



CITY OF SAN JOSE
 Planning, Building and Code Enforcement
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 San José, CA 95113-1905
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 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:

MND for CSJ PD18-040 Harker Middle School Expansion

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

See attached.

PERSON FILING APPEAL

NAME <i>Maria Arellano</i>	DAYTIME TELEPHONE _____
ADDRESS _____	CITY <i>San Jose</i> STATE <i>CA</i> ZIP CODE <i>95124</i>
SIGN _____	DATE <i>11/18/2019</i>

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME <i>Brian Ahr</i>		
ADDRESS _____		CITY <i>San Jose</i> STATE <i>CA</i> ZIP CODE <i>95124</i>
DAYTIME TELEPHONE _____	FAX NUMBER () _____	E-MAIL ADDRESS _____

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

To: Rosalynn Hughey, Director
Planning, Building & Code Enforcement

Environmental Project Manager
Thai-Chau Le, Thai-Chau.Le@sanjoseca.gov

From (Appellants): Brian Ahr, Charlotte Ahr, Christine Kouvaris, Aine O'Donovan, Kiran Kadambi, Sujatha Venkatraman, Carolyn Robinson, Allyson Robinson, Oscar Siguenza, Nadine Siguenza, Janet Gillis

Subject: CEQA appeal of MND for CSJ PD18-040 - Harker Middle School Expansion at 4525 Union Avenue, San Jose, CA

We respectfully submit this Appeal of CSJ's Mitigated Negative Declaration for PD18-040. The reason we 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. We submitted written public comment on August 22, 2019, to Thai-Chau Le, via email. We spoke at the Director's Public Hearing on November 13, 2019.

Harker Middle School will have a significant negative impact on our community. It will cause excessive traffic on our local streets and will have a serious impact on the entrances and exits to HWY 85. The Mitigated Negative Declaration (MND) does not comply with Envision San Jose 2040 General Plan or adequately address and mitigate many issues, including the following:

- The intensity of use (600 students and 100 staff). This is significantly more than the two previous uses, a children's shelter and a public elementary school, and its use currently as a pre-school for 100 students.
- The impact of increased traffic to Cambrian residents commuting to and from work.
- The impact of increased traffic to Cambrian residents taking their children to Union Middle School, Carlton Elementary school, Leigh High School, Farnham Elementary School, St. Francis Cabrini Elementary and Middle School.
- The use of residential streets as through ways.
- The queuing of cars on residential streets.
- The queuing of cars on Union Ave as they enter the property and the impact of cars turning right and left out of the property on to Union Ave.
- The impact to the residents on Barrett Avenue has not been identified with regard to the proposed two-story building.

We request that the MND not be adopted as is.

A. Intensity of Use

- a. Previously, in PD12-027, the Project Name was "The Harker *School* Campus" and the MND applicable to PD12-027 only referred to a pre-K to 5th grade elementary school. The current focus of the "Harker *Middle School* Expansion Project" has now been significantly altered to a new use with very minimal community input.
- b. The impact of a middle school is greater than an elementary school due to increased onsite activity during and after school, and most likely on weekends (which has been completely ignored by the applicant and MND) causing additional traffic and noise to the neighborhood.
- c. Noise is identified in the MND on page 2 as an item that can have a significant effect on the environment. *The noise that the students will generate from using the campus outdoor areas during morning, recess, and afternoon was entirely omitted from discussion in the MND. In addition, noise that would be generated on the weekend was also omitted in response to public comments to the MND. The only potential noise uses that were discussed on page 113-114 of the MND would be from sports games (field hockey, lacrosse, soccer), at which only 10-20 children would be on the field at one time, along with people in the stands, versus recess or lunch where 600 students will be outside playing and using the outdoor areas each day of the week, multiple times a day. The noise generated by 600 students being outside together was entirely omitted from the MND and is entirely different from noise to be emitted from children playing field sports. Therefore the MND section on noise is incomplete, and should have been addressed as to its level and impact on surrounding homes.*

