



# Memorandum

**TO:** HONORABLE MAYOR

**FROM:** Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** February 24, 2020

Approved

*D. DSYL*

Date

*2/26/2020*

**COUNCIL DISTRICT: 9**

**SUBJECT: ADMINISTRATIVE HEARING ON THE APPEALS OF THE PLANNING DIRECTOR'S (i) ADOPTION OF THE HARKER MIDDLE SCHOOL EXPANSION PROJECT MITIGATED NEGATIVE DECLARATION IN ACCORDANCE WITH CEQA; AND (ii) APPROVAL OF PLANNED DEVELOPMENT PERMIT NO. PD18-040 FOR THE HARKER MIDDLE SCHOOL EXPANSION PROJECT**

**RECOMMENDATION**

- (a) Conduct an Administrative Hearing to consider the Appeals of the Planning Director's (i) adoption of the Harker Middle School Expansion Project Mitigated Negative Declaration in accordance with CEQA and (ii) approval of Planned Development Permit No. PD18-040 for the Harker Middle School Project, which permits the demolition of three existing academic buildings, and a portion of an auditorium/gym building totaling approximately 19,000 square feet, and the construction of a 2-story classroom building, an addition to the existing auditorium/gym resulting in approximately 20,542 square foot building, and site improvements including the removal of fifteen ordinance size trees, circulation improvements including the installation of a traffic light on Union Avenue, landscaping and the addition of sports courts and a field for a private middle school with up to 600 students on an approximately 7.7-gross acres lot located at 4525 Union Avenue.
- (b) Adopt a resolution denying the environmental appeal and adopting the Harker Middle School Expansion Project Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Program, and finding that:
  - (1) The City Council has read and considered the Initial Study/Mitigated Negative Declaration (IS/MND) for the Harker Middle School Expansion Project and related administrative record in connection with Planned Development Permit No. PD 18-040; and
  - (2) The Harker Middle School IS/MND was prepared in full compliance with the California Environmental Quality Act (CEQA) of 1970, as amended, together with State and local implementation guidelines; and

- (3) Adoption of the Harker Middle School Project MND reflects the independent judgement and analysis of the City of San José; and
  - (4) Preparation of a new environmental document is not required because the IS/MND thoroughly and adequately analyzed the project and the environmental appeal does not raise any new significant impacts that have not already been analyzed or addressed in the IS/MND in accordance with Public Resources Code (PRC) Section 21083 or CEQA Guidelines Sections 15073 and 15185.
- (c) Adopt a resolution denying the permit appeal and approving, subject to conditions, Planned Development Permit No. PD18-040, for the Harker Middle School Expansion Project to allow the demolition of three existing academic buildings and a portion of an auditorium/gym building totaling approximately 19,000 square feet and the construction of an approximately 39,000-square foot, 2-story classroom building, an addition to the existing auditorium/gym resulting in an approximately 20,542 square foot building, and site improvements including the removal of fifteen ordinance-size trees, circulation improvements including installation of a traffic light on Union Avenue, landscaping, and the addition of sports courts and a field for a private middle school with up to 600 students on an approximately 7.7-gross acre site, on the West side of Union Avenue, 100 feet southerly of Barrett Avenue, (4525 Union Avenue).

## **OUTCOME**

Denying the environmental appeal and adopting the Mitigated Negative Declaration would allow the City Council to consider the appeal of the Planned Development Permit. If the permit appeal is also denied, the project applicant would be able to move forward with the building permit phase of the project to allow a middle school use with a maximum enrollment of 600 middle school students (grades 6-8) on an approximately 7.7-gross acre site.

Granting the environmental appeal would void both the Planning Director's adoption of the Mitigated Negative Declaration and approval of the Planned Development Permit. The project applicant would be required, although not necessary, to prepare a new or revised environmental document prior to reconsideration of the proposed project. Alternatively, the project may not take place at all.

