Planned Development Permit for The Harker School project, for which the Mitigated Negative Declaration was prepared.

Upholding the approval of the Planned Development Permit would allow the applicant to implement their plan to develop a private elementary school at the subject site.

EXECUTIVE SUMMARY

This report addresses the issues raised in appeals of a Mitigated Negative Declaration and an appeal of the Planned Development Permit prepared for the proposed Harker School at 4525 Union Avenue. Most of the issues raised in the appeals pertain to traffic.

The report documents that the Mitigated Negative Declaration should be adopted by Council as being in compliance with the California Environmental Quality Act (CEQA) and that on the basis of the whole of the administrative record that there is no substantial evidence that the project will have a significant effect on the environment.

The report further recommends that Council approve the Planned Development Permit as prepared in the draft Council resolution.

BACKGROUND

On June 25, 2012, Mike Bassoni, on behalf of The Harker School, applied for a Planned Development Permit to allow redevelopment of the existing 7.7 acre former Santa Clara County Children's Shelter campus with a private elementary school, located at 4525 Union Avenue. Initially the school would operate as a preschool, serving up to 120 pre-Kindergarten students. At campus build-out the preschool use would be replaced with up to 600 pre-K through 5th grade students.

The site is located in an A(PD) Planned Development Zoning District (File No. PDC91-077) on the west side of Union Avenue, approximately 100 feet southerly of Barrett Avenue (4525 Union Avenue). Surrounding the subject site are single-family detached residential uses to the north, west and east across Union Avenue, and industrial R&D office uses to the south.

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Following its use as Lewis Parker Elementary School by the Union School District, the property was redeveloped in the early 1990s into the Santa Clara County Children's Shelter with 11 buildings comprising approximately 76,000 square feet, including classrooms, cafeteria, living quarters, and play areas. The site has most recently been occupied by the Children's Foster Care Relocation Intake and Assessment Center operated by Santa Clara County.

The proposed private school would retain nine of the existing 11 buildings and demolish two of the existing approximately 4,800 square foot classroom buildings. A new two-story, 34-foot tall, approximately 17,500 square foot multi-purpose building would be constructed near the center of the site surrounded by existing buildings. In the area adjacent to the new swimming pool and the existing gymnasium building, a new 2,500 square foot building (including boys and girls locker rooms) would be constructed. To provide additional capacity for on-site student drop-off/pick-up and queuing a new driveway and turn-around is proposed along the southerly property line.

On September 26, 2012 and October 3, 2012, the Planning Director conducted public hearings on the Mitigated Negative Declaration and the related Planned Development Permit in accordance with the Municipal Code. On October 3, 2012, the Planning Director made a final determination (Attachment 1) regarding the adoption of the Mitigated Negative Declaration (Attachment 2) and associated Mitigation Monitoring and Reporting Program, and recommended approval of the Planned Development Permit. The Planned Development Permit (Attachment 5) was approved and issued on October 5, 2012.

On October 9, 2012, Brian Burke, Aine O'Donovan, and Jeff Bollini, filed separate timely appeals of the Planning Director's environmental determination. Copies of the appeals are available on the Planning Division website at: www.sanjoseca.gov/planning/eir/MND.asp, and are included as an Attachment 3 to this memo. When a Mitigated Negative Declaration is adopted by a non-elected decision-making body of the local lead agency, that environmental determination may be appealed to the local lead agency's elected decision-making body, which process has been codified in Title 21 of the San José Municipal Code.

In addition to the three appeals of the Planning Director's environmental determination, on October 15, 2012, Jeffrey Pickard filed an appeal of the Planning Director's decision to approve the Planned Development Permit for the proposed project. A copy of the Permit Appeal is included as Attachment 6. Typically the Planning Commission is the appeal hearing body for Planned Development Permits approved by the Planning Director. However, in accordance with Title 21, Council may elect to hear the appeal of the environmental clearance determination with a public hearing on the appeal of a related underlying project. The public hearing on the matter of both environmental and permit appeals is de novo and Council's decisions on the adequacy of the environmental determination and Planned Development Permit are final.

Upon conclusion of the certification appeal hearing, Council may find and certify that the Mitigated Negative Declaration has been completed in compliance with the requirements of the California Environmental Quality Act (CEQA). If Council makes such a finding and

certification, it shall uphold the Planning Director's adoption of the Mitigated Negative Declaration, and as noted above can consider the appeal of the Planning Director's decision to approve the related Planned Development Permit. Council may uphold the original Planned Development Permit that was approved by the Planning Director, approve the Permit with modifications to the Permit conditions, or deny the Permit.

If Council finds that the project may have a significant effect on the environment, Council shall require the preparation of an Environmental Impact Report prior to any consideration of whether the project should be approved.

ANALYSIS

The proposed project has been analyzed in terms of the following: 1) specific comments raised by the appellants of the environmental determination; 2) conformance with the Envision San José 2040 General Plan; 3) conformance with the Planned Development Zoning and to the applicable provisions of the City of San José Zoning Ordinance; and 4) specific comments raised by the permit appellant.

Appeals of Environmental Determination

A timely appeal of the Planning Director's adoption of the Mitigated Negative Declaration (MND) was filed by Brian Burke, Aine O'Donovan, and Jeff Bollini, neighbors of the proposed project. This report responds to the three environmental appeals as a group because there is substantial overlap in the appellants concerns. The appellants argue that the Mitigated Negative Declaration is inadequate based on the following points, with responses following each point demonstrating that the MND satisfies the requirements of CEQA:

- 1. The Mitigated Negative Declaration used incorrect data in its analysis of traffic surrounding the Harker site, undercounted cars, and did not include 100 staff trips in traffic counts.*

The statements made by the appellant are unsupported and are, therefore, difficult to respond to. The comment does not state how the data used for the traffic analysis is incorrect. Additionally, the statements by themselves do not describe an environmental impact or explain how there could be an environmental impact from the project. The Transportation Impact Analysis was prepared in accordance with the City's Traffic Impact Analysis handbook and consistent with the thresholds indicated in the City's Level of Service Policy.

That traffic analysis relied on trip generation data collected from an existing 604 student K-8 Harker School located in Campbell. The data obtained from the field study and used in this report was compared to the Institute of Transportation Engineers (ITE) published rates and a more recent Challenger School site located in San José in order to verify consistency. The trip generation data used as the basis for this analysis does not differentiate whether the vehicles entering or exiting the site are students, faculty or visitors. The traffic data collected at the existing school specifically records the number of vehicles entering and exiting the site

during the highest peak travel period in order to measure the most congested traffic condition projected as a result of the proposed project. The City's Level-of-Service Policy, Council Policy 5-3 requires any project to measure the highest peak hour traffic in order to study the most congested hour and mitigate if impacts were to occur. Even if additional project generated traffic may occur before or after the peak hour, it would be less and therefore, traffic impacts would be lessened.

If we assume that this statement made by the appellants is saying that the traffic analysis is incorrect because an additional 100 staff trips should have been included in the vehicular trip counts for the project, then: (a) firstly, staff trips were taken into account and included in the traffic analysis conducted for the project in the following manner: the trip generation study collected all traffic generated by the existing school during the morning peak hour, and (b) secondly, the trip generation data was collected from a school with no mandated trip reductions and even though there were no significant LOS impacts along Union Ave identified as a result of this project's traffic, the proposed TDM will reduce traffic volumes well below what was studied in this report. The project falls far short of generating that magnitude of vehicular trips. So, even assuming that the appellants' statements are true, no significant traffic impact is created by the project.

2. *The TIA effectively ignores the D- and F Level of Service (LOS at Camden Avenue and Interstate 85 respectively, which will create a negative effect on the residential streets in the Camden neighborhood.*

The proposed project does not create a significant impact at either of those intersections as defined by the City's Level of Service Policy and, therefore, no mitigation is required. The TIA did not ignore the Level of Service at the Camden Avenue intersection nor the Route 85 intersection. The Level of Service analyses for those intersections are contained at pages 32 and 48, respectively of the Traffic Impact Analysis. Even if this statement of the appellants was assumed to be correct, however, the statement does not identify the creation of a significant impact.

3. *The appellants request that a number of conditions be imposed as part of the Mitigated Negative Declaration.*

Significant traffic impacts were identified on five freeway segments along Route 85. The conditions requested by the appellants do not address the significant traffic impacts. The reduction of traffic volumes on the impacted freeway segments mitigates the impacts.

The conditions that the appellants are requesting, include but are not limited to: restricting Harker students from cutting through residential streets; preventing left turns across Union Avenue from the Harker site; and preventing left turns from Union Avenue northbound to neighborhood streets such as Barrett Avenue. The appellants have not provided any information describing a significant traffic impact or how any of the proposed additional measures would be required to mitigate that traffic impact. However, even if not necessary

as traffic mitigation, if the City determines that additional operational restrictions, such as left turn restrictions, are necessary for the proper functioning of the Harker project, the more appropriate place to include such additional, operational conditions is in the Planned Development Permit for the project.

There are a number of suggestions for permit conditions, especially in Ms. O'Donovan's appeal, such as traffic turning movement restrictions, addition of a crosswalk, street signage and markings, and installation of a median island. These suggestions do not raise new environmental issues, nor question the adequacy of the environmental document, and are, therefore, not related to the CEQA analysis. Those proposals for permit conditions will be addressed in the permit appeal section of this staff report.

4. *The Transportation Demand Management mitigation measure does not adequately mitigate for potential traffic impacts from the proposed use. Specifically, forecasted student shuttle ridership rates are significantly higher than current ridership rates on voluntary shuttles.*

The Transportation Demand Management (TDM) Plan is a traffic mitigation requirement, not a voluntary program like the program that has previously been implemented at the current Harker site. This Transportation Demand Management Plan is a mandatory requirement imposed in order to mitigate environmental impacts along Route 85 identified as a result of the project traffic. Failure to conform to the required traffic reductions along the freeway will result in a requirement for the applicant to reduce its student enrollment, which could affect the viability of the school. As part of the California Environmental Quality Act (CEQA), the mitigation monitoring program requires diligent monitoring of traffic to ensure conformance with the required mitigation measures on an annual basis.

In order to demonstrate conformance to the trip reduction goals, traffic will be counted at the project frontage even though impacts were identified only on freeway segments. Traffic is counted based on vehicles entering and leaving the project site, in conformance with the City's Level of Service Policy.

The TDM plan is an adaptive mitigation measure that contains multiple tools to meet the target driveway count of 370 inbound and outbound AM peak hour trips including 20 shuttle trips. The tools could include but are not limited to carpooling, shuttle buses, staff incentives to use alternative modes, pay to drive programs, etc. All the details of the actual TDM program have not been determined, but the overall goal and standard that must be met is defined.

Even though significant traffic impacts were identified only along Route 85, in addition to traffic reductions along Union Ave., the TDM plan will require, and the applicant has agreed to, ongoing neighborhood outreach, periodic monitoring of neighborhood streets, designated travel routes, a TDM Plan Coordinator, and an Environmental Mitigation Monitor within the Planning Department.

The project will be required to demonstrate conformance to CEQA through monthly driveway counts. If the driveway counts exceed traffic reduction goals for two consecutive months, the project will have two months to develop additional measures to meet traffic reduction goals by employing any of the tools available. If the project fails to meet traffic reduction goals subsequently, then enrollment shall be reduced accordingly for the following school year.

5. *The non-responsiveness of Harker School calls into question whether the school is sincere about addressing traffic impacts.*

The sincerity of the applicant is, technically, not the identification of a significant environmental impact. However, the proposed school would be subject to Mitigation Monitoring and Reporting to confirm compliance with mitigation measures imposed to offset potential environmental impacts. The City's Environmental Review section within the Department of Planning, Building and Code Enforcement is also responsible to ensure compliance with the required mitigation. Compliance with a mitigation monitoring and reporting program is legally required, and non-compliance could lead to reduction in the total student population or revocation of the permit.

6. *The Mitigated Negative Declaration did not analyze neighborhood traffic, nor did it analyze the impact of cut-through traffic on the neighborhood.*

Based on the traffic distribution for the project, which was derived from and informed by the zip code study of the existing students, it was concluded that relatively few vehicles would use the residential streets (including Woodard Avenue) to access this school site. In addition, the geometry and network of residential streets in this area creates a circuitous travel route to and from the project site. Even though a CEQA impact was not identified, as part of the Transportation Demand Management plan, the applicant is required and has agreed to conduct outreach to parents, staff, and neighbors to further discourage school traffic on residential streets around the project site on an ongoing basis. The TDM plan will also require periodic data collection of Average Daily Traffic (ADT) volumes on nearby residential streets prior to the occupation of the school and during the school session to measure traffic volume changes.

In conformance with the standard methodology used by the City to analyze the traffic impacts of a project, the Traffic Impact Analysis (TIA) includes Average Daily Traffic volumes from the City's database for the surrounding residential streets. In this fashion, the TIA does consider surrounding neighborhood traffic volumes. The City assumes a carrying capacity for local residential streets in the range of 1,200 to 1,800 vehicles per day. The database volumes along the neighboring residential streets to the project site are within the specified range with the exception of Woodard Avenue, a residential street that loads two separate school sites, St. Francis Cabrini and Farnham Elementary School.

7. *The Mitigated Negative Declaration does not address potential safety impacts from cars trying to turn left from the Harker site onto northbound Union Avenue.*

The traffic report included a simulation of Project traffic conditions using simulation software (SimTraffic) in order to evaluate the operations of the driveways and their interactions with traffic on Union Ave. during the AM peak hour when both school traffic and Union Avenue traffic reach a peak. The results indicate that, amongst other findings, the southern driveway could operate with left-turns out and subsequent field study confirms that there are adequate gaps in traffic to accommodate left turns out of the Harker site on to Union Avenue in the northbound direction, both during the AM peak hours and PM peak hours. Therefore, it is incorrect that the Mitigated Negative Declaration did not examine or address this issue. The Traffic Impact Analysis specifically analyzed this issue and found that because there are adequate gaps in traffic, turning movements out of the project site can occur safely and would not create a significant impact under CEQA. Other than making an inaccurate statement, this comment does not describe any significant environmental impact under CEQA.

However, as with any school in San José, the City's Department of Transportation will assess traffic operations during peak school hours to ensure safe traffic conditions.

8. *The Mitigated Negative Declaration does not address potential safety impacts from queuing along Union Avenue, and from queues along Union blocking Barrett Avenue.*

A queuing analysis was performed as part of the TIA, and the analysis found that potential queues from the project would not constitute a significant safety impact under CEQA. Therefore, it is incorrect to state that the Mitigated Negative Declaration ignored or did not address this issue, as it was specifically reviewed as a part of the queuing analysis performed in connection with the TIA.

9. *The Initial Study relies in staggered start times to reduce the number of students arriving during the AM peak hour at the Harker site; however, all students arrive within the 7 a.m. to 9 a.m. time period, and should be counted.*

Per the City's Level of Service Policy that describes and directs how traffic analyses will be performed citywide, the AM peak hour is defined as being the highest peak hour of adjacent street traffic between 7:00 a.m. and 9:00 a.m., which is the most congested peak hour. The TIA was prepared in conformance with the City's Level of Service policy and, therefore, the trips within the AM peak hour have been correctly apportioned and counted. Although there is no basis provided for the statement that all students will arrive to the project site between 7:00 a.m. and 9:00 a.m., assuming that statement is true, nothing in the statement indicates that the number of trips allocated to the peak hour is incorrect or would create a significant environmental impact.

10. *The Mitigated Negative Declaration did not analyze the impact of traffic on Union Avenue, nor did it mitigate for impacts from Harker traffic on Union Avenue.*

The Transportation Impact Analysis report prepared for the project specifically reviewed and analyzed Level of Service at seven signalized intersections along Union Avenue including Union Avenue and Camden Avenue, Union Avenue, and Woodard Street, Union Avenue and Charmeran Avenue, Union Avenue and Logic Dr./Cole Drive, Union Avenue and SR85 NB ramps, Union Avenue and Samaritan Drive/SR85 SB on-ramp, and Samaritan Drive and SR85 SB off-ramp. The report concluded there were no significant Level of Service impacts to those signalized intersections included in the analysis. Therefore, the statement that the Mitigated Negative Declaration did not analyze traffic impacts on Union Avenue is not correct. It is true that no project mitigations were imposed for traffic on Union Avenue because no significant traffic impacts to mitigate were identified through the TIA performed. This statement does not otherwise identify a significant environmental impact created by the project.

The TIA did identify freeway impacts along five segments of Route 85. The mitigation for the significant freeway impacts required a reduction of freeway traffic by 240 vehicle trips in the AM peak hour and 160 vehicle trips in the PM peak hour. The project proposed to mitigate the freeway impacts by implementation of the TDM plan to reduce freeway trips. Even though the TIA did not identify significant intersection level-of-service impacts along Union Avenue, the trip reductions implemented to mitigate the freeway impacts will, as an added benefit, further reduce traffic volumes along Union Avenue.

Although CEQA impacts were not identified along Union Avenue, the TDM plan will also review traffic operations along Union Avenue. Vehicle trips will be counted at both the entrance and exit of the project site in order to measure traffic levels. If necessary, signal timing adjustments may be implemented along the corridor. Furthermore, the project will construct a bus duck-out and bus pad along the project frontage which will improve traffic flow along Union Ave.

The ADT along Union Ave. is approximately 24,000 vehicles and a review of accident data from 2007 to 2012 did not indicate any unusual or hazardous conditions.

General Plan Conformance

The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Public/Quasi-Public. Private school uses are allowed in this designation. In addition, the proposed school is consistent with and facilitates implementation of the General Plan's Education Goal (ES-1): "Promote the operation of high-quality educational facilities throughout San José as a vital element to advance the City's Vision and goals for community building, economic development, social equity, and environmental leadership."

Zoning Conformance

The Planned Development Zoning for the subject site (File No. PDC91-077) allows school use. Therefore, the key considerations for zoning conformance pertain to adherence to the setback, separation, and height standards established by the Planned Development Zoning and conformance to the City's parking regulations.

The Planned Development Zoning established a 20-foot building setback from property lines, a 25-foot building separation, and a maximum building height of 34 feet. The proposed one-story pool building is attached to the existing gymnasium building in the southwest corner of the site and is setback approximately 35 feet from the southerly property line. The proposed 2-story, 34-foot tall multi-purpose building is surrounded by existing buildings near the center of the site.

The parking required for the initial preschool use is based on one space per six children, up to five spaces and thereafter one space per ten children. For the proposed pre-K school with 120 students, 14 parking spaces are required. The parking for elementary schools is based on one space per teacher, plus one space per employee. With a maximum total of 100 teachers and employees, 100 parking spaces are required. The proposed site includes a total of 130 parking spaces. 116 are located in the existing front parking area and 14 new spaces are located along the proposed drop-off/turn-around. For special events the site can accommodate an additional up to 160 parking spaces on the proposed new athletic field.

Therefore, the proposed school is in conformance with the existing Planned Development Zoning for the site and the City's parking requirements contained in the Zoning Code.

Appeal of the Planned Development Permit

A timely appeal of the Planning Director's decision to approve the Planned Development Permit for the proposed project was filed by Jeffrey Pickard, a neighbor that lives adjacent to the project site (see attachment 6). Each of the stated reasons for appeal is summarized below in italics and corresponds to the numbering in the permit appeal letter. Responses to each of the appellant's items are provided below, demonstrating that the Permit contains the appropriate conditions, with the suggested modifications mentioned below, to operate in this location as a good neighbor to nearby residents and businesses.

- 1. p.6, bullet point 9: "Upper elementary grades (2nd through 5th grades) will begin at 8:00 a.m. and the lower elementary grades (Kindergarten through 1st grades) will begin at 8:40 a.m." This is inadequate. Upper elementary grades should be 3rd-5th grades (300 students) and lower elementary should be K-2nd (300 students) so that the number of cars is divided equally between the two time periods.*

The benefit from staggering start times described in the Transportation Impact Analysis is based on the current split between upper and lower elementary grades at Harker's existing Bucknall site. Because of the changing nature of enrollment, modifying the split between upper and lower grades would not ensure that there would be an equal number of students in

upper and lower grades, nor would it ensure an equal distribution of cars arriving at the site prior to the start of classes.

