

First Amendment to the
Draft Environmental Impact Report

Charcot Avenue Extension Project



Prepared by



In Consultation with



May 2020

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SECTION 1.0 INTRODUCTION

This document, together with the Draft Environmental Impact Report (Draft EIR), constitutes the Final Environmental Impact Report (Final EIR) for the Charcot Avenue Extension project.

1.1 PURPOSE OF THE FINAL EIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, this Final EIR provides objective information regarding the environmental consequences of the proposed project. The Final EIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final EIR is intended to be used by the City and any Responsible Agencies in making decisions regarding the project.

Pursuant to CEQA Guidelines Section 15090(a), prior to approving a project, the lead agency shall certify that:

- (1) The final EIR has been completed in compliance with CEQA;
- (2) The final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
- (3) The final EIR reflects the lead agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL EIR

CEQA Guidelines Section 15132 specify that the Final EIR shall consist of:

- a) The Draft EIR or a revision of the Draft;
- b) Comments and recommendations received on the Draft EIR either verbatim or in summary;
- c) A list of persons, organizations, and public agencies commenting on the Draft EIR;
- d) The Lead Agency's responses to significant environmental points raised in the review and consultation process; and
- e) Any other information added by the Lead Agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines (Public Resources Code Section 21092.5[a] and CEQA Guidelines Section 15088[b]), the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the EIR. The Final EIR and all documents referenced in the Final EIR are available for public review at San José City Hall, 3rd Floor, 200 East Santa Clara Street, San José on weekdays during normal business hours. The Final EIR is also available for review on the City's website:

<https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs>

SECTION 2.0 DRAFT EIR PUBLIC REVIEW SUMMARY

The Draft EIR for the Charcot Avenue Extension project, dated August 2019, was circulated to affected public agencies and interested parties for a 69-day review period from August 27, 2019 through November 4, 2019. The City undertook the following actions to inform the public of the availability of the Draft EIR:

- A Notice of Availability of Draft EIR was published on the City's website and in the San José Mercury-News;
- Notification of the availability of the Draft EIR was mailed to project-area residents and other members of the public who had indicated interest in the project;
- The Draft EIR was delivered to the State Clearinghouse on August 27, 2019, as well as sent to various governmental agencies, organizations, businesses, and individuals (see Section 3.0 for a list of agencies, organizations, businesses, and individuals that received the Draft EIR); and
- Copies of the Draft EIR were made available on the City's website at:
- <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs> .

SECTION 3.0 DRAFT EIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (i.e., government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies.

The Notice of Availability (NOA) for the Draft EIR was sent to the following:

Santa Clara County Agencies

- County of Santa Clara, Planning Department
- County of Santa Clara, Transportation
- Santa Clara County Airport Land Use Commission
- Santa Clara County Roads & Airports

City of San José Internal Contacts

- Mayor and City Council
- Planning Commission
- Airport Commission
- Historic Landmarks Commission

Outside Public Agencies

- Bay Area Air Quality Management District
- City of Campbell
- City of Cupertino
- City of Fremont
- City of Milpitas
- City of Morgan Hill
- City of Santa Clara
- City of Saratoga
- City of Sunnyvale
- City of Palo Alto
- City of Mountain View
- Town of Los Gatos
- Santa Clara Valley Transportation Authority
- Metropolitan Transportation Commission/Association of Bay Area Governments
- Santa Clara Valley Open Space Authority

Utilities/Water Agencies

- Santa Clara Valley Water District
- San Jose Water Company
- Pacific Gas & Electric Company
- PG&E – Land Rights Services

State Agencies

- California Department of Transportation, District 4
- California Department of Transportation, Division of Aeronautics
- California Department of Transportation, Planning
- California Energy Commission
- California Environmental Protection Agency
- California Department of Fish and Wildlife, Region 3
- California Air Resources Board
- California Emergency Management Agency
- California Department of Housing and Community Development
- California Department of Toxic Substances Control
- Native American Heritage Commission
- State Office of Historic Preservation
- Regional Water Quality Control Board, District 2
- California Department of Resources Recovery & Recycling
- San Francisco Bay Conservation and Development Commission

Tribal Representatives

- Andrew Galvin – The Ohlone Indian Tribe
- Valentin Lopez – Amah Mutsun Tribal Band
- Irenne Zwierlein – Amah Matsun Tribal Band of Mission San Juan Bautista
- Ann Marie Sayers – Indian Canyon Mustun Band of Costanoan
- Monica Arellano – Muwekma Ohlone Indian Tribe of the SF Bay Area
- Katherine Perez – North Valley Yokuts Tribe

Unions

- Janet Laurain, Adams Broadwell Joseph & Cardozo
- Lozeau Drury LLP, Richard Drury

Community and Environmental Organizations

- Orchard School District- Wendy Gudalewicz (Orchard Superintendent)
- Orchard School PTA

- Greenbelt Alliance
- California Native Plant Society, Santa Clara Valley Chapter
- San Jose Downtown Association
- Santa Clara Valley Audubon Society

Businesses

- PS Business Parks
- SuperMicro
- Kinder Morgan

Individuals (contacts from Notice of Preparation, Scoping Meeting, or Public Correspondence)

- Amorim, Olivia
- Amorim, Stacy
- Amorim, Travis
- Avila, Sarah
- Bangalore, Subbu
- Bella, Andromea
- Bella, Jason
- Bella, Lara
- Beltran, Susan
- Borlaza, Eloisa
- Bruce, Martin & Aileen
- Bui, Thuy
- Bustamente, Octavio
- Campos, Jose
- Carmiento, Hazel
- Carranza, Rosi
- Chen, Jing
- Dalton, Jeremie
- Danabar, Bet
- Dejesus, Melody
- Delapaz, Nicholas
- Estrada, Adriane
- Flores-Alsiddi, Alicia
- Fuerst, Linette
- Fujita, Yoko
- Galindo Dan. Monica
- Ganschow, Judianne

- Gilbert, Steve
- Huang, Mike
- Huang, Suwei
- Huddleston, Walter
- Huynh, Denise
- Izekoe, Ivina
- Jain, Ankur
- Jain, Pooja
- Johnson, Chris
- Johnson, Karl
- Kasolas-Jacobson, Katherine
- Keo, Suzanne
- Keo-Totu, Vicky
- Ko, Anson
- Lam, Michael
- Lam, Som
- Lee, Laurie
- Lim, Hock
- Lim, Tamara
- Limqueco, Lynn
- Lin, Jingxiam
- Lobato, Reni
- Locke, Linda
- Long, Victoria
- Mahdere, Roziwa
- Marayag, Aillen
- Marquez, Ada
- McCarthy, Erin
- Meng, Lilian
- Miguel, Unesa
- Mutuc, Marilou
- Nerabetla, Ramya
- Ngo, Hai
- Nguyen, Kieu
- Nguyen, Ngoc Mai
- Nguyen, Son
- Nguyen, Thao
- Pagchangana, Gorla

- Peng, Mandy
- Pham, Anne
- Quiroz, Leticia
- Quiruz, Ana
- Reyes, Rhoda
- Roemer, Robin
- Said, Deena
- Schell, Renee
- Shen, Gin
- Song, Bi
- Spetter, Nida
- Susanto, Jennie
- Tang, George
- Tang, Judy
- Tang, Mike
- Tazumi, Mimi
- Tiradon, Clemence
- Tran, Loc
- Troung, Anna
- Tungol, Bet & Mike
- Vanam, Kaylan
- Varela-Campos, Virginia
- Wang, Amelia
- Wee, Audrey
- Wei Yu Neng, Cecile
- Weiyuneng, Cecile
- Wu, Melody
- Wu, Owen
- Ybanez, Elizabeth
- Zalone, Joe
- Zhou, Weiqiang

The Notification of Availability of the Draft EIR was also sent through a newsflash to the City's Planning Notification list.

SECTION 4.0 RESPONSES TO DRAFT EIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft EIR.

Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Copies of the letters and emails received by the City of San José are included in their entirety in Appendix B of this document. Comments received on the Draft EIR are listed below.

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REGIONAL AND LOCAL AGENCIES

A. Bay Area Air Quality Management District (dated November 1, 2019)

Comment A.1: Bay Area Air Quality Management District (Air District) staff has reviewed the draft Environmental Impact Report (DEIR) for the proposed Charcot Avenue Extension (Project). The City of San José proposes to extend Charcot Avenue from its eastern boundary at Paragon Drive, over Interstate 880 (1-880), to Oakland Road in the North San José area to improve connectivity around the freeway. The proposed two-lane extension is approximately 0.6 miles and includes an overcrossing of O'Toole Avenue and 1-880 that would be approximately 720 feet in length. The project is expected to impact 0.44 acres of Orchard School campus, which includes an elementary and middle school as well as the on-site Champions preschool.

The Air District understands that the City considers the Project to be an important roadway connection that is anticipated to alleviate traffic congestion on nearby Brokaw Road, Trimble Road, and Montague Expressway. However, by diverting traffic to Charcot Road, nearby sensitive receptors at the Orchard School campus could potentially be exposed to a significant increase in air pollution and elevated health risk from mobile sources. According to the DEIR, roadway volumes along the Charcot Avenue extension could have approximately 1,080 peak-hour trips and 8,700 daily trips under the Existing Plus Project conditions and approximately 1,720 peak-hour trips and 13,900 daily trips under the Year 2040 Project conditions. In addition, the new road connection would increase traffic, including heavy-duty truck traffic, and may discourage students from using active modes of transportation, such as walking or biking, to get to and from the campus.

Response A.1: The District states that the diversion of traffic to Charcot Avenue could expose sensitive receptors at Orchard School to significant increases in air pollution and elevated health risks. However, the air quality impact analysis completed for the project, which utilized the District's published thresholds of significance, determined that impacts would not be significant. See also Response A.2, below, wherein a supplemental air quality impact analysis undertaken in March 2020 using District-requested models and inputs reached the same conclusions.

The District provides no data or information to support the statement that the presence of a 2-lane roadway may discourage students from walking or biking to school. The City is not aware of any studies that would support this assertion. Further, the project would construct new facilities for both bicyclists and pedestrians, including Class IV buffered bikeways, new/widened sidewalks, and a pedestrian-only HAWK signal, as listed in Sections 2.3.2 and 2.3.3 of the DEIR.

Comment A.2: Staff reviewed the Project Air Quality and Greenhouse Gas Emissions Assessment (Appendix E). The DEIR concludes that the exposure of sensitive receptors to substantial pollutant concentrations would be less than significant. However, the modeling methodology concerning exposure of sensitive receptors to pollutant concentrations of toxic air contaminants and PM_{2.5} deviates from practices recommended by the Air District and the State of California's Office of Environmental Health Hazard Assessment. While the DEIR used CT-EMFAC2014 and Sacramento Metropolitan Air Quality Management District's Road Construction Emissions Model, the Air

District recommends that the analysis use the most recent models to calculate emissions, such as EMFAC2017 and CalEEMod 2016.3.2. Furthermore, the modeling underestimated the exposure duration, used inconsistent breathing rates, and included several discrepancies regarding construction, VMT, and vehicle speeds. Therefore, the Air District is concerned that cancer risk and PM2.5 concentrations may be significantly underestimated in the DEIR. Staff highly recommends that the City revise the air quality and health risk analysis and coordinate with the Air District on the best practices and protocols to ensure the most current models and methods are used.

Response A.2: Emissions Modeling: The recommendation to use the newest version of the EMFAC model for operational emissions and CalEEMod Version 2016.3.2 for construction emissions is not appropriate for this analysis for the following reasons:

- **Use of EMFAC2017:** This is a roadway air quality analysis that used roadway modeling tools that are commonly used for these types of transportation projects. Caltrans is typically the lead agency for transportation projects and provides guidance and the most appropriate modeling tools. These include the CT-EMFAC2014 model that was used in the analysis. While EMFAC2017 was released by the California Air Resources Board (CARB) on December 22, 2017, the model was not approved for use on transportation projects by the U.S. EPA until August 2019. The Project's NOP was issued prior to the availability of EMFAC2017 and the analysis was completed prior to the approval of EMFAC2017. Therefore, use of EMFAC2014, using the Caltrans' roadway version, CT-EMFAC2014 was appropriate for this analysis. Air quality models are always being updated and a project study (that requires time to prepare) cannot always use the model that is most recent at the time of public review.
- **Use of CalEEMod Version 2016.3.2:** The District is recommending that a land use emissions model be used to predict the construction emissions of a roadway. The Roadway Construction Emissions Model (RCEM), Version 8.1.0, released in 2016 was used for the analysis of construction emissions. Both CalEEMod Version 2016.3.2 and RCEM Version 8.1.0 use the CARB Off-Road database of emissions factors for construction equipment emissions. For roadway projects, Caltrans has recommended the use of this model, and therefore, this model was used. The BAAQMD CEQA Air Quality Guidelines also recommend the use of RCEM for linear projects such as roadways (see page 8-1). The CalEEMod model is for land use projects and does not allow the user to select a roadway type. Note that roadway projects analyzed in the Bay Area by Caltrans use RCEM to predict construction emissions. Also, the construction modeling assumptions were based on project-specific engineering estimates.

Health Risk Assessment Assumptions: The District makes claims that the health risk assessment used inappropriate breathing rates and exposure times in calculating the health risk. The District provided no specifics as to which inputs were incorrect; therefore, a detailed response cannot be made. Nonetheless, the following text

summarizes the breathing rates and exposure parameters that were used for the health risk assessment

- Exposure Parameters. Exposure parameters and cancer potencies for both residents and school children were applied to this assessment.
 - For residential exposures, each receptor was assumed to include a 3rd-trimester fetus, infants, children, and adults. The most conservative exposures were considered, where a 3rd-trimester fetus and infant were continuously present during construction at each residence. This results in a total 1.25-year exposure duration to construction emissions. These same receptors were assessed for an additional 29 years of exposure of an infant (1 year), child (14 years) and an adult (14 years) caused by roadway operation as the traffic increased over time. The total residential exposure duration to construction and operation emissions was 30.25 years. The breathing rates, exposure durations, cancer potency factors used are consistent with those recommended in the BAAQMD Air Toxics NSR Program Health Risk Assessment Guidelines, dated December 2016 (BAAQMD HRA Guidelines).
 - For school children, students were all assumed to be ages two to nine years old. The breathing rates, exposure durations, and cancer potency factors were used for this age grouping. No adjustments were made to account for the school hours, which are less than the assumed construction hours. The students were assumed to be continuously present during construction. For the cancer risk calculations, school children were assumed to be present at the school for 9 to 10 hours per day, 350 days per year. Exposure to construction emissions was assumed to occur for a one-year period and exposure to roadway emissions was assumed to occur for an additional 8 years, for a total school child construction and operation exposure duration of 9 years. Note that the BAAQMD HRA Guidelines for school child exposures recommend an 8 hour/day exposure period for 180 days (36 weeks) per year, and overall exposure duration of 9 years.
 - For school child exposure to PM_{2.5} concentrations from construction and roadway operation the maximum values reported were for an annual concentration based on construction emissions for 9 hours per day and roadway emissions for 24 hours per day. The maximum reported PM_{2.5} concentrations were not adjusted for the shorter time period when children would be present at the school.
 - The locations (receptors) where the maximum impacts (increased cancer risk and annual PM_{2.5} concentration) were reported to occur were in the school yard/field areas where the children would be present for only limited time periods compared to the classroom areas. Impacts to children in the classroom areas would be lower than those reported.

Discrepancies with Construction, VMT, and Vehicle Speed: The District claims that there are discrepancies regarding the construction, VMT, and vehicle speed; however, they do not clarify what type of discrepancies are in the air quality analysis.

- Construction. The project engineers provided a construction schedule, an equipment equipment/duration list, and earthwork volumes for the project and alternatives. These inputs were entered into the RCEM model to compute construction emissions. Since no details were provided by the District, it is not possible to elaborate or explain inconsistencies, if any.
- VMT & Vehicle Speed. Hexagon Transportation Consultants, Inc. prepared a VMT evaluation memorandum for the project using the City of San José’s Travel Demand Forecasting (TDF) Model on November 12, 2018. The memorandum listed the modeled daily vehicle miles traveled (VMT), vehicle hours traveled (VHT), and travel speed for the no project and project scenarios in the years 2015, 2025, and 2040 (General Plan). The exact VMT, VHT, and travel speed given by the traffic consultant were entered into CT-EMFAC 2014 (version 6.0) for the years 2025 and 2040. The District states that there were discrepancies with the VMT and vehicle speed used in the model. Since no details were provided by the District, it is not possible to identify any inconsistencies.

Conclusion: Based on the above information, the City believes that the air quality and health risk assessments were completed using methods and assumptions consistent with EPA, CARB, BAAQMD, and Caltrans policies and procedures for roadway projects. Assumptions utilized were conservative and represent worst-case exposures. The analyses, for both the project and cumulative scenarios, determined that air quality impacts would not exceed the thresholds of significance established by BAAQMD.

Supplemental Analyses: Notwithstanding the above response and conclusion, the City prepared a supplemental air quality and GHG analyses in March 2020 using the methodologies and assumptions recommended by BAAQMD in this comment. Although, for the reasons detailed above, the City stands by the adequacy of the analyses in the DEIR, the supplemental analyses were undertaken to verify the accuracy of the conclusions in the DEIR and demonstrate due diligence and disclosure. Specifically, the supplemental air quality and GHG analyses answer the question of “*had the City done the analyses as per BAAQMD’s recommendations, would any thresholds of significance be exceeded?*”

The supplemental air quality and GHG analyses are attached to this First Amendment to the Draft EIR as Appendix A. The analysis describes the changes in methodologies and assumptions that were used in the supplemental analyses and presents the results. ***As with the original air quality and GHG analyses contained in the DEIR, the supplemental analyses determined that none of BAAQMD’s thresholds of significance would be exceeded during the project’s construction or operational phases.***

Comment A.3: The DEIR also does not demonstrate consistency with the California 2017 Climate Change Scoping Plan, which recommends a 15 percent reduction in light-duty VMT beyond what existing plans and policies achieve to meet the State's GHG reduction targets. The Project's increase in VMT would contribute to an increase in greenhouse gas (GHG) emissions. Staff recommends the

Project demonstrate consistency with all applicable measures identified in the 2017 Climate Change Scoping Plan needed to achieve the Statewide 2030 GHG reduction goal and be on track to meet the 2050 climate stabilization goal.

Response A.3: The District states the DEIR does not demonstrate consistency with the California 2017 Climate Change Scoping Plan and that the increase in VMT due to the Project would contribute to increased greenhouse gas emissions. Note that the Project decreases delay times, which improves circulation and slightly reduces GHG emissions. The Project supports planned infill land use developments that provide more housing near employment, services, and transit, which are key to reducing VMT to meet State GHG reduction goals. Transportation projects, such as this project, do not generate traffic but rather try to accommodate the growing demand on the system. Finally, the project includes pedestrian and bicycle facilities that support the State and City goals of reducing GHGs by facilitating those modes of transportation.

Comment A.4: Furthermore, Air District staff recommends that the City strongly consider an alternative project that would not site a major roadway within ¼ mile of a school. The DEIR considers eight project alternatives, including options that would not require encroachment on the Orchard School campus. The DEIR should evaluate the potential health risk for each alternative, and the Air District recommends that the City consider an alternative that would either not increase or have the smallest possible increase on the exposure of sensitive receptors to air pollutants.

Response A.4: The City strongly objects to the District’s characterization of the project as siting “a major roadway within ¼ mile of a school.” A 2-lane local roadway with a projected (year 2040) ADT of 13,900 is not a “major” roadway. The California Education Code school siting criteria defines a “busy traffic corridor” as one with 100,000 ADT in urban areas and 50,000 ADT in rural areas. This same definition is found in CARB’s “Air Quality and Land Use Handbook” (April 2005).

Further, the City notes that there are hundreds of schools located throughout the Bay Area that are located adjacent to 2-lane, 4-lane, and 6-lane roadways. In fact, in 1995, the Orchard School District Board of Trustees, with concurrence from the School Facilities Planning Division of the California Department of Education, selected the current site for Orchard School adjacent to the 6-lane Oakland Road and planned Charcot Avenue (which at that time was envisioned as a 4-lane facility).

In view of the above facts, and in view of the less-than-significant conclusions of the air quality and health risk assessments prepared as part of the EIR, the City disagrees that there is a basis to quantify health risks from air pollutant emissions in alternative corridors.

B. County of Santa Clara Roads and Airports Department (dated November 1, 2019)

Comment B.1: The County of Santa Clara Roads and Airports Department appreciates the opportunity to review the Charcot Ave Extension Draft Environmental Impact Report (DEIR) (PP18-044) and submits the following comments:

In general, the County supports the Charcot Ave Extension project. Our general comment is that the proposed Charcot Ave extension will have a bigger and wider overall impact than just the few intersections surrounding one and half miles around Charcot. This project would change traffic patterns on a wider scale encompassing freeway corridors such as SR 87, U.S. Highway 101, I-880, and major arterials such as Montague Expressway, Zanker Street, First Street, Brokaw Avenue, and Oakland Road. To that end, the DEIR does not acknowledge the significance of the project on regional circulation. For example, in section 3.17, the analysis should state if, and to what extent, the Charcot project will improve regional and local circulation in consideration of future implementation of other projects in the North San José Plan and 2006 County/City Settlement Agreement. Even though the estimated vehicle miles travelled (VMT) doesn't appear to trigger the City's VMT impact criteria, the cumulative impact analysis excludes any description of the operational impacts that would occur as a result of local and highway recirculation patterns. The cumulative impacts should discuss chokepoint issues are displaced from location to another location, especially between interchange locations.

Response B.1: Figures 3.17-5 through 3.17-7 and Tables 3.15-7 through 3.17-9 depict the effect of the proposed Project in the region. The information presented utilizes the City's traffic model, which accounts for the planned growth of the North San José and adjacent areas. An evaluation of VMT for all major roadways in the County was not completed since such an evaluation would be applicable to a major roadway improvement that provided capacity through the City or into adjacent jurisdictions. The proposed approximately 0.6-mile extension is local serving and would not have a measurable effect on the countywide transportation system.

Comment B.2: We recognize that a greater overview of regional circulation in the North San José area, separate from this specific project, is merited and we look forward to continue working with the City to discuss these issues

Response B.2: The comment does not identify any specific issues related to the analysis of the Charcot Extension under CEQA. The City will continue to work with the County on circulation-related issues in the North San José area.

Comment B.3: Other specific comments are as follows:

In general, the Traffic Study should also analyze O-D routes for the new trips on Charcot by looking at entry and exit points to freeways/expressway.

Response B.3: These factors are accounted for in the DEIR's traffic analysis through the use of the City's Transportation Demand Forecasting model. Furthermore, there are no City, County, or State requirements for the evaluation of O-D route in regard to freeways/expressways. Rather, per San José Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA VMT analysis.

Comment B.4: Please provide project phasing, or timings, as compared to projects included in the Montague settlement agreement.

Response B.4: The City anticipates that construction of the project would begin sometime in 2021 with completion sometime in 2023.

Comment B.5: On page XIV -The identified I-880 and Montague Expressway interchange improvement project in the North San José Plan would provide Montague Expressway with much needed congestion relief. The Montague widening (to 10 lanes) mentioned in Alternative B in the DEIR goes beyond the 8-lane widening which County has planned. Please correct the language to 8 lanes.

Response B.5: The discussion on page xiv of the DEIR does not say that Montague Expressway will be widened to 10 lanes. Rather, it is making the point that an alternative that would widen Montague Expressway to 10 lanes is infeasible.

Comment B.6: The DEIR should include all impacted Montague Expressway intersections in the analysis from Mission Blvd to Trade Zone Blvd.

Response B.6: The commenter is referred to page 18 of Appendix K of the DEIR which states.... the determination of project impacts per CEQA requirements are based solely on VMT analysis. The intersection operations analysis is provided for informational purposes and is not presented for the purpose of determining project impacts. Intersections were selected for evaluation for the purpose of identifying necessary improvement and or adjustment of those roadway facilities to accommodate the proposed roadway extension. Furthermore, Figures 3.17-5 through 3.17-7 of the DEIR show that the project will reduce traffic volumes on Montague Expressway. Therefore, an analysis of intersections along the entire length of the expressway is not warranted because there is no reason to believe that the project would adversely affect them.

Comment B.7: The Traffic Study should consider how transit and other modes on First Street would be affected by potential trip gain roadway due to traffic diversion.

Response B.7: Figures 3.17-5 through 3.17-7 of the DEIR show that the trip redistribution effects of the project west of Zanker Road will not be substantial. The Charcot Extension's primary benefit is for east-west trips and First Street is a north-south facility. For these reasons, the project's effects on transit modes (e.g., light rail) along North First Street would be minor.

Comment B.8: Page 143, Table 3.17-1 shows existing peak hour directional volumes on Montague Expressway which are much lower than CMP PM counts and 2013 County AM counts. Please see the attached redlines.

Response B.8: Traffic counts were collected in September 2018 and are presented in Appendix A of the April 8, 2019 traffic study. The referenced volume data is pulled from a raw 24-hour count collected directly on the Montague Expressway overpass of I-880. The referenced volume is not reflective of the entire extent of Montague Expressway and was not used for the purpose of evaluating project impacts. Rather,

the volumes and roadway analysis were provided to provide a general comparative evaluation of the effects of the proposed project on a few select roadways.

Comment B.9: Page 155, Tables 3.17-7 - 3.17-9: Please provide details and assumptions as to why Montague Expressway volumes would decrease due to project.

Response B.9: The traffic analysis utilized City of San José Travel Demand Forecasting (TDF) Model to project long-term traffic growth on the selected study roadway segments, including Montague Expressway. The model baseline conditions reflect land use in the Year 2015 per the Envision San José 2040 General Plan. The projection of future traffic volumes on the roadway system is based on a comparison of model baseline conditions (Year 2015) with current 2018 traffic counts.

The traffic volumes used in the analyses were derived by using existing count data and traffic forecasts produced by the City's Travel Demand Forecasting (TDF) model. The City's TDF model has the ability to estimate the diversion of traffic and change in traffic patterns due to roadway/transit system changes similar to those proposed by the project. The methodology and adjustment process of the forecasted traffic volumes produced by the City's TDF model is consistent with that which has been used for the evaluation of other roadway network changes in the City.

Comment B.10: Page 162, Table 3.17-11 should also include increases in travel time, not just reductions.

Response B.10: Travel times between the selected origin and destination routes would not increase. Furthermore, there are no City, County, or State requirements for the evaluation travel time. The travel time evaluation is provided for informational purposes only. Per San José Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact.

C. Orchard School District (dated October 28, 2019)

Comment C.1: The EIR did not include impacts to traffic on Fox Lane. The families that currently drop off in the back of the school will no longer have that as an option. Also, those coming over Charcot to avoid Brokaw and work in the Ridder Park/Fox area will drive on Fox to enter which will add traffic.

Response C.1: Tables 3.17-7 through 3.17-9 show that, when compared to the No Project, volumes on Fox Avenue will be unaffected by the Charcot Avenue Extension. The changes in parking on Silk Wood Lane, including the future inability of cars to illegally stop/park along the south side of the roadway is described in Section 3.17.3.7 of the DEIR. Under the City's Transportation Policy 5.1, this change is not an impact under CEQA but is disclosed as part of the Planning-related discussion in the Local Transportation Analysis (LTA).

Comment C.2: Impact on Oakland Road and Brokaw intersection, specifically the left turn from Oakland to Brokaw was ignored in the EIR. There will be more cars turning left which will cause delays.

Response C.2: Intersections were selected for evaluation for the purpose of identifying necessary improvement and or adjustment of those roadway facilities to accommodate the proposed roadway extension. Based on the roadway volume data in Appendix K, the proposed project would have minimal effect on the operations of the Oakland/Brokaw intersection. In any case, changes in intersection delay are no longer impacts under CEQA.

Comment C.3: Impact of the road to our classroom building, which we were told verbally at the EIR meeting would only be 20 feet from the classroom (road) and cars would only be 40 feet away.

Response C.3: The back of the sidewalk along the south side of Charcot Avenue would be approximately 25 feet from the classroom building. The distance between the classroom building and the edge of travel way would be approximately 42 feet.

Comment C.4: Did not address any construction possibilities on the Orchard campus. The playground will have to be torn down and rebuilt. If the ball field is impacted then we will have to remove the two portable classrooms to accommodate the field.

Response C.4: The ball field can be reconfigured without removing or relocating the portables. Please see the revised discussion of MM-REC-2.1 in Section 5, *Draft EIR Text Revisions*.

Comment C.5: What will be the impact of students crossing (nearly 300 twice a day) on the Charcot traffic. Students will be crossing at the height of morning commute. With a Hawk signal and a light at Charcot and Oakland it will be a nightmare.

Response C.5: There are hundreds of intersections throughout the City where there are high volumes of pedestrians. The pedestrian/WALK phases of traffic and HAWK signals provide time for pedestrians to safely cross the streets. The effect of a pedestrian/WALK phase being activated is to cause vehicles to stop so as to safely accommodate all modes of traffic, which is consistent with policies to promote safe access for multiple modes of travel.

Comment C.6: Did you account for hundreds of cars and diesel trucks idling for long periods of time in your air quality study?

Response C.6: Idling and speeds are both accounted for in the air quality study, which is Appendix E of the DEIR.

Comment C.7: Gasoline and chemical trucks will be yards away from where children play.

Response C.7: The fact that trucks carrying hazardous materials utilize Charcot Avenue, Oakland Road, or any other street is commonplace, as is the fact that many of

those streets are near schools. As described in Section 3.9.2.1 of the DEIR, trucks carrying hazardous materials are required to comply with multiple safety regulations that minimize potential safety impacts.

Comment C.8: Where will staging take place if the road is built? Is there an additional impact to the school?

Response C.8: Staging will take place along the alignment for the Charcot Extension. There will be no impact to the school as the City will limit construction adjacent to the school property to the summer when school is not in session.

Comment C.9: What was the noise level expected for our students in the building closest to the road? Did you even bother to check? Do you know if the classroom has double pane windows?

Response C.9: The building closest to the road is represented in the noise analysis as “Receptor S2.” As shown in Table 3.13-6 of the DEIR, interior noise levels will meet the 45-dB DNL standard.

Comment C.10: Why would the sound wall on the school side be lower than the sound wall on the residential side?

Response C.10: Recommended soundwall heights are those necessary to reduce noise to levels consistent with the noise/land use compatibility guidelines of the City. The heights take factors such as ground elevations, distance to receptors, height of receptors, etc. into account.

Comment C.11: What will the traffic impact be on the residential community off of Silkwood?

Response C.11: This issue is part of the non-CEQA Local Transportation Analysis and is discussed in Section 3.17.3.8 of the DEIR.

D. Santa Clara Valley Transportation Authority (dated November 4, 2019)

Comment D.1: VTA’s Complete Streets Policy states that complete streets are streets that prioritize the safety, comfort, and convenience of pedestrians, bicyclists, and transit riders (including access and operations) of all ages and abilities, as appropriate for the local context, while still providing safe accommodations for motorists and other roadway users. VTA believes Alternatives H and F best align with VTA’s Complete Streets policy for the following reasons:

- Alternatives H and F provide the shortest crossing distances of Charcot Road of all alternatives for those traveling along Oakland Road, thereby reducing vehicle-pedestrian and vehicle-bicycle exposure time.
- Narrower roadways incentivize drivers to travel more slowly than along wider roadways. With the school located immediately adjacent to this intersection, VTA recommends designing for the preferred vehicle speeds rather than relying on speed limit signs for

enforcement. VTA acknowledges that safety issues at this intersection and approaching intersection are balancing factors in the review of alternatives.

Response D.1: This comment expresses the opinion that Alternatives H and F best align with VTA's Complete Streets policy. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment D.2: VTA applauds the design recommendation for a pedestrian beacon at the Charcot Avenue/Silk Wood Lane intersection. Should the City choose Alternative H as the final design, VTA notes that a Rectangular Rapid Flashing beacon (RRFB) would be acceptable as the Pedestrian Hybrid Beacon mentioned in the EIR.

VTA recommends a high-visibility design for all crosswalks impacted by this project including the intersections of Charcot Avenue at Paragon Drive, O'Toole Avenue, Silk Wood Lane, and Oakland Road.

Due to the presence of bicycle facilities on the proposed Charcot Avenue extension and on Oakland Road, VTA recommends redesigning the intersection of these two roadways to a partial protected intersection.

Response D.2: The comment is included in the record and will be considered by the City Council. These recommendations will be evaluated and considered during the project's final design phase.

ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS

E. Eloisa Borlaza (dated November 3, 2019)

Comment E.1: Here are my comments to the Charcot Extension Draft EIR. The Charcot project which will cost millions of taxpayers' money will not benefit commuters and the community.

Drivers will have to slow down when nearing Silkwood Lane since people can cross the street anytime. Peak hours are between 7am-10am and 3pm-6pm. Kids go to school around 7:30am-9am and goes home from school around 2:30pm-3:30pm. These times coincide with rush hour commutes when a lot of parents and kids are crossing Silkwood Ln. Therefore during the overlapping times no cars can really go fast. It can even be slower for them since they need to let pedestrians cross when pedestrians activate the HAWK beacon at the crosswalk.

Parents drop off and pickup their kids at the entrances on Silkwood Ln, Oakland Rd, and Fox Ln. Even with 3 drop off entrances, there is already a long queue of cars during drop off and pick up times from Oakland Rd both turning left and right towards Fox Ln and along Oakland Rd. With the Silkwood Ln entrance closed because of the Charcot project, those parents will have to drop off and pick up their kids at either Oakland Rd or along Fox Ln, causing more congestion on Oakland Rd and Fox Ln.

The Charcot extension ends at Oakland Rd. Those who do not live within the area enclosed by Montague, Lundy, Brokaw, and Silkwood Lane, will have to somehow go back to Montague and Brokaw/Murphy to be able to go farther (to let's say Flickinger, Berryesa, Landess, Capitol). Therefore, those commuters will hit the same congestion. Currently turning left from Oakland Road to Murphy already takes 8 to 15 minutes on busy hours. This will most likely take longer time since more traffic will be generated by cars coming from Charcot. If those cars saved a negligible 0.4 seconds from Charcot to Oakland, the time savings can easily be offset by the long wait to turn left at Murphy. The same is true for turning right from Oakland Rd to Montague or from Trade Zone to Montague.

The speed limit on residential streets is only 25 mph or less, then the same limit should be set on Silkwood Ln for the safety of the residents crossing Silkwood Ln. Since cars can only go 25mph or less along Silkwood Ln therefore cars cannot really go fast and save time during peak hours.

For non peak hours, Montague and Brokaw/Murphy are very open, no congestion at all. Therefore there's really no use for the Charcot extension for 18 hours of each day. Millions of tax payers' money is going to be spent on a project with negligible benefit for 6 hours Monday to Friday (30 hours a week) and 0 benefit for the rest of the hours of Monday to Friday and full days of Sat and Sunday (138 hours a week).

This project is increasing the health risk to students, teachers, school personnel of the Orchard school and the residents of Silkwood Ln. We are already between I-880 freeway and main roads Oakland Rd and Brokaw/Murphy contributing to the air and noise pollution. Now the city wants to add another

busy road along Silkwood Ln which will add more pollution to our community, not to mention that higher air pollution is introduced by stop and go cars which will be the case on Silkwood Ln.

Response E.1: This comment expresses the opinion that the project will not benefit commuters and the community and, at the same time, will increase noise and air pollution. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment E.2: This project is going to destroy several mature trees (trees that help lessen the air pollution) at Charcot and at the same time introduce more air pollution to the area. How is the city going to protect the people working in the area from more air pollution?

Response E.2: The commenter provides no substantial evidence to show that the removal of 37 mature trees would result in more air pollutant emissions to the area. As discussed in Section 3.3 of the Draft EIR, the proposed Charcot Avenue extension would not result in a significant impact to air quality. Further, the project contractors shall implement standard BAAQMD BMPs during all phases of construction to reduce air pollutant (i.e., dust) emissions.

Comment E.3: How is the city going to address the additional traffic from Oakland Rd to Rock Ave to Silkwood Ln? Rock Ave and Silkwood Ln are narrow streets and further narrowed by resident's cars parked on both sides of the streets.

Response E.3: As discussed in Section 3.17.3.8 of the Draft EIR, it is estimated that approximately 129 AM peak-hour vehicles, and 54 PM peak-hour vehicles could potentially use Silk Wood Lane as a cut-through route. If a problem with cut-through traffic occurs in the future, traffic calming measures can be considered for implementation along Silk Wood Lane. As an example, Silk Wood Lane can be narrowed at its intersections with Charcot Avenue and Rock Avenue by extending the curb radius into the street. Curb extensions are commonly referred to as bulb-outs. Bulb-outs typically shorten the pedestrian crossing lengths, keep the vehicle speeds low and allow better pedestrian visibility around parked cars. However, bulb-outs result in a loss of on-street parking and also impede emergency response vehicles and other trucks.

Comment E.4: Instead of building this extension which does not really benefit the commuters, can the city look into optimizing when the traffic lights change? The traffic light is green along Brokaw from Zanker but cars cannot move because the traffic light at Brokaw and 880 freeway entrance is red. Only very few cars will be able to move because by the time the traffic starts moving, the light at Zanker again turns red.

Response E.4: Retiming existing traffic signals would not meet any of the objectives of the project. Please see Section 2.4 of the DEIR for a list of the objectives.

Comment E.5: Why can't the city use the millions of taxpayers' money to solve the more pressing problems we have right now?

- Growing number of homeless people on our streets
- Safety and Security of the people. There are a lot of crimes (theft, burglary, robbery, assault, homicide, car break-ins) happening everyday
- Garbage along the streets, freeways

Response E.5: T Although the issue of funding for a project is not a CEQA issue, the funding of this project comes from the 2016 sales tax ballot Measure B. This measure specifically allocates funding for transportation infrastructure improvements, including the proposed Charcot Avenue Extension identified in the measure.

F. Judianne Ganschow (dated November 4, 2019)

Comment F.1: I am writing on behalf of my students at Orchard Elementary School. Our community opposes this project and believes it will have a negative impact on our students and our community.

Response F.1: This comment expresses the opinion that the project should not be constructed because of negative effects on the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment F.2: If you would like more, here are some facts from the first EIR. The wall they plan to build around the school is only 6 feet. The one across the street by the houses is 8 feet.

Response F.2: As described in Section 3.13.2 of the DEIR, the sound barrier proposed on the school frontage is six feet because it is the height required to reduce the noise levels at the Orchard School outdoor field area and playground to 65 dBA DNL, the “normally acceptable” criteria for the “Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds” land use category. Note that the sound barrier proposed on the residential frontage on the Charcot Avenue extension will be 10 feet, because that is the height required to reduce noise levels at the residences to 60 dBA DNL, the “normally acceptable” criteria for the “Residential, Hotels and Motels, Hospitals, and Residential Care” land use category.

Comment F.3: We will have to restructure our entire playground.

Response F.3: Please see the revised discussion regarding impacts to the playground and the corresponding mitigation in Section 5, *Draft EIR Text Revisions*.

Comment F.4: The road will be only 40 feet from our classrooms.

Response F.4: Based on the preliminary plans shown in Section 2 of the DEIR, the back of the sidewalk along the south side of Charcot Avenue would be approximately

25 feet from the closest classroom building. The distance between the classroom building and the edge of travel way would be approximately 42 feet.

Comment F.5: Pollution in the area will double.

Response F.5: The conclusion in this comment that pollution will double is not supported and, in fact, is contradicted by the DEIR's air quality analysis. The data in Table 3.3-4 show that emissions of criteria air pollutants will be similar with or without the project.

Comment F.6: Traffic will threaten the safety of our students and make school less accessible to the community.

Response F.6: This comment provides no data or evidence to support the conclusion that traffic from the project will threaten the safety of students. The extension will comply with all current design and safety criteria. In addition, the project includes multiple features that will enhance safety for bicyclists and pedestrians, as described in Sections 2.3.2 and 2.3.3 of the DEIR.

Comment F.7: It is against the law to build a school so close to a road. Why do you think it's ok to build the road so close to the school? Illegal and immoral.

Response F.7: The City is unaware of any law that prohibits the construction of a road adjacent to a school. There are numerous examples of roadways adjacent to schools through the City, State, and Country.

Comment F.8: Please also consider that if the emission standards are changed per the administration, all the pollution numbers in the EIR are out the window. It will be much worse.

Response F.8: The City uses BAAQMD's thresholds to evaluate air quality emissions. BAAQMD is a regional agency in California. The BAAQMD thresholds have not been modified by the current administration.

Comment F.9: I fail to see how saving 30 seconds of commute time is worth this impact on the community. The EIR fails to address how damaging this will be to the community.

Response F.9: The environmental impact of the proposed Charcot Avenue extension has been disclosed in the Draft EIR. The City Council will weigh the impacts of the project against its benefits when deciding whether to approve the project.

Comment F.10: Finally, no "Safe Route" study was done for students walking, biking, and driving to school. This is missing from the EIR and should be included.

Response F.10: The Safe Routes to School (SRTS) Program provides funding for measures that improve safety and access to schools by bicyclists and pedestrians. The SRTS Program is separate from and is not a part of, the CEQA analysis for the proposed project. As discussed in Sections 2.3.2 and 2.3.3 of the DEIR, the project

includes multiple features (e.g., buffered bike lanes, crosswalks, signals, and sidewalks) that will allow for safe pedestrian and bicycle access to the school.

G. Rebecca Hartley (dated October 30, 2019)

Comment G.1: I am writing on behalf of my students at Orchard Elementary School. Our community opposes this project and believes it will have a negative impact on our students and our community.

Response G.1: This comment expresses the opinion that the project should not be constructed because of negative effects on the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment G.2: If you would like more, here are some facts from the first EIR. The wall they plan to build around the school is only 6 feet. The one across the street by the houses is 8 feet. We will have to restructure our entire playground. The road will be only 40 feet from our classrooms. Construction noise (need I say more)? Pollution in the area will double. Traffic will threaten the safety of our students and make school less accessible to the community. This is not something this community needs.

Response G.2: Regarding the soundwall heights, please see Response F.2. For impacts to the playground, please see the revised discussion in Section 5, *Draft EIR Text Revisions*. Information regarding the distance between the road and nearest classroom, which is based on the preliminary plans shown in Section 2 of the DEIR, is found in Response F.4. Construction noise will not affect the school because construction adjacent to the school will be limited to the summer when school is not in session. The statement that pollution will double is incorrect; please see Response F.5 for details. Finally, in response to the comment regarding traffic and safe access, please see Response F.6.

H. Stephanie Hill (dated November 4, 2019)

Refer to Appendix B of this First Amendment to the Draft EIR for the PowerPoint presentation included with this comment letter.

Comment H.1: Please see my comments and requests for the Charcot Extension Project contained in the Power Point presentation attached.

I respectfully submit this document for consideration and formal response. I represent myself as a community resident that will be affected by the project, as well as Orchard School District's Board President. We have shared our concerns every step of the way, and at the last community meeting at Berryessa Library (which was a difficult and inconvenient spot for those of us most affected by the extension) our comments fell upon deaf ears.

I have personally attended all of the scoping meetings and community meetings associated with Charcot Extension, and I can say with certainty we have never claimed to be in support of this project nor have we approved drop-off and pick-up provisions included in the EIR. This was an absolute false statement brought up by the planners at last month's meeting. Our board never agreed to any part of this for the record.

The fact that the meeting occurred during City Council and School Board meeting times made it impossible for Orchard/City representatives to be there. We decided to cancel our meeting in order to provide opportunity to be there. We felt it was that important. This project should be canceled in my opinion – the gain is absolutely not worth the very “underestimated and incomplete” impact assessment presented in the EIR.

We are prepared to defend the health and safety of our children and staff, and no matter how many times we have heard this was in the works a long time ago, it is an ill planned project and you can't convince me otherwise.

Response H.1: The portion of this comment related to opposition to the project is included in the record and will be considered by the City Council. Regarding the comments that promises of support were made or there was agreement regarding pick-up and drop-off provisions, the City is unaware of them and, in any case, such issues do not pertain to the EIR.

Although not required by CEQA, the City held multiple meetings on the project and the EIR at locations in the community, including the following:

- Community meeting on March 22, 2017 at Orchard School
- EIR scoping meeting on May 17, 2018 at Berryessa Library
- EIR scoping meeting on May 21, 2018 at Orchard School
- Draft EIR meeting on September 24, 2019 at Berryessa Library

In addition, City staff has met with Orchard School staff on several occasions to discuss the project:

- City presented project to Orchard School District staff on June 4, 2009
- City provided project update to Orchard School District staff on May 23, 2017
- City met with Orchard School Superintendent Wendy Gudalewicz to discuss project on February 15, 2018

Comment H.2: EIR (Environmental Impact Report) findings

Project was limited in scope to 6 elements

Aesthetics (cannot be mitigated to less-than significant)

Biological Resources (will be mitigated)

Cultural Resources (will be mitigated)

Hazards & Hazardous Material (will be mitigated) – this only pertained to things that may be uncovered in the construction process – i.e. contaminated soil, pesticides, etc.

Noise (will be mitigated)

Recreation (cannot be mitigate to less-than significant)

The category that is strikingly missing is the evaluation of the student and staff safety of Orchard as a result of the Charcot Extension.

Response H.2: As discussed in Section 3.17.2.3 of the DEIR, the project is designed to comply with current highway design standards. The project does not include any substandard geometric design features or incompatible uses that might result in substantial hazards. Further, as described in Section 2.3.2 and 2.3.3 of the DEIR, the project includes features (e.g., buffered bike lanes, sidewalks, crosswalks, and signals) that will enhance safety for both pedestrians and bicyclists. Thus, there is no data or evidence to support a conclusion that safety impacts would be a significant adverse effect of the project.

Comment H.3: Drop-Off and Pick-up Currently – 900 students must safely arrive and depart from school. Our Current Situation (2) locations suitable for pick-up and drop-off: Fox Lane, and Silkwood Lane (Charcot Extension will severely compromise this heavily used drop-off)

Fox Lane (front of the school) bisecting the loading area is Ridder Park Lane. We have had one student hit by a vehicle due to limited visibility, it's a well used-shortcut around lights at Brokaw and Oakland road commonly used by commuters, service trucks, gas fueling trucks (there is a large sweeping turn at Ridder Park and Fox that allows these big trucks to bypass railroad track stops on Brokaw, and a succession of 3 highly congested stop lights. Excessive speed causes a dangerous situation at this intersection.

Response H.3: This comment references existing issues on Fox Lane. However, those issues are unrelated to the project because, as described on page 166 of the DEIR, the project would not include any changes to Fox Lane and, as shown in Tables 3.17-7 through 3.17-9, the project would not change traffic volumes on Fox Lane.

Comment H.4: Silkwood is a narrow, “protected” cul-de-sac and parents with children line up to deliver their children to school. They enter the school through an opening in the gate. Not ideal under any circumstances but better than Fox Lane. This is where Charcot Extension will go, adding potentially 4-5 lanes of congestion.

Response H.4: The existing Silk Wood Lane terminus is not designed to be a permanent cul-de-sac. It has been planned as part of the alignment for the proposed Charcot Avenue extension since 1994 in the *San José Focus on the Future 2020 General Plan*. The proposed Charcot Avenue extension would not have five lanes. The project would be a two-lane facility overall (i.e., one lane in each direction), with the roadway widened to four lanes at Oakland Road to accommodate turns at the Charcot Avenue/Oakland Road intersection.

Comment H.5: Major problems with both locations, and we have no real good existing optimal solution AND Charcot Extension will drop a large number of additional drivers right in the area that was our best option. EIR reports the board was consulted about a break in the sound wall on Silkwood and we agreed. We did not ever have this discussion. This is an absolutely false statement. I have been part of every public community meeting hosted by the City and DOT including the original scoping meetings. EIR does did not evaluate this as a category in the report!!! *****We want

this included and studied – and we want to be included in the analysis because we have been told that all of our complaints fall below acceptable levels and they are irrelevant – ONE CHILD INJURED is too many!!!****

Response H.5: As started in Response H.1, the City is unaware of agreement(s) between the City & School Board regarding pick-up and drop-off locations and/or breaks in the soundwall. In any case, the existence or absence of any agreement(s) would not affect the analysis of impacts in the EIR. The proposed break in the soundwall was added to the design to facilitate access to the school from the north.

Comment H.6: Our safety concerns prior to the impacts of the Charcot Extension have fallen on deaf ears. We have asked for proper signage 25MPH in school zone, reduction of the 40MPH speed limit on Oakland Rd. (rejected by City Council vote) appropriate resources, i.e. crossing guards, lights, ADA access and other requests, some only recently have been fulfilled after years of efforts on our part. This will only be exacerbated with thousands of “redistributed trips” from the Charcot extension. It is not the place to be funneling more traffic activity. This has been communicated since the inception of the scoping meetings.

Response H.6: The first part of this comment pertains to existing issues unrelated to the project. The City responds to requests to address existing traffic-related problems on an ongoing basis. As an example, in 2018, the City partnered with the Orchard Parent-Teacher Association (Orchard PTA), California Walks (Cal Walks), the University of California at Berkeley’s Safe Transportation Research and Education Center (SafeTREC), and the Planning Committee to develop a comprehensive set of recommendations to improve bicycle and pedestrian safety at Orchard School.

The second part expresses the opinion that the project’s location is not the place to be funneling more traffic activity. This comment is included in the record and will be considered by the City Council.

Comment H.7:



Gas Tankers on Brokaw going to turn on Ridder Park to avoid train tracks and lights.



Silkwood with parents waiting at pick up

Gas Tankers and Large Trucks who must stop at two separate Railroad crossings (one on Brokaw and another on Oakland Rd.) can “cut the corners” by traveling along Ridder Park to turn in front of Orchard.

There have been frequent near misses, and one student was hit by a vehicle in 2019 in front of our Superintendent who witnessed the accident. One child hit by a vehicle does NOT achieve Vision Zero.



This is NOT okay and there is no impact analysis of this in the EIR Plan as it exists today.

Response H.7: The issue of some gas tankers using Ridder Park Drive and Fox Lane to avoid Brokaw Road and Oakland Road is an existing condition that is unrelated to the Charcot extension. The City notes that the recommendations contained in the report cited in Response H.6 include improvements on Fox Lane and Ridder Park Drive to address potential safety issues associated with this phenomenon.

Comment H.8: We do not believe that the EIR properly studied the ancillary effects of an overpass.

- The overflow of traffic in the housing areas will be severely impacted.
- Redistributed traffic on all of the surrounding roads (Silkwood, Fox, Ridder Park, and Oakland) will create an unacceptable number of stop lights, wait times, and unnecessary risk especially at the Orchard School endpoint vs. any perceived gains in traffic relief on Brokaw and Montague.

Response H.8: This comment does not explain where/how traffic overflow will severely impact a housing area. As such, no detailed response is possible.

The project provides additional east-west capacity across the I-880 corridor. The redistribution of traffic that will result from the project will not result in an unacceptable number of stop lights or wait times and the City is unaware of any policy that defines “unacceptability.” Further, there is no evidence that a significant safety risk will result from the project. As noted in previous responses, the project will comply with all current design and safety criteria.

