

Exhibit E – Staff Response to Mitigated Negative Declaration (MND) Appeal of PD18-040

A timely appeal of the environmental report (MND) for the Site Development Permit, was filed on November 18, 2019 by Mr. Brian Ahr. The project appellants include: Brian Ahr, Charlotte Ahr, Christine Kouvaris, Aine O’Donovan, Kiran Kadambi, Sujatha Venkatraman, Carolyn Robinson, Allyson Robinson, Oscar Siguenza, Nadine Siguenza, and Janet Gillis

Comment 1: 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.

Response 1: This comment is to reiterate that the appeal is based on comments previously made at to the Mitigated Negative declaration during the public circulation period and on the date of the Director’s Public Hearing. This comment does not raise any specific environmental concerns under CEQA, and therefore, no specific response is required. .

Comment 2: 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.

Response 2: The appellant is correct; the Harker Middle School Expansion Project is different from the project proposed under File No. PD12-027 (Harker School Campus). Therefore, the applicant was required to file a new Planned Development Permit (File

No. PD18-040) and prepare a new environmental document to review the impacts of the proposed Middle School, including a Transportation Analysis (TA).

As part of the stand-alone Initial Study/Mitigated Negative Declaration (IS/MND), the physical impacts of the proposed demolition and construction of new buildings were analyzed based on the City's thresholds as it pertains to CEQA. As part of the TA (appendix F of the IS/MND), a transportation analysis was completed to evaluate the environmental effects resulting from the increase of 480 students, the difference between the current 120 students to the new 600 students.

The analyses in the IS/MND are based on impacts to the existing environment and regulatory settings at the time of the preparation of the IS/MND (July 2019). As stated in the IS/MND Section 4.17 Transportation/Traffic and the TA (appendix F of the IS/MND), in 2018, the City adopted a new Transportation Analysis Policy (City Council Policy 5-1) consistent with the California Senate Bill 743 (SB 743) and the City's goals as set forth in the City's Envision San Jose 2040 General Plan. This Policy establishes the threshold for transportation impacts under CEQA and replaces the previous Council Policy 5-3. As the project was submitted and scoped after the adoption of the City Council Policy 5-1 and pursuant to Council Policy 5-1, the City evaluated the project's Vehicle Miles Traveled (VMT), the CEQA threshold for impacts.

As explained on page 138 of the IS/MND and in the TA (appendix F of the Initial Study), the City has developed the San José VMT Evaluation Tool (sketch tool) to streamline the analysis for residential, office and industrial projects and the focus of the tools on residential and employment uses as those are two main VMT generators. The VMT Evaluation Tool has been developed to assess expected VMT based on a variety of factors. These factors include the project's location and the characteristics of the location that influences VMT such as proximity to complementary land uses, transit, and other non-auto transportation options. As the tool does not have the specific use of school as an option, the project's VMT was analyzed by converting project trip generation estimates to an equivalent office square footage to obtain project VMT, which represents the best available information and methodology for VMT analysis of this use at the time of the completion of the IS/MND and associated TA. Furthermore, by considering all students and employees of this proposed use as VMT generators, it yields a more conservative analysis.

The results show that there could be a significant impact to transportation under the City Council Policy 5-1. Therefore, mitigation measures (MM TR-2.1 and 2.2) were incorporated into the Mitigation Monitoring and Reporting Program (MMRP) and permit and the applicant is required to complete all applicable mitigation measures prior to issuance of applicable City permits or during the life of the project. With implementation of the mitigation measures, the VMT impacts would be reduced to a less than significant level, consistent with the CEQA guidelines.

While not part of CEQA analysis, the intersection queuing was also analyzed in the Local Transportation Analysis (LTA) to understand operational effects and was included in the IS/MND and associated TA (appendix F of the IS/MND). As part of the LTA included in the TA, the following nine intersections were evaluated for level-of-service analysis:

- Union Avenue and Camden Avenue (CMP)
- Union Avenue and Woodard Road
- Union Avenue and Charmeran Avenue
- Union Avenue and Cole Drive
- Union Avenue and SR-85 Westbound Ramps
- Union Avenue and Samaritan Drive/SR Eastbound On-Ramp
- Samaritan Drive and SR-85 Eastbound Off-Ramp
- SR-85 northbound diagonal on-ramp from Union Avenue – AM peak-hour
- SR-85 southbound diagonal on-ramp from Union Avenue – PM peak-hour

It should be noted that trips generated by the existing public (as well as private) schools in the area were also accounted for in the LTA. Results of the analysis to these signalized intersections are available in the Table 4.17-1 of the IS/MND. Based on the analysis (Table 6 of appendix F of the IS/MND), the project would not cause the intersection's critical-movement delay to increase by four or more seconds and the V/C to increase by 0.01 or more compared to background conditions. Therefore, the project would not have an adverse effect on traffic operations at this intersection.