## **EXECUTIVE SUMMARY**

The project site located at 4525 Union Avenue is currently used as the Harker Preschool Campus with an enrollment of up to 120 preschool students. Existing development on the site includes: five one-story classroom buildings; a two-story gymnasium; one-story music/drama class building; administration buildings (which front Union Avenue); a paved parking lot; and a student drop-off area. The preschool campus also includes playgrounds, basketball courts, turf fields, and landscaping.

The Planned Development Permit, PD18-040, and environmental document for the proposed project were considered and approved at the Planning Director's Hearing on November 13, 2019. The proposed project includes site improvements to an existing pre-school campus to establish a private middle school use with a maximum enrollment of 600 middle school students (grades 6-8) on the approximately 7.7-gross acre site. Site improvements include approximately 19,000 square feet of demolition, construction of a two-story, 39,000-square foot classroom building and addition to a gym, circulation and landscaping improvements.

A timely appeal (Exhibit B) of the Environmental Determination was filed on November 18, 2019, by Ms. Maria Arellano. The appellants include: Mr. Brian Ahr, Ms. Charlotte Ahur, Ms. Christine Kouvaris, Ms. Aine O'Donovan, Ms. Kiran Kadambi, Ms. Carolyn Robinson, Ms. Allyson Robinson, Mr. Oscar Siguenza, Ms. Nadine Siguenza, and Ms. Janet Gillis. The environmental appeal claims the IS/MND document is incomplete and it does not comply with the Envision San José 2040 General Plan or adequately address:

- The intensity of the middle school use with 600 students and 100 teachers
- Increased traffic impacts on the Cambrian residents including request for a traffic monitoring plan, mandatory use of shuttles and carpools, staggered start times, vehicle queuing on residential streets, VTA Bus pull out, and cut-through traffic on residential streets
- Tree removal
- Special Event traffic and parking
- Impacts of the two-story classroom on residents on Barrett Avenue.
- Contributions by Harker to the community

As discussed in this memorandum, the IS/MND was thoroughly prepared, based on facts and reasoned analysis and provides adequate details and information for the decision makers to consider the project.

A timely appeal of the Planned Development (PD) Permit (Exhibit C), was filed on November 25, 2019, by Mr. Brian Ahr. The project appellants include: Mr. Brian Ahr, Ms. Maria Arellano, Ms. Kiran Kadambi, Ms. Sonia Tomar, and Ms. Sujatha Venkatraman. The Planned Development Permit appeal identified the following concerns:

- Lack of Community Outreach
- Health, safety, and welfare of concerns related to traffic, privacy, and noise were not addressed in the PD Permit
- Request to include conditions from the previously approved Planned Development Permit (PD12-027) which permitted an Elementary School on the project site
- Tree removal requirements from the previous permit, File No. PD12-027, were not accounted for
- Permit does not address event parking and noise
- Permit does not address the impact of the proposed classroom's height and setbacks

The appealed Planned Development Permit and analysis in this memorandum outlines the project's conformance with the General Plan policies, Municipal Code requirements, and City Council policies which address the health, safety, and welfare concerns.

Staff recommends denial of the environmental appeal and permit appeal. The comments in the Environmental Appeal do not raise new information that would result in new analysis, significant impacts, or mitigation measures, as compared to those analyzed and disclosed in the IS/MND and associated appendices. Therefore, the IS/MND and associated documents are adequate in their analyses of the proposed project. The comments raised in the Permit Appeal do not negate any of the Planned Development Permit findings and the proposed project continues to be consistent with the goals and policies of the General Plan, Planned Development Zoning District, and City Council policies. While the concerns raised in the Permit Appeal do not negate the Planned Development Permit findings, the project applicant has volunteered to include additional project conditions to ease neighborhood concerns regarding traffic monitoring, as described in Exhibit H.