Comment H.9: Increased places for homeless encampments which is already a chronic problem we face on a daily basis. Our janitors push the homeless out at dawn before school starts, clean up the hypodermic needles and waste they leave behind while sleeping on the campus at night, and prepare the campus for students to arrive.

Drug activity has increased as a result of homeless proximity near the school.

Response H.9: Regarding the issue of homelessness and its relation to the proposed roadway extension, please see Response O.33.

Comment H.10: Study of traffic violations and traffic accidents occurring around the school site. Gather current statistical data on traffic accidents, violations, injuries, and school property damage. We do not feel a “sound wall” will provide a sufficient safety component and there is certainly not enough coverage. Protective walls should sustain penetration by vehicle, trucks, and tankers and should extend the length of Oakland Road.



Students parking and leaving in surrounding neighborhoods north of Silkwood

Response H.10: A study of existing accidents and traffic violations was not undertaken because it is not relevant to the analysis of the impacts of the project in the DEIR. Under CEQA, the purpose of an EIR is to disclose the impacts of a proposed project on the existing environment in 20+ subject areas.

All soundwalls are designed to meet applicable safety criteria in terms of their ability to withstand impacts. Protective walls are not proposed along Oakland Road because there is no evidence that the project will create conditions that warrant the construction of such barriers.

Comment H.11: Requests for EIR further study: 1. Add a school, student and staff safety analysis while students are coming, going and during school hours; Add a school, student and staff impact analysis of ancillary issues related to more congestion in the area from; vehicles, trucks, gas tankers, pedestrian, bicycle, and transient (homeless) increases and 3. ... And request for the DOT, City and all stakeholders to reconsider this DOT project altogether. Locate it elsewhere or re-allocate \$\$'s to another project.

Closing Comments: 1. We will STRONGLY OPPOSE the Charcot Extension project and will actively defend and protect the safety and well-being of our students and staff; 2. We feel that the recently released EIR is NOT ACCURATE or COMPLETE and at times the information is confusing and contradictory at best. Other important analysis categories need to be added; and 3. The BENEFITS and goals of “traffic redistribution” at the Charcot site are NOT WORTH the RISK the project brings to our school and this area.

Response H.11: The requests for further study are duplicates of requests made above from the same commenter; please see the responses to those comments.

The opinion expressed in the comment in opposition to the project is included in the record and will be considered by the City Council.

I. Jo Ho (dated November 4, 2019)

Comment I.1: Your project is planned near 20 years ago and it's absurdly wrong since we have big community next to the school already. After you build this project, my kids have to walk across a very dangerous street to get to school and the polluted air they have to suffered every day is unacceptable. You put young kids' life ahead of so-called traffic jam improvement is totally absurd. The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Response I.1: This comment expresses the opinion that the project should not be constructed because of negative effects on the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

J. Michael Hsu (dated September 24, 2019 and November 4, 2019)

Comment J.1: Will the soundwall be built on private property? If so, will it trigger Prop 13 reassessment? Will the City reimburse homeowners if it results in higher property taxes?

Response J.1: The soundwall will be constructed at the edge of the public right-of-way. The soundwalls will not trigger reassessment or increase property taxes.

Comment J.2: What is the expected impact if the homeless set up camp under the overpass?

Response J.2: Regarding the issue of homelessness and its relation to the proposed roadway extension, please see Response O.33.

Comment J.3: How much gang graffiti will be caused by the addition of concrete soundwalls? Who will pay for graffiti removal?

Response J.3: It is not possible to predict where and when graffiti might occur. The City is under contract with a private company hired to do graffiti clean-up. Reporting graffiti can be done online or on the 24-hour hotline (866) 249-0543.

Comment J.4: Are any of the ducks currently resting in the school yard on the endangered species list?

Response J.4: The DEIR's biological assessment (Appendix F) determined that no endangered species were present in the project area other than certain fish species in Coyote Creek. Many bird species do, however, nest and forage throughout the region as they migrate. The Migratory Bird Treaty Act protects nesting birds. Please see pages 51-52 of the DEIR for a description of the measures included in the project that will avoid impacts to nesting birds.

Comment J.5: Is a 10 ft soundwall effective in mitigating noise heard by a person on the 2nd story (house along Silk Wood Ln)?

Response J.5: Generally, a 2nd floor would not receive any notable benefit unless the soundwall blocks the line of sight to the roadway. If the line of sight is blocked by the soundwall, then the noise reduction would be roughly 5 dB.

Comment J.6: There is a sports car rental business on Charcot Ave. What expected traffic accidents/casualties are going to occur to school children by speeding sports cars?

Response J.6: All vehicles, including sports cars, are required to comply with posted speed limits. It is not possible to quantify whether a motorist will speed and the number of accidents that might occur due to such speeding.

Comment J.7: The Draft EIR has severely understated the impact of Trip Diversion Scenario #2 mentioned in section 3.17.3.8. This trip diversion deals with south bound traffic on Oakland Rd. which uses Rock Ave and Silkwood Ln. as a cut-through route whenever there is congestion on the southbound Oakland Rd / westbound Charcot Ave intersection. The draft EIR incorrectly stated that the cut-through traffic would be minimal simply due to the posted speed limit being 25 mph. First, I don't recall ever seeing any clearly visible speed limit signs along the cut-through route. Second, even if there were posted 25 mph signs, it's a commonly known fact that drivers would never follow that rule and thirdly, there has never been an instance of anyone getting a single speeding ticket along the cut-through route - even though speeding violations occur on a daily basis. And by opening up the cut-through route with this project, even more traffic problems would result.

Since the AM and PM traffic through the westbound Charcot Ave route is estimated to be in the thousands of vehicles per day, it seems more likely that the cut-through traffic along Rock Ave and

Silkwood Ln would be approximately 50% of that amount. This is because drivers have the following choices when they see traffic congestion at the Oakland Rd / Charcot Ave intersection - (1) continue on southbound Oakland Rd and face a 100% probability of traffic congestion, or (2) take the cut-through route on Rock Ave / Silkwood Ln and face a less than 100% probability of traffic congestion along the cut-through route.

If you had consulted with an expert in driver behavior (or conducted a survey of likely drivers), you would find that most drivers (over 90%) would choose the cut-through route. Hence, this would result in a severe impact of approximately 4,000 vehicles per day increase along Rock Ave and Silkwood Ln. The Draft EIR fails to acknowledge the severe environmental impact of this cut-through traffic. It also fails to provide any mitigation measures to reduce this significant impact to acceptable levels. Also, when evaluating the "project build" option, it failed to list this impact as a non-mitigatable condition.

Response J.7: The comment questions the applicable speed limit along Silkwood Lane. Per the CA vehicle code, unless otherwise posted, the "prima facie" speed limits are: 15 miles per hour at railroad crossings, in alleys, and highway intersections without 100 feet of visibility of approaching vehicles; and, 25 miles per hour in business and residential districts and school zones.

The commenter also formulates his own opinion of the extent of the potential cut-through based on their presumptions on driver behavior. The Local Transportation Analysis (LTA) section of the transportation analysis acknowledges the potential for the use of Rock Avenue and Silkwood Lane as a cut-through route as referenced in the comment. Although not a CEQA impact, the study also provides an estimate of the extent of cut-through traffic and recommends potential traffic calming measures should issues with cut-through traffic materialize.

The City is not currently committing to any specific traffic calming measures because the degree to which traffic will cut-through the neighborhood is purely speculative. As stated in the traffic study, upon completion of the proposed project, should cut-through become a substantial issue, the implementation of traffic calming measures to address cut-through traffic can be considered by the City as part of a traffic calming study for the area. The City has extensive experience in addressing such issues in neighborhoods throughout San José and has prepared a 54-page Traffic Calming Tool Kit to assist residents in developing solutions tailored to their location. See <https://www.sanjoseca.gov/home/showdocument?id=2432>.

K. Suwei Huang (dated November 5, 2019)

Comment K.1: This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students. The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The

environmental study done for the City does not adequately consider the current situation in the neighborhood.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of taxpayer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students at Orchard will be irreparable.

The health of the students at Orchard School needs to be more important than increasing the speed of cars. The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Response K.1: This comment expresses the opinion that the project should not be constructed because of negative effects on residents and the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

L. Katherine Kasolas-Jacobson (dated November 4, 2019)

Comment L.1: This project is based on outdated plans, false facts and assumptions. It doesn't fit into the City's new vision of itself as a safe, vibrant, thriving, well researched and smart place to live. It will obviously increase traffic congestion, pollution to unacceptable and unhealthy levels and will make it very unpleasant and extremely unsafe to walk, jog, or ride a bicycle and drive. It will divide and destroy the neighborhood. The noise level will undeniably disturb students, school faculty, families, residents, the local businesses, etc.... The City needs to reconsider how polluted the air in the area already is, what the real reason and how logical it is to build this Extension to nowhere. Why do they want to destroy the peace and harmony that Orchard provides for its students, staff, faculty, families, neighborhood and community. The hap hazard and neglectful environmental study created for and by the City of San José does not adequately consider the current situation how it will affect the students, staff, faculty, families, community, neighborhood and the local residents.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of taxpayer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students, families, staff, faculty at Orchard, neighborhood and community will be irreparable.

The health of the students at Orchard School and community needs to be more important than increasing the number and speed of the cars.

The City needs to understand and reconsider what this project will do and act responsibly to the community and to Orchard School and they need to seriously reevaluate this project and not ignore the people.

Response L.1: This comment expresses the opinion that the project should not be constructed because of negative effects on residents and the Orchard School

community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

M. Vicky Keo (dated November 2, 2019)

Comment M.1: I urge you and the City to take concerns of the community under this project under serious consideration and reevaluate the project as this project is based on outdated plans and assumptions. This project will affect the surrounding communities drastically to save commuters a few minutes on commute, which is not enough to put this community at risk for health issues, congestion and accidents.

It will not only increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students at Orchard school. Taking away property from the school seems irresponsible as the school and community uses it as a space for recreation.

The City needs to consider how polluted the air in the area already is, not to mention the congestion during commute and school hours. The environmental study done for the City does not adequately consider the current situation of the community. It doesn't make sense to cut down tree that help clean the air and add more pollution to the area.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss.

In all, this project will do more harm to the surrounding communities than help. It seem irresponsible to spend more of tax payers money to increase congestion and importantly, the harm done to the students at Orchard will be irreparable. The health of the students at Orchard School and the community needs to be more important than saving commuters several minutes of commute time.

Response M.1: This comment expresses the opinion that the project should not be constructed because of negative effects on residents and the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

N. Michael Lam (November 4, 2019)

Comment N.1: This project is based on outdated plans. The City needs to consider taking away from our school the recreational space and the refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood. Most importantly, the harm done to the students at Orchard will be irreparable. Their safety is paramount and should be the primary consideration for the City. The City needs to be responsible for the community and terminate this project.

Response N.1: This comment expresses the opinion that the project should not be constructed because of negative effects on residents and the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

O. Jeffrey Lawson, Silicon Valley Law Group (dated November 4, 2019)

Comment O.1: Background: PS Business Park owns large properties on both sides of Charcot Avenue. Charcot Business Park I is located at 721-751 Charcot Avenue, 2023-2035 O'Toole Avenue and 2142-2190 Paragon Drive and consists of 19 units. Charcot Business Park II is located at 700-848 Charcot Avenue and 2001-2015 O'Toole Avenue and consists of 57 units. Charcot Business Parks I & II are collectively known as Charcot Business Park and operate together on the west side Interstate 880 in north San José. Because Charcot Avenue ends at highway 880 the road is not a hindrance and the two parks work essentially as a single entity. The project would extend Charcot Avenue for 0.6 miles from Paragon Drive on the west side of I-880 to Oakland Road on the east side of I-880. Improvements to intersections affected by the roadway extension are also included in the project.

No property is impacted more than the Charcot Business park by the western end of the proposed Charcot extension over Highway 880. The business park specializes in providing first class business locations for a variety of small and medium sized companies. Small and medium size businesses provide the bulk of the jobs and GNP in San José and the USA. San José is notoriously jobs deficit and providing an environment that welcomes business and the jobs they provide is supposed to be a high City priority. However, this project does not concern itself with its detrimental impacts on business. Nor does there appear to be any concern that this project will effectively bifurcate the parks that currently function as a single operation.

Companies at the stage of their development during which they are tenants in the park can be fragile and require the access, visibility and flexibility the Charcot Business park currently provides. To protect the businesses in the park, PS Business Parks is highly motivated to ensure that the Charcot Business Park remains a secure, safe, high-quality environment for the types of businesses that fuel Silicon Valley and San José. Charcot Business Park I has had operations at this location since 1980, Charcot Business Park II has operated at its location since 1974. This long presence in this location gives the parks particular expertise in how the proposed changes to the physical environment foreseeably caused by this project could adversely impact the local urban environment.

Response O.1: This comment contains background and introductory remarks by Silicon Valley Law Group, the law firm representing PS Business Parks, to which no response is necessary. Each of the detailed comments provided by this commenter is responded to below.

Comment O.2: Lack of Construction Mitigation Disclosure: Via an email dated May 22, 2018 PS Business Parks previously submitted extensive substantive issues to be studied in the DEIR in response to the City's Scoping Request. PS Business Parks is deeply disappointed to see that the DEIR did not adequately respond to those issues or even study many of the significant issues raised

by PS Business Parks. For example, when asked about how the impacts caused by moving the utilities could be mitigated the drafters completely ignored the issue. The DEIR 's proposal of shutting down operating business and not having a mitigation plan attached to the DEIR makes the entire DEIR deficient. Mitigation measures need to be incorporated in the DEIR before the DEIR is released to the public to ensure the mitigation measure does not escape public and governmental scrutiny. Pub Res C §21100(b)(3); 14 CCR I 5126.4(a)(1)

The DEIR fails to identify several potential construction impacts of the Project. The DEIR, provisions regarding construction impact mitigation (and in particular mitigation for impairment of access to the business park and minimizing disruption to our tenants), do not provide sufficient information to constitute meaningful disclosure, do not establish objective measurable standards, and do not commit to further mitigation if the currently planned mitigation is ineffective. In short, the proposed construction impacts mitigation consists only of vague statements of undefined future actions. This is inadequate under CEQA.

Mitigation measures should describe with specificity the actions that will be taken to reduce or avoid an impact. It is inappropriate in the current circumstances to defer formulation of the mitigation measures. 14 CCR §15126.4(a). Also, mitigation measures must be enforceable. Pub Res C §21081.6. Here there is no adequate mitigation of the adverse impacts on utility disruption, construction impacts, building homeless habitat, security, impacts on Coyote Creek etc. Nor is enforceability addressed. Indeed, the DEIR virtually ignores the potential impacts on the western end of the project and does nothing substantive to mitigate those impacts.

Response O.2: The thrust of this comment is that the construction impacts of the project will be significant, which in turns requires the disclosure of enforceable mitigation measures under CEQA. However, the statements in this comment that purport to demonstrate the reasons construction impacts will be significant are either false, unsupported, and/or contradicted by the analyses in the DEIR, as follows:

- The statement in the comment “the DEIR 's proposal of shutting down operating business and not having a mitigation plan attached to the DEIR makes the entire DEIR deficient” is false. There are no statements in the DEIR to that effect and, importantly, the project will not shut down any businesses, either during construction or over the long-term. Access to the properties along Charcot Avenue between Paragon and O’Toole will be maintained during construction (DEIR, p 152) and over the long-term (DEIR, p 9).
- The statement in the comment that the DEIR lacks “adequate mitigation of the adverse impacts on utility disruption, construction impacts, building homeless habitat, security, impacts on Coyote Creek, etc.,” which implies that each of those impacts is significant, is unsupported by any facts. The DEIR does analyze the project’s impacts to Coyote Creek (Section 3.4), impacts during construction (Sections 3.3 and 3.10), safety impacts (Section 3.17), and impacts to utilities (Section 3.19) and concludes no significant impacts in each case. [“Building homeless habitat” is not analyzed, as explained in a subsequent response to this commenter.]

The first part of this comment states the “DEIR did not adequately respond to those issues or even study many of the significant issues raised by PS Business Parks” and cites the DEIR ignoring mitigation for the relocation of utilities as an example. First, except as noted in the following paragraph, each of the seven comments made by the PS Business Parks in their NOP letter was addressed (see Comment #36 in DEIR Appendix B). Second, the analysis of the project’s impacts on utilities in Section 3.19, which utilized the Checklist from Appendix G of the CEQA Guidelines, concluded the impacts would be less-than-significant, which is why no mitigation was warranted.

Response 36.5 of Appendix B states that impacts to parking would be disclosed in Section 3.11, *Land Use & Planning*, of the DEIR. The discussion of parking impacts was, however, inadvertently omitted from the DEIR. The discussion has been added to this document; see Section 5, *Draft EIR Text Revisions*.

Comment O.3: Notice of Preparation (NOP) and Responses: It appears that the Notice of Preparation (NOP) was circulated in May of 2018, yet it took over 15 months for the DEIR to be circulated. The NOP should have been re-circulated if there was a delay in project implementation to give the public the opportunity to acknowledge any new information that could have been provided. Why did so much time elapse between the circulation of the NOP and the release of the DEIR?

Environmental impacts and the means by which they are analyzed, especially greenhouse gas emissions and transportation, are changing all the time, as is the existing condition. In fact, it was during this time that the City was working on their new Vehicle Miles Travelled (VMT) policy consistent with SB 743. The policy, which created a VMT evaluation tool to determine impacts of development projects, was approved in March 2018 and the Transportation Analysis Handbook was prepared in April 2018. Therefore, the new way of analyzing traffic impacts was fresh out of the gate without many (if any) projects using it to determine its success or failures. The sheer fact that the City created the evaluation tool shows they were interested and perhaps required to evaluate the results of the new tool-yet they didn't give it enough time.

A new NOP, let's say, a whole YEAR later, would have been able to reflect at least a year's worth of data on how the policy was working. It would have given the public and decision makers the opportunity to comment on what should be included in the DEIR based on changed conditions, thresholds, and methodologies. This was not provided in violation of CEQA (Section 15375) and should be corrected by re-circulating the NOP in a timelier manner.

In addition, the public scoping meeting for the DEIR was conducted in May 2018—over 17 months ago. There could be new parents at Orchard School, new industrial park occupants, and new residents in the area with comments that have not been taken into account. Schools and residential uses are defined as sensitive receptors. These stakeholders will be dramatically impacted by the construction of a new roadway through their community. Again, the NOP must be recirculated and the public scoping meeting must be scheduled within the timeframe of the circulation of the revised NOP.

The bulk of the responses to the NOP prepared by the City state "No further response is required as the comment does not raise any environmental issues". In fact, most of the comments relate to air quality, noise, safety, and traffic, which CEQA defines as environmental issues (Appendix G of the CEQA Guidelines) and should have been addressed. Instead, they were systematically dismissed.

The issues brought up in the NOP comments and responses (which the City dismissed as not being "environmental issues") actually ended up being included in the list of "Areas of Public Controversy" (page xix of the DEIR). If the City is going to respond to NOP comments, the responses should be meaningful and describe how the issue will be addressed - they should not be dismissive.

Response O.3: There is no requirement under CEQA that a DEIR be circulated within a certain timeframe after the NOP is circulated. It is not uncommon for the preparation of a DEIR to take over a year from NOP circulation, especially on controversial projects. In this case, a substantial amount of time was required to undertake the technical analyses, including the analysis of three additional alternatives (Alternatives F, G, and H) at the request of the community during the scoping process. Time was also expended in responding to each NOP comment on an individual basis, which is not required and is over-and-above the standard practice in most EIRs. This last step was voluntarily undertaken by the City in an effort to ensure that each person who submitted a comment, whether CEQA- or project-related, received a response.

Recirculation of a NOP is not required unless the project itself changes and/or the Lead Agency becomes aware of substantial changes in the environmental setting, neither of which occurred in this case. The comment that a re-circulated NOP was warranted because of the new VMT policy is not valid because the NOP disclosed that impacts would include VMT (p 11, NOP). The City did not violate CEQA Guidelines §15375, a section that simply defines a NOP and its purpose.

Even when responding to formal comments on a DEIR, CEQA requires responses only to "comments raising significant environmental issues" (CEQA Guidelines §15088). However, many community members participating in the CEQA process do not submit comments on environmental analysis issues, but rather express an opinion on the project itself. Rather than dismiss a non-environmental comment, the City typically notes each one for the record and lets the commenter know it will be considered by the City Council as part of its decision-making process on the project.

Comment O.4: Draft EIR: The basic premise of the project and the DEIR is that the extension of Charcot Avenue has been an identified improvement in North San José for many years. The project received program-level environmental review in the 1994 San José Focus on the Future 2020 General Plan, 2005 North San José Area Development Policy (NSJADP), and 2011 Envision San José 2040 General Plan EIRs. None of these EIRs were completed based on the current Council Policy 5-1 which requires a VMT analysis according to State law (SB 743).

SB 743 was passed in 2013 to eliminate the use of the standard intersection level of service, traffic congestion, and automobile vehicle delay as the metric for determining a significant impact under CEQA. The State gave cities the option of determining a new measure that "promote(s) the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses". The intent of the change was to appropriately balance the needs of congestion management with statewide goals related to infill development, the promotion of public health through active transportation, and the reduction of greenhouse gas emissions.

The City of San José's current 2040 General Plan includes a multitude of policies to create a successful multimodal transportation network supporting the City's sustainability goals. These include policies to reduce traffic trips, vehicle dependence, and greenhouse gas emissions, increase transit use, require Transportation Demand Management (TDMs) for development projects, and densify the City with complementary land uses to shorten trip lengths, including the following:

- TR-1.1: Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).
- TR-1.2: Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.
- TR-1.3: Increase substantially the proportion of commute travel using modes other than the single-occupant vehicle. The 2040 commute mode split targets for San José residents and workers are presented in the following table.

Table TR-1: Commute Mode Split Targets for 2040

COMMUTE TRIPS TO AND FROM SAN JOSÉ		
MODE	2008	2040 GOAL
Drive alone	77.8%	No more than 40%
Carpool	9.2%	At least 10%
Transit	4.1%	At least 20%
Bicycle	1.2%	At least 15%
Walk	1.8%	At least 15%
Other measures (including work at home)	5.8%	See Note 1
Source: 2008 data from American Community Survey (2008)		
Note 1: Working from home is not included in the transportation model, so the 2040 Goal shows percentages for those modes currently included in the model.		

- TR-1.4: Through the entitlement process for new development, projects shall be required to fund or construct needed transportation improvements for all transportation modes, giving first consideration to improvement of biking, walking and transit facilities and services that encourage reduced vehicle travel demand.
- TR-1.5: Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences.
- TR-1.6: Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.
- CD-3.3: Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.
- LU-10.3: Develop residentially- and mixed-use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.

As stated in Chapter 6, "As a means to reduce energy consumption, to reduce greenhouse gas emissions and to create a healthier community, San José maintains a goal to reduce the number of vehicle miles traveled in the city by 40% per service population. Achieving this goal will require a multi-pronged strategy that includes both land use and transportation. This section includes the transportation goals, policies and actions that are intended to achieve an initial VMT reduction of 10% in Tier I, followed by a 20% reduction in Tier II, and ultimately a 40% reduction by 2040. All reductions are measured from the 2009 base year."

The General Plan also includes a "Balanced Transportation System Actions furthering the Tier I VMT reduction goal" as stated below.

TR-1 .13: Reduce vehicle capacity on streets with projected excess capacity by reducing either the number of travel lanes or the roadway width, and use remaining public right-of-way to provide wider sidewalks, bicycle lanes, transit amenities and/or landscaping. Establish criteria to identify roadways for capacity reduction (i.e. road diets) and conduct engineering studies to determine implementation feasibility and develop implementation strategies.

We also know that streets in San José have been put on "road diets", including Lincoln Avenue, Winchester Boulevard, San Fernando Street, Hedding Street, S. 10th Street, and S. 11th Street to name a few. We also know that additional streets, including Alma Avenue are expected to be reduced from four lanes to two lanes while Class II bike lanes and on-street parking are retained. The goal of these road diets is to meet the Vehicle Miles Traveled goals of the General Plan and State law thereby reducing the need to drive and the associated emission of greenhouse gases.

The proposed project flies in the face of the goals and policies of the City's General Plan. Constructing a new street, which it can be imagined would cost upwards of a billion dollars, to allow more vehicle travel is not consistent with the City's General Plan or State law. A better use of this funding would be to redo the 2005 analysis that required the roadway in the first place utilizing the City's VMT Evaluation Tool!

As stated on page 8 of the DEIR, "The Charcot Avenue Extension has been included in each version of the NSPADP (sic) in 2005. It is assumed that this means the extension has been included in all updates. But is it still needed? The DEIR cannot answer this question, because the analysis has not been completed. This section also states that the extension was identified in 2005 as a measure that will "improve transportation conditions and air quality in North San José." But will it reduce drive alone trips by 40% as required by the General Plan. No analysis has been completed to determine accomplishment of this vital goal.

Air quality has improved dramatically since the 2005 analysis was completed due to more restrictive regulations and advances in vehicle technology and cleaner running fuels. How do decision makers and public know that this improvement is still warranted in light of the fact that VMT is not reduced with the construction of NEW roadways! This is why so many streets are put on "road diets".

Also, just because the improvement is continuing to be included in the General Plan Transportation Network Diagram, does not prove that the extension is needed. Analysis does that and without that analysis, it cannot be shown that the project will be counter to General Plan policies to reduce greenhouse gas emissions.

Response O.4: The thrust of this comment is that “times have changed” and therefore the project is no longer needed or, at the very least, the City is obligated to re-justify the need. As described in Section 2.2 of the DEIR, the need for the project has been validated and revalidated for more than 25 years in multiple planning documents including the *San José Focus on the Future 2020 General Plan*, the *Envision San José 2040 General Plan*, several updates to the *North San José Area Development Plan*, and the *North San José Deficiency Plan*. All of these planning documents underwent CEQA review at a program level prior to their adoption.

The many infrastructure improvements contained in the General Plans and North San José planning documents are all designed to serve and accommodate the planned growth identified in those plans. The improvements include transportation, utilities, sanitary sewers, storm drains, fire stations, parks, libraries, community centers, etc. The improvements are implemented in phases, commensurate with construction of residential, commercial, and industrial land uses. The CEQA analyses prepared for the residential, commercial, and industrial land uses document the existing and planned infrastructure projects.

The City is currently proposing to implement the Charcot Avenue Extension, which is one of the infrastructure improvements that has been identified in the above-referenced planning documents. A design for the project has been developed and therefore this EIR is providing project-level review for the project.

The fact that there are a number of new policies (e.g., evaluation of VMT) does not negate the objectives of the project that are stated in Section 2.4 of the DEIR. As an example, there is still a need for additional east-west connectivity across the I-880 corridor, as shown in Section 3.17 of the DEIR. Further, the design of the project has evolved to include substantial bicycle and pedestrian improvements, consistent with the City’s Complete Streets Policy.

Consistent with Council Policy 5.1 and SB 734, a VMT analysis was conducted for the project as discussed in Section 3.17 of the DEIR. Further, the project’s compliance with applicable Circulation Plans and Policies is discussed at Section 3.17.2.1 of the DEIR, and the project’s compliance with applicable plans, policies and regulations is discussed at Section 3.11 of the DEIR.

The project-level impacts disclosed in this EIR (e.g., noise, GHG and criteria pollutant emissions, aesthetics, etc.) will be weighed against the benefits of the project by the City Council when it decides whether to approve the project. The Council could decide to not move forward with the project if it determines that its adverse effects outweigh its benefits or vice versa.

Finally, the statement in this comment that the project “would cost upwards of a billion dollars” is inaccurate. The current cost is estimated to be approximately \$50.9 million (2021 dollars).¹

Comment O.5: Right-of-way and construction, retaining wall, and utility easements are required from the properties in Table 2.3-1. Two of these properties (237-02-064 and 237-02-084) are owned by PS Business Parks, who's ownership and management are not in favor of the roadway extension for all of the reasons in this letter. They are not inclined to participate. Does the City intend to utilize eminent domain to acquire easements on these privately-owned parcels (and others, both privately and publicly owned properties) in Table 2.3- 1? There is no discussion about this in the DEIR or how these businesses will be affected, displaced, or relocated. This must be corrected in the Final EIR.

Response O.5: On all public projects for which right-of-way and/or easements are required, the City negotiates with the affected property owners to achieve a mutually acceptable agreement. When applicable, issues such as temporary loss of use, relocations, etc. are factored into the agreement. Eminent domain is used only when all attempts to negotiate a mutually acceptable agreement between the parties have failed.

Comment O.6: The purpose of extending Charcot Avenue across I-880 is to provide a safe multi-modal facility, improve connectivity for vehicular, bicycle, and pedestrian travel routes, provide the opportunity to utilize alternative travel modes, and reduce travel time for the east-west travelers in the North San José Area. The objectives for the proposed project are as follows:

- Improve connectivity between the east side of I-880 and the west side of I-880;
- Increase the capacity for east/west travel across the I-880 corridor;
- Provide a safe bicycle/pedestrian facility over I-880, in compliance with San José's Complete Streets Policy;
- Implement a programmed roadway network improvement project identified in the Envision San José 2040 General Plan; and
- Implement a planned major roadway improvement project, as set forth in the North San José Area Development Policy and the North San José Deficiency Plan.

There is plenty of connectivity between the east and west sides of I-880. We count five over the four-mile distance between Gish Road in the south and SR-237 in the north. In addition, the Brokaw Road interchange is only 0.35 miles to the south of Charcot Avenue. The number of crossings of I-880 is comparable to those on US-101 and I-680 to the east of I-880. Similarly, the objective to increase the capacity for east/west travel across I-880 is not necessary in the project area.

A safe bicycle/pedestrian facility over I-880 can be provided at existing interchanges and crossings and should be consistent with General Plan and Complete Streets policies. A new roadway is not necessary to accomplish this objective. Implementing roadway construction projects simply because they have been on the books for so long is not fiscally or environmentally responsible. Development

¹ Source: BKF Engineers, E-Mail from Chiaming Chi, PE to John Hesler at David J Powers & Associates dated March 20, 2020.

in North San José/Berryessa has continued for almost 15 years, including during the current construction boom without the Charcot extension. What's to say that cannot continue?

Therefore, the project objectives do not warrant construction of a new roadway with significant unavoidable impacts that would increase VMT in the City. Impacts associated with the safety of children and the viability of many businesses are not consistent with the NSJADP or General Plan – especially when there is no proof that the extension of Charcot Avenue is even necessary.

Further, it is not apparent that the location of this proposed extension would improve traffic conditions in North San José proper, which is located more to the northwest. It could be argued that Charcot Avenue is located more in the Berryessa area of San José. In addition, there is no direct access from Charcot Avenue to any other major freeway connections such as US- 101, unlike Brokaw Road and Montague Expressway. Charcot Avenue is easily accessed from Oakland Road in the east and there is a direct route to the Brokaw Road interchange from O'Toole Avenue on the west side of I-880. How can this roadway extension really improve overall traffic conditions in the project area?

Spending the money on a new traffic analysis that may very well determine, especially, with current TDM measures such as reduced parking, bicycle parking, ride-sharing, and TDM coordination, that the traffic impacts of North San José development would be less than significant. TDM measures are now routinely included in projects in the City and there could be other more minor roadway improvements that could reduce impacts to a less than significant level. However, without an updated traffic report using the City's VMT Evaluation Tool, public dollars would be wasted to build a new roadway inconsistent with General Plan policies and State law - a new roadway that would inevitably increase greenhouse gas emissions.

Response O.6: As stated in Response O.4, the need for the project has been revalidated on multiple occasions over the past 25 years. The analysis contained in Section 3.17 of the DEIR shows the benefits of the project. See, for example, Figures 3.17-5 through 3.17-7, which depict the project's effect of reducing traffic on parallel east-west routes.

This comment requests an updated traffic report using the City's VMT Evaluation Tool. That analysis been completed; see Section 3.17.2.2 of the DEIR.

The opinion that the project is unwarranted, is not fiscally and environmentally responsible, and is not needed because there are other existing east-west crossings, is included in the record and will be considered by the City Council.

Comment O.7: The project cannot move forward without Caltrans approval for the required encroachment permit. Caltrans often requires its own environmental review proceedings to approve such projects. This process should be more explicitly explained in the DEIR, rather than the one sentence provided on page 2 of the DEIR.

Response O.7: Caltrans has agreed that the City is the CEQA Lead Agency for this project. Therefore, Caltrans will issue its encroachment permit in its role as a CEQA Responsible Agency.

Comment O.8: School lands are considered to be a 4(f) resource by the federal agencies and the displacement of businesses must be evaluated as part of Caltrans' review. In fact, the Federal Highway Administration's Visual Impact Assessment method ("Viewer Response") is used to determine visual impacts in Section 3.1.1.2 of the DEIR. Therefore, additional analysis could be required for the project, which is not included in this DEIR. This section should be revised to include a complete description of what is entailed in "Caltrans approval", which could involve topics not included in the DEIR. In addition, subsequent environmental review may be required.

It is also our belief that the conversion of parkland, which is what the playfields are described as in the DEIR, to development must be approved of by the voters of San José. The City Charter requires this for the loss of parkland and it must be implemented.

Response O.8: Section 4(f) rules, policies, and procedures do not apply to this project as no federal funds are involved.

The Orchard School property was not purchased with park monies. Therefore, approval by the voters of San José is not required.

Comment O.9: Aesthetics: The DEIR states that a significant number of mature trees would be removed from the project area to construct the proposed project. The DEIR only describes this as a change, but in fact, it is a long-term impact. There appears to be no evaluation of how air quality in the project area would be affected in the long-term as trees absorb the energy from the sun that would otherwise be reflected back into the atmosphere. Through the process of photosynthesis in green trees, carbon dioxide, a greenhouse gas, is absorbed by them from the atmosphere. They turn carbon dioxide and water into food using energy obtained from the sun light. There is no discussion about how the loss of trees is not only an aesthetic impact, but also a greenhouse gas impact.

How is the construction of a noise barrier along a school boundary adjacent to a playground, open space playfields, and single-family homes any replacement for a view of the outdoors and nearby trees? Stamping the noise barrier with an "aesthetic treatment" does not replace a scenic vista, as shown on Figure 3.1-4 of the DEIR. This impact must be significant unavoidable and the City must make findings for a Statement of Overriding Conditions in which it must be determined that the project is so important for the public good that it outweighs the impacts of the roadway extension and the loss of views to a school and residential uses. A tall order.

Figure 3.1-2 shows a crosswalk and bike lane at the base of the elevated freeway overcrossing. It appears that there would not be enough sight distance for westbound vehicular traffic to render this a safe crosswalk. This must be evaluated in the DEIR.

Impact AES-4 does not address impacts of car lights coming in the windows of the homes shown on Figure 3.1-4. A similar effect would occur at the home located on the west side of Silk Wood Lane. Only streetlights can be dimmable, programmable, and directly downward and outward. As shown in this photo simulation, the proposed barrier wall would not block eastbound car traffic lights. This must also be a significant unavoidable impact.

Response O.9: Trees do assist in the sequestration of GHGs. As stated in the Section 3.4 of the DEIR, approximately 85 trees will be removed by the project. However, all trees removed will be replaced at the ratios listed in Table 3.4-2. This will mitigate the GHG effects from the tree removal.

The existing view along Silk wood Lane is not a scenic vista. As described on page 22 of the DEIR, this area has “moderate visual quality.” Further, as stated on page 23 of the DEIR: A scenic vista is generally defined as an expanded view of an area that is visually and aesthetically pleasing. The project alignment is not located within a designated scenic vista, nor is it located on a hill or along a ridgeline. Due to the flat topography, adjacent development limits views of the project alignment to the immediate area. For these reasons, the proposed roadway extension project would not have a substantial adverse effect on a scenic vista. (No Impact)” The comment provides no analysis to support the characterization of the existing setting as a scenic vista.

The design of the roadway, including the location of the crosswalk, complies with all current design criteria including sight distance.

The impact of a vehicle’s headlights as it drives by a residence is not significant because the headlights are aimed at the roadway in front of the vehicle. If such an effect was significant, then it would apply to every street lined with residences. At this location, the City points out that the existing and proposed soundwalls block vehicle headlights from entering windows at all but the two residences on the corner.

Comment O.10: The air quality section of the DEIR again states that the extension of Charcot Avenue is identified as part of the City's planned roadway network in the Envision San José 2040 General Plan, the North San José Deficiency Plan, and the North San José Area Development Policy. Therefore, it is claimed that it is consistent with these plans because it would implement one of the projects identified therein.

Again, the project is not consistent with many General Plan policies as previously noted, especially those related to reducing VMT and GHG emissions. New analysis of the total NSJADP is warranted since air quality thresholds have changed and GHG emission were not even calculated when the NSJADP was prepared in 2005. This renders the project in conflict with implementation of air quality plans, CEQA, and the City's General Plan.

Response O.10: Section 3.8 of the DEIR calculates the GHG emissions from the project and compares those emissions to No Project conditions for three horizon years. In all cases, as shown in Table 3.8-2, GHG emissions are reduced by the project.

Comment O.11: Air Quality: Again, this section states the incorrect premise that because the extension of Charcot Avenue is identified as part of the City's planned roadway network, it is consistent with the General Plan and NSJADP. However, as stated above the construction of a new roadway is inconsistent with all of the goals and policies related to greenhouse gas emissions. The traffic report itself states that new roadways inherently increase VMT. The air quality analysis

should have equated increased VMT with increased emissions of criteria air pollutants, which is in conflict with the applicable air quality plan.

Has anyone contacted BAAQMD to see if they are in favor of building a new roadway in an area with plenty of other transportation options? It seems unimaginable that they will not have considerable concerns that would lead to a conclusion of a significant unavoidable impact due to obstruction of the implementation of the applicable air quality plan, which they are responsible for implementing.

Response O.11: As CEQA Lead Agency, it is the City's responsibility to assess the GHG and criteria air pollutant emissions of the project. BAAQMD guides the assessment methodology and provides thresholds of significance. BAAQMD has no authority over the approval of the project.

BAAQMD's letter on the DEIR is Comment A. See Comment A and the City's responses.

Comment O.12: The first incorrect assumption is that the project would only take 10 months to complete. The roadway extension includes a vehicle overpass of I-880. As Bay area commuters have noticed, construction of overpasses on US-101 at Willow Pass Road took over two years to complete and that was to just widen an existing bridge. When you include all of the utility relocation, signal installations, concrete piers, sound walls, and slip ramp envelope (whatever that is) that will be required as well as grading and drainage, it could take between two and three years to complete the project.²

I-880 is an interstate facility with eight lanes in this location in addition to four shoulders on each side and a median down the middle. To negotiate the construction of a new two-lane bridge with sidewalks and bike lanes will take years, not to mention the rest of the roadway to Oakland Road and Paragon Drive will take much longer than 10 months. It can take four months alone for concrete piers to cure. In addition, Caltrans is not known for their quick turnaround and they will definitely be part of the construction process, as I-880 is one of their facilities. This inaccurate construction length renders the evaluation of air quality emissions, including dust and particulate matter during construction, inadequate.

Response O.12: It is estimated that the project construction will take approximately 10 months to complete. While certain aspects of the construction work need to follow a sequence, the majority of the work may be performed concurrently. The column pier does not need to be fully cured for other work to proceed. The roadway work, including retaining walls, on the east and west sides may be constructed at the same time. The bridge over I-880 can be constructed concurrently with the roadway work. The bridge construction can be constructed within minimal impacts to the I-880 traffic which facilitates the bridge construction schedule. While the details of the construction will be determined by the means and methods of the Contractor, it will be reviewed and approved by the City and Caltrans to minimize construction impacts.

² <https://www.quora.com/How-long-does-it-take-to-build-a-highway>

Comment O.13: Further, page 39 of the DEIR does not contain the City's current Standard Conditions that are to be implemented for an impact to be considered less than significant and must be revised. They are currently as stated below. Without the successful implementation of all of these measures, impacts will be significant and unavoidable. And who will be responsible for guaranteeing that the City will actually police itself on a public project and how will it be done? Since the City is the applicant and most likely not the contractor, how can the public be sure all measures, although these measures were not included in the DEIR, are implemented?

Standard Permit Conditions: During any construction period ground disturbance, the project applicant shall ensure that the project contractor implement the following standard BAAQMD measures to control dust and exhaust:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day or often as needed to control dust emissions.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered and/or maintain at least two feet of freeboard.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff onto public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

Response O.13: The conditions listed on page 39 mimic those listed in this comment. Page 39 does not include the measure on building pads as it is not applicable to the project. The measure requiring sandbags and erosion control is related to preventing degradation of water quality.

A Mitigation Monitoring & Reporting Program (MMRP) will be adopted by the City, which spells out the timing, method, and oversight responsibility for implementation of all mitigation measures. The City's Director of Planning, Building, and Code Enforcement or his/her designee has the responsibility for ensuring mitigation compliance.

Comment O.14: The traffic report states that VMT will increase as a result of the project construction. Therefore, how can it be stated that emissions that result from traffic "would be slightly lower than under No Project conditions"? Especially in an area with plenty of vehicle travel options over I-880, including Brokaw Road and Montague Expressway, which have much better access to both jobs and housing than Charcot Avenue. Similarly, the statement that operational criteria pollutants would decrease over time if the project is completed. Constructing a new roadway adjacent to housing and school playgrounds cannot possibly result in fewer impacts than the existing condition.

The section on Toxic Air Contaminants (TACs) does not accurately reflect the existing condition and impacts to residents and children - the very definition of sensitive receptors. Page 41 of the DEIR states that these sensitive receptors could "potentially be affected during construction and operation of the proposed roadway extension.

The sheer fact that cancer risk to infants and children must be assessed is frightening enough. Would the placement of six- and 10-foot high soundwall barriers along a playground, playfields, and the side and backyards of homes serve to trap TACs in areas where infants and children spend vast amounts of time? This was not discussed or analyzed.

To have misrepresented the length of construction as previously discussed results in an inaccurate assessment of TAC impacts. Durations of exposure is tantamount to the evaluation and with the roadway to be constructed adjacent to an existing school playground and playfields, the assessment must be recalculated with the correct duration, the impact conclusion changes to significant unavoidable and the DEIR recirculated.

Response O.14: The DEIR air quality analysis modeled traffic emissions that take into account VMT, traffic speed and vehicle delay. There are relatively small changes in VMT and speed across the travel network studied. Emissions of air pollutants and GHG are sensitive to changes in all of these variables. While VMT may be slightly higher or lower, the change in emission rate due differences in speed may add or offset that change. Similarly, changes in vehicle delay time would contribute to these changes.

The localized impacts from construction and operation of the project were evaluated at the school and nearby residences. The increase in localized TAC and air pollutant concentrations that affect sensitive receptors was addressed in that analysis, in terms of increased cancer risk over 30 years of exposure, increased annual PM_{2.5} concentrations and increased non-cancer hazards that are expressed as a Hazard Index. Regionwide effects from the project were addressed by modeling emissions from traffic in the entire roadway network. The thresholds used to judge total project emission and localized impacts are based on guidance contained in the BAAQMD CEQA Air Quality Guidelines.

The TAC section, that analyzes community risk impacts, addresses the project incremental impacts. Those impacts were then added to the effect of the cumulative sources within the area. There are two thresholds used in the DEIR analysis to judge these impacts: (1) the single-source thresholds that evaluate only the project effects

and (2) cumulative thresholds that address impacts from existing and foreseeable future sources.

The DEIR analysis did not attempt to model the effects of a sound barrier on the dispersion of pollutants since there are no reliable methods to conduct this assessment. Under certain wind conditions, barriers could cause “downwash” effects that result in higher concentrations directly behind a structure. This is a complex effect that tends to be localized and short-term in nature. On the other hand, the barrier could disrupt dispersion of pollutants behind a barrier such that lower concentrations occur. There are no reliable dispersion modeling techniques to analyze this effect for sound walls. The California Air Resources Board (CARB) sponsored an investigation of the effectiveness of sound walls and vegetative barriers as air pollutant mitigation strategies. This study indicates that barriers, especially those with vegetation, could be effective in reducing the localized pollutant concentrations. However, the results are complex and dependent on receptor-barrier-roadway conditions, meteorological conditions, time of day, and traffic.

The DEIR relied on the estimates for construction activity and schedule provided by the project design team. These are considered the most reliable estimates for computing air pollutant emissions

Comment O.15: How can the odors of bakeries and restaurants even be compared to those of construction equipment and asphalt paving? Diesel exhaust adjacent to homes and school play areas for extended periods of time (much longer than described in the DEIR) would be significant to a significant number of children and infants and must be mitigated with more than a five-minute limit to equipment idling. Therefore, not only is the impact incorrect, but the mitigation measure is not adequate to reduce the impact to a less than significant level. This must be corrected.

All of the above comments also relate to the cumulative air quality impact discussion in the DEIR.

Response O.15: Construction odors are highly localized and short-term. The odors would likely only be noticed near the project site when construction activity is occurring. While noticeable, these temporary odors would not cause substantial odor complaints that rise to a significant impact. The presence of temporary odors is not a significant impact.

Comment O.16: Biological Resources: The tree survey was completed for the project over 20 months ago. It must be updated as trees can grow in that amount of time such that they become ordinance size and impacts identified are most likely less than what will actually occur. The larger the tree canopy, the more potential there is for raptors and other birds to utilize the trees during the nesting season. Therefore, the tree survey must be updated for an accurate assessment of impacts to protected bird species.

Response O.16: The tree survey was completed in 2018, which is when the NOP was circulated. As such, it represents existing conditions as defined by CEQA. In addition, the fact that a tree might grow slightly between 2018 and 2019 would not change any of the EIR conclusions with regard to the potential for nesting birds.

Comment O.17: The tree replacement section of the DEIR states that the City can pay the City if trees cannot be replaced along the project alignment. How will the public be made aware that the City has paid themselves or planted trees at alternative sites? Public projects must be held to a higher standard and mitigation must be feasible and transparent.

Response O.17: Reports on mitigation implementation for all projects, both private and public, are public records maintained by the City and can be viewed upon request by any member of the public.

Comment O.18: Although Coyote Creek is described as being “330 feet west and outside of the project alignment”, it cannot be ignored that additional traffic on Charcot Avenue would result in the potential for additional hazardous materials to enter the creek during storm events. As stated in the biology section, federally threatened and California species of concern such as steelhead and western pond turtle are known inhabitants of Coyote Creek. In addition, two sensitive vegetation habitats are located within its banks. Additional traffic on the bridge over the creek would result in additional toxins, including gasoline, oils, and carbons being transported to the waterway and affecting water quality detrimentally for flora and fauna. This impact was not addressed in the biology section, which must be corrected.

Response O.18: Impacts to Coyote Creek will not occur because the project will not construct any improvements within 330 feet of that resource. The fact that traffic volumes will increase on the existing bridge over the creek does not equate to increased impacts because the bridge was constructed and evaluated under the assumption that Charcot Avenue would be extended to Oakland Road.

Comment O.19: The project may not be located within the boundary of the Santa Clara Valley Habitat Plan (SCVHP), but it will certainly lead to additional nitrogen deposition by way of additional VMT, which is also covered by the SCVHP. This impact must be identified, and all appropriate fees paid.

Response O.19: The project is located within the boundary of the SCVHP but will not generate additional vehicle trips. Therefore, in accordance with SCVHP fees and conditions, it does not need to pay the nitrogen deposition fee associated with increased vehicle trips.

Comment O.20: Energy: One of the main complaints about the project is that travel speeds will increase on Charcot Avenue both on the east and west side of I-880. This will adversely affect the business parks on the west and the school and residential uses on the east side of the highway. This fact is somehow determined to be a desirable situation in the discussion of energy use during the operational phase on page 66 of the DEIR.

It is stated that "by creating additional roadway system capacity, the project would reduce travel time and improve travel speed on roadways in the project area, which reduces energy (i.e., gasoline and diesel) consumed by vehicles traveling more efficiently in and through the City of San José." It is not apparent why improving travel speeds on roadways reduces the use of gasoline.

In addition, improving travel speeds must mean speeding them up, which is exactly what will happen on a roadway with sensitive uses. This increase in travel speeds is a significant impact that is not addressed in the transportation section, yet the City admits to it occurring. General Plan policy CD-2.1 states that the circulation goals and policies include creating a "comfortable and safe pedestrian environment by implementing wide sidewalks, shade structures, attractive street furniture, street trees, reduced traffic speeds ..."

The DEIR states that the project removes street trees and increases traffic speeds. Traffic calming is proposed in concept without any details for Silk Wood Lane on page 169, but there are no traffic calming measures proposed for Charcot Avenue right in front of residences and a school on a roadway where the City admits speeds will increase. For these reasons, not only is an inadequate discussion of an increase in traffic speeds and its effects on sensitive users not included in the DEIR, but the project inconsistent with the General Plan related to reducing travel speeds and energy consumption.

Response O.20: The fact that a project increases average speeds over those that would otherwise occur under congested conditions does not equate to a significant impact. The removal of congested/stop-and-go conditions is a beneficial impact that does not imply vehicles will violate speed laws.

The traffic calming measures discussed for the Silk Wood Drive neighborhood are associated with potential cut-through traffic impacts, not vehicle speeds. There is no evidence that the project will result in violations of speed limits on Charcot Avenue. Further, there is no statement in the DEIR that tree removal will increase speeds as no such relationship has been established.

Comment O.21: Noise: The project depends on 6-, 10- and 12-foot soundwalls along the Charcot Avenue extension and at Oakland Road to mitigate for significant project-generated traffic noise. These soundwalls will be adjacent to an elementary school and single-family residential uses. There is no discussion of how this mitigation would result in its own environmental impacts - namely aesthetic and shade and shadow impacts.

Response O.21: The aesthetic impacts of the proposed soundwalls east of I-880 are included in the discussion of aesthetic impacts, as depicted on Figure 3.1-4. The shadows created by a wall of up to 12 feet in height would be minimal. Soundwalls with heights of 16 feet are common along freeways in Santa Clara County.

Comment O.22: Soundwalls in the Bay area are primarily constructed along highways and expressways - not along 2-lane roadways. This shows how detrimental and expensive this project will be. If you purchase a home or enroll your children into a school that are along highways or freeways, you understand what you and your children will be exposed to. But who wants to have these tall structures erected in your backyard or along your playground for a project with a very suspect purpose and need?

In addition, there does not appear to be a discussion of the construction impacts of constructing these walls - noise, air quality, greenhouse gas emissions immediately adjacent to residential and school uses? Walls along Oakland Road would be as high as 12-feet. Most highway soundwalls are not that

tall. These yards will be shaded much of the time with an inability to grow vegetation at certain times of the year. This impact was not discussed.

Construction of the project will take longer than 10 months to complete, as previously described, yet the construction noise analysis assumes this incorrect timeframe. Residents and school children will be subjected to noise and vibration, including pile driving for much longer. We would like to see an example of a project of this magnitude only taking 10 months to complete. And daytime hours of construction are the most sensitive for school uses.

Cumulative noise has been determined to be significant at backyards, side yards, and at the school. The mitigation is to build walls that separate a community and use taxpayer dollars for a project for which there is no apparent need.

Response O.22: The City disagrees that soundwalls with 12-foot heights are uncommon. Soundwall heights of up to 16 feet are common along freeways, as well as along expressways and certain arterials.