2. *p.6 bullet point 10: "Vehicular Access During Peak Hours. The northern driveway shall be two inbound only lanes onto the site and the southern driveway shall be two outbound only lanes during the school's peak AM and PM hours." This does not specify that there can be no left turn out of the southern driveway. The left turn request needs to be denied. Additionally, a median island needs to be constructed on Union Ave., preventing this left turn traffic and enforcing a right-turn only.*

As discussed in the environmental appeal analysis section above, a traffic gap study was performed as part of the Transportation Impact Analysis for the project, which found that there are adequate gaps in traffic along Union Avenue near the site to accommodate left turns out of the project site onto Union Avenue in the northbound direction. However, as with all schools in San José, the City's Department of Transportation will assess traffic operations to ensure safety and implement modifications, if necessary. A condition is included in the Permit that requires the school to designate a traffic coordinator whose responsibilities specifically include overseeing traffic operations and outreach to the public, employees, and parents. This way, if changes need to be implemented, the coordinator is responsible for ensuring the modifications are communicated to the public, employees, and parents. The left turn prohibitions described in the comment have not been made conditions of the project because the traffic studies performed indicate such prohibitions are not warranted or necessary.

3. *p.6, bullet point 12: "Special Events. The school may have up to twelve special events per year." This is double the number listed on the IS and MND. This change was made after the first Public Hearing on Sept. 26.*

The Initial Study and MND do not specify a maximum number of special events. As a part of the school's ongoing coordination efforts, a condition is included in the Permit that requires the school to provide a schedule of special events to the neighborhood. If Council wishes, it could identify a maximum number of events in their action on the Permit.

4. *p.6, bullet point 13: "The Transportation Demand Management (TDM) program shall include designated routes for shuttle bus, carpool, and parent trips that utilize primary arterials." This does not require all Harker buses and cars to use primary arterials. The primary arteries are not specified.*

A condition is included in the Permit that states that the Transportation Demand Management program shall include designated routes for shuttle bus, carpool, and parent trips that utilize primary arterials. The primary arterials will be identified in the TDM. A condition is included in the Permit that requires the applicant to implement the TDM.

5. *p.6, bullet point 14: "A neighborhood liaison has been designated for the school". This is inadequate. A Citizens Advisory Committee needs to be a requirement of the PDP.*

In addition to designating a neighborhood liaison, which is an important overall component of establishing and maintaining open communications between the neighborhood and the school, a separate condition is included in the Permit that requires the school to designate a traffic coordinator whose responsibilities specifically include overseeing traffic operations and outreach to the public, employees, and parents. Since neighborhood concern is mostly focused on traffic, staff suggests that Council modify this condition to include a requirement that the traffic coordinator establish a working group of staff, parent, and neighborhood representatives to discuss and assess neighborhood traffic intrusion issues on an on-going basis.

6. *p.6, bullet point 16: Annual Neighborhood Meeting "Notification of the neighborhood residents of this meeting". Notification radius needs to be specified. It needs to be required that all residents within one mile of the property be notified of all community outreach efforts from Harker.*

Staff suggests modifying the Annual Neighborhood Meeting condition to add that at a minimum, notification shall include notices mailed to owners and occupants within a maximum 1,000 foot radius of the school site and that any resident wishing to receive notifications by mail and/or email can submit a written request to the Harker neighborhood liaison. The 1,000 foot distance is the maximum noticing distance used by the City and is more than triple the usual noticing distance (300 feet) for land use projects.

7. *p.7, bullet point 17.d.i "The project proponent shall implement a comprehensive shuttle bus program as part of its Transportation Demand Management (TDM) program to limit AM peak hour vehicle trips to 350 trips or fewer." How many buses will Harker use? Use of buses needs to be mandatory.*

The Transportation Demand Management program is an adaptive mitigation measure that contains multiple tools, including a comprehensive shuttle bus program that can be used to meet the target driveway count of 370 inbound and outbound AM peak hour trips or fewer. The City is not requiring or conditioning which particular combination of tools be used as long as the target number of inbound and outbound AM peak hour trips are not exceeded.

8. *p.7, bullet point 17.d.i "The TDM Program shall be monitored by conducting driveway traffic counts on an annual basis to ensure TDM program effectiveness." Driveway counts are inadequate. The mitigation monitoring program must attempt to count all project-generated traffic and must not be limited to counting only driveway traffic.*

Using driveway counts is an effective, established method of collecting reliable traffic data. No additional conditions are needed.

9. *p.7, bullet point 17.d.i “Driveway counts shall be collected for three consecutive days (Tuesday – Thursday) monthly after the start of the school’s fall session.” Does “monthly” mean there will be a traffic count every month while school is in session? How many times per year will a traffic count be performed? Will a traffic count be performed every year that Harker occupies this site?*

As a condition of the Permit and the Mitigation Monitoring and Reporting Program, traffic counts will be conducted monthly while school is in session.

10. *p.7, bullet point 17.d.i – The only traffic mitigation discussed in the PDP is a shuttle bus program. The PDP does not prohibit the use of residential streets by buses, carpools, parent trips, even though 98% of students come from outside the neighborhood. The PDP does not require that on-site drop off needs to be increased. It should be required that Harker increase the length of their driveway so that more cars can move off of local streets and can stack on-site. The PDP does not require any traffic calming devices such as signage. Use of “no left turn”, “no right turn”, “resident only” etc signs needs to be included.*

The TDM program is the identified tool for traffic management. The program relies on input, ongoing coordination with the neighborhood, and diligence on the part of Harker school to immediately address issues as they arise. The report did not identify any anticipated neighborhood intrusion, so traffic calming or restrictive signage was not required.

As described in the above analysis, the Transportation Demand Management program is an adaptive mitigation measure that contains multiple tools, including but not limited to carpooling, shuttle buses, staff incentives to use alternative transportation modes, pay to drive programs, etc., and the Permit does not micromanage the particular tools or combination of tools selected. Previous responses to comments above also explain why left turn prohibitions are not included in the Permit. The necessity for “no right turn” signage is unclear and not apparent. The Permit does not prohibit the legal use of public streets.

The site has been designed to provide efficient circulation that maximizes the available onsite drop-off. Two student drop-off/pick-up locations have been identified on the proposed plans; one in front of the administration building and a second location at the end of the proposed driveway extension on the south side of the school. Harker currently provides on-site personnel to direct traffic for better circulation and quicker drop-off times and is anticipated to continue to provide this service in the future.

In summary, the Planned Development Permit contains conditions to ensure that the school operates in a manner that is compatible with neighboring residents and businesses. The draft Council resolution includes the suggested Permit conditions discussed above. Council may also add or further modify the conditions. The Planned Development Permit should be approved because all of the required findings can be made (see pages 3 and 4 of Attachment 5).

Conclusion

The Harker School Mitigated Negative Declaration meets the requirements of CEQA by disclosing the environmental effects of the project and by providing feasible mitigation measures to mitigate potentially significant impacts from the project to a less than significant level. Because the appeals do not raise new environmental issues, nor do they indicate that environmental impacts are more severe than previously disclosed, there is no need to propose additional mitigation measures to mitigate significant environmental effects. Council should uphold the adoption of the MND and Mitigation Monitoring and Reporting Program.

In addition, Council should approve the Planned Development (PD) Permit, including the modifications to the conditions as described in this report. The draft Council resolution to approve the Permit already includes the suggested modifications.

EVALUATION AND FOLLOW-UP

If Council adopts the Mitigated Negative Declaration and approves the Planned Development Permit, then Harker School will proceed with the necessary improvements to ready the school for its opening.

POLICY ALTERNATIVES

As discussed in the Analysis section, Council has two distinct decisions to make:

1. Mitigated Negative Declaration: Council can either:
 - a. Adopt the MND, or
 - b. require that an Environmental Impact Report be prepared.
2. Planned Development Permit: If Council adopts the MND, then it can consider the Planned Development (PD) Permit for Harker School. Council may:
 - a. Approve the PD Permit as prepared in the draft Council resolution with the modifications discussed in this report,
 - b. Approve the PD Permit with additional modifications to the conditions,
 - c. Approve the PD Permit as originally approved by the Planning Director, or
 - d. Deny the Permit.

For the reasons stated in the Analysis section, staff recommends that Council adopt the MND and approve the Permit as prepared in the draft Council resolution.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. The property owners and occupants within a 1,000-foot radius of the project site were sent public hearing notices for the Council appeal hearing, and for the previous Planning Director's hearing and community meeting. Copies of the Initial Study (IS), Mitigated Negative Declaration (MND), comments received during circulation of the IS/MND, and the Draft Planned Development Permit were available on the Planning Division web site prior to the first public hearing in September and remain available on the web site. This memo and attachments have been posted on the City's web site.

On August 14, 2012 staff from the Planning Division facilitated a City noticed community meeting attended by approximately 90 members of the public. In addition to the District Councilmember and Planning staff, representatives from the County, the applicant team, and staff from the Departments of Transportation and Public Works were in attendance to provide background information on the project, discuss the permit and environmental review processes, and answer the community's questions. The primary concerns raised by the community were related to increased traffic, particularly neighborhood cut-through traffic. Other concerns included that the private school would not serve the surrounding community and would generate little or no tax revenue for the City.

In addition to the City noticed community meeting the applicant proactively initiated their own series of meetings with the community.

Staff has met with and discussed the project, including application and environmental review processing procedures, with several interested members of the public. Staff has received and responded to numerous emails and phone calls, mostly from neighbors opposed to the project. Staff received a petition to deny the project signed by approximately 450 community members. A community established website in opposition to the proposed project: concernedcambrians.org provides background information on the proposal, including links to information on the City's website, how to submit comments, and information on upcoming meetings and hearings.

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office, and Departments of Public Works and Transportation.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan goals and policies as discussed in the Analysis section.

CEQA

Mitigated Negative Declaration, resolution to be adopted.

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact John Davidson, at 408-535-7895.

Attachments:

1. Final Director's Determination, October 3, 2012.
2. Mitigated Negative Declaration September 24, 2012.
3. Environmental Appeals from Brian Burke, Aine O'Donovan, and Jeff Bollini.
4. Memo from the Department of Public Works relating to traffic concerns raised in the environmental appeals.
5. Planned Development Permit approved by the Director of Planning on October 5, 2012.
6. Permit Appeal from Jeffrey Pickard, October 15, 2012.

FINAL DIRECTOR'S DETERMINATION

FILE NO.	PD12-027
LOCATION OF PROPERTY	West side of Union Avenue, approximately 100 feet southerly of Barrett Avenue (4525 Union Avenue)
ZONING DISTRICT	A(PD) Planned Development (PDC91-077)
GENERAL PLAN DESIGNATION	Public/Quasi-Public
PROPOSED USE	Planned Development Permit to allow redevelopment of the existing 7.7 acre former Santa Clara County Children's Shelter campus including demolition of two existing 4,800 square foot buildings, construction of a new 17,500 square foot multi-purpose building, a 2,500 square foot accessory structure and other site improvements for a private elementary school for up to 600 pre-Kindergarten through 5 th grade students
ENVIRONMENTAL STATUS	Mitigated Negative Declaration
OWNER	Santa Clara County 4525 Union Avenue San José, CA 95124
APPLICANT	The Harker School 3800 Blackford Avenue San José, CA 95117

FINDINGS OF FACT

The Director of Planning finds that the following are the relevant facts regarding this proposed project:

1. The Planning Director of the City of San Jose prepared an Initial Study and recommended the adoption of an MND for the The Harker School Project in accordance with the requirements of the California Environmental Quality Act of 1970, as amended ("CEQA"), and state and local guidelines implementing CEQA
2. The Harker School project analyzed under the Initial Study/MND consisted of a Planned Development Permit to allow redevelopment of the existing 7.7 acre former Santa Clara County Children's Shelter campus including demolition of two existing 4,800 square foot buildings, construction of a new 17,500 square foot multi-purpose building, a 2,500 square foot accessory structure and other site improvements for a private elementary school for up to 600 pre-Kindergarten through 5th grade students in San José.

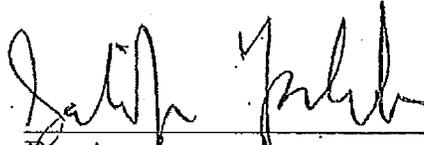
3. The Initial Study/MND concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would reduce the significant effects to a less-than-significant level.
4. In connection with the approval of a project involving the preparation of an Initial Study/MND that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environment effects to a less-than-significant level.
5. Whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) to ensure compliance with the mitigation measures during project implementation.
6. The City of San Jose is the lead agency on the Project, and the Director of Planning is the decision-maker for the proposed Project.
7. The Director of Planning has reviewed and considered the Initial Study/MND and related MMRP for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA.
8. The Initial Study/MND and the MMRP for the Project are, by this reference, incorporated into this determination as if fully set forth herein.

The Director of Planning, based on the factual findings above, hereby makes the following findings:

1. The project will not have significant effects on the environment.
2. The Initial Study/MND prepared for the Project has been completed in compliance with CEQA and consistent with state and local guidelines implementing CEQA.
3. Mitigation measures were made a part of the project.
4. Findings were made pursuant to the provisions of CEQA.
5. A Mitigation Monitoring and Reporting Program was adopted for this project.
6. The Director has independently reviewed and analyzed the Initial Study/MND and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project.
7. The Initial Study/MND represents the independent judgment and analysis of the City as lead agency for the Project. The Director Planning at the Director's Office at 200 East Santa Clara Street, Tower, 3rd Floor, San Jose, CA 95113, is the custodian of documents and records of proceedings on which this decision is based.
8. That the Director does hereby approve construction of the Project, for which the Initial Study/MND was prepared (Planning File No. PD12-027) and adopts the MMRP prepared for the Project. The Initial Study/MND and MMRP are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, Tower, 3rd Floor, San Jose, CA 95113 and (2) available for inspection by any interested person.

DETERMINED this 3rd day of October, 2012.

Joe Horwedel, Director
Planning, Building & Code Enforcement



Deputy

REVISED LANGUAGE FOR THE HARKER SCHOOL INITIAL STUDY/MITIGATED
NEGATIVE DECLARATION
10/2/2012

REPLACE Mitigation Measure TRF 1 (original language):

The project proponent shall implement a comprehensive shuttle bus program as part of its Transportation Demand Management (TDM) program to limit AM peak hour vehicle trips to 350 trips or fewer. The project proponent shall provide buses as necessary to serve the Evergreen/Silver Creek areas in San Jose, Palo Alto, Los Altos, Mountain View, Cupertino, Saratoga and Sunnyvale. The TDM Program shall be monitored by conducting driveway traffic counts on an annual basis to ensure TDM program effectiveness. The driveway counts shall be collected by an independent vendor for the AM peak period between 7 AM - 9 AM with inbound and outbound volumes reported in 15-minute intervals. Driveway counts shall be collected for three days (Tuesday - Thursday) during the period from four to eight weeks after the start of the school's fall session. The data shall be collected on days when there are no special events or school holidays (that could bias the traffic volumes).

A memorandum shall be submitted to the City of San Jose Planning Division Environmental Review Section to document the effectiveness of the TDM Program to meet the trip goal cited above. This memorandum shall include the following: 1) descriptions of the TDM Program elements currently in place, and 2) trip generation for the school based on the driveway counts. The project proponent would be considered non-compliant if the trip generation goal is not achieved. If found to be out of compliance, the project proponent must implement one of the three options below:

- 1) increase the TDM activities (such as modifying existing shuttle routes to serve areas with higher concentrations of students, adding new shuttle routes or stops, making the use of the shuttle bus mandatory for the required number of students, and increasing the proportion of three and four-person carpools) and attain compliance within four months, which would be demonstrated by new monitoring efforts; or
- 2) reduce enrollment in the next academic year; or
- 3) Mitigate all traffic impacts in conformance with the City's Transportation Policies.

The TDM program, the associated monitoring program, and any modifications to the program shall be subject to review by the City of San José Department of Public Works and Department of Transportation. The annual monitoring can be suspended after five years of compliance with the school at its projected 600 students.

WITH Mitigation Measure TRF 1 (revised language):

- a. Transportation (City of San José Planning Div., Environmental Review Section Sr Planner).
 - i. The project proponent shall implement an adaptive Transportation Demand Management program, including a comprehensive shuttle bus program, to limit AM peak hour vehicle trips to 350 trips or fewer. The project proponent shall establish a carpool match program to facilitate students living near each other to carpool. The project proponent shall provide buses as necessary to serve the Evergreen/Silver Creek areas in San Jose, Fremont, Palo Alto, Los Altos, Mountain View, Cupertino, Saratoga and Sunnyvale. The TDM Program shall be monitored by conducting driveway traffic counts on a monthly basis to ensure TDM program effectiveness. The driveway counts shall be collected by an independent vendor for the AM peak period between 7 AM - 9 AM with inbound and outbound volumes reported in 15-minute intervals. Driveway counts shall be collected for three consecutive days (Tuesday - Thursday) monthly after the start of the school's fall session. The data shall be collected on days when there are no special events or school holidays (that could bias the traffic volumes).
 - ii. A bi-monthly Monitoring Report shall be submitted to the City of San Jose Department of Planning, Building and Code Enforcement, Environmental Review Section, to document the effectiveness of the TDM Program to meet the trip goal cited above. This memorandum shall include the following: 1) descriptions of the TDM Program elements currently in place, and 2) trip generation for the school based on the driveway counts. The project proponent would be considered non-compliant if the trip generation goal is not achieved. If found to be out of compliance for two consecutive months, the project proponent must implement option 1 below; after six consecutive months of non-compliance, the applicant is required to implement option 2 or 3:
 - 1) Increase the TDM activities (such as modifying existing shuttle routes to serve areas with higher concentrations of students, adding new shuttle routes or stops making the use of the shuttle bus mandatory for the required number of students, and increasing the proportion of three and four-person carpools) and attain compliance within four months, which would be demonstrated by new monitoring efforts.
 - 2) Reduce enrollment in the next academic year (enrollment may be increased back to previously approved level with the issuance of a Planned Development Permit Amendment); or
 - 3) Mitigate all traffic impacts in conformance with the City's Transportation Policies.
 - iii. This TDM program, associated annual monitoring program, and any modifications to the program shall be subject to review by the City of San Jose Department of Public Works and Department of Transportation.

MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: The Harker School

PROJECT FILE NUMBER: PD12-027

PROJECT DESCRIPTION: Planned Development Permit to allow redevelopment of the existing 7.7 acre former Santa Clara County Children's Shelter campus including demolition of two existing 4,800 square foot buildings, construction of a new 17,500 square foot multi-purpose building, a 2,500 square foot accessory structure and other improvements for a private elementary school for up to 600 pre-K through 5th grade students.

PROJECT LOCATION & ASSESSORS PARCEL NO.: West side of Union Avenue, approximately 100-feet south of Barrett Avenue (4525 Union Ave); Assessor's Parcel No: 421-07-003

COUNCIL DISTRICT: 9

APPLICANT CONTACT INFORMATION: Mike Bassoni, The Harker School, 3800 Blackford Avenue, San José, CA 95117; Telephone: (408) 553-0377

FINDING:

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. AESTHETICS.** The project will not have a significant impact on aesthetics or visual resources, therefore no mitigation is required.
- II. AGRICULTURE AND FOREST RESOURCES.** The project will not have a significant impact on agriculture or forest resources, therefore no mitigation is required.

III. AIR QUALITY. The project will not have a significant air quality impact, therefore no mitigation is required.

IV. BIOLOGICAL RESOURCES.

If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.

V. CULTURAL RESOURCES. The project will not have a significant impact on cultural resources, therefore no mitigation is required.

VI. GEOLOGY AND SOILS.

Prior to the issuance of a grading permit, a design-level geotechnical analysis shall be prepared by a qualified geologist and submitted to the Director of Planning for review and approval for all new structures. The project shall be designed and constructed in accordance with the specific recommendations of the design-level geotechnical investigation.

VII. GREENHOUSE GAS EMISSIONS. The project will not have a significant impact due to greenhouse gas emissions, therefore no mitigation is required.

VIII. HAZARDS AND HAZARDOUS MATERIALS.

Prior to initiation of earthwork activities, the project proponent shall perform soil testing on the project site and analytically test for pesticide residuals and pesticide-related metals arsenic, lead, and mercury. Sampling activities shall be coordinated with the San Jose Environmental Services Department. If contamination is identified in the soil samples above applicable levels, the project proponent shall prepare a Site Management Plan (SMP) to establish protocols/guidelines for the contractor including: identification of appropriate health and safety measures while working in contaminated areas; soil reuse; handling, and disposal of any contaminated soils; and agency notification requirements. The SMP shall be subject to the review and approval of the appropriate regulatory agency.