## **BACKGROUND**

### ***Site History and Prior Approval***

Historically, the subject site was used as Lewis Parker Elementary by the Union School District. In the early 1990's, Santa Clara County requested a Planned Development Zoning District and Planned Development Permit, File No. PD92-021, to redevelop the site into a Children's Shelter. Thus, the subject site is in the A(PD) Planned Development Zoning District established pursuant to Planned Development Rezoning File No. PDC91-077 and allows a "children's homeless shelter or other uses similar in intensity and character such as a school, living quarters, recreation building or child services center". In 1992, Planned Development Permit PD92-021 permitted the construction of the Children's Shelter consisting of eleven on-site buildings, of which ten buildings remain on-site today.

In 2012, Harker School submitted an application for a Planned Development Permit, PD12-027, for the redevelopment of the project site for a private elementary school for up to 600 pre-Kindergarten through 5<sup>th</sup> grade students. On September 26, 2012 and October 3, 2012, the Planning Director conducted public hearings for the project and on October 3, 2012, the Planning Director approved the Planned Development Permit and adopted the Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Program. The approved Planned Development Permit allowed a Kindergarten through 5<sup>th</sup> grade elementary school with a maximum enrollment of 600 students and 100 teachers and staff. The Planned Development Permit also allowed a pre-Kindergarten school use with up to 120 students, prior to the elementary school's occupation of the site. Three separate appeals of the Planning Director's environmental determination were filed. City Council held a duly noticed public hearing on December 4, 2012, and upheld the Planning Director's decision on the project.

Since approval of Planned Development Permit, PD12-027, Harker School has opened and operated a pre-school campus with up to 120 students, in compliance with the Planned Development Permit's provisions. A building permit and Planning Permit Adjustment File No. AD13-198 for the preschool use were issued on April 10, 2013 and March 22, 2013, to convert the existing Children's Shelter to a preschool and demolish one on-site classroom building. Ten buildings exist on-site today; none of the physical additions such as a new classroom building proposed under PD12-027 were made to accommodate or begin the elementary school use on the site.

### ***Site Location***

The 7.7-gross acre project site is located at 4525 Union Avenue, approximately 100 feet south of the intersection of Union Avenue and Barrett Avenue. The site is currently used as the Harker Preschool Campus with an enrollment of up to 120 preschool students. Existing development on the site includes: five one-story, 4,877-square-foot classroom buildings; a two-story 11,340-square-foot gymnasium; a one-story, 10,121-square-foot music/drama class building; three connected administration buildings totaling 27,854 square feet varying in height from one to two stories (which front Union Avenue); a paved parking lot; and a student drop-off area. The preschool campus also includes playgrounds, basketball courts, turf fields, and landscaping.

Development in the project area is a mix of single-family residential and light industrial office buildings. The properties north, west, and east of the site have a Residential Neighborhood General Plan land use designation and the properties to the south of the site have a CIC Combined Industrial Commercial Land Use/Transportation Diagram designation. The properties to the north and west of the site are in the R-1-8 Single-Family Residence Zoning District and are developed with predominantly single-story, single-family residences. The properties to the south of the site are in the A(PD) Planned Development Zoning District (PDC01-009) and are developed with two-story light industrial office buildings. The properties to the east of the site are in unincorporated County land and are developed with duplexes and single-family residence.

### ***Proposed Project***

The subject Planned Development Permit was filed by Jeff Berg, on behalf of Harker School on October 16, 2018, to replace the existing 120-student preschool with a Middle School use with up to 600 students and site improvements. The school's proposed hours of operation would be from 7:00 a.m. to 6:00 p.m. Monday through Friday, with student drop-off anticipated to occur from 7:00 a.m. to 8:00 a.m. and after school pick-up between 3:00 p.m. and 6:00 p.m. Extra-curricular, after-school activities, which could include sports games, theater dance, art and academic activities, could last until 9:00 p.m. and occasional special events would end no later than 10:00 p.m. Occasional special events would occur on weekends and overflow parking would be made available on the outdoor basketball courts, as needed. Physical development of the project would include:

- a. The demolition of three (3) of the five (5) existing 4,877-square foot classroom buildings;
- b. The demolition of approximately 4,000 square feet of the north and east end of the gymnasium/auditorium building and remodel of the gymnasium/auditorium building. The

existing gymnasium building is 11,340 square feet in size and 32 feet in height and it is located at the southwest corner of the existing campus. The remodeled and expanded gymnasium/auditorium building would be approximately 20,542 square feet and would have a maximum height of 34 feet. The expansion would allow the addition of lockers, changing rooms, storage facilities, and a new interior basketball court;

- c. Construction of a two-story, approximately 39,000-square foot classroom building with 34 classrooms and ancillary offices and storage spaces, located along the northern property line;
- d. Removal of forty-six (46) trees, including fifteen (15) ordinance-sized trees;
- e. Site improvements including the reconfiguration of the existing sport field located in the center of the site, relocation of the three existing outdoor basketball courts and addition of one outdoor basketball court for a total of four exterior basketball courts on-site; and
- f. Circulation improvements including:
  - i. Modifications to the landscaping and pedestrian walkways
  - ii. Addition of a 26-foot emergency vehicle access (EVA) driveway
  - iii. Paving of a 21-foot wide drive aisle along the southern property line
  - iv. The relocation of the northern driveway on Union Avenue, 150 feet south along the eastern property line and installation of a traffic signal at the relocated driveway
  - v. Reconfiguration of the parking lot and student pick-up and drop-off zones

***Director's Hearing***

On November 13, 2019, the proposed Planned Development Permit and associated Mitigated Negative Declaration were considered by the Hearing Officer. Twelve Cambrian Park residents spoke against project approval citing concerns regarding the project and environmental document including:

- Increase of traffic in the neighborhood from the private middle school and other proposed planning projects
- Traffic is dangerous to bicyclists
- Impact to on-street parking on residential streets and possible queuing on Union Avenue
- Request to require \$75,000 contribution to the City, as required in the 2012 Planned Development Permit
- Cut-through traffic and speeding concerns. Request for speed bumps on residential streets
- Request for a neighborhood agreement
- Private middle school would not serve the community and would impact the viability of public schools
- Impacts to backyard privacy due to the proposed two-story classroom building
- Shuttle buses should be required
- Tree removal is inconsistent with the tree removals and replanting of previous permits

In response to the provided testimony, the project applicant expressed disappointment that their outreach did not meet the neighbors' expectations. The project applicant cited outreach beyond the required City community meeting, including a meeting with the surrounding neighbors and attendance at a Cambrian Park Neighborhood Association meeting. The project applicant expressed the school's dedication to environmental stewardship and noted the proposed buildings would be Gold LEED certified and only necessary trees would be removed as part of the removal.

Staff noted the proposed Planned Development Permit is a new project with a new environmental review to reflect the new project and current regulatory environmental setting and requirements. The review includes updated tree replacement requirements, stricter than previous permits, and new traffic analysis under the Vehicles Miles Traveled (VMT) policy. The project's Transportation Demand Management (TDM) Program required under the VMT analysis would be reviewed annually by the City to confirm the measures support a 25% Vehicle Miles Travelled reduction.

After consideration of the testimony, the Hearing Officer adopted the Harker Middle School Mitigated Negative Declaration and approved the Planned Development Permit. In the approval of the permit, the Hearing Officer noted his consideration of the community's concerns, the applicant's vested property rights to develop the property per the Planned Development Zoning District, General Plan policies supporting schools, evidence presented in the draft permit, and the mitigation identified in the MND which would reduce traffic impacts and would be monitored.

### ***Appeals***

A timely appeal (see Exhibit C) of the Environmental Determination was filed on November 18, 2019, by Ms. Maria Arellano in accordance with San José Municipal Code Section 21.04.140.E. The appellants include: Mr. Brian Ahr, Ms. Charlotte Ahur, Ms. Christine Kouvaris, Ms. Aine O'Donovan, Ms. Kiran Kadambi, Ms. Carolyn Robinson, Ms. Allyson Robinson, Mr. Oscar Siguenza, Ms. Nadine Siguenza, and Ms. Janet Gillis. The environmental appeal claims the IS/MND document is incomplete and it does not comply with the Envision San José 2040 General Plan or adequately address:

- The intensity of the middle school use with 600 students and 100 teachers
- Increased traffic impacts on the Cambrian residents including request for a traffic monitoring plan, mandatory use of shuttles and carpools, staggered start times, vehicle queuing on residential streets, VTA Bus pull out, and cut-through traffic on residential streets
- Tree removal
- Special Event traffic and parking
- Impacts of the two-story classroom on residents on Barrett Avenue
- Contributions by Harker to the community

A timely appeal of the Planned Development Permit (See Exhibit D), was filed on November 25, 2019, by Mr. Brian Ahr in accordance with San José Municipal Code Sections 20.100.230 and 20.100.240. The project appellants include: Mr. Brian Ahr, Ms. Maria Arellano, Ms. Kiran

Kadambi, Ms. Sonia Tomar, and Ms. Sujatha Venkatraman. The Planned Development Permit appeal identified the following summarized concerns:

- Lack of community outreach
- Health, safety, and welfare of concerns related to traffic, privacy, and noise were not addressed in the PD Permit
- Request to include conditions from the previously approved Planned Development Permit (PD12-027) which permitted an Elementary School on the project site
- Tree removal requirements from the previous permit, File No. PD12-027, were not accounted for
- Permit does not address event parking and noise
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***Post-Appeal Actions***

Since the appeal, the project applicant has coordinated with City Staff and the Council District 9 Staff to engage further with the community and address the concerns raised in the two appeals. In compliance with Mitigation Measure TRN-2.1, the applicant submitted a TDM plan (See Exhibit G) to the City which outlines the measures the project applicant will make to meet the trip cap limitation. The applicant presented the TDM Plan to the community at a Council District 9 sponsored community meeting on January 27, 2020.

Additionally, the applicant has also agreed to the following additional conditions of approval for the Planned Development Permit (See Exhibit H):

- **Pedestrian Counts:** The permittee 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 whether the permittee is meeting their trip cap, but shall instead be advisory to the permittee 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 the 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 shall only 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.** The school shall collect periodic data of the 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 change. Such data shall be collected Tuesday, Wednesday, or Thursday under normal school 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 permittee 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 permittee has voluntarily offered \$75,000 to the City 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 from Condition 19, may be deemed appropriate. The fee shall be paid upon submittal of the first annual TDM monitoring report.

## ANALYSIS

Exhibits E and F include a detailed response to each item raised in the Environmental and Permit appeals. Staff's responses are summarized below:

### **Response to the Environmental Appeal**

The Mitigated Negative Declaration (MND) appeal referred to missing analysis related to aesthetics, tree mitigation measures, noise, and transportation. The environmental appeal claimed there was inadequate analysis of shade impacts on private properties, the new building height blocking views to nearby mountains, tree replacement ratios inconsistent with the previously approved permit in 2012, inadequate operational noise analysis for all students on site, and missing traffic analysis during special events. The environmental appeal claimed the mitigation measures are not adequate (i.e. not specific or enough) to address the new trips that would be generated from the project.

Based on the IS/MND, mitigation measures are required for construction air quality, biological resources, hazards, noise, and transportation.

- Aesthetic: 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. The new buildings would result in an increase of the building height on some parts of the campus, however, the maximum height of the proposed classroom building (34 feet) would not differ substantially from the height of the existing classroom buildings (approximately 30 feet). The residential neighborhood which abuts the property is in the R-1-8 Single Family Zoning District which has a height

limitation of 35 feet. As the height of the new buildings will not be substantially different than the allowed and existing development in the residential neighborhood 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.