The portion of the project adjacent to the school will be constructed during the summer when school is not in session. Therefore, noise impacts at the school during the schoolyear will be avoided. In any case, the proposed soundwalls will be constructed as a first task so that they will serve to mitigate construction noise impacts as well as long-term noise impacts.

Comment O.23: Transportation: Section 3.17.2.2 states that because "project meets certain screening criteria (Table 3.17- 2), the project is presumed to result in less-than-significant VMT impacts and a detailed VMT analysis is not required under CEQA." There appear to be two tables in the DEIR labeled as Table 3.17-2, one of which shows existing truck volumes and not any screening criteria. The table on page 138 states the screening criteria.

It should be noted that SB743 was not intended to eliminate traffic analyses - it was only intended to change the metrics by which impacts are determined. Again, these "screened" projects have not been qualitatively tested for VMT impacts. This policy has only been in place for a little over a year and as far as we know, the construction of a new roadway has not been completed in San José since they were enacted. Therefore, there is no qualitative proof that the construction of a new roadway as part of a roadway network that has also not been analyzed from a VMT standpoint will not result in significant transportation impacts.

As shown on Figure 3.17-2 of the DEIR, there are ample sidewalks and bike lanes in the project area that provide conveniently located ways to get across I-880, including Brokaw Road where recent commercial development has been constructed. This is where bicyclists and pedestrians will be traveling and they will come down Brokaw Road - they will not be traveling on Charcot Avenue. It is also not shown how this roadway will serve vehicle, bicycle, and pedestrian travel for North San José proper. Yet, apparently the "screening criteria" listed in the wrong Table 3.17-2 show the project will improve conditions for pedestrians, bicyclists, and transit. How is this determined with no analysis of a project that is simply just on the books. There is no evidence that this project continues to be required for North San José development to continue to occur.

To have "presumed " that the project would have a less than significant transportation impact because it will provide inconvenient bicycle and pedestrian access is not consistent with the City 's VMT policy. The City is relying on this "presumption" to dismiss completing a qualitative traffic analysis consistent with CEQA. A VMT analysis of not only the proposed roadway extension, but also of all NSJADP traffic could very well determine that the roadway is not required. The City should complete this analysis prior to constructing an expensive, unsafe roadway adjacent to highly sensitive residential and school uses.

Response O.23: The proposed project will improve the roadway system for pedestrians and bicyclists which will in turn improve the opportunities for use of transit and thus meet the City's adopted transportation project screening criteria. The proposed pedestrian and bicycle facilities proposed as part of the project will provide the opportunity for multi-modal travel and reduction in auto travel. Therefore, per San José Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA transportation analysis. However, for informational purposes, a VMT evaluation for the project was completed and included within the traffic study. The VMT evaluation indicates that the proposed project would not meet the established VMT impact criteria; see Section 3.17 for details.

The comment also states that there is "ample sidewalks and bike lanes in the project area that provide conveniently located ways to get across I-880, including Brokaw Road." However, Brokaw Road and Montague Expressway currently provide the only means for pedestrians and bicyclist to cross I-880. Existing sidewalks on both Brokaw Road and Montague Expressway are discontinuous and there are no bike lanes provided on Montague Expressway. Brokaw Road is a six-lane heavily congested roadway that is not conducive to bicycle and pedestrian travel. The proposed project will provide for pedestrian and bicycle travel across I -880 along a two-lane roadway with much less vehicular traffic. Therefore, the proposed project would improve conditions for pedestrian and bicycle travel across I-880.

Comment O.24: The traffic volume data (page 142) is too old to be of any value and should be collected again. To rely on old data is in violation of CEQA. Again, it appears that delays occurred during the preparation of the DEIR, rendering the NOP comment responses and traffic data as too old. In addition, whatever traffic data and analysis that was done as part of the General Plan and NJSADP are too old and should be re-run according to the Council Policy 5-1 to determine whether the proposed project, from a VMT standpoint, is still required. Again, to state that the project would not conflict with any plans, ordinances, or policies is disingenuous until a new study is completed consistent with SB 743. Simply including a bike lane on the roadway does not negate the need for qualitative information to be provided related to its environmental impacts.

Response O.24: The traffic counts used in the analyses were collected in September 2018. The final Transportation Analysis (TA) is dated April 8, 2019. Therefore, the traffic counts were less than two years old at the time of the completion of the TA. Traffic counts that are less than two years old are considered valid for use in traffic analyses in the City of San José and generally adequate throughout the state where changes in traffic conditions do not warrant the collection of more recent data.

The comment is incorrect in its assertion that the use of counts more than two years old is a violation of CEQA. CEQA provides no threshold for age of counts so long as there are no substantive changes in traffic volumes that warrant the collection of new data.

Comment O.25: This project will be constructed with public dollars and/or monies collected as development has occurred. These funds would be better served preparing a new report and providing better bike lanes and transit on existing streets in the project area, which is not an Urban Village. Therefore, project cannot be considered to be consistent with applicable plans and policies encouraging the reduction of greenhouse gas emissions. As we have shown, the project is inconsistent with many specific General Plan policies, including TR-1 .1, TR-1.2, TR- 1.9, TR-2.7, TR-5.4, and many others.

Response O.25: As stated previously in Response O.10, the project will reduce GHG emissions as compared to No Project conditions.

The project includes improvements for both automotive and non-automotive transportation modes, consistent with Policies TR-1.1, TR-1.2, TR-1.9, and TR-2.7. The Charcot Avenue Extension also enhances the interconnected network of streets by constructing a planned east-east connection, consistent with Policy TR-5.4.

Comment O.26: A VMT analysis was completed for the proposed project even though the City determined that a VMT analysis was not necessary because the project was "screened ". The traffic report completed for the project completed an intersection operations analysis that compared existing conditions with the Charcot Extension to Year 2025 conditions with the Charcot Extension.

CEQA requires that the proposed project be compared to the existing conditions at the time the NOP is circulated. In this case, the existing condition is without the Charcot Avenue extension, and traffic conditions over 17 months ago can easily be different than what they are now. Therefore, the analysis must be corrected utilizing the correct existing condition and more up-to-date traffic data.

Further, it appears that information for the analysis was completed using "interpolation" of traffic volumes. What exactly does this entail? Is real information not utilized? This is not consistent with sound or normal traffic analysis methodology and could result in the utilization of incorrect data for the determination of important and accurate traffic impacts.

Response O.26: As explained previously in Response O.3, the traffic analysis was undertaken in 2018, which is the same year when the NOP was circulated. This is consistent with CEQA Guidelines Section 15125(a)(1).

The comment's insinuation that the methodology used in the analyses is "not sound" is unfounded. The traffic volumes used in the analyses were derived by using existing count data and traffic forecasts produced by the City's Travel Demand Forecasting (TDF) model. The City's TDF model has the ability to estimate the diversion of traffic and change in traffic patterns due to roadway/transit system changes similar to those proposed by the project. Unlike, manual estimations and assignment of traffic volumes

typically used for the evaluation of development projects which rely on assumptions and judgment of the traffic professional, the model assigns traffic based on an extensive process that considers the capacity of the roadway system, travel speeds, congestion, and travel time. Therefore, the City's TDF model, is the ideal tool for the evaluation of roadway network changes such as the proposed project. The methodology and adjustment process of the forecasted traffic volumes produced by the City's TDF model is consistent with that which has been used for the evaluation of other roadway network changes in the City.

Comment O.27: As shown on Figure 3.17-3 of the DEIR, there for very limited transit opportunities in the project area. The City's General Plan focuses on encouraging multi-modal improvements City-wide. The VMT screening that was relied on for traffic impacts should not have placed any value on transit for the purposes of screening the project. Better transit in the area, especially along Brokaw Road, where there is none, would provide valuable multi-modal opportunities and be much less invasive to residential and school uses than the construction of a new roadway over a highway.

Response O.27: The comment is correct in its description of limited transit opportunities in the project area. However, the comment is incorrect in its assertion that the proposed project will provide no value in regard to the improvement of multi-modal travel. The proposed pedestrian and bicycle facilities proposed as part of the project will provide for opportunities to increase multi-modal travel and reduce auto travel.

The comment suggests that the use of Brokaw Road would provide better opportunities for multi-modal travel. However, Brokaw Road is a six-lane heavily congested roadway that is not conducive to bicycle and pedestrian travel. The proposed project will provide for pedestrian and bicycle travel across I -880 along a two-lane roadway with much less vehicular traffic and a more direct connection to transit services along North First Street.

Comment O.28: The VMT analysis in the traffic report and the traffic section of the DEIR concluded that the proposed project would only result in a 0.1% increase in VMT in a 1.5-mile area. How was the 1.5-mile radius for impacts determined and is it adequate? We know of no known scientific data that shows that 1.5-miles is appropriate or if it constrains the impacts inaccurately so as to reduce potential VMT impacts. In fact, this roadway was reportedly a part of the Samsung headquarters traffic considerations and they are 3.7 miles away. North San José is a much larger area than the radius shown on Figure 5 of the traffic analysis.

Response O.28: Page 6 of the transportation analysis (Appendix K) states "...per San José Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA transportation analysis. However, for informational purposes, a VMT evaluation for the project was completed and included within this study."

The comment questions the methodology and determination of impact each of which is irrelevant based on the described City Policy. The VMT evaluation was completed, for informational purposes, using the referenced City methodology. As stated in Table

2 of Appendix K, the City methodology requires that a project's effects be evaluated within its "sphere of influence" which is to be determined on an individual project basis and engineering judgment. The City methodology does not define a specific area, or radius, for the selected sphere of influence. The 1.5-mile radius selected for use in the VMT evaluation includes all major roadways (including Montague Expressway, Brokaw Road, Oakland Road, Ringwood Avenue, and others) within the area of the proposed roadway extension project. The 0.5-mile roadway extension project would have an immeasurable influence on other major roadways.

Comment O.29: How many times has the model been run for VMT impacts? The VMT Evaluation Tool has only been approved for 18 months and since so little information is given in the DEIR or traffic report, it is difficult to know if the 0.1% is accurate. What are the assumptions in the model? If the difference is so small, doesn't that call into question the actual need for the project? In other words, if there is statistically really no difference in VMT when the project is operational, how can it be said that the project is needed or that it will improve VMT and thus reduce greenhouse gas emissions - a main goal of the General Plan!

Response O.29: The City's TDF model was used to establish the supporting data upon which the City's VMT Tool is based. The TDF model used in this analysis is the same model used in the City's General Plan (GP) evaluations and includes the planned GP land uses and roadway network.

The commenter is correct in their interpretation of the evaluation and the minimal effect that the proposed project would have on VMT. The minimal change is an indication that the proposed roadway extension is local-serving and will have minimal effect on travel outside of the immediate project area. When considering, that the proposed project will add only 1.0-lane miles to the hundreds of lane-miles in the proximate area of the project and thousands of lane miles in the larger area of North San José, the roadway extension project would have a minimal effect on VMT.

Comment O.30: The previous means of determining traffic impacts was level of service at intersections. That is no longer the means by which impacts are determined. Again, if a total VMT analysis was done for the General Plan and NSJADP, the proposed project could very well be determined to not be necessary to reduce VMT, the new metric. Why rely on the level of service impacts determined in a 2005 study when the City could run the VMT numbers consistent with the General Plan and come to the reasonable conclusion that the project is not necessary - a much better use of public monies while also eliminating detrimental impacts to residents and school children?

Response O.30: This comment suggests that there may not be a need for the project if the General Plan and NSJADP traffic analyses were rerun with VMT instead of LOS. The City disagrees with this assertion because, in fact, the need for the project has been validated on multiple occasions. Please see Response O.4 for details.

Comment O.31: The traffic report also analyzed some "non-CEQA" transportation impacts, including level of service at some local intersections. It was determined that the proposed project would result in significant impacts at the intersections of Paragon Drive/Charcot Avenue and O'Toole Avenue/Charcot, and improvements are recommended in the traffic report that are not included in the

project description. These safety impacts are not described under Section 3.17.2.3 or 3.17.2.4 of the DEIR that are related to an increase in safety hazards due to a geometric design feature or emergency access.

The mitigation to improve the safety impacts at this intersection are not described or included in the project, and include "safety measures, such as advanced warning beacons, signage that provide drivers with advance warning of the upcoming signal, and the signal design should consider signal head placement and size to improve its visibility to drivers", (pages 21 and 28 of the traffic report). Bike detection at intersections is also not described in the DEIR. If this is a truly functional bicycle facility as defined by the screening criteria, these improvements must be included.

These improvements are not described in the DEIR project description or the traffic section as a required mitigation measure for safety impacts. Therefore, the project would substantially increase hazards and provide inadequate emergency services in the area. This must not be considered a non-CEQA issue. VMT alone may not get to the details needed to keep the public and school children safe. This safety impact cannot be simply considered to be a non-CEQA issue and must be included in the determination of impacts and identification of mitigation measures. This is in violation of CEQA.

Response O.31: The comment incorrectly states that the traffic report identified non-CEQA impacts. The traffic study provided non-CEQA informational analyses which included intersection LOS. The intersection operations analysis was completed for the purpose of aiding in the design of the proposed roadway. However, the determination of project impacts per CEQA requirements are based solely on VMT analysis.

The comment incorrectly states that impacts at the referenced intersections were identified in the traffic study that must be mitigated. Again, under CEQA, there were no impacts identified at intersections, thus mitigation is not required. The traffic study does recommend and identify safety improvements at the referenced intersections that may be implemented as part of the roadway design. However, the ultimate implementation of the recommendations will be determined and designed upon project approval.

Comment O.32: The Average Daily Traffic (ADT) numbers for the new Charcot Avenue are astounding. More than 10,000 new trips in 2025 and 13,000 new trips in 2040 on a residential and school serving street? In fact, it looks as if Brokaw Road and Montague Expressway will have the capacity to continuing to serve the project area and the roadway extension is not needed (Figures 3.17-6 - 3.17-8).

In addition, travel time changes do not appear to be significant enough to warrant years of construction, long-term operational air quality, noise, and greenhouse gas emissions impacts for an exorbitant cost to be borne by the taxpayers and businesses. In fact, as stated on page 162 of the DEIR, "The proposed extension is projected to result in only minimal (i.e., less than three minutes) reductions in travel times for trips with origins and destinations that are located near Montague Expressway." Those major thoroughfares are where the majority of traffic in the area is currently using for vehicle trips. Again, the need for the project is not justified no matter how many previous EIRs prepared years ago assumed its existence.

Trip diversion and traffic calming options in the project area should be discussed in depth with the surrounding residents, school population, and businesses before an option is chosen. To suggest the use of bulb-outs (page 169 of the DEIR) only to then state that they impede emergency response vehicles is not productive or responsive and should be left up to those who will be driving in the area on a regular basis.

Response O.32: The proposed Charcot Avenue extension will be an extension of a two-lane collector street and will not be classified as a school serving or residential street as referenced in the comment. Two-lane collectors are intended to provide access to adjacent properties from connecting arterial streets.

The commenter is correct in their interpretation of the evaluation and the minimal effect that the proposed project would have on average travel times. The minimal change is an indication that the proposed roadway extension is local-serving and will have minimal effect on travel outside of the immediate project area.

With respect to the comment that trip diversion should be discussed, that potential is discussed on pages 167-169 of the DEIR. The use of bulb-outs that are described on page 169 is meant to illustrate one tool out of many that the City employs for traffic calming. For more detail on the potential for cut-through traffic and traffic calming, please see Response J.7.

Comment O.33: Significant Unavoidable Impacts: As previously stated under aesthetic impacts, not only is the loss of trees a significant unavoidable impact, but so is the construction of 10- and 12-foot soundwalls. Also, it is our belief that according to the City Charter, the impact due to the loss of recreational parklands may also require a referendum by City voters to approve.

Response O.33: For the reasons described previously in Response O.9, there is no basis for concluding that the soundwalls will result in a significant and unavoidable impact. Voter approval for impacts to the recreational facilities at Orchard School will not be required; see Response O.8.

Comment O.34: Alternatives: Eight different alternatives were evaluated in the DEIR. While CEQA requires a "reasonable range" of alternatives be discussed, the fact that eight different alternatives are described may relate to the actual lack of need for the project and the abundance of alternative options. This section also states that the community has not been engaged since 2017 and 2018 - again, stakeholders may have changed dramatically since this time and should be re-engaged as soon as possible so the decision makers can get an accurate lack of enthusiasm for this project.

To determine that the widening of Brokaw Road and/or Montague Expressway is not feasible due to costs is not consistent with what CEQA requires. The proposed project also requires right-of-way, utility relocations, construction of a bridge over an 8-lane state highway facility, intersection improvements, including signals, soundwalls, retaining walls, and many more costly improvements. The DEIR does not include a cost comparison so that this alternative can be dismissed as infeasible.

Instead, CEQA requires a comparison of environmental impacts must be provided. The widening of these roadways may not affect schools or residential areas to the same extent as the proposed project. Perhaps fewer trees would require removal and there would be fewer soundwalls. Recreational areas with playgrounds and playfields may not be affected and significant unavoidable impacts could be reduced. To dismiss this alternative as infeasible is in violation of CEQA and must be corrected. The same could be said for Alternative C.

Because the need for the project has not been established from a VMT reduction standpoint, the No Project Alternative is a viable option and should not be dismissed. Again, just because the project is on the books, does not mean it continues to be required. A new VMT analysis, a much more cost-effective option, could show that based on a new State law and City Council Policy 5-1, the project is not required. Multi-modal options like the extension of BART, trails, more bike lanes, ride-sharing, and state of the art TDM measures, if included in the No Project alternative could all render the project unnecessary, if a new analysis were to be completed. This is the fiscally responsible alternative.

The construction of a bicycle/pedestrian facility rather than a vehicle crossing of I-880 would be far cheaper, environmental impacts would be far less, and consistency with General Plan goals to reduce VMT and greenhouse gas emissions would be achieved. Businesses, schools, and residences would not be affected in the long-term and construction impacts would be dramatically reduced.

This alternative does meet connectivity and capacity objectives - for bicycle and pedestrian travel. Providing such facilities is the wave of the future and thinking of them only in terms of vehicles is against General Plan policies. Again, just because this improvement was included in the General Plan and NJSADP does not mean it is still needed. A new analysis could show that the future is now for increased non-vehicle, multimodal travel as emphasized in just about every section of the General Plan.

Response O.34: The fact that eight alternatives were evaluated was unrelated to project need. Instead, the eight alternatives reflect the City's desire to be responsive to the requests of many community members that other options be explored. In fact, six of the eight alternatives were requested by residents.

The assertion that the City has not adequately engaged the community is responded to in Response H.1.

The City disagrees that cost cannot be a factor in determining the feasibility of an alternative. See CEQA Guidelines Section 15364. As described in Section 7.3 of the DEIR, Alternatives A, B, and C are all economically infeasible due to their significant right-of-way/relocation costs.

The assertion that the project's need has not been recently demonstrated is addressed in previous responses to this commenter.

Comment O.35: Homeless Habitat: As everyone in California knows we are in a homeless crisis. There have been occasional homeless issues at the business park. However, this physical change in the environment will foreseeably make the situation much worse. According to the Homeless

Encampment Response Report dated May 23, 2014 by the City of San José this project will create a location that has four of the top criteria for developing a homeless encampment. (See Table 1) This location is by a creek, it has an off ramp/retaining wall near a freeway, it's a street and is a bridge/overpass.

Moreover, the project creates preferential access between existing homeless encampments east of 880 by bridging the freeway that now divides them. Similarly, the seclusion from view/privacy and shelter from weather makes the location being created by the project preferential. (See Homeless Encampments on Public Right-of Way, A Planning and Best Practices Guide, Center for Urban Studies, September 2012, p.30) Transportation agencies need to plan how to address the impacts homelessness. (Id at 2) The DEIR fails in this task.

It is easily foreseeable based on City studies and observation that creation of access to a superior location will likely result is a large homeless encampment where little exists now. An overpass provides warm dry shelter year-round and being near the Coyote Creek it will be a prime location. The fact that an encampment is located at the Brokaw overpass makes clear what will happen if the Charcot overpass is built as proposed without any analysis or mitigation. (See Figure 1: Homeless Encampment Map for Waterways)

Courts have held that an EIR should, when looked at as a whole, provide a reasonable, good faith disclosure of environmental impacts. *Laurel Heights, Improvement Ass'n v Regents of Univ. of Cal.*, (1088) 47 Cal 3d 376. Building what can only be described as preferential habitat for a homeless encampment and yet not considering the impact this will have on the environment and the community and not disclosing or studying, this foreseeable impact is not good faith. Even worse, failing to disclose and study the issue means the DEIR fails to consider any mitigation which will result in the worse outcome imaginable.

For purposes of CEQA, a project is defined as the whole of an action that has the potential to result in a direct or indirect, reasonably foreseeable, change to the environment. 14 CCR §1 5378(a) This is to ensure that all the potential impacts of the project will be examined before it is approved. 14 CCR §15378(a)&(d). Here the City is surrounded by a homeless crisis and the City's own studies demonstrate that this project will exacerbate the crises by building this project. But, inexplicably, the DEIR ignores this likely outcome. As for the potential impacts the City, because it is in crisis, knows what will happen if the project is built without disclosure, analysis and mitigation. Nonetheless, for the sake of being explicit and putting evidence in the record here our many studies describing what will like occur:

An ever-growing number of rodents in California-particularly in Los Angeles-is being fueled by a spiking homeless population, according to a study released in July. Travis Fedschun , "Los Angeles, California cities 'overrun by rodents' that pose public health epidemic, study says," Fox News, July 17, 2019. See also Dennis Romero and Andrew Blankstein, "Typhus zone": Rats and trash infest Los Angeles' skid row, fueling disease," NBC News, October 14, 2019. This is a foreseeable impact on the Coyote Creek and the surrounding business community.

"Tasked with cleaning up rapidly multiplying numbers of homeless encampments, Los Angeles sanitation workers have asked the city for more resources to handle a backlog of thousands of service requests [S]anitation officials say they have requested \$17 million to bring on new staff trained

to clean in and around encampments-up from about \$6 million this year." "LA sanitation needs \$17M to keep up with homeless encampments," Curbed LA, Feb. 22, 2018.

Similarly, the City of San José does not have the staff or money clean up these encampments

Numerous wildfires have originated from homeless encampments (whether from open fires or cigarettes). The Skirball fire that burned more than 400 acres in Los Angeles in 2017 "started as a cooking fire at a homeless encampment, according to an investigation by the Los Angeles Fire Department." Jennifer Medina, "Los Angeles Fire Started in Homeless Encampment, Officials Say," The New York Times, Dec. 12, 2017. By mid-2018, Skid Row had seen 81 tent fires, up from 59 during the entirety of 2017. Amy Pollard, "Tent Fires Are on the Rise Among the Homeless in L.A.'s Skid Row," Slate, July 24, 2018.

NBC4 reports that L.A. firefighters are now extinguishing almost seven fires a day started at homeless encampments or tents across the city. This is a 211% increase in the number of fires from 2018. Some homeless tap into power lines to provide electricity in their tents; this can cause wires to short out and spark a fire. Firefighters say other fires begin when the homeless use stoves and barbecues in highly flammable tents. Meanwhile, hydrants are disabled by being jerry-rigged with faucets or repurposed as water pumps. Joel Grover and Amy Corral, "Firefighters Lose Critical Tool to Battle Rise in Homeless Fires," NBC4 News, July 22, 2019.

Fires regularly occur at the homeless encampments along the Guadalupe River in San José. The impact of these fires on the natural environment along the Coyote Creek and the urban environment of the business park is wholly undisclosed, studied or mitigated.

Brittany Falkers, Portland Fire & Rescue Has Responded to More Than 1000 Homeless- Related Fires in Last 3 Years, KGW (July 30, 2019), <https://bit.ly/2ladKNj>.

Similarly, on December 6, 2016, a malfunctioning camp stove sparked a fire in a long- term encampment near Legacy Emmanuel Medical Center, according to Portland Fire & Rescue. Although no one was injured, the blaze damaged nearby buildings, including a law office. Everton Bailey Jr., Malfunctioning Stove Sparks Fire, Burning Portland Homeless Camp, Neighboring House (Oregon Live Posted Dec. 6, 2016; Updated Jan. 9, 2019), <https://bit.ly/2laj4A8>.

Homeless encampments can foreseeably cause significant environmental harm. Workers cleaned thousands of pounds of human waste, and nearly 14,000 hypodermic needles, from Santa Ana River homeless encampments. Some 700 people were living in those encampments. Theresa Walker, "Thousands of pounds of human waste, close to 14,000 hypodermic needles cleaned out from Santa Ana River homeless encampments," The Orange County Register, March 8, 2018.

Communities are now forced to manage a startling volume of dangerous waste. Crews in downtown Portland cleared 52,048, 51,886, and 55,828 biohazards, in 2016, 2017, and 2018, respectively. The needle clean-up counts for the same period were 16,822, 27,787, and 38,394, respectively. Downtown Portland, Or. Clean & Safe Dist., Internal Cleaning Statistics, 2016- 2019, available to Counsel; see also Yearly Clean & Safe Program Statistics, <http://cleanandsafepdx.com/cleaningsecurity/yearly-statistics.html>. The term "biohazard" primarily consists of human waste.

San José has a similar experience in regarding needles during cleanups along the Guadalupe River.

A California water quality control district has sought to address the toxic water that encampments create. An affiliated geologist said: "It's a health issue. You know there's E.coli, there's fecal-born coliform in this water from these buckets and their toilets that are all along the stream." Steve Large, "Debris From Homeless Camps Ending Up In Local Waterways After Storms," CBS Sacramento, Jan. 9, 2018.

According to an NBC report, "[g]arbage and human waste from homeless camps pouring into rivers and creeks are creating a pollution problem in the South Bay." "It's a threat to all the communities around the Bay," said a water district official. "All the water flows through the creeks, ends up in the Bay and carries whatever trash, debris and contaminants." Terry McSweeney, "Pollution Problem: Water District Pulls in San José, County to Help Clear Homeless Camps From Creeks," NBC Bay Area, Feb. 9, 2016.

Moreover, there is personal injury and property damage risk to the inhabitants of camps along the Coyote Creek due to potential flooding. There is no good system for warning or saving the homeless from Coyote Creek flooding.

Sex trafficking is rampant among encampments and homeless communities. One journalist reported that there are "between 4,800 and 10,000 homeless minors in Los Angeles on any given night. . . Many will fall into, or be pressed into, sex work." The National Runaway Switchboard believes that "one in three teens will be recruited into sex work the first 48 hours on the street," and a U.S. Department of Health and Human Services study found that 46% of runaway and homeless youths report physical abuse. Lane Anderson, "Saving 'Throwaway Kids. ' in Los Angeles, sex trafficking doesn't look like it does in the movies," Deseret News, December 31, 2015

Many residents who live near encampments are experiencing the dangers of encampments. Typical is Mark Shinbane, president of Ore-Cal Corporation, in Skid Row, who has faced multiple break-ins and thefts and now spends tens of thousands of dollars replacing doors, adding fences, and cleaning needles out of drains. Bob Smiland, CEO of Inner-City Arts, a school in Skid Row, has been forced by encroaching encampments to redirect thousands into security. Students and teachers walk in the street to avoid the tents that clog the sidewalks. See Motion to Intervene, Mitchell v. City of Los Angeles, No.16-CV-1750-SJO (C.D. Cal.), Doc. 120 (June 24, 2019).

In San Francisco, Matthew Zimmerman, who runs Aspect Framing Studio and Art Gallery on Polk Street, told the S.F. Chronicle that "[h]eaps of trash, sleeping bags, and used syringes line the alley bordering his business. " "The last couple of years, things have gotten worse as far as the amount of people that are on the streets and the amount of open drug use is another thing that is pretty detrimental to the community," he said. "I actually just checked my revenue from last year to this year, and I'm down 25%." Bigad Shaban, Robert Campos, Anthony Rutanashoodech, Mark Villarreal and Jeremy Carroll, "Mayor Breed's First Year: Feces, Needles Complaints Decline; Trash Gripest, Homelessness Rise," NBC Bay Area, July 10, 2019.

Businesses in areas near encampments now foot the cost of additional security measures, such as reinforced doors, alarm systems, and guards. Security expenses have grown along with the homeless

population. One Oregon business, for example, assumed management of a property in 2008, where a part-time security guard worked for twenty-nine hours a week, primarily greeting guests. By 2017, security services were on the premises forty-nine hours a week, and that number has now reached sixty-nine hours a week to ensure, among other things, that people do not sleep in the building's vestibules.

Businesses have also adapted how they operate - locking down facilities during business hours, closing earlier, and shifting staff responsibilities to ensure their physical safety. This is blighting a neighborhood and should be evaluated. PS Business Parks as well as their business tenants will suffer greatly if this issue is not addressed in a clear eyed and forthright manner.

Moreover, the lack of disclosure does not allow discussion of additional liability for property owners due to property owners having few tools to mitigate impacts from encampments adjacent to their properties. It is clear that if the project is built without consideration of the habitat it is creating that businesses will be inclined to find other locations without this problem. This potential project, because it is, inexplicably, not examining the biggest problem in San José, is as a result of this oversight creating blight.

Response O.35: The issues surrounding the problem of homelessness are not environmental impacts as defined by CEQA. Instead, the homeless problem is a social issue. Even if one were to argue that this social issue causes physical changes to the environment, and therefore is an impact under CEQA, there is no evidence that the construction of a roadway causes or exacerbates homelessness. The comment does not provide substantial evidence that social effects of homelessness will be caused by the project that could then result in any reasonably foreseeable indirect environmental impact. Under CEQA, a potential impact which is speculative or unlikely to occur is not reasonably foreseeable. Other references to Coyote Creek, the general examples of homelessness and related possible environmental concerns cited in the comment are not from San José, and do not appear to involve circumstances similar to those related to the project.

Further, Coyote Creek already exists as a possible location for homelessness. But the project will not touch the Creek or result in any modification to the Creek's environmental setting so as to increase the potential for homeless activity there.

Areas underneath the project overpass element provide very few opportunities for homeless activity because such areas will mostly be taken up by the active lanes of I-880 and O'Toole Avenue, as well as by active parking areas for adjacent commercial and industrial offices.

The fact that homeless encampments occur along some roadways or under some bridges does not equate to those facilities causing those occurrences any more than claiming that certain buildings cause homelessness because the homeless sometimes camp in doorways or other sheltered areas. As evidenced by the information provided in this comment, the issues associated with homelessness are myriad and are occurring throughout the city, county, and state and are not caused by a certain land use. Causes are varied and include economic factors, social/medical factors, and lack of housing.

Carrying the argument that the project will result in homeless encampments in the area to its logical conclusion, then every proposal such as a transportation corridor, park, trail, business park, etc. that has an area where a tent could be pitched would need to conduct a “homeless encampment feasibility analysis.” There are no models to predict such an outcome and therefore doing so would be speculation that is excluded from EIRs under CEQA.

The bridge over O’Toole Avenue/I-880 would be the one component of the project where homeless might desire to camp due to the overhead protection from rain that the bridge would provide. In accordance with Caltrans standard procedure, as described in Index 701.2 of the Highway Design Manual, to prevent that occurrence, the areas outside the traffic lanes near the abutments would be fenced to prohibit access. The other portions of the proposed extension would not be attractive to the homeless as those areas front onto businesses, are unprotected from the elements, and are not isolated.

Comment O.36: For all of the above reasons, the DEIR is legally insufficient to support the Project and needs significant revision.

Response O.36: Based on the responses to each of the above comments, the City, as CEQA Lead Agency, believes that the EIR meets the requirements of CEQA. Further, the clarifications provided in the responses do not constitute substantial new information or result in new significant impacts that would require recirculation of the DEIR.

P. Hock Lim (dated September 24, 2019)

Comment P.1: The environment report generates traffic – what & who decides what is an acceptable or nonacceptable options - Experts or politician?

Response P.1: The information and analyses in an EIR are intended to inform the public and decision-makers of the environmental impacts of a project. Such analyses are required to utilize objective methodologies and thresholds, with results being unbiased either “for” or “against” a project. The decision-makers (in this case the San José City Council) are required to weigh the impacts of a project, as disclosed in the EIR, against its benefits when deciding whether to approve the project.

Q. Lynn Limqueco (dated November 4, 2019)

Comment Q.1: I'm writing to add my thoughts on the Charcot Extension Project. I'm a parent of 2 kids attending Orchard School and a resident a few blocks away from where this project will be constructed. Based on draft EIR, part of the city's plan to protect the children who are in the nearest pod to the overpass is to build a wall 20ft away from the bldg. How sturdy will the 6ft wall be? Can it withstand the impact of a container truck or worst a lorry carrying fuel/hazardous gas should it pass

by and topple over to that side of the overpass? if you foresee that many cars passing by that overpass (increasing in the years ahead), how can it be guaranteed that wall will help soundproof so as to not distract the students during their learning time. Building a wall right next to the play structure doesn't make it any safer for our kids. The city is actually limiting the play area for 880+ kids of Orchard School. Think about it, if you were to build a new school right next to a road. Will that be acceptable and safe? so why build a road next to a school. How is the school going to be compensated for area taken away from it? I hope it's not monetary because it would mean, it's coming from taxpayer's money to put the health and safety of school children at risk.

Response Q.1: The proposed soundwall will comply with all current structural and safety design criteria. The noise reduction properties of soundwalls have been verified by comparing before and after noise measurements.

Mitigation for impacts to the school's recreational facilities is described in Section 3.16 of the DEIR, as updated in Section 5, *Draft EIR Text Revisions*, of this document.

Comment Q.2: Why does the city insist on building this overpass when it will just create more noise and air pollution to the back of the school? Why is this extension project more important than the health and lives of students in our area?

Response Q.2: The noise impacts of the project will be mitigated as described in Section 3.13 of the DEIR. The air quality impacts of the project will not be significant, as described in Section 3.3 of the DEIR. The EIR does not make any judgments as to the importance of an impact; the EIR discloses information and it is up to the decision-makers to weigh adverse impacts against the benefits of the project.

Comment Q.3: Based on photos Draft EIR, existing and proposed, the proposed is showing less greenery. Trees will be removed to make way for a road? When the city should be thinking of putting up more trees to help air pollution?

Response Q.3: All trees removed will be replaced at the ratios listed in Table 3.4-2 of the DEIR.

Comment Q.4: I hope the city with reconsider building the Charcot Extension Project. It may have been planned many years ago, but overall it brings more harm to students and residents in the area.

Response Q.4: This comment expresses the opinion that the project should not be constructed because of negative effects on the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

R. Lozano Smith - Attorneys at Law (dated November 4, 2019)

Comment R.1: Our firm represents Orchard School District ("District"). On behalf of the District, we submit these comments on the Draft Environmental Impact Report ("Draft EIR") prepared for the

proposed Charcot Avenue Extension Project (“Project”). As set forth in this letter, the Draft EIR does not comply with the California Environmental Quality Act (“CEQA,” Pub. Resources Code, §§ 21000, et seq.) and its implementing regulations (Cal. Code Regs., tit. 14, §§ 15000, et seq., “CEQA Guidelines.”) for both technical and substantive reasons. Moreover, the Draft EIR does not include sufficient information to evaluate potential environmental impacts particularly related to schools. In particular, the Draft EIR fails to adequately examine the very significant impact on the Orchard School (“School”) and the safety of the children it serves. Through this letter, the District emphasizes that this Project has the potential to have a profound negative effect on the District’s students, their families, and the residents that reside in the vicinity of the Project.

By its nature, CEQA is a technical process, but at its heart, the law intends that an EIR serve as an informational document that allows both elected officials and the public to make decisions about projects. (CEQA Guidelines §15121, 15151.) In this instance, the Draft EIR has utterly failed to serve as such an informational document.

The Project will undoubtedly have profound impacts on the School, as well as the businesses and residents that are located in the vicinity of the Project. The District will leave it to its neighbors to raise the many concerns about both the Project and the Draft EIR that specifically impact them. Here, we focus on the extraordinary impact that this Project will have on the School and the San José parents and schoolchildren that it serves.

The Project proposes to place a raised overpass immediately adjacent to the existing School, which has been in operation for well over two decades. The edge of the overpass will be merely 20 feet from classroom buildings; cars will pass by only 40 feet from those buildings (assuming that they stay in their lanes and that there are no accidents that would bring traffic even closer or, worse, onto the School’s campus). The overpass will level out and go from two lanes to four at approximately the same point that District students will be crossing the new portion of Charcot Avenue to go to and from School. Remarkably, the Project proposes to take almost a half-acre of the District’s playing field. Student’s views of trees, which the Project will remove, will be replaced with a solid sound wall, and their environment will be subject to noise, pollution and classroom disruption. The District will be forced to reshuffle the back of its School to reconfigure the field, playground, two portable classrooms (the existence of which is not acknowledged in the Draft EIR), and possibly other outdoor and indoor spaces. With the elimination of a parent drop-off/pick-up location behind the school on Silk Wood Lane, all traffic to and from school will now be routed onto the narrow and already heavily-trafficked Fox Lane entrance at the front of the school. This, in turn, may require reconfiguration and expansion of the School’s existing entrance, parking lot and pick-up/drop-off area. Like dominoes, the impacts continue, as that in turn may require reconfiguration of permanent school buildings and the School’s administrative office.

Students and School staff will have to live through the construction of the Project and the reconstruction of the School that will be caused by the Project. Perhaps most significant of all, many schoolchildren will have to navigate the new thoroughfare that will divide their homes from the School, while many others will now have to fight their way through increased traffic to the front of the School.

Precisely none of these effects are analyzed in the deficient Draft EIR. Despite all of these impacts and more, the Draft EIR concludes that there is no meaningful impact on the School and the families

it serves beyond the loss of some recreation area and removal of some trees. This conclusion is extraordinary, unsupported by the evidence, and flies in the face of reason. Most remarkable of all remains the complete failure of the Draft EIR to consider the safety impacts on the School's students.

The City of San José's Draft EIR tends to treat the Orchard School as merely a park and not a place where students spend the better part of each day learning and playing. The City seems most concerned with the loss of recreational land, essentially disregarding that this recreational space is part of an operational public school site. The Draft DEIR goes so far as to apply incorrect standards of significance that expressly treat this site as nothing more than a City park.

The Draft DEIR does acknowledge the public controversy related to "project location adjacent to an elementary school, including concerns related to increases in traffic, leading to safety, noise, and air pollution impacts." (Draft EIR, p. XIX.) The Draft EIR's cursory analysis of these areas as they impact the School demonstrates that this controversy was of no consequence.

Response R.1: This comment contains introductory remarks that summarize the detailed comments that follow in this letter from Lozano Smith, the law firm representing the Orchard School District (District). The conclusions of the comment are that 1) the analyses in the DEIR are inadequate and need substantial revision and 2) the DEIR needs to be recirculated once it is revised. For the reasons enumerated in the responses to each of the detailed comments that follow, the City as CEQA Lead Agency concludes that 1) the DEIR and its analyses comply with CEQA, 2) the conclusions contained in the DEIR are valid, and 3) there are no revisions to the DEIR that would require recirculation.

Comment R.2: The Draft EIR fails as an informational document as it does not address safety issues that will affect the School.

CEQA is rooted in the premise that "the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern." (Public Resources Code, §21000 (a).) Naturally, safety is crucial in the maintenance of a quality environment. "The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached." (Public Resources Code, §21000 (d).)

At issue for the District is the safety of the children at the Orchard School. Article I, section 28(c), of the California Constitution states that all students and staff of primary, elementary, junior high, and senior high schools have the inalienable right to attend campuses that are "safe, secure, and peaceful." CEQA itself is also concerned with a Project's effects on humans, requiring an EIR to examine if there is substantial evidence that adverse effects on human beings will occur. Public Resources Code §21083 (b)(3) requires consideration of whether "the environmental effects of a project will cause substantial adverse effects. The CEQA Guidelines provide that "[a] lead agency shall find that a project may have a significant effect on the environment" requiring preparation of an EIR if the project "will cause substantial adverse effects on human beings, either directly or indirectly." (CEQA Guidelines §15065 (a)(4).) CEQA also focuses on the protection of public health and safety. "The Legislature has made clear in declarations accompanying CEQA's enactment that

public health and safety are of great importance in the statutory scheme. (Public Resources Code, §21000 (b), (c), (d), (g), §21001(b), (d) (emphasizing the need to provide for the public's welfare, health, safety, enjoyment, and living environment.) (California Building Industry Assn. v. Bay Area Air Quality Management Dist. (2015) 62 Cal.4th 369, 386.)

CEQA notes that the people of this state require a quality environment and that all coordinated actions must be taken to prevent thresholds for the health and safety of the people of the state to be exceeded. The health and safety of the most vulnerable of individuals will be called into question with this Project. The placement of the roadway extension will cause children to cross the street on the same grade as cars exiting the overpass. The children will be subjected to the pollution of a construction project and then the pollution of cars using the overpass under Project conditions. The noise effects of Project construction and from the cars using the overpass will have a probable adverse effect on the children and affect their ability to hear instruction. This Project will make it more dangerous for children to reach the school on foot and more dangerous for students to be outside during and after Project construction. The Project will put a raised roadway immediately adjacent to classroom buildings, bringing risk of accidents that will threaten schoolchildren and staff.

This Project represents a significant change in the character of Charcot Avenue at Silk Wood Lane. Previously, students would cross through a car-free zone over an undeveloped, unoccupied area of land to the rear Orchard School gate. After completion of the proposed project, students walking to the school will have to cross a four-lane roadway to access the gate, protected only by a High-Intensity Activated Crosswalk (“HAWK”) light and even that minimal protection is not assured by the Draft EIR. Cars will exit the extension on a downslope mere feet away from a school. Cars coming downslope on the roadway extension will be headed east and directly into the glare of morning sunlight. Thus, a driver will face numerous hazardous conditions coming down the overpass, but no analysis is included of the visibility of the HAWK signal for drivers who will be using the extension and the children who will be crossing the extension. The Draft EIR does not examine this effect on the School and its students and does not analyze whether a HAWK light will be an effective way to protect the students who will be walking to the school via Charcot Avenue and Silk Wood Lane.

Figure 3.1-4 of the Draft EIR depicts the before and after appearance of Charcot Avenue at Silk Wood Lane. The photograph depicting the proposed project represents a significant change in the character of the street as it pertains to pedestrians. A student would have to navigate across four lanes of traffic, with multiple cars as well as bicycles providing potential hazards for a student just trying to get to school. Beyond the HAWK light, the Draft EIR itself is silent as to other possible safety measures in the area, including the provision and placement of crossing guards. When questioned in the comment period to the Notice of Preparation about crossing guards, the City improperly deferred any analysis to the future. (See Section 3 below for discussion of improper deferral.) In response to comment 34.28, the City states that “if studies warrant a need, crossing guards may be placed at this location.” Per this comment, a request can be made to the City and Police Department for crossing guards. This cursory response represents an inadequate analysis of the very real hazards that will inevitably result as a result of this Project. The placement of the extension in relation to the School raises significant concerns about the physical safety of the students, none of which is addressed in the Draft EIR. Hazards will increase for the students who cross the street near the overcrossing.

Taking these hazards into account, the Project results in the following dangerous options for children to get to Orchard School:

The pedestrian crossway at the new roadway extension, with no mandated crossing guard.

The light at the end of Charcot Avenue and Oakland Road, which will be four lanes with turns in both directions and again with no crossing guard proposed.

The light where Fox Lane exits onto Oakland Road, which is already dangerous, has two crossing guards, and will see an enormous increase in pick-up/drop-off traffic once the existing informal pick-up/drop-off area at Silk Wood Lane is eliminated as a result of this Project.

Elsewhere in front of the School at Fox Lane, which again will have increased pick-up/drop-off traffic.

The School has already dealt with multiple automobile accidents on School grounds. The Superintendent has reported that there have been multiple instances of cars crashing through the school fence from Oakland Road. The roadway extension will funnel more traffic onto that route as cars turn right from Charcot Road to Oakland Road, which will increase the risk of even more accidents occurring, and increase the hazards for students.

This Project should also take into account that national pedestrian deaths have been steadily increasing over the past ten years. The national pedestrian death toll increased to 6,283 last year.³ California saw 893 pedestrians involved in fatal crashes in 2018. Pedestrian fatalities in urban areas are up 69 percent over the last ten years. According to studies by the nonpartisan advocate groups Smart Growth America and the National Complete Streets Coalition, “we are continuing to design streets that are dangerous for all people...furthermore, federal and state policies, standards, and funding mechanisms still produce roads that prioritize high speeds for cars over safety.” This Project, if constructed, will add another dangerous street to an urban area, prioritizing purportedly higher speed and efficiency over the safety of the children of Orchard School and their families.

The possibilities considered in this section are subject either to minimal analysis or no analysis at all in the Draft EIR. In this way, the Draft EIR fails as an informational document under CEQA Guideline section 15121. Under this guideline, an EIR is supposed to inform public agency decision makers and the public of the significant environmental effects of the Project. The Draft EIR is in violation of these guidelines as it does not adequately address the significant effects on student safety. The City plans to implement this Project against the backdrop of increasing dangers to pedestrians and an already existing history of automobile accidents and traffic congestion by or on school grounds.

Response R.2: This comment contains excerpts from state law that summarize the Legislature’s intent that people live in a quality environment, which includes public health and safety. The comment goes on to state that the project will result in an environment at Orchard School that is contrary to state law by creating hazardous

³ <https://www.mcclatchydc.com/news/politics-government/congress/article236574323.html>

conditions with regard to noise and air pollution, as well as safety risks to pedestrians from vehicular traffic. It includes conclusory statements about the noise and air quality effects of the project, as well as the dangerous situations that pedestrians will be forced to navigate if the project is constructed. To highlight these hazards, the comment cites national and state statistics regarding pedestrian deaths.

None of the comment's conclusions regarding the effects of the project are supported by any evidence provided in this comment. In contrast, the noise, air quality, and traffic analyses prepared by the City's technical professionals concluded that there would be no unmitigated significant impacts in these subject areas. [Note: Numerous detailed comments regarding the project's noise, traffic, and air quality impacts were submitted, below, by this commenter.]

Comment R.3: The City improperly suggests that impacts on the School can be disregarded because the District should have anticipated the Project.

The City addresses the history of the Project by stating that “developments along the alignment have been planned and approved in anticipation of the proposed Charcot Avenue Extension, which was added to the City's General Plan in August 1994.” (Draft EIR 3.11.2.1.) The developments included:

- Orchard School (land purchase for school approved in 1995)
- Super Micro Campus (approved in 1998)
- Residential development along the north side of Silk Wood Lane (approved in 2004).
- Orchard School District dedication of land to City for the existing Charcot Avenue (approved in 2004). (Draft EIR 3.11.2.1.)

The District's Notice of Completion and Initial Study & Discussion of Environmental Evaluation (Dated February 17, 1995) of the Orchard School site observes that “the proposed location for the new replacement elementary school will permit almost sixty percent of the current and future students to walk to school, thereby significantly reducing required vehicular trips during the morning peak period which may lead to reduced traffic congestion.” (See Exhibit A.) Thus, the intent of the School's site selection was to provide a walkable campus for students and to correspondingly reduce automobile trips. As set forth in the Draft EIR, the City, through this Project, seeks to undo these objectives by introducing more traffic into the School's vicinity and severely reducing the walkability of the School site.

The District adopted a Final Negative Declaration and Notice of Determination for the original construction of the School on March 28, 1995. (See Exhibit B.) Comments to the Negative Declaration were provided by the State of California Department of Fish and Game and the Governor's Office of Planning and Research. As reflected in the attached Board Meeting Minutes, the City registered no objection and offered no comments or concerns regarding the location of the School and its relationship to the Project. (See Exhibit B.) If, as the City suggests, the District's concerns with the Project and its future impacts should be dismissed because the District should have been aware that the Project might happen someday, the City correspondingly should have offered some comment on the School's construction in 1995. Indeed, the fact that 25 years has passed since the Project was initially included in some vague and conceptual form in the City of San José's General Plan and yet the Project is still not a reality demonstrates the reasonableness of the District

building the School many years ago. The District also had no way of knowing that the Project as proposed decades later would be so invasive to the School, including taking 0.44 acres of the School's property.

The City similarly failed to raise the specter of this Project when approving the residential development near the School. The District adopted Resolution 052504-02 on May 25, 2004, to convey an easement for road purposes to the City of San José in connection with Summerhill Homes' agreement to purchase 14 acres of property adjacent to the District's school for residential use. (See Exhibit C.) As a condition to the development of the property, the City required that a portion of the School consisting of approximately 12,000 square feet be dedicated to the City for road purposes and Summerhill Homes requested that the District dedicate an easement for road purposes to the City, and was in fact dedicated to the City. (See Exhibit D, Exhibit E.) The easement consisted of a portion of the Orchard School property. Thus, the City previously had the opportunity to receive land dedications from the District, and took no action to seek additional dedication of property for the Project. This again indicates that the Project was not imminent or even on the foreseeable horizon in 2004. Furthermore, the City's actions shrunk the School site, creating an obstacle to the ability for the District to dedicate even more land in the future.

If the City prioritized the Project and considered the effects of the Orchard School construction and dedication of District land on the Project, then it is likely the City would have taken a more proactive and pragmatic approach than what is reflected above. Starting with the circulation of the District's Final Negative Declaration in 1995, the City offered no input or analysis of the School construction's compatibility with the conceptual Project. Further, the District dedicated land to the City in 2004, at a time when the City contends that the Project was anticipated. If this dedication was truly in conjunction with the Project, there is no explanation as to why the City did not enter into a transaction to acquire the 0.44 acres currently needed for the Project when dedication negotiations were active in 2004, or at a minimum, to raise the issue. Instead, the City chose to wait until now to move forward with the Project, at the cost of the School's fully developed and long-established recreation space and instruction space. It is also telling that within the past two years, City staff has assured the Orchard School District's Superintendent that the Project would not be moving forward in the foreseeable future. Yet two years later, the Project now suddenly seems to be fast-tracked. There was no reasonable basis for the District to expect that the Project was ever likely to come to fruition, particularly in its current iteration.

Another consequence of the City's extraordinary procrastination and inactivity is that the current conditions of the area do not allow the City to replace the lost parkland/recreational acreage. In the City's own words, "there is no vacant land available contiguous to Orchard School that could be purchased and added to the School...therefore, the loss of 0.44 acre of recreational land would constitute an unavoidable effect on the project." (Draft EIR, MM REC-2.1.) Ironically, this impact might have been avoidable if the City had considered the Project and its land needs in 1995 and again in 2004. Nevertheless, the City has chosen to move forward with this project decades later in 2019, with significant negative impact to be felt by the children who attend the Orchard School.

From a CEQA perspective, the City has repeatedly made assumptions in the Draft EIR about existing conditions that are faulty. In many ways, as further discussed below, the Draft EIR reads as an analysis of conditions as they existed in 1994 when some version of the Project was conceived, rather than existing conditions in 2019. CEQA requires that impacts be assessed based on existing

conditions, not historical or theoretical conditions. The City cannot now pretend that the School does not exist, and the Draft EIR's propensity to do just that renders the document insufficient under CEQA. The Draft EIR is so fundamentally and basically inadequate that it must be revised and recirculated to address accurate information about existing conditions. (CEQA Guidelines §15088.5(a)(4).)