The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft IS/MND and associated appendices. Therefore, the IS/MND and associated document are adequate in its analysis of the proposed project.

Comment 3: We request that the MND not be adopted as is.

Response 3: The comment does not identify any specific environmental issue under CEQA to support the assert that the City should not adopt the MND; therefore, no specific response is required.

Comment 4: 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.

Response 4: The appellant is correct; the Harker Middle School Expansion Project is significantly different from the project proposed under File No. PD12-027 (Harker School Campus). Therefore, the applicant was required to file a new Planned Development Permit (File No. PD18-040) and prepare a new environmental document to review the impacts of the proposed Middle School, including traffic and noise. The Harker Middle School project followed the City Council Policy 6-30 for public outreach. A development sign was posted on-site informing the neighborhood of the proposed development and of an upcoming community meeting. The community meeting was held in coordination with the Department of Planning, Building and Code Enforcement and Council District 9's office on December 13, 2018. A notice of the community meeting was sent to owners and tenants within 1,000 feet of the project site. The applicant team also coordinated with the Cambrian Community Council to attend one of their meetings to present the project to the community and has hosted several other meetings with surrounding neighbors. Additionally, at the request of the community, the City created a project website updated with the project's plans and information.

Refer to Response 2, above, for additional information about transportation analysis methodology and approach in the IS/MND. Operational noise impacts were analyzed based on new proposed outdoor uses (i.e., school sport activities) and the location of where those activities would happen (appendix E of the IS/MND).

An Environmental Noise and Vibration Assessment (appendix E of the IS/MND), prepared in September 2018, revised in May 2019, for the project included modeling of typical outdoor activities that would occur in the sport fields of a school at the outdoor turf areas and compared the analysis to potential impacts to the nearest sensitive receptors adjacent to the project site. The scenario of the maximum number of students to be using the fields at once is not the typical operations of the proposed project and, therefore, was not assumed as part of the analysis. Furthermore, the modeling of the noise analysis was based on data from similar activities from other schools as it presents the best assumption for noise assessment of these type of uses. The outdoor activity areas are located in the middle of the project site. The area is shielded by intervening school buildings and an

existing 7-foot tall concrete wall that would attenuate sound. Based on the modeling of the types of activities to take place in the outdoor areas, the normal operation of the site with students using the outdoor fields were found to not result in a day-night-level increase of more than 3 dba DNL. Therefore, noise is not a significant impact under CEQA for the project.

The noise section of the IS/MND is complete and no additional analysis was required as part of the response to this appeal.

Comment 5: 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 agency....for 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.

Response 5: As part of the IS/MND and TA, the project is required to implement mitigation measures MM TR-2.1 and 2.2 which would require annual monitoring to ensure the trip cap is met. These mitigation measures include monitoring for the transportation lifetime of the project and not only for the first three years (refer to MM TR-2.1 on page 139 of the IS/MND).

As previously stated in Response 2 above, and in the IS/MND, TA, and associated documents, the project was reviewed under the current City Council Policy 5-1 and new mitigation measures were required based on the results of the analysis under VMT. Monitoring will include pedestrian and vehicular counts at the driveway, which is sufficient to monitoring user trips. Monitoring plans that document the project counts at the driveway will be prepared by a qualified transportation engineer and will be reviewed by the City on an annual basis.

Furthermore, pursuant to the project's Transportation Demand Management (TDM) Program, dated January 10, 2020, surveys options to lower the number of trips. The project has to implement the measures in MM TR-2.1, but has the option to implement more as long as it meets the trip cap. Furthermore, TDM conditions of the permit compliments the MM TR-2.1 in term of requirements for implementation of TDM Plan. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices. Therefore, the IS/MND and associated document are adequate in its analysis of the proposed project.

Comment 7: 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.