- Tree mitigation measures: The project is required to comply to the current tree replacement ratio, which is higher than the 2012 standards. Furthermore, the IS/MND analyzed the potential impacts and tree replacement based on the existing conditions and assumes all previous projects, if built and implemented, have completed their mitigation measures of that time.
- Noise: The Noise Analysis (Appendix E of the IS/MND) 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. The Noise Analysis concluded that the project would be in compliance with the General Plan EC-1.1, 1.2, and 1.3.
- Transportation Impact, TDM, and Additional Conditions: The majority of the appeal referred to the inadequacy of the analysis on project trip generation from the proposed school and omission of operations-related conditions stated in the previously approved permit. As stated in Exhibit E, the transportation analysis is based on the existing condition and regulatory setting (i.e. using City Council Policy 5-1). Pursuant to CEQA, the CEQA threshold for a significant impact is focused on VMT impacts. Based on the Transportation Analysis (TA), mitigation measures are required for the proposed project as the proposed use is above the baseline. Mitigation Measures to implement mandatory TDM and annual trip cap monitoring will be included as part of the permit conditions. With the incorporation of the mitigation measures, the project would not result in significant impacts under CEQA.

While outside of CEQA thresholds pursuant to Council Policy 5-1, the concerns regarding operations such as parking and queuing were disclosed in the IS/MND as well. Based on the analysis of the TA, the operational of the propose site does not result in adverse effects on studied signalized intersections and existing pedestrian or bicycle facilities in the study area. The TA have identified conditions that would be incorporated as part of the permit to address issues associated with intersection queuing, site access, on-site circulation, and parking. However, these operational issues do not conflict with the City Council Policy 5-1 and do not result in increased hazard due to geometric design features or incompatible uses. Therefore, there would be no significant impacts under CEQA.

Furthermore, since the appeal, additional conditions were agreed upon by the applicant (Refer to conditions listed under section "Post-Appeal Actions" above) that have addressed many of the comments in the MND appeal.

The comments in the appeal do not raise new information that would result in new analysis, significant impacts, or mitigation measures different from 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.

**Response to the Planned Development Permit Appeal**

The Planned Development Permit appeal identified project issues related to community outreach, traffic, the proposed development's noise, height, and setbacks, and special events.

The project is consistent with the General Plan, Planned Development Zoning Standards, and City Council Policies as detailed in Exhibit H, Planned Development Permit Resolution. The project is consistent with the site's Public/Quasi Public General Plan land use designation which is intended for uses including schools and was found in conformance with General Plan Vibrant Neighborhood Policy VN-1.1 and Education Goal and Policy, ES-1 and ES-1.7. The project conforms to the A(PD) Zoning District standards including use, height, setbacks, parking, and tree removal. The project complied with the City Council Public Outreach Policy, 6-30 through posting an on-site sign to inform the neighborhood of the proposed project and hosting a project community meeting in coordination with Council District Office 9 and Council District staff attended the meeting.

The project's impact to Transportation/Traffic was analyzed in the Initial Study/MND prepared for the project and appropriate conditions of approval were applied to the project. (See additional discussion above). Since the appeal, the applicant has agreed to implement the additional conditions, listed above, as a good neighbor policy and beyond the General Plan and Zoning Ordinance requirements. Noise generated by the Middle School Expansion project were analyzed in the Initial Study/MND and found to be in conformance with the residential property line noise levels established in the General Plan and Zoning Ordinance (Section 20.30). The project would be subject to the City's Tree Replacement ratios, which are stricter than tree replacement ratios previously required on the project site. The appealed permit, PD18-040, included hour limitations and parking requirements for special events to ensure the project site's operations would not unreasonably impact the surrounding neighborhood. The project's new two-story classroom building was found to be consistent with the Zoning's setback requirements and it is designed to reduce shade and privacy impacts on the surrounding neighbors through use of a second floor step back and landscaping/architectural shielding features.

Overall, the issues raised in the Planned Development Permit Appeal do not negate the Planned Development Permit findings for approval outlined in the appealed permit PD18-040 (See Exhibit A) and the Draft Resolution (See Exhibit H).

## **CONCLUSION**

With respect to the appellant's comments, the Planned Development Permit continues to conform with the Planned Development Permit findings set forth in San José Municipal Code Section 20.100.940.