Response R.3: DEIR Sections 2.2.2 (Planning for the Charcot Avenue Extension), 3.11.2.1 (Division of an Established Community), and 3.16 (Recreation) each provide information on the historical context for the project and its relation to Orchard School. The historical facts are intended to provide objective information to the public and decisionmakers regarding the sequence of events and what was known at each interval.

Regardless of the numerous opinions regarding previous decisions by the City and District regarding the planned Charcot Avenue Extension, the site selection for the school, the approval of the residences on the north side of Silk Wood Lane, and the dedication of school land to the City by the District, the information in the DEIR makes clear that the planned Charcot Avenue Extension was common knowledge.

Further, it is the job of the DEIR to describe the impacts of the project on existing conditions, regardless of how those conditions came about. Therefore, the comment's assertions that the City should have prioritized the Charcot Extension and constructed it sooner or should have requested a greater dedication of land from the District in 2004 may be taken into account by the City Council, but those opinions are irrelevant to the CEQA analysis.

What is relevant is whether the EIR captures the existing environmental setting and the project's effects on that setting. The EIR does exactly that. It describes the right-of-way needed for the project from the school and its effect on the existing recreational facilities without any judgement that the City should have asked for more sooner. It quantifies the short- and long-term air quality, noise, and traffic effects of the project on the school without any judgement on the school's location. The same applies to the other topics (e.g., aesthetics, biology, water quality, etc.) analyzed in the EIR. Therefore, the statement in the comment that "the Draft EIR reads as an analysis of conditions as they existed in 1994 when some version of the Project was conceived, rather than existing conditions in 2019" is not supported. If that statement were true, there would be no discussion of the school, nearby residences, Super Micro, etc. in the EIR, as none of those existed in 1994.

To summarize, there is no evidence to support the opening statement in this comment that the EIR downplays or disregards the impacts of the project on the school "because the District should have anticipated the project." Nor is there any basis for the claim that the project DEIR should be recirculated due to supposed inadequate information about existing conditions.

Comment R.4: The Draft EIR improperly defers mitigation measures to the District.

The Draft EIR determined that the Recreational Impacts would result in a Significant Unavoidable Impact. (Draft EIR, MM REC-2.1). MM REC-2.1 goes onto state that:

The City **will work with** the District to determine the appropriate amount of compensation for the loss of acreage required by the Project. If an amount is not agreed upon, the City will follow local, state, and federal laws to determine the appropriate compensation amount to the District. This amount **may** include reimbursement to the District for the cost to reconfigure/reconstruct the existing recreational facilities affected by the project. This **could involve** shifting and reconstructing the affected facilities to the south of their current locations. The intent of this measure is that the replacement facilities would be comparable to the existing facilities in size, function, and quality. (Emphasis added.)

Similarly, in the Draft EIR, the City recommends that the Orchard School consider a review of the school drop-off/pick-up plan and procedures and implement measures to reduce adverse effects on surrounding businesses and residential areas during the school drop-off/pick-up periods. (Draft EIR, 3.17.3.7.) The Draft EIR goes onto suggest the School consider staggered arrival and dismissal schedules given the physical limitations of the use of public streets and school parking lots to accommodate the current demand of the school. (Draft EIR, 3.17.3.7.)

“Formulation of mitigation measures should not be deferred until some future time.” (CEQA Guidelines §15126.4 (a)(1)(B).) Deferral of mitigation is improper per CEQA. “Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.” (Clover Valley Foundation v. City of Rocklin (2011) 197 Cal.App.4th 200, 236.) Further, “an EIR is inadequate if ‘[t]he success or failure of mitigation efforts ... may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.’ ” (Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 92, quoting San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670.)

While deferral of specifics is acceptable in some circumstances, the lead agency must articulate specific performance criteria and make further approval contingent on finding a way to meet them. (Id.) In Preserve Wild Santee v. City of Santee (2012) 210 Cal.App.4th 260 (“Santee”), an EIR was disapproved by the court based on the fact that it improperly deferred mitigation of impacts to an endangered butterfly and did not include any performance standards or guidelines regarding the future mitigation measures. The court found that the anticipated plan for management contained nonspecific actions, and left the timing and other specifics subject to the discretion of the habitat preserve manager on prevailing environmental conditions. Therefore, the activities were not guaranteed to occur at any particular time or in any particular manner. Further, the EIR in Preserve Wild Santee did not indicate that it was in any way impractical or infeasible to specify standards or guidelines. In the current instance, the Draft EIR essentially just concludes that the District may do something or other in the future and makes a few suggestions. That is not sufficient.

In MM REC-2.1 of the Draft EIR, the City will determine the compensation for the School’s land at a future time and if an amount is not agreed upon, the City will follow laws to determine the appropriate compensation. This amount may or may not include reimbursement for reconfiguration or reconstruction of the School’s existing recreational facilities, which could involve shifting affected facilities to the south of their current location. In the Draft EIR, the City does not offer much in the way of attempting to mitigate this significant unavoidable impact. There is no definitively formulated measure, and what is actually offered is based on speculation. Further, no definite standards or

criteria are offered in this measure. No true consideration is given to the “shifting and reconstructing” of School facilities as a result of the Project and whether such actions would be feasible and what standards would apply. Through its use of non-committal language, the Draft EIR demonstrates an intent to have the District solve the problem at a later time. This is truly a measure that appears to be put off until a later time with the vague hope that the City may provide adequate compensation.

The Draft EIR states that “although the project would impact the ability to drop-off/pick-up students on Silk Wood Lane, it is likely that students would continue to cross Charcot Avenue/Silk Wood Lane as they walk between the School and the neighborhood to the North.” (Draft EIR, 3.17.3.7.) In conceding an impact on the students, the Draft EIR puts no effort into mitigating its own self-identified Project impact. The Draft EIR offers no formulated mitigation measures, instead offering suggestions and recommendations as to ways that the School could reduce the adverse effects of a City-implemented Project. Any performance criteria is dependent on the School’s action. This constitutes improper deferral of mitigation measures under CEQA.

The Draft EIR also disregards that at least one impact cannot be mitigated at a future date: the loss of land. MM REC-2.1 states that the intent of the vague mitigation measure includes making the “replacement facilities...comparable to the existing facilities in size.” With the loss of 0.44 acres of playfield, the only way to avoid substantially shrinking the field in size is to shrink the playground or classroom space. The Mitigation Measure fails to indicate how it will result in comparable sized facilities in a School site that is landlocked, surrounded by roads and other development. Will the City condemn property adjacent to the School to the west (the only direction not surrounded by roads) to provide for expansion of the School campus? Is doing so feasible? How will this be determined? Again, there are no standards set forth to address these complex issues.

Response R.4: MM-REC-2.1 has been revised. Please see Section 5, *Draft EIR Text Revisions*. The revised MM-REC-2.1 does not trigger recirculation under CEQA because it is a clarification and amplification of the previously addressed mitigation measure under CEQA Guidelines Section 15088.5(b).

Discussion of the project’s impacts to school drop-off/pick-up activities in Section 3.17.3.7 of the DEIR relates to the non-CEQA effects to be analyzed under the City’s Local Transportation Analysis. Such impacts are non-CEQA items that neither involve a significant adverse environmental impact, nor require mitigation under CEQA. See also Response R.8.

Comment R.5: The Draft EIR improperly delegates authority for determining and implementing mitigation measures to the District.

The Draft EIR not only defers mitigation measures, but effectively delegates them from the Project proponent, the City, to another party altogether. MM REC-2.1 of the Draft EIR requires the District to take some affirmative action in working to determine the appropriate amount of compensation for the loss of acreage required by the Project. This is effectively delegating formulation of a mitigation measure to the District. Also included in MM REC-2.1 is the consideration that the District could reconstruct or reconfigure the existing recreational facilities.

This is another vague, half-hearted measure that shifts responsibility for the mitigation measure to the District. This is an improper deferral in violation of CEQA.

Mitigation measures are also delegated to the District in the context of the Project's impact on the School's drop-off/pick-up plan. Here, the City relies on the District to formulate mitigation measures to deal with the impacts of its Project on the school's drop-off/pick-up plans. In 3.17.3.7, the Draft EIR offers a few suggestions for how the School can reduce the Project's adverse effects. This again is an attempt by the City to shift responsibility to the District to implement vague, incomplete mitigation measures. This again results in improper delegation, in violation of CEQA Guideline section 15025(b)(1) which states that the decisionmaking body of a public agency shall not delegate reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

In *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 90, the City of Richmond prepared a Draft EIR for a refinery to be built by Chevron within city limits. The Draft EIR prepared a menu of potential mitigation measures with specific measures to be selected by Chevron and approved by the City Council a year after project approval. (Id. at 92.) The Court of Appeal agreed with the trial court that the City's decision to approve the project, after giving the City Council final approval over a mitigation plan that Chevron formulates a year later outside the EIR process, does not satisfy CEQA's requirements. (Id. at 95.) Similarly in *POET, LLC v. State Air Resources Bd.* (2013) 217 Cal.App.4th 1214, 731, as modified on denial of reh'g (Aug. 8, 2013), the Air Resources Board violated a fundamental policy of CEQA when it gave the responsibility for completing the environmental review process to its Executive Officer because he did not have the authority to approve or disapprove the project. Therefore, CEQA compliance cannot be delegated to an official or body who is not responsible for project approval. (Id. at 731.)

These deferrals by the City all seek to delegate consideration of mitigation measures, and to shift responsibility to the District for this Project, much like the mitigation measures considered by the city of Richmond and Chevron in *Communities for a Better Environment* and the responsibility delegated by the Air Resources Board in *POET*. Thus, the District would be left to clean up the substantial mess left by this Project. Not only will public land be taken from the District for the Project, the District will have to determine how to mitigate the impacts of this loss of land. As stated above, there is also inconsistency in the City contemplating the reconstruction or reconfiguration of Orchard's recreational facilities as part of its mitigation measures, yet also ignoring these measures in its discussion of project impacts, which is further addressed below in Section 4c.

Response R.5: MM-REC-2.1 has been revised. Please see Section 5, *Draft EIR Text Revisions*.

Discussion of the project's impacts to school drop-off/pick-up activities in Section 3.17.3.7 of the DEIR relates to the non-CEQA effects to be analyzed under the City's Local Transportation Analysis. Such impacts are non-CEQA items that neither involve a significant adverse environmental impact, nor require mitigation under CEQA. See also Response R.8.

Comment R.6: In delegating mitigation measures to the District, the Draft EIR errs in not designating the District as a responsible agency.

As stated above, the Draft EIR shifts responsibility for mitigation measures to the District. In the Draft EIR, the City designates only the California Department of Transportation (Caltrans) as a responsible agency. (Draft EIR, p. 2.) Per the Draft EIR, Caltrans will approve the portion of the project within its right of way. “Responsible agency” means a “public agency other than the lead agency, that has discretionary authority over some portion of a project.” (CEQA Guidelines, §15381.) For projects requiring an EIR, the lead agency consults with responsible agencies and trustee agencies both as regards the proper scope of the EIR, and as to the substance of the EIR. (CEQA Guidelines § 15082 & 15086 (a)(1).)

Through the Draft EIR, the City relies on the District to take action to dedicate land for the Project, determine compensation for the lost acreage, review its drop-off/pick-up policies, and reconfigure its School to accommodate the Project. These actions should appropriately be viewed as carrying out portions of the Project. Indeed, without the District’s Land and other actions, this Project could not proceed. Therefore, the Draft EIR improperly fails to designate the Orchard School District as a responsible agency and the District should have been consulted with as such. By not designating the District as a responsible agency, the City has deprived the District of its opportunity to consult on the proper scope and substance of the EIR. That, in turn, might have avoided some of the absurd results of this Project

Response R.6: MM-REC-2.1 has been revised. Please see Section 5, *Draft EIR Text Revisions*. The City will implement MM-REC-2.1 in coordination with the District, but is not delegating responsibility for the mitigation measure to the District.

Further, the District does not have any discretionary permitting authority or responsibility relating to the project or the acquisition of 0.44 acre of land. All work in the expanded right-of-way for Charcot Avenue adjacent to Orchard Elementary School will be under the City’s jurisdiction. If the City and District cannot agree on the sale of the approximately 0.44 acre of land for the needed roadway expansion, then the City will pursue its rights under California Code of Civil Procedure section 1240.610 and other applicable law to demonstrate that, with the replication of the current recreation facilities at the School (at the City’s cost) and the lack of any impacts to existing school buildings under revised MM-REC-2.1, the project will be a necessary public use of the land.

Moreover, the City has involved the District regarding the project substantially similarly as if it was a responsible agency under CEQA. The City provided the District with a copy of the project NOP, provided the District with notice of meetings held by the City on the scope and content of the DEIR, provided the District with notice of the circulated DEIR so the District could comment on it, and has responded to the District’s comments on the scope and substance of the DEIR. In fact, in response to the District’s comments on the DEIR, MM-REC-2.1 has been revised.

Comment R.7: The Draft EIR fails to analyze the potential impacts of reconstruction of school facilities.

In MM REC-2.1, the Draft EIR asserts that the Mitigation Measures would not result in any new permanent impacts since they would be limited to the replacement of existing facilities at the same location. Though it would result in temporary noise and air quality impacts during the construction phase for the reconfigured/reconstructed facilities, the Draft EIR generically states that any resulting impacts would be mitigated by the implementation of standard construction measures for noise, water quality, and dust. (Draft EIR, p. 133.) These standard construction measures, and the City's general failure to address enforcement of these measures is discussed in subsequent sections of this letter. The replacement or reconstruction of the existing facilities would in fact have a significant effect on the children of the Orchard School. This impact is not considered in the Draft EIR. There are at least three effects stemming from the reconstruction of School recreational facilities that should have been analyzed in the Draft EIR:

- a. Social and economic impacts stemming from physical impacts.
- b. Direct and secondary physical impacts.
 - a. The Draft EIR fails to examine the social and economic impact on the School stemming from physical change.

CEQA Guideline section 15131 deals with the Economic and Social Impacts of a Project described in a Draft EIR. Subpart (b) states that "economic or social effects of a project may be used to determine the significance of physical changes caused by the project." Section 15131 (b) includes the following examples: "if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant...as an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment...the religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices." "Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant." (CEQA Guidelines 15131 (b).) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. (CEQA Guideline 15131(b).)

The example in Section 15131(b) regarding religious practices is instructive in analyzing the impacts of the social impacts of the Project. The significant effect on the environment would arise out of the disturbance of the School's educational practices. Under Project conditions, the School would have to adjust to a loss of space and additional noise, during Project construction and then during Project operation. The areas that the Draft EIR considered solely as lost parkland/recreational acreage are also areas of instruction, used for outdoor education activities including physical education. In particular the loss of space may present a challenge to the School's ability to meet its legal physical education requirement. "Instruction in physical education in an elementary school maintaining any of grades 1 to 8, inclusive, shall be for a total period of time of not less than 200 minutes each 10

schooldays, exclusive of recesses and the lunch period.” (Education Code § 51223(a).) In order to meet this legal requirement, physical education activities may be shifted to the School’s indoor facilities, particularly during Project construction, forcing the School to scramble to meet its legal physical education construction environment. Any limitation on this ability to hold physical education classes outside may hinder the school’s ability to meet this legal requirement.

The additional noise following Project completion will make it harder for School staff to monitor and instruct students in the outdoor areas. Children may no longer be able to participate in sufficient recess outdoors. Another concern raised by the loss of land is whether the School will have the appropriate room outside to assemble its students for emergency drills and actual emergencies, or how these events can be handled during construction of the Project. It is likely that the challenges discussed above will lead to a reconfiguration or reconstruction of the School site, which will have an economic effect on the School as well. In fact, the Draft EIR acknowledges, at a minimum, that reconfiguration of the play areas may be needed. (Draft EIR, MM REC-2.1.) However, no consideration is given to the cost of such reconfiguration, which may extend well beyond recreation areas, as discussed below.

b. The Draft EIR fails to analyze the direct and secondary physical impacts resulting from reconstructing the School.

Any reconstruction of the School’s recreational facilities would set off a domino effect that will have significant physical impacts on the School. The Project would have a severe and immediate impact on the School’s baseball field. Per the Draft EIR, the north bench area, backstop area, the northeast corner, and the north spectator bleachers of the field will be affected by the Project’s taking of land. (Draft EIR, 3.16.2.2.) Any reconfiguration of the baseball field will also impact the two portable classrooms that are located at the outer edges of the baseball field grass. The two portable classrooms house the school music program and an English class. The portable classrooms were added to the School in the 2015-2016 school year, years before the Draft EIR was produced. Despite this, the portable classrooms are missing from many of the maps and photographs in the Draft EIR, and are never fully and directly addressed. (See Depiction in Exhibit F for a more recent depiction of the School and the portable classrooms.) No consideration is given to the effects on the educational program of diverting students and portable classrooms from the School’s outdoor area in order to accommodate the project. If the project is implemented as described in the Draft EIR, classroom space and play space will be taken from the school and the already crowded school building may have to reabsorb the programs from the eliminated portable classrooms. Thus the amount of shifting and reconstructing of affected facilities (as laid out in MM REC - 2.1) is more significant than addressed in the Draft EIR. The areas that the Draft EIR considered solely as lost parkland/recreational acreage are also areas of instruction, used for outdoor education activities including physical education.

The Project also shows the placement of a sound barrier around the school as a supposed mitigation for the Project’s noise effects. (Draft EIR, Figure 3.1-4.) The placement of this sound barrier would be right next to the existing play structure, which would create safety risks for students playing on the area of the structure next to the top of the short six-foot wall. These risks would necessitate the reconfiguration of this play area, which would then affect the reconfiguration of the two existing portable classrooms and the School’s ball field.

Additionally, the front of the School may need to be reconfigured to absorb more traffic due to the loss of the Silk Wood Lane informal pick-up/drop-off area. (Draft EIR, 3.17.3.7.) The significant traffic impact on the School is discussed below. There is no practical way for the small parking lot and drop-off area in front of the School to absorb the many drop-offs that will need to be rerouted. Any reconfiguration of the front of the School may in turn impact both classroom buildings and the limited space available for recreational facilities. There is very little available space between the District's front parking lot and the administration and classroom building, as seen in the depiction. (Exhibit F.) Enlarging or altering the parking lot from drop-off/pick-up will almost certainly require relocation or reconfiguration of permanent buildings, with accompanying tremendous cost and School disruption.

Inexplicably, Section 3.15.2.1 of the Draft EIR discusses Project impacts and states that it is not a Project that would construct new buildings and that no new public service facilities would be needed if the project is constructed. The wording of this findings omits that reconstruction on existing buildings, specifically at the School site, will take place. This reconstruction is already contemplated in MM REC 2-1, which states that "this amount may include reimbursement to the District for the cost to reconfigure/reconstruct the existing recreational facilities affected by the project...This could involve shifting and reconstructing the affected facilities to the south of their current locations." In this mitigation measure, the Draft EIR concedes that reconstruction of School facilities may be necessary, which is inconsistent with its conclusions in Section 3.15.2.1.

All reconfiguration of the School's recreational facilities would have to take into account the limited space of the School site due to the loss of acreage required for the Project. It is entirely possible that the School will not have enough land to reconstruct its recreational facilities, portable classrooms, front parking lot, and drop-off/pick-up area, and possibly permanent school buildings sufficiently as a result of this Project. Any reconfiguration of the School's facilities would involve additional construction above and beyond what is required for the Project. This would result in disruptive noise and odors and would significantly likely limit usage of the outdoor areas of the school site. Thus, MM REC-2.1 would give way to numerous scenarios that would cause physical impacts. The lack of analysis of these impacts renders the Draft EIR inadequate under CEQA.

Response R.7: MM-REC-2.1 has been revised. Please see Section 5, *Draft EIR Text Revisions*. Based on the revision of MM-REC-2.1, implementation of MM-REC-2.1 will restore the function and capacity of the school's recreational facilities to pre-project levels and will not impact the two portable classrooms that were installed in 2015-16.

The short-term impacts referenced in this comment will be avoided because the construction of the portion of the project adjacent to the school property will be confined to the summer when school is not in session.

For the City's response to the portion of this comment pertaining to the school's drop-off and pick-up areas, please see Response R.8, below.

Comment R.8: The Draft EIR does not meet its purpose as an informational document because it fails to provide an adequate description of the environmental setting related to the School.

The City’s analysis of the project’s traffic impacts is woefully inadequate because it fails adequately to examine the safety impacts on school children as well as the traffic impacts stemming from the closure of the portion of Silk Wood Lane currently being used as a pick-up/drop-off area. An environmental impact report is required to include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation is published. This environmental setting constitutes the baseline physical conditions by which the lead agency determines whether an impact is significant. (CEQA Guidelines §15125 (a).) “Generally the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.” (CEQA Guidelines §15125 (a)(1).) The Draft EIR does not accurately describe the conditions of the Silk Wood Lane and Fox Lane pick-up/drop-off areas. The Draft EIR also fails to discuss current pedestrian and vehicle travel to and from the School.

a. The Draft EIR does not accurately describe the School.

As stated above, the Draft EIR’s photographs do not accurately depict the School site. The outdated photographs on pages 7 and 196 of the Draft EIR (and on many other pages) do not account for the two portable classrooms that were added to the school in 2015-2016. (See Depiction in Exhibit F for a more recent depiction.) The loss of acreage would lead to the need to reconfigure outdoor play/physical education areas, leading to the reconfiguration of these portable classrooms, which would impact school curriculum and the classroom buildings. The Draft EIR does not adequately assess these existing conditions.

b. The Draft EIR does not adequately describe the impact of the pick-up/drop-off area on Silk Wood Lane.

In examining the impact on the School’s pick-up/drop-off areas, the Draft EIR emphasizes that it is unlawful for vehicles to stop/park along the south side of Silk Wood Lane and under the Project it would no longer be possible for cars to stop/park illegally along the south side of Silk Wood Lane. (Draft EIR, 3.17.3.7.) On that basis, the City concludes that this would result in a greater use of the official Fox Lane drop-off/pick-up area. (Id.) However, the City also dismisses the existence of illegal stopping behind the School. Even prior or existing illegal activities cannot be ignored if they are part of the existing environmental setting. (*Riverwatch v. County of San Diego* (1999) 76 Cal App. 4th 1428, 1453.) Yet the City chooses to ignore the existing condition of the “illegal” pick-up/drop-off area in its analysis, and elsewhere the Draft EIR concludes that the Project would have no effect on the designated pick-up/drop-off area in front of the School. (Draft EIR, 3.17.3.7.) Any changes to the Draft EIR would have to address these glaring discrepancies. “An EIR cannot properly and accurately assess the impacts of the project or determine appropriate mitigation measures if it does not include adequate consideration and documentation of the existing environmental conditions.” (See, *San Joaquin Raptor/Wildlife Rescue Center, et al. v. County of Stanislaus* (1994) 27 Cal.App.4th 713.)

According to the Draft EIR, parking or stopping along the south side of Silk Wood Lane at any time of day is currently prohibited. (Draft EIR, 3.17.3.7.) That determination is the extent of the City’s analysis of the Silk Wood Lane parking situation, conveniently ignoring the reality that it is currently being heavily used as a major drop-off/pick-up point for the school. The District has observed that

approximately 300 students routinely enter the school through the school access gate on Silk Wood Lane. These 300 students enter the gates both as pedestrians from nearby housing, and more substantially, students who have just been dropped off at the School by car. A simple visit to the School at any pick-up or drop-off time shows cars lined up. (See Exhibit G.) (Photograph taken by the undersigned at 2:09 P.M. on Thursday, October 17, 2019 as cars are just beginning to queue for pick-up on Silk Wood Lane.) The City appears to have failed even to visit the School it is impacting severely as part of the Draft EIR to observe existing conditions.

Whether informal or not, the usage of Silk Wood Lane is significant and eliminating its usage would lead parents and caregivers to find new pick-up/drop-off locations. Connecting the dots laid out by the City, the remaining official drop-off/pick-up areas are on Fox Lane and Oakland Road. By process of elimination, parents who previously used Silk Wood Lane would be forced to redirect, resulting in an influx of new traffic on Fox and Oakland. Despite this logical conclusion, the City states that “the Charcot Extension would have no effect on the school’s drop-off/pick-up areas and/or parking lots that are located on Fox and Oakland.” (Draft EIR, 3.17.3.7.)

c. The Draft EIR fails to take into consideration the existing difficulties in the official drop-off/pick-up areas.

The current pick-up/drop-off situation at the School is extremely challenging and this reality is not reflected in the Draft EIR. The official pick-up area on Fox Lane fills the narrow School parking lot with cars at the School’s drop-off and pick-up times. The informal pick-up area on Silk Wood Lane is also extremely congested at the drop-off and pick-up times. The City intends to eliminate the informal drop-off/pick-up area on Silk Wood Lane, with the result that this will redirect pick-ups into an already cramped pick-up area in the Fox Lane parking lot. Many Orchard School staff members report extreme difficulty in exiting this parking area, due to the already heavy congestion. This Project will have the effect of changing the condition of the School pick-up/drop-off area from bad to untenable. The Draft EIR does not account for additional congestion to this parking area and surrounding streets as well as the resultant monitoring and safety issues. An increase of cars in the drop-off/pick-up area increases the risk of automobile and pedestrian accidents. The Draft EIR again does not take into account these existing conditions at the Project site, in violation of CEQA. The traffic impacts are discussed further below in Section 7.

d. The Draft EIR does not describe current paths of travel to and from the School.

The Draft EIR consistently fails to address the paths by which students, families, and staff go to and come from the School. (See Exhibit H, Traffic Peer Review, p.1 and 3, Section 7f and Section 7g below.) This is another failure to describe, analyze, or consider existing conditions, rendering the Draft EIR inadequate.

Response R.8: It is the City’s position that the educational and recreational functions at the school can and will continue undiminished if the 0.44-acre area is removed. This statement is supported by the conceptual plan shown in Section 5, Draft EIR Text Revisions, which depicts the reconfiguration of the existing recreational facilities without impacting any classroom buildings.

The school's existing drop-off and pick-up facilities and activities, as well as existing parking lots on Fox Lane and Oakland Road, are described on pages 146-147 of the DEIR and are shown on Figure 3.17-4. Based on site visits by traffic engineers, the DEIR states that the Fox Lane facilities are "heavily used" and notes that some parents park in adjacent private parking lots along Ridder Park Drive, while others stop on eastbound Fox Lane to drop-off or pick-up their children. The DEIR notes that the use of the Oakland Road Event Center parking area is minimal when compared to that which occurs on Fox Lane. This description is consistent with that contained in this comment.

The informal pick-up and drop-off activity associated with the school that occurs on Silk Wood Lane is described on page 147 of the DEIR and is depicted on Figure 3.17-4. Based on site visits by traffic engineers, the DEIR states this area "was observed to be heavily used to drop-off/pick-up students." The DEIR correctly points out that the south side of Silk wood Lane is used for drop-off and pick-up despite being posted as a no-stopping zone. This description is consistent with that contained in this comment.

As described on page 166 of the DEIR, the project will not impact the school's pick-up/drop-off areas and/or parking lots on Fox Lane and Oakland Road because no improvements will be constructed at those locations. The DEIR acknowledges that the project will, however, eliminate the existing illegal practice of parents dropping-off/picking-up children in a no stopping zone along Silk Wood Lane. While the cessation of this illegal practice will likely result in a greater use of the designated drop-off/pick-up areas on Fox Lane and Oakland Road, this is not a CEQA impact for which mitigation is required. The fact that the school's existing pick-up/drop-off and parking facilities may be undersized, as implied in this comment, is unrelated to the Charcot Avenue Extension and is not the responsibility of the City to rectify. Further, the City understands that the District, in addressing drop-off and pick-up activities in its designated lot at the school, will conform with its District Board Policy BP 5142, which states: "The Governing Board recognizes the importance of providing a safe school environment that is conducive to learning and helps ensure student safety and the prevention of student injury. The Superintendent or designee shall implement appropriate practices to minimize the risk of harm to students, including, but not limited to, practices relative to school facilities and equipment, the outdoor environment, educational programs, and school-sponsored activities."

Per SB 743 and the City's Transportation Policy 5-1, any additional references in the comment generally about the project's impacts to school drop-off/pick-up activities, as discussed in Section 3.17.3.7 of the DEIR, relate to the non-CEQA effects to be analyzed under the City's Local Transportation Analysis. Such impacts are non-CEQA items that neither involve a significant adverse environmental impact, nor require mitigation under CEQA. Note also that potential increases in delay and congestion do not exceed any CEQA thresholds of significance. Specifically, for the following reasons, none of the thresholds listed on page 147 of the DEIR (such thresholds listed in Appendix G of the CEQA Guidelines) will be exceeded as a result of any increase in activity on Fox Lane resulting from the project:

- Increases in drop-off and pick-up activity at Orchard School along Fox Lane would not conflict with any of the City’s plans or policies addressing the circulation system, such policies that are listed in Table 3.17-2 of the DEIR and such plans that are described on page 149 of the DEIR.
- Increases in delay or congestion at the school’s drop-off/pick-up facilities along Fox Lane would not conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b), because under that Guidelines section and the City’s Transportation Policy 5-1, such effects are not an impact under CEQA.
- The project does not include the construction or modification of any existing facilities along Fox Lane. Increases in drop-off and pick-p activity along Fox Lane do not constitute a substandard geometric design feature that might result in a substantial increase in hazards.
- Increases in drop-off and pick-up activity at Orchard School along Fox Lane would not constitute an impairment or severing of emergency access. As described on page 152 of the DEIR, the project’s new east-west crossing of I-880 would be available for use by emergency vehicles. As an example, the new connection will shorten the distance from Fire Station 29 to Orchard School by approximately 0.4 mile, reducing response times.

The statement at the end of this comment that the DEIR fails to discuss the existing paths that students take to access Orchard School is incorrect. The text on page 146-147 describes the locations where pedestrian access to the school occurs. Sections 2.3.2 and 2.3.3 of the DEIR list all of the bicycle and pedestrian improvements that will be constructed as part of the project, which is consistent with city policies that state that transportation improvements should include multimodal facilities.

Comment R.9: The Draft EIR does not contain an accurate Project description.

The District is concerned with a number of inaccuracies in the Draft EIR’s Project description. “A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the ‘no project’ alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the Sine qua non of an informative and legally sufficient EIR.” (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 192-193.)

With respect to the Traffic Improvements section of the Project Description, Bullet 1 states “Charcot Avenue would be extended as a two-lane roadway from Paragon Drive on the west to Oakland Road on the east.” (Draft EIR, p.8.) This is incorrect, as Charcot Avenue would be four lanes along the Orchard School frontage. Although this information is tucked away in later discussions, it is incorrect in the opening bullet for the proposed changes.

Further, while retaining wall heights are identified for some sections of the proposed roadway, the Project description fails to identify the height of the retaining wall fronting Orchard School. (Draft

EIR, p. 10). This information is critical to analyzing the environmental effects of the Project including, but not limited to, visual impacts, air quality and health risk impacts, etc. On page 26 in the Aesthetics analysis, the Draft EIR concludes that the proposed roadway extension itself would result in a significant visual impact. The mitigation presented requires construction of a six-foot high noise barrier to include aesthetic treatment. It's not clear how placement of a six-foot high noise barrier reduces the visual impacts of the new road alignment to a less than significant level. Typically, noise barriers are considered by the City of San José and others to be an adverse visual impact. (Envision San José 2040 General Plan 2040 Policy CD-4.11.)

The Draft EIR should be revised to correct the Project description, to identify clearly the height of the proposed retaining walls along the school property, and to evaluate the visual impact associated with the retaining walls.

Response R.9: The standard convention for describing a roadway project is to utilize the number of through lanes. The fact that turning lanes are added at an intersection does not change the character of a roadway. There are countless examples to illustrate this concept. As an example, Oakland Road is a 6-lane roadway north of Brokaw Road, but the fact that there are two additional left-turn lanes at Brokaw Road does not make it an 8-lane facility. The project description for the Charcot Avenue Extension is accurate; it will be a 2-lane roadway – one lane in each direction - that includes turning lanes at its intersection with Oakland Road.

While soundwalls and retaining walls are frequently viewed negatively with regard to the aesthetic and visual character of an area, their presence does not always equate to a significant impact let along a significant and unavoidable impact. Many factors are used to reach significance conclusions, including size, context, overall visual quality, and viewer response. These and other factors were accounted for in the project's Visual Impact Assessment (Appendix D of the DEIR), which followed the guidance outlined in the publication *Visual Impact Assessment for Highway Projects* published by the Federal Highway Administration (FHWA) in March 1981,

The assessment concluded that the proposed new/higher walls, new/wider street cross-section, and loss of landscaping trees would combine to create a significant visual impact. Mitigation would consist of aesthetic treatments for the soundwalls. Replacement trees could also be planted if desired. Note that the 6-foot soundwall along the school's property line can itself be viewed as mitigation because it would form a visual barrier between the proposed roadway extension and the school's recreational facilities (see MM AES-3.1).

Retaining wall heights were accounted for in the visual/aesthetic analysis. Retaining wall heights, at the west and east ends of the O'Toole/I-880 overcrossing, are listed at the top of page 11 of the DEIR. The retaining wall at the southwest corner of Oakland Road/Charcot Avenue would be approximately four feet in height.

Comment R.10: The Draft EIR errs in finding the transportation impact to be of a less than significant Impact. Traffic Engineer Keith Higgins identified significant impacts to traffic operations

at the Orchard School in his peer review. (See Exhibit H.) The following are some of the major impacts identified in this review:

- The Project will result in substantial increases in traffic volumes and drop-off and pick-up activities at the School that have not been quantified in the Draft EIR. The analysis also improperly defers to the District the responsibility for correcting any operational problems.
- Impacts on the Silk Wood Lane neighborhood north of the roadway extension should be quantified, and a mitigation strategy should be developed and funded by the Project.
- Other impacts may be created such as on turning movements at arterial intersections that will receive increased traffic from the new area-wide travel patterns that will result from the Project.
- Further analysis of several design components of the roadway extension is also recommended.
- School area vehicular, bus, pedestrian, bike, and pick-up/drop-off operations and neighborhood traffic operations all have serious safety implications. The Project will require modifications to School access for all travel modes as well as its pick-up and drop-off facilities. These need to be analyzed in detail with appropriate mitigations identified and implemented.
- There is also concern regarding the proximity of existing buildings to the Project. A discussion should be included regarding clear zones and potential extension of the bridge guardrail or sound wall.
- There is no discussion of pedestrian facilities in the vicinity of the School.
- Certain intersections should be studied for additional times and pedestrian traffic.
- There is also concern regarding the queue on eastbound Charcot Avenue approach to Oakland Road and how it will extend past the Silk Wood Lane intersection under year 2025 conditions and will increase in year 2040. Analysis of how the HAWK light and raised median will function with the longer queues is needed.
- The Draft EIR's discussion of the installation of a new pedestrian only signal or HAWK light is inadequate. Additional analysis is needed regarding what type of control will be installed and when this decision will be made is of concern; how the control would function with a raised median along Charcot Avenue across the intersection; discussion of queuing, sight distance, and geometric elements should be provided for the Silk Wood Lane intersection assuming it is signalized or controlled by a HAWK.
- Sight distance is an issue on the westbound Charcot Avenue Extension approach to Paragon Drive due to the crest vertical curve across the I-880 overcrossing. Sight distance for the eastbound Charcot Avenue Extension should be discussed at the Silk Wood Lane intersection.
- Traffic volumes on Fox Lane will increase at least 50% due to the factors listed above. This additional traffic on Fox Lane, combined with the additional pick-up, drop-off and pedestrian activity will further complicate and exacerbate traffic operations at Orchard School. The Draft EIR should quantify these factors and the resulting traffic volumes and traffic operations on Fox Lane.
- The Draft EIR states that the Project does not include any substandard geometric design features or incompatible uses that might result in a substantial increase in hazards. It states that the Project therefore has no impact. The above comments on the transportation analysis identify significant Project impacts on Orchard School traffic operations that have the potential to result in safety issues during student drop-off and pick-up. The Project also has

the potential of increasing neighborhood traffic on Silk Wood Lane that will have safety effects. These are direct results of the geometric design features that eliminate Orchard School drop-off and pick-up operations on the existing Silk Wood Lane and on the barrier to school-age pedestrian traffic created by a high-volume arterial where no roadway currently exists.

- The Project’s effects on drop-off and pick-up operations at Orchard School described above have the potential to impede emergency access to Orchard School, Fox Lane and the business park southwest of Orchard School.

Response R.10: This comment highlights the findings of the peer review of the TA by Keith Higgins, which is an attachment to the letter from the law firm representing the District. The Higgins’ peer review is responded to point-by-point at the end of this comment letter, starting with Response R.56.

Comment R.11: Additionally, the District’s review of the Transportation Analysis finds that the below areas are discussed inadequately and will need to be addressed in a recirculated Draft EIR.

Vehicle miles traveled analysis: The City considered the effect of the proposed Charcot Avenue Extension on all major roadways within a 1.5 mile radius, by conducting an evaluation of Vehicle Miles Traveled (VMT) as called for in CEQA Guideline section 15064.3. (Draft EIR, Table 3.17-4.) For purposes of roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. (CEQA Guidelines § 15064.3(b)(2).) The evaluation shows that the Project would result in a 0.1% increase in VMT under existing, year 2025, and year 2040 conditions. Per the Draft EIR, these are the below the established 0.3% VMT thresholds for significance as set forth in the City of San José Transportation Handbook, April 2018, shown in Table 3.17-3. Thus, the Draft EIR states that coming in below the threshold will result in no impact.

Additionally, for this evaluation, the City arbitrarily chose to examine a 1.5 mile radius, without any substantial justification for selecting this distance. Further, the evaluation is brief and conclusory, with little explanation of the methodology. As with most of its analysis in the Draft EIR, the City fails to address the impact of an increase in vehicle miles traveled and how it affects the School and the safety of the students who will be in the vicinity of the Project.

Response R.11: Page 6 of the transportation analysis (Appendix K) states “...per San José Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA transportation analysis. However, for informational purposes, a VMT evaluation for the project was completed and included within this study.”

The comment questions the methodology and determination of impact each of which is irrelevant based on the described City Policy. The VMT evaluation was completed, for informational purposes, using the referenced City methodology. As stated in Table 2 of Appendix K, the City methodology requires that a project’s effects be evaluated within its “sphere of influence” which is to be determined on an individual project basis and engineering judgment. The City methodology does not define a specific area, or radius, for the selected sphere of influence. The 1.5-mile radius selected for use in

the VMT evaluation includes all major roadways (including Montague Expressway, Brokaw Road, Oakland Road, Ringwood Avenue, and others) within the area of the proposed roadway extension project. The 0.5-mile roadway extension project would have an immeasurable influence on other major roadways.

Comment R.12: Changes in traffic conditions on Fox Lane: According to the City’s Transportation Analysis, “changes to the informal use of Silk Wood Lane for student drop-off/pick-up...will result in a greater use of the official Oakland Road and Fox Lane drop-off/pick-up areas. (Draft EIR, Appendix K, p. 50.) Thus a greater use of the Oakland Road and Fox Lane drop-off/pick-up areas contradicts the Draft EIR’s statement that those areas would not be affected. Particularly troubling is that the greater use contemplated on Page 50 of the Transportation Analysis, especially of Fox Lane, is not reflected in the Transportation Analysis’ own quantitative analysis. The quantitative analysis measured the “plus project roadway segment traffic volumes” of various roadways in the vicinity of the project. With respect to the existing and plus project roadway segment traffic volumes on Fox Lane, Table 8 shows zero percent change from existing to plus project on AM, PM, and ADT. (Draft EIR, Appendix IC, p. 34.) This is inconsistent with the Transportation Analysis’s findings of greater use of Fox Lane. Further evaluations of the Year 2025 and 2040 and their associated plus project volumes also find zero percent change in the usage of Fox Lane. (Draft EIR, Appendix K, p. 35-36.) This conclusion has no basis and is contradicted within the Draft EIR.

Response R.12: The proposed project consists of an extension of Charcot Avenue between its current termination points on both sides of I-880. The project is not proposing changes to the designated school drop-off/pick-up areas along Fox Lane. The project does not propose changes to Fox Lane and thus would not result in changes to traffic volumes on Fox lane.

The proposed project will result in the elimination of illegal, or "informal," use of Silkwood Lane and subsequent greater use of Fox Lane is the obligation of the school to remedy. The use of Silkwood Land for school drop-off/pick-up is an existing problem that should be addressed regardless of the proposed project. It is agreed that the safety of children should be of utmost importance when the school considers adjustments to accommodate the proper use of the designated Fox Lane drop-off/pick-up areas.

Comment R.13: Increase in hazards due to design features or incompatible uses: Further, under Section 3.17.2.3 of the Draft EIR, the City concludes that “the project would not substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses.” (Draft EIR, p. 152.) However, the very nature of the overcrossing and where the cars exit the overcrossing would increase the hazards for schoolchildren who are crossing the street in order to access the School’s gate. The City attempts to address this in Section 2.3.1, which states that a new pedestrian-only signal such as a HAWK beacon would be installed along Charcot Avenue at Silk Wood Lane. The HAWK light will be located approximately where the road expands from two to four lanes, which puts it in close proximity to the traffic light on Oakland Road. Thus, when the HAWK light is activated and there is a red light at Charcot Avenue and Oakland Road, cars will be trapped, which will lead to traffic jams in the area. Therefore, the geometric designs of the Project would only serve to increase these hazards for student pedestrians accessing the School.

Response R.13: The proposed HAWK signal will provide for a controlled crossing of Charcot Avenue with direct access to the referenced school gate. The implementation of the HAWK signal also would include advance warning signage along both eastbound and westbound Charcot Avenue. The comment makes reference to potential queueing along Charcot Avenue. However, it is important to note that lengthy vehicle queues along eastbound Charcot Avenue due to the Charcot Ave./Oakland Rd. traffic signal would not be expected to occur outside of the peak evening commute period (4-6pm) when traffic volumes are greatest. The evening peak commute period will not coincide with the peak period of pedestrian crossings at the HAWK signal which would occur after school dismissal at 2:35 pm. Westbound traffic on Charcot Avenue would be directly controlled by the Hawk signal.

Comment R.14: Emergency access impacts: The Draft EIR concludes that the Project would not result in inadequate emergency access. (Draft EIR 3.17.2.4.) Per the Draft EIR, the extension “would be available for use by emergency vehicles that, depending on the location of call-for-assistance could reduce response times.” (Id.) The Draft EIR’s analysis is minimal and provides no real assurance that response times would improve. The Draft EIR does not address the impact caused by an additional east-west crossing and an increase in VMT on emergencies and emergency access. It is certainly possible that an increase in miles traveled and the additional roadway attributable to this project would create a higher potential for motor vehicle accidents. These conditions would also create a higher potential for longer emergency response times since there would be more cars traveling more miles due to the Project roadway. Additionally, emergency vehicles coming over Charcot Avenue will have to deal with additional obstacles, including having to safely maneuver around students at drop-off/pick-up areas. Emergency vehicles may also encounter challenges responding to calls during periods of heavy congestion on Fox Avenue during those hours, which will be exacerbated by the additional pick-up and drop-off traffic that will redirect from the back of the School to the front as a result of this Project. All of these very real possibilities were not analyzed. This possible negative impact is not addressed in the Draft EIR, again in violation of CEQA by not adequately informing the public about significant environmental effects.

Response R.14: The comment is attempting to link increases in emergency response times to increases in VMT, pedestrians, traffic congestion, and operations of the school drop-off/pick-up locations. However, traffic volumes and related increases in traffic congestion and VMT on the roadway system will occur independent of the proposed roadway extension project due to approved development growth. Therefore, the referenced increases in response times also would increase, potentially at a greater amount, without the project. Analysis is not required to show that the proposed roadway extension would provide enhanced roadway connectivity for emergency vehicles, particularly for neighborhoods and areas in the immediate area of the project, that otherwise would be limited to Montague Expressway and Brokaw Road. Emergency vehicle response delays due to the increased use of the designated Fox Lane drop-off/pick-up areas is the responsibility of the school district.

Comment R.15: Potential traffic calming measures: The City attempts to address Potential Traffic Calming Measures in the EIR. However these measures again result in another improper deferral. The Draft EIR concedes that “the effects of a roadway Project such as the proposed Charcot

extension on surrounding residential streets like Silk Wood Lane are of concern.” (Draft EIR, p. 169.) The Draft EIR considers extending curb extensions (bulb-outs), but then notes that these extensions result in a loss of on-street parking and also impede emergency response vehicles and other trucks. (Draft EIR, p. 169.) This discussion is extremely vague and results in no solutions or proposed mitigation measures. Traffic calming measures (stop signs, stoplights, and crossing guards) involving the School site were not discussed adequately as well. The City’s half-hearted discussion of Traffic Calming Measures runs afoul of CEQA as it fails to commit itself to mitigation and adopt specific performance standards that the mitigation will achieve. (CEQA Guidelines § 15126.4(a)(1)(B).) The Draft EIR only mentions these potential calming measures, without committing to specific action or moving forward with standards.

The Draft EIR states that the impact on Transportation as a result of the Project will be less than significant. This finding is inconsistent with this section of the Draft EIR, which finds the Project effects to be of concern to residential streets like Silk Wood Lane such that it merited discussion of traffic calming. A recirculated Draft EIR should address the likely impacts of the Project on the surrounding residential streets and identify concrete enforceable mitigation measures to offset those impacts.

Response R.15: Per SB 743 and the City’s Transportation Policy 5-1, the discussion of potential cut-through traffic in Section 3.17.3.8 of the DEIR, relates to the non-CEQA effects to be analyzed under the City’s Local Transportation Analysis. Such impacts are non-CEQA items that neither involve a significant adverse environmental impact, nor require mitigation under CEQA. Note also that potential increases in cut-through traffic does not exceed any CEQA thresholds of significance listed on page 147 of the DEIR (such thresholds listed in Appendix G of the CEQA Guidelines).

Comment R.16: Changes in travel times due to the Project: The Draft EIR performed a quantitative evaluation of travel times with and without the proposed roadway extension in Section 3.17.3.5. The evaluation consists of travel times to and from major residential and employment destinations within a general two-mile radius of the Charcot Avenue Extension. The focus of the analysis is trips with origins and destinations that are located near Montague Expressway and Brokaw Road. Missing from this section is any analysis of the travel times to and from the Orchard School from its surrounding residential neighborhoods. This lack of meaningful analysis regarding a relevant site within this Project area is improper and unacceptable. Similarly, the discussion of effects of the Project on bicycle and pedestrian facilities suffers again from a lack of attention paid to the School. The Draft EIR focuses solely on the pedestrian routes crossing I-880 and again fails to analyze the Project’s impact on bicycle and pedestrian traffic to and from the School site. The Draft EIR does not measure the current pedestrian and bicycle activity occurring in the vicinity of the Orchard School including students traveling to and from the School. (See Exhibit H, p. 2.) Nor does it measure the amount of students who access the School via Charcot Avenue and Silk Wood Lane. Therefore, no measurement of current or future activity is provided for use of the extension or crossing the extension to access the School, which fails to provide the public with information in a manner that is meaningful and useful.

Response R.16: The commenter is referred to page 18 of the Transportation Analysis (Appendix K) and Section 3.17 of the DEIR that state the determination of project impacts per CEQA requirements are based solely on VMT analysis.

The intent of the travel time evaluation was to document the potential benefits of the proposed roadway extension. However, what the travel time evaluation indicated that the proposed project would have minimal effect on travel times to and from destinations outside of the immediate project area. The travel time evaluation supports the expectation that the proposed roadway extension would be local-serving and provide minimal benefit in travel time outside of the immediate project area. The comment requests that the effects of the project on travel times to the school be evaluated. However, the project does not propose the removal of current travel routes to the school outside of the Silkwood Lane neighborhood that would result in an increase in travel times

Comment R.17: Effect of project construction on traffic patterns near the school: The Draft EIR fails to address the Project’s impact on school pedestrians during the Project construction. In the Comments to the “NOP”, comment 34.24 addressed the impact on walkways to School during construction especially for students coming from the north of the School. The City’s response to 34.24 is that “a Construction Management Plan will be developed and implemented to ensure the safety of all persons that will be affected by the construction.” The City again improperly defers this analysis to a later date and again fails to address the Orchard students directly. As there is no standard established for this Construction Management Plan, questions abound, including the staging of construction trucks and equipment and its potential effect on traffic, the School, and nearby residences. During construction, the flow of traffic and pedestrians will change, which is another area that the Draft EIR fails to examine. The Draft EIR does not address the location of construction staging for the duration of the project. The District is concerned about the location of the staging and is concerned about the effects of construction staging on the safety of the children and traffic surrounding the School. Thus, the Draft EIR again violates CEQA by improperly deferring analysis and failing to provide the public with meaningful information on the significant environmental effects of the project.

Response R.17: The traffic study did not address construction traffic. The details of the construction schedule, staging, etc. is not available at this time to complete an evaluation of construction effects on the school. In any case, the portion of the project adjacent to the school will be constructed during the summer when school is not in session so as to avoid potential construction related impacts to the school.

Comment R.18: Changes in vehicle hours traveled and speeds due to the project: The Draft EIR also analyzes Changes in Vehicle-Hours-Traveled and Speeds due to the Project. The results of the minimal analysis show that the project will very marginally reduce Vehicle Hours Traveled and increase average speeds. Specifically, Table 3.17-10 shows the changes in average speed between no project and project conditions:

Year	No Project	Project	Percent Change
Existing	25.22	25.28	0.2%
2025	17.49	17.62	0.8%
2040	14.35	14.49	1.0%

Here, under existing, 2025, and 2040 conditions, the average speed under Project conditions is only slightly faster than under no Project conditions. This is evidenced by the change percentages of 0.2%,

0.8%, and 1.0%. This section does not specify whether this data applies to the City as a whole or if it only applies to a certain radius around the Project site. As speeds will only gradually increase overall due to an increase in the number of vehicle miles traveled, the difference in speeds from Project conditions to no Project conditions makes very little difference. In viewing the data above, these increases in speed are negligible and hardly speak to the efficiency boasted of throughout the Draft EIR. This Project will have significant impacts across the board for the trivial and conclusory gains described in this table.

Response R.18: The commenter is referred to page 18 of the Transportation Analysis (Appendix K) and Section 3.17 of the DEIR that state the determination of project impacts per CEQA requirements are based solely on VMT analysis. The referenced VHT and average speeds are provided for informational purposes and are not presented for the purpose of determining project impacts.

The commenter is correct in their interpretation of the evaluation and the minimal effect that the proposed project would have on average travel speeds and VHT. The minimal change is an indication that the proposed roadway extension is local-serving and will have minimal effect on travel outside of the immediate project area. The VHT and travel speed evaluation was completed for the same roadways within the 1.5-mile radius used for the evaluation of VMT.