Response 7: A project recommendation is for the implementation of staggered start time for the project or implement equivalent measures to address potential intersection queuing, site access, on-site circulation, and parking. Alternatively, instead of staggered time, implement additional shuttle service so that half of the students use the school shuttle buses to reduce vehicle queuing before and after school could still meet the on-site operation goals. As indicated by the applicant, staggered start time for middle schools are difficult due to subject-focused courses and did not select this as an option for implementation. Therefore, school shuttle buses are proposed in the TDM and is consistent with the recommendations from the appendix F of the IS/MND.

A TDM, dated January 10, 2020 has been submitted to the City's Public Works Department. Pursuant to the City Council Policy 5-1, the project would have potential impacts to VMT and therefore, are required to implement mitigation measures TR-2.1 and 2.2. These measures were identified based on the existing VMT methodology to reduce the project VMT to 10.37 per employee/student and therefore, would reduce the project impact to less than significant pursuant of CEQA.

The LTA portion of the appendix F of the IS/MND (Transportation Report) have studied and identified additional conditions to address potential issues for operational issues such as parking, site access, and on-site circulation. Applicable conditions are made as part of the permit. However, these issues did not result in a significant CEQA impact pursuant to the requirements in the City Council Policy 5-1. For these reasons, the mitigation measures identified in the IS/MND is adequate and no new mitigation measures are required.

The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft IS/MND and associated appendices. Therefore, the IS/MND and associated document are adequate in its analysis of the proposed project.

Comment 8: 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.

Response 8: Refer to Response 2 for explanation on CEQA threshold of the IS/MND as it pertains to transportation. Pursuant to the City Council Policy 5-1, a separate section (the LTA) of the Transportation Report (appendix F of the IS/MND) analyzed queuing, on-site circulation, and parking as it pertains to the proposed project. Pursuant to the CEQA Guidelines checklist and requirements, these operational aspects of the transportation report are analyzed to, ensure the operation and design of the project is in conformance with the City's standards. The LTA also applies the City's methodology of peak hours analysis pursuant to City's policies and industry standards to analysis transportation impacts and effects.

The LTA acknowledges that the drop-off/pick-up aisle as shown on the project site plan would measure approximately 580 feet long and would accommodate approximately 29 cars inbound and 29 cars outbound (assuming a car length of 20 feet). Additional

queueing space for approximately 11 vehicles inbound and 11 vehicles outbound would be facilitated by the two parking aisles located to the south of the proposed signalized project driveway. In order to facilitate on-site student pick-up/dropoff operations by shuttle buses and guarantee efficient circulation of these shuttles within the parking aisles, the project would implement on-site circulation patterns during the peak pick-up and drop-off time periods at the school. School staff members or parent volunteers would be stationed at the drop-off/pick-up area during school peak hours to ensure student safety and to direct vehicles to pull as far forward as possible to make effective use of the drive aisle queuing space.

With the condition of approval, the queuing does not result in adverse effects under the requirement of the LTA. Furthermore, pursuant to CEQA, the project has been required to analyze VMT and mitigation measures (TR-2.1 and TR-2.2) are required and has been conditioned in the permit. The analysis and mitigation measures identified in the IS/MND are legally adequate under CEQA and no new analysis or mitigation measures are required.

Comment 9: 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.

Response 9: As previously stated, the project completed a new IS/MND and TA based on the existing environmental and regulatory setting at the time of the preparation of the IS/MND and associated technical reports to evaluate the operation of the school (including new number of students) and construction of the new buildings. Based on the analysis disclosed in the TA and under CEQA (i.e. City Council 5-1), MM TR-2.1 and 2.2 are required as mitigation measures and as there are no CEQA impacts to public transportation (Section 4.17.2 of the IS/MND), no measures regarding a bus pull out was required. As previously mentioned in the Responses to Comments of the IS/MND (available at www.sanjoseca.gov/negativedeclarations), the bus location would be relocated across the street with the new proposed signal. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft IS/MND and associated appendices. Therefore, the IS/MND and associated document are adequate in its analysis of the proposed project.