B. Traffic Monitoring Plan

- a. The traffic monitoring plan previously agreed to in 2012 of monthly monitoring for the first 3 years under the prior permit has now been reduced to annually for the first three years, apparently due to change of policy by the City of San Jose.
- b. Due to the substantial increase in usage of the site, the City should require the applicant to conform to the previously agreed monitoring plan, and if the City finds it burdensome to staff for the prior 2012 plan, then the City should require the applicant to pay the cost for the monitoring pursuant to California Public Resource Code Section 210899(a).
- c. Mitigation monitoring should also include counting of all project-generated traffic and not be only limited to counting driveway traffic. Counting of shuttle buses, street drop-offs, and parents who walk children to school should be included, but under the present MND they are not required to be counted. If parents drop off children on side streets or walk children in to the school, then Harker could potentially enroll more than 600 students but there would be no way to study the impact of the additional students if trips are not counted. Moreover, if asked,

parents of Harker students would be supportive of not driving their car into the facility and instead parking on side streets as it would allow Harker to maintain maximum enrollment and thereby shield from study the additional trips to the school each day. At \$49,000 annual tuition per student, it is likely that Harker would take all actions necessary to protect their enrollment numbers. Even a reduction of 10 students would mean close to a \$500,000 loss in revenue.

- d. The spirit of the traffic monitoring and reduction plan is to reduce trips to Harker overall for all school-associated vehicles, not just those that enter and exit the driveway. This will truly encourage Harker to mitigate vehicle trips to the site, whether a student is dropped off on-site or on a neighboring street, and thereby reduce the impact to the neighborhood.
- e. A traffic monitoring plan should be adopted which includes counts each of the following as a vehicle trip:
 - i. Each entry of the parking lot whether by car or on foot
 - ii. Each arrival but non-entry at the front of the facility which results in a drop off of students or staff
 - iii. Each departure but non-entry at the front of the facility which results in a pick up of students or staff
 - iv. Any arrival and stop/park of a vehicle on Union, Barret, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson or Branham to unload students or staff
 - v. Any departure and stop/park of a vehicle on Union, Barret, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson or Branham to wait for or pick up students or staff
- f. Under California Public Resource Code Section 21089(a), the "lead agency may charge and collect a reasonable fee from a person proposing a project subject to this division in order to recover the estimated costs incurred by the lead agencyfor procedures necessary to comply with [CEQA] on the project."
 - i. This express authority allows the lead agency (City of San Jose) to levy fees to cover the costs of mitigation or monitoring. This project should not impose a burden on city resources; the costs to monitor should be borne by the applicant given that their students will be causing the traffic impact. Fees can cover the costs of agency staff to monitor traffic or fees to hire special monitors or consultants, if needed.

C. Use of Shuttles and Carpools Should be Mandatory

- a. As Harker's VMT of 13.83 will exceed the applicable threshold of 12.21, Harker will be required to implement mitigation measures. However, none of the measures are mandatory. The only way that the VMT can be reduced is via carpool, shuttle bus or use of public transit (which is highly unlikely given that most students reside a significant distance from the school).
- b. The Transportation Analysis (appendix F, page 19) states "In order to prevent the vehicular queues generated during the school peak drop-off and pick-up periods

from extending onto Union Avenue, **it is estimated that 46% of the student population would have to use the school shuttle service.**"

- i. The MND (page 6) only states that a shuttle service will be *provided* to students. It does not state that it is required to be used by 46% of the students. It is critical that this be included in the MND.
- c. In the most recent article available on Harker's website regarding implementation of bus service for its students, "Bus and Transportation Service Adds New Vehicles and Routes to Ease Harker Commutes," dated January 6, 2016, the article states:
 - i. "In response to a growing need, Harker has improved its bus and transportation system over the past couple of years in both the extent of its services and number of vehicles. The school now has a fleet of eight full-size school buses – three of them provided in the last year by annual giving – and has round-trip routes servicing the Fremont area and the Peninsula, as well as a home-to-school route from the Silver Creek area of San Jose. Additionally, intercampus shuttles now operate every morning and afternoon, with morning shuttles traveling between the preschool, middle and upper school campuses, and afternoon shuttles reaching all four Harker campuses. About 100 students now use these services, an increase of about 20 from 2013." See <https://news.harker.org/bus-and-transportation-service-adds-new-vehicles-and-routes/>
 - ii. The article shows that there is limited usage of the school buses (an increase of 20 students using them from 2013 to 2016) and does not talk about any specific measures Harker is taking to require families to use the buses even though they have existed for many years prior to this project.
 - iii. If 46% of students are going to have to use the shuttle to reduce VMT, then that would be 276 students. How can Harker expect to attain ridership of this amount when they only have 100 students using the buses at the present time?
- d. The Transportation Demand Management (TDM) discussed on pages 139-140 of the MND only states that Harker shall offer shuttle buses and carpooling to parents, but do not make it mandatory. Given that it is not possible to reduce the VMT without implementation of these measures, the City erred and should make implementation of shuttle buses and carpooling mandatory. Without requirements from the City, there can be no expectation that Harker can implement the VMT of 12.21 at this site.
- e. Moreover, under the current TDM program, the counting of trips will only occur once per year. There will be a long delay in determining whether Harker will comply with the TDM program, meanwhile, the neighborhood will be impacted with no recourse until the study for the first year is implemented.