Comment R.19: Changes in truck volumes due to the project and changes in travel time due to the Project: The Draft EIR discusses changes in truck volumes to the Project in Section 3.17.3.4. According to the City, the use of the Project by large trucks will not be prohibited. The City fails to analyze the impact truck traffic may have on the safety of the students at Orchard School. It stands to reason that the increased hazards contemplated in 3.17.2.3 of the Draft EIR are exacerbated when it is truck traffic that is barreling down the overpass towards students attempting to cross the street to access the School. The Draft EIR evaluates changes in travel time due to the Project in Section 3.17.3.5. Included in the evaluation are travel times to and from major residential and employment destinations within a general two-mile radius of the project. The City again chooses an arbitrary two-mile radius and fails to explain the rationale for this decision. The City's analysis of travel times is incomplete as it once again omits any discussion of the School and projected travel times to and from the School, particularly for drop-off and pick-up. A School serving students at the epicenter of this Project must appropriately be considered a major destination within the vicinity of the Project and must be studied for the Draft EIR's analysis to be adequate.

Response R.19: The commenter is referred to page 18 of the Transportation Analysis (Appendix K) and Section 3.17 of the DEIR that state that, per SB 743 and Transportation Policy 5-1, the determination of project impacts per CEQA requirements are based solely on VMT analysis. The referenced truck traffic evaluation is provided for informational purposes and is not presented for the purpose of determining project impacts under CEQA. Similarly, the presentation of sample travel times in the project area is provided for informational purposes and is not presented for the purpose of determining project impacts under CEQA. As stated on page 161 of the DEIR, the 2-mile radius was chosen because it represents the area where the effect of the project is most pronounced.

The comment infers that trucks will travel at a high rate of speed and result in a safety issue due to the geometric configuration of the proposed roadway extension. However, a 35-mph speed limit is proposed along the extension along with an enhanced pedestrian crossing (HAWK signal) of Charcot Avenue. Furthermore, the traffic analysis acknowledges via various analyses that traffic congestion is anticipated along Charcot Avenue between Oakland Road and I-880. Therefore, the reference to trucks "barreling" down the overpass is unfounded.

Comment R.20: Conclusion regarding transportation analysis: Based on the District's concerns which have been outlined in this section on Traffic and Transportation, the District strongly disagrees with the conclusion that the Project will have a less than significant impact and believes that the discussion of transportation is unsupported, inadequate, and in violation of CEQA. The District urges the City to conduct a more adequate analysis of the Project's impacts on traffic and transportation before schoolchildren are allowed to be harmed by the Project. Given these concerns and the lack of mitigation measures to address them adequately, the Draft EIR must be revised and supplemented to analyze the significant issues of traffic and safety as they relate to schools. Greater traffic analysis that specifically takes the District and its students into consideration is required. (See *Chawanakee Unified School Dist. v. County of Madera* (2011) 196 Cal.App.4th 1016, 1029.)

Response R.20: The commenter is referred to page 18 of the Transportation Analysis (Appendix K) and Section 3.17 of the DEIR that state the determination of project impacts per CEQA requirements are based solely on VMT analysis.

Comment R.21: The Draft EIR errs in finding the air quality impact and greenhouse gas emissions impact to be of a less than significant impact.

The Draft EIR is inadequate in its discussion of air quality impacts, particularly as related to the School. Most importantly, while the Draft EIR references sensitive receptors, such as schools and children, and further details general air quality impacts and mitigation plans, it fails sufficiently to identify in any detail specific impacts related to sensitive receptors. These impacts will likely disrupt classes as well as prevent students from being outside during construction. The discussion of air quality impacts on the School is lacking, and the Draft EIR is not in compliance with CEQA in that it fails to be written in a manner that is meaningful and useful to decision makers and the public.

The District finds the analysis of the following air quality impacts to be deficient.

Response R.21: These are introductory comments regarding air quality impacts. Detailed comments and responses on this topic are following.

Comment R.22: Construction criteria pollutant emissions.

The Draft EIR in Section 3.3.2.2 discusses the net increase in emissions of criteria air pollutants during the construction period. This evaluation is depicted in Table 3.3-3 which measures the emissions of reactive organic gases, nitrogen oxides, and particulate matter throughout the construction period, which is assumed to take place over 220 days. This of course is the best case scenario for the Project and does not take into account any potential delays. The Draft EIR deemed the projected construction criteria pollutant emissions to be below the Bay Area Air Quality

Management District (“BAAQMD”) thresholds and thus concluded that the Project would cause a less than significant impact.

However, the Draft EIR’s usage of the BAAQMD’s significance threshold is minimally explained. The Draft EIR attempts to use the BAAQMD’s thresholds as a safe haven that exempts the City from discussing the impact of pollutant emissions on the surrounding community. The City fails to analyze the effect of such emissions on the surrounding area, especially on sensitive receptors at the School. This level of analysis fails to comply with CEQA Guideline section 15064.7(d), as it does not explain how the particular requirements of this environmental standard reduce project impacts, including cumulative impacts, to a level that is less significant, and why the environmental standard is relevant to the analysis of the project under consideration.

Response R.22: The modeling of construction emissions was based on the projected amount of construction activity. Average daily emissions were computed based on the number of construction days anticipated by the project design team. The DEIR analysis did not make any speculation regarding the amount of construction or duration of construction activity.

The DEIR analysis includes a detailed analysis of the impacts from these construction emissions upon sensitive receptors, including students, based on guidance contained in the BAAQMD’s CEQA Air Quality Guidelines.

The basis for the significance thresholds used by the City are those recommended in BAAQMD’s CEQA Air Quality Guidelines. Appendix D, pages D-29 through D-42 of BAAQMD’s CEQA Air Quality Guidelines describe BAAQMD’s justification for developing those thresholds. Furthermore, BAAQMD has adopted the latest recommendations published by the Office Environmental Health Hazards Assessment (OEHHA) for cancer risk to ensure risk assessments address sensitive receptors in the general population.

Comment R.23: Construction dust emissions.

Section 3.3.2.2 of the Draft EIR expects Project construction dust emissions to be of a less than significant impact, again without examining its effects on sensitive receptors at the Orchard School. The Draft EIR fails to analyze these impacts and instead relies on contractors to implement standard BAAQMD BMPs (“Standard Conditions”) during all phases of project construction to reduce dust emissions, which the City believes would result in no significant fugitive dust. This section does not discuss how the City would be able to enforce the Standard Conditions set forth in the Draft EIR and does not mention any mechanism that would require the contractors to adhere to these Standard Conditions. Further, the Draft EIR does not discuss oversight of these conditions nor penalties or consequences of violating these conditions. This inadequate discussion of enforcement is in violation of CEQA. (Public Resources Code § 21081.6 (b); CEQA Guidelines § 15126.4 (a)(2) (EIR must have mitigation measures that are enforceable through conditions of approval, contracts or other means that are legally binding).) The analysis simply asks the reader to blindly believe that the City will select a contractor that adheres to the conditions and that the contractor actually adheres to the conditions. This lack of enforcement power and lack of analysis of the actual impacts is

unacceptable, particularly since the proposed Project is to be built adjacent to a school site and residential site.

Response R.23: The City’s standard construction contract contains provisions for dust control that the contractor is legally mandated to implement. The City’s construction inspectors have the authority to enforce those provisions. In addition, other options are available to the City, including penalties and even termination. BAAQMD inspectors also enforce dust control measures and can impose fines and other sanctions for violations.

Comment R.24: Operational criteria emissions and greenhouse gas emissions.

Section 3.3.2.2 of the Draft EIR also covers the operational criteria pollutant emissions, which result from changes in traffic patterns and traffic conditions. The Draft EIR created a model to predict annual criteria air pollutant emissions and CO emissions under the proposed project for existing conditions, 2025, and 2040. According to the Draft EIR, “in most cases, as shown in Table 3.3-4, emissions under the Project Conditions would be slightly lower than under the No Project conditions because of the efficiencies in travel that would result from the Charcot Avenue Extension.” (Draft EIR, p. 39-40.) The Draft EIR engages in unsupported puffery, as it makes a conclusory statement that efficiencies in travel will result from the Project. This fails to take into account the Draft EIR’s Transportation Analysis’ findings that only showed a negligible increase in speed. The highest increase in miles per hour due to the Project will be one percent, to be realized twenty years in the future. Will a one percent long-term increase in long-term traffic speeds have anything but a negligible effect? The Draft EIR states that “the Project would provide an additional east-west access point to/from the North San José area, which would benefit the network...for these reasons operation of the proposed project would not result in significant regional criteria pollutant emissions impact.” (Draft EIR, p. 39-40.) Thus, the Draft EIR is asking the reader to believe an additional access point, which this Draft EIR has stated would lead to an increase in VMT, would somehow result in lower emissions. All these assertions are provided with minimal supporting detail, but with an unreasonably high degree of certainty. The Draft EIR’s analysis of emissions, especially with respect to the School site, is incomplete, conclusory, and unjustified. This analysis fails under CEQA as it also fails to be written in a manner that is meaningful and useful to the public.

The discussion of greenhouse gas emissions (“GHG”) in 3.8.2.1 of the Draft EIR is similar to the pollutant emissions discussion. In a short and conclusory two paragraph section, the City determines that “the project would not generate GHG emissions that would have a significant effect on the environment.” (Draft EIR, 3.8.2.1). Table 3.8-2 shows that the proposed project, when compared to the No Project scenario, would decrease GHG emissions under existing, Year 2025, and Year 2040 conditions. The decrease would be “the result of the reductions in congestion and improvements in operations that are associated with the project.” This conclusion did not take into account the Draft EIR’s findings that there will be an increase in VMT under Project conditions. Further, any “improvement in operations” overlooks the Project’s negligible increase in vehicle speeds. This of course, assumes that any improvements in operations will actually take place.

Response R.24: The DEIR air quality analysis modeled traffic emissions that take into account VMT, traffic speed and vehicle delay. There are relatively small changes in VMT and speed across the travel network studied. Emissions of air pollutants and

GHG are sensitive to changes in all of these variables. While VMT may be slightly higher or lower, the change in emission rate due differences in speed may add or offset that change. Similarly, changes in vehicle delay time would contribute to these changes.

Comment R.25: A review performed for the District by Ron Sissem of EMC Planning Group echoes these concerns. (See Exhibit I.) In short, neither the text in the Draft EIR GHG analysis nor the text in Appendix E of the draft EIR adequately “connect the dots” between results and evidence used to arrive at the results. Without a more complete evaluation of how this conclusion is reached in light of VMT increases, it is not clear that the project has a less-than-significant impact. The Draft EIR should be revised to include this information.

The City’s methodology here is conclusory and fails to examine all of the impacts on the Orchard School and the children it serves.

Response R.25: This comment references the findings of the peer review of the Air Quality Analysis by Ron Sissem, which is an attachment to the letter from the law firm representing the District. The Sissem peer review is responded to point-by-point at the end of this comment letter.

Comment R.26: d. Exposure of sensitive receptors to substantial pollutant concentrations.

In discussing the Project’s existing conditions, Section 3.3.1.2 of the Draft EIR states that the nearest existing sensitive receptors to the Project include residents on Silk Wood Lane and students at the Orchard School. Section 3.3.2-3 of the Draft EIR discusses the exposure of sensitive receptors to substantial pollutant concentrations. This section examines the maximum increased lifetime cancer risk, annual amount of toxic air contaminants, and hazard index for the maximally exposed individual. The maximally exposed individual for the purposes of this study was a child at the Orchard School. This study did not completely measure the effects on Orchard School staff as well as adult residents of the surrounding neighborhood.

Of particular concern is how the Project is close to exceeding the threshold for toxic air contaminant exposure to the School. The risk for exposure to PM_{2.5} is identified as 2.6 µg/m³ with significance exceeding the threshold being 3.0 µg/m³ or greater. (Draft EIR, Table 3.3-5.) It is extremely troubling to see the amount of exposure the Orchard students will have to toxic air contaminants as a result of the Project. Though this section again conclusively determines that the risks are below the City’s selected threshold and a less than significant impact would result, it again fails to analyze the effects that exposure to toxic air contaminants and fine particulate matter would have on sensitive receptors.

Though maximum increased lifetime cancer risk, annual amount of particulate matter and hazard index may all be useful measurements, there are likely other risks and ailments that would affect the schoolchildren in the proximity of the project. For example, this evaluation does not take into account those students suffering from asthma and other sensitive conditions. The Draft EIR again uses arbitrary thresholds as a shield from producing meaningful analysis. This is particularly troubling given that these students will be in school buildings twenty feet from the overpass, and exposed on School grounds during physical education and recess.

Given the proximity of construction of the Project to the School site, and the resultant unavoidable impacts to the School, it is unacceptable for the Draft EIR to present such minimal analysis of the air quality impacts and greenhouse gas emissions on the children who attend the school. The Draft EIR does not explain the air quality impacts on the sensitive receptors at the Orchard School during the construction and operational periods of the Project. Further, the Draft EIR only measures the effects of pollutants on sensitive receptors in three limited areas. The Draft EIR's limited analysis of the Project's air quality impact does not adequately inform the public of the significant environmental effect on a project leads to the failure of the Draft EIR as an informational document, which is in violation of CEQA.

Response R.26: The DEIR air quality analysis used the methods and significance thresholds recommended in the BAAQMD CEQA Air Quality Guidelines. This includes significance thresholds for evaluating impacts to sensitive receptors based on emissions of toxic air contaminants (TACs) and air pollutants (i.e., PM_{2.5}). This assessment was conducted for both the school and the residences near the project. The PM_{2.5} exposures address those that would occur for all receptor types, which could include Orchard School staff at any of the receptors. The maximally exposed individual at the Orchard school, in terms of cancer risk would be a student. Staff, which are considered adult workers are not considered sensitive receptors. In addition, they are not the maximally exposed individuals because they are less sensitive to TACs and have a lower breathing rate per body weight. The maximum cancer risk at both the school and residences were identified in the DEIR air quality analysis.

The Commenter incorrectly states results and conclusion that are contained in Table 3.3-5 of the DEIR. Since the project would have health risk impacts below the significance thresholds recommended by BAAQMD and used by the City, there would not be an adverse effect to human health caused by the project.

Again, the basis for the significance thresholds used by the City are those recommended in BAAQMD's CEQA Air Quality Guidelines, Appendix D. Pages D-29 through D-42 of that appendix describes BAAQMD's justification for developing those thresholds. Furthermore, BAAQMD has adopted the latest recommendations published by the Office Environmental Health Hazards Assessment (OEHHA) for cancer risk to ensure risk assessments address sensitive receptors in the general population.

Comment R.27: The Draft EIR errs in finding the hazardous materials impact to be of a less than significant impact with mitigation.

The Draft EIR notes that the project could create a significant risk if hazardous materials in sufficient concentrations are present in soils and those materials are, in turn released into the environment during construction. (Draft EIR, 3.9.2.2.) The City offers mitigation in the form of MM HAZ-2.1, which provides for project sampling for pesticides prior to demolition, grading and excavation. The results of the samples will be provided to the Director of City Planning and the City's Environmental Compliance Officer. (Draft EIR, 3.9.2.2.) If contaminated soils are found in concentrations above

regulatory thresholds, the project proponent shall obtain regulatory oversight from the SCCDEH or DTSC. (Draft EIR, 3.9.2.2.) These organizations would then determine next steps, including documents required for a Site Management Plan, Removal Action Plan, or equivalent document. (Draft EIR, 3.9.2.2.) The City again defers future plans to different public agencies and provides no meaningful analysis on the effects the contaminated soil would have on sensitive receptors at the School site. This lack of analysis and failure to provide additional data on mitigation measures to offset these impacts is unacceptable, particularly since the Project is proposed in such a densely populated area and ongoing construction will occur near an operating school site. Once again, the effects of such a large project on the School have been largely ignored by the Draft EIR, in violation of CEQA.

Response R.27: The City is not deferring mitigation to another entity. Instead, the mitigation measure describes standard procedures wherein testing is undertaken to determine if hazardous substances are present in the soil at concentrations above regulatory thresholds and the process that will be followed if that is the case. Agencies such as DTSC and the SCCDEH oversee this process in their role as regulatory authorities. According to the applicable statutes, the process ensures that neither construction workers nor the public are exposed to hazardous substances in excess of regulatory thresholds.

Comment R.28: The District has additional concerns with respect to hazardous materials. The area is already beset by heavy duty truck traffic, from 6:30 A.M. through the entire school day. Fox Lane is already being used heavily by trucks as a cut-through route to the industrial businesses west of the School, with large trucks and fuel tankers coming from Brokaw Road, down Ridder Park Lane to Fox Lane. This creates an unfavorable mix of both school-related and truck traffic. School staff have observed numerous trucks carrying gas cutting through Fox Lane, immediately in front of the School. This already causes the District serious concerns about the safety of the children at the School, which has previously been raised to the City unrelated to this Project. Given the nature of the businesses west of the School (e.g. Kinder Morgan Oil Terminal, Univar) it is possible under the Project that trucks accessing the area via the roadway extension will carry hazardous materials close to classrooms. The potential for truck traffic on both Charcot Avenue and Fox Lane will only increase the risk of accidents involving hazardous materials in the immediate vicinity of the school. That risk, coupled with the risk of a release of hazardous materials other than air pollutant emissions during the construction period, could have a catastrophic impact on the School's children. The impact of such a potential accident on the School has not been evaluated, and again the Draft EIR does not provide meaningful and useful information to the public.

Response R.28: Please refer to Response R.51.

Comment R.29: The City errs in finding the noise and vibration impact to be of a less than significant impact with mitigation.

This section of the Draft EIR suffers from a lack of analysis as to how the School, a particular sensitive receptor that will be in extremely close proximity to a construction site, will be affected by these noise and vibration impacts. It is likely that these impacts will disrupt classes, prevent students from being able to be outside due to overwhelming outside noise that would affect teachers' abilities to monitor and direct students because they cannot be heard, and further, could affect the school's

classroom buildings. These impacts would be particularly felt when students are outdoors or when the windows are open. (Gary Hopkins, “Have You Heard? Noise Can Affect Learning!” (July 18, 1997) Education World (Noise can affect learning - several studies show that noise impacts reading ability and scores).⁴ Additionally, noise and vibrations could affect the classroom buildings in which the students are learning. With the best case scenario construction schedule of 220 days, students will lose all or most of a school year of outdoor education and recess. This matters deeply to a school child and should be of concern to the Draft EIR’s analysis. The Draft EIR fails to address these substantial potential impacts and is therefore inadequate. Deficient areas in the Draft EIR’s noise impact analysis are addressed below.

Response R.29: These are introductory comments regarding noise and vibration impacts. Detailed comments and responses on this topic are following.

Comment R.30: The Draft EIR applies improper noise standards for a school site.

According to a peer review performed for the District by WJV Acoustics, the Draft EIR employs the wrong noise level standards for the outside School areas. (See Exhibit J.⁵) The Draft EIR applied Land Use Category 2, described as “Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds” to the exterior areas of the School campus. An exterior noise level of 65 dB is considered “normally acceptable” for Category 2 land uses. (Draft EIR, Table 3.13-6., see also Draft EIR, Appendix J, Table 5.) WJV correctly observes that the exterior areas of the School should fall under Land Use Category 3, described as “Schools, Libraries, Museums, Meeting Halls, and Churches.” An exterior noise level of 60 dB is considered “normally acceptable” for Category 3 land uses. Thus, exterior noise levels at the School should have been evaluated based upon the Land Use Category 3 exterior noise level standard of 60 dB. (See Exhibit J.) The modeled receivers S1 and S5 (depicted in Draft EIR, Figure 3-13-2) are located on the School campus and are evaluated based on the incorrect Category 2 standard. Additionally, the noise barrier along the south side of Silk Wood Lane (adjacent to the School) should be recalculated to demonstrate compliance with the 60 dB exterior noise level standard.

The noise levels on Orchard School campus (indicators S1 and S5 depicted in Draft EIR Table 3.13-6) would be exposed to increases in traffic noise levels under Project conditions that would place them above the Normally Acceptable Levels. The Envision San José 2040 General Plan at EC1-2 considers significant noise impacts to occur if a project would cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where the noise levels would equal or exceed “Normally Acceptable.” As S1 measured as 69 and S5 measured as 67 under Project conditions, both are in excess of the Normally Acceptable level of 60.

The fact that the Draft EIR addresses the School under standards applicable to a park and recreation area as part of its noise analysis, is also another telltale sign that the City refuses to acknowledge that

⁴ https://www.educationworld.com/a_curr/curr011 .shtml

⁵ All of the comments contained in the WJV Acoustics peer review have been incorporated into the main body of the letter from Lozano Smith. Therefore, the WJV comments are not responded separately at the end of the Lozano Smith letter.

there is a public school in place. In that regard, the noise analysis also fails to provide an accurate or adequate description of existing conditions.

Response R.30: Application of Land Use Category 2, “Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds” to exterior areas of the school campuses in San José that are used for Outdoor Sports and Recreation and/or Playgrounds is consistent with the use of these outdoor areas and with prior application of the Noise Element for school projects. The use of these facilities includes noise generating activities, such as children playing, whistles blowing, etc. The more conservative Land Use Category 3, “Schools, Libraries, Museums, Meeting Halls, and Churches” would be applicable to more noise sensitive spaces, such as an outdoor classroom or study area. See Harker School Expansion Project as another example of this application.

Comment R.31: The Draft EIR errs in failing to find significant noise impacts at School-based receivers.

With respect to receiver S2, which is also located on school grounds, the reported exterior noise levels of 61 dB (existing plus Project) and 63 dB (2040 Build Conditions) should be indicated as a significant impact as they exceed the 60 dB exterior noise level standard applicable to school land uses. (Draft EIR, Table 3.13-6.) The noise levels of modeled receiver S5 (with the construction of the stated six-foot sound barrier) state that an exterior noise level of 59 dB would be expected for 2040 No Build conditions, and an exterior noise level of 64 dB would be expected for 2040 Build conditions with the recommended six-foot barrier.

In regards to compliance with the interior noise level standard of 45 dB, it is the opinion of WJV that the analysis does not adequately address interior noise levels that could result from the Project within the buildings closest to the proposed roadway alignment. Exterior noise levels should be modeled at the northern facade of the building closest to the proposed roadway alignment in the vicinity of the modeled receiver. An interior noise analysis should be prepared based upon the exterior facade noise levels along the north facing facade(s) of these three buildings.

Additionally, the Draft EIR states that an existing five-foot sound barrier provides acoustic shielding for single family residences located adjacent to Silk Wood Lane. (Draft EIR, Appendix J, p. 21.) However, Google Earth images dated March 2019 only show existing wooden fences and not a sound barrier. (See Exhibit J.) This warrants a review of the modeled noise levels.

Response R.31: Standard construction with windows closed would be anticipated to provide 25 dBA of noise reduction from exterior noise sources. The Orchard School classroom and multi-purpose room façades were constructed with double-paned windows, insulation, and forced-air mechanical ventilation. Therefore, at a minimum, 25 dBA or more of exterior-to-interior noise reduction can be anticipated.

Modeling locations were selected to represent the center of the east facing façade due to the higher window to wall ratio of this façade. Building façades without windows or with smaller window to wall ratios would result in higher exterior to interior noise reduction and, therefore, lower interior levels.

Field observations conducted by trained field staff during the noise monitoring survey confirmed that the existing wooden fence is of solid construction to act as a sound barrier.

Comment R.32: Noise impacts of the Project.

Table 3.13-3 of the Draft EIR measured the existing day/night sound levels of areas surrounding the Project, including the School site. The Draft EIR has found the noise increases in the School's outdoor field due to the project to be of a significant impact and its mitigation measure is to erect a six-foot noise barrier. Inexplicably, the residents of Silk Wood Lane will receive a ten-foot noise barrier, with some areas receiving an eight-foot noise barrier. MMNOI-1.2 explains that a ten-foot barrier, per FHWA's Traffic Noise Model, will reduce noise levels at these residences to acceptable levels of 60 dBA DNL or less. The Traffic Noise Model was referenced again in stating the School's barrier would reduce noise levels on the outdoor field area and playground to 65 dBA DNL and exterior levels at the primary classrooms to 60 dBA DNL. No explanation was given for this disparate treatment of similarly situated properties. MMNOI-1.1 and MMNOI-1.2 both state that their taller barriers will reduce noise levels to 60 dBA DNL or less and no explanation is given for why the School's barrier is shorter than the others and why a higher decibel level was deemed acceptable at the School site, which should actually be subject to a more stringent standard. Nevertheless, the Draft EIR found that a ten-foot barrier is a feasible mitigation measure for the areas surrounding Silk Wood Lane affected by the Project.

In analyzing mitigation measures, CEQA focuses on feasibility. "One of the fundamental objectives of CEQA is to facilitate the identification of 'feasible alternatives or feasible mitigation measures which will avoid or substantially lessen significant environmental effects.'" (Public Resources Code § 21002; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376, modified (Apr. 27, 1992.)) CEQA's concern is with feasible means of reducing environmental effects. (Id. at 376.) Feasible is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Id. at 376.)

The Draft EIR has demonstrated that a ten-foot barrier is a feasible mitigation measure for this Project. This mitigation measure will be applied to the residents of Silk Wood Lane. The school's barrier is limited to six feet and noise levels would be reduced to 65 dBA as opposed to the 60 dBA that is possible for the ten foot barrier. The Draft EIR has established that a ten-foot barrier that limits noise levels to 60 dBA is capable of being accomplished in a successful manner, otherwise it would not be offered as a mitigation. What is not addressed is why this cannot be accomplished for the School. The City relies on the FHWA Traffic Noise Model to provide its thresholds of significance, however the residence noise levels and noise levels outside the School are subject to a five decibel difference. As the School is subject to an inferior mitigation measure, this does not promote the consistency that is contemplated under CEQA. The School is provided with inferior mitigation measures, when a superior measure is readily available and will be applied to another area of the project. (Draft EIR, p. 116.) This is particularly a concern because of the sensitive nature of the School.

As stated above in the discussion of the peer review letter, the Draft EIR misapplies the noise level threshold for the School. An exterior noise level of 65 dBA is considered by the Draft EIR to be “normally acceptable” for the School. (Draft EIR, p. 116.) The peer review established the correct “normally acceptable” dBA to be 60 dBA. The ten-foot noise barriers will reduce noise levels for the residences on Silk Wood Lane to 60 dBA or less. The Draft EIR should propose the ten-foot barrier as the appropriate mitigation measure for the School, as it will reduce the noise levels to the correct “normally acceptable” level. The visual and other effects of the ten-foot barrier should then also be analyzed.

Response R.32: Land Use Category 1, “Residential, Hotels, Motels, Hospitals, and Residential Care” is applicable to residential areas. Land Use Category 2, “Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds” is applicable to exterior areas of the school campuses that are used for Outdoor Sports and Recreation and/or Playgrounds. Land Use Category 3, “Schools, Libraries, Museums, Meeting Halls, and Churches” is applicable to more noise sensitive school spaces, such as classrooms or study areas. Land Use Categories 1 and 3 have a more conservative ‘normally acceptable’ objective of 60 dBA DNL, as compared to the 65 dBA DNL ‘normally acceptable’ objective for Category 2 Land Use.

Recommended soundwall heights are those necessary to reduce noise to levels consistent with the above-referenced noise/land use compatibility guidelines of the City. The heights take factors such as ground elevations, distance to receptors, height of receptors, etc. into account.

Comment R.33: Existing noise conditions of the School site: The Draft EIR states that the classrooms at Orchard School were constructed with double-paned windows, insulation, and forced-air mechanical ventilation (Thorburn Associates, 1996), resulting in interior noise levels that are 25 dBA or more below exterior levels. (Draft EIR, 3.13.1.4.) According to the Draft EIR, the School’s multi-purpose room has these features as well and is also set back farther than the proposed alignment. (Draft EIR, 3.13.2.1.) The City reasons that these features in the School buildings will maintain interior noise levels at 45 dBA DNL and the impact of noise levels at the project would be less than significant. However, the Draft EIR’s analysis is faulty in that the Orchard School’s classrooms currently only have single-paned glass. The Draft EIR has also again failed accurately and adequately to describe existing conditions.

Response R.33: Standard construction with (single-pane) windows closed would be anticipated to provide 25 dBA of noise reduction from exterior noise sources. As part of the noise analysis for the Oakland Road Widening Project in 2003, the school classrooms and multi-purpose rooms were confirmed to have been constructed with double-paned windows, insulation, and forced-air mechanical ventilation. This type of construction would be anticipated to provide additional (i.e., more than 25 dBA) exterior-to-interior reduction as compared to standard single pane construction. However, as a conservative analysis, only 25 dBA of noise reduction was assumed for the school façades. Therefore, even if the school were to have only single-pane windows, the results of the DEIR would apply.

Comment R.34: Vibration impacts of the project.: Additionally, 3.13.2.2 of the Draft EIR states that vibration during construction activities for the Project would be perceptible indoors when construction is located adjacent to structures and secondary vibration, such as a slight rattling of windows or doors, may be considered annoying at times. The Draft EIR comes to the determination that the Project would not result in generation of excessive, groundborne vibration or groundborne noise levels, and a less than significant impact will occur. This section goes on to state, “based on the anticipated vibration levels that are projected at the closest buildings, architectural damages to adjacent residential buildings are not anticipated...construction will occur only during the daytime hours, reducing the potential for annoyance to residences during evening and night hours of rest and sleep.” Noticeably absent from the preceding sentences is any mention of the annoyance or inconvenience to the School and its students as a result of the construction noise and resultant vibration. The exclusivity of the construction occurring during the daytime hours, which of course coincides with the traditional School schedule, again continues the City’s pattern of understating impacts and avoiding analysis of the Project’s effect on the School.

Response R.34: As stated in the DEIR, construction activities are not anticipated to generate groundborne vibration levels exceeding the City’s conservative threshold of 0.2 in/sec PPV. Therefore, structural or architectural damage is not anticipated. Given the short-term nature of construction, vibration annoyance is not considered under CEQA. Perceptible vibration is anticipated only during periods when the use of heavy construction equipment is located directly adjacent to a structure, which would occur only for short periods of time at any one location. As construction activities proceed along the project’s alignment, vibration levels would be lower and would generally be below vibration levels generated by existing activities, such as existing traffic, footfalls within the building, etc. The City has committed to a construction schedule in which construction on the eastern alignment, adjacent to Orchard School, would occur during summer only. Therefore, perceptible vibration is not anticipated to affect student activities.

Comment R.35: Staging of construction equipment and its noise-related impacts.

Of great concern to the District is the staging of construction equipment and its associated noise impacts, as referenced above in the analysis of the Transportation Impacts. The construction will have the potential effect on buildings 20 feet from the edge of the overpass, which presumably means that construction equipment will be extremely close to the school buildings. The Standard Conditions state that “construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.” (Draft EIR, p. 113.) The Draft EIR again engages in improper deferral in its discussion of these Standard Conditions. The Draft EIR does not designate acceptable distances nor does it determine the locations of these construction staging area. This lack of analysis is in violation of CEQA, as the construction will likely have an effect on the students of the Orchard School.

Response R.35: As stated in the comment, the Draft EIR includes Standard Conditions stating that “construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.” The

exact location(s) of staging areas will be determined during final design to be in compliance with this and all other Conditions of Approval states in the Draft EIR. In any case, the City has committed to constructing the portion of the project adjacent to the school property to the summer when school is not in session. This will avoid the construction-related noise and vibration impacts at the school.

Comment R.36: Construction-related noise impacts and its impact on sensitive receptors.

The Draft EIR's discussion of temporary construction-related noise impacts is flawed in that it fails to mention sensitive receptors. The "construction of the proposed roadway extension, including the I-880 overcrossing, would require the temporary use of heavy equipment that could generate high noise levels in the immediate vicinity. (EIR 3.13.2.1). Table 3.13-5 (Calculated Construction Noise Levels) shows maximum dBA's ranging from 67-85 dBA for various phases of construction. Section 3.13.2.1 states that construction of the project alignment, roadway improvement (130 days) and construction of the bridge (220 days) is anticipated to overlap, but the Draft EIR states that "even if construction were to occur sequentially, the project would occur over a total period of 350 days." "Prolonged interference" is defined by the Draft EIR as a noise level increase lasting more than one year.

The Draft EIR concludes that a less than significant impact will result based on the implementation of the standard conditions. This discussion is without assurances that the conditions will be followed and does not address any consequences for failing to follow the conditions.

Additionally, the Draft EIR states that because the Project will be constructed in less than a year, there will be no temporary construction noise impacts. This is a fallacious and flawed misrepresentation of the temporary construction noise impacts. This alleged one year of construction will end all outside activities at the school and interfere with classes. Students will lose a whole school year of uninterrupted and effective education.

While the District is sympathetic to the plight of its neighbors in relation to this imposing and disruptive project, it is difficult to explain the City's apparent general lack of concern and lack of meaningful analysis of the vibration impacts on the School.

Common sense dictates that the Project's noise impacts will disturb the School. The City proposes to build an overpass that abuts the School only twenty feet from classrooms. It is unreasonable to conclude that student learning in those classrooms will not be impacted by the heavy machinery and accompanying pounding, digging, and other construction activities occurring virtually on top of classrooms.

Response R.36: Consistent with Policy EC-1.7 of the City's General Plan, construction located within 500 feet of residential uses or 200 feet of commercial or office uses involving substantial noise-generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) and continuing for a period of more than 12 months would be considered significant. Construction of the project would occur for a period of less than 12 months in proximity to any individual location. Therefore, this impact would be considered less-than-significant. Additionally, the City has committed to construction

near the school occurring during summer periods only, to minimize construction noise interference with school activities.

Noise levels given in Table 3.13-5 (Calculated Construction Noise Levels) and described in the comment are given at a distance of 50 feet from the noise source. As construction moves away from sensitive areas, noise levels will be reduced at a rate of about 6 dBA per doubling of distance between the source and the receiver.

Comment R.37: The Draft EIR does not adequately evaluate the visual character impacts of the Project.

Only a small sliver of the playground that borders the project is depicted in the Draft EIR. (Draft EIR, Figure 3.1-4.) The Draft EIR does not visually depict a finished project from the point of view of the school and its staff and child users. Additionally, the Draft EIR does not analyze the visual impacts that will occur during the construction of the Project, including its impacts on the School site and the actual students.

The proposed noise barrier will also provide a visual barrier between the proposed roadway extension and Orchard School outdoor areas. The visual barrier as depicted will be a solid color, thus children or adults will not be able to see intruders or hazards until the very last moments. The Draft EIR does not analyze the visual impacts of the sound barrier on the students using the outdoor recreation area at the School, safety issues, or possible impacts on access by students. In each of these regards, the Draft EIR's visual impact analysis is incomplete and inadequate.

Response R.37: A conceptual plan showing the layout of the reconfigured recreational facilities is shown in Section 5, *Draft EIR Text Revisions*. The intent of the reconfiguration is to maintain the overall size and function of the existing facilities, so the visual characteristics would be similar.

Aesthetic impacts during construction would be short-term and are temporary. Viewers would see grading, construction equipment, and phased construction of walls, the roadway, and recreational equipment. As stated previously, construction will be limited to the summer when school is not in session.

The 6-foot soundwall along the northerly edge of the school property would screen/block views of the roadway and vehicles from the recreational facilities. Including aesthetic treatments on the wall (e.g., designs, colors, textures) can transform a plain surface into a visual amenity.

Comment R.38: If the Project is approved, the School's available acreage would no longer meet the state's site guidelines.

The current student population of the Orchard School is 875 and the School's current acreage is 16 acres. The student population by grade level is listed below.

Grade Level	Student Population
Preschool	12
TK	30
Kindergarten	100
First Grade	99
Second Grade	90
Third Grade	82
Fourth Grade	77
Fifth Grade	107
Sixth Grade	92
Seventh Grade	79
Eighth Grade	106

The California Department of Education (“CDE”) sets site acreage guidelines for elementary and middle schools in its Guide to School Site Analysis & Development.⁶ The required acreage for the grade levels and population counts served by the Orchard School is set forth below.

Grade Levels	Population	Required Acreage
Kindergarten	Two classrooms.	0.5
First-Third Grade	151-300	2.8
Fourth-Sixth Grade	151-300	5.9
Sixth-Eighth Grade	151-300	6.7
Total		15.9

The total acreage required, at minimum, for the School is 15.9 acres to accommodate the Orchard student population. As the School will lose 0.44 acres under Project conditions, it will be left with 15.56 acres, less than called for in the guidelines. Under Project conditions, the School site would no longer be in compliance with the Department of Education’s site guidelines.

The Draft EIR should have considered the CDE guidelines as a threshold of significance. “A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.” (CEQA Guideline Section 15064.7(a).) If the CDE guidelines were applied as a threshold of significance, then the Draft EIR would determine that the Project’s lack of compliance with the guidelines would lead to a significant environmental effect.

The significant environmental effect here would be an overcrowded school site, which could create potential impacts on student safety and learning. As a result, these impacts on traffic must be considered in the EIR. As the Draft EIR did not apply a threshold of significance to guide their analysis under CEQA, a potential impact has gone unconsidered.

Response R.38: Consistency with the DOE’s Site Analysis & Development Guidelines is part of the process a school district undergoes when purchasing land for

⁶ <https://www.cde.ca.gov/ls/fa/sfguideschoolsite.asp>

a school. As stated in Section 14010 of the Title 5 California Code of Regulations, *Standards for School Site Selection*, there are numerous factors that determine a site suitability for a school, of which size is just one. There are multiple exceptions to site size requirements.

The City is unable to verify the accuracy of the 15.9-acre figure listed in this comment but notes that the original purchase of land for Orchard School was for 15.88 acres, of which 15.0 acres was listed as “net usable.”⁷ The City also notes that the District dedicated 0.27 acres of the site to the City in 2004 for the Charcot Extension⁸. Thus, based on the argument made in this comment, the District has not been in compliance with the COE Guidelines.

The point being made here is that these minor variations in acreage are not the defining factor in whether Orchard School can function adequately if 0.44 acres were to be removed from the site for the Charcot Avenue Extension, which is the relevant question under CEQA. It is the City’s position that the educational and recreational functions at the school can and will continue undiminished if the 0.44 acres is removed. This statement is supported by the conceptual plan shown in Section 5, *Draft EIR Text Revisions*, which depicts the reconfiguration of the existing recreational facilities without impacting any classroom buildings.

Accordingly, the District failed to provide evidence of how students at the School allegedly will not be provided an adequate educational program including physical education due to the project.

Comment R.39: Under Project conditions the School Site would not meet the state’s site selection standards.

The District believes that under Project conditions, the School site as it is currently situated would no longer meet the School site selection standards of the State Department of Education. “Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251.” (Education Code, §17211.) Under Project conditions, any evaluation of the School site would likely fail to meet the following site selection standards:

- A site shall not be adjacent to a road or freeway that any site-related traffic and sound level studies have determined will have safety problems or sound levels which adversely affect the educational program. (Cal. Code Regs., tit. 5, §14010 (e).)
- The site shall not be on major arterial streets with a heavy traffic pattern as determined by site-related traffic studies including those that require student crossings unless mitigation of traffic hazards and a plan for the safe arrival and departure of students appropriate to the

⁷ Letter dated July 21, 1995 to Orchard School District from California Department of Education.

⁸ Orchard School Board of Trustees Resolution #062204-01, adopted June 22, 2004.

grade level has been provided by city, county or other public agency in accordance with the “School Area Pedestrian Safety” manual published by the California Department of Transportation, 1987 edition, incorporated into this section by reference, in toto. (Id. at CCR §14010(1).)

- Existing or proposed zoning of the surrounding properties shall be compatible with schools in that it would not pose a potential health or safety risk to students or staff in accordance with Education Code Section 17213 and Government Code Section 65402 and available studies of traffic surrounding the site. (Id. at CCR §14010 (m).)
- The district shall consider environmental factors of light, wind, noise, aesthetics, and air pollution in its site selection process. (Id. at CCR §14010 (q).)

As shown above, traffic and sound impacts stemming from the Project will adversely affect the School’s educational program. Safety issues stemming from student crossings against a heavy traffic pattern is of great concern to the District and the families it serves. The District built the School on this site over two decades ago and as stated above, the City voiced no objection. Taking into account the selection standards outlined above, it is likely that the School might not have been built if the proposed Project existed first. If the proposed Project moves forward, it could equal a taking of the entire School if it is no longer safe to operate the School there under standards applicable to public schools.

Response R.39: It is unclear why the District would not have constructed the school at the current site if the 2-lane Charcot Avenue Extension had existed first. When the District selected the site in 1995, it was aware of the following:

- The site was adjacent to Oakland Road, a 6-lane major arterial
- The site was within 650 feet (1/8-mile) of I-880, a major freeway
- The site was within 450 feet (0.08 mile) from a rail line that carries munitions and other volatile cargoes.
- The site was in an industrial area where the surrounding businesses stored and used numerous types of hazardous materials

None of the air quality, noise, traffic, hazardous materials, or safety issues were evaluated by the District in its 1995 Initial Study for the school site. In fact, the entire Initial Study analysis was qualitative and only three and one-half pages in length. See Exhibit A to this comment letter.

The absence of the evaluation of these issues by the District is perplexing because the School Facilities Planning Division of the California Department of Education (DOE) had previously identified many of them. As stated in an internal DOE staff memo prepared when the District desired to purchase a site near VSLI Technology, a firm that stored and used hazardous chemicals:

“the District is virtually inundated by businesses and industry that involve hazardous substances as follows: gases, flammable liquids and solids, corrosives, poisons, oxidizers, and explosives...The Orchard School District has indicated that the VSLI site is their first choice and intends to prepare a negative declaration instead of an Environmental Impact Report (EIR). VSLI has refuted this approach stating that the district will be in violation of CEQA is they fail to prepare an EIR to analyze potential environmental effects detrimental to human beings either

directly or indirectly. **It is important to note that there appears to be no ideal site for a new school in the Orchard School District due not only to the widespread presence of the industrial hazardous substances but also two (2) railroad networks that carry munitions and other volatile cargoes, and opposition to depleting the amount of prime agricultural land.**” (emphasis added)⁹

In contrast to the District’s decision to not evaluate the issues now being raised by the commenter before it purchased the current school site, this EIR includes extensive analyses of the Charcot Extension’s impacts. The City Council will consider these impacts when deciding whether to approve the project.

Comment R.40: The Draft EIR fails to provide an adequate analysis of the Project’s impact on existing parks & recreation conditions.

The City and District cooperated to provide recreational amenities to the community by entering into a June 1998 joint-use-agreement in which the City contributed \$80,000.00 toward the total cost for the purchase and installation of playground climbing structures on the School’s property. The City of San José Greenprint for Parks and Community Facilities (2000) indicated that 27 areas of the City were underserved by neighborhood/community parkland which the City considers to include recreation school grounds. The Project Area was identified as one of the 27 areas and the recommended action for the City was to coordinate to secure public access to park and recreation spaces. The 2009 Greenprint states that Orchard School was relocated to this area and addresses part of this underserved area. (City of San José, 2009 Greenprint, Pg. 91, Draft EIR, 3.16.1.2.) In fact, when the City Council approved the Hawthorn Place Project adjacent to the school in 2004, the City Council directed that a “substantial part of the parkland dedication ordinance in-lieu fees shall be spent to make significant improvements to the property of Orchard School so that the community will have more park amenities and more opportunities for families to gather and those improvements will include new sports field (sic) and a landscaped picnic area.” (Draft EIR, p. 132.)

It is likely that the City Council and Greenprint versions referenced herein did not contemplate taking 0.44 acres of recreational area from a School that also serves as a recreational area for an underserved community. The Draft EIR fails to explain the impact from eliminating a part of a recreational area. It is difficult to understand why a recreational area that the City expended money and resources on will now be eliminated by the City in order to make room for a roadway extension. This becomes more glaring in light of the discussion above in which the City had opportunities in 1995 and 2004 to coordinate the Project with the construction of the school and residences, but failed to do so.

In 3.16.2.3, the Draft EIR finds that no cumulative recreation impact within the geographic study area would occur. The geographic study area for cumulative impacts to recreational facilities is defined as a 0.75 mile radius around the recreational facilities at Orchard School. Within the study area there is only one other recreational facility, the Gran Paradiso Park on the corner of McCay Drive and Avenida Elisa. There are no plans to reduce the size or facilities at Gran Paradiso Park.

⁹ “Orchard School District Proposed Site Acquisition,” DOE Memorandum from Stan Rose to Duwayne Brooks/Henry Heydt, November 22, 1994.

However, the City ignores the Orchard School recreation area in its examination of the recreation impact. As stated above, the School will lose the following portions of its baseball field: the north bench area, backstop area, and northeast corner of the field. Further, the School will also lose the north spectator bleacher areas from the field. This will cause a domino effect in the restructuring of the School's facilities, as discussed above.

As the Project will result in a loss of recreational land, it is a significant environmental effect. This loss of land will affect the District as well as individuals who wish to take advantage of the District's recreational facilities. It is inconsistent for the Draft EIR to find no cumulative recreation impact when the School's recreational facilities will face major reconstruction. By ignoring this fact, the Draft EIR does not inform the public generally of this potential significant environmental effect, in violation of CEQA Guideline section 15121. As this will result in less recreational space within the radius, it is disingenuous and unsupported for the City to determine that there will be no cumulative recreation impact within the study area.

Response R.40: MM-REC-2.1 has been revised. Please see Section 5, *Draft EIR Text Revisions*. The revised mitigation measure demonstrates that the school's recreational facilities will be fully restored onsite with no loss of function or capacity. Thus, there will be no domino effect.

By definition, a cumulative effect would only occur if there were other projects in the area that, in combination with the Charcot Extension, were impacting recreational facilities. Section 3.16.2.3 of the DEIR, which is cited in this comment, concludes that there are no such projects in the area. The comment provides no data or evidence to the contrary. Therefore, the conclusion of "No Cumulative Effect" is correct.

Comment R.41: Feasible Project Alternatives.

Section 7.0 of the Draft EIR includes an analysis of Project Alternatives with the No Project Alternative designated as Alternative D. As the No Project Alternative would avoid all the identified significant impacts of the Project, namely aesthetics/visual, biological, cultural (archaeological), hazardous materials, noise and recreational. (Draft EIR, Section 7.4.1.) The Draft EIR concluded that Alternative D was the environmentally superior alternative. (Draft EIR, 7.5.) Per CEQA Guidelines section 15126.6 (e)(2), if the No Project alternative is deemed the environmentally superior alternative, the EIR shall also identify an environmentally superior alternative among the remaining alternatives. There are numerous flaws in the Draft EIR's analysis of feasible alternatives, which are discussed below.

Response R.41: These are introductory comments regarding the discussion of alternatives. Detailed comments and responses on this topic are following.

Comment R.42: Alternative H: Alternative H would be the same as the proposed Project except that it would 1) eliminate one of two proposed left-turn lanes from northbound Oakland Road to Westbound Charcot Avenue and 2) would eliminate the exclusive left turn lane from eastbound Charcot Avenue to northbound Oakland Road. (Draft EIR, 7.4.5.) Under this alternative, the cross-section of Charcot Avenue at Oakland Road would be two lanes, as opposed to the four lanes contemplated under the project. (Draft EIR, 7.4.5.) Alternative H would have the smallest effect on

the recreational land and facilities at the School amongst the other feasible alternatives. Alternative H would avoid the direct impact to the baseball field, paved playground area, most of the trees along the northerly planting strip, and most of the paved spectator areas and pathway. Alternative H would result in lower noise and air quality impacts and would meet all five project objectives. In taking those factors into consideration, the Draft EIR concludes that Alternative H is the environmentally superior alternative other than the no Project alternative. (Draft EIR, Pg. 200.)

The City maintains that the traffic operations for this Alternative at the Charcot Avenue/Oakland Road intersection would be less efficient due to the elimination of two turning lanes, however levels of service would remain at an acceptable LOS D. This alternative would also lead to the prohibition of left turns from northbound Oakland Road into the Orchard School Event Center Driveway, though access can be made via a U-Turn. (Draft EIR, 7.4.5.) The City will not commit to this alternative due to a loss of efficiency, even though the levels of service would still be acceptable under the City's standards. The Draft provided a cursory discussion of how this alternative would result in the loss of efficiency.

However, "it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." (Public Resources Code §21002.) Feasible means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Public Resources Code §21061.1.) CEQA contains a "substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures." (Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105, 134.)

The Draft EIR finds Alternative H to be feasible and environmentally superior. It lessens the environmental effects of the proposed Project and also has the smallest effect on the recreational land and facilities at the School. The Draft EIR's main argument against Alternative H is a loss of efficiency. According to the Level of Service goals set forth in the City of San José Traffic Impact Analysis Handbook - Volume II, the level of service goal for transportation is Level D. (p. 88-89.) The Draft EIR acknowledges that Alternative H would remain at an acceptable Level of Service D. (Draft EIR, 7.4.5.) One advantage of Alternative H (and alternative F) that is not mentioned in the Draft EIR, is the reduction of lanes at Silk Wood Lane, where the crosswalk would connect the residential neighborhood to the School. These alternatives increase student safety by reducing the crossing distance and potential for automobile-pedestrian collisions. No longer would students have to dodge cars where they spill out from two lanes onto four.

Another issue that goes unaddressed is the feasibility of adopting Alternative H in light of a potential eminent domain action. Under the proposed Project design, a right-of-way acquisition of 19,410 square feet at Orchard School is required. Under Alternative H, the right-of-way acquisition would only be 5,590 square feet. This would make Alternative H even more feasible as a much smaller right-of-way would require less compensation than the proposed Project design. Alternatives F and G would also require smaller right-of-ways and would be more feasible to acquire. This greater

feasibility is all the more relevant because the District will vigorously oppose any effort to take its land for an overpass.

The Draft EIR articulates no reason for its failure to adopt Alternative H, other than citing to a loss of efficiency, which it concedes is still within the City's acceptable level. Nor does the Draft EIR describe any conditions which make Alternative H infeasible. Taking the above information into consideration, it would be against state policy and express statutory requirements for the proposed Project to be approved.

Response R.42: This comment is correct in saying that the DEIR identified Alternative H as the environmentally superior alternative. The differences between the Project and Alternative H are pointed out in the DEIR, as noted by the commenter. These facts and others will be considered and weighed by the City Council.

The comment regarding eminent domain and the District's opposition to take any of the school's land for the project is unrelated to the adequacy of the EIR but is included in the record.

Comment R.43: Alternative A: Fox Lane Alignment: Under Alternative A, the alignment for the Project on the east side of I-880 would utilize Fox Lane instead of Silk Wood Lane. (Draft EIR, 7.3.1.) This section states, "the use of Fox Lane for the Charcot Avenue Extension would result in increased traffic volumes along the Orchard School frontage, which provides access to the school's designated student drop-off/pick-up area." It further states that this alternative would not be feasible because, "from an environmental perspective, there would be substantial impacts to Orchard School's designated student drop-off/pick-up area on Fox Lane." However, no evidence is presented to substantiate these comments; i.e. no traffic volumes on Fox Lane along the Orchard School frontage are provided and no environmental impacts to the school's designated student drop-off/pick-up area on Fox Lane are provided.