Comment 10: G. Impact on Local Residential Streets

a. In the CSJ response to the public comments on the MND, it is stated in Response 1-7: "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

Response 10: Refer to Response 2 for reiteration of City Council Policy 5-1 and the role of VMT as a requirement for CEQA impact analysis. The comments regarding impacts to local residents are existing neighborhood operational issues that would not affect the CEQA analysis under City Council Policy 5-1. Pursuant to City Council Policy 5-1, a TA was completed for the project which includes VMT and an LTA analysis. Under the TA, existing conditions of the neighborhood were observed and documented. VMT were analyzed and determined that mitigation measures are required to reduce VMT to the baseline of the area (MM TR-2.1 and TR-2.2). However, existing cut-through issues of the neighborhood does not affect the VMT analysis pursuant to the City's VMT methodology. As part of the LTA, the analysis includes operational analysis and whether the project would worsen the existing conditions in terms of level of service at signalized intersections (refer to Response 2), queuing and overall operation of the proposed project and site. Furthermore, conditions of approval pertaining to transportation and pedestrian monitoring are part of the project approval and include the following:

- Pedestrian Counts: The applicant shall conduct counts of the number of pedestrians entering and existing the site. Such counts should be conducted four times a year, twice during the fall semester and twice during the spring semester, and should fall on days when driveway traffic counts (as outlined in the Transportation Demand Management Plan) are also being conducted. Such counts shall not be used to determine wither the applicant tis meeting their trip cap, but shall instead be advisory to the applicant as a means to determine whether additional efforts should be made to communicate with parents about proper student drop-off and pick-up procedures.
- Transportation Demand Management Plan: Implement Transportation Demand Management (TDM) Plan. The Transportation Demand Management plan ("TDM Plan"), prepared by Hexagon Transportation Consultants, Inc., dated January 20, 2020, is on file with the Department of Public Works and is incorporated fully herein by this reference. The project is required to submit an annual monitoring report (and pay associated administrative costs for the City's time to review) that measures the effectiveness of the approved TDM plan, in a form approved by the Director of Public Works. The report shall be provided to the City on or before each June 30th for the reporting period of the prior calendar year. Additional TDM measures, or changes to existing TDM measures, may be required or reduced enrollment in the next academic year at the discretion of the Director of Public Works, if the TDM measures are not effective in meeting the trip cap. (Enrollment may be increased back to previously approved level with the issuance of a Planned Development Permit Amendment.)

- **Public Use of School Facilities.** The school shall receive and consider (but shall not be obliged to grant) requests for public use of the facility.
- **Neighborhood Intrusion.** Periodic data collection of Average Daily Traffic (ADT) volumes on nearby residential streets prior to the occupation of the school during the school session to measure traffic volume change. Such data should be collected Tuesday, Wednesday, or Thursday under normal traffic conditions. At least one such data collection shall be conducted during the first year of the Middle School operation. Such data collection should be advisory to the applicant as a means to determine whether additional efforts should be made to community with parents about proper student drop-off and pick-up procedures.
- **Neighborhood Improvements.** The applicant has offered \$75,000 to the City, and the City accepts said offer to be used to fund any traffic calming or pedestrian improvements in the surrounding area (such as radar signs, crosswalks or islands) that, in consultation with the neighborhood and the Neighborhood Intrusion data, may be deemed appropriate.

The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft IS/MND and associated appendices. Therefore, the IS/MND and associated document are adequate in its analysis of the proposed project.

Comment 11: 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.

Response 11: The referenced Children's Center project is Planned Development Permit PD91-021. This permit required adherence to the tree mitigation requirement set forth in the Planned Development Zoning District PDC91-077. The Children's Center project PD Permit was superseded by the Harker Elementary School PD Permit, PD12-027, which also required tree mitigation in accordance with the Planned Development Zoning District requirements.

Although the current project, PD18-040, would supersede previous File Nos. PD12-027 and PD91-021, the project would also be required to adhere to the Planned Development Zoning tree removal standards as well as the more stringent city's Standard Permit Condition tree replacement ratio.

The General Development Standards require ordinance-size trees which are removed to be replaced by at a ratio of 4:1, trees 12-18 inches in diameter replaced by at a ratio of 2:1 and trees under 12 inches replaced at a ratio of 1:1. The project site has 154 trees. The

project would remove a total of 46 trees including two (2) trees with a diameter above 18 inches, fourteen (14) trees with a diameter between 12 and 18 inches, and thirty (30) trees under 12 inches in diameter.

The PD18-040 permit's standard environmental permit condition No. 30.b.i, outlines the more stringent tree replacement ratios (See Exhibit A). The project is required to replace removed trees (46 trees including 15 ordinance size trees) at the following ratios:

Table 4.4-2: Tree Replacement Ratios

Table 4.4-2: Tree Replacement Ratios				
Circumference of Tree to be Removed¹	Type of Tree to be Removed²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

¹ As measured 4.5 feet above ground level
² X:X = tree replacement to tree loss ratio
³ Ordinance-sized tree

Notes: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size.
A 38-inch tree equals 12 inches in diameter.
A 24-inch box tree = two 15-gallon trees
Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.