- IX. HYDROLOGY AND WATER QUALITY.** The project will not have a significant hydrology and water quality impact, therefore no mitigation is required.
- X. LAND USE AND PLANNING.** The project will not have a significant land use impact, therefore no mitigation is required.
- XI. MINERAL RESOURCES.** The project will not have a significant impact on mineral resources, therefore no mitigation is required.
- XII. NOISE.** The project will not have a significant noise impact, therefore no mitigation is required.
- XIII. POPULATION AND HOUSING.** The project will not have a significant population and housing impact, therefore no mitigation is required.
- XIV. PUBLIC SERVICES.** The project will not have a significant impact on public services, therefore no mitigation is required.
- XV. RECREATION.** The project will not have a significant impact on recreation, therefore no mitigation is required.
- XVI. TRANSPORTATION / TRAFFIC.**

The project proponent shall implement a comprehensive shuttle bus program as part of its Transportation Demand Management (TDM) program to limit AM peak hour vehicle trips to 350 trips or fewer. The project proponent shall provide buses as necessary to serve the Evergreen/Silver Creek areas in San Jose, Palo Alto, Los Altos, Mountain View, Cupertino, Saratoga and Sunnyvale. The TDM Program shall be monitored by conducting driveway traffic counts on an annual basis to ensure TDM program effectiveness. The driveway counts shall be collected by an independent vendor for the AM peak period between 7 AM - 9 AM with inbound and outbound volumes reported in 15-minute intervals. Driveway counts shall be collected for three days (Tuesday - Thursday) during the period from four to eight weeks after the start of the school's fall session. The data shall be collected on days when there are no special events or school holidays (that could bias the traffic volumes).

A memorandum shall be submitted to the City of San Jose Planning Division Environmental Review Section to document the effectiveness of the TDM Program to meet the trip goal cited above. This memorandum shall include the following: 1) descriptions of the TDM Program elements currently in place, and 2) trip generation for the school based on the driveway counts. The project proponent would be considered non-compliant if the trip generation goal is not achieved. If found to be out of compliance, the project proponent must implement one of the three options below:

- 1) increase the TDM activities (such as modifying existing shuttle routes to serve areas with higher concentrations of students, adding new shuttle routes or stops, making the use of the shuttle bus mandatory for the required number of students, and increasing the proportion of three and four-person carpools) and attain compliance within four months, which would be demonstrated by new monitoring efforts; or
- 2) reduce enrollment in the next academic year; or

3) Mitigate all traffic impacts in conformance with the City's Transportation Policies.

The TDM program, the associated monitoring program, and any modifications to the program shall be subject to review by the City of San José Department of Public Works and Department of Transportation. The annual monitoring can be suspended after five years of compliance with the school at its projected 600 students.

XVII. UTILITIES AND SERVICE SYSTEMS. The project will not have a significant impact on utilities and service systems, therefore no mitigation is required.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE. The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **September 24, 2012**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

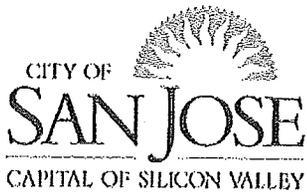
Joseph Horwedel, Director
Planning, Building and Code Enforcement



Deputy

Circulation period: from August 24, 2012 to September 24, 2012.

Revised 5-6-11 jam



CITY OF SAN JOSE
 Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER PD12-027	RECEIPT # _____		
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX) MND	AMOUNT \$100		
	DATE 10/9/12		
	BY MD		
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION: PD12-027			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): SEE ATTACHED			
PERSON FILING APPEAL			
NAME BRIAN BURKE		DAYTIME TELEPHONE (408) 377-0928	
ADDRESS 4144 WHITE OAKS AVE		CITY SAN JOSE, CA	STATE CA
SIGNATURE <i>[Signature]</i>		DATE 10/9/12	
ADDRESS 95124		STATE CA	ZIP CODE 95124
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS		CITY	STATE
DAYTIME TELEPHONE ()		FAX NUMBER ()	E-MAIL ADDRESS

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

Summary

The addition of almost 400 cars in and around Union Avenue and Barrett Avenue during the AM hour will create a significant negative effect on the environment that is not mitigated with the Mitigated Negative Declaration (MND).

CEQA provides that a MND is lawful only when "clearly no significant effect on the environment would occur, and ... there is *no* substantial evidence, in light of the whole record" that such impacts may follow project approval, taking into account adopted mitigation measures. (Pub. Resources Code § 21080 subd.(c) (emphasis added); Guideline § 15064, subd.(f).) CEQA requires an agency to prepare an EIR whenever a project "may have a significant impact on the environment." (Pub. Resources Code § 21151, subd.(a), emphasis added.) There is a "low threshold requirement for initial preparation of an EIR [which] reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*League for Protection of Oakland's Architectural etc. Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905.) Here, area residents have pointed out the deficiencies in the MND and have provided sufficient substantial evidence of potential traffic impacts such that an EIR should be prepared for this Project.

The MND is inadequate and Incomplete because it:

- 1 a. Used incorrect data
- b. Undercounted cars
- 2 c. Did not include 100 staff trips in counts (table 6 of TIA)
- d. Effectively ignores the D- and F Level of Service (LOS) at Camden Ave and Interstate 85 respectively, which will create a negative effect on the residential streets in the Cambrian neighborhood.
- 3 e. Doesn't prohibit the use of residential streets by buses, carpools, parent trips even though 98% of students come from outside the neighborhood, impacting the neighborhood
- f. Doesn't require the use of, nor specify, approved primary traffic arteries for buses, carpools, parent trips

MND & TDM lack specificity required

4 In addition the MND and TDM doesn't clearly outline how the effect will be mitigated it only sets a goal based on driveway counts. Since it is easy for cars to use adjacent residential streets to avoid entering and exiting the driveway, the proposed mitigation of working with neighborhood groups to introduce traffic calming devices to reduce proposed increases to traffic on residential streets and to monitor via driveway counts is too vaguely described in the MND. The efficacy of such a plan is therefore, unknown, and there may be remaining potential impacts. Area neighbors have commented about their first hand observations of potential traffic impacts on residential streets surrounding the Project. Deferring identification of mitigation measures to future study cannot support a finding that a significant impact is mitigated to a less than significant level, because mitigation remains uncertain. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, a county required hydrological studies as conditions of a use

4

permit, specifying that any mitigation measures suggested by the studies would become requirements of the permit. The Court held that unspecified future mitigation based on a future study was improper.

Non response from the Harker School

5

Pam Dickinson, Director of Communications at Harker School has failed to respond to email correspondence sent Wednesday, October 3rd and Friday, October 5th regarding meeting to discuss planned mitigation. After committing to meet in correspondence sent Tuesday, October 2 her lack of response to two subsequent emails calls into question the willingness of the Harker School to meet their obligations to meet with and work with the neighbors to ensure traffic intrusion and environmental impact to the neighborhood is minimized. Attached is the email correspondence.

Subject: Re: An Invitation from Harker
From: Brian Burke (burkebnc@pacbell.net)
To: pamd@harker.org;
Date: Friday, October 5, 2012 1:37 PM

Pam,

I missed the meeting Wednesday but understand the permit was approved, so, I want to personally welcome you to the neighborhood. Please pass on my welcome to Chis as well since I don't have his email address.

We were pleased that the TDM included adjustments which, if implemented appropriately, will address some of our concerns about neighborhood intrusion and traffic patterns. There are other issues yet unresolved where the group will continue to push for change.

Again, welcome to the neighborhood and I look forward to working with you to ensure our neighborhood streets remain primarily for local traffic.

Thank you.

Brian

From: Pam Dickinson <pamd@harker.org>
To: Brian Burke <BURKEBNC@PACBELL.NET>
Sent: Tuesday, October 2, 2012 6:36 PM
Subject: Re: An Invitation from Harker

Sounds good, Brian, and let's talk tomorrow or I'll email you this week and we'll get it set up!

Pam Dickinson, Director
Office of Communication
The Harker School

From: Brian Burke <BURKEBNC@PACBELL.NET>
To: Pam Dickinson <pamd@harker.org>
Subject: Re: An Invitation from Harker

Pam,

Sorry for the delayed response, I was on the road through last night and don't normally check personal email when traveling.

We would be happy to meet with you to discuss our concerns and how together we can resolve them. We'll keep our group to a minimum, likely four, maybe five people.

The only request we have is that legal counsel not be present. We would like to have a dialogue on the major issues, not draft a contract, that can come later.

Meeting at one of your campuses is fine, just let us know which one.

I look forward to hearing from you and if you need to reach me quickly, it's best by cell. 408-464-0424 ☎ .

Thanks.

Brian

On Sep 28, 2012, at 2:47 PM, Pam Dickinson wrote:

Hi, Brian!

I'm following up on our conversation at City Hall this week about getting together to discuss the issues. We'd like to extend an invitation to meet with you and a handful of the neighbors to sit down and review the issues, brainstorm and discuss possible solutions. We're very committed to being good neighbors, and this may help us all best move forward and establish ongoing dialogue.

Let us know when you're back in town and what day and time might work best for you and some of the group. Maybe a group of 3-6 would be good, and we can meet on one of our campuses or at a place of your choice.

I look forward to hearing from you!

Pam Dickinson, Director
Office of Communication
The Harker School

Est. 1893 | K to 12 College Prep | San Jose, CA

<http://www.harker.org/> | K through Life

pamd@harker.org | Office 408.345.9273 ☎ | phone | Fax 408.985.1391 ☎

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER	RECEIPT # _____		
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)	AMOUNT _____		
	DATE _____		
	BY _____		
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:			
PD12-027			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			
The environmental Determination is incomplete. See attached for comments			
PERSON FILING APPEAL			
NAME Aine D'Donovan	DAYTIME TELEPHONE (408) 888 1752		
ADDRESS 1471 Tomrick Ave	CITY San Jose	STATE CA	ZIP CODE 95124
SIGNATURE <i>Aine Donovan</i>	DATE 10/9/12		
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS		CITY	STATE ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS aine_donovan @ yahoo.com	

TO: City of San Jose Planning Dept.
FROM: Aine O'Donovan
RE: PD12-027 Harker School Campus on Union Ave.
SUBJ: Environmental Appeal of IS & MND
DATE: October 9, 2012

I respectfully submit this Appeal of CSJ's Environmental Determination for PD12-027. The reason I wish to appeal this Environmental Determination is that the document is incomplete. All of the issues specified below have been previously raised during the City's Approval process, both in writing and as public testimony. I submitted written public comment on September 24, 2012 via email. I spoke at the Director's Public Hearing on September 26, 2012 and on October 3, 2012, and also submitted written material during these Hearings. The Environmental Determination is incomplete because:

- A. **NO data** is provided for the traffic impact to Barrett Ave. which is located approx. 100 ft. north of the Project Site.
- B. The TIA evaluated seven intersections in the regional area, **none of which are the local surrounding residential streets**, i.e. Bascom Ave., White Oaks Ave, Faircrest Ave, Jacksol Ave and Barrett Ave.
- C. When traffic exits the southern driveway, it can turn right and left. The left hand turn should not be allowed. A median is needed on Union Ave to prevent this left hand turn.
- D. A Citizens Advisory Committee needs to be a requirement of the MND.
- E. On site drop off for cars needs to be increased.

The MND should not be adopted as is until the Initial Study has been updated.

My comments are as follows:

A. Initial Study - Transportation

- 1. p. 43, Chapter 3, section P, 2nd paragraph states that the TDM program is "designed to reduce the amount of traffic generated by the school and its effects on the surrounding roadway systems as described ... under impacts." However the surrounding local residential roadway system has NOT been evaluated.
 - a. Barrett Ave is 100 ft north of the Site and also borders one side of the Site. However, it is never mentioned in the IS.
 - b. The TIA in the Initial Study:
 - Ignores the impact of traffic to the local surrounding residential streets.
 - Ignores the street parking impact to Barrett Ave and Union Ave.
 - Ignores the traffic backup on southbound Union Ave which will block Barrett Ave
 - c. It is critical that the LOS for Barrett Ave be determined to adequately address the impact of Harker traffic to the local surrounding neighborhood.
 - d. Items to consider in the TIA re-evaluation:
 - A "No Left Turn" from Northbound Union Ave onto Barrett Ave.
 - "No Through Traffic" signs at Barrett/Union and Bascom/White Oaks"

Environmental appeal of Harker's MND

- The need for a crosswalk at the intersection of Barrett Ave and Union Ave
- A "Keep Clear" marking is needed at this intersection.
- See Figure 1 in this document for suggested locations for signage.

2. p. 44, Impacts and Mitigation, Thresholds per CEQA Checklist Chart states that "By spreading the school start times over a time span of 40 minutes will increase the amount of traffic entering and exiting the site before and after the school's traffic peak hour. This will therefore reduce the amount of traffic generated by the school during the AM peak hour by approximately 20 percent."

- a. Counts should not be reduced for a "staggered start" – all trips occur within peak hours (7am - 9am), as outlined by San Jose Planning.
- b. Therefore all trips should be counted. Reducing by 20% is a mis-representation of the true impact.

3. p. 46, Impacts and Mitigation, states "The project proponent shall implement a comprehensive shuttle bus program as part of its Transportation Demand Management (TDM) program to limit AM peak hour vehicle trips to 350 trips or fewer."

- a. How many buses will Harker use?
- b. At the Public Hearing on 9/26, Harker stated that there would be 5 buses.
- c. At the Public Hearing on 10/3, Harker stated that there would be 20 buses.
- d. What is the correct number of buses?
- e. How many buses are mandatory for the impact on LOS to be insignificant?
- f. The number of buses required to decrease trip generation to 350 (or 206 as stated at the community outreach meeting) needs to be clearly defined.
- g. Use of buses needs to be **MANDATORY**.

B. Harker Union Ave. TIA - Appendix E of IS

1. Chapter 5 – Project Conditions - Driveway Operations

a. p. 40, paragraph 3: The TIA recognizes significant queuing impact on Barrett Ave. and Charmeran Ave, both residential streets. The TIA states "Queues formed on southbound Union Avenue extending past Charmeran Avenue, on eastbound Barrett Avenue (west of Union Avenue), and on eastbound Charmeran Avenue."

- The MND document does not address these Queues and does not limit use of the surrounding local residential streets by the parents of Harker School.
- Cars should be restricted to the main arteries, such as Hwy. 85, Bascom Ave., Union Ave. and Camden Ave.
- See Figure 2 in this document for a visual of traffic flow on Union Ave, on Barrett Ave. and on the site.

b. p. 42, Figure 10 shows traffic exiting from the southern driveway, turning both right and left onto Union Ave.

- Traffic turning right will most likely attempt to enter the on-ramp to 85.
- The videos of Union Ave & 85 interchange show a very congested junction.
- Given the very short distance between the southern driveway and the 85 on-ramp, there will be traffic chaos in this section of roadway. (Refer to the website www.concernedcambrians.org)
- Turning left out of the southern driveway will cause additional traffic chaos.

Environmental appeal of Harker's MND

- Cars exiting left will need to cross two lanes of southbound traffic plus the northbound turning lane, with an estimated 9 car queue.
- This will create a significant back-up in Harker's exiting queue, therefore causing back-up on Union Ave.
- Cars should take the main arteries: Union/Camden/Bascom route, and enter 85 at the 85/Bascom junction.
- The likelihood is that cars will attempt to turn left on Barrett Ave. or Charmeran Ave. and cut through the surrounding local residential streets.
- See Figure 3 in this document for a visual of traffic flow as cars exit and make a left turn out of the Site on to Union Ave.

e. The left turn request needs to be denied. Additionally: A median Island needs to be constructed on Union Ave., preventing this left turn traffic and enforcing a right-turn only.

2. Chapter 5 – Project Conditions – Neighborhood Intrusions.

a. p. 45, 2nd paragraph - The TIA states "the route from White Oaks Avenue is circuitous."

- There are no statements indicating that the White Oaks route **will not be used**.
- Are we therefore to infer that Harker parents will not use this route?

b. The high volumes of traffic on the following main thoroughfares will encourage Harker's use of the surrounding local residential streets as a cut-through:

- The LOS at Camden/Union is currently Level D.
- Woodard Ave.'s traffic is currently approx. 3,900 to 4,200 vpd.
- The intersection of Union Ave. and westbound 85 Freeway is currently Level F.

c. In particular, cars that turn left out of the property onto Union Ave will make another left turn onto Barrett Ave. so that they can cut through residential neighborhoods and easily access the carpool lane on 85/Bascom. There is no carpool lane on 85/Union so this is not an attractive route for those trying to head North on 85 during peak AM period (according to the TIA, 47% of Harker families will travel 85 South so we can assume that 47% will travel 85 North after they drop off their child at school).

d. Figure 12 indicates:

- The daily traffic volume on Barrett Ave between Union Ave and Esther Dr. is at 1730 vpd.
- Page 45 states that typical carrying capacity for neighborhood streets ranges between 1200 and 1800 vpd.
- When Harker's school traffic starts to use Barrett Ave., traffic volume on this street will quickly exceed 1800 vpd

d. The TIA

- Ignores the impact of traffic to the local surrounding residential streets.
- Ignores the street parking impact to Barrett Ave and Union Ave.
- Ignores the traffic backup on southbound Union Ave which will block Barrett Ave

e. Queuing and parking (to unload students) on local residential streets are not in alignment with San Jose policy for "Automobiles, bicycles, and trucks are accommodated equally in the roadway. Transit use is rare. These streets accommodate low volumes of local traffic and primarily provide access to property. Through traffic is discouraged. Neighborhood traffic management strategies to slow and discourage through automobile and truck traffic may be appropriate. Pedestrians are accommodated with sidewalks or paths."

Environmental appeal of Harker's MND

6 | g. Figure 6 in the TIA indicates that only 1% of the AM trip distribution will flow along Charmeran Ave and 1% will flow along Barrett Ave. This grossly underestimates the amount of traffic that will cut through the neighborhood.

3. Chapter 5 – Project Conditions – Transportation System Impacts & Mitigation Measures

a. p36, 2nd paragraph - The description states “Based on the existing Fremont shuttle ridership (25 riders in an area with 35 students) and current subscription to the Palo Alto/Los Altos shuttle being added this fall (35 riders in an area with 60 students), approximately 60 to 70 percent of the students in areas served by shuttle buses could reasonably be assumed to use the shuttle buses at the Union Avenue school site.

- 4 |
- Please refer to the Harker website which discusses bus usage ... <http://news.harker.org/new-shuttle-service-from-peninsula-draws-more-than-two-dozen-riders-daily/>. This article was written on Sept. 18, 2012 and states that “The parent-organized Fremont shuttle has been running for more than 15 years ... That bus has had between six and 11 riders this year.) This number is significantly less than the 25 riders stated in the IS (and TIA). This article also states that “Harker has introduced its first school-run shuttle, which will serve those on the Peninsula; 25 students are riding it so far.”. Again, this number is significantly less than the 35 riders stated in the IS (and TIA).
 - I request that accurate numbers be used for bus usage and that all determinations using these numbers be re-calculated.

4. Chapter 5 – Project Conditions - Site Plan Review

3 | a. p. 41, paragraph 4, states “Harker currently provides on-site personnel to direct traffic for better circulation and quicker drop-off times and should continue to provide personnel at the new school location.”

- Per the videos of traffic at the Bucknall campus, this system is not working and major back up occurs on residential streets. (<http://concernedcambrians.org/facts/traffic-videos/>)
- Therefore this description is inaccurate and is meaningless for the Union site.

5. Chapter 5 – Project Conditions - Site Plan Review

10 | a. p44, 2nd paragraph - The TIA states that a potential location for drop off is the Cambrian Park Plaza. Confirmation of usage of this car park is needed. Stating that it can be “potentially” used is wishful thinking.

3 | b. p43, Figure 11: Car stacking allows for approximately 60 cars.

- The number of stacked cars needs to be increased to 120.
- Extend driveway into the property so that more cars can be taken off of Union Ave.