Response R.43: Alternative A would shift the traffic from Charcot Avenue to Fox Lane. Based on the volumes shown in Table 3.17-9, it is estimated that the ADT volume on Fox Lane would increase by approximately 13,000 in 2040 under Alternative A. In addition, the turning lanes needed to accommodate the projected traffic volumes at the Fox/Oakland intersection would be similar, if not more than was identified to be required at the Charcot/Oakland intersection. A second left-turn lane from northbound Oakland Road to westbound Fox Lane would be critically needed to avoid vehicle queues from extending back to the rail crossing on Oakland Road that is located less than 225 feet south of Fox Lane. An additional 5-6 feet of travel way would be needed via the removal and relocation of the sidewalk along the school frontage and elimination the existing short-term parking along the north side of Fox Lane between Oakland Road and Ridder Park Drive to accommodate the second left-turn lane. In addition, left-turns into and out of the school driveways on Fox Lane would be restricted due to the lengthy vehicle queues along both eastbound and westbound Fox Lane due to the Fox/Oakland intersection and crosswalks at Ridder Park. Furthermore, additional measures would likely be required along Fox Lane, including the acquisition of additional right-of-way and signal timing to prioritize

vehicular traffic, to avoid queues from extending back to the rail crossing on Oakland Road.

Comment R.44: Alternative B: Widen Montague Expressway and/or Brokaw Road.

Alternative B would widen Montague Expressway and/or Brokaw Road to improve east-west connectivity across I-880. These alternatives were rejected due to significant right-of-way costs; however, no acreage of land is provided in order to compare either of them with the right-of-way necessary for the proposed project. These alternatives should be evaluated to determine what the environmental impacts would be and if this alternative would be environmentally superior to the proposed project.

Response R.44: No plans for the widening of Montague Expressway or Brokaw Road have been developed so right-of-way acreages are not available. However, a review of aerials along both of these facilities shows that they have been widened to the maximum within the existing right-of-way. Both facilities are lined with numerous commercial, industrial, and residential developments. The effects of right-of-way takes would vary by parcel but would include impacts to sidewalks, landscaping, parking, access roads, and buildings.

Comment R.45: Alternative E: New Overcrossing for Bicycles and Pedestrians only.

The draft EIR states that Alternative E (bike and pedestrian crossing) would not meet four of the project objectives. (Draft EIR, p. 189 & 200.) In fact, this alternative would partially meet at least two additional objectives, improving connectivity and increasing capacity across the I-880 corridor. This alternative would eliminate air quality impacts from the project. This alternative should have been identified as at least one environmentally superior alternative.

Response R.45: As stated on page 189 of the DEIR, Alternative E would meet only one of the five project objectives. While Alternative E would provide a bicycle/pedestrian facility over I-880, it would not improve connectivity or capacity for vehicular traffic and it would not implement a major roadway improvement identified in the General Plan, NSJADP, or North San José Deficiency Plan. Thus, while the environmental impacts of Alternative E would be less than those of the Project, its failure to meet four of the five project objectives is a substantial shortfall.

Comment R.46: Alternatives F, G, and H meet project objectives.

Three alternatives (Alternatives F, G, and H) are studied that would reduce the number of lanes on Oakland Road and/or the extension of Charcot Avenue. All of the alternatives result in slight reductions to toxic air contaminant emissions at the residences and/or the School. All of these alternatives fully meet all five project objectives.

Response R.46: The statement that Alternatives F, G, and H each meet all of the five project objectives is correct. Table 7.4-1 of the DEIR provides a comparison of the differences between the project and each of these three alternatives.

Comment R.47: The Draft EIR fails to discuss conflicts with City plans.

The CEQA Guidelines require an EIR to discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans. (CEQA Guidelines §15125(d).) An “applicable” plan is one that has already been adopted and thus legally applies to the project. (Chaparral Greens v. City of Chula Vista (1996) 50 Cal.App.4th 1134, 1145.) The purpose of the required analysis is to identify inconsistencies that the lead agency should address. By doing so, the lead agency may be able to modify the project to avoid any such inconsistencies. (See Orinda Association v. Board of Supervisors (1986) 182 Cal.App.3d 1145, 1169.) The Draft EIR fails to satisfy these requirements because it fails adequately to consider Project consistency with the Envision City of San José 2040 General Plan (“General Plan”).

Response R.47: These are introductory comments regarding the discussion of inconsistency with plans. Detailed comments and responses on this topic are following.

Comment R.48: The Draft EIR conflicts with the City’s plans regarding safe connections to school facilities.

The General Plan’s Policy TR-2.10 states that the City shall “coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San José.” This Project will have the exact opposite effect and is in direct conflict with the City’s General Plan. The Draft EIR makes no mention of any coordination or collaboration with the District, other than to defer mitigation measures to a later date. A roadway extension that slopes downward in the immediate vicinity of the School will only serve to make bicycle and pedestrian connections to the School less safe. The District’s safety and traffic concerns are outlined above.

Response R.48: As detailed in Response H.1, the City has held multiple meetings in the community as well as with representatives of Orchard School to discuss the project. See also Section 8 of the DEIR, *Scoping and Coordination*. The City disagrees that the project will not provide enhanced safer bicycle and pedestrian facilities. Sections 2.3.2 and 2.3.3 provide lists of all the bicycle and pedestrian enhancements that are part of the project.

Comment R.49: The Draft EIR conflicts with City Plan’s vehicle miles traveled goals.

The Envision San José 2040 General Plan Goal TR-1.1 states that it is a goal of the City to “Accommodate and encourage use of non-automobile transportation modes to achieve San José’s mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).” The Draft EIR at Table 3.17-4 shows that the Project conditions will increase VMT across the Board:

Scenario	Existing	2025
No Project VMT	1,263,080	1,821,479
Project VMT	1,264,478	1,823,272

The Draft EIR's analysis shows that VMT's under project conditions will exceed the no Project conditions. As this clearly is not a reduction in VMT's, the Project is in violation of the General Plan and the conflict is not addressed in the Draft EIR.

Further, the increase discussed above of VMT's also conflicts with the "Climate Smart San José" plan. Per a City memorandum, "Climate Smart San José builds on and furthers the General Plan's vision."¹⁰ Climate Smart San José lists the VMT metric for progress as "vehicle miles traveled per capita per day reduction." By increasing VMT per capita, the Project conflicts with the Climate Smart San José plan.

Response R.49: The commenter fails to acknowledge that the increase in VMT equates to an increase of 0.1 percent. In terms of the nearly two million miles traveled projected in the Year 2025, the increase of 1,793 miles traveled is minimal and can be considered insignificant. Furthermore, the City's General Plan policies and VMT reduction goals are intended to guide future development within the City towards greater use of multi-modal travel (transit, walking, and bicycling). The City's VMT policies allow for roadway improvement projects when they would be of benefit to multi-modal travel. The proposed project will provide for improved connectivity for multi-modal travel in the area. The opportunity provided by the project for increases in multi-modal travel outweigh the minimal increases in VMT.

The City also notes the GHG analysis in Section 3.8 of the DEIR concluded that GHG emissions would be lower with the project than under No Project conditions.

Comment R.50: The Draft EIR's noise measurements and mitigation measures conflict with City Plans: As discussed above, the Draft EIR's analysis of noise levels conflicts with Envision San José 2040's General Plan. The noise levels on Orchard School campus (indicators S1 and S5 depicted Draft EIR Table 3.13-6) would be exposed to increases in traffic noise levels under Project conditions that would place them above the Normally Acceptable Levels. The "Normally Acceptable Noise Level" for these locations is listed as 65 dBA DNL (Draft EIR Table 3.13 -6), yet as stated in Exhibit J, the wrong City noise level standard was applied in the Draft EIR. Under the proper noise level standards, an exterior noise level of 60 dBA DNL is considered normally acceptable for schools. Yet the General Plan at EC1-2 considers significant noise impacts to occur if a project would cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where the noise levels would equal or exceed "Normally Acceptable." As S1 measured as 69 and S5 measured as 67 under Project conditions, both are in excess of the Normally Acceptable level of 60. The Draft EIR nevertheless considers these noise impacts less than significant, which is in conflict with the City's General Plan.

Noise walls along City sheets are to be avoided according to General Plan policy. CD-4.11 includes as a focus to: "accomplish sound attenuation for development along City streets through the use of setbacks and building design rather than sound attenuation walls. When sound attenuation walls are located adjacent to expressways or freeways, or railroad lines, landscaping, public art, and/or an

¹⁰ <https://saniose.legistar.com/View.ashx?M=F&ID=7740265&GUID=:BDA753CC-B484-4112-BA30-0F346E4D1F96>

aesthetically pleasing and visually interesting design should be used to minimize visual impacts.” With respect to the Orchard School site, the Draft EIR proposes six-foot solidly colored sound barriers and eight-foot and ten-foot sound walls to the School’s neighbors across the street. The General Plan contemplates more preferable alternatives than what the Project promises in the form of setbacks and building design. Further, the lack of uniformity in sound barrier heights conflicts with CD-4.4 of the General Plan. Per CD-4.4, it is a City policy to “promote consistent development patterns along streets, particularly in how buildings relate to the street, to promote a sense of visual order, and to provide attractive streetscapes.” The arbitrary usage of multiple different heights for sound barriers on opposing sides of the same road fails to accomplish this policy, and the Draft EIR fails to analyze the inconsistency between the Project and the City’s adopted policy. The removal of trees along the roadside as part of the Project is also not assessed for inconsistency with this adopted policy.

Response R.50: The first part of this comment states that the DEIR erred in not identifying noise impacts at Receivers S1 and S5 as significant. This comment is incorrect; see Table 3.13-6 of the DEIR, which identifies the noise increases at S1 and S5 as significant impacts.

As noted in this comment, setbacks and building design are typically preferable to walls as noise reduction measures. Those options are not always feasible, especially when development is already in place as is the case here. In such cases, the General Plan states that soundwalls should utilize aesthetically pleasing designs. The City intends to work with the District and the community in developing such designs.

The lack of uniformity in soundwall heights is not arbitrary. The recommended heights are those necessary to meet the City’s noise/land use compatibility guidelines. As noted in Response R.32, the noise/land use compatibility guidelines are different for residences on the north side of Silk Wood Lane than for outdoor recreation on the south side of Silk Wood Lane.

Comment R.51: The Draft EIR conflicts with the City Plan’s hazardous materials goals: The Draft EIR also conflicts with the General Plan in the potential for transportation of hazardous materials next to the School. Per EC-6.5 of the General Plan, the City shall designate transportation routes to and from hazardous waste facilities as part of the permitting process in order to minimize adverse impacts on surrounding land uses and to minimize travel distances along residential and other non-industrial frontages. EC-6.7 requires the City not to approve land uses and development that use hazardous materials that could impact existing residences, schools, day care facilities, community or recreation centers, senior residences, or other sensitive receptors if accidentally released without the incorporation of adequate mitigation or separation buffers between uses. In Section 3.9.2.1 of the Draft EIR, the City mentions the possibility of hazardous materials being transported by commercial and/or private vehicles using the proposed extension. No such transport occurs now in the rear of the School. As addressed in the Transportation and Hazardous Materials sections of this letter, the District has existing concerns about the heavy truck usage in front of the School on Fox Lane, including fuel trucks. The Project’s proposed extension will result in additional truck traffic. As the School will then be surrounded on multiple sides by trucks potentially carrying hazardous materials as a result of the Project, the Project is in conflict with the General Plan’s object to not approve land uses that could impact existing schools, and the Draft EIR improperly fails identify this conflict.

Response R.51: The roadways adjacent to Orchard School, including Silk Wood Lane, Fox Lane, or Oakland Road, are public facilities on which trucks are permitted. As stated in Section 3.9.2.1 of the DEIR, all vehicles operating on public roadways must comply with local, state, and federal regulations governing the transport of hazardous materials. In addition, there are no existing or proposed features on the roadways adjacent to the school that would pose a hazard to the routine transport of hazardous materials.

The part of Policy EC-6 stating the City should not approve new land uses that use hazardous materials near schools and residences without adequate mitigation applies to industrial and commercial enterprises. The extension of Charcot Avenue is not a new land use that would utilize, store, or manufacture hazardous materials.

Finally, as stated in Section 3.17.3.4 of the DEIR, Charcot Avenue is unlikely to be used by a substantial number of trucks given the destinations it will serve. In contrast, nearby facilities such as Montague Expressway and Brokaw Road carry more trucks because they are large facilities that provide direct access to US 101, I-880, and I-680, the latter of which are designated hazardous materials transport routes.

To summarize, trucks with hazardous cargoes that might travel on Charcot Avenue would not create a significant hazard to the public or the environment.

Comment R.52: The City has limited public participation in the Project approval process.

Public participation is an essential part of the CEQA process. (CEQA Guidelines §15201.) Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. (CEQA Guidelines §15201.)

As one commentator has noted, “the 'privileged position' that members of the public hold in the CEQA process ... is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making” (Selmi, *The Judicial Development of the California Environmental Quality Act* (1984) 18 U.C. Davis L.Rev. 197, 215-216.) “CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.” (*County of Inyo v. City of Los Angeles* (1984) 160 Cal.App.3d 1178, 1185.) In short, a project must be open for public discussion and subject to agency modification during the CEQA process. (*Id.*) This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86; *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936.)

The District believes that the City has violated the spirit of CEQA by limiting public participation in the Project approval process. Specifically, the District and its parents are frustrated with the City

regarding the timing and location of community meetings regarding this Project. The City's initial community meeting about the Project took place on March 22, 2017, at the Orchard School Event Center Building¹¹, which led the District to believe that the School would be an appropriate meeting place for all future community meetings. Of the three meetings following the initial meeting, only the May 21, 2018, meeting was again held at the Orchard School Event Center Building.¹² The community meetings on May 17, 2018,¹³ and September 24, 2019,¹⁴ were held at the Berryessa Noble Library Branch, which is at least a 20 minute drive from the Orchard School, not accounting for traffic. Further, the September 24, 2019 community meeting was scheduled to conflict with Orchard School Board Meeting on the same day.¹⁵

The District was further frustrated by the City Staffs lack of transparency in community meetings, including its decision not to record public comments in the 2018 and 2019 meetings.¹⁶ This meant that there was no opportunity for the District to learn of the comments of others for the meetings its staff and parents could not attend. The District wishes to work with the City to make all future meetings accessible to all interested parties and to ensure that all public comments are recorded.

Response R.52: Response H.1 lists the meetings the City has held on the project at locations in the community, as well as three meetings held with representatives of the Orchard School District. In addition, as described in Section 8 of the DEIR, *Scoping and Coordination*, the City met with stakeholders including Super Micro, PS Business Park, and California Walks. The City also provided responses to each of the 53 comments it received during the EIR scoping process (see Appendix B of the DEIR). Although not required by CEQA, the responses were provided in an effort to address questions and concerns from the community in a cohesive and comprehensive fashion.

Comment R.53: Any statement of overriding considerations will have to outweigh the educational needs of School students.

The proposed Project cannot be approved unless the City either imposes mitigation measures adequate to mitigate identified unmitigated impacts to a level of less-than-significant or the City adopts an applicable statement of overriding consideration. (Pub. Resources Code § 21002; CEQA Guidelines §§ 15021 (a)(2), 15091(a), 15093 (b) & 15096 (g); see *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41-42 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559) (“A public agency can approve a project with significant environmental impacts only if it finds such effects can be mitigated or concludes that unavoidable impacts are acceptable because of overriding concerns”). Public Resources Code Section 21002

¹¹ https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/cl3c6e5e-953a-4be2-83eb-6979fe344d37/20170322_Notice.pdf

¹² https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/0dae736e-c9b4-4b0f-b051-3026f8b80575/20180521_Flyer.pdf

¹³ https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/83272b33-6f06-472a-b9c7-db8eeef876c/20180517_Notice.pdf

¹⁴ https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/f387b47e-96a1-4332-a214-7b9026764116/12509_1_1_CSJ_Community_Outreach_Postcard_2019_0823.pdf

¹⁵ <http://www.orchardsd.org/documents/Calendars/2019%20Board%20Calendar.pdf>

¹⁶ https://mailchi.mp/bkf.com/past_meetings

states that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects....” This section also states that “in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects.” Thus, before adopting an applicable statement of overriding considerations, the City must have identified and eliminated, based on specific economic, social or other conditions, all reasonably feasible alternatives.

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable." (CEQA Guidelines §15093.)

In this case, the City will have to balance the supposed benefits of the Project against its adverse environmental effects. According to the Draft EIR, the purpose of extending Charcot Avenue across I-880 is to provide a safe multi-modal facility, improve connectivity for vehicular, bicycle, and pedestrian travel routes, provide the opportunity to utilize alternative travel modes, and reduce travel time for the east-west travelers in the North San José area. (Draft EIR, 2.4.) This Project will cause two recognized significant unavoidable impacts as identified by the Draft EIR, the loss of acreage at the Orchard School (Impact REC-2) and the removal of 37 trees along Charcot Avenue (Impact AES-3.) As described above, the District believes that there are other significant impacts that are unmitigated and unavoidable that have yet to be assessed. The District is concerned with the Project’s impacts on transportation, noise, and air quality, and its associated impacts on the safety of the children at the Orchard School. Also, as stated above, the Draft EIR has identified alternatives that would lessen the Project’s environmental impacts and has offered minimal analysis to justify the elimination of these alternatives.

As stated above, the Project will increase VMT and will result in a negligible increase in automobile speeds. In any statement of overriding considerations, the City will have to show that the Project’s purpose and these trivial advantages outweigh the educational needs and safety of the students of the Orchard School.

Response R.53: Correct. The City Council will need to weigh the adverse environmental impacts of the project against its benefits when deciding whether to approve the project or an alternative. A Statement of Overriding Considerations will also need to be adopted for any significant unavoidable impact.

Comment R.54: Unavailability of land for eminent domain.

The City will encounter challenges in acquiring the land necessary for the Project. The District is not a willing seller of its land. As such, the City would likely have to resort to eminent domain to move forward with the Project, as intimated in the Draft EIR which references basing acquisition costs on

applicable law. (Draft EIR, MM REC-2.1.) In order to be allowed to acquire the Property from the District by eminent domain, the City of San José would need to meet the following requirements:

- California Constitution article I, section 19, requires that a taking be for a public use;
- The property is necessary for the proposed project (Code Civ. Proc. § 1240.030); and
- The proposed public use of the Property is a “more necessary public use” than that to which the Property is currently put (Code Civ. Proc. §1240.660).

The City would encounter difficulty in establishing that its proposed use is a “more necessary public use” than that of the District. This would, in essence, require the court to perform, a balancing test between the necessity of public uses proposed by the City and the current use in place with the District. The City would be at a disadvantage in this balancing test due to the rebuttable presumption contained in Code of Civil Procedure Section 1240.660, which provides that “where property has been appropriated to public use by a local public entity, the use thereof by the local public entity is presumed to be a more necessary use than any use to which such property might be put by any other local public entity.” The City will be unable to rebut this presumption and demonstrate that its roadway extension is a more necessary public use of the property than education, particularly in light of the marginal gains the Project offers. The Project itself thus may be infeasible.

Response R.54: The comment includes speculative statements about the possible results of litigation over acquisition of land needed for the project. Such statements are not substantial evidence under CEQA (CEQA Guideline Section 15384).

If the City and District cannot agree on the sale of the approximately 0.44 acre of land for the needed roadway expansion, then the City will pursue its rights under California Code of Civil Procedure section 1240.610 and other applicable law to demonstrate that, with the replication of the current recreation facilities at the School (at the City’s cost) and the lack of any impacts to existing school buildings under revised MM-REC-2.1, the project will be a necessary public use of the land.

Comment R.55: Conclusion: Recirculation is required when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented (CEQA Guidelines, § 15162 (a)(1), (3)(B)(1)); (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance (CEQA Guidelines, § 15162 (a)(3)(B)(2)); (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project’s proponents decline to adopt (CEQA Guidelines § 15162 (a)(3) (B)(3), (4)); or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless (Mountain Lion Coalition v. Fish & Game Com. (1989) 214 Cal.App.3d 1043); Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1130, as modified on denial of reh’g (Feb. 24, 1994).)

In this case, recirculation is required under all four of the foregoing subsections:

1. Substantial air quality, noise, and transportation impacts will result from the Project that were not identified in the Draft EIR;
2. Impacts that are more severe than identified exist;
3. The Draft EIR has declined to adopt additional feasible Project alternatives that would lessen the Project's environmental impacts.
4. The Draft EIR is inadequate and conclusory, as discussed in the body of this letter.

The recirculated Draft EIR must adequately acknowledge and analyze the substantial environmental impacts that are pointed out above in this correspondence. The feasibility of Alternative H must also be meaningfully analyzed in the recirculated Draft EIR. The safety of its students is paramount to the District, and its safety concerns are not adequately addressed in the Draft EIR as currently constituted. Changes must be made to preserve the safety of the children and allow them to enjoy productive time at school, free from traffic, excessive noise, and pollution.

Response R.55: Per CEQA Guidelines Section 15088.5(a), recirculation of the DEIR is not required because, for the reasons identified in the responses to this commenter, 1) the project will not result in any significant air quality, noise, and/or transportation impacts beyond those identified in the DEIR, 2) the impacts of the project will not be more severe than identified in the DEIR, 3) the DEIR has evaluated a reasonable range of eight alternatives, five of which are feasible, and 4) there is no basis to conclude that the DEIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

[Note: The following are comments contained in Exhibit H (Peer Review of Traffic Analysis by Keith Higgins) and Exhibit I (Peer Review of Greenhouse Gas Emissions Analysis by Ron Sisse) of Comment Letter R. Please refer to Appendix B of this First Amendment to the Draft EIR for a complete copy of all Exhibits (A-J) of Comment Letter R.]

Comment R.56: The proposed extension of Charcot Avenue (Project) would begin in the vicinity of Paragon Drive, on the west side of I-880, extend over I-880, and connect to Oakland Road, east of I-880. The project area includes Charcot Avenue from its intersection with Paragon Drive on the west side of I-880 to its future intersection with Oakland Road on the east side of I-880. The extension is proposed to consist of a two-lane roadway, one travel lane in each direction with sidewalks and Class IV bike lanes on both sides of the roadway. The Project would travel along the northern boundary of Orchard School. Based on this review, it is evident that the Charcot Avenue Extension will result in significant impacts to traffic operations at Orchard School. Major ones are as follows.

- These are primarily associated with current inadequate drop-off and pick-up facilities on the school's Fox Lane driveways and frontage. The project will result in substantial increases in traffic volumes and drop-off and pick-up activities that have not been quantified in the analysis. In addition, the analysis assumes that Orchard School is responsible for correcting any operational problems, rather than the project that is creating the impact.

- Impacts on the Silkwood Lane neighborhood north of the Charcot Avenue Extension are also qualitatively identified. These should be quantified, and a mitigation strategy developed and funded by the project, which is creating this impact.
- Other impacts may be created such as on turning movements at arterial intersections on the routes that will receive increased traffic from the new area-wide travel patterns that will result from the project.
- Further analysis of several design components of the Charcot Avenue Extension is also recommended.

The Transportation Analysis should be expanded with additional quantitative analysis. This more detailed analysis should then be recirculated for additional public review. Specific comments are as follows.

Response R.56: These are introductory comments regarding the discussion of inconsistency with plans. Detailed comments and responses on this topic are following.

Comment R.57: Higgins #1: Pg. 5, first bullet -states "A new pedestrian only signal or High-Intensity Activated Crosswalk (HAWK) beacon will be installed along Charcot Avenue at Silkwood Lane. A median will be constructed along Charcot Avenue at Silkwood Lane to restrict turn-movements."

- Please indicate which type of control will be installed and/or when this decision will be made.
- Please indicate how each control would function with a raised median along Charcot Avenue across the intersection.
- Please analyze an alternative with left turns allowed to and from Silkwood Lane.
- Many school-age pedestrians currently cross the future Charcot Avenue right of way. As discussed in Comments 10 and 11, pedestrian volumes should be included in the level of service analysis. This will be the critical north - south traffic movement across Charcot Avenue at this location. The analysis should also include mid-afternoon to include school traffic after dismissal time.

Response R.57: The design and operations of the HAWK signal is not required as part of the CEQA analysis and will be completed upon project approval.

For the purpose of limiting vehicular and pedestrian conflict at the HAWK signal, left turns to and from Silk Wood Lane are proposed to be restricted. Permitting left-turns to and from Silkwood Avenue would adversely affect pedestrian safety when crossing Charcot Avenue.

As stated above, design and operation of the HAWK signal will be completed upon project approval. At that time, an estimation of pedestrian crossing at various times can be documented. Further analysis is not required, since the HAWK signal will be incorporated as part of the project and will increase pedestrian safety when crossing Charcot Avenue. Furthermore, the school drop-off/pick-up activities currently occurring along Silk Wood Lane will no longer be possible and will result in a significant decrease in pedestrian crossings along Silk Wood Lane/Charcot Avenue.

Thus, this comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Comment R.58: Higgins #2: Pg. 6, Intersection Operations Analysis - Intersection operations are only provided for 2025, which will only be a few years after Charcot Avenue is opened to traffic. Intersection operations should be analyzed for Year 2040 conditions, which is still less than 20-years after the project will be opened to traffic.

Response R.58: The commenter is referred to page 18 of the Transportation Analysis (Appendix K) and Section 3.17 of the DEIR that state the determination of project impacts per CEQA requirements are based solely on VMT analysis. Although the analysis of intersection Level of Service (LOS) is no longer a CEQA issue, as a courtesy the following response is provided for information:

The operations analysis provides an evaluation of five-year projection of traffic demand for the purpose of design. The evaluation of 20-year traffic demand projections is speculative and the design of roadway facilities to accommodate such demand may result in over design of roadways. In addition, the evaluation of Year 2040 conditions would be of little value since there is no support to provide additional vehicular capacity as part of the proposed project by the City or other stakeholders. Thus, this comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Comment R.59: Higgins #3: Pg. 8, Supplemental Operations Analysis - Analysis of the effects of the project on Orchard School operations and the neighborhood between Silkwood Lane and Rock Avenue are recognized as an important element of the Local Transportation Analysis (LTA). These are implied to not be part of the CEQA analysis. However, the "CEQA Guidelines Appendix G: Environmental Checklist Form, Section XVII.c. Transportation," states that the project could create a significant effect if it "Substantially increases hazards due to a geometric design feature or incompatible use." School area vehicular, bus, pedestrian, bike and pick-up/drop-off operations and neighborhood traffic operations all have serious safety implications. The Charcot Avenue project will require modifications to Orchard School access for all travel modes as well as its pick-up and drop-off facilities. These need to be analyzed in detail with appropriate mitigations identified and implemented.

"Envision San José 2040 General Plan" Policy TR-2.10 states that the City shall "coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San José."

Response R.59: Please see Response R.12

Comment R.60: Higgins #4: Page 10, Existing Street Network - The study street network should be expanded to include Rock Avenue, Fox Lane and Ridder Park Drive as listed in the "Roadway Circulation Operations Evaluation on page 30. The descriptions of Fox Lane and Ridder Park Drive should include their function as pick-up and drop-off facilities for Orchard School.

Response R.60: The comment requests the addition of textual discussion of the subject roadways that have no effect on the presented traffic analysis. The project is not proposing changes to the designated school drop-off/pick-up areas along Fox Lane. Thus, this comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Pages 146-147 of the DEIR describe the existing drop-off and pick-up facilities on Fox Lane, including the fact that areas along Ridder Park Drive are also used for that purpose.

Comment R.61: Higgins #5: Pg. 11, Existing Pedestrian, Bicycle and Transit Facilities - No discussion is provided of pedestrian facilities in the vicinity of Orchard School. These should be described, or it should be mentioned that they are described In the Orchard School Drop-Off and Pick-Up Operations section of the traffic study.

Response R.61: Section 3.17.1.2 of the DEIR includes a description of existing pedestrian and bicycle facilities. Pages 146-147 of the DEIR describe the manner in which students access Orchard School.

Comment R.62: Higgins #6: Pg. 11 - VTA Bus Service - VTA should be contacted to determine if bus routes will be modified to utilize the Charcot Avenue Extension. If so, the provision of bus turnouts should be reflected in the analysis and design of the project.

Response R.62: The future use of the proposed roadway extension by transit services would not result in transportation impacts and the design of the roadway extension is not addressed as part of the CEQA analysis. Thus, this comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Comment R.63: Higgins #7: Pg. 12 - Figure 3 - Existing Pedestrian and Bicycle Facilities - This figure should include a sidewalk along the north side of Silkwood Lane across from the school's north property line.

Response R.63: The comment requests the addition of textual discussion of sidewalks that have no effect on the presented traffic analysis. Thus, the comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Comment R.64: Higgins #8: Pg. 18, Local Transportation Analysis (Non-CEQA Informational Only) Introduction - As discussed in Comment 3, Orchard School traffic operations fall under the scope of CEQA due to pedestrian and bicycle safety.

Response R.64: Please see Response R.60

Comment R.65: Higgins #9: Pg. 18, Study Intersections - Study intersections should include the following in the vicinity of Orchard School: 1) Oakland Road and Rock Avenue, 2) Oakland Road and Fox Lane, and 3) Fox Lane and Ridder Park Drive

Response R.65: Intersections were selected for evaluation for the purpose of identifying necessary improvement and or adjustment of those roadway facilities to accommodate the proposed roadway extension. The proposed project would have minimal effect on the operations of the referenced intersections. Thus, the comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Comment R.66: Higgins #10: Pg. 18 Study Intersections - The following intersections should be studied for the mid-afternoon time period when Orchard School dismisses in addition to the weekday morning and evening peak hours: 1) Silkwood Lane and Charcot Avenue, 2) Oakland Road and Charcot Avenue, 3) Oakland Road and Rock Avenue; 4) Oakland Road and Fox Lane, and 5) Fox Lane and Ridder Park Drive.

Response R.66: The subject of the transportation analysis is a proposed roadway extension. It is not the responsibility of this project to evaluate and provide mitigation for existing transportation issues directly associated with Orchard School. Thus, the comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Comment R.67: Higgins #11: Pg. 18, Study Intersections - Given the high pedestrian volumes at some locations, all study intersections listed in Comment 10 should be analyzed with a methodology that accounts for pedestrian traffic.

Response R.67: See Response R.57

Comment R.68: Higgins #12: Pg. 18, Study Intersections - The following intersection should be studied for the effect of the Charcot Avenue Extension on overall level of service and queuing on movements that will experience increases in traffic. These may be CEQA issues because of the effect on traffic safety from potential queue spillover into through lanes.

- Trimble Avenue and Junction Road - especially northbound Junction Avenue left turn queue
- Montague Expressway and Oakland Road - especially the westbound Montague Expressway left turn queue.
- First Street and Charcot Avenue - especially southbound First and westbound Charcot left turn queues.
- Junction Road and Charcot Avenue - Especially southbound Junction left turn queue.
- Brokaw Road and Oakland Road - Especially southbound Oakland Road left turn and westbound Brokaw right turn queues.

Response R.68: The project's effects on vehicular queuing are addressed in Appendix K. The project would have minimal effect on the referenced locations. Thus, the comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Comment R.69: Higgins #13: Pg. 20 Study Scenarios - Year 2040 with and without the Project should be studied, as discussed in Comment 2.

Response R.69: Please see Response R.57

Comment R.70: Higgins #14: Pg. 20 - Level of Service Standards and Analysis Methodologies - TRAFFIX software is used for the level of service calculations, which is appropriate for the major arterial intersections. Synchro or a similar software should be used in the immediate vicinity of Orchard School in order to account for the impact of large pedestrian volumes. This is also discussed in Comments 1.d and Comment 11.

Response R.70: Please see Response R.65

Comment R.71: Higgins #15: Page 21, Intersection Traffic Operations Analysis and Recommendations -

- Discussions are provided of queuing, sight distance and geometric elements at the Charcot Avenue Extension intersections with Paragon Drive, O’Toole Avenue and Oakland Road. A similar discussion should be provided for the Silkwood Lane intersection assuming it is signalized or controlled by a HAWK.
- Sight distance is apparently an issue on the westbound Charcot Avenue Extension approach to Paragon Drive due to the crest vertical curve across the I-880 overcrossing. Eastbound Charcot Avenue Extension sight distance should be discussed at the Silkwood Lane intersection.
- A two-lane to one-lane merge is proposed on westbound Charcot Avenue Extension just west of Silkwood Lane. The adequacy of the spacing of the start of the merge from Silkwood Lane should be discussed as it relates to driver distraction across a HAWK-controlled crosswalk. The adequacy of the length of the merge should also be discussed.

Response R.71: Please see Response R.56.

Comment R.72: Higgins #16: Existing buildings will be very close to the Charcot Avenue Extension. A discussion should be included regarding clear zones for this type of roadway and the appropriateness of extending the bridge guardrail or sound wall along the Orchard School frontage west of the Silkwood Lane intersection.

Response R.72: Roadway design is not a subject of the CEQA analysis. Thus, the comment provides no substantive information in regard to the project’s effect on traffic impacts per CEQA requirements.

Comment R.73: Higgins #17: Pg. 23, Table 5 - Intersection Levels of Service Under Project Conditions - Comments 9, 10 and 11 apply to this table.

Response R.73: Please see Responses R.64, R.65, and R.66.

Comment R.74: Higgins #18: Pages 28 and 29, Oakland Road and Charcot Avenue - The queue on the eastbound Charcot Avenue approach to Oakland Road will extend past the Silkwood Lane intersection under Year 2025 Plus Project conditions, it is anticipated that the queue will be even longer by 2040 and continue to increase beyond 2040. Please describe how a HAWK or Pedestrian Only Traffic Signal with a raised median on Charcot Avenue would function with queues extending over the crosswalk at Silkwood Lane.

Response R.74: Please see Response R.56.

Comment R.75: Higgins #19: Pages 34-36, Tables 8-10 - Roadway Segment Volumes -

- Ridder Park Drive should be labelled north of Brokaw Road rather than Oakland Road.
- Traffic volumes on Fox Lane are expected to increase from the existing 6,000 ADT to about 7,800 ADT by 2040. This is a 30% increase that will affect pick-up, drop-off and pedestrian activity at Orchard School.
- Traffic volumes are assumed to be the same on Ridder Park Drive north of Brokaw Road and on Fox Lane west of Oakland Road. However, traffic volumes on Brokaw Road west of Oakland Road will decrease by about 10% (5,000 vehicles per day) with a corresponding increase in traffic on Oakland Road between the Charcot Avenue extension and Brokaw Road. Some traffic that would enter and exit the industrial area southwest of Orchard School that is served by Fox Lane and Ridder Park Drive will travel to and from this area via Charcot Avenue extension rather than Brokaw Road. This would result in a decrease in traffic on Ridder Park Drive north of Brokaw Road and a corresponding increase in traffic on Fox Lane west of Oakland Road. If there is a 10% redistribution in Ridder Park Drive traffic to Fox Lane, Fox Lane traffic volumes would increase from 7,800 to 8,660, which is 44% above existing volumes. The redistribution could be more than 10% and should be determined as a part of the traffic analysis.
- Traffic volumes will also increase on Fox Lane from existing school age pedestrians that currently cross the Charcot Avenue Extension right of way being discouraged from crossing an arterial and instead is driven to and from school.
- Pick-up and drop-off activity that will prohibited from taking place along both sides of the existing Silkwood Lane west of Oakland Road will also be relocated to Fox Lane due to its elimination from Silkwood Lane. It is understood that the pick-up and drop-off activity on the south side of Silkwood Lane is illegal. However, it currently occurs and its elimination will add to traffic volumes on Fox Lane.
- Traffic volumes on Fox Lane will increase at least 50% due to the factors listed above. This additional traffic on Fox Lane, combined with the additional pick-up, drop-off and pedestrian activity will further complicate and exacerbate traffic operations at Orchard School.
- The traffic study should quantify these factors and the resulting traffic volumes and traffic operations on Fox Lane.

Response R.75: The traffic volumes presented in the traffic analysis were forecasted using the City's Transportation Demand Forecasting (TDF) model. The TDF model utilizes extensive land use data and roadway system characteristics, traffic generation and assignment processes to develop the traffic forecasts. The comment references traffic volume changes based on assumptions and relates those volumes to the Orchard School drop-off/pick-up area. The subject of the transportation analysis is a proposed roadway extension. It is not the responsibility of this project to evaluate and provide mitigation for existing or future transportation issues directly associated with Orchard School. Thus, the comment provides no substantive information in regard to the project's effect on traffic impacts per CEQA requirements.

Comment R.76: Higgins #20: Pages 44 - 50, Orchard School Drop-Off and Pick-Up Operations, Current School Site Access and Drop-Off/Pick-Up Activities - Observations of drop-off and pick-up operations are described in this section and indicate the following.

- Page 44, First paragraph - It is stated that "it is not anticipated that the proposed Charcot Avenue extension would have an adverse effect on the school's access." However, the report goes on to state that, "Although parking or stopping is prohibited along the south side of Silkwood Lane, both the north and south sides of Silkwood Lane were "observed to be heavily used to drop off/pick-up students. During the school drop-off/pick-up periods parents were observed to park along the extent of Silkwood Lane, including illegally along the south side of Silkwood Lane, to walk children onto campus and/or wait for students to arrive for pick-up. Parents also were observed to double-park along Silkwood Lane while dropping-off and picking-up students. Drop-off and pick-up activity at the Orchard School Event Center was minimal compared to activities along Fox Lane and Silkwood Lane. Drop-off/pick-up activity along Oakland Road mostly consisted of parents entering the event center parking lot to drop-off/pick-up students, and a few students were dropped-off/picked-up along the curb on the west side of Oakland Road."
- Silkwood Lane is approximately 550 feet in length. This represents about 1,000 feet of pick-up/drop-off length that will be lost with the project. This is approximately the amount of Orchard School curb frontage along Fox Avenue including the on-site pickup and drop-off length provided on-site. In other words, Orchard School will lose about one-half of its current pick-up and drop-off curb length on the north side of the school due to the Charcot Avenue Extension. Also, Silkwood Lane is the most convenient drop-off/pick-up location for the parents who use this area. This will clearly have an adverse effect on the school's access.
- In addition, this will nearly double the pick-up and drop-off activity along Fox Avenue and at the on-site pick-up and drop-off locations. The traffic study states, "The school parking lot on Fox lane, as well as curb-parking along the northside of Fox Lane, are heavily used during morning drop-offs and afternoon pick-ups..."
- The traffic study notes that "Parents also were observed to utilize adjacent private parking lots along Ridder Park Drive to park and walk children onto campus." Use of some of the private parking lots has apparently not been authorized.
- Finally, the traffic study states that "Parking is not permitted along the south side of Fox Lane between Oakland Road and Ridder Park at any time during the day, however parents were observed to utilize the south side of Fox Lane to drop-off/pick-up students."
- The above observations indicate that drop off-pick-up operations on the south side of Orchard School are already severely impacted. The increase in drop-off and pick-up activity combined with increases in vehicular traffic along Fox Avenue from parent traffic shifted from Silkwood Lane plus redistributed traffic between the Charcot Avenue Extension and the business park southwest of Orchard School has the potential to result in unmanageably severe congestion and confusion along the Orchard School Fox Avenue frontage.
- By 2040, there will be an additional 30% increase in traffic on Fox Lane, which indicates that traffic problems along Fox Lane will degrade even further in the future.
- The loss of drop-off and pick-up capacity along Silkwood Lane west of Oakland Road also has the potential to result in increased vehicular and pedestrian traffic as well as drop-off and pick-up activity on Silkwood Avenue north of the Charcot Avenue Extension. This has the potential to create a quality of life impact on that neighborhood.

Response R.76: Please see Response R.8.

Comment R.77: Higgins #21: Page 50, Proposed School Drop-Off/Pick-Up Adjustments -

- a. Second paragraph - The traffic study recognizes that there will be "greater use of the official Oakland Road and Fox Lane drop-off/pick-up areas." However, the extent of this greater use is not quantified.
 - i. The study needs to quantify the extent of drop-off and pick-up activity, including the amount of curb length required and where the overflow will occur.
- b. Third paragraph - The traffic study recommends "that Orchard School consider a review of the school drop-off/pick-up plan and procedures and implement measures to reduce adverse effects on surrounding businesses and residential areas during the school drop-off/pick-up periods."
 - i. The study needs to identify the mitigations to this project impact.
 - ii. Rather than put the burden of implementing mitigations to an impact created by the project, the project should be responsible for the cost of mitigations and be responsible for mitigation implementation. The mitigations need to at least result in traffic operations at the school that are comparable to what is currently experienced.
- c. Fourth paragraph - It is mentioned that "it is likely that students will continue to cross Charcot Avenue/Silkwood Lane as they walk between the school and the neighborhood to the north." The existing pedestrian volumes should be counted, with the source such as the neighborhood to the north, north side of Silkwood Lane and south side of Silkwood Lane identified. This will help with determining the appropriate traffic control (i.e., HAWK or pedestrian signal) at the future Charcot Avenue Extension / Silkwood Lane intersection as well as quantify the amount of additional drop-off/pick-up activity that will be relocated to Fox Lane.

Response R.77: Please see Response R.8.

There is no need to count pedestrian volumes across Silk Wood Lane, because regardless of the volume, future pedestrian crossings of the roadway will be facilitated by the proposed HAWK signal.

Comment R.78: Higgins #22: Page 51, Silkwood Lane Cut-Through and Rock Avenue Traffic Diversion, Trip Diversion Scenario #2 - Cut-through traffic from Oakland north of Rock Avenue to the Charcot Avenue Extension west of Silkwood Lane is estimated. However, cut-through traffic will also occur from the mobile home park north of Rock Avenue that currently uses Montague Expressway. This should be estimated and included in the forecast of post-project traffic volumes on Silkwood Lane north of the Charcot Avenue Extension. The analysis should account for some Orchard School drop-off/pick-up activity being relocated from Silkwood Lane west of Orchard Lane to Silkwood Lane north of the Charcot Avenue Extension.

Response R.78: Please see Response R.15.

Comment R.79: Higgins #23: Page 53, Potential Traffic Calming Measures - Traffic calming measures are recommended based on a traffic calming study for the area. The timing and scope of this study should be described in detail. This study and whatever traffic calming measures are determined to be implemented are the responsibility of the project. A preliminary study should be done as a part of the environmental document that estimates future traffic operations and provides a

preliminary design and cost estimate of the improvements to be implemented. This would be followed up by a final study, design and construction one year after the opening of the Charcot Avenue Extension.

Response R.79: Please see Response R.15.

Comment R.80: Higgins #24: DEIR, Page 152, Section 3.17.2.3, increase in Hazards due to Design Features of Incompatible Uses -

- a. The EIR states that the project does not include any substandard geometric design features or incompatible uses that might result in a substantial increase in hazards. It states that the project therefore has no impact. The above comments on the transportation analysis identify significant project impacts on Orchard School traffic operations that have the potential to result in safety issues during student drop-off and pick-up. The Project also has the potential of increasing neighborhood traffic on Silkwood Lane that have safety effects. These are direct results of the geometric design features that eliminate Orchard School drop-off and pick-up operations on the existing Silkwood Lane and on the barrier to school-age pedestrian traffic created by a high-volume arterial where no roadway currently exists.
- b. The effect of regional traffic redistribution on queues exceeding the left turn storage lengths at intersections discussed in Comment 18 on the transportation analysis is possible a CEQA issue due to the indirect effect on geometries at these off-site locations.

Response R.80: Please see Response R.8. As noted in that response and in Section 3.17 of the DEIR, the project does not propose any changes to the school's drop-off, pick-up, and/or parking facilities on Fox Lane or Oakland Road. Further, any increase in traffic volumes on any roadway does not constitute a hazard resulting from a substandard design. All improvements to be constructed by the project will comply with current design standards and safety criteria.

Comment R.81: Higgins #25: DEIR, Page 152, Section 3.17.2.4, Emergency Access Impacts - The Project's effects on drop-off and pick-up operations at Orchard School described above have the potential to impede emergency access to Orchard School, Fox Lane and the business park southwest of Orchard School. This should be discussed in the EIR.

Response R.81: As described in Section 3.17.2.4 of the DEIR, the new connection provided by the Charcot Avenue Extension will provide an additional route for emergency vehicles to access the area. As an example, the new connection will shorten the distance from Fire Station 29 to Orchard School by approximately 0.4 mile.

Comment R.82: Sisseem #1: EMFAC is used as the tool to estimate on-road GHG emissions. EMFAC uses changes in vehicle miles travelled (VMT) as an input to calculate changes in criteria and GHG emissions. Appendix E contains the Air Quality/GHG analysis. The operational GHG analysis reports the use of EMFAC as the modeling tool, but provides no specific information on the VMT inputs used to calculate GHG emissions. The draft EIR should be revised to include this information.

Response R.82: Criteria air pollutant and GHG emissions, in the form of CO₂, were computed using the CT-EMFAC2014 model and the VMT network analysis provided by Hexagon Transportation Consultants. These computations are shown in Appendix E of the DEIR, Attachment 2.

Inputs to the modeling effort included Ct-EMFAC emissions rates by speed and vehicle delay and traffic information expressed as VMT. Ct-EMFAC emission rates were based on the default settings for Santa Clara County. The model provided vehicle emissions rates based on annual conditions.

The VMT data are based on the 2.5-mile radius network and contain different VMT, speed and delay information because this network uses a larger study area. However, the results are consistent with those that would be computed using the smaller traffic network that were reported in the DEIR.

Comment R.83: Sissem #2: There are hundreds of pages of model results in Appendix E, with no indication provided in the text under Impact 4 on p. 30 as to where the results pertaining to GHGs are found within those model results. Thus, there is no reasonable way to further evaluate the summary of results provided in Table 8, CO₂e Emissions in Metric Tons per Year on p. 31 against the model run results. The Table 8 results show GHG emissions dropping with the project under existing, year 2025, and year 2040 conditions. The draft EIR should be revised to include this information.

Response R.83: The DEIR air quality analysis modeled traffic emissions that take into account VMT, traffic speed and vehicle delay. There are relatively small changes in VMT and speed across the travel network studied. Emissions of air pollutants and GHG are sensitive to changes in all of these variables. While VMT may be slightly higher or lower, the change in emission rate due differences in speed may add or offset that change. Similarly, changes in vehicle delay time would contribute to these changes.

Comment R.84: Sissem #3: Section 3.17 of the draft EIR, Transportation, includes analysis of changes in VMT with and without the project. See Table 3.17-4: VMT Evaluation. This table shows that VMT rises, albeit to a minor degree, under all three scenarios evaluated (existing, year 2025, and year 2040). If these are the VMT inputs to EMFAC used in Appendix E to calculate GHG emissions, it is unclear how increases in VMT under all three scenarios can result in reduced GHG emissions under these scenarios as reported in Table 8 of Appendix E. The draft EIR should be revised to include this information.

Response R.84: Please see Response R.83.

Comment R.85: Sissem #4: The GHG impact summary on p. 79 of the draft EIR includes the following statement: "As shown in Table 3.8-2, the proposed project, when compared to the No Project scenario, would decrease GHG emissions under existing, Year 2025, and Year 2040 conditions. This decrease is the result of the reductions in congestion and improvements in operations that are associated with the project. For a detailed discussion of the traffic effects of the project, please see Section 3.17, Transportation."

The conclusion that “This decrease is the result of reductions in congestion and improvements in operations...” does not appear to be supported by the GHG information in Appendix E, which is VMT based, and VMT rises as described in item #4 above. If there are other variables considered other than VMT as a proxy for "reductions in congestion and improvements in operations" that are considered in the analysis, these should be discussed. The draft EIR should be revised to include this information.

Response R.85: Please refer to Response R.83.

Comment R.86: Sisseem #5: In short, neither the text in the draft EIR GHG analysis nor the text in Appendix E of the draft EIR adequately "connect the dots" between results and evidence used to arrive at the results. Without a more complete evaluation of how this conclusion is reached in light of VMT increases, it is not clear that the project has a less-than-significant impact. The draft EIR should be revised to include this information.

Response R.86: Section 3.8 and Appendix E of the DEIR “connect the dots” by 1) explaining the methodology used for the GHG analysis, 2) the assumptions used in the analysis, and 3) the conclusions of the analysis. The text on page 79 of the DEIR explains that the conclusion of decreased GHG emissions “is the result of the reduction in congestion and improvements in operations that are associated with the project.”

S. Erin McCarthy (dated October 30, 2019)

Comment S.1: Please let this letter reflect and represent the sentiments of the Teachers at Orchard School. I am writing to once again express that Orchard Teachers Association opposes the construction of the flyover on and near our school campus. I am responding to the draft EIR and have some specific concerns that should be addressed. The public meeting regarding the flyover was held approximately 30 minutes from the school and the construction site. Why wasn't the school used for this meeting? Was the venue chosen to keep the people most impacted away from this meeting?

Response S.1: As stated in Response H.1, the City has held four public meetings regarding the Charcot Avenue Extension in the community, two of which were at Orchard School and two of which were at the Berryessa Library. The venues were selected based on a combination of their availability, the availability of the project team, and the parameters of the EIR Scoping and DEIR Circulation periods.

Comment S.2: The draft proposes that the road will come within 30-40 feet of classrooms. The speed limit will be 35 miles per hour. The DMV asserts that traveling at that speed a driver should allow 100ft to come to a complete stop. How is this acceptable?

Response S.2: The stopping distances cited by the DMV assume no obstructions. For a vehicle to crash into a classroom, it would need to jump a curb, go through a soundwall on a barrier, and potentially a tree. All facilities would comply with existing safety and design criteria.

Comment S.3: The draft does not indicate that Orchard School will be impacted by construction. This is untrue. Our field will need to be modified to remain usable as a baseball diamond and a track. With the current layout of our campus there is a possibility that buildings will need to be moved to accommodate a new track. Our playground will need to be moved and building a concrete wall is considered construction. Who will absorb this expense?

Response S.3: No buildings will be impacted by a reconfiguration of the recreational facilities. Mitigation costs will be borne by the City, not the District. For a revised description of the mitigation for the project's impact to the recreational facilities, please see Section 5, *Draft EIR Text Revisions*.

Comment S.4: The concrete walls on the school side of the road are slated to be 6ft and those on the housing side of the street are slated to be 8ft. How did the city determine that children were not as important as houses? Why is there a difference in height?

Response S.4: Please see Response R.32 regarding differences in soundwall heights.

Comment S.5: How does the city justify doubling pollution in an area where there are students? Does the city realize that students learning in polluted areas do not perform as well on high stakes testing? How does the city plan to keep our students safe from the extra pollution?

Response S.5: The statement in this comment that pollution will double is not supported and, in fact, is contradicted by the DEIR's air quality analysis. The data in Table 3.3-4 show that emissions of criteria air pollutants will be similar with or without the project.

Comment S.6: The crosswalk near the school is not intended to have a traditional stop light. This is unsafe. How will the city respond to students being run down on their way to school?

Response S.6: HAWK signals are effective in alerting/stopping traffic for pedestrians crossing a street, which is why they are being installed at numerous locations.¹⁷

Comment S.7: Our planet is in desperate need of reducing greenhouse gasses so that future generations may simply live. How does this support that goal for the future of our students and our community?

Response S.7: GHG emissions will be slightly lower under Project conditions than under No Project conditions. See Table 3.8-2 of the DEIR for details.

¹⁷ See, for example, Federal Highway Administration report: Safety Effectiveness of the HAWK Pedestrian Crossing Treatment, FHWA-HRT-10-042, which reached the following conclusion: "The prime objective of a HAWK is to provide pedestrians with safe crossing opportunities. As such, a reduction in pedestrian crashes would be expected to be associated with the HAWK, and a statistically significant reduction in pedestrian crashes was found. The installation of the HAWK was also found to be associated with a statistically significant reduction in total crashes."