For reason stated above, Staff recommends that the City Council deny the appeals and uphold the Planning Director's decision to adopt the Harker Middle School Mitigated Negative Declaration and approve the subject Planned Development Permit. The subject site has a Public/Quasi-Public General Plan land use designation and is in a Planned Development Zoning district; the subject project conforms to the applicable General Plan, Municipal Code, and City goals, policies, and strategies.

While Staff acknowledges the comments and concerns from the public about school operations, project design, traffic, public engagement, and project design; the decision to approve or deny a Planned Development Permit should be based on the merits of the proposed project and its conformance to the General Plan, Zoning Ordinance, and applicable city policies. The proposed project conforms to all of these requirements.

## **EVALUATION AND FOLLOW-UP**

If the City Council approves the Planned Development Permit, the applicant would need to obtain demolition, grading, and building permit(s) for the project to allow the demolition of three existing academic buildings and a portion of an auditorium/gym building totaling approximately 19,000 square feet and the construction of an approximately 39,000-square foot, two-story classroom building, an addition to the existing auditorium/gym resulting in an approximately 20,542 square foot building, and site improvements including the removal of fifteen ordinance-size trees, circulation improvements including installation of a traffic light on Union Avenue, landscaping, and the addition of sports courts and a field for a proposed private middle school with up to 600 students on an approximately 7.7-gross acre site. The project would be required to adhere to the project's conditions of approval and Mitigation Monitoring and Reporting Report.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would capitalize on an under-utilized site for a Middle School and would:

- Facilitate the construction of an energy and water efficiency building
- Facilitate the choice of mobility choices other than single-occupancy, gas-powered vehicles through the required Transportation Demand Management Plan
- Facilitate job creation (up to 104 jobs) within City limits

## **POLICY ALTERNATIVES**

The Council has two distinct decisions to make:

1. For the Environmental Appeal, the Council can either:
  - a. Deny the appeal and uphold the adoption of the MND, or
  - b. Grant the appeal and require that additional environmental review be conducted, resulting in a new or revised environmental document prior to consideration of the Planned Development Permit, or the applicant not moving forward with the project
2. For the Planned Development Permit appeal, if the Council denies the environmental appeal, then it can consider the Planned Development Permit. In such circumstances, the Council may:
  - a. Approve the Planned Development Permit as approved by the Planning Director
  - b. Approve the Planned Development Permit as approved by the Planning Director with the added applicant-volunteered conditions of approval,
  - c. Approve the Planned Development Permit with additional modifications to the conditions, or
  - d. Deny the Planned Development Permit.

Staff recommends that the City Council deny the environmental appeal and adopt the MND, and deny the permit appeal and approve the Planned Development Permit with the added applicant-volunteered conditions of approval.

## **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy, whereby, the project is considered a large development proposal. Following City Council Policy 6-30, the applicant posted the on-site sign to inform the neighborhood of the proposed project. A project community meeting was held on December 13, 2018. Comments received during the community meeting and project review are further discussed in the attached Planned Development permit. The meeting was coordinated with Council District Office 9 and Council District staff attended the meeting.

Staff contact information have also been available on the community meeting notices and on the project webpage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

## **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's Office.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action; the project was considered at a Director's Hearing on November 13, 2019.

**CEQA**

Harker Middle School Expansion Mitigated Negative Declaration.

/s/  
ROSALYNN HUGHEY, Director  
Planning, Building and Code Enforcement

For questions, please contact Deputy Director, Robert Manford, at (408) 535-7900.

Attachments:

- Exhibit A: Appealed Planned Development Permit PD18-040 and Plan Set
- Exhibit B: Harker Middle School Initial Study, Mitigated Negative Declaration, technical reports, and Responses to Comments
- Exhibit C: Environmental Appeal
- Exhibit D: Permit Appeal
- Exhibit E: Staff Response to Environmental Appeal
- Exhibit F: Staff Response to Permit Appeal
- Exhibit G: TDM Plan
- Exhibit H: Proposed Planned Development Permit Resolution
- Exhibit I: Proposed MND Resolution
- Exhibit J: Public Comments