Environmental appeal of Harker's MND

C. Planned Development Permit

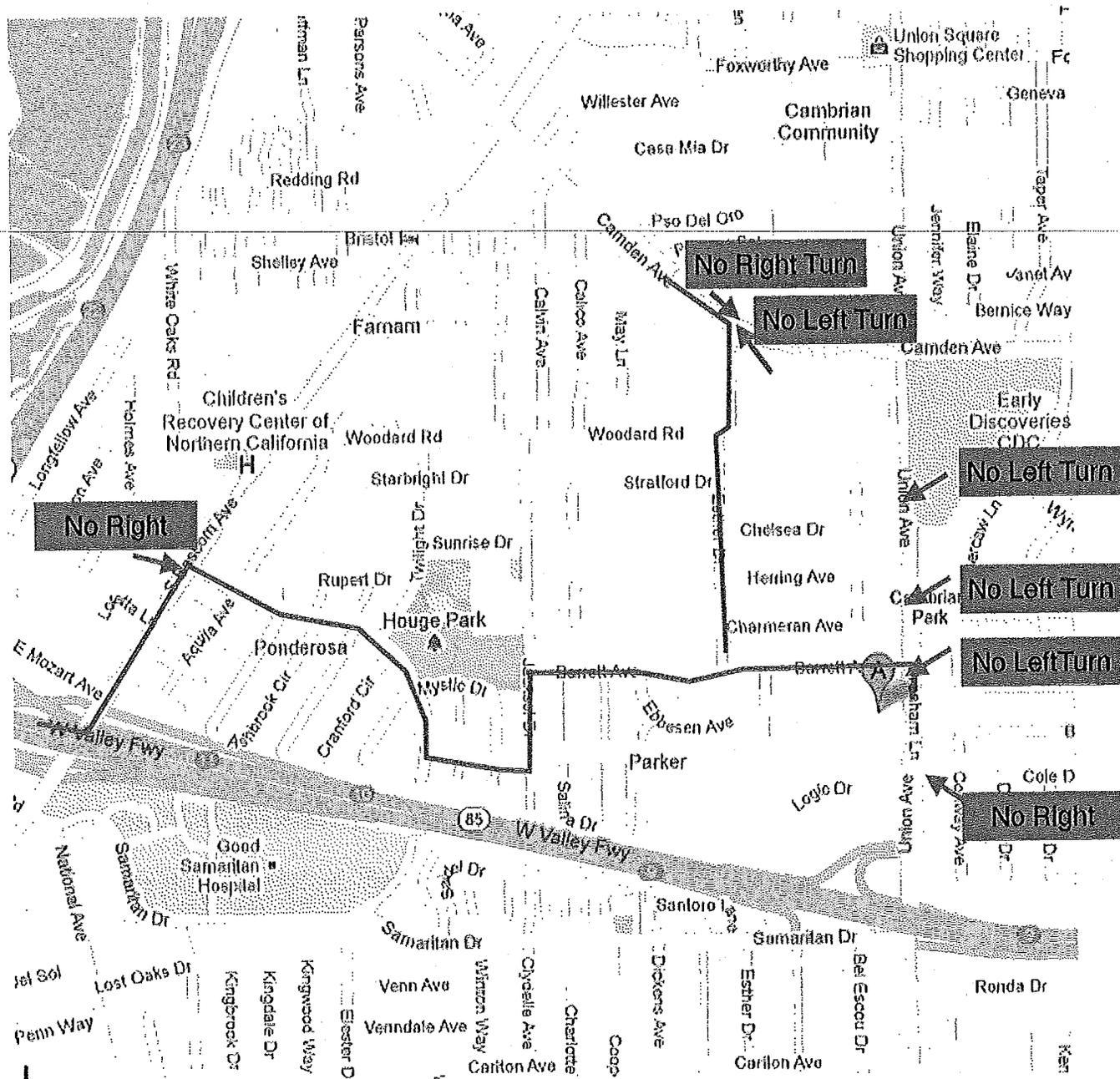
- 3
1. p.6 bullet point 9: "Upper elementary grades (2nd through 5th grades) will begin at 8:00 a.m. and the lower elementary grades (Kindergarten through 1st grades) will begin at 8:40 a.m.". This is inadequate. Upper elementary grades should be 3rd-5th grades (300 students) and lower elementary should be K-2nd (300 students) so that the number of cars is divided equally between the two time periods.
 2. p.6, bullet point 13: "The Transportation Demand Management (TDM) program shall include designated routes for shuttle bus, carpool, and parent trips that utilize primary arterials." This does not **require** all Harker buses and cars to use primary arterials. It only requires that the primary routes be indicated to those that use them. This is inadequate and needs to be addressed.
 3. p.6, bullet point 14: "A neighborhood liaison has been designated for the school". This is inadequate. A Citizens Advisory Committee needs to be a requirement of the MND.

Thank you for your consideration:

Aine O'Donovan
4471 Tomrick Ave, San Jose, CA 95124
aine_odonovan@yahoo.com

Environmental appeal of Harker's MND

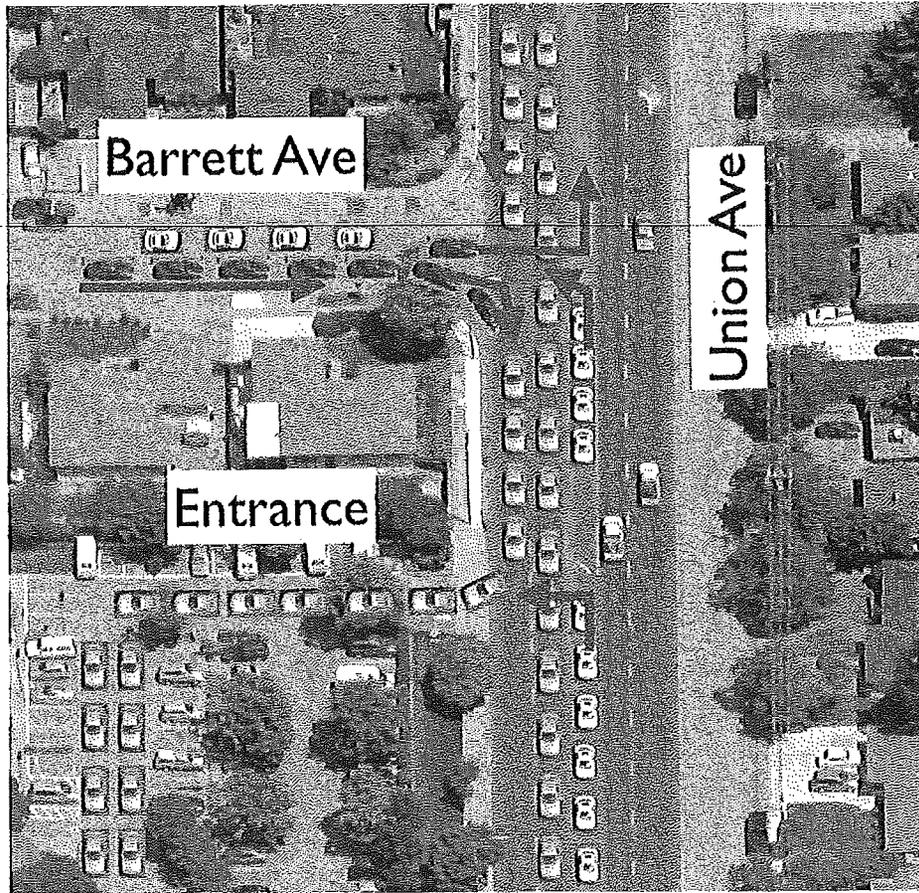
Figure 1



Streets that will potentially be used as cut-throughs

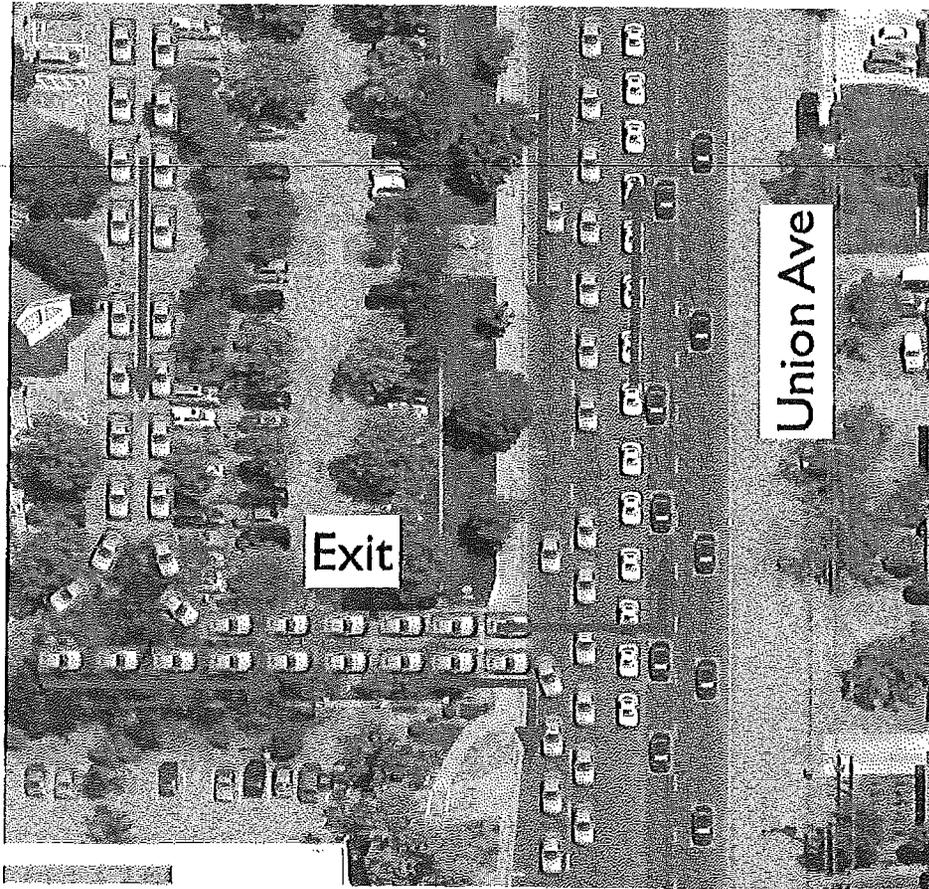
Environmental appeal of Harker's MND

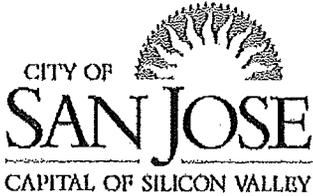
Figure 2



Environmental appeal of Harker's MND

Figure 3





CITY OF SAN JOSE

Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT # _____
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)	AMOUNT _____
	DATE _____
	BY _____

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:

PD12-027

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

See attachments

PERSON FILING APPEAL

NAME <u>Jeff Bollini</u>	DAYTIME TELEPHONE <u>(408) 349-5158</u>
ADDRESS <u>4489 Jacksol Drive</u>	CITY <u>San Jose</u> STATE <u>CA</u> ZIP CODE <u>95124-3338</u>
SIGNATURE <u>Jeff Bollini</u>	DATE <u>10/9/2012</u>

CONTACT PERSON
 (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME			
ADDRESS	CITY	STATE	ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

INSTRUCTIONS FOR FILING AN APPLICATION FOR APPEAL OF AN ENVIRONMENTAL DETERMINATION

WHO MAY APPEAL

Any person may file.

TIME LIMIT

A complete Notice of Environmental Appeal (see back page) must be filed in person at Development Services Center, City Hall, no later than 5 p.m. on the **third business day** following the day of the public hearing that relied upon the Environmental Determination.

APPEAL REQUIREMENTS

1. A complete Notice of Environmental Appeal including the following within the appropriate time limit:
 - a. Application filing fee, (see Filing Fee Schedule).
 - b. The appeal shall state with specificity the reasons that the Environmental Determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA.
 - c. No appeal shall be considered unless it is based on issues which were raised at the public hearing either orally or in writing prior to the public hearing. (21.07.040C)

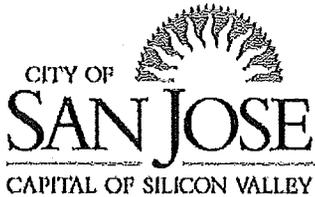
PROCESSING SCHEDULE

Planning Staff:

- Checks the application for completeness.
- Logs and collects fees.
- Sets a public hearing date before City Council and places the item in the agenda.
- Prepares a recommendation to the City Council.

City Council:

- considers and acts upon the appeal in a public hearing.



CITY OF SAN JOSE

Planning, Building and Code Enforcement
 200 East Santa Clara Street
 San José, CA 95113-1905
 tel (408) 535-3555 fax (408) 292-6055
 Website: www.sanjoseca.gov/planning

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER		RECEIPT # _____	
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)		AMOUNT _____	
		DATE _____	
		BY _____	
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:			
<p style="text-align: center;">PD12-027</p>			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			
See attachments			
PERSON FILING APPEAL			
NAME		DAYTIME TELEPHONE ()	
ADDRESS	CITY	STATE	ZIP CODE
SIGNATURE	DATE		
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME Jeff Bollini			
ADDRESS	CITY	STATE	ZIP CODE
4489 Jacksol Drive	San Jose	CA	95124-3338
DAYTIME TELEPHONE (408) 349-5158	FAX NUMBER (928) 395-3588	E-MAIL ADDRESS myanonaddr-harker@yahoo.com	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

Notice of Environmental Appeal of PD12-027

Submitted by Jeff Bollini on October 9, 2012

Dear City Planning / City Council:

I am appealing Planned Development Permit PD12-027. The monitoring and reporting program for Approval Condition 17d (Transportation) is not comprehensive enough to ensure that the significant environmental effects from project-generated traffic will be adequately mitigated.

With this appeal, I am seeking only one improvement to the Planned Development Permit –the mitigation monitoring program must attempt to count all project-generated traffic and must not be limited to counting only driveway traffic.

Shuttle buses, street drop-offs, and parents who park and walk their children all produce traffic but under the current traffic counting rules they would not be counted. When faced with the possibility of having to reduce enrollment, Harker might be tempted to ask parents to drop off students along Barrett Ave or Union Ave. Parents would likely be supportive of this since it would allow Harker to keep enrollment at the maximum permitted level and no there would be no downsizing. It's not hard to imagine 50 to 100 cars doing this each day during the traffic monitoring period and thereby shielding 100 to 200 vehicle trips from the AM peak hour measurement.

At the conclusion of the 10/3 public hearing at City Hall, I briefly discussed this loophole with Chris Nikoloff, Pam Dickinson, and one other person from Harker School. We all shared a pleasant conversation (including a joke about how Harker wouldn't allow "cheating" even if faced with an enrollment reduction that would cost them \$30K per student) and agreed that we should have a meeting together.

Brian Burke, one of my Cambrian neighbors, made an attempt via email to set up the meeting with Ms Dickinson and Mr Nikoloff. We had hoped to talk with them about some of our concerns and perhaps reach an agreement. Unfortunately

Brian's last email to Pam went unanswered and we have not been able to meet with anyone from Harker. We would have preferred to work together with Harker on this but we were unable to do so before the appeal deadline.

Here are the recommendations that I submitted at the 10/3 public hearing:

The Traffic Monitoring Plan should count each of these conditions as a vehicle trip:

- 1) Enters the parking lot
- 2) Exits the parking lot
- 3) Arrives at the frontage (4525 Union Ave) to wait for, pickup, or unload students or staff
- 4) Departs from the frontage (4525 Union Ave) after waiting for, picking up, or unloading students or staff
- 5) Arrives and stops/parks along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham to wait for, pick up, or unload students or staff
- 6) Departs from stopping/parking along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham after waiting for, picking up, or unloading students or staff

I ask that you accept this appeal and revise the traffic monitoring plan. As stated on page 7 of the "Tracking CEQA Mitigation Measures Under AB 3180" document, San Jose City Government "cannot escape its responsibility for ensuring the adequacy of the program."

Thank you,
Jeff Bollini

Additional Comments for Appeal:

At the Sep 26 public hearing I introduced evidence that the original Traffic Impact Analysis overstates Harker's current shuttle ridership rate by 100%. The 9/18 Harker online newsletter published a story about Harker shuttle service. The shuttles are not being used by 60% to 70% of the area students as was claimed in the TIA. The true rate is only 33%.

Since shuttles are the key element of Harker's mitigation plan, I am seriously concerned that the MND is based on a false hope of high ridership.

The **spirit** of the traffic mitigation plan is to limit the number of vehicle trips to 350 per AM peak hour for all school-associated vehicles, not just those that enter and exit the driveway.

Harker School is funded mostly by student tuition. If they have trouble reaching the desired shuttle or carpool ridership of 60% then it would behoove them to find an alternate way of staying below the AM peak hour limit, such park-and-walk or dropping off on a nearby street.

As stated on Page 7 of the "Tracking CEQA Mitigation Measures Under AB 3180" document:

The task of designing monitoring and reporting programs is the responsibility of the public agency which is approving the project. Although a public agency may delegate this work, the agency cannot escape its responsibility for ensuring the adequacy of the program.

Mitigation measures are the specific requirements which will minimize, avoid, rectify, reduce, eliminate, or compensate for significant environmental effects.

A monitoring and reporting program's effectiveness depends in large part upon the quality of the mitigation measures themselves.

The current mitigation measurement plan has a loophole. It needs to be modified to ensure compliance and to ensure that the environmental effect of traffic from this project is not falsely considered mitigated.

The last thing I'd like to include in this appeal is the following statements about Monitoring, Program Administration, and Cost Recovery taken from the "Tracking CEQA Mitigation Measures Under AB 3180" document:

- The mitigation plan should contain provisions for funding monitoring activities, including the imposition of fees. [Page 9]
- Project monitors, whether agency staff or contract personnel, should be given clear written guidance regarding the mitigation measures to be monitored and reported on. [Page 10]
- Section 21089 authorizes the lead agency to “charge and collect a reasonable fee from any person proposing a project subject to [CEQA] in order to recover the estimated costs incurred ... for procedures necessary to comply with [CEQA] on the project.” This express authority allows the lead agency to levy fees to cover the costs of mitigation monitoring or reporting programs. The fee is limited to the estimated cost of the program, including the agency’s administrative costs. Fees may be used to cover the cost of agency staff, as well as the cost of hiring special monitors or consultants, if needed. [Page 11]

The City of San Jose is presently experiencing budget woes. It might be worthwhile to the city to request that Harker School cover the cost of the monitoring fees and administrative costs.

My name is Jeff Bollini and I have lived at 4489 Jackson Drive for 12 years.

The MND is inaccurate. It uses erroneous data from the TIA and overstates the trip reduction from shuttles.

Please refer to Page 36 of the TIA. [VISUAL #1]

The traffic analysis states that the existing Fremont Shuttle has 25 riders and that the Palo Alto Shuttle has 35 riders.

It further claims 60 to 70 percent of the students could "reasonably be expected" to use shuttle buses to get to the Union site.

All of these claims are wrong.

Please refer to the Harker Newsletter. [VISUAL #2]

This Harker newsletter from September 18th has the true facts.

The Fremont Shuttle, which has existed for 15 years, has only had 6 to 11 riders this year.

The Palo Alto shuttle has only had 25 riders.

Please refer to the Claimed versus Actual data. [VISUAL #3]

While the TIA claims the Fremont shuttle has 71% ridership, the truth is it's only 23%. The TIA claims the Palo Alto shuttle has 58% ridership. The truth is it's only 42%.

The shuttle bus mitigation proposed in the MND overstates its benefit by 100%. Actual ridership is 50% less than what was claimed. The Fremont shuttle has operated for 15 years and can only sustain 23% ridership.

The MND is incomplete. It completely leaves out the impact of traffic on Barrett and the intersection of Barrett and Union. It fails to address "car queuing" on the streets leading into the site.

The MND is inaccurate. It overstates the benefit of busing by 100%.

I urge that the MND and the planned development permit be denied.

Thank you.

Submitted by Jeff Bollini on Sep 26, 2012

Freeway Mitigation Measures

As shown in Table 8, the project would add more than 1 percent of the freeway's capacity to five of the eleven study freeway segments currently operating at LOS F thus creating a freeway impact. Harker will need to reduce the amount of traffic it adds to the freeway segments to reduce the impact to a less-than-significant level. This can be accomplished through a comprehensive shuttle bus program.

In addition to the current Fremont residents that are receiving shuttle services, Harker will provide additional buses to serve the Evergreen/Silver Creek area of San Jose, Palo Alto, Los Altos, Mountain View, Cupertino, Saratoga and Sunnyvale, as illustrated in Figure 9. These areas are home to 300 to 310 students. Based on the existing Fremont shuttle ridership (25 riders in an area with 35 students) and current subscription to the Palo Alto/Los Altos shuttle being added this Fall (35 riders in an area with 60 students), approximately 60 to 70 percent of the students in areas served by shuttle buses could reasonably be assumed to use the shuttle buses at the Union Avenue school site. This would equate to approximately 180 new riders. The trip reductions associated with the 180 added riders are estimated to be 240 AM peak hour vehicle trips (120 inbound and 120 outbound) and 160 PM peak hour trips (80 inbound and 80 outbound). Table 9 shows the freeway volumes after shuttle service reductions.