- f. It is critical that monthly monitoring be established to ensure initial and ongoing compliance with the TDM report. There is otherwise no recourse for the community and no legal obligation for Harker and its parents to comply.
- g. Harker can otherwise enroll fewer students and employ fewer staff to meet the VMT of 12.21.

D. Staggered Start Times

- a. Staggered start times were agreed to in the previous MND PD12-027 (40 mins apart).
 - i. Staggered start times are needed to reduce vehicle congestion in the AM.
 - ii. The response to public comments C-4 stated the following: "The project has been conditioned to implement staggered school operation hours. The commenter's suggestion for further coordination between existing surrounding public and private schools as part of this condition is acknowledged."
 - iii. While the comment was acknowledged, nothing is being done to implement a strategy to deal with this problem. Specifics for staggered start time implementation should be included in the MND but were not, and were also not addressed in response to public comments to the MND. Therefore the MND is incomplete.

E. Vehicle Queuing Onsite and Offsite

- a. Vehicle queuing onsite and offsite was not specifically addressed in the MND with respect to what time classes would start and how many cars would be needing to drop off children/pick up children based on class start times. If start times are not staggered, then there would be an estimated 679 AM peak car trips (per the MND, page 140) and 315 PM peak car trips. This is only PEAK trips and may not actually reflect the total number of actual trips which could be greater if they are not at PEAK.
- b. However, in order to understand how the vehicle queuing will or will not impact Barrett, Union, and the 85 on/off ramps, the class start times would need to be provided for analysis. As they were not provided, it can only be assumed and evaluated under the premise that the school will employ one start time and end time for all grades. The MND (at page 146) states that only 23 cars can queue in each direction on site, with spots for another 6 cars in the parking area on site (both directions). That amounts to 29 cars on the property at one time. The MND also states on page 145 that there would be a 30 minute peak time for drop offs. What is critically missing from the analysis is how quickly cars can enter and exit the Harker site. Using the assumption that there will be 679 peak trips in the AM, and the peak drop off period is 30 minutes in the AM (see page 146 of MND), this would result in 23.41 cars needing to enter and exit the site PER MINUTE. This would provide each car with less than 3 seconds to enter, drop off and exit the site, which is completely unrealistic. More realistically, it will probably take each

car 3-5 minutes to enter, drop off and exit, which would result in queuing times that will be longer, therefore causing cars to queue and wait to enter the site on Union from either direction and back up. Considering that the MND now states that the driveway placement further south will result in a maximum back-up of approximately one car length shorter than the distance to the Barrett Ave and Union intersection, the back-up will push beyond the maximum allowed distance.

- c. In addition, what is not mentioned is how many cars will leave the site and turn left onto Union, and how many cars can turn left with each light, versus how many cars will exit and return right onto Union. If only 8 cars can exit left onto Union due to the signal length, then this will further cause back up within the site and on the street. Union is a major artery in the morning and insufficient analysis has been performed to examine how many cars will actually queue in light of how quickly the cars can move through the site.

F. VTA Bus Pull Out

- a. The public comments to the MND stated that the VTA bus pull out was not included in the MND although it was included under PD12-027.
- b. The MND failed to address this, and the response to the public comments to the MND provided a wholly unsatisfactory response, which stated: "The existing bus stop along the project frontage does not include a pull-out. The stop will be located south of the proposed new driveway location with the project."
- c. A bus pull out needs to be included in the plans because this will reduce traffic impacts by getting the bus out of traffic's way.

G. Impact on Local Residential Streets

- a. In the CSJ response to the public comments on the MND, it is stated in Response I-7: "The traffic report makes a reasonable assumption that the proposed new signal on Union allowing direct access to the site would make it easier for drivers coming from SR85 to the south and Camden Avenue to the north to get to the site rather than cutting through the surrounding neighborhood. Barrett Avenue does not directly connect Bascom Avenue to Union Avenue and would therefore not be a desirable cut-through route."
 - i. There is only **one reference** to the reduction of cut-through traffic in the entire Transportation Analysis Report, Appendix F. This is on page 52: "the project would install a traffic signal at the northern driveway to facilitate left-turns into and out of the site. Since the traffic signal on Union Avenue would provide direct access to the school for traffic coming from SR 85 and Camden Avenue, neighborhood streets such as Barrett Avenue, Woodard Road and Cole Drive are less likely to experience any cut-through traffic." Supporting information and analysis to substantiate this claim needs to be provided.
 - ii. Currently, Barrett Ave is used as a cut through for those living near Union and wanting access to Hw 85 on-ramp where there is a car-pool lane.