The project would require a total of 67 replacement trees. Thirty-four trees are proposed to be replaced on-site and the remainder of the trees would be replaced through an in-lieu tree replacement fee to the City. Overall, the identified concerns do not negate the Planned Development Permit Findings for approval outlined in the PD permit.

Furthermore, as described in the Responses to Comments to the IS/MND prior to the Director's Hearing, the mitigation measures described in this IS/MND are prescribed to address potentially significant impacts of this project, and it is assumed that any mitigation measures associated with the previously approved project on the site or other

projects around the area have been implemented. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices. Therefore, the IS/MND and associated document are adequate in its analysis of the proposed project.

Comment 12: 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.

Response 12: While it is not a CEQA issue, the IS/MND has discussed the parking requirements and proposed parking operation. As part of the project condition, the condition for Special Events and Weekend Activities from the previous approved permit, which limits the number and hours of special events and weekend activities for the life of the project, will be part of this proposed permit. The condition ensures that weekend activities would only occur from 9am to 7pm and only twelve special events are allowed per year. Event parking off-site would be in violation of the PD permit. The noise study which found the operations of the school and school activities (such as special events) would not exceed the General Plan noise threshold such as Policy EC-1.1, EC-1.2, and EC-1.3.

Furthermore, pursuant to the Policy 5-1, VMT and trips generations are two separate standards for analysis. Under VMT analysis, the project would not result in significant impacts provided that mitigation measures are implemented.

Comment 13: 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.

Response 13: The City does not have established threshold for shade on private properties while there are threshold on shading to public parks within the Downtown Area. There is no threshold for the protection of private views under CEQA. Neither the City of San José nor any other regulatory body has thresholds for shading of private property. As such, temporary shading of private property is not an impact under CEQA. Under CEQA, Section 4.1 Aesthetics was completed according to the checklist and guidelines of CEQA impacts to scenic resources, obstruction or degradation of scenic resources, degradation of existing visual characters from public views, and substantial source of new light or glare sources.

As stated in the Responses to Comments to the IS/MND, Section 4.1.2 of the IS/MND addresses the aesthetic impacts of the project to the existing environment, including the height of the proposed new classroom building. The classroom building has a maximum height of 34 feet, with the first story being setback 21 feet, 9.5 inches from the adjacent rear yards along Barrett Avenue. and the second story being set back 33 feet, 8.5 inches. These setbacks are greater than the minimum required 20-foot setback of the existing PD Zoning on the site, and greater than the required minimum 20-foot rear setback of the existing R-1-8 zoning district of the adjacent Barrett Avenue properties. In addition, the proposed height conforms to the 34-foot building height limit of the existing PD Zoning on the site, and is less than the 35-foot building height limit of the R-1-8 zoning district.

Furthermore, as state in Section 4.1.1.2 of the IS/MND, the project site and the surrounding area are relatively flat and, as a result, the site is only visible from the immediate area. Visibility of the nearby mountains and hills are limited from the ground floor. As the new buildings would result in a height structure, however, the maximum

height of the proposed classroom building (34 feet) would not differ substantially from the height of the existing classroom buildings (30 feet).

As the height of the new buildings will not be substantially different than the existing residential neighborhoods or the existing buildings on site, the new buildings would not result in a degradation of exiting visual character or quality of public views, therefore, does not result in significant impact under CEQA. Therefore, the comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft IS/MND and associated appendices.

Comment 14: 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.

Response 14: As part of the MM TR-2.1, a TDM coordinator will be required as part of project operations. Based on the analysis of the IS/MND and associated technical reports, the IS/MND cannot require additional measures and conditions that are beyond the impacts of CEQA. Based on the IS/MND, mitigation measures are required for construction air quality, biological resources, hazards, noise, and transportation. There are no impacts that would result the extension of the proposed project to be community space as a mitigation measure or condition. The project also does not require pedestrian improvements beyond the project frontage.

Furthermore, the project will be contributing up to \$75,000 toward neighborhood transportation and traffic calming measures, dependent on the results of the annual volume studies, monitoring, and community outreach (refer to Condition No. XX in the Planned Development Permit Resolution). The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices.

Comment 15: 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.

Response 15: Refer to Response 10 . The comment does not change the analysis of the project. The comment does not include new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft IS/MND and associated appendices. Therefore, the IS/MND and associated document are adequate in its analysis of the proposed project.