4

TABLE 9 FREEWAY PROJECT VOLUMES BEFORE AND AFTER SHUTTLE MITIGATION

Time Period	Time Period	Inbound			Outbound		
		SR 85 (SB)	SR 85 (NB)	Total	SR 85 (NB)	SR 85 (SB)	Total
AM Peak Hour	Total Trips	163	41	204	121	34	155
	Shuttle Reduction	(90)	(30)	(120)	(90)	(30)	(120)
	Net New Trips	73	11	84	31	4	35
PM Peak Hour	Total Trips	93	26	119	107	27	134
	Shuttle Reduction	(60)	(20)	(80)	(60)	(20)	(80)
	Net New Trips	33	6	39	47	7	54

Notes: NB = Northbound, SB = Southbound
Source: Fehr & Peers, August 2012.





Top Stories: Eagles Swim, Spike and Fight in Water Polo, Volleyball and Football as Season Ramps Up League Play Has

Feature Story

New Shuttle Service from Peninsula Draws More Than Two Dozen Riders Daily

By William Cracraft | Sep. 18, 2012



PHOTO COURTESY OF HARKER SCHOOL

Harker has introduced its first school-run shuttle, which will serve those on the Peninsula; 25 students are riding it so far. There has been a parent-run shuttle from Fremont for some years which the Peninsula shuttle will complement, solving, for some families, the knotty issue of driving to drop students, then returning to their home area for work.

The shuttle makes one stop in Portola Valley, one in Los Altos, then heads to the middle school where upper school students transfer to a waiting bus that takes them to their campus, while the shuttle itself continues on to the lower school.

Cost is quite reasonable at \$25 per student per week, with discounts for families of three or more riders. Aside from cutting down on pollution and traffic, and saving parents' time, Pip Sanders (Zoe, grade 4), said, "Running the shuttle expands Harker's outreach and accessibility to families who live some distance from Harker."

"I would love to see our ridership increase!" said Heather Perrotta, Harker transportation manager. "Not only does it decrease traffic on our campuses, it gives a sense of bonding to the students. They are able to get to know other students from their neighborhood that they may otherwise not have known. It can also be an opportunity to get some last minute studying done before class."

Harker is open to expanding the service to other areas, too. "We are hoping that the success of this route will lead to others, and we will be exploring those possibilities over the course of this year using the same market testing methods we did for this one," said Greg Lawson, assistant head of school for student affairs.

The parent-organized Fremont shuttle has been running for more than 15 years, said Monica Kumar (Gaurav, grade 11; Maya, grade 7), who organizes the shuttle. That bus has had between six and 11 riders this year. "My son is now a junior and he took the shuttle from kindergarten until tenth grade," when he started driving himself, she said. "My daughter is still taking the shuttle."

"The shuttle saves time for busy parents and makes sure kids get to school safely and on time!"

The collected speeches and columns of Chris Nikoloff, Head of School



Most Viewed Posts - Last 30 Days

- Union Avenue Campus Update
- Harker Dancers Win Invites to IFL Pro Bowl and London at Summer Dance Camp
- 46 Upper School Students Named National Merit Semifinalists
- Class of 2016 Welcomed in Grand Fashion at Matriculation Ceremony
- Memorial Scheduled for Former Global Ed Director Bill Bost
- [UPDATED] 21 Class of 2012 Members Win National Merit Scholarships
- Harker Shines in 2012 Physics Bowl
- Rising Senior's Team Wins First Place at International Linguistics Olympiad
- School Founder's Grandson Visits Campus
- [Update] Harker Alumnus Trains with Olympic Coach, Swims in Olympic Trials

Claimed vs Actual

Shuttle Area	Max Students	CLAIMED		ACTUAL	
		# Riders	% Usage	# Riders	% Usage
Fremont	35	25	71%	8	23%
Palo Alto/Los Altos	60	35	58%	25	42%

4

The shuttle bus mitigation proposed in the TIA and MND is **overstated by 100%**.

Actual ridership is 50% less than what was claimed.

Fremont shuttle has operated for 15 full years yet has only 23% usage.

Err on the side of caution. Assume 30% adoption on average.

y name is Jeff Bollini and I live at 4489 Jacksol Drive.

s we all know, this project WILL create new traffic.

at here's a quote from Page 7 of the Planned Development Permit...
The TDM Program shall be monitored by conducting driveway traffic counts."

nder this monitoring plan, only vehicles that enter and exit the parking lot will be
ounted.

at about shuttle buses that drop off students in front of the school?
hey don't enter the parking lot so they won't be counted.

at about parents who park on Barrett, Union, Charmeran, Esther, Cole, or at Xilinx and
alk the rest of the way?
hey don't enter the parking lot so they won't be counted.

at about parents who drive down Barrett and let their kids exit and walk the rest of
ne way?
hey don't enter the parking lot so they won't be counted.

ny school-related car or bus generates traffic as it arrives AND as it departs.
ne intent of mitigation and monitoring is to reduce the traffic impact.
nfortunately, the monitoring plan, as it is currently written, is very easy to evade.

VISUAL #1]

request that the monitoring plan be modified to count all vehicular traffic
nat meets any of the following conditions:

- 1) enters the parking lot
- 2) exits the parking lot
- 3) arrives at the frontage to wait for, pick up, or unload students or staff
- 4) departs from the frontage after waiting for, picking up, or unloading students or
tuff
- 5) arrives and stops or parks along the neighboring streets to wait for, pick up, or
nload students or staff
- 6) departs after stopping or parking along neighboring streets to wait for, pick up, or
nload students or staff

his modification will close a loophole.
t will eliminate an opportunity to evade.
t will ensure that all school traffic is fairly counted.

thank you.

Submitted by Jeff Bollini on Oct 3, 2012

The Traffic Monitoring Plan should count each of these conditions as a vehicle trip:

- 1) Enters the parking lot
- 2) Exits the parking lot
- 3) Arrives at the frontage (4525 Union Ave) to wait for, pick up, or unload students or staff
- 4) Departs from the frontage (4525 Union Ave) after waiting for, picking up, or unloading students or staff
- 5) Arrives and stops/parks along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham to wait for, pick up, or unload students or staff
- 6) Departs from stopping/parking along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham after waiting for, picking up, or unloading students or staff

It is unreasonable to only conduct driveway traffic counts.

Bonus video from Bucknall K-5 Campus:

<http://www.youtube.com/watch?v=oMPGmVxiSY4>

Parents that park-and-walk along street should be counted.

Pete Wilson, Governor

**TRACKING CEQA
MITIGATION MEASURES
UNDER AB 3180**

CEQA Technical Advice Series



GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
1400 Tenth Street
Sacramento, CA 95814
(916) 445-0613

Paul F Miner, *Director, Office of Planning and Research*

Antero Rivasplata, *Deputy Director, Planning*

Third Edition, March 1996

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Introduction



Newton's Law provides that for every action there is an equal and opposite reaction. CEQA on the other hand provides that whenever a proposed project will result in potential significant adverse environmental impacts, measures must be taken which will limit or avoid that impact. These may include conditions of approval, revisions to the project, and, less frequently, approving an alternative project with fewer impacts. Where such measures are imposed, there must be a program for monitoring or reporting on the project's compliance with those measures.

Section 21081.6 of the Public Resources Code requires all state and local agencies to establish monitoring or reporting programs whenever approval of a project relies upon a mitigated negative declaration or an environmental impact report (EIR). The monitoring or reporting program must ensure implementation of the measures being imposed to mitigate or avoid the significant adverse environmental impacts identified in the mitigated negative declaration or EIR.

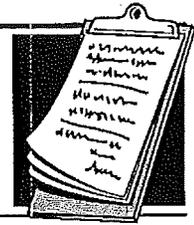
The Office of Planning and Research (OPR) has written this advisory publication to offer lo-

cal governments basic information and practical advice about how they may comply with the mitigation monitoring and reporting program requirements. It is supplementary to, and not an amendment or revision of, the *California Environmental Quality Act Guidelines*. Accordingly, this publication represents the informal guidance of OPR regarding compliance with Section 21081.6, but is not a regulation. This is part of OPR's public education and training program for planners, developers, and others.

The following suggestions are not the only methods of implementing Section 21081.6. The examples that follow are illustrative and not limiting. Agencies can develop their own programs to meet the variety of projects and unique circumstances which they encounter.

The third edition of *Tracking CEQA Mitigation Measures Under AB 3180* is based upon the law as it existed on January 1, 1996. Readers should refer to the most recent CEQA statute to ensure that they are meeting all current requirements. Code citations in this document are to the Public Resources Code, unless otherwise noted.

1 A Brief History of AB 3180



Despite CEQA's emphasis on mitigation, until 1988 the Act did not require that agencies take actions to ensure that required mitigation measures and project revisions were indeed being implemented. When reports of gross disregard for mitigation requirements reached the State Legislature in that year, it responded by enacting AB 3180 (Cortese). Section 21081.6 of the Public Resources Code, added by this bill, provides that whenever a mitigated negative declaration is adopted or a public agency is responsible for mitigation pursuant to an EIR, the agency must adopt a program for monitoring or reporting on project compliance with the adopted

mitigation. The legislation was signed into law by Governor Deukmejian in September of 1988 (Chapter 1232, Statutes 1988) and took effect on January 1, 1989.

OPR published the first edition of Tracking Mitigation Measures in early 1989 to provide guidance to local agencies in complying with the requirements of Section 21081.6. Expert publications and the efforts of U.C. Extension instructors have continued this education. As a result, by 1993, approximately 75% of cities and counties had enacted measures to comply with AB 3180. This edition of Tracking Mitigation Measures updates the advice offered by its predecessor.

2 Programs Required by Section 21081.6



Section 21081.6 establishes two distinct requirements for agencies involved in the CEQA process. Subdivisions (a) and (b) of the section relate to mitigation monitoring and reporting, and the obligation to mitigate significant effects where possible. Subdivision (c), which was amended into the code by AB 375 of 1992, is almost a non-sequitur. Its subject is the responsibility of responsible and trustee agencies during consultation on a negative declaration or EIR.

Pursuant to subdivision (a), whenever a public agency either: (1) adopts a mitigated negative declaration, or (2) completes an EIR and makes a finding pursuant to Section 21081(a) of the Public Resources Code taking responsibility for mitigation identified in the EIR, the agency must adopt a program of monitoring or reporting which will ensure that mitigation measures are complied with during implementation of the project. When changes have been incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency, if so requested by the lead or responsible agency, must prepare and submit a proposed reporting or monitoring program for the changes.

A project which is exempt from CEQA, or for which a simple (i.e., not mitigated) negative declaration has been prepared requires no AB 3180 program. In addition, no program is required for projects which are disapproved by the agency. Nor is a program required to address those mitigation measures which the agency has found to be either the responsibility of another agency or infeasible, pursuant to subdivisions (b) and (c) of Section 21081.

Besides ensuring implementation of mitigation measures, as required by statute, a monitoring or reporting program may provide feedback to staff and decisionmakers regarding the effectiveness of mitigating actions. Such experiential

information can be used by staff and decisionmakers to shape future mitigation measures.

Subdivision (b) of Section 21081.6 requires that mitigation measures be "fully enforceable through permit conditions, agreements, or other measures." Incorporating the mitigation measures into the conditions of approval applied to the project meets this requirement. Where the project consists of a general plan (or other type of policy plan), a regulation, or a public project, the mitigation measures can be incorporated into the policies of the plan, the regulations themselves, or the design of the project to meet the enforceability requirement.

Subdivision (c) creates a requirement for responsible and trustee agencies which have identified a significant impact during consultation on a negative declaration or EIR. This requirement is not directly related to mitigation monitoring or reporting programs, nor is it limited to those situations which require mitigation monitoring or reporting. We will discuss it only briefly before moving on.

Pursuant to subdivision (c), when a responsible or trustee agency suggests mitigation measures to address a significant impact which that agency has identified during consultation, it must either provide the lead agency with "complete and detailed performance objectives" (i.e., standards by which to meet specific objectives of the responsible or trustee agency) for those measures or refer the lead agency to readily available guidelines which would be the functional equivalent of such objectives. The mitigation measures suggested by a responsible or trustee agency are limited to those within the statutory authority of that agency (Section 21080.4). In effect, a responsible or trustee agency is required to limit its requests for mitigation measures to those subjects over which it has

regulatory powers and to provide the lead agency with sufficient information to allow the lead agency to effectively fashion such measures.

The requirements of subdivision (c) impact the lead agency's mitigation monitoring or reporting program to the extent that the lead agency imposes such measures on the project. It does not alter the

lead agency's responsibility for determining, on the basis of the evidence before it, whether a significant effect exists and how it may be mitigated. When the lead agency does not adopt those measures, it need not address them in a monitoring or reporting program.

3 Mitigation Monitoring or Reporting Programs



CEQA requires that each public agency adopt objectives, criteria, and specific procedures to administer its responsibilities under the Act and the CEQA Guidelines (Section 21082). Accordingly, local agencies should revise their adopted CEQA guidelines and procedures as necessary to include the requirements of Section 21081.6.

The task of designing monitoring and reporting programs is the responsibility of the public agency which is approving the project. Although a public agency may delegate this work, the agency cannot escape its responsibility for ensuring the adequacy of the program.

Each city and county may adopt programs which match their unique circumstances. The contents and complexity of the programs may be expected to vary based on the characteristics of the project being approved, the environmental effects being mitigated, and the nature of the mitigation measures themselves. Further, the public agency may choose whether its program will monitor mitigation, report on mitigation, or both.

The statute does not define the terms "reporting" or "monitoring," leaving this to the interpretation of the affected agency. Later in this section, we will offer simple definitions for discussion purposes. In practice, however, there is no clear distinction between monitoring and reporting, and the program best suited to ensuring compliance with mitigation measures will generally involve elements of both. For example, reporting requires the agency to monitor mitigation at some point in time. Likewise, a monitoring program can include regular reports to the decisionmaking body.

Mitigation Measures

Since the purpose of a monitoring or reporting program is to ensure the implementation of

mitigation measures, a quick look at mitigation measures will be the first item in our discussion. Mitigation measures are the specific requirements which will minimize, avoid, rectify, reduce, eliminate, or compensate for significant environmental effects. See Section 15370 of the CEQA Guidelines for a full definition.

A monitoring and reporting program's effectiveness depends in large part upon the quality of the mitigation measures themselves. Poorly drafted measures are not only difficult to implement, they are difficult to report on and monitor.

Here are some suggestions for preparing mitigation measures:

- 1 Certainty:** Avoid using the words "may" or "should" when the intent is to direct some required action. "Will" or "shall" are much better. Avoid measures that are conditioned on feasibility (i.e., required "where feasible") rather than applied directly or at a specified stage in the project.

Measures should be written in clear declaratory language. Specify what is required to be done, how is to be done, when it must be done, and who is responsible for ensuring its completion.

- 2 Performance:** Include specific minimum, measurable performance standards in all quantitative measures, and if possible, contingency plans if the performance standards are not met.
- 3 Authority:** CEQA does not provide independent authority to carry out mitigation (Section 21004). Measures which are not based on some other authority (i.e., zoning code, tree preservation ordinance, development agreement, impact fee ordinance, subdivision ordinance, etc.) are unenforceable. Monitoring or reporting on their implementation would clearly be problematic.

4 Continuity and Consistency: To the extent possible, integrate measures with existing policy and regulatory systems, and inspection or review schedules. Where the mitigation measures are regulatory in nature, for example, design them as conditions of approval within the context of the zoning, subdivision, or other ordinances. Further, mitigation measures must take applicable general plan and specific plan policies into account and not conflict with those policies.

5 Feasibility: Above all, measures must be feasible to undertake and complete. Avoid the trap of imposing mitigation measures that are based upon future activities of uncertain outcome. For example, the court in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 overturned the county's negative declaration for a motel project because the county required a study of potential sewage disposal methods rather than actions which would mitigate sewage impacts. A measure that did not mitigate the impact could not be the basis for a finding that impacts were mitigated.

Although infeasibility becomes obvious as the agency attempts to monitor or report on implementation, by that time it is too late. Early in the process of developing mitigation measures, the EIR or negative declaration preparer should consider how implementation of each measure is to be reported on or monitored. This offers a convenient feasibility test.

Reporting

For purposes of simplification, "reporting" may be defined as a written review of mitigation activities that is presented to the approving body by either staff or the project developer. A report may be required at various stages during project implementation and upon completion of the project.

Reporting without detailed monitoring is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, the

annual report on general plan status required under Government Code Section 65400 may serve as the reporting program for a city or county general plan as long as it meets the requirements of Section 21081.6. Reporting is also suited to simple projects where a means of reviewing project compliance already exists, such as issuance of building permits and related inspections.

A program for reporting on the implementation of mitigation measures should contain at least the following components:

- 1 A list of the mitigation measures being reported on.
- 2 Standards for determining compliance with each mitigation measure and the related condition of approval.
- 3 A schedule for making one or more reports to the approving agency regarding the level of compliance of the project with the required mitigation measures and related conditions of approval. The program may set out the stages of the project at which each mitigation measure must be implemented (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49).
- 4 A statement which identifies the person or agency, public or private, responsible for reviewing the project and for preparing and making the report to the agency.

These components may be combined in a checklist, matrix, or other representation of the required mitigation measures or revisions, any related conditions of approval, the persons or agencies responsible for ensuring their completion, and the responsible person's or agency representative's affirmation of completion. In some cases, where mitigation will occur in stages during the project, or a mitigation measure contains more than one part, preparing a checklist for each mitigation measure may be an effective approach.

Monitoring

"Monitoring" can be described as a continuous, ongoing process of project oversight. Moni-

toring, rather than simply reporting, is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, which are expected to be implemented over a period of time, or which require careful implementation to assure compliance.

A program for monitoring the implementation of mitigation measures should contain at least the following components:

- 1 A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.
- 2 A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any. The program may set out the stages of the project at which each mitigation measure must be implemented (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49).
- 3 A means of recording compliance at the time of each check.
- 4 A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.
- 5 If monitoring duties are contracted to private individuals or firms, provisions for ensuring that monitoring reflects the independent judgment of the public agency. Such provisions might include requiring the submittal of regular progress reports to the agency, establishing a mechanism for appealing actions of the contractor to the agency for decision, or selection of the contractor by the agency (as opposed to solely by the applicant). Regardless of whether monitoring is performed by the agency or a contractor, the agency retains the ultimate legal responsibility for satisfying the requirements of section 21081.6.
- 6 Provisions for funding monitoring activities, including the imposition of fees.
- 7 Provisions for responding to a failure to comply with any required mitigation measure (in-

cluding conditions of approval). This might include "stop work" authority, permit revocation proceedings, or civil enforcement procedures. This can also include administrative appeal procedures.

Some agencies prepare a separate worksheet describing each mitigation measure and its monitoring requirements. These worksheets are provided to the monitors.

General Approaches to Reporting and Monitoring

Following are two basic approaches which an agency might use:

- 1 **Jurisdictional Framework:** A standard mitigation monitoring and reporting ordinance or guidelines adopted by the jurisdiction may establish the basis for individually tailored programs. This framework would express the relative roles of involved agencies, staff, and project proponents; establish administrative procedures; lay out a standardized format for reporting or monitoring programs; establish general timetables; and provide or identify enforcement mechanisms. It may also include standard methods of reporting or monitoring for common mitigation measures.

Standardizing the framework for monitoring or reporting programs promotes consistency and thoroughness in reporting or monitoring activities.

- 2 **Project Specific:** Develop a new, specially tailored program for each project which triggers Section 21081.6. Such a program may be imposed under the regulatory authority of the agency. Compliance could be required as a condition of project approval or, if a framework ordinance is in place, by reference to that ordinance.

This may be the best way to approach large and complicated development projects which will have special monitoring requirements. It is useful where a standardized program alone

may be inadequate to such a situation. This approach may also make sense for small cities and counties which adopt EIRs or mitigated negative declarations infrequently.

Regardless of the method chosen, a draft AB 3180 program should be made available to decisionmakers prior to the formal adoption of either a mitigated negative declaration or the EIR-related findings in Section 21081 (a).