Also, residents who live at the end of Barrett Ave near Union (e.g. 2012 Barrett Avenue) frequently travel from Route 17 to their homes via Bascom and neighborhood streets, thus making the city's assertion it is not a good route, and response to the public comment, incomplete. It needs to be acknowledged that this could be a potential cut-through and traffic analysis needs to be carried out on Barrett Ave as well as on other residential streets that could be potential cut throughs (eg Charmeran, Woodard).

- iii. The Transportation Analysis in the Initial Study:
 - 1. Ignores the impact of traffic to the local surrounding residential streets.
 - 2. Ignores the street parking impact to Barrett Ave and Union Ave.
 - 3. Ignores the traffic backup on southbound Union Ave which will block Barrett Ave.
- iv. The transportation plan should require the applicant to ensure that Harker families will not use Barrett or any other residential street as a cut-through.
- v. The transportation plan should require the applicant to have designated routes for Harker cars and buses - they should be required to utilize primary arteries such as Camden, Union, Hwy 85, and not residential streets.
- vi. The transportation plan should also require Harker to create a Good Neighbor Plan (as they had previously agreed in 2012) and to distribute this to their parents annually. Harker should be required to reinforce on a regular basis that parents should not park on our residential streets or use them as cut-throughs. It is only suggested in the MND that Harker work with the community. Suggestion means Harker could choose not to participate in a Good Neighbor Plan. This is insufficient mitigation against negative impacts; therefore, the MND is incomplete.
- vii. Items to consider in a Transportation Analysis re-evaluation:
 - 1. "No Through Traffic" signs at Barrett/Union and Bascom/White Oaks"
 - 2. The need for a crosswalk at the intersection of Barrett Ave and Union Ave
 - 3. "Keep Clear" marking is needed at the intersection of Barret Ave and Union Ave

H. Prior Permits that Affect Tree Removal and Planting

- a. The MND has failed to take into account requirements in prior permits with regard to tree planting. PD12-027 had certain tree planting requirements that are not being tracked or traced as new permits are introduced.

- b. Per mitigation for installation of Highway 85, the original Children's Shelter was required to plant trees on site in order to offset air pollution from Highway 85. The IS/MND does not address this.

I. Event Parking and traffic

- a. The MND does not address parking during events. Harker has acknowledged that their parking is insufficient for events. Their proposed solution is to have parkable basketball courts to address the insufficiency of parking spaces on site for events and the impact this would have on neighboring streets. However, the MND does not require this. Additionally, if Harker has a basketball event or other event that requires use of the basketball courts, then cars parked on the courts would be unfeasible. This would push parking onto Barrett Avenue.
- b. Additionally, if the number of cars entering for events on campus exceeds the available parking then traffic queueing into Harker will back up onto Union, likely beyond the intersection with Barrett, since this traffic will not arrive at staggered times and not be mitigated with shuttle busses. The MND does not address how the traffic flow during events will impact the surrounding neighborhood. In the MND it is stated that events will not be frequent, but there is nothing that addresses how many events per year will occur and impact the community. Also it does not address the timing of these events and whether any of them would occur at peak times. Therefore, the MND is incomplete. We propose that all events are required to occur during off-peak hours to mitigate any impact.
- c. The MND does not address the number of VMT trips for events nor does it address any mitigation of traffic during these events. The MND does not address whether the car pools and shuttle busses or other mitigation is required for events to maintain the reduction in VMT. It is indicated that the number of events will not be frequent, but there is nothing that addresses how many events per year will occur and impact local traffic. Given that Harker will have its traffic assessed only annually it is unlikely that the impact of traffic during events on the community will be mitigated unless there is specific language in the permit on this issue. Therefore the MND is incomplete.

J. Land Use

- a. Impact on neighboring residents on Barrett Avenue and Esther Drive with regard to building height, shading and appropriate setbacks, has not been fully addressed in the MND other than to indicate the buildings are at least 20' from residences. Buildings could be moved back further from the fence lines to increase privacy for residents and to protect children from viewing inappropriate behavior in neighbor's yards or homes.
- b. Shading and privacy have still gone unaddressed in response to public comments to the MND, and the MND is therefore incomplete with respect to these items.