Comment S.8: In short, our community does not support this road. The city had planned this road prior to the school and prior to the homes being built across the street. Why does the city insist on building this antiquated plan? look forward to an update of the EIR and some clarification of the above questions.

Response S.8: This comment expresses the opinion that the project should not be constructed. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

T. Sarah Mocarim (dated November 4, 2019)

Comment T.1: This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students. The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of taxpayer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students at Orchard will be irreparable. The health of the students at Orchard School needs to be more important than increasing the speed of cars. The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Response T.1: This comment expresses the opinion that the project should not be constructed due its impacts on the community and the environment. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

U. Zeeshan Mocarim (dated November 4, 2019)

Comment U.1: This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood and the noise will disturb residents and students. The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood.

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of taxpayer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students at Orchard will be irreparable. The health of the students at Orchard School needs to be more important than increasing the speed of cars. The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Response U.1: This comment expresses the opinion that the project should not be constructed due its impacts on the community and the environment. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

V. Linda Hutchins-Knowles, Mothers Out Front (dated November 4, 2019)

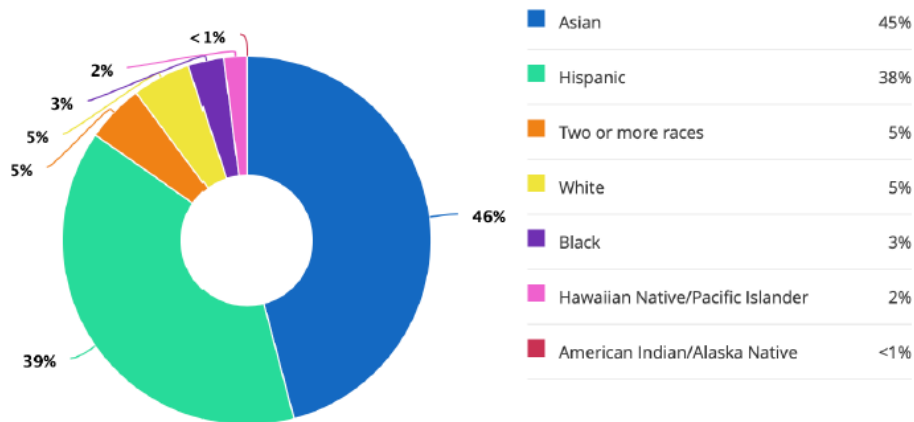
Comment V.1: As residents of San José, and as leaders in the community, we have serious concerns about this proposed project for health, safety, climate and equity reasons.

Health: By increasing vehicle traffic in the neighborhood, this project will increase air pollution from CO2 and particulate matter. Vehicle exhaust contains numerous poisonous chemicals, including carbon monoxide, sulfur dioxide, nitrogen oxides, formaldehyde, benzene and soot. Given the close proximity to Orchard School, this project threatens the health of nearly 1000 children, whose developing lungs are particularly vulnerable to the harmful effects of air pollution, putting them at increased risk for asthma, cancer, COPD and cardiovascular disease. Children deserve clean air to breathe; routing even more vehicles next to an established school is not treating their health as a priority.

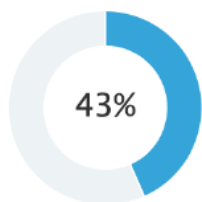
Safety: This project will significantly increase traffic in the neighborhood. This will make it less safe to walk to school and work, increasing the likelihood of collisions between vehicles and pedestrians, especially children, threatening their lives. Rather than bringing vehicles into closer proximity to kids, we should be routing them away from school zones.

Climate: In September, the San José City Council unanimously declared a Climate Emergency, recognizing the threat that climate destabilization poses to all of our residents. In an emergency, we cannot continue business as usual. We must examine the policies that are contributing to the climate crisis and replace them with new policies. The Charcot Avenue Extension Project undermines the goals of Climate Smart San José and is based on outdated plans and assumptions. It does not fit into the City's new vision of itself as a vibrant, active, walkable City. Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. These trees draw down carbon from the atmosphere, serving as a valuable carbon sink and air purifier. We urgently need to plant new trees not destroy the mature ones we already have. In addition, to be climate-smart, we must stop directing funds to increased highway infrastructure and instead invest in public transit.

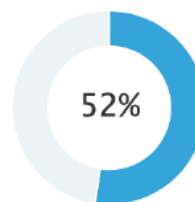
Equity: Over half (52%) of the students at Orchard School qualify as low-income, 83% are students of color, and 43% are English-language learners, as shown in the graphics below by Great Schools:



Students learning English ?



Students from low-income families



Siting an undesirable, air-polluting and safety-threatening project in such a disadvantaged neighborhood raises questions of environmental racism, however unintentional. As San José strives to evaluate its programs and policies through an Equity lens, it would do well to commission an additional environmental study that would consider how this project would divide the neighborhood, disturb residents and students with increased noise, threaten their health and safety, increase pollution, and damage the environment. Furthermore, the project would shrink the school's ballfield and remove the playground structure, diminishing students' quality of life.

We urge the City to consider how polluted the air in the area already is and how the school and the recreational space serve as a refuge for the community. The environmental study done for the City does not adequately consider this reality.

Finally, spending more than 50 million dollars to increase neighborhood congestion is not a good use of taxpayer money. Most importantly, the harm done to the students, staff and neighbors will be irreparable. The health and safety of the students at Orchard School and the protection of our climate are more important than increasing the speed of cars.

Therefore, we respectfully request that the City take the concerns of the community under serious consideration and re-evaluate this misguided project. A much wiser solution would be a bike and pedestrian bridge, which would provide many of the benefits of a road expansion, with none of the negative impacts and at a cost savings. Thank you in advance for listening to and reflecting the wishes the community.

Response V.1: This comment expresses the opinion that the project should not be constructed due its impacts on the community and the environment. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

W. David Poeschel, Sierra Club (dated November 4, 2019)

Comment W.1: This letter has three objectives:

- Don't build the extension because of automobiles and instead improve circulation for people.
- Address the screening criteria for Vehicle Miles Travelled which lack data or effectiveness.
- Consider an alternate such as a pedestrian overcrossing or a functional Coyote Creek Trail that allows for service access on both sides as that proposed for the Charcot Avenue Extension.

The mission of Sierra Club includes a wide range of environmental concerns in order to protect natural resources through efficient planning. We wish to protect the health and safety of our most vulnerable, children, and those in underserved communities, often people of color including the students of Orchard School K-8 and residents who would be most impacted by the Charcot Project. We are troubled by the impact of the project and respectfully submit the following comments in regard to the Draft Environmental Impact Report (DEIR).

Response W.1: These are introductory comments. Detailed comments and responses are following.

Comment W.2: EIRs are intended to inform citizens and decision makers about the environmental impacts of projects as required by the California Environmental Quality Act (CEQA). This is valuable. But they do not evaluate the wisdom of a project or the project objectives and opportunity costs. The problem with this project lies with several of the project objectives as listed in the DEIR and especially their juxtaposition to the school.

The DEIR states, "The objectives for the proposed project are as follows:

- ▶ Improve connectivity between the east side of I-880 and the west side of I-880; [implied as for automobiles as described elsewhere in the document]
- ▶ Increase the capacity for east/west travel across the I-880 corridor; [implied as for automobiles as described elsewhere in the document]
- ▶ Provide a safe bicycle/pedestrian facility over I-880, in compliance with San José's Complete Streets Policy;
- ▶ Implement a programmed roadway network improvement project identified in the Envision San José 2040 General Plan; and
- ▶ Implement a planned major roadway improvement project, as set forth in the North San José Area Development Policy and the North San José Deficiency Plan."

In regard to 1 and 2, we suggest the project goal should be to provide for circulation of people not necessarily automobiles. Only a block away from the project to the south is east/west connectivity via E. Brokaw Rd., a major arterial. East/west capacity is also available to automobile traffic just a few blocks to the north at Montague Expressway. With those two major arterials, there are already 12 high rate of speed east/west lanes plus separate turn lanes in the span of just 1.35 miles. While automobile traffic may still experience congestion, this exemplifies the need to provide better bus and transit options, not more lanes jammed through school grounds. Our City and State has a century of experience of attempts to alleviate congested roadways with adding lanes and roadways only leading to more automobiles and congestion. Alternative modes of circulation are needed rather than degrading the living standards and quality of life of children.

California legislators realize we need to avoid adding additional automobile capacity for many reasons including the need to mitigate climate change. So CEQA rules now directs the use Vehicle Miles Traveled (VMT) analysis. Screening away from this analysis was only done for this project because of the bikeway since it "substantially improves conditions for pedestrians, cyclists, and/or transit, including but not limited to: 1) Protected and separated Class IV bikeway, 2) Pedestrian refuges, bulb-outs, and elements that shorten pedestrian crossing distances; and 3) Consistency with the San José Complete Streets Design Standards and Guidelines and/or other applicable design guidelines;"

Yet, the Alternative E providing for bicycles and pedestrians was deemed infeasible for not meeting the automobile objectives. Objectives 4 and 5 do reflect the expectations of planners and it is understandable why they have come about. But built into the General Plan itself is an ongoing revision process including a 4 year review cycle, one of which is beginning now. We believe it is time to reevaluate the North San José Area Development Policy and the North San José Deficiency Plan with new perspectives especially in regard to circulation.

Response W.2: This comment expresses the opinion that the project objectives related to automobiles are outdated and should be reevaluated. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment W.3: Reflecting our current knowledge and with dictate from State law, we now have the VMT rules, a Climate Smart Plan including "Developing integrated, accessible public and active transport infrastructure reduces the dependency on the car to move within the City", and a resolution of "Climate Emergency", acknowledging our need to rapidly change our dependency on GHG producing activities. The fact that this project is being proposed suggest additional throughput need or increased Vehicle Miles Travelled.

This EIR has placed screening criteria for VMT but haven't shown that any of the screening criteria individually or in concert actually work in San José to reduce VMT. Has VMT decreased since the implementation of the criteria? No data. The screening criteria is purely conjecture. Table 3.17-2 lists the City's screening criteria for transportation projects that are expected to result in less than significant VMT impacts (Page 136). The EIR goes on to claim "the project is presumed to result in less-than-significant VMT impacts and a detailed VMT analysis is not required under CEQA. (Page 137)"

However, road expansion, as contemplated by the Charcot overcrossing, according to UC DAVIS, is the primary cause of VMT increase. https://ncst.ucdavis.edu/wp-content/uploads/2017/03/State-Level-VMT-Strategies-White-Paper_FINAL-03.2017.pdf

Californians face increased fires, precipitation patterns, and drought. We need solutions that work now, not conjecture for business as usual. Under SB32 reductions of 1% per year are necessary in VMT. The strongest tool according to UC Davis is pricing. Moderate tools to reduce VMT include infill development and TDM. These too are not in the screening criteria. The screening criteria is heavy on recommendations for alternatives like pedestrian and bicycle use which the city has been doing for two decades with no reduction in VMT as can be attested by the increase in public and commercial parking lot construction during that period. The EIR should rely on known effective screening criteria and provide data of their effectiveness instead of conjecture.

As described in Section 3.17 of the DEIR, San José Transportation Analysis Policy 5.1 was adopted in 2018 to comply with SB 743. The policy established VMT as the measure to be used to determine a project's significance with regard to transportation. The policy also established screening criteria, which are described in Section 3.17.2.2. The project complies with these criteria.

Response W.3: This comment is questioning the VMT screening criteria of Policy 5.1 in terms of whether there are data to demonstrate that the criteria has resulted in a reduction of VMT. CEQA requires that the analysis be conducted in accordance with adopted policies, which the City has done.

Comment W.4: The Measure B resources to be expended on this project should be shifted to other projects or toward, "7.4.2 Alternative E: New Overcrossing for Bicycles and Pedestrians Only. Alternative E would consist of constructing a new bicycle/pedestrian overcrossing of I-880/O'Toole Avenue on the same alignment as that proposed for the Charcot Avenue Extension. The overcrossing would connect to the existing bike lanes and sidewalks along Charcot Avenue west of O'Toole Avenue. On the east side of I-880, the overcrossing would connect to Silk Wood Lane." An alternative suggestion would be to make the Coyote Creek Trail work for access on both sides of Charcot.

The benefits of this alternative over the project are tremendous for the health and safety of the children of the neighborhood and entire community. "Since this alternative would not include any travel lanes for motor vehicles, its cross-section/footprint would be much smaller than that of the proposed project. On the west side of I-880, this alternative would not require the elevation of Charcot Avenue between Paragon Drive and O'Toole Avenue and access to properties along this segment of Charcot Avenue would be maintained. Unlike the proposed project, this alternative would also not require the removal of most of the trees that line both sides of Charcot Avenue between Paragon Drive and O'Toole Avenue. On the east side of I-880, the footprint of Alternative E would fit within the right-of-way reserved by Super Micro for the Charcot Avenue Extension and within the existing Silk Wood Lane right-of-way. No right-of-way from Orchard School would be required and there would be no direct impacts to the school's playground and playing field. The noise and air quality impacts of the project to the residences located on the north side of Silk Wood Lane and the school located on the south side of Silk Wood Lane would not occur under this alternative since there

would be no increase in traffic. Finally, tree removal along Silk Wood Lane would be minimal, if any."

Please redirect the efforts of staff to wiser uses of Measure B funds as soon as possible.

Response W.4: This comment expresses the opinion that Alternative E, *New Overcrossing for Bicycles and Pedestrians Only*, would be preferable to the proposed project. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

X. Ana Romero (dated October 30, 2019)

Comment X.1: I am writing on behalf of my students at Orchard Elementary School. Our community strongly, strongly, strongly opposes this project and believes it will have an extremely negative and harmful impacts on our students and our community.

Response X.1: This comment expresses the opinion that the project should not be constructed due to impacts to the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment X.2: The wall they plan to build around the school is only 6 feet. The one across the street by the houses is 8 feet.

Response X.2: For a discussion of soundwall heights, please see Response R.32.

Comment X.3: We will have to restructure our entire playground. The road will be only 40 feet from our classrooms!

Response X.3: The mitigation for impacts to the school's recreational facilities has been revised. Please see Section 5, *Draft EIR Text Revisions*, for details.

Comment X.4: Construction noise will be incredibly disruptive to our school and learning environment.

Response X.4: Construction adjacent to the school will be limited to the summer when school is not in session.

Comment X.5: More than anything the POLLUTION in the area will double. The health issues that this will create are SO harmful.

Response X.5: The statement in this comment that pollution will double is not supported and, in fact, is contradicted by the DEIR's air quality analysis. The data in

Table 3.3-4 show that emissions of criteria air pollutants will be similar with or without the project.

Comment X.6: This is UNACCEPTABLE that it is even being considered to build a highway literally on a school's campus. It is appalling and shameful. It is just flat out the WRONG thing to do. Please do everything in your power to put a stop to this please, from the bottom of all of the hearts of the teachers, students, staff, neighbors, and families of our Orchard Elementary community. Additionally, the traffic will threaten the safety of our students and make school less accessible to the community.

Response X.6: This comment expresses the opinion that the project should not be constructed due to impacts to the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Y. Thu Vu (dated November 1, 2019)

Comment Y.1: I am writing on behalf of my 4th graders at Orchard Elementary School. Our community opposes this project and believes it will have a negative impact on our students and our community.

Response Y.1: This comment expresses the opinion that the project should not be constructed due to impacts to the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment Y.2: If you would like more, here are some facts from the first EIR: The wall they plan to build around the school is only 6 feet. The one across the street by the houses is 8 feet.

Response Y.2: For a discussion of soundwall heights, please see Response R.32.

Comment Y.3: We will have to restructure our entire playground. The road will be only 40 feet from our classrooms.

Response Y.3: The mitigation for impacts to the school's recreational facilities has been revised. Please see Section 5, *Draft EIR Text Revisions*, for details.

Comment Y.4: Construction noise will disrupt our learning.

Response Y.4: Construction adjacent to the school will be limited to the summer when school is not in session.

Comment Y.5: Consistent noise from traffic on the overhead when the project will continue to disrupt students' learning when it is finished.

Response Y.5: As discussed in Section 3.13 of the DEIR, noise levels within classrooms will comply with applicable standards.

Comment Y.6: Pollution in the area will double which risks the health of our students.

Response Y.6: The statement in this comment that pollution will double is not supported and, in fact, is contradicted by the DEIR's air quality analysis. The data in Table 3.3-4 show that emissions of criteria air pollutants will be similar with or without the project.

Comment Y.7: Traffic will threaten the safety of our students and make school less accessible to the community. Please consider our students in mind when you discuss the Charcot flyover. This will have a negative effect on our community.

Response Y.7: This comment expresses the opinion that the project should not be constructed due to impacts to the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Z. Mandy Peng (November 4, 2019)

Comment Z.1: Your project was planned over 20 years ago and it's absurdly wrong since we already have big residential community near the school. If you insist building this outdated project, my kids will have to walk across a very dangerous street to get to school and the polluted air they have to suffered every day is unacceptable. You put kids' life and all residential community health ahead of so-called traffic jam improvement is totally absurd. The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Response Z.1: This comment expresses the opinion that the project should not be constructed due to impacts to the Orchard School community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

AA. Vince Rivero, Supermicro Inc. (dated September 24, 2019)

Comment AA.1: I hope you are doing well and I wanted to reach out to you on behalf of Supermicro Computer Inc. I attended the informal meeting you and the team hosted (thank you for being available!) Also, I wanted to see if you would be willing to meet with us to go over the design you presented a little more in depth. Specifically, we would like to discuss:

1. Our concern regarding the security of our campus and aesthetic impacts of the proposed design on our campus

2. The schedule of the project

3. The noise impact on our manufacturing and assembly facilities

Please let me know if this is an appropriate time to meet or if you have something else in mind.

Response AA.1: The City welcomes the opportunity to meet with Supermicro to discuss the issues listed in this comment. The City has contacted the commenter and will be meeting with Supermicro.

BB. Robin Roemer (dated November 3, 2019)

Comment BB.1: Executive Summary: The DEIR is in many parts inaccurate and inconsistent (see chapter I, II, VIII). Given the major impact this will have on the community, a more diligent approach and further fact finding (chapter III) is needed. Many aspects of the environmental setting, impacts and mitigation have not been sufficiently addressed (chapter IV). Especially the transportation analysis is in many instances implausible as according to DEIR:

Cars will travel 72 mph on the extension next to the school.

- Drivers across 880 will save on average less than 17 seconds because of the project.
- More cars will come down on one side of the overpass as are going up on the other side.
- The 2-lane extension will be used during peak hours by more cars than 8-lane Montague and still provide greater speeds than the Expressway.
- Every day, 17,000 cars enter North San José from the East only to never return.
- Furthermore, the transportation analysis denies the existence of the well-established and documented effect of induced demand and does not adequately consider the impact on pedestrian safety, especially students walking to school.

Since the transportation analysis is the basis for many other aspects in the DEIR, most importantly the noise and air quality analysis, those parts of DEIR seemed to be flawed as well.

- "For road projects, the accuracy of traffic demand forecasts are crucial to the validity of any subsequent impact assessments [...]. These forecasts form the basis for estimates for a wide range of impact factors, including time savings, emissions, and noise. [...] traffic demand seems to be underestimated for road projects on average." 1

Given the current already strained school environment near I-880 and Oakland road, it is of utmost importance to establish a true picture of current conditions. Yet, the DEIR failed to take any noise or air pollution measurements on the school site. The proposed mitigation measures "6+ feet noise barriers" raises additional concerns - which have not been adequately addressed by the DEIR.

The DEIR also fails to consider any impact of increased air pollution on student learning - a connection for which there is also well-established scientific research.

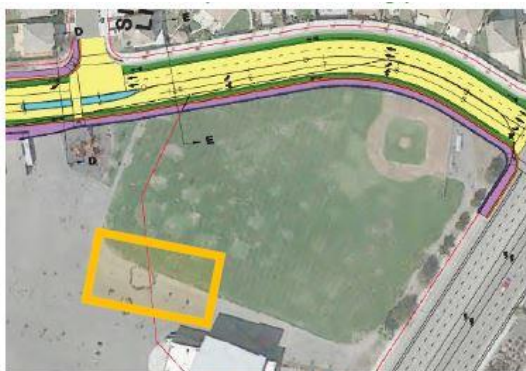
Lastly and most importantly, what are we trying to achieve with this project and is it still consistent with the City's plans (chapter V and VI)? The original issue - LOS at one specific screen line - is outdated especially given recent changes from LOS to VMT. The Project will hamper Climate Smart

San José by increasing VMT. There is no evidence provided that the project is needed or even helpful for the development in North San José envisioned by the City.

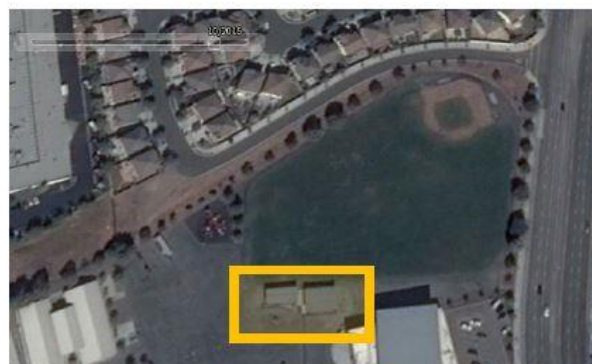
Although "it is not the intent of an EIR to recommend either approval or denial of a project." (DEIR, p. 1), it is clear that the project should either be cancelled or the alternative of a bike- and pedestrian-only- overpass should be considered instead (chapter VIII).

Response BB.1: This comment is an Executive Summary of more detailed comments submitted by the commenter. The more detailed comments and responses are provided below.

Comment BB.2: The satellite photographs used in the DEIR are outdated as they do not include the portable classrooms installed next to the school's ball field.



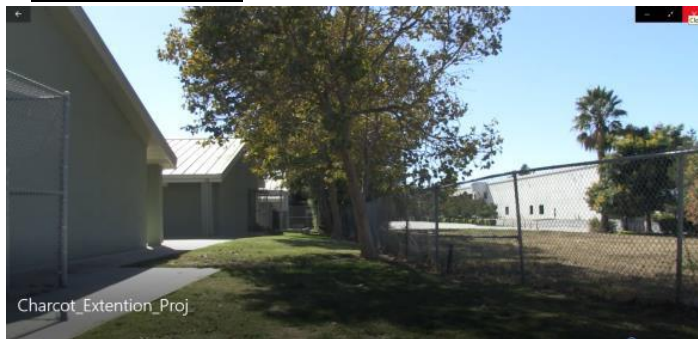
(DEIR, p. 7)



(Picture source: Google Earth, 10/2015)

Response BB.2: The aerial on DEIR page 7 showing the project plans was taken before the portable classrooms were installed in 2015. The absence of the portables on this figure does not affect the DEIR because the portables were accounted for in the technical analyses undertaken for the project. See, for example, Figures 3.13.1 and 3.16.1, which show the portables.

Comment BB.3:



Appendix D, p.11, states "three adjoining service buildings are completely screened by existing dense tree planting." Current picture of the tree planting at the location described, school buildings on the left, future roadway on the right. This is not dense nor completely screening.

Response BB.3: The tree survey prepared for the project (See Figure 3.1-1 and Appendix G of the DEIR) indicates that there is a row of approximately 15 trees between these buildings and the Charcot Avenue alignment. According to the opinion of the landscape architect who prepared the Visual Impact Assessment

(DEIR Appendix D), these trees provide dense screening. The photo provided by the commenter does not show this row of trees from the angle at which it was taken. Therefore, no change to the text is warranted.

Comment BB.4:



Appendix D, p.11, states “Three adjoining service buildings of Orchard School are completely screened by existing dense tree planting and have no views facing the right- of-way.” Buildings described is a classroom building. Photo shows windows with views of the right-of-way

Response BB.4: As shown in the photo provided by the commenter, the windows in these buildings are on the side and do not face the right-of-way. Therefore, no change to the text is warranted.

Comment BB.5: Nearest school building: DEIR page 21 states: “For most school viewers, views of the project would be at a distance. The nearest school buildings with windows facing the project, for example, are 300 to 400 feet.” Statement not true (see above.) Closest school building is about 20 feet from the edge of the project, both pod as well as classrooms have windows from which the project is clearly visible.

This is also inconsistent with the response B-27: “The classroom building for grades 4-6 is the one that will be the closest to Charcot Avenue. Based on preliminary plans, the northerly end of that building is estimated to be approximately 50 feet from the outside edge of the eastbound traffic lane on Charcot Avenue.” As shown in the photo above the building has windows facing the right-of-way.

Response BB.5: The windows on the subject building are on the side and do not face the roadway. The proposed soundwall would block views of the roadway from this building.

Comment BB.6: Views screened: Appendix D, p. 11 states “Views of the right-of-way from the ball field are currently screened by a row of trees along Silk Wood Lane.” Since the row of tree on Silk Wood Lane is sparse and needs to be removed for the project, its current impact on views is irrelevant as a means of moderation.

Response BB.6: Under CEQA, the EIR must describe the existing setting, regardless of its condition and regardless of if or how that setting will be impacted by a project. In this case, the trees along Silk Wood Lane are relevant to the analysis of visual impacts because their removal would contribute to the overall change.

Comment BB.7: A map in the DEIR shows existing sidewalks (purple lines) on both sides of Silk Wood Lane (Appendix K, p. 12). Silk Wood Lane currently has sidewalks only on one side.

Response BB.7: This comment is correct. The map on page 12 of Appendix K should not indicate an existing sidewalk along the south side of Silk Wood Lane.

Comment BB.8: The DEIR describes a roadway segment as “Ridder Park Dr – North of Oakland Road” (DEIR, p. 143). Ridder Park Dr does not intersect with Oakland Road but runs parallel to it. There is no Ridder Park Dr that could be described as north of Oakland Road.

Response BB.8: This is a typo. The text should read “Ridder Park Drive – North of Brokaw Road.” This correction is listed in Section 5, *Draft EIR Text Revisions*.

Comment BB.9: The DEIR describes the speed limit on Oakland Road as 45 mph (DEIR, p. 143). Speed limit on Oakland Road is 40 mph.

Response BB.9: This comment is correct. While the speed limit on certain segments of Oakland Road is 45 mph, the speed limit in the vicinity of Silk Wood Lane is 40 mph. This correction is listed in Section 5, *Draft EIR Text Revisions*.

Comment BB.10: Page 13 of the DEIR states “Currently, all east-west through traffic crossing between both sides of I-880 in the North San José Area travel on the Tasman Drive overcrossing, the Montague Expressway overcrossing, or the Brokaw Road undercrossing, all of which experience congested conditions during commute periods.” This statement omits the east-west routes of the 237 freeway/Calaveras Blvd, 101, and the Old Bayshore Highway, which also serve the NSJ area.

Response BB.10: US 101 is a north-south route. While SR 237 is an east-west corridor, it is outside of the project study area. Old Bayshore Highway is also outside of the project study area and is a local street with limited capacity.

Comment BB.11: “The extension of Charcot Avenue will provide an additional east-west route in the greater North San José area, which will reduce traffic volumes on parallel routes. For example, volumes on Montague Expressway, which is utilized by VTA Express Bus 321, will decrease. This would improve travel times for the bus.” (Response 39.3 in Appendix B) The analysis has not specifically considered the usage of the HOV lane on Montague which is used by the bus. The bus currently runs only once a day per direction and each time during commute times/HOV lane usage times.¹⁸ Therefore, travel times for the bus would remain the same as it should be expected that HOVs will not switch from Montague to Charcot as the existing HOV lanes will likely provide greater speeds than the planned extension.

Response BB.11: The point being made by Response 39.3 is that a decrease in peak-hour volumes/congestion on Montague Expressway would benefit users in both the mixed-flow and HOV lanes. This is because a decrease in congestion leads to higher travel speeds, thereby decreasing travel time.

¹⁸ <https://www.vta.org/go/routes/321>

Comment BB.12: The vicinity map shows a non-existent road grid south of Charcot Ave connected to O’Toole Ave. (p. 5). While the map shows medians on Oakland Road south of Fox, medians north of Rock Ave are omitted. (p. 5)

Response BB.12: The purpose of the vicinity map is to provide information to the reader regarding the location of the project. The “non-existent road grid” cited in this comment is in fact the network of access roads that serves the industrial development south of Charcot Avenue, west of O’Toole Avenue. The vicinity map does not depict medians; the intent is to show where various segments of Oakland Road are wider than others.

Comment BB.13: Page 99 of the DEIR states “To the east of I-880, the alignment is partially developed with a loading dock area, Silk Wood Lane, and landscaping and outdoor recreation areas associated with the Orchard Elementary School site. The eastern portion also includes vacant right-of-way that has been set aside for the proposed project. Residential uses are located adjacent to the north side of Silk Wood Lane, west of Oakland Road.” The paragraph fails to clearly state that surrounding land use includes classrooms and school buildings not just recreational areas.

Response BB.13: The intent of the text on page 99 is to describe the land uses closest to the alignment of the proposed Charcot Avenue Extension. The fact that Orchard School classrooms are not specifically called-out in this text does not mean that the effects of the project on those classrooms is not addressed in the EIR. In fact, the air quality and noise effects on those classrooms are specifically addressed in Sections 3.3 and 3.13 of the DEIR.

Comment BB.14: Location of Noise Walls: The location of sound walls as shown on page 116 is incorrect as it doesn’t reflect actual project boundary and shows sound wall going into classrooms at the western edge of Orchard School.

Response BB.14: The proposed sound walls are shown on page 117. At the scale of the aerial photo it is difficult to depict the precise alignment, but the intent is that the sound wall would be constructed on the property line.

Comment BB.15: Pages 42-43 of Appendix K states “For many years dating back since 1994 when the City adopted its 2020 General Plan, the City has planned and maintained right-of-way for the proposed alignment of the Charcot Avenue extension over I-880 from its current terminus at O’Toole Avenue on the west side of I-880 to the current alignment of Silkwood Lane near Oakland Road..” The statement that the city has maintained right- of-way for the alignment since 1994 is untrue and not supported by facts. Especially, the City does not have right-of-way for the section across I-880 as this right-of-way belongs to Caltrans.

Response BB.15: The City does not need right-of-way from Caltrans at the I-880 crossing. Instead the City will obtain an encroachment permit from Caltrans or work within the Caltrans right-of-way.

Comment BB.16: Page 47 of Appendix K states “The observations [at the school] were conducted on September 25th and 26th 2018, which were normal school days during the morning drop-off (7:30-8:30 am) and afternoon pick-up (2:15-3:00 pm) periods.” During the month of September, Kindergarten operates on a shortened schedule which ends at 12:25pm. No Kindergarten pick-up activity could therefore be observed on these days during the 2:15-3:00pm observation period. Kindergarten families contribute significantly to vehicle and pedestrian activity at the school. September 26th, 2018 was a Wednesday. All of Orchard School operates on schedule where Wednesdays are minimum days schoolwide with all classes ending before 12:45. Therefore, no pick-up activity could have been observed on September 26, 2018 between 2:15 and 3:00 pm. The statement that these were “normal school days” is untrue.

Response BB.16: The comment is correct in that kindergarten drop-off/pick-up was not observed. However, the focus of the observation was the later dismissal period which coincides with a greater volume of traffic on adjacent roadways. Traffic volumes during the kindergarten dismissal period at 12:35pm are much less than after 3pm.

Comment BB.17: Page 48 of Appendix K states “Crossing guards were located at both the Fox Lane/Ridder Park Drive and Fox Lane/Oakland Road intersections during drop-off/pick-up periods.” Although eligible for school crossing guards at the Fox Lane/Ridder Park intersection since 2018, crossing guards only started working at this intersection with the 2019/2020 school year. It is unclear how the traffic consultant was able to observe crossing guards in 2018.

Response BB.17: Observation of the school drop-off/pick-up periods were completed Tuesday afternoon (9/25/18; 2:15-3PM) and Wednesday morning (9/26/18; 7:30-8:15AM). It is possible that a school staff member was mistaken as a crossing guard. However, the locations of crossing guards in 2018 have no effect on the traffic analysis.

Comment BB.18: Page 11 of Appendix K states “Pedestrian and bicycle facilities on each of the roadways are limited and discontinuous between Oakland Road and O’Toole Avenue.” This statement is inconsistent with Figure 3 that shows continuous pedestrian and bicycle facilities between Oakland Road and O’Toole Avenue on Brokaw Road.

Response BB.18: Figure 3 and the text on page 11 of Appendix K are not in conflict. Figure 3 correctly notes that, consistent with the text on page 11, there are no sidewalks on the north side of Brokaw Road west of I-880 and there are no bike lanes on Montague Expressway.

Comment BB.19: John Ristow is the current Director of the Department of Transportation, not “Acting” Director.

Response BB.19: Mr. Ristow was formerly the Acting Director and is now the Director. This change is listed in Section 5, *Draft EIR Text Revisions*.

Comment BB.20: The DEIR on page 129 states “The City is currently in the process of another revision to the plan known as Greenprint Update 2018.” The current Greenprint Update is known as “Activate SJ”.

Response BB.20: The City has recently changed the title of this update to the Greenprint to “Activate SJ.” This change is listed in Section 5, *Draft EIR Text Revisions*.

Comment BB.21: Southbound I-880 is currently described on DEIR page 7 and on page 3 of Appendix K as “to Los Gatos”. A more relevant and appropriate description would be “to San José Airport” or “to Downtown San José”.

Response BB.21: The reference “to Los Gatos” on the figures is simply meant to convey the overall travel direction on southbound I-880. That reference is accurate.

Comment BB.22: Response 34.2 in Appendix B of the DEIR states “Truck Ban: The City’s ban on select trucks over a certain tonnage is only applicable for residential streets.” Statement is inconsistent with San José Municipal Code 11.96.010-1005 which restricts truck traffic on a number of non-residential streets including McKay in close proximity to the project. Also Santa Clara Street next to City Hall seems to be restricted to truck traffic according to the Municipal Code.



Response BB.22: There is no inconsistency. McKay Street east of Oakland Road is largely bordered by residential uses. There is no truck ban on Santa Clara Street; trucks are restricted only during certain hours.

Comment BB.23: Page 80 of the DEIR states “Further, the proposed roadway extension is included in the adopted Envision San José 2040 General Plan roadway network and the planned roadway network for the North San José Area Development Policy, both of which are consistent with the City’s GHG Reduction Strategy.” Climate Smart San José assesses “the climate implications of building out the General Plan and finds that the General Plan alone is not enough to meet the [City’s or] State’s carbon commitments, let alone align with the decarbonization rates implied by the Paris

Agreement.”¹⁹ Statement is inconsistent with staff memo for City of San José Transportation and Environment Committee October 7, 2019.

Response BB.23: This comment does not provide any information as to which staff memo the statement on page 80 of the DEIR is inconsistent with. Therefore, a detailed response is not feasible.

Comment BB.24: Response 34.2 in Appendix B of the DEIR states “10-Foot Wide Lanes: A 10-foot wide traffic lane would narrow the project’s footprint. However, 10-foot wide lanes are not allowed, per Caltrans design standards, which require a minimum of 11-foot wide lanes. Therefore, a width of 10 feet for the lanes would not be feasible.”

“Where a local facility, not on the NHS [national highway system], within the State right of way crosses over or under a freeway or expressway but has no connection to the State facility, the minimum design standards for the cross section of the local facility within the State's right of way shall be the local agency adopted standards.” (Caltrans design standards section 308.1)²⁰

“Lane widths of 10 feet are appropriate in urban areas and have a positive impact on a street’s safety without impacting traffic operations.” (NACTO, “Urban Street Design Guide”)

Even 9 foot wide lanes are generally able to accommodate truck traffic.

Response BB.24: The Highway Design Manual (HDM) has been updated to allow the local jurisdiction to designate their own standards for lane widths. The City will evaluate for the feasibility of reducing the lane width to 10 feet based on truck turning evaluations. This will take place during the final design phase of the project.

Comment BB.25: Page 8 in Appendix K states “California also has the ability to set motor vehicle emission standards and standards for fuel used in California, as long as they are the same or more stringent than the federal standards.”

“Trump to Revoke California’s Authority to Set Stricter Auto Emissions Rules - The Trump administration is expected on Wednesday to formally revoke California’s authority to set auto emissions rules that are stricter than federal standards”

California currently does not have the ability to set motor vehicle emission standards.

Response BB.25: The issue referenced in this comment is currently being reviewed by the courts. Until the issue is fully adjudicated, emissions from autos sold in California will continue to be required to meet California emissions standards. Changing this assumption would be speculation, which is not permitted under CEQA.

¹⁹ <https://sanjose.legistar.com/View.ashx?M=F&ID=7740265&GUID=BDA753CC-B484-4112-BA30-0F346E4D1F96>

²⁰ <https://dot.ca.gov/-/media/dot-media/programs/design/documents/hdm-complete-14dec2018.pdf#page=211>

Comment BB.26: Page 65 of the DEIR states “In 2012, the federal government raised the fuel economy standard to 54.5 miles per gallon for cars and light-duty trucks by Model Year 2025. (Source: National Highway Traffic Safety Administration. Obama Administration Finalizes Historic 54.5 mpg Fuel Efficiency Standards. August 28, 2012.)” Given recent developments on the federal level, statement needs to be reevaluated.

Response BB.26: Regardless of whether fuel-efficiency standards for new motor vehicles is modified, the basic assumption in the energy analysis that the overall fuel efficiency of the fleet will improve over time remains true. Further, regardless of potential changes at the federal level, there is no indication that California regulations mandating minimum percentages of electric and zero emission vehicles in the fleet will change.

Comment BB.27: Page 15 of Appendix K states “The proposed roadway project will [...] reduce automobile trips in the project area consistent with the Envision 2040 General Plan goals and policies.” However, page 157 of the DEIR states that ADT in the project area will be 813,600 without the project and 828,200 with the project. This is an increase of 1.79%, not a reduction.

Response BB.27: This comment omits the first half of the statement on page 15 of Appendix K regarding a reduction in vehicle trips. The full statement is that automobile trips will be reduced if more travel is undertaken by walking and bicycling.

It is presumed that the ADT volumes cited in this comment were calculated by adding the ADTs in the “no project” and “with project” columns of Table 3.17-9 on page 157 and comparing the two results. Such a comparison is misleading and inaccurate because Table 3.17-9 only contains data for 18 study roadway segments in the project area.

Comment BB.28: Comparing the data in Appendix K – Transportation analysis with the data used in Appendix E – Air Quality Analysis shows major discrepancies for example for VMT, VHT, Speed, Peak AM and Peak PM traffic data.

No Project	VMT 2025	VHT 2025	Speed 2025	VMT 2040	VHT 2040	Speed 2040
Transportation Analysis	1,821,479	104,144	25.22	2,659,078	185,249	14.35
Air Quality Analysis	4,789,277	209,093	22.90	6,080,580	340,160	17.88
Project	VMT 2025	VHT 2025	Speed 2025	VMT 2040	VHT 2040	Speed 2040
Transportation Analysis	1,823,272	103,460	25.28	2,661,463	183,620	14.49
Air Quality Analysis	4,787,047	205,279	23.32	6,092,019	336,012	18.13
Cars/h	Peak AM 2025	Peak PM 2025	Peak AM 2040	Peak PM 2040		
Transportation Analysis	1240	1250	1490	1720		
Air Quality Analysis	776	818	1026	1082		

Response BB.28: The air quality analysis used a different (and larger) study area than the traffic analysis. Therefore, the traffic data that was input into the air quality analysis was, by definition, different from the data shown in Appendix K. Note however, that the VMT analysis was calculated in the same manner for both the smaller and larger study areas and, as such, there are no conflicts or inconsistencies.

The DEIR air quality analysis relied on the average daily traffic (ADT) projections for the roadway dispersion modeling and associated computations. The increase in ADT on Charcot Avenue and Old Oakland Road were modeled with the traffic volumes distributed over the course of a 24-hour day. Cancer risk and annual PM_{2.5} concentrations are based on long-term exposures and not peak-hour conditions; therefore, this is an appropriate method. The ADT differences (shown in Figures 5 and 6 of the DEIR traffic analysis) at Intersection 4 were used. The ADT difference is the traffic volume with the Extension minus No Extension. The ADT difference used for 2025 was 10,000 daily vehicles and 13,200 daily vehicles for 2040.

Comment BB.29: Page 183 of the DEIR states “The discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.”

Yet a few pages later on page 187 the DEIR does exactly that when it states “In conclusion, it has been determined that Alternative B, the widening of Montague Expressway or Brokaw Road, is not feasible for the following reason: From an economic/funding perspective, there would be significant right-of-way costs associated with the widening of Montague Expressway or Brokaw Road.”

Response BB.29: As stated on page 183 of the DEIR, CEQA Guidelines Section 15126.6(f) (1) includes “economic viability” as one of the factors in determining feasibility. In other words, CEQA recognizes that there’s a difference between an alternative simply being more costly and an alternative where the magnitude of the additional costs render it infeasible. In the case of Alternative B, the costs to purchase the significant amount of right-of-way needed to construct additional lanes on Montague Expressway or Brokaw Road, including the costs associated with relocating numerous businesses, would be extraordinary. Given the finite amount of funding available to construct public infrastructure projects, it is unreasonable to assume that Alternative B would ever be chosen, especially where the project objectives can be achieved without significant right-of-way acquisition.

Comment BB.30: Page 189 of the DEIR states “Traffic circulation for the Bicycle/Pedestrian Overcrossing Only would be the same as for the No Project Alternative under existing, year 2025, and year 2040 conditions.” However, page 67 of the DEIR states “By providing improvements that will facilitate bicycle and pedestrian use, the operational phase would reduce vehicle trips.” If traffic circulation is the same as no project alternative than providing improvements that will facilitate bicycle and pedestrian use aren’t actually reducing vehicle trips.

Response BB.30: This comment is confusing “traffic circulation” with “trip reduction.” The statements on pages 67 and 189 are both true: Regarding the statement on page 67, the project will reduce vehicle trips to the extent that future trips are made by bicyclists and pedestrians instead of driving. Regarding the statement on page 189, traffic circulation under the No Project Alternative and the Bicycle/Pedestrian Overcrossing Alternative Only Alternative will be the same

because neither alternative includes a new vehicular overcrossing of I-880. Therefore, there is no inconsistency.

Comment BB.31: Response 21.1 in Appendix B of the DEIR states “This comment states the opinion that building and planning should stop as it is not safe or healthy for children attending Orchard School. The comment is included in the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues.” This statement is in itself inconsistent: the health of children is an environmental issue.

Response BB.31: Comment 21.1 stated in its entirety “Please stop building and planning. It’s not safety and healthy for children in Orchard School. It will destroy the environment of children in Orchard School.” The comment was an opinion on generic building and planning, which did not raise any specific concerns to be addressed in the EIR. Therefore, the response simply acknowledged the comment and stated it would be considered as part of the record.

Comment BB.32: Response 31.1 in Appendix B of the DEIR states “This comment states the opinion that the project should not utilize land that is part of Orchard School. The comment is included in the record and will be considered by the City Council as part of its decision-making process on the project. No further response is required as the comment does not raise any environmental issues.” However, page xii of the DEIR states “While the implementation of MM REC-2.1 would mitigate the project’s impact on the school’s recreational facilities, it would not replace the lost parkland/recreational acreage. Further, there is no vacant land available contiguous to Orchard School that could be purchased and added to the school. Therefore, the loss of 0.44 acre of recreational land would constitute an unavoidable effect of the project. Conclusion: Significant Unavoidable Impact”

The comment raises issues of impact to recreational land (“Please don’t take away a piece of land from Orchard School that my children attend because they need the space to play to regain physical and mental health to be productive.”) which the EIR itself considers a Significant, Unavoidable Impact. The response given is inconsistent with the findings of the DEIR.

Response BB.32: Comment 31.1 stated in its entirety “Please don’t take away a piece of land from Orchard School that my children attend because they need the space to play to regain physical and mental health to be productive. Also, I would like to ask to protect the environment and ensure that all the children around the school is safe.” The comment was an opinion that no land from the school should be taken for the project. The comment did not raise any specific concerns to be addressed in the EIR. Therefore, the response simply acknowledges the comment and states it would be considered as part of the record.

Comment BB.33: Page 67 of the DEIR states “By providing an additional east-west route in the greater project area, the project will improve the efficiency of vehicle travel, thereby reducing energy consumption.” However, Appendix K of the DEIR states “the TDF model is designed to reflect driver’s behavior by minimizing the travel time of motorists rather than travel distance. Since the roadways in the area are congested during the morning and afternoon peak periods, commuters will

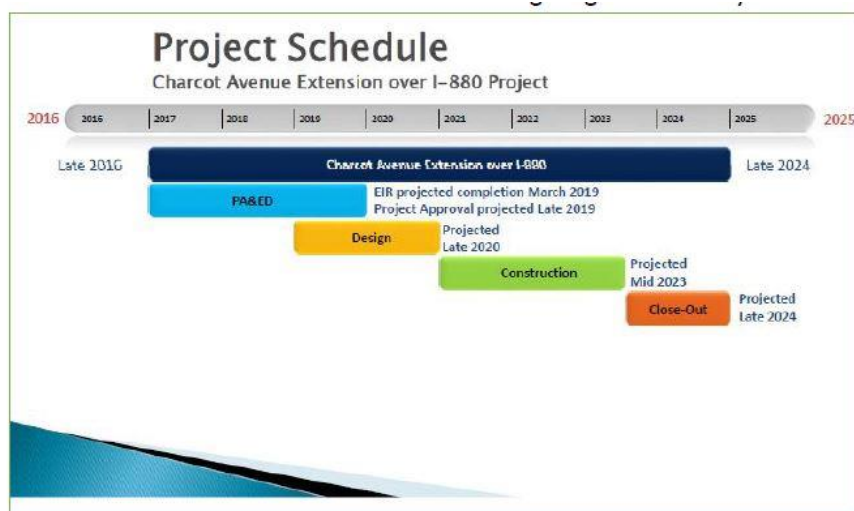
drive longer distances to shorten their travel time.” Statement (on page 67) is inconsistent with the result of the traffic analysis that shows commuters driving longer distances than before, which is less efficient.

Response BB.33: Energy efficiency can result from a combination of factors, including a reduction in congestion and a reduction in vehicle miles traveled. In this case, while total VMT would increase by 0.1% (Table 3.17-4), congestion would decrease as evidenced by the decrease in VHT by 0.9% and the increase in average speeds by 1.0% (Table 3.17-10).

Comment BB.34: Page 174 of the DEIR states “Electricity consumption associated with the project would be limited to power for new streetlights and traffic signals.” However, page 64 of the DEIR states “Existing electricity use associated with operation and maintenance of the project alignment primarily consists of electricity used to power electric vehicles and streetlights.

Response BB.34: The statement on page 64 is meant to cover all energy consumption on the existing alignment, which includes electricity used to power electric vehicles. In contrast, the statement on page 174 does not cover electric vehicles because that EIR section is only evaluating electricity being provided to the site by the local utilities. Therefore, there is no inconsistency.

Comment BB.35: Page 16 of Appendix E states “The provided project schedule and equipment usage assumptions are that the project would be built out over a period of approximately 10 months beginning in 2019, or an estimated 220 construction workdays.” However, page 28 of Appendix J states “Construction is anticipated to occur over a total period of 130 days.” Statements also seems inconsistent with timetable provided by the City as response to request for public records, which shows construction lasting longer than two years.



Response BB.35: The construction schedule used to compute the construction criteria pollutant emissions was representative of the worst-case timeline for construction of the project. The project applicant had provided specific construction worksheets for the bridge, western road component, and eastern road component. It was assumed that

all three components of the project would be built simultaneously so the component with the longest workday schedule was used (i.e. 220 days). The City of San José had an approximate timeline of one to two years. Additionally, a longer timeline would result in less intense emissions. The timeline used is consistent with project-specific information provided at the time of the analysis.

Comment BB.36: Page 30 of Appendix E states Under existing conditions, [...] existing GHG emissions are considered nonexistent.” However, Table 8 on page 8 of Appendix E shows that existing CO2e emissions are 598,123 Metric Tons per Year.

Response BB.36: There are no emissions from the non-existent roadway. However, the traffic network that was modeled has traffic and those traffic conditions will change slightly in the future as a result of the project.

Comment BB.37: Table 11 on page 40 of Appendix K shows the percentage change in daily VHT as follows: 2015: -0.1%; 2025: -0.7%; 2040: -0.9%. However, page 31 of Appendix K states “The model results show that VHT would decrease by approximately 1 to 2 percent in the project area.”

Response BB.37: The referenced percent changes are correct. The referenced text is a typo and should read: *The model results show that VHT would decrease by no more than approximately 1 to 2 percent in the project area.*

Comment BB.38: Table 11 on page 40 of Appendix K shows the percentage change in average speeds as follows: 2015: 0.2%; 2025: 0.8%; 2040: 1.0%. However, page 40 of Appendix K states ““The Charcot Avenue extension also would increase the travel speeds on the roadways within the area by approximately 1 to 2 percent.”

Response BB.38: The referenced percent changes are correct. The referenced text is a typo and should read.... The Charcot Avenue extension also would increase the travel speeds on the roadways within the area by approximately 1 to 2 percent.

Comment BB.39: Response 17.1 in Appendix B states “The project will not take away any parking from this area. The portion of Silk Wood Lane adjacent to Orchard School is not a designated drop-off and pick-up location and is signed as a “No Stopping Any Time” zone.” [Similar wording in Responses 15.1, 34.8, 44.1, 45.4, 48.3, 51.1, 51.2] However, page 147 of the DEIR states “The north side of Silkwood Lane provides on- street parking” and page 50 of Appendix K states “The project will remove the existing on-street parking along the north side of Silkwood Lane.”

Response BB.39: The comment omits the fact that the responses in Appendix B are not referring to Silk Wood Lane, but instead are referring to the school’s official vehicular drop-off and pick-up area on Fox Lane. In contrast, the text on page 147 of the DEIR and on page 50 of Appendix K are referring to the parking on the north side of Silk Wood Lane. Therefore, there is no inconsistency.

Comment BB.40: Page 50 of Appendix K states “The Charcot extension will have no effect on the school’s access points, drop-off/pick-up areas, and/or parking lots that are located on Fox Lane and

Oakland Road...These changes will substantially curtail this informal use of Silkwood Lane for student drop-off/pick-up because the only remaining on-street parking will be along the north-south segment of Silkwood Lane that connects to Rock Avenue. This, in turn, will result in a greater use of the official Oakland Road and Fox Lane drop-off/pick-up areas.”

The quantitative traffic analysis (p. 34-36) shows no impact to Fox Lane as traffic volume will supposedly stay the same as without the project, which is inconsistent with “greater use”.

Table 8
Existing and Existing Plus Project Roadway Segment Traffic Volumes

#	Roadway	Location	AM				PM				ADI	
			Existing+		Change		Existing+		Change		Existing+	Existing+
			Existing	Project	Volume	Percent	Existing	Project	Volume	Percent	Existing	Project
18	Ridder Park Drive	North of Oakland Road	730	730	0	0%	500	500	0	0%	6,700	6,700
19	Fox Lane	West of Oakland Road	620	620	0	0%	440	440	0	0%	6,100	6,100

Response BB.40: The quantitative analysis cited in this comment is presenting the results of the modeling undertaken for the “existing” and “existing + project” scenarios. The results show no changes on Fox Lane under these two scenarios, a logical conclusion given the fact that Fox Lane is a 2-lane street that serves only the adjacent uses and provides no connections to regional facilities. In contrast, the referenced text on page 50 of Appendix K is disclosing the fact that the cessation of unofficial school drop-off/pick-up activity that occurs on Silk Wood Lane will likely result in an increase in the use of the official drop-off/pick-up areas on Fox Lane. Therefore, there is no inconsistency.