Although not required to do so, some agencies choose to circulate the draft program during consultation on the draft environmental document. This allows public and agency comments on the effectiveness of both mitigation measures and the associated monitoring or reporting program. When circulating a draft, the agency should specify that the program is not final and is subject to change prior to adoption.

Ultimately, the agency must enact a program which reflects the mitigation or project revisions adopted as part of the mitigated negative declaration or subject to findings under Section 21081 (a), regardless of what might have been in the draft documents. If mitigation measures are revised, added or dropped prior to approval of the project, the adopted AB 3180 program must reflect those changes.

Program Administration

Project monitors, whether agency staff or contract personnel, should be given clear written guidance regarding the mitigation measures to be monitored and reported on. This is particularly important in those cases, such as where a large private project is involved, the applicant will perform the actual monitoring. Further, when compliance is achieved, there should be a clear "sign off" by the appropriate agency to ensure that this compliance is documented.

Worksheets offer a convenient means of tracking compliance. Worksheets can be used to express: (1) impact being mitigated; (2) mitigation measure for that impact; (3) implementor; (4) monitor; (5) monitoring requirements; (6) frequency of monitoring or reporting; (7) standards

for completion or compliance; and (8) verification of compliance. Some agencies also include a checklist to summarize the monitoring or reporting record.

When the program is a relatively simple one, a checklist rather than a worksheet may suffice to guide inspections, record findings, and certify compliance.

Implementation

In order to maximize efficiency in implementing a monitoring or reporting program, the agency should make every effort to integrate the requirements of the program with its current land use regulations and inspection procedures. This applies whether the program is comprehensive or project specific. As a general rule, the more that mitigation monitoring or reporting programs can utilize existing procedures and requirements, the easier those programs may be to implement. The more that such programs work outside usual procedures, the more expensive and time consuming they may be to implement.

This is not intended to say that a program should monitor or report on zoning or other regulations that are not mitigation measures. While working within the existing regulatory system, the program's scope is limited to mitigation measures resulting from the project's mitigated negative declaration or EIR.

Enforcement

CEQA does not create new authority for agencies to carry out or enforce mitigation measures. Agencies must rely upon the authority conferred by other laws. In the case of a city or county, this would include local zoning, subdivision, and related land use regulations. Typically, enforcement procedures are enacted by ordinance and provide for administrative dispute resolution.

OPR recommends that if a jurisdiction-wide AB 3180 program is adopted, that it contain, or reference other existing regulations which would enforce compliance with the mitigation measures. A jurisdiction-wide program that includes enforce-

ment regulations must be adopted by ordinance in order to be effective. In the absence of a jurisdiction-wide AB 3180 ordinance, individual mitigation monitoring or reporting programs should reference those existing regulations, such as the zoning ordinance, that will provide enforcement.

Cost Recovery

Section 21089 authorizes the lead agency to "charge and collect a reasonable fee from any person proposing a project subject to [CEQA] in order to recover the estimated costs incurred ... for procedures necessary to comply with [CEQA] on the project." This express authority allows the lead agency to levy fees to cover the costs of mitigation monitoring or reporting programs. The fee is limited to the estimated cost of the program, including the agency's administrative costs. Fees may be used to cover the cost of agency staff, as well as the cost of hiring special monitors or consultants, if needed.

Fees for complex AB 3180 programs, such as those involving long-term monitoring or continuous observation over time, are often charged on the basis of time and work. Flat fees are usually

charged when the AB 3180 program involves routine inspections and reporting. In practice, hourly fees and flat fees charged on a sliding scale based on project type or size are equally popular among cities and counties.

Responsible and Trustee Agencies

Lead and responsible agencies may adopt different AB 3180 programs for the same project. This is because the agencies often do not adopt the same set of mitigation measures. In general, when a lead agency approves a project for which an EIR was prepared, it adopts feasible mitigation measures for those portions of the project which it controls or regulates. In turn, the responsible agency adopts only the mitigation measures pertinent to its statutory authority. Under ideal circumstances the programs of the lead and responsible agencies, when taken together, should monitor or report upon all of the adopted mitigation measures and project revisions.

Section 21081.6 does not require agencies to duplicate monitoring programs. Agencies can avoid potential duplication by coordinating their relative roles during the consultation process.

4 Common Questions Regarding Section 21081.6



A number of issues commonly arise in complying with Section 21081.6. In many instances, there may be a variety of ways to resolve a particular concern; the following discussion is intended to stimulate thinking rather than to represent the only solutions. Here are some responses to commonly asked questions.

Question:

What does Section 21081.6 require when an EIR for an earlier project is recertified (or certified with an addendum) and applied to a subsequent project, avoiding the need to prepare a new EIR? What is the requirement when a program EIR is used as the basis for a subsequent EIR, or a later project EIR is tiered on the earlier EIR for a plan, program, or ordinance?

Answer:

The monitoring or reporting requirements of Section 21081.6 apply whenever the lead agency makes findings under Section 21081 (a) relative to the mitigation measures or alternatives being required of the project. An AB 3180 program must be adopted which addresses each mitigation measure or project change for which a finding is made. Similarly, if a project is analyzed pursuant to a program EIR or involves tiering, an AB 3180 program would be required for each mitigation measure or project change subject to findings under Section 21081 (a) or required under a mitigated Negative Declaration.

Question:

What happens when an agency has a lack of trained personnel to monitor required mitigation measures?

Answer:

This does not reduce the agency's responsibility to adopt and carry out an AB 3180 program. Outside consultants may be retained to provide assis-

tance. The cost of the consultant may be borne by the agency or charged to the project proponent.

Question:

What is the project planner's role in monitoring/reporting?

Answer:

This is left to the discretion of the involved agency. However, the relative roles of personnel should be spelled out in either an individual or jurisdiction-wide program.

Question:

What happens when the developer and the agency personnel assigned to monitor a project have differences of opinion over mitigation or monitoring requirements?

Answer:

Monitoring personnel must be given sufficient authority to ensure that the mandated mitigation is being implemented. A jurisdictional framework can establish methods of resolving disputes such as administrative appeal.

Question:

Have courts added any specific requirements for reporting or monitoring programs beyond those established by statute?

Answer:

No. In the two cases to date (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31 and *Rio Vista Farm Bureau v. County of Solano* (1992) 5 Cal.App.4th 351), the courts have not expanded the requirements beyond those explicit in statute.

Question:

Must a mitigation monitoring or reporting program address conditions of approval that are neither mitigation measures for significant effects nor

revisions to the project required pursuant to the environmental document?

Answer:

No. An AB 3180 program must address mitigation measures and project revisions required pursuant to the CEQA document. A program is *not* required to address those conditions of approval that are not related to mitigation. The agency may monitor these other conditions at its own discretion.

Question:

Must a draft AB 3180 program be circulated with the draft mitigated negative declaration or draft EIR?

Answer:

Nothing in CEQA requires the mitigation monitoring program to be circulated with or included in the EIR (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49). Some agencies do circulate drafts in conjunction with a draft EIR. The comments received on the program can be used to fine tune the program prior to adoption. Whether an agency must respond to such comments in the final EIR is unknown. Certainly a case might be made that no response is necessary where the draft program is not an integral part of, but is merely circulated with, the draft EIR. Where the program has been incorporated into the draft EIR, there may be a need to respond to comments on the draft program.

Question:

How does AB 3180 apply to actions such as adoption of a general plan or rezoning where there are no conditions of approval, and mitigation is provided by policies or regulations that are incorporated into the general plan or zoning?

Answer:

In the case of a general plan, mitigation measures should be integrated directly into the plan's policies (Section 21081.6(b)). The AB 3180 program can build upon the annual general plan status report required of each planning agency under Government Code Section 65400. It may not be nec-

essary to monitor or report on site-specific mitigation measures, except to the extent of being included in the policies and standards of the plan and considered in future land use decisions (*Rio Vista Farm Bureau v. County of Solano* (1992) 5 Cal.App.4th 351, 380).

If some of the mitigation measures for the plan are based on the subsequent adoption of new ordinances or regulations rather than being implemented by general plan policies, progress in enacting those regulations can be monitored or reported on by establishing a timetable for regular status reports to the city council or board of supervisors.

A program of regularly scheduled status reports might also be suitable for monitoring or reporting on the mitigation measures applied to a specific plan or rezoning. Recognize that where the specific plan or rezoning is associated with other actions such as a planned unit development or subdivision, i.e., actions with a finer level of detail than a plan or rezone, status reports may be only one portion of the overall AB 3180 program.

The lead agency is not allowed to *delay* adoption of a program until a subsequent discretionary permit is required. Section 21081.6 clearly mandates adoption of the monitoring or reporting program when the lead agency approves a project. Adoption of a program cannot be put off, nor may the program ignore qualifying mitigation measures or required project revisions.

Question:

Should the monitoring or reporting program be adopted as a condition of project approval?

Answer:

This depends upon the type of project and the existing regulatory scheme. In some cases, such as where the program is based on a framework ordinance, adopting the program as a condition of approval may be redundant. In other instances, such as where a project specific program is being imposed, it may make sense to require compliance with the program as a condition of project approval.

5 Examples of AB 3180 Comprehensive Programs



The City of Encinitas

Encinitas adopted a comprehensive monitoring program in 1989, soon after AB 3180 was enacted. In addition to project-specific monitoring and reporting, the program commits the city to regular review of and reporting on city-wide impacts on development fees, the mitigation measures adopted as part of the general plan, and the progress general plan implementation.

Encinitas' program establishes the following basic provisions:

- 1 All mitigation measures are to be adopted as conditions of project approval. The conditions will specify a time at which implementation is expected to be complete.
- 2 Project approvals will be by resolution or formal notice of decision and will identify those mitigation measures being adopted as conditions. Copies of all decisions will be routed to the affected city agencies.
- 3 The resolution or notice of decision will be attached directly to all permits issued to the project. Mitigation which requires monitoring will be marked on the construction plans for the inspector and contractor. No permits will be issued until the Community Development Department has confirmed that any preconstruction mitigation requirements have been completed.
- 4 Staff is required to confirm completion of mitigation measures prior to signing off on city forms. Each department is required to confirm the measures which relate to its responsibilities, coordinated by the Community Development Department.
- 5 The Community Development Department is responsible for any monitoring which occurs after project completion. This includes admin-

istering the review of long-term monitoring plans required of applicants. The program authorizes the Department to collect fees to recover its costs.

- 6 Each department will maintain the original program files for projects which it approves. Copies of the documentation will be given to each agency imposing mitigation.

A copy of Encinitas' community-wide program is included in the appendix.

Sacramento Metropolitan Air Quality Management District

The district's 1993 "Environmental Review Guidelines" contain standardized requirements for establishing district monitoring and reporting programs. Under these requirements, approval of the project does not become final until the adoption of a mitigation monitoring or reporting program. Compliance with the adopted program is imposed as a condition of project approval. Upon adoption, the program is forwarded to the County Recorder for recordation in order to put the requirements of the program into the chain of title and provide successors to the permittee with substantive notice of the requirements. A "program completion certificate" must be issued by the district before the project will be considered to meet all requirements of a program. This certificate is also recorded, indicating that the requirements of the program have been met.

The district's guidelines require that district programs contain the following standard elements:

- 1 A statement that the requirements of the program run with the property involved, as opposed to the permittee, and all successive owners.

- 2 A statement that the permittee must provide a copy of the adopted program to any potential lessee, buyer, or transferee of the involved property.
- 3 A statement of the responsibilities of the applicant and the district's environmental coordinator, as well as whether other professional expertise is necessary to complete or evaluate of any part of the program.
- 4 A schedule of tasks or phases which, upon completion, will allow issuance of a program completion certificate.

With regard to compliance, the Guidelines requires the applicant to submit regular written progress reports to the district, verified by the district environmental coordinator, and to correct any noncompliance in a timely manner.

The County of Santa Barbara

Santa Barbara County established some of the earliest mitigation monitoring programs in the State, monitoring large projects even before the passage of AB 3180. The County's Environmental Quality Assurance Programs (EQAPs), which establish comprehensive monitoring programs for large-scale environmentally sensitive projects were first developed before AB 3180. An EQAP describes the relative roles of staff, consultants, and project proponents in the monitoring process. It also provides specific performance standards for compliance and the sanctions for failure to meet those standards.

After enactment of AB 3180, the County adopted a "Permit Compliance Procedure Manual" to ensure compliance with mitigation measures and conditions of approval; to initiate county enforcement procedures; establish a systematic and consistent approach to monitoring mitigation measures and conditions of approval; maintain standard mitigation monitoring and reporting requirements, mitigation measures, and conditions of approval across departmental lines; develop a reporting program that provides feedback on the effectiveness of mitigation measures and conditions of approval; and use the feedback from moni-

toring programs to develop more effective comprehensive planning policies. These procedures also include reporting on the effectiveness of mitigation measures, even though AB 3180 does not require this.

The manual establishes the role and authority of the County's Permit Compliance group to monitor mitigation and conditions of approval. It also establishes detailed administrative procedures for monitoring and compliance activities, including the roles and specific responsibilities of applicable staff, and the use of outside consultants. The County's "DataEase" computerized tracking system continuously tracks cases from initial application, to approval, to reporting, and to final compliance.

Among other things, Santa Barbara County's procedures provide for the formal exemption of qualifying minor projects from monitoring requirements. The manual includes standard administrative forms as well.

The City of Santa Maria

Santa Maria amended its adopted CEQA procedures to establish a general mitigation monitoring system. Environmental mitigation measures imposed by the city are monitored through the permit and plan check process. Santa Maria's system provides a written record of mitigation without necessitating major changes to city practices.

The key to this system is a checklist that individually identifies the mitigation measures to be monitored for a given project as well as the city department responsible for monitoring each measure. Measures are checked off when they are incorporated into project design and when they have been implemented. Monitoring generally takes place during plan check and project inspection.

On-going measures which will require monitoring over a longer period are also handled through a checklist. Projects are inspected or the developer is required to submit progress reports periodically until implementation is complete. The city makes the final verification of the adequacy of the measure before signing off on its completeness.

Fees are collected from project proponents to pay for monitoring programs. Fees are limited to actual cost, and any excess is refunded to the proponent. If consultants are needed, they are hired by the city and their cost paid by the project proponent. A copy of the city's program is included in the appendix.

South Coast Air Quality Management District

The South Coast AQMD has adopted extensive guidelines covering all aspects of CEQA compliance. The 1993 edition of the District's "CEQA Air Quality Management Handbook" contains detailed advice for establishing monitoring programs.

The District recommends that programs do the following:

- 1 Communicate mitigation measures and reporting responsibilities to the applicant clearly.
- 2 Identify the agency which will be responsible for monitoring each mitigation measure.

- 3 Identify the time frame within which each measure is to be completed and during which monitoring will occur.
- 4 Establish specific standards or criteria for completion of each mitigation measure.
- 5 Identify remedial measures which will be imposed in case of non-compliance.
- 6 Include a mechanism for periodic reporting.

The District's handbook also recommends that monitoring should be linked to a specific point in the development process, such as issuance of a grading permit, occupancy permit, building permit, or construction inspection, and that mitigation measures should be limited to those which are legally enforceable. Suggested enforcement tools include conditions of approval, impact fees, improvement security, development agreements, Memoranda of Understanding, and recorded "Conditions, Covenants, and Restrictions" (CCRs).

An excerpt of the Handbook's chapter on mitigation monitoring is included in the appendix.

Bibliography



Bass, Ronald and Albert Herson, *Successful CEQA Compliance: A Step-by-Step Approach*, 1993 edition, Solano Press, Point Arena, California, 1993

Farris, Terry, "The Story of Assembly Bill 3180: Mitigation Monitoring in California," Masters thesis, California State Polytechnic University, Pomona, 1989

Farris, Terry, unpublished mitigation monitoring survey, 1993

"Mitigation Monitoring Programs," Dominic Roques, *Environmental Monitor*, Fall 1993

Remy, Michael H., Tina A. Thomas, et al., *Guide to the Environmental Quality Act*, 1993 edition, Solano Press, Point Arena, California, 1993

3 Mitigation Monitoring or Reporting Programs



CEQA requires that each public agency adopt objectives, criteria, and specific procedures to administer its responsibilities under the Act and the CEQA Guidelines (Section 21082). Accordingly, local agencies should revise their adopted CEQA guidelines and procedures as necessary to include the requirements of Section 21081.6.

The task of designing monitoring and reporting programs is the responsibility of the public agency which is approving the project. Although a public agency may delegate this work, the agency cannot escape its responsibility for ensuring the adequacy of the program.

Each city and county may adopt programs which match their unique circumstances. The contents and complexity of the programs may be expected to vary based on the characteristics of the project being approved, the environmental effects being mitigated, and the nature of the mitigation measures themselves. Further, the public agency may choose whether its program will monitor mitigation, report on mitigation, or both.

The statute does not define the terms "reporting" or "monitoring," leaving this to the interpretation of the affected agency. Later in this section, we will offer simple definitions for discussion purposes. In practice, however, there is no clear distinction between monitoring and reporting, and the program best suited to ensuring compliance with mitigation measures will generally involve elements of both. For example, reporting requires the agency to monitor mitigation at some point in time. Likewise, a monitoring program can include regular reports to the decisionmaking body.

Mitigation Measures

Since the purpose of a monitoring or reporting program is to ensure the implementation of

mitigation measures, a quick look at mitigation measures will be the first item in our discussion. Mitigation measures are the specific requirements which will minimize, avoid, rectify, reduce, eliminate, or compensate for significant environmental effects. See Section 15370 of the CEQA Guidelines for a full definition.

A monitoring and reporting program's effectiveness depends in large part upon the quality of the mitigation measures themselves. Poorly drafted measures are not only difficult to implement, they are difficult to report on and monitor.

Here are some suggestions for preparing mitigation measures:

- 1 Certainty:** Avoid using the words "may" or "should" when the intent is to direct some required action. "Will" or "shall" are much better. Avoid measures that are conditioned on feasibility (i.e., required "where feasible") rather than applied directly or at a specified stage in the project.

Measures should be written in clear declaratory language. Specify what is required to be done, how is to be done, when it must be done, and who is responsible for ensuring its completion.

- 2 Performance:** Include specific minimum, measurable performance standards in all quantitative measures, and if possible, contingency plans if the performance standards are not met.

- 3 Authority:** CEQA does not provide independent authority to carry out mitigation (Section 21004). Measures which are not based on some other authority (i.e., zoning code, tree preservation ordinance, development agreement, impact fee ordinance, subdivision ordinance, etc.) are unenforceable. Monitoring or reporting on their implementation would clearly be problematic.

4 Continuity and Consistency: To the extent possible, integrate measures with existing policy and regulatory systems, and inspection or review schedules. Where the mitigation measures are regulatory in nature, for example, design them as conditions of approval within the context of the zoning, subdivision, or other ordinances. Further, mitigation measures must take applicable general plan and specific plan policies into account and not conflict with those policies.

5 Feasibility: Above all, measures must be feasible to undertake and complete. Avoid the trap of imposing mitigation measures that are based upon future activities of uncertain outcome. For example, the court in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 overturned the county's negative declaration for a motel project because the county required a study of potential sewage disposal methods rather than actions which would mitigate sewage impacts. A measure that did not mitigate the impact could not be the basis for a finding that impacts were mitigated.

Although infeasibility becomes obvious as the agency attempts to monitor or report on implementation, by that time it is too late. Early in the process of developing mitigation measures, the EIR or negative declaration preparer should consider how implementation of each measure is to be reported on or monitored. This offers a convenient feasibility test.

Reporting

For purposes of simplification, "reporting" may be defined as a written review of mitigation activities that is presented to the approving body by either staff or the project developer. A report may be required at various stages during project implementation and upon completion of the project.

Reporting without detailed monitoring is suited to projects which have readily measurable or quantitative mitigation measures or which all involve regular review. For example, the

annual report on general plan status required under Government Code Section 65400 may serve as the reporting program for a city or county general plan as long as it meets the requirements of Section 21081.6. Reporting is also suited to simple projects where a means of reviewing project compliance already exists, such as issuance of building permits and related inspections.

A program for reporting on the implementation of mitigation measures should contain at least the following components:

- 1 A list of the mitigation measures being reported on.
- 2 Standards for determining compliance with each mitigation measure and the related condition of approval.
- 3 A schedule for making one or more reports to the approving agency regarding the level of compliance of the project with the required mitigation measures and related conditions of approval. The program may set out the stages of the project at which each mitigation measure must be implemented (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49).
- 4 A statement which identifies the person or agency, public or private, responsible for reviewing the project and for preparing and making the report to the agency.