- c. Additionally, the MND does not state the further impact of building height on residents on Barrett with regard to the view of Mt. Thayer and the surrounding peaks. These mountains are currently viewable from back yards all along Barrett and many residents would be affected.

K. Contribution to Community

- a. Under the 2012 permit, Harker had committed to being a good neighbor and communicating with all neighbors. As described at the Public Hearing, communication from Harker has been minimal to non-existent. For example, only houses within 1000ft of the school were notified of the one community meeting (in the past 7 years) held to discuss the new plans. There were ~8 neighbors in attendance. Per the Public Hearing, Harker had committed in 2012 and was expected to uphold the following:

- i. Ongoing outreach/Neighborhood coordination.
- ii. Installing a Traffic Coordinator
- iii. Holding an annual neighborhood meeting so as to engage with neighbors.

We ask that the following be required:

- iv. All communication to extend to all neighbors within the Bascom/85/Camden/Leigh boundary.
 - v. Notification to include paper mailers as well as email communication. Harker to commit to collecting emails for all neighbors who wish to be contacted via email.
 - vi. Clear and visible contact information for the Traffic Coordinator to be displayed outside the school.
- b. Under the 2012 permit, Harker had previously committed to contribute \$75,000 towards the community for vehicle calming and pedestrian safety. These funds could have been used for signal improvement, crosswalk addition, and expansion of bicycle lanes. Now under the current permit, the inclusion of these funds is GONE. With such an expansion onto community resources and environment, the applicant should be required to contribute to the community.
 - c. Under the 2012 permit, Harker had also committed to making their facility available for limited community use. This also is no longer available.
 - d. Harker students may walk to Cambrian Park Plaza to eat or shop, but as there is NO sidewalk on the south side of Union, they will have to walk along Union until reaching Woodard. However, at Woodard, there is very little protection for pedestrians due to the fact that the light is a full green for all vehicles and pedestrians are crossing in the pathway of vehicles wishing to turn left. It is unsafe because pedestrians never have an opportunity to cross the street when they are protected from cars turning left. Cars give little regard for the pedestrians and frequently turn left in front of pedestrians rather than waiting for them to cross the street first.

L. Summary of Changes that should be addressed

For reference, these items were agreed to in 2012. These are no longer included in the permit and we ask that the permit be amended to include:

- a. Staggered start times which will be 40mins apart. (staggered start times are agreed to but not the timing).
- b. Number of students is limited to 600. If Harker is not in compliance with the permit, they will be required to reduce enrollment in the next academic year.
- c. Harker has committed to transporting 180 children using buses.
- d. Restricting cars through the residential streets. The permit includes designated routes for Harker cars and buses - they are requested to utilize primary arteries - Camden, Union, Bascom. Harker will create a Good Neighbor Plan and distribute to their parents annually. They will also reinforce on a regular basis that parents should not park on our residential streets or use them as cut-throughs.
- e. Counting of pedestrians entering and exiting the school. This will be performed four times a year and will be a good indicator as to whether parents are using residential streets to park and walk to the school.
- f. Monthly counts of cars entering and exiting the school (for three years) to ensure that Harker has not exceeded their limit of 370 peak hour vehicle trips.
- g. Measure the average daily volumes of traffic on residential streets prior to the occupation of the school. Remeasure when school is in session. This will be a good indicator of whether additional efforts are required by Harker to communicate with parents about proper student drop-off procedure and travel routes.
- h. Neighborhood outreach - Harker will have a neighborhood liaison and a traffic coordinator and these will interact with neighborhood associations in our community like the CCC.
- i. Harker to contribute \$75,000 for vehicle calming and pedestrian safety improvements as part of the permit.



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NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER	RECEIPT # <u>1322591</u>		
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)	AMOUNT <u>\$250</u>		
	DATE <u>11/18/2019</u>		
	BY <u>Each J</u>		
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:			
<u>MND for CSS PD 18-040 Harker Middle School Expansion</u>			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			
<u>See attached.</u>			
PERSON FILING APPEAL			
NAME <u>Brian C. Ahr</u>	DAYTIME TELEPHONE [REDACTED]		
ADDRESS [REDACTED]	CITY <u>San Jose</u>	STATE <u>CA</u>	ZIP CODE <u>95124</u>
SIGNATURE [REDACTED]	DATE <u>11/17/19</u>		
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS			
CITY			
STATE			
ZIP CODE			
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

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