These components may be combined in a checklist, matrix, or other representation of the required mitigation measures or revisions, any related conditions of approval, the persons or agencies responsible for ensuring their completion, and the responsible person's or agency representative's affirmation of completion. In some cases, where mitigation will occur in stages during the project, or a mitigation measure contains more than one part, preparing a checklist for each mitigation measure may be an effective approach.

Monitoring

"Monitoring" can be described as a continuous, ongoing process of project oversight. Moni-

toring, rather than simply reporting, is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, which are expected to be implemented over a period of time, or which require careful implementation to assure compliance.

A program for monitoring the implementation of mitigation measures should contain at least the following components:

- 1 A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.
- 2 A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any. The program may set out the stages of the project at which each mitigation measure must be implemented (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49).
- 3 A means of recording compliance at the time of each check.
- 4 A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.
- 5 If monitoring duties are contracted to private individuals or firms, provisions for ensuring that monitoring reflects the independent judgment of the public agency. Such provisions might include requiring the submittal of regular progress reports to the agency, establishing a mechanism for appealing actions of the contractor to the agency for decision, or selection of the contractor by the agency (as opposed to solely by the applicant). Regardless of whether monitoring is performed by the agency or a contractor, the agency retains the ultimate legal responsibility for satisfying the requirements of section 21081.6.
- 6 Provisions for funding monitoring activities, including the imposition of fees.
- 7 Provisions for responding to a failure to comply with any required mitigation measure (in-

cluding conditions of approval). This might include "stop work" authority, permit revocation proceedings, or civil enforcement procedures. This can also include administrative appeal procedures.

Some agencies prepare a separate worksheet describing each mitigation measure and its monitoring requirements. These worksheets are provided to the monitors.

General Approaches to Reporting and Monitoring

Following are two basic approaches which an agency might use:

- 1 **Jurisdictional Framework:** A standard mitigation monitoring and reporting ordinance or guidelines adopted by the jurisdiction may establish the basis for individually tailored programs. This framework would express the relative roles of involved agencies, staff, and project proponents; establish administrative procedures; lay out a standardized format for reporting or monitoring programs; establish general timetables; and provide or identify enforcement mechanisms. It may also include standard methods of reporting or monitoring for common mitigation measures.

Standardizing the framework for monitoring or reporting programs promotes consistency and thoroughness in reporting or monitoring activities.

- 2 **Project Specific:** Develop a new, specially tailored program for each project which triggers Section 21081.6. Such a program may be imposed under the regulatory authority of the agency. Compliance could be required as a condition of project approval or, if a framework ordinance is in place, by reference to that ordinance.

This may be the best way to approach large and complicated development projects which will have special monitoring requirements. It is useful where a standardized program alone

may be inadequate to such a situation. This approach may also make sense for small cities and counties which adopt EIRs or mitigated negative declarations infrequently.

Regardless of the method chosen, a draft AB 3180 program should be made available to decisionmakers prior to the formal adoption of either a mitigated negative declaration or the EIR-related findings in Section 21081 (a).

Although not required to do so, some agencies choose to circulate the draft program during consultation on the draft environmental document. This allows public and agency comments on the effectiveness of both mitigation measures and the associated monitoring or reporting program. When circulating a draft, the agency should specify that the program is not final and is subject to change prior to adoption.

Ultimately, the agency must enact a program which reflects the mitigation or project revisions adopted as part of the mitigated negative declaration or subject to findings under Section 21081 (a), regardless of what might have been in the draft documents. If mitigation measures are revised, added or dropped prior to approval of the project, the adopted AB 3180 program must reflect those changes.

Program Administration

Project monitors, whether agency staff or contract personnel, should be given clear written guidance regarding the mitigation measures to be monitored and reported on. This is particularly important in those cases, such as where a large private project is involved, the applicant will perform the actual monitoring. Further, when compliance is achieved, there should be a clear "sign off" by the appropriate agency to ensure that this compliance is documented.

Worksheets offer a convenient means of tracking compliance. Worksheets can be used to express: (1) impact being mitigated; (2) mitigation measure for that impact; (3) implementor; (4) monitor; (5) monitoring requirements; (6) frequency of monitoring or reporting; (7) standards

for completion or compliance; and (8) verification of compliance. Some agencies also include a checklist to summarize the monitoring or reporting record.

When the program is a relatively simple one, a checklist rather than a worksheet may suffice to guide inspections, record findings, and certify compliance.

Implementation

In order to maximize efficiency in implementing a monitoring or reporting program, the agency should make every effort to integrate the requirements of the program with its current land use regulations and inspection procedures. This applies whether the program is comprehensive or project specific. As a general rule, the more that mitigation monitoring or reporting programs can utilize existing procedures and requirements, the easier those programs may be to implement. The more that such programs work outside usual procedures, the more expensive and time consuming they may be to implement.

This is not intended to say that a program should monitor or report on zoning or other regulations that are not mitigation measures. While working within the existing regulatory system, the program's scope is limited to mitigation measures resulting from the project's mitigated negative declaration or EIR.

Enforcement

CEQA does not create new authority for agencies to carry out or enforce mitigation measures. Agencies must rely upon the authority conferred by other laws. In the case of a city or county, this would include local zoning, subdivision, and related land use regulations. Typically, enforcement procedures are enacted by ordinance and provide for administrative dispute resolution.

OPR recommends that if a jurisdiction-wide AB 3180 program is adopted, that it contain, or reference other existing regulations which would enforce compliance with the mitigation measures. A jurisdiction-wide program that includes enforce-

ment regulations must be adopted by ordinance in order to be effective. In the absence of a jurisdiction-wide AB 3180 ordinance, individual mitigation monitoring or reporting programs should reference those existing regulations, such as the zoning ordinance, that will provide enforcement.

Cost Recovery

Section 21089 authorizes the lead agency to "charge and collect a reasonable fee from any person proposing a project subject to [CEQA] in order to recover the estimated costs incurred ... for procedures necessary to comply with [CEQA] on the project." This express authority allows the lead agency to levy fees to cover the costs of mitigation monitoring or reporting programs. The fee is limited to the estimated cost of the program, including the agency's administrative costs. Fees may be used to cover the cost of agency staff, as well as the cost of hiring special monitors or consultants, if needed.

Fees for complex AB 3180 programs, such as those involving long-term monitoring or continuous observation over time, are often charged on the basis of time and work. Flat fees are usually

charged when the AB 3180 program involves routine inspections and reporting. In practice, hourly fees and flat fees charged on a sliding scale based on project type or size are equally popular among cities and counties.

Responsible and Trustee Agencies

Lead and responsible agencies may adopt different AB 3180 programs for the same project. This is because the agencies often do not adopt the same set of mitigation measures. In general, when a lead agency approves a project for which an EIR was prepared, it adopts feasible mitigation measures for those portions of the project which it controls or regulates. In turn, the responsible agency adopts only the mitigation measures pertinent to its statutory authority. Under ideal circumstances the programs of the lead and responsible agencies, when taken together, should monitor or report upon all of the adopted mitigation measures and project revisions.

Section 21081.6 does not require agencies to duplicate monitoring programs. Agencies can avoid potential duplication by coordinating their relative roles during the consultation process.

TO: Andrew Crabtree
PBCE

FROM: Michael Liw
Public Works

SUBJECT: SEE BELOW

DATE: 11/5/2012

SUBJECT: Harker Elementary School Project
4525 Union Avenue
PW NO. 3-10274 (PD12-027)

In response to both the Notice of Permit Appeal and Notice of the Environmental Appeal, Public Works Development Services staff submits the following supplemental memo:

The project as proposed is in conformance with the City of San Jose Council Policy 5-3 for Transportation Level of Service. The Transportation Impact Analysis (TIA) Report concluded there were no significant Level of Service impacts to the signalized intersections along Union Avenue included in the analysis. The report identified significant freeway impacts along four segments in the AM peak hour and one segment in the PM peak hour along Route 85. The freeway impacts along Route 85 are considered to be CEQA impacts.

The mitigation for the freeway impacts includes implementation of a Transportation Demand Management Plan that proposes to reduce freeway traffic by 240 vehicle trips in the AM peak hour and 160 vehicle trips in the PM peak hour. Even though there were no significant traffic impacts along Union Ave., as a result of the implementation of the TDM program, the trip reductions are applied to traffic volumes along the intersections of Union Avenue, and reductions to inbound and outbound traffic to the school site.

The report also identified an operational impact at the Route 85/Union Ave. northbound onramp in the AM peak hour. This is mainly due to the presence of the metered onramp which is operated by CALTRANS and limits the volume of traffic entering the freeway during the AM peak hour (800 -900 per hour). This operational impact is not considered a CEQA impact.

Public comments to the subject project pertained to three specific categories referenced below.

1. Traffic on Surrounding Residential Streets
2. Traffic Along Union Avenue
3. Effectiveness of the Transportation Demand Management (TDM) Plan

The following are summarized responses.

Traffic on Surrounding Residential Streets

The TIA includes Average Daily Traffic volumes from the City's database (ADT) for the surrounding residential streets. The City assumes a carrying capacity of local residential streets in the range of 1,200 to 1,800 vehicles per day. The database volumes along the neighboring residential streets are within the specified range with the exception of Woodard Avenue, a residential street that loads two separate school sites, St. Francis Cabrini and Farnham Elementary School.

Based on the traffic distribution derived from the zip code study of the existing students, it was concluded that few vehicles would use the residential streets to access the school. In addition, the geometry and network of residential streets creates a circuitous travel route. Even though a CEQA impact was not identified, as part of the TDM plan, outreach to parents, staff, and neighbors will be conducted to discourage school traffic on residential streets on an ongoing basis. The TDM plan will also require periodic data collection of Average Daily Traffic (ADT) volumes on nearby residential streets prior to the occupation of the school and during the school session to measure traffic volume changes.

Traffic along Union Avenue

The mitigation for the significant freeway impacts required a reduction of freeway traffic by 240 vehicle trips in the AM peak hour and 160 vehicle trips in the PM peak hour. The project proposed to mitigate the freeway impacts by implementation of the TDM plan. Even though the TIA did not identify significant intersection level-of-service impacts, the trip reductions implemented to mitigate the freeway impacts will, as an added benefit, reduce traffic volumes along Union Avenue.

Although CEQA impacts were not identified along Union Ave., the TDM plan will also review traffic operations along Union Avenue. Vehicle trips will be counted at both the entrance and exit of the Harker site in order to measure traffic levels. If necessary, signal timing adjustments may be implemented along the corridor. Furthermore, the project will construct a bus duck-out and bus pad along the project frontage which will improve traffic flow along Union Ave.

The ADT along Union Ave. is approximately 24,000 vehicles and a review of accident data from 2007 to 2012 did not indicate any unusual or hazardous conditions.

Effectiveness of the Transportation Demand Management (TDM) Plan

The Transportation Demand Management Plan is a traffic mitigation requirement, not a voluntary program like the program implemented at the current Harker site. It mitigates environmental impacts along Route 85 identified as a result of the project traffic. Failure to conform to the required traffic reductions along the freeway will result in a reduction of student enrollment, which will affect the viability of the school. As part of the California Environmental Quality Act (CEQA), the mitigation monitoring program requires aggressive monitoring of traffic to ensure conformance on an annual basis.

Planning and Building

11/7/2012

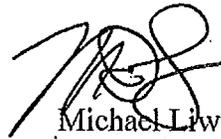
Subject: Traffic Analysis for PD12-027

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In order to demonstrate conformance to the trip reduction goals, traffic will be counted at the project frontage even though the impacts were identified on the freeway only. The TDM plan is an adaptive mitigation measure that contains multiple tools to meet the target driveway count of 370 inbound and outbound AM peak hour trips including 20 shuttle trips. The tools could include but are not limited to carpooling, shuttle buses, staff incentives to use alternative modes, pay to drive programs, etc. All the details of the TDM program have not been determined but the overall goal is defined.

Even though significant traffic impacts were only identified along Route 85, in addition to traffic reductions along Union Ave., the TDM plan will require ongoing neighborhood outreach, periodic monitoring of neighborhood streets, designated travel routes, a TDM Plan Coordinator, and an Environmental Mitigation Monitor within the Planning Department.

The project will be required to demonstrate conformance to CEQA through monthly driveway counts. If the driveway counts exceed traffic reduction goals two consecutive months, the project will have two months to meet traffic reduction goals by employing any of the tools available. If the project fails to meet traffic reduction goals subsequently, then enrollment shall be reduced for the following school year. If you have questions, please contact Karen Mack at (408)535-6816.



Michael Liw

Division Manager

Development Services Division

Department of Public Works

ML:km

cc: Manuel Pineda, DOT

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD12-027
LOCATION OF PROPERTY	West side of Union Avenue, approximately 100 feet southerly of Barrett Avenue (4525 Union Avenue)
ZONING DISTRICT	A(PD) Planned Development (PDC91-077)
GENERAL PLAN DESIGNATION	Public/Quasi-Public
PROPOSED USE	Planned Development Permit to allow redevelopment of the existing 7.7 acre former Santa Clara County Children's Shelter campus including demolition of two existing 4,800 square foot buildings, construction of a new 17,500 square foot multi-purpose building, a 2,500 square foot accessory structure and other site improvements for a private elementary school for up to 600 pre-Kindergarten through 5 th grade students
ENVIRONMENTAL STATUS	Mitigated Negative Declaration
OWNER	Santa Clara County 4525 Union Avenue San José, CA 95124
APPLICANT	The Harker School 3800 Blackford Avenue San José, CA 95117

FACTS

The Director of Planning, Building and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. The subject site has a land use designation of Public/Quasi-Public on the Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A(PD) Planned Development Zoning District.
3. Following its use as Lewis Parker Elementary School by the Union School District the property was redeveloped in the early 1990s into the Santa Clara County Children's Shelter with 11 buildings comprising approximately 76,000 square feet, including classrooms, cafeteria, living quarters, and play areas.

4. The site is currently occupied by the Children's Foster Care Relocation Intake and Assessment Center operated by Santa Clara County.
5. This Planned Development Permit will allow redevelopment of the existing site with a private elementary school for a maximum enrollment of 600 pre-K through 5th grade students. Initially the school would operate as a preschool, serving up to 120 pre-K students. At campus build-out the preschool use would be replaced with up to 600 K-5th grade students.
6. Nine of the existing buildings will be retained as part of the proposed school. Two of the existing approximately 4,800 square foot classroom buildings built in the 1990s will be demolished.
7. Under the provision of Section 20.80.400(A) of the San José Municipal Code, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.100.
8. A new two-story, 34-foot tall, approximately 17,500 square foot multipurpose building will be constructed near the center of the site surrounded by existing buildings.
9. A new 2,500 square foot pool building, including boys and girls locker rooms, for a new swimming pool will be constructed adjacent to the existing gymnasium building.
10. A new driveway and turn-around will be constructed along the southerly property line for student drop-off/pick-up and queuing.
11. The parking required for the initial preschool use is based on 1 space per 6 children, up to 5 spaces and thereafter 1 space per 10 children. For the proposed 120 pre-K students 14 parking spaces are required.
12. The parking required for elementary schools is based on 1 space per teacher, plus 1 space per employee. With a maximum total of 100 teachers and employees 100 parking spaces are required.
13. The site includes a total of 130 parking spaces. 116 spaces are located in the existing front parking area and 14 new parking spaces are located along the proposed drop-off/turn-around.
14. The site can accommodate an additional up to 160 parking spaces on the proposed new athletic field for special event parking.
15. Vehicular access to the site is provided by two driveways along Union Avenue. Union Avenue is a four-lane north-south roadway that connects Route 85 to the south and Camden Avenue to the north.
16. One Ordinance Size tree, a 60-inch circumference London Plane tree is proposed for removal. The tree is located within the proposed new athletic field/overflow parking area. 127 non-Ordinance Size trees are proposed to be removed. 52 existing trees are to remain and 68 new trees are proposed.
17. The request for a tree removal permit pursuant to the provisions of Chapter 13.32 may be included as part of an application for development permit under the provisions of Title 20.

18. Surrounding the subject site are single-family detached residential uses to the north and west, industrial R&D office uses to the south, and single-family detached residential uses to the east across Union Avenue.
19. Pursuant to the State Guidelines for implementation of the California Environmental Quality Act (CEQA), an Initial Study and Mitigated Negative Declaration were prepared by the Director of Planning, Building, and Code Enforcement for the subject Planned Development Permit. The documents were circulated for public review between August 24, 2012 and September 24, 2012.

FINDINGS

After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, the Director of Planning finds:

1. That the tree is of an affected size, type and condition, and are in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32; and
2. That the location of the trees with respect to the proposed improvement unreasonably restricts the economic development of the parcel in question.

Further, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that under the provisions of Section 20.80.400(A) of the San José Municipal Code, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.100.

1. The Director of Planning has considered, pursuant to Section 20.80.460, the following criteria in evaluating the proposed demolition:
 - a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
 - b. The failure to approve the permit would jeopardize public health, safety or welfare.
 - c. The approval of the permit would not negatively impact the supply of existing housing stock in the City of San José.
 - d. Both inventoried and non-inventoried buildings, sites and districts of historical significance will not be negatively impacted.
 - e. Rehabilitation or reuse of the existing building would not be feasible.
 - f. The approval of the demolition of the building should facilitate a project that is compatible with the surrounding neighborhood.
 - g. Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:
 - h. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.

- i. The proposed project is in conformance with the California Environmental Quality Act.
- j. The benefits of permitting the demolition, removal or relocation of the subject buildings outweigh the impacts of the demolition, removal or relocation.

The Director of Planning, Building, and Code Enforcement concludes and finds, based on analysis of the above facts with respect to the Planned Development Permit findings (Section 20.100.940), that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
 - a. The project is consistent with the site's General Plan Land Use/Transportation Diagram designation of Public/Quasi-Public in that private school uses are allowed in this designation.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
 - a. The proposed project conforms to the approved General Development Plan, in that the General Development Plan allows the proposed school use and the proposed buildings conform to the setback, separation, and height requirements.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:
 - a. The proposed multi-purpose building and pool building are architecturally compatible with the existing buildings that surround or are adjacent to them in terms of consistency of design elements and use of materials.
4. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties, in that:
 - a. A Mitigated Negative Declaration has been adopted for this project that indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning, Building, and Code Enforcement approves, pursuant to Chapter 13.32 (Tree Removal Controls), Part 5 of Chapter 20.80 (Demolition Permit), and to Part 9 of Chapter 20.100 (Planned Development Permits) of the San José Municipal Code, concludes and finds that the proposed project conforms in all respects to the provisions of Title 13 and Title 20 of the San José Municipal Code.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:

- a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, the proposed use of this site or construction has not commenced, pursuant to and in accordance with the provision of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Conformance to Plans.** Except as noted in condition number 5 below, development of the site shall conform to approved Planned Development plans entitled, "Planned Development Permit for The Harker School, Located at 4525 Union Avenue, San José," dated June 25, 2012, last revised August 31, 2012, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
5. **Permit Adjustment Required.** Within 180-days of approval of this Permit the applicant shall secure and agree to implement a Permit Adjustment to address the items listed below to the satisfaction of the Director of Planning, otherwise a Planned Development Permit Amendment shall be required.
- a. Provide detailed plans for modification of existing trash area/enclosure. The enclosure must include sufficient space for storage and collection of trash and recyclables and shall be covered to minimize stormwater intrusion. Any drainage within the enclosure area shall be connected to the sanitary system.
 - b. For any existing buildings that are proposed to be converted to other uses, provide detailed elevations for any exterior modifications.
 - c. Provide details for proposed fences and gates (e.g., around proposed pool).
 - d. Provide details for relocation of existing transformer and generator.

- e. Provide details to show conformance with Zoning Code bicycle parking facility requirements, Section 20.90.060. Bicycle parking for full-time employees shall be provided in long-term bicycle parking facilities and bicycle parking for classrooms shall be provided in short-term bicycle parking facilities.
- f. Construct bus duck-out and bus pad along Union Avenue to the satisfaction of the Director of Public Works. Coordinate with the VTA on the design, timing, and possible joint use of the bus duck-out for both VTA and school shuttle busses. Construct curb, gutter, and sidewalk along Union Avenue frontage.
6. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
7. **Number of Students and Staff.** This school shall be limited to a maximum of 600 Kindergarten - 5th grade students and 100 teachers/staff. Prior to the occupancy of the site with the Kindergarten - 5th grade school a pre-Kindergarten school use is allowed with a maximum of 120 students.
8. **Weekday Hours.** With the exception of those activities permitted in Conditions 11 and 12 below, the daily arrival and pick-up of students shall occur no earlier than 7:00 a.m. and no later than 6:00 p.m., respectively. All other weekday activity shall begin no earlier than 6:00 a.m. and end no later than 10:00 p.m.
9. **Staggered Start Times.** Upper elementary grades (2nd through 5th grades) will begin at 8:00 a.m. and the lower elementary grades (Kindergarten through 1st grades) will begin at 8:40 a.m. The exact start times may be adjusted so long as the start time for upper elementary grades begins at least forty minutes earlier than lower elementary grades.
10. **Vehicular Access During Peak Hours.** The northern driveway shall be two inbound only lanes onto the site and the southern driveway shall be two outbound only lanes during the school's peak AM and PM hours.
11. **Weekend Activities.** Weekend activities utilizing the pool facilities, athletic fields and basketball courts may occur between 9:00 a.m. and 7:00 p.m.
12. **Special Events.** The school may have up to twelve special events per year, including but not limited to graduation, public workshops, and open houses. Special events on weekends or weekdays shall begin no earlier than 9:00 a.m. and end no later than 10:00 p.m. Vehicle parking for special events should be accommodated on-site in the main parking lot and on the athletic field/special event parking area. As part of the school's ongoing coordination efforts, a schedule of special events shall be provided to the neighborhood.
13. **School Generated Travel.** The Transportation Demand Management (TDM) program shall include designated routes for shuttle bus, carpool, and parent trips that utilize primary arterials.
14. **Neighborhood Coordination.** A neighborhood liaison shall be designated for the school and contact information (name, phone number, email) shared with the neighborhood and displayed on a weather proof sign on the project site at the northerly driveway. The neighborhood liaison shall be responsible for ensuring compliance with this permit. The school shall implement ongoing and continual outreach and communication to address neighborhood concerns. The school shall maintain a mailing list and email list of neighborhood residents that would like to be kept informed of school activities, including special events.

15. **Traffic Coordinator.** The school shall designate and provide a traffic coordinator whose responsibilities shall include overseeing traffic operations and providing outreach to the public, employees, and parents.
16. **Annual Neighborhood Meeting.** In addition to on-going and continual neighborhood outreach, the school shall conduct an annual Neighborhood Meeting to engage the surrounding neighborhood in discussions related to the operation of the school site and any concerns the area residents may have. Notification of the neighborhood residents of this meeting shall occur at least 2 weeks prior to the scheduled meeting and be done in writing and distributed in a manner sufficient to accomplish notification. The Annual Monitoring Report required as part of the Transportation Demand Management (TDM) program shall be shared with the neighborhood at the annual Neighborhood Meeting. Summary of notes shall be provided to the Director of Planning, Building and Code Enforcement and Department of Transportation within 30 days of meetings.
17. **Conformance to Mitigation Monitoring & Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development. The following mitigation or avoidance measures are organized by impact category and identify (responsibility for monitoring compliance).
 - a. Biological Resources (City of San José Planning Division, Environmental Review Section Senior Planner). If construction of the project occurs during the typical avian nesting season (February 1 – September 30), the project proponent shall retain a qualified biologist to conduct focused preconstruction surveys for nesting birds no more than 14 days prior to initiation of construction activities in areas that may provide suitable nesting habitat within 300 feet of construction activities. If active nests are found, a suitable construction buffer shall be established by the qualified biologist (typically 300 feet) and no work shall occur within that buffer until September 30. Alternatively, a qualified biologist can conduct weekly nest checks to gauge nestling/fledgling status, and construction may proceed once fledglings have dispersed from the nest provided written concurrence is obtained from DFG. No active nest shall be impacted or removed. For activities that occur outside of the nesting season (generally October 1 through February 1), preconstruction surveys are not required.
 - b. Geology and Soils (City of San José Planning, Director). Prior to the issuance of a grading permit, a design-level geotechnical analysis shall be prepared by a qualified geologist and submitted to the Director of Planning for review and approval for all new structures. The project shall be designed and constructed in accordance with the specific recommendations of the design-level geotechnical investigation.
 - c. Hazards and Hazardous Materials (City of San José Planning Division, Environmental Review Section Senior Planner). Prior to initiation of earthwork activities, the project proponent shall perform soil testing on the project site and analytically test for pesticide residuals and pesticide-related metals arsenic, lead, and mercury. Sampling activities shall be coordinated with the San Jose Environmental Services Department. If contamination is identified in the soil samples above applicable levels, the project proponent shall prepare a Site Management Plan (SMP) to establish protocols/guidelines for the contractor including: identification of appropriate health and safety measures while working in contaminated areas; soil reuse; handling, and disposal of any contaminated soils; and agency notification

requirements. The SMP shall be subject to the review and approval of the appropriate regulatory agency.

d. Transportation (City of San José Planning Div., Environmental Review Section Sr Planner).

- i. The project proponent shall implement an adaptive Transportation Demand Management program, including a comprehensive shuttle bus program, to limit AM peak hour vehicle trips to 370 trips or fewer. The TDM is an adaptive mitigation measure that contains multiple tools to meet the target driveway count of 370 inbound and outbound AM peak hour trips including 20 shuttle trips. The tools could include but are not limited to carpool, shuttle, teacher incentive, pay to drive, etc. All the details of the TDM program have not been determined but the overall goal is defined. The project proponent shall establish a carpool match program to facilitate students living near each other to carpool. The project proponent shall provide buses as necessary to serve the Evergreen/Silver Creek areas in San Jose, Fremont, Palo Alto, Los Altos, Mountain View, Cupertino, Saratoga and Sunnyvale. The TDM Program shall be monitored by conducting driveway traffic counts on a monthly basis to ensure TDM program effectiveness. The driveway counts shall be collected by an independent vendor for the AM peak period between 7 AM - 9 AM with inbound and outbound volumes reported in 15-minute intervals. Driveway counts shall be collected for three consecutive days (Tuesday - Thursday) monthly after the start of the school's fall session. The data shall be collected on days when there are no special events or school holidays (that could bias the traffic volumes).
- ii. A bi-monthly Monitoring Report shall be submitted to the City of San Jose Department of Planning, Building and Code Enforcement, Environmental Review Section, to document the effectiveness of the TDM Program to meet the trip goal cited above. This memorandum shall include the following: 1) descriptions of the TDM Program elements currently in place, and 2) trip generation for the school based on the driveway counts. The project proponent would be considered non-compliant if the trip generation goal is not achieved. If found to be out of compliance for two consecutive months, the project proponent must implement option 1 below; after six consecutive months of non-compliance, the applicant is required to implement option 2 or 3:
 - 1) Increase the TDM activities (such as modifying existing shuttle routes to serve areas with higher concentrations of students, adding new shuttle routes or stops making the use of the shuttle bus mandatory for the required number of students, and increasing the proportion of three and four-person carpools) and attain compliance within four months, which would be demonstrated by new monitoring efforts.
 - 2) Reduce enrollment in the next academic year (enrollment may be increased back to previously approved level with the issuance of a Planned Development Permit Amendment); or
 - 3) Mitigate all traffic impacts in conformance with the City's Transportation Policies.
- iii. This TDM program, associated annual monitoring program, and any modifications to the program shall be subject to review by the City of San Jose Department of Public Works and Department of Transportation.

18. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the issuance of Building permit(s) the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
- a. **Transportation:** A Traffic Impact Analysis has been performed for this project based on 738 AM and 420 PM peak hour trips. See separate Traffic Memo dated 9/20/2012 for additional information.
 - b. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iii. Because this project involves a land disturbance of more than one acre, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - iv. A soils report must be submitted to an accepted by the City prior to the issuance of a grading permit.
 - c. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Based on the project's total new and replaced impervious surface areas, the project will result in an alteration of more than 50% of the impervious surface area of the existing site. Therefore, the entire project site is subject to the stormwater treatment requirements.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - d. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Area (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.
 - e. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

- f. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Union Avenue prior to the issuance of a Public Works Clearance. One hundred percent (100%) of the base fee in place at the time of payment will be due. Currently, the 2012 base fee is \$412 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's 20 City Average Cost Index. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued. (Based on 2012 rate, the fee is \$160,268).
 - g. **Street Improvements:** Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
19. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, PD12-027, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required.
 - d. *Permit Adjustment.* Per Condition #5 above a Permit Adjustment is required.
20. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.
21. **Hours of Construction.** Construction activity within 500-feet of a residential unit shall not be allowed before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or any time on weekends. Construction outside of these hours may be approved through a separate Development Permit Amendment based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building, and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
22. **Construction Noise.** The following standard controls shall be implemented during construction:
- a. Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - b. Locate stationary noise generating equipment (e.g., compressors) as far as possible from adjacent residential receivers.
 - c. Acoustically shield stationary equipment located near residential receivers with temporary noise barriers.
 - d. Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- e. The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
 - f. Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem.
23. **Construction Air Quality.** The project shall implement the following standard measures recommended by the Bay Area Air Quality Management District (BAAQMD) to reduce the air quality impacts associated with proposed demolition, renovation, and new construction:
- a. Any exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 - h. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations
24. **Tree Replacement.** As indicated on the Tree Removal and Mitigation Plan the 128 trees (1 Ordinance size and 127 non-Ordinance size) that are to be removed as part of this project are to be replaced with 164 trees. 68 trees are proposed to be replaced on-site. A donation of \$28,800 (\$300 per additional replacement tree) shall be made to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Our City Forest at (408) 998-7337 x106 to make the donation. A donation receipt for off-site tree planting shall be provided to the Department of Planning, Building and Code Enforcement, Environmental Team within 30-days of removal of the first tree.

25. **Tree Protection.** The following tree protection measures shall be implemented in order to protect trees to be retained during construction:

a. *Pre-Construction Treatments*

- i. The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
- ii. Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
- iii. Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

b. *During Construction Treatments*

- i. No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
- ii. Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
- iii. Supplemental irrigation shall be applied as determined by the consulting arborist.
- iv. If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- v. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE.
- vi. Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
- vii. As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.

26. **Cultural Resources.** The development shall conform to the following standards:

- a. Should evidence of prehistoric cultural resources be discovered during construction, work within 50 feet of the find shall be stopped to allow adequate time for evaluation and mitigation by a qualified professional archaeologist. The material shall be evaluated and if significant, a mitigation program including collection and analysis of the materials at a recognized storage facility shall be developed and implemented under the direction of the City's Environmental Principal Planner.
- b. As required by County ordinance, this project will incorporate the following guidelines. Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site

or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

27. **Lighting.** Lighting shall conform to the Zoning Code and City Council Policy 4-3 Outdoor Lighting on Private Developments. No outdoor lighting of the playfields or pool is allowed with this permit.
28. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
29. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
30. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
31. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
32. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at (408)535-8566 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
33. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
34. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
35. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
36. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
37. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal

Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.

38. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
39. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
40. **Fire Flow.** Required fire flow for the site shall be provided to the satisfaction of the Fire Chief.
41. **Fire Hydrants.** The following shall be provided to the satisfaction of the Fire Chief.
 - a. The average distance between hydrants shall not exceed 300 feet. The maximum distance from any point on street frontage to a hydrant shall be 180 feet. Any exterior portion of all buildings shall be within 400 feet of a hydrant.
42. **Visible Street Numbers.** Street numbers shall be visible day and night from the nearest street, either by means of illumination or by use of reflective materials.
43. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this 5th day of October 2012.

Joseph Horwedel, Director
Planning, Building and Code Enforcement


Deputy

Forwarded to John Baty

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER <i>PD12-027</i>	RECEIPT #
PROJECT LOCATION <i>4525 Union Avenue</i>	AMOUNT <i>\$100</i>
	DATE <i>Oct 15, 2012</i>
	BY <i>Mecra</i>

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

(Separate sheet attached.)

PERSON FILING APPEAL

NAME <i>Jeffrey Pickard</i>	<i>jeff.pickard22@gmail.com</i>	DAYTIME TELEPHONE <i>(408) 482-3846</i>
ADDRESS <i>2042 Barrett Ave</i>	CITY <i>San Jose</i>	STATE <i>CA</i>
		ZIP CODE <i>95124</i>
SIGNATURE <i>[Signature]</i>		DATE <i>10/15/12</i>
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) <i>Property Owner within 1000ft</i>		

CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME		
ADDRESS		
CITY		
STATE		
ZIP CODE		
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS

PROPERTY OWNER

NAME <i>Jeffrey Pickard</i>	DATE <i>10/15/12</i>
ADDRESS <i>2024 Barrett Ave</i>	CITY <i>San Jose</i>
	STATE <i>CA</i>
	ZIP CODE <i>95124</i>

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

TO: City of San Jose Planning Dept.
FROM: Jeff Pickard

RE: PD12-027 Harker School Campus on Union Ave.
SUBJ: Permit Appeal

DATE: October 15, 2012

I respectfully submit this Appeal of CSJ's Planned Development Permit for PD12-027. The reason I wish to appeal this Planned Development Permit is that the document is incomplete. All of the issues specified below have been previously raised during the City's Approval process, both in writing and as public testimony. The Planned Development Permit **should not be adopted** as is until the Initial Study has been updated and additional conditions have been included.

My comments are as follows:

1. p.6, bullet point 9: "Upper elementary grades (2nd through 5th grades) will begin at 8:00 a.m. and the lower elementary grades (Kindergarten through 1st grades) will begin at 8:40 a.m.". This is inadequate. Upper elementary grades should be 3rd-5th grades (300 students) and lower elementary should be K-2nd (300 students) so that the number of cars is divided equally between the two time periods.
2. p.6, bullet point 10: "Vehicular Access During Peak Hours. The northern driveway shall be two inbound only lanes onto the site and the southern driveway shall be two outbound only lanes during the school's peak AM and PM hours." This does not specify that there can be no left turn out of the southern driveway.
 - a. Turning left out of the southern driveway will cause additional traffic chaos.
 - b. Cars exiting left will need to cross two lanes of southbound traffic plus the northbound turning lane, with an estimated 9 car queue.
 - c. This will create a significant back-up in Harker's exiting queue, therefore causing back-up on Union Ave.
 - d. Cars that turn left out of the property onto Union Ave will more than likely make another left turn onto Barrett Ave. so that they can cut through residential neighborhoods and easily access the carpool lane on 85/Bascom. There is no carpool lane on 85/Union so this is not an attractive route for those trying to head North on 85 during peak AM period (according to the TIA, 47% of Harker families will travel 85 South so we can assume that 47% will travel 85 North after they drop off their child at school).
 - e. The left turn request needs to be denied. Additionally, a median island needs to be constructed on Union Ave., preventing this left turn traffic and enforcing a right-turn only.
3. p.6, bullet point 12: "Special Events. The school may have up to twelve special events per year." This is double the number listed on the IS and MND. This change was made after the first Public Hearing on Sept. 26.
 - a. Such significant changes should not be made after a Public Hearing has taken place and neighbors are unaware of changes.

Appeal of Planned Development Permit for Harker

- b. 12 events per year is a significant impact on our local community.
4. p.6, bullet point 13: "The Transportation Demand Management (TDM) program shall include designated routes for shuttle bus, carpool, and parent trips that utilize primary arterials."
- a. This does not **require** all Harker buses and cars to use primary arterials. It only requires that the primary routes be indicated to those that use them. This is inadequate and needs to be addressed.
 - b. The primary arteries are not specified. The names of the roadways to be used needs to be listed.
5. p.6, bullet point 14: "A neighborhood liaison has been designated for the school". This is inadequate. A Citizens Advisory Committee needs to be a requirement of the PDP.
6. p.6, bullet point 16: Annual Neighborhood Meeting "Notification of the neighborhood residents of this meeting".
- 1. Notification radius needs to be specified.
 - 2. It needs to be required that all residents within one mile of the property be notified of all community outreach efforts from Harker.
7. p.7, bullet point 17.d.i "The project proponent shall implement a comprehensive shuttle bus program as part of its Transportation Demand Management (TDM) program to limit AM peak hour vehicle trips to 350 trips or fewer."
- a. Per the TIA (Chapter 5 – Project Conditions – Transportation System Impacts & Mitigation Measures p36, 2nd paragraph) - "Based on the existing Fremont shuttle ridership (25 riders in an area with 35 students) and current subscription to the Palo Alto/Los Altos shuttle being added this fall (35 riders in an area with 60 students), approximately 60 to 70 percent of the students in areas served by shuttle buses could reasonably be assumed to use the shuttle buses at the Union Avenue school site.
 - i. Please refer to the Harker website which discusses bus usage ... <http://news.harker.org/new-shuttle-service-from-peninsula-draws-more-than-two-dozen-riders-daily/>. This article was written on Sept. 18, 2012 and states that "The parent-organized Fremont shuttle has been running for more than 15 years ... That bus has had between six and 11 riders this year.)" This number is significantly less than the 25 riders stated in the IS (and TIA). This article also states that "Harker has introduced its first school-run shuttle, which will serve those on the Peninsula; 25 students are riding it so far.". Again, this number is significantly less than the 35 riders stated in the IS (and TIA).
 - ii. How many buses will Harker use?
 - iii. At the Public Hearing on 9/26, Harker stated that there would be 5 buses.
 - iv. At the Public Hearing on 10/3, Harker stated that there would be 20 buses.
 - v. What is the correct number of buses?
 - vi. How many buses are mandatory for the impact on LOS to be insignificant?
 - vii. The number of buses required to decrease trip generation to 350 needs to be clearly defined.

Appeal of Planned Development Permit for Harker

viii. Use of buses needs to be MANDATORY.

8. p.7, bullet point 17.d.i “The TDM Program shall be monitored by conducting driveway traffic counts on an annual basis to ensure TDM program effectiveness.” Driveway counts are inadequate. The mitigation monitoring program must attempt to count all project-generated traffic and must not be limited to counting only driveway traffic.
 - a. Shuttle buses, street drop-offs, and parents who park and walk their children all produce traffic but under the current traffic counting rules they would not be counted.
 - b. The Traffic Monitoring Plan should count each of these conditions as a vehicle trip:
 - i. Enters the parking lot
 - ii. Exits the parking lot
 - iii. Arrives at the frontage (4525 Union Ave) to wait for, pickup, or unload students or staff
 - iv. Departs from the frontage (4525 Union Ave) after waiting for, picking up, or unloading students or staff
 - v. Arrives and stops/parks along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham to wait for, pick up, or unload students or staff
 - vi. Departs from stopping/parking along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham after waiting for, picking up, or unloading students or staff.
9. p.7, bullet point 17.d.i “Driveway counts shall be collected for three consecutive days (Tuesday - Thursday) monthly after the start of the school’s fall session.” Does “monthly” mean that there will be a traffic count every month while school is in session? How many times per year will a traffic count be performed? Will a traffic count be performed every year that Harker occupies this site?
10. p.7, bullet point 17.d.i -The only traffic mitigation discussed in the PDP is a shuttle bus program.
 - a. The PDP does not prohibit the use of residential streets by buses, carpools, parent trips, even though 98% of students come from outside the neighborhood. This needs to be addressed.
 - b. The PDP does not require the use of, nor specify, approved primary traffic arteries for buses, carpools, parent trips. This needs to be addressed.
 - c. The high volumes of traffic on the following main thoroughfares will encourage Harker’s use of the surrounding local residential streets as a cut-through. Therefore, prohibiting use of local surrounding residential streets needs to be specifically addressed in the PDP.
 - i. The LOS at Camden/Union is currently Level D.
 - ii. Woodard Ave.’s traffic is currently approx. 3,900 to 4,200 vpd.
 - iii. The intersection of Union Ave. and westbound 85 Freeway is currently Level F.
 - d. The PDP does not require that on-site drop off needs to be increased. It should be required that Harker increase the length of their driveway so that more cars can move off of local streets and can stack on-site.
 - e. The PDP does not require any traffic calming devices such as signage. Use of “no left turn”, “no right turn”, “residents only” etc signs needs to be included.

Appeal of Planned Development Permit for Harker

- f. Deferring identification of mitigation measures to future study cannot support a finding that a significant impact is mitigated to a less than significant level, because mitigation remains uncertain. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, a county required hydrological studies as conditions of a use permit, specifying that any mitigation measures suggested by the studies would become requirements of the permit. The Court held that unspecified future mitigation based on a future study was improper.

Thank you for your consideration:

Jeff Pickard