Comment BB.41: Page 9 of the DEIR states "Access to adjacent properties along Charcot Avenue between Paragon Drive and Silkwood Lane will not be provided." Page 10 of the DEIR states “To enhance pedestrian access to/from Orchard Elementary School, the width of the sidewalk on the south side of Charcot Avenue at Silk Wood Lane would widen to 11 feet. In addition, a 9-foot wide paved pedestrian path would be constructed next to the 11-foot wide sidewalk to connect to a gate at the school playground.”

The project map on page 7 seems to indicate openings/access for pedestrian towards Super Micro on the north side of the project. The map showing the proposed soundwalls is inconclusive in this regard.



Response BB.41: Pedestrian and vehicular access to properties along Charcot Avenue between Paragon Drive and Silk Wood Lane will not be provided from Charcot Avenue. Access would be via other existing streets. Along the northerly boundary of Orchard School, there will be an off-set break in the soundwall to provide access to the gate at the playground.

Comment BB.42: Length of the Project: Please provide the total length of the project in feet. The DEIR states the length of the project as 0.6 miles. Measurements taken indicate a length of approximately 0.5 miles instead. Please also provide detailed measurement for the length of the existing roadway segments in the alignment. An accurate measurement is important for the VMT analysis.

Response BB.42: The total project limits are from just west of Paragon Drive to Oakland Road, which is approximately 3,000 feet or 0.6 mile. The segment from the westerly project limits to O'Toole Avenue is approximately 1,000 feet, the segment from O'Toole Avenue to the westerly edge of the Orchard School property is approximately 1,000 feet, and the segment from the westerly edge of the Orchard School property to Oakland Road is approximately 1,000 feet.

Comment BB.43: Roadway Capacity: Please provide maximum capacity for all roadway segments analyzed.

Response BB.43: A connector street is defined by the City of San José as being between 60 and 90 feet wide and with average daily traffic (ADT) volumes typically ranging from 2,000 to 16,000 vehicles

Comment BB.44: Creation of New Impervious Surfaces: Please state the amount of new impervious surfaces created by the project.

Response BB.44: Per page 94 of the DEIR, the project would increase impervious surfaces within the project alignment by approximately 2.9 acres.

Comment BB.45: On-site measurements – Noise: The EIR fails to include any actual measurements taken on school grounds for all of the noise receptor locations. This needs to be corrected.

Response BB.45: The primary purpose of taking noise measurements is to verify/calibrate the accuracy of the noise model. As such, it is not necessary to take measurements at all locations. In this case, noise was measured at eight locations (see EIR Section 3.13), which was sufficient to determine the accuracy of the model. The EIR discloses the existing noise levels at the school as calculated by the noise model.

Comment BB.46: On-site measurements – Air quality: The EIR fails to include any actual measurements for current air pollution in the area. This needs to be corrected. See Attachment E – “Air Quality Measurements taken at school site” for a snapshot of measurements taken in the area.

Response BB.46: It is not necessary to take measurements as the models certified by BAAQMD, CARB, and EPA for quantifying emissions have that capability.

The commenter does not provide information as to where/how/when the data in Attachment E were procured. In any case, the table of air quality measurements is not appropriate to estimate conditions of the study area. The data in Attachment E are real-time ambient air measurements. In contrast, the risks values of TAC sources modeled are the increased effects of that singular source using meteorological data that is representative of the climate of the area. Real-time air measurements are not representative of increased risk over a lifetime nor are they equivalent to what was modeled.

Comment BB.47: New Significant Developments since Traffic Data was Taken in 2018: Local developments in the area (e.g. Lumentum moving their corporate headquarter to a previously vacant office building) have potentially resulted in significant changes to traffic volumes on some of the roadway segments analyzed. An updated count as input for the traffic analysis is required.

It should also be noted that in the very near future and likely before the final approval of the EIR, the BART extension to Milpitas and Berryessa will open. This is likely and intended to again alter traffic patterns in the area. This would require another update of the data after new traffic patterns have established itself.

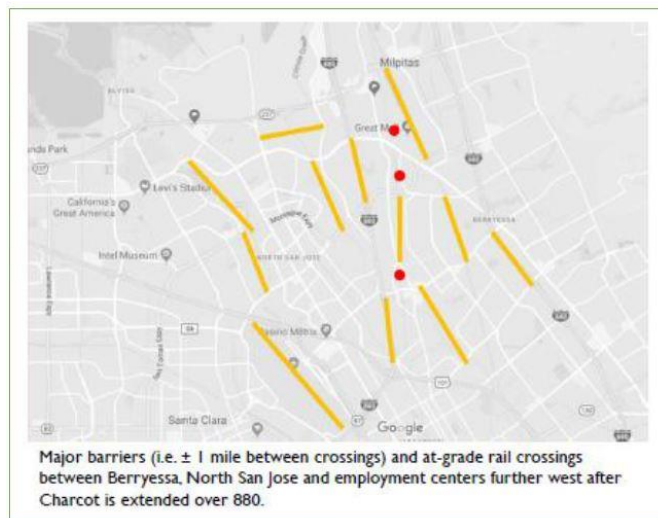
Similarly, the City plans signal re-timing along Brokaw Road in order to “reduce travel delay along major commute corridors reduces vehicle emissions and improves traveler experience.” This is likely to affect traffic volumes and patterns as well.

Response BB.47: CEQA defines “existing conditions” as when the Notice of Preparation (NOP) is circulated, which for this EIR was May 2018. Continually redoing counts to account for ongoing changes is not required nor is it practical. Pending-but-not-yet-occupied projects such as Lumentum and the BART extension are not existing conditions. Those projects are, however, accounted for in the modeling undertaken for both 2025 and 2040, including the VMT analysis.

Comment BB.48: Additional Permits Required: The EIR should clearly acknowledge any additional permits required for the project such as the many tree removal permits or the National Pollutant Discharge Elimination System Construction General permit required for the project.

Response BB.48: This information has been added; see Section 5, *Draft EIR Text Revisions*.

Comment BB.49: Division of Established Community: “In the project area, I-880 currently physically divides the community.” (p. 99) The community is also divided by Oakland Road (a major arterial street) and the UPRR railroad tracks (railroad line). Other major barriers in proximity to the project site are for example Coyote Creek and the BART tracks. Statement needs to be amended.



“Examples of projects that have the potential to physically divide an established community include new freeways and highways, major arterial streets, and railroad lines. [...] The proposed roadway is not a new freeway, highway, or major arterial.” (p. 99)

Even if the proposed roadway is not among the examples the report chose to enumerate, that doesn’t exclude it from dividing a community. The project is classified as a highway project on the City’s website and a highway interchange project under VTA measure B.

Response BB.49: This comment provides no information to support a conclusion that the project would divide an established community. A line on a map designating a 2-lane highway does not imply a major facility that would cut through and divide an established neighborhood. As stated on page 99, the alignment for the Charcot Avenue Extension has been planned for years and adjacent developments have been approved in anticipation of its construction.

Comment BB.50: Division of Established Community (I1): “The proposed project would not divide an established community.” (p. 99) Statement not supported by facts and inconsistent with staff statement: “The applicant’s proposal to have the residential development and the park separated by

the future extension of Charcot Avenue is not supported by staff.“ (SJ City Staff memo to SJ City Council, March 10, 2004)

The statement that the land purchase for Orchard School was approved in anticipation of the proposed Charcot Avenue is not supported by the evidence presented. A consideration of the planned Extension in the development adjacent to it, does not necessarily imply that the Extension is not dividing a community. It would even be illogically for those developments mentioned to consider the potential division of the community by the Extension project as:

- “The California Supreme Court in a December 2015 opinion in California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal. 4th 369 (BIA v. BAAQMD) confirmed that CEQA, with several specific exceptions, is concerned with the impacts of a project on the environment, not the effects the existing [or potentially planned] environment may have on a project. Therefore, the evaluation of the significance of project impacts under CEQA in the following sections focuses on impacts of the project on the environment, including whether a project may exacerbate existing environmental hazards.” (DEIR, p. 16)

It should also be noted that the housing along Silk Wood Lane was approved to improve connections throughout the neighborhood:

- “In urging council members to vote for the conversion, Reed said the most important reason to support it is that the new neighborhood would connect Orchard School with the Casa del Lago Mobile Home Park. The new homes also would supply the school with more students, and the developer would build a park for the area on school district land. "Our school is ready to support the students that would come from these homes," said Ken Riley, Orchard school board president. "And the kids from the mobile home park wouldn't have to walk on Oakland Road." (Mercury News, San José Approves Developer's Proposal, 7 April 2004)

The division of the community is a significant, unavoidable impact.

Response BB.50: As noted in this comment, and as evidenced in the minutes from the City Council meeting dated 4/6/2004, the approval of the residential development along the north side of Silk Wood Lane was controversial, primarily over the question of whether housing should be constructed in an industrial area and on a site designated for industrial uses. The controversy was not about the Charcot Avenue Extension. The analysis of the residential development and the debate over its approval acknowledged that the Charcot Extension would be built with or without the future residences.²¹

Similarly, the 1995 decision to purchase the land for Orchard School was made a year after the Charcot Avenue Extension was added to the City’s General Plan and the school district dedicated land for the extension in 2004.

²¹ ²¹ Source: City of San Jose, “Lands of BFI Residential Project (General Plan Amendment & Rezoning EIR,” 2004.

The point is that the land uses along the Charcot Extension alignment were made in anticipation of the roadway, not the other way around. Given these facts, there is no basis to conclude that the project would divide an established community.

Comment BB.51: Division of Established Community (III): The division of the community during construction needs to be evaluated as well.

Response BB.51: During construction, the project will not close roadways or sever access to Orchard School or any other properties. Therefore, there will be no temporary division of the community.

Comment BB.52: Conflict with plans, policies and regulations: According to staff memo building out the General Plan will not comply with the City’s goals as set in “Climate Smart San José”.

- “Climate Smart San José (Climate Smart) builds on and furthers the General Plan’s vision. It assesses the climate implications of building out the General Plan and finds that the General Plan alone is not enough to meet the [City’s or] State’s carbon commitments, let alone align with the decarbonization rates implied by the Paris Agreement. With 63% of San José emissions coming from transportation, Climate Smart doubles down on the importance of focused land use growth and a robust multi-modal transportation network to set the City on a path to meeting the Paris Agreement’s emissions reduction goals.” By increasing VMT per capita the project violates Climate Smart San José. This is a significant, unavoidable impact.

Response BB.52: This comment does not provide the source or context for the staff memo it references. Therefore, a detailed response is not possible. In any event, the question of whether the City’s General Plan is sufficient to meet the goals of the Climate Smart San José policy is not relevant to this project.

Comment BB.53: Cumulative Land Use Impacts: As shown above the project has several significant impacts on land use. “The City of San José prepared and adopted the North San José Area Development Policy to support the implementation of the City’s vision for the North San José Area, such vision consisting of compact, in-fill uses. The Area Development Policy establishes a specific procedure for the allocation and timing of development capacity within the policy area. The policy identifies major transportation improvements needed to serve the development in the North San José Area, including the extension of Charcot Avenue to Oakland Road.” (p. 98) Based on the EIR for the NSJADP, building the planned improvements will significantly increase VMT and GHG and therefore violate the Climate Smart San José plan. This is a significant, unavoidable cumulative Impact.

Response BB.53: This comment concludes that development in North San José will increase VMT and GHG emissions, thereby violating the Climate Smart San José Plan, and thereby combining with the Charcot Avenue Extension to create a significant unavoidable cumulative land use impact. The commenter provides no information to support this conclusion. To the contrary, the City notes that both the General Plan and Climate Smart San José contain policies that foster sustainable infill

development near transit lines. In other words, the City does not intend to decrease GHG emissions by banning all new development; instead, the goal is to decrease GHG emissions associated with all sectors including energy, land use, and transportation.

Finally, as shown in Table 3.8-2 of the DEIR, the Charcot Avenue Extension will reduce GHG emissions when compared to the no project scenario. Therefore, by definition, there would be no cumulative impact because the project's contribution would be less than zero.

To summarize, there is no basis to conclude that there will be a significant unavoidable cumulative impact.

Comment BB.54: Existing Conditions: Although traffic counts were supposedly collected in September 2018 (p. 8). The analysis often refers to 2015 as base line year, e.g. on the same page. For example, in Table 11 on page 40, the baseline and data for the traffic analysis is from four years ago (2015) and therefore outdated.

“Hexagon utilized the recently updated City of San José Travel Demand Forecasting (TDF) Model to forecast traffic volumes, daily VMT and VHT values as well as average travel speeds with and without the implementation of the proposed Charcot Extension under baseline (year 2015), Year 2025, and Year 2040 General Plan conditions.” (Appendix K, p. 8)

The discrepancy needs explanation.

Response BB.54: Traffic counts were collected in September 2018 and are presented in Appendix A of the April 8, 2019 traffic study. The traffic analysis utilized City of San José Travel Demand Forecasting (TDF) Model to project long-term traffic growth and VMT data. The model baseline conditions reflect land use in the Year 2015 per the Envision San José 2040 General Plan. The projection of future traffic volumes on the roadway system is based on a comparison of model baseline conditions (Year 2015) with current 2018 traffic counts.

Comment BB.55: Existing Roadway Network: The description of the existing roadway network and “roadways in the vicinity of Charcot Avenue that would be directly affected by the proposed Charcot Extension” (Appendix K, page 10) is inconsistent with the traffic analysis.

- Paragon Dr and O’Toole not described
- Other roads affected by the project include for example Fox Lane, Ridder Park, McKay, Wayne, Trade Zone
- First Street is included and therefore deemed “directly affected”, yet the roadway segment analysis doesn’t include First Street.

Response BB.55: The intent of the discussion is to provide a brief overview of the primary roadways in the area. The discussion is not intended to be all-inclusive of every facility.

Comment BB.56: Regional access to the project area: “Regional access to the project area is provided by Interstate-880 (I-880).” (p. 10). According to the description further down regional access is also provided by Montague Expressway, Trimble Road and Brokaw Road. Please ensure consistency throughout the DEIR.

Response BB.56: There is no inconsistency as both of these statements are true: I-880 is the freeway that provides regional access and Montague Expressway, Trimble Road, and Brokaw Road are all major roadways that provide regional access.

Comment BB.57: Charcot Avenue: “Segment east of North First Street functions as a two-lane collector street providing access to adjacent employment areas.” It should be noted that Charcot in this section has a middle two-way left turn lane and that this section is designated in the North San José design guidelines to become a Parkway.

Response BB.57: This detail has no bearing on the traffic analysis, but is included in the record.

Comment BB.58: Montague Expressway: It should be noted that the HOV lanes on Montague Expressway are not continuous and that its transition from 8 to 6 lane is in the project area between Oakland Road and O’Toole Avenue.

Response BB.58: This comment is noted and is consistent with page 141 of the DEIR, which states that Montague Expressway is a six- to eight-lane facility.

Comment BB.59: Existing Bicycle and Pedestrian Facilities on Montague and Brokaw: “The large traffic volumes and congestion on the roadways are not conducive to pedestrian and bicycle travel.” The main barrier for pedestrian and bicycle travel on these roadways is the current roadway design and substandard bike and pedestrian facilities currently provided on these roadways. It should also be noted that Charcot is also a “high stress” road for bicyclists similar to Brokaw or Trimble.²²



²² Montague as a County Expressway was not evaluated. Source: San Jose Bikeplan 2025 documents: <https://static1.squarespace.com/static/5b85b16db40b9d1dd2ad6421/t/5c12c093aa4a99d17f4deb37/1544732839253/Level+of+Traffic+Stress.pdf>.

Response BB.59: Regardless of how one characterizes the existing conditions for bicyclists on area roadways, the relevant point for this EIR is that Class 4/buffered bike lanes will be constructed along the length of the Charcot Avenue Extension. These lanes are a key feature and benefit of the project.

Comment BB.60: Existing Bicycle and Pedestrian Facilities on Silk Wood Lane: Figure 3 (Appendix K) shows existing sidewalks on the south side of Silk Wood Lane. This is incorrect as only one side has sidewalks currently.

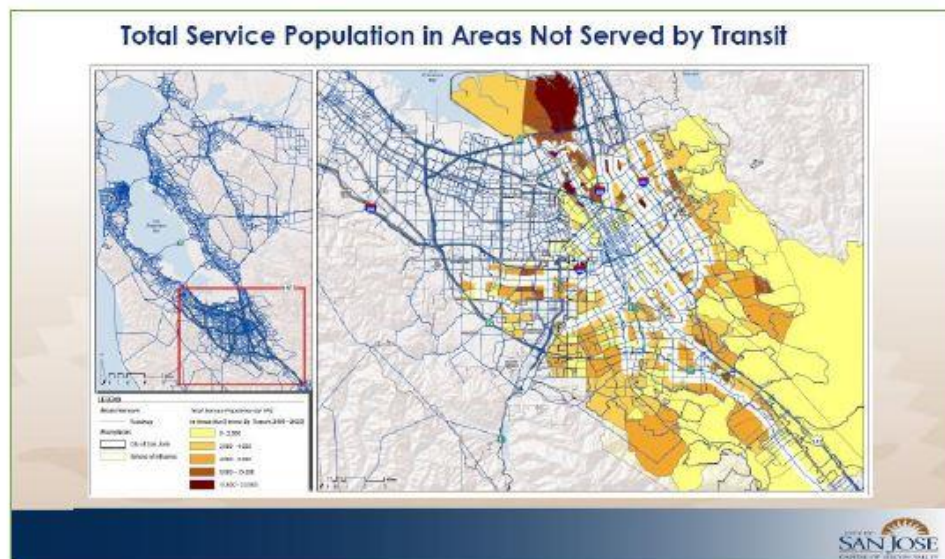
Response BB.60: This comment is correct. The map on page 12 of Appendix K should not indicate an existing sidewalk along the south side of Silk Wood Lane.

Comment BB.61: Sidewalks on Charcot Avenue: “There are no sidewalks along either side of Charcot Avenue under existing conditions. Similarly, there are no sidewalks along either side of O’Toole Avenue north of Charcot under existing conditions.”

Statement inconsistent with response 36.3: “The proposed design retains the current sidewalk circulation from Charcot Avenue to O’Toole Avenue south of Charcot.”

Response BB.61: Figure 3.17-2 of the DEIR correctly shows that there are no sidewalks on existing Charcot Avenue and there is a short sidewalk on the west side of O’Toole Avenue south of Charcot. The project will retain a pedestrian connection between O’Toole and Charcot. Therefore, there is no inconsistency.

Comment BB.62: Transit Facilities: The description of transit facilities should include a discussion of the approved VTA new transit plan since the transit plan is likely to be in force before construction of the project starts. Both bus and light rail lines will see significant changes. It should also be noted that significant parts of the area are not served by transit according to City data.



Source: Modernizing Transportation Review, City of San Jose, AEP Conference, May 19, 2017, San Francisco

Response BB.62: The revisions to VTA’s Transit Plan cited in this comment were effective on December 28, 2019. Those revisions include modifications to bus and LRT schedules and routes. As stated on page 142 of the DEIR, no VTA bus or LRT lines operate, or are proposed to operate, along the Charcot Avenue corridor. Therefore, none of VTA’s changes would impact, or be impacted by, the Charcot Avenue Extension.

Regarding the last part of this comment, the degree to which various areas are served by existing transit is unrelated to the proposed project.

Comment BB.63: Existing congestion: “There is a need to [...] reduce the congestion on the adjacent interchange” (Appendix I, p. 6) The most recent VTA CMP 20180 report does not identify any significant congestion on the Montague/880 intersection and Brokaw/880 operates on acceptable to good LOS B/D. It needs to be clarified what data the statement is based on.

Response BB.63: The text quoted in this comment is a general statement from page 6 of the hazardous materials technical report. It is referring to the overall substantial existing and projected congestion on roadways in the project area. This congestion is documented in CMP monitoring reports that show many freeway and roadway segments operating at LOS “F” (see 2016, 2017, and 2018 annual reports). In addition, it is important to note that planned development in the North San José Area (see DEIR Section 4) will substantially increase traffic, which will increase congestion. For example, Table 3.17-10 of the DEIR shows that areawide daily vehicle hours traveled will more than triple by year 2040, as compared to existing conditions.

Comment BB.64: Congestion: “The roadways [Montague and Brokaw] currently experience traffic congestion due to the large traffic volumes and reduced travel speeds and congestion along both roadways is projected to increase due to the planned development growth in the North San José area.” (p. 42). Traffic volumes especially on Montague during commute hours in commute direction is less than 700 cars/h total. Why is this considered large?



Response BB.64: The referenced volume data is pulled from a raw 24-hour count collected directly on the Montague Expressway overpass of I-880. The referenced

volume is not reflective of the entire extent of Montague Expressway. The County’s 2040 Expressway Study shows major existing delays on Montague (LOS E) between Trade Zone and Trimble, as well as the intersections of Montague at O’Toole, Oakland, and Trade Zone operating at LOS F.

Comment BB.65: “Travel times between the selected origins and destinations were projected assuming that it would take approximately 30 seconds to travel between Oakland Road and O’Toole Avenue via the proposed extension.” Given the length of the extension of 0.6 miles (DEIR p. vi) this suggests that cars will go on average an unlikely 72 mph on the Charcot extension –through the school zone and during commute hours.

Google Maps shows the distance between Oakland Rd and O’Toole Ave as shorter (~2200 ft). This would still equal to an average speed of ~50mph not considering time needed to stop at a crosswalk or to then accelerate to 50+mph. This seems unlikely and should be corrected.

Staff has indicated in the time since the publication of the DEIR that this is a typo. Please provide any calculations that are potentially affected by this assumption, especially but not limited to underlying calculations for table 3.17-11 in DEIR so that it can be verified that there are no other “typos” in these calculations.

Response BB.65: The statement on page 162 included a typo and should have read: Travel times between the selected origins and destinations were projected assuming that it would take approximately 30 seconds to travel between Silk Wood Lane and O’Toole Avenue via the proposed extension. The statement was intended to provide a point of reference for only the missing length of roadway between Silk Wood and O-Toole. This correction is listed in Section 5, *Draft EIR Text Revisions*.

Comment BB.66: Travel time analysis: Table 12 “Reduction in Travel Times Due to Charcot Extension” should include travel times for bicycle use in order to allow for a multi-modal comparison and the impact of a mode shift on congestion.

- “Walking and e-scooters can be good options for trips between a half and one mile long, while bikes are frequently used for trips between one and three miles long. The problem in most cities is that infrastructure is lacking because investments have favored car travel, making bike and scooter networks disconnected and potentially dangerous for people who would opt for these modes.
- But if some of those short trips could be switched from cars to bikes or scooters, cities would benefit greatly. And not all drivers, or even very many, would need to switch. Past studies, including of the London congestion zone when it was first implemented, have shown that a small mode shift of four to five percent could cut congestion by as much as 25 percent.”²³

Response BB.66: Quantification of changes in bike travel times is not an adopted City criterion for evaluating the effects/impacts of development and roadway

²³ <https://cal.streetsblog.org/2019/09/16/bikes-and-scooters-could-replace-a-lot-of-car-trips-in-u-s-cities/>

projects, such as the proposed project. The intent of established methodology and impact criteria is to provide a means of evaluating projects on a consistent and unbiased basis. This statement notwithstanding, it is reasonable to conclude that constructing a new/safe bike route that shortens the distance a bicyclist must travel will result in a corresponding decrease in travel time. Consistent with the policies of the City's General Plan, providing new bike facilities is intended to facilitate the number of trips made by bicycles.

Comment BB.67: Google Maps: “The evaluation utilized Google Maps navigation to estimate current travel times during the morning and evening commute periods.” The use of Google Maps for the evaluation is surprising and does not meet necessary standards for an EIR. The City's traffic model should be used instead.

Response BB.67: There is no “standard” required for calculation of travel times in an EIR and, in fact, the estimation of travel times itself is not required. In this case, to provide a supplemental tool for understanding the effects of the extension, the City elected to provide estimated travel times for typical origins destinations in the project vicinity.

Comment BB.68: Reduction of Congestion: “Decrease [in GHG] is the result of the reductions in congestion” (p. 79) No data in the DEIR allows for the conclusion that the project would lead to a reduction in congestion. Statement needs to be substantiated. It also inconsistent with research.²⁴

Response BB.68: In EIR Section 3.17, the reduction in peak hour volumes on alternate routes (Figures 3.17-5 through 3.17-7), the reduction in VHT and increase in average speeds (Table 3.17-10), and the reduction in travel times (Table 3.17-11) are data that substantiate a reduction in congestion.

Comment BB.69: Reduction in Automobile Trips: “The reduction in length of travel routes will provide the opportunity to utilize walking and bicycling as an alternative travel mode and reduce automobile trips in the project area.” (p. 42) Please provide supporting facts for this statement. It does not seem to be supported by the data from the transportation analysis and given the fact that sidewalks are either missing or inadequate in many parts of the area.

Response BB.69: The Charcot Avenue Extension includes new bike and pedestrian facilities within the full project limits. As shown in Figure 14 of Appendix K, the proposed project will shorten the travel route between Oakland Road and Charcot Avenue by approximately-1.0 mile. The project is one of many that will improve bike/ped facilities. No project by itself will complete all of the missing pieces in the bike/ped network, but each project moves the City closer to that goal.

Comment BB.70: Mode Share: “The Extension includes bicycle and pedestrian improvements, including a new bike/ped connection over I-880, which will facilitate those modes of travel. Trips

²⁴ http://cityobservatory.org/urban-myth-busting_idling_carbon/

made by non-motorized modes instead of by motor vehicle have a direct benefit in terms of fewer GHG emissions.” (p. 79/80) The impact of the project on mode share has not been analyzed.

Response BB.70: It is not possible to accurately calculate the number of trips that would shift from cars to bikes or walking if the project is constructed. Such a calculation would be speculative and is not required by CEQA. The intent of the City’s efforts to include bike/ped facilities in its transportation projects is to facilitate such a shift because studies have shown that the lack of safe and direct facilities inhibits the number of bicyclists and pedestrians.

Comment BB.71: Reduced Congestion and Reduced Travel Time: “The proposed Charcot Avenue extension will [...] reduce traffic congestion during peak commute periods [...] and] would reduce travel time.” (Appendix K, p. 5).

The analysis also recognizes on the same page: “the State of California has recognized the limitations of measuring and mitigating only vehicle delay at intersections and in 2013 passed Senate Bill (SB) 743, which requires jurisdictions to stop using congestion and delay metrics.” It further writes: “In adherence to SB 743, the City of San José has adopted a new Transportation Analysis Policy, Council Policy 5-1. The policy replaces its predecessor (Policy 5-3) and establishes the thresholds for transportation impacts under the CEQA based on vehicle miles traveled (VMT) instead of levels of service (LOS). The intent of this change is to shift the focus of transportation analysis under CEQA from vehicle delay and roadway auto capacity to a reduction in vehicle emissions, and the creation of robust multi-modal networks that support integrated land uses.” Given the new focus of the State of California and of the City of San José, the analysis fails to explain why the noted reduction in congestion or travel time should be relevant or is beneficial under CEQA.

Response BB.71: A VMT analysis was prepared for the proposed project utilizing the City’s new VMT-based methodology contained in Council Policy 5-1. As discussed on pages 150 and 151 of the DEIR, the project complies with both the VMT screening criteria and the VMT significance criteria of Policy 5-1.

The reduction in congestion is beneficial under CEQA with regard to lower criteria air pollutant and GHG emissions. See DEIR Sections 3.3 and 3.8 for details.

Comment BB.72: Use of the Extension Outside of a Two-Mile Radius: “The use of the proposed extension is expected to be minimal outside of a two-mile radius” (p. 44). This statement requires further explanation. Use of the extension is obviously difficult for someone who is two miles away. Assuming the statement is meant to mean that drivers with start and end points that are more than two miles from the project will not use the extension, this would be inconsistent with statement made previously in the analysis that: “Since the roadways in the area are congested during the morning and afternoon peak periods, commuters will drive longer distances to shorten their travel time.”

And this would be true even for drivers coming from a longer distance. As more and more drivers are guided mobile driving apps such as Google Maps and Waze, which are also optimizing VHT not VMT, it seems logical that any driver in the area regardless of origin or destination will potentially

use the Extension as long as it provides time-savings compared to Montague or Brokaw. Meaning usage of the Extension will increase till it is similarly congested as those roadways.²⁵

Response BB.72: The proposed Charcot extension is limited in its connectivity the overall roadway system in that it does not provide a direct route to freeways and regional roadways. The extension will provide improved roadway connectivity in the immediate project vicinity, primarily consisting of the area generally encompassed by North First Street, Brokaw Road, Oakland Road, and Montague Expressway. As indicated within the traffic analyses, the extension will have minimal effect on travel times, VHT, speeds, and roadway traffic volumes. This is an indication that the project will provide little benefit to travel routes originating or bound for destinations outside of the immediate project area.

Comment BB.73: Extension will Reduce Congestion: “The proposed Charcot Avenue extension will [...] reduce traffic congestion during peak commute periods on Brokaw Road, Trimble Road, and Montague Expressway that currently serve as the primary east-west roadways and run parallel to the Charcot Avenue extension.” (p. 6/8) Statement is not substantiated as travel speeds on these roads are not included in the analysis.

Response BB.73: Tables 3.17-7 through 3.17-9 and Figures 3.17-5 through 3.17-7 provide the data showing the reduction in traffic due to the project on the parallel routes. The lower volumes and less congestion translate into higher speeds, as summarized in Table 3.17-10.

Comment BB.74: Pedestrian and Bicyclists Impact:

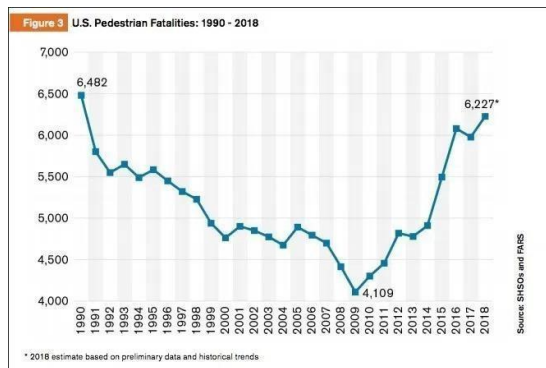
- “A global status report²⁶ shows that road traffic injuries are now the single biggest cause of death for children and young adults.”²⁷
- “When we design streets to move cars as quickly as possible instead of prioritizing the safety of all people, the consequences can be deadly, especially for people walking. Between 2008 and 2017, drivers struck and killed 7,127 people walking in California. Over the past decade, the number of people struck and killed by drivers while walking increased by 35.4 percent nationwide, and in California, pedestrian deaths increased by 38.4 percent during this time period.” (Deadly by Design)²⁸ Given San José is a Vision Zero city, the impact on the safety of pedestrians and bicyclists in particular has to be considered in detail in the DEIR.

²⁵ See also: <https://www.theatlantic.com/technology/archive/2018/03/mapping-apps-and-the-price-of-anarchy/555551/>

²⁶ https://www.who.int/violence_injury_prevention/road_safety_status/2018/en/

²⁷ <https://theconversation.com/why-us-cities-are-becoming-more-dangerous-for-cyclists-and-pedestrians-111713>

²⁸ https://smartgrowthamerica.org/app/uploads/2019/06/Dbd2019_State_CA.pdf also see: <https://cal.streetsblog.org/2019/06/19/state-specific-data-shows-high-risk-for-california-pedestrians/>



Response BB.74: The City concurs that the safety of all users, including pedestrians and bicyclists, is important. This is why key components of the project include pedestrian and bicycle facilities, as listed on pages 9-10 of the DEIR. Furthermore, increases in the use of transit, walking and bicycling should be expected due to the projected increases in traffic volumes and congestion which are not tied to the proposed project. Thus, should the proposed project not be completed, the future increases in pedestrians and bicyclists will be required to utilize surrounding roadways that do not currently have adequate facilities for safe travel.

Comment BB.75: Pedestrian Counts: The location for the pedestrian counts (p. 148) is inconsistent with the area of heavy pedestrian activity described in the report (ie Fox Lane, Oakland Road south of Fox Lane, Silk Wood Lane near the school gate). A recent count at the school showed significantly higher pedestrian activity than what is disclosed in the report. A recent survey among students (October 2019) showed over 170 students walking to school.



For a detailed discussion of pedestrian count methodology please refer to Attachment B – “Pedestrian Count”.

Response BB.75: The comment requests information in relation to Orchard School which is not the subject of the transportation analysis.

However, a HAWK signal will be incorporated as part of the project and will increase pedestrian safety when crossing Charcot Avenue. Furthermore, the school drop-off/pick-up activities currently occurring along Silkwood Lane will no longer be possible and result in a significant decrease in pedestrian crossings along Silkwood Lane/Charcot Avenue.

Comment BB.76: Multi-Modal Traffic Analysis/Traffic Analysis for Bike/Pedestrian Only Overcrossing: The DEIR does not provide a multi-modal traffic analysis/traffic analysis for bike/pedestrian only overcrossing. This is insufficient.

Response BB.76: For motor vehicles, page 189 of the DEIR states that the effects of the Bike/Pedestrian Overcrossing Only Alternative are the same as the No Project Alternative, the latter of which are quantified in Section 3.17. For bicyclists and pedestrians, page 189 of the DEIR states that the Bike/Ped Overcrossing Only Alternative would meet bike/ped objectives to the same degree as the project.

Comment BB.77: Pedestrian Safety: “The installation of a traffic signal at the Paragon Drive and Charcot Avenue intersection will result in queues along westbound Charcot Avenue that may not be clearly visible to drivers travelling westbound along Charcot Avenue. Therefore, it is recommended that safety measures be implemented along with the new traffic signal at the Paragon Drive and Charcot Avenue intersection. The safety measures could include advance warning flashing beacons and signage that provide drivers with advance warning of the upcoming signal. In addition, the signal design should consider signal head placement and size to improve its visibility to drivers.” (p. 21)

Since the analysis is able to evaluate safety of vehicle users along the planned extension, the analysis should also include an analysis of the safety of pedestrians and bicyclists along the extension and include additional safety measures as described on p. 21.

And as demanded by the City’s Transportation Analysis Handbook: “Private schools, community centers, libraries, parks, and other high pedestrian generators should be evaluated for pedestrian activities. These projects may be required to collect data on adjacent neighborhood streets and propose pedestrian crossing improvements, electronic speed limit signs, or other improvements if appropriate. These high pedestrian generators should also be evaluated for safe pedestrian access. Projects that add traffic to the adjacent streets may be required to implement improvements to improve pedestrian access to and from these community facilities” (Transportation Analysis Handbook, p. 31)

Especially since, “new safety technologies in cars today have so far fallen short in protecting many outside the vehicle.”²⁹

Response BB.77: See Response BB.75.

²⁹ <https://www.wsj.com/articles/u-s-roadway-deaths-decline-for-second-straight-year-in-2018-11571746206?mod=e2tw>

Comment BB.78: Pedestrian Safety – Visualizations: Based on the visualizations provided, it seems that the signs on the median at Silk Wood will restrict view of pedestrians. How would slow moving pedestrian that are caught on the median activate the HAWK to continue crossing safely? The visualization shows no pedestrian signals. The visualization underlines the pedestrian safety challenges of the project as even in the drawing the two(!) pedestrians in crosswalk are not clearly visible.



Response BB.78: The purpose of this computer simulation is to provide an overview of the visual/aesthetic characteristics with the project in place, as contrasted to existing conditions. The features included in the simulation (e.g., signs, bicyclists, median, bike lanes, HAWK signal, soundwall, etc.) are scaled approximations of future conditions and are not intended to be used for judging what a future motorist might see.

Comment BB.79: Pedestrian Crosswalk not Visible for Cars Travelling on Eastbound Charcot: “The extended queue along eastbound Charcot Avenue may not be clearly visible to drivers travelling eastbound along Charcot Avenue due to the vertical alignment of the Charcot Avenue overcrossing of I- 880.” (p. 195). Queue for all alternatives would lead back to crosswalk. The statement implies that similarly pedestrians in the crosswalk would not be clearly visible to drivers travelling eastbound along Charcot Avenue due to the vertical alignment of the Charcot Avenue overcrossing of I-880. This is further supported by the DEIR statement: “Due to the large projected traffic volumes and limited sight distance along Charcot Avenue, an uncontrolled crosswalk on Charcot Avenue at its intersection with Silkwood Lane is not recommended.” (p. 30)

Response BB.79: As evidenced by the EIR Citations contained in this comment, the City is aware of the issues, which is one of the reasons the project includes a HAWK signal at the Silk Wood Lane intersection. During final design of the selected design, the traffic engineers will assess potential safety issues and include features appropriate for the facility, taking multiple factors such as speeds, volumes, sight distance, etc. into account.

Comment BB.80: ADA Compliance: The DEIR fails to address if slope on the overpass is ADA compliant. The visualization shows a crosswalk across Silk Wood Lane that is not ADA compliant.

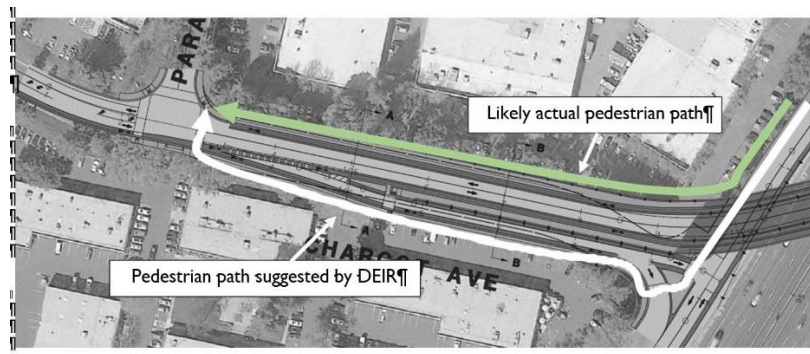
Response BB.80: All components of the project will be designed to comply with all applicable ADA standards.

Comment BB.81: Response 34.22 of Appendix B states “Irrespective of traffic volumes, pedestrians will continue to use the existing sidewalks along Oakland Road.” The response to the comment does not adequately address the concerns mentioned in the comment. The comment asks for a measure of walkability similar which includes factors such as safety and place-making as referenced in the “San José Complete Streets Design Standards and Guidelines”, “NACTO Urban Street Design Guide”, EPA’s “Guide To Sustainable Transportation Performance Measures” or as described by the graph below from Transport for London.



Response BB.81: With or without the Charcot Avenue Extension, the existing sidewalks along Oakland Road, which are separated from the traffic lanes by buffered bike lanes, will continue to allow pedestrian movement.

Comment BB.82: Sidewalk Circulation O’Toole: Response 36.3 in Appendix B states “The proposed design retains the current sidewalk circulation from Charcot Avenue to O’Toole Avenue south of Charcot.” There is no sidewalk currently on Charcot Avenue. Not providing a direct sidewalk connection from O’Toole southbound to Charcot westbound as mentioned in the comment to this response seems to violate General Plan policies and San José Street Design Guidelines. The assumption that Pedestrians traveling southbound on O’Toole would use “the new westside sidewalk, would cross under Charcot, and would continue southbound using the existing westside sidewalk along O’Toole” (response 36.7 – orange path in map below) instead of crossing through the business parking lot (green path in map below) to go west on Charcot seems not informed by any pedestrian experience.



Response BB.82: Consistent with the City’s General Plan and Complete Street design guidelines, the project will improve pedestrian access by constructing new sidewalks along Charcot and O’Toole Avenues at the locations shown on Figure 2.1-

4 of the DEIR. The alignment (in green) suggested by the commenter is not proposed because it would be on private property.

Comment BB.83: Bike lanes on Brokaw: “Bicyclists, in particular, would be able to utilize existing bike lanes along Charcot Avenue as a faster alternative to bike lanes along Brokaw Road.” Why bicyclists, in particular? Which other users should be expected to use the bike lanes along Brokaw Road?

Response BB.83: The meaning of this sentence is that bicyclists would be able to use the bike lanes on Charcot Avenue as a faster route to certain destinations than if they used the bike lanes on Brokaw Road.

Comment BB.84: Bicycle and Pedestrian Circulation: “The current crossing of I-880 provided by Montague Expressway and Brokaw Road require lengthy travel routes from destinations within the immediate project area.” It should then also be noted that the new crossing of I-880 requires lengthy travel routes from destinations along Montague Expressway or Brokaw Road. The only thing that the analysis provided in figure 14 proves is that the shortest distance between two points is a straight line. It should be replaced with a more detailed bike- and pedestrian usage analysis in the project area and for example include travel patterns from Oakland/Brokaw to Junction/Brokaw and Oakland/Montague to Montague/Seely.

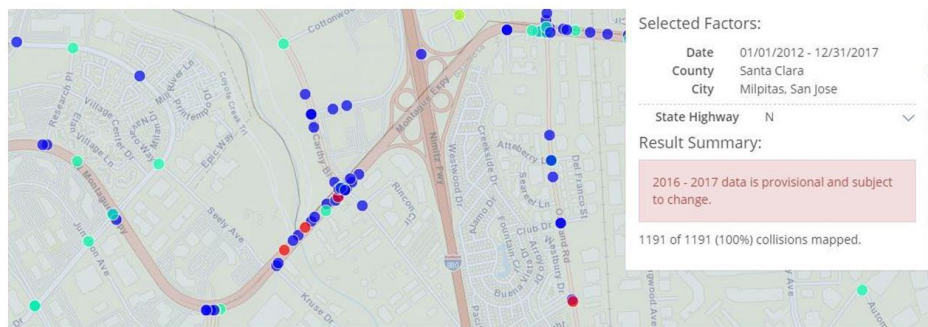
“The travel route across I-880 would be reduced by only ¼-mile with the Charcot Avenue extension.” (p. 40). Please explain how the ¼ mile was calculated, figure 14 seems to indicate a reduction of 1.1 miles.

Response BB.84: The point of the DEIR discussion cited in the first part of this comment is simply that providing a new east-west connection across I-880 will shorten bicyclists’ trips to various destinations in the area, as opposed to using less direct routes on Brokaw Road or Montague Expressway.

The comment is correct in regard to the ¼-mile distance. The text should have stated that the proposed project will result in a reduction of travel distance of 1.1 miles between North First Street and Oakland Road in the proximate areas of their intersections with Charcot Avenue.

Comment BB.85: Mass Access Points to NSJ: “The three existing crossings also interchange with I-880, resulting in mass access points of regional traffic that make crossings for local traffic, bicycles, and pedestrians less ideal.” (p. 13) This reasoning that “access to I-880” makes the crossings less ideal is questionable as the volume and ease of use for bicyclists and pedestrians on these roads is much more likely a result of the roadway design: 6-8 lane wide fast moving arterial roads with limited space provided to bicyclists and pedestrians.

Based on data of past crashes recorded in the vicinity of the Montague/880, it seems that adjacent intersections are much more dangerous for all roadway users than the actual interchanges. Crashes seem to occur more frequently on road intersection similar to how the future intersections at Silk Wood/Charcot and Charcot/Oakland would be designed.



Source: Transportation Injury Mapping System (TIMS) by SafeTREC at UC Berkeley²⁸

Response BB.85: The comment questions the use of larger traffic volumes at roadway interchanges with I-880 as a factor in safe travel by motorists, pedestrians, and bicyclists, yet states that the reasoning that cyclists may choose not to use the crossing may be due to volume. The comment thus agrees that the use of traffic volume is a potential reason for roadway users choosing not to travel along roadways that provide access to freeways.

The comment also references accident data which clearly excludes state roadway facilities and/or freeway interchanges. Thus, the inference that collisions occur more frequently at intersection is unsubstantiated by the provided accident data.

Comment BB.86: Pedestrian Improvements: “A new pedestrian-only signal such as a HAWK beacon, would be installed along Charcot Avenue at Silk Wood Lane.” (p. 10). What other pedestrian-only signals are under consideration?

Response BB.86: No other pedestrian-only signals are under consideration for this project.

Comment BB.87: HAWK Signal: “Studies have shown that 97% of drivers comply and yield to pedestrians at HAWKs” (San José Streets Smart “HAWK Pedestrian Signal Guide”, p1) This means in turn 3% of drivers do not comply and yield to pedestrians. Given that 13,900 cars will use Charcot every day by 2040 (DEIR, p. 157), this equals to 417 cars per day that will not comply with the HAWK signal and yield to pedestrians in this school crossing. Does the EIR concur with this conclusion?³⁰ Other studies have seemed to have shown even lower compliance rates.³¹

“One truck barreled on through the red light at the HAWK traffic signal that had been activated by pushing a button around 11 a.m. Thursday, signaling that all vehicles should stop for a pedestrian to cross the street near the Pittsburg County Courthouse. While other drivers stopped, the driver of the

³⁰ Also see: Godavarthy, R.P., Russell, E.R., Study of pedestrian hybrid beacon’s effectiveness for motorists at mid-block pedestrian crossings, Journal of Traffic and Transportation Engineering (English Edition) (2016), doi:10.1016/j.jtte.2016.01.007 ; FHWA: Safety Effectiveness of the HAWK Pedestrian Crossing Treatment <https://www.fhwa.dot.gov/publications/research/safety/10042/10042.pdf>

³¹ Federal Highway Administration “Pedestrian Hybrid Beacon Guide– Recommendations and Case Study”, https://safety.fhwa.dot.gov/ped_bike/tools_solve/fhwas14014/fhwas14014.pdf

truck didn't even slow down. A similar situation occurred at the site of a second HAWK traffic signal on Carl Albert Parkway.”³²

How will the HAWK signal be visible to drivers going South on Silk Wood Lane and turning right into Charcot? NOTE: The HAWK signal is only activated when pedestrians are present.

Response BB.87: The 97% compliance rate cited in this comment demonstrates the effectiveness of the HAWK as a device to alert motorists to the presence of pedestrians in a crosswalk. There is no traffic sign or device that is 100% effective, but the high compliance rate associated with the HAWK is a primary reason why it is being installed at numerous locations.

The City does not agree that 3% of future drivers on Charcot Avenue will fail to comply with the HAWK signal each day. The 97% compliance rate is a statistic based on data collected at numerous locations over time and cannot be used to predict driver behavior on any given day at any given location.

As part of the HAWK signal design, the control of all vehicular traffic will be considered and will likely include a signal head on the referenced Silkwood Lane approach to the Haw signal.

Comment BB.88: Response 34.18 of Appendix B states “If pedestrians activate the “walk” portion of the signal cycle, traffic is held until that phase is completed. At most intersections, activating the “walk” cycle results in an increase in traffic delay, as compared to when the “walk” signal is not activated.” Please explain at which intersections activating the “walk” cycle would not result in an increase in traffic delay. How much delay can be expected during AM peak and school start between 8 and 9 AM?

Please provide estimate pedestrian crossing times for all lane-configuration alternatives as: "There are plenty of reasons not to widen roads. Not the least of which, as Klipp points out, is that wider roads mean drivers have to wait longer at intersections while pedestrians get across. Theoretically, road widening is supposed to add car throughput and capacity, but the increased time to walk further across negates this supposed advantage. In an email, Klipp stated “road widenings may do about as much harm to their intended purpose as any good, but they do certainly give people free license to drive faster in between signals, which makes streets less safe.”³³

Response BB.88: The proposed HAWK signal will be incorporated as part of the project and will increase pedestrian safety when crossing Charcot Avenue. The design and operation of the proposed HAWK signal will be completed upon project approval. At that time, an estimation of pedestrian crossing at various times can be documented. Furthermore, the school drop-off/pick-up activities currently occurring along Silk Wood Lane will no longer be possible and result in a significant decrease in pedestrian

³² https://www.mcalesternews.com/news/hawk-pedestrian-crossings-installed-some-drivers-ignoring-signals/article_e97b71fc-9995-11e7-a0be-c319d82642f6.html

³³ <https://la.streetsblog.org/2018/08/28/luke-klipp-pedestrian-beg-buttons-exist-to-serve-people-in-cars>

crossings, along Silk Wood Lane/Charcot Avenue and activations at the proposed HAWK signal.

Comment BB.89: Detailed Analysis of Pedestrian and Bicycling Situation at the School: For an in-depth assessment of the pedestrian and bicycling situation at the school please refer Attachment H – “Report Orchard School Community Pedestrian and Bicycle Safety Training”.

Response BB.89: The City is aware of this report and two staff members from the City’s Department of Transportation were part of the report’s Planning Committee. The City will continue to work with the Orchard School to improve safety for pedestrians and bicyclists as they travel to and from the school. The Charcot Avenue Extension, which is acknowledged in the report, includes features to enhance safety for all users.

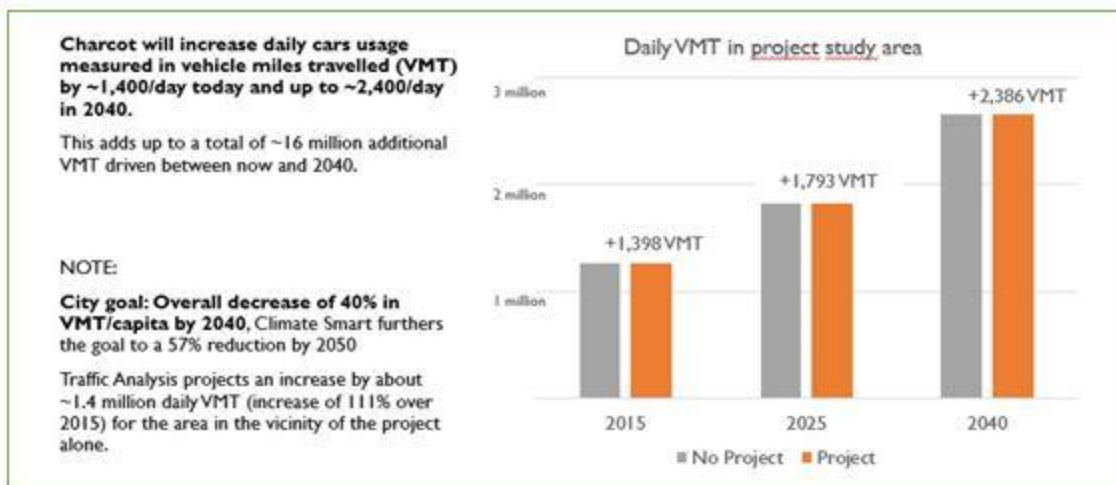
Comment BB.90: Longer distances for Shorter Travel Times: “The slight decrease in VHT and minimal increase in VMT is not abnormal since the TDF model is designed to reflect driver’s behavior by minimizing the travel time of motorists rather than travel distance. Since the roadways in the area are congested during the morning and afternoon peak periods, commuters will drive longer distances to shorten their travel time.” (p. 31/40). The analysis should note that this behavior is exactly what the City of San José - with its focus on VMT - is trying to discourage. The DEIR does not disclose if the traffic model incorporates changes brought upon by apps such as Waze which multiply the magnitude of the issue.³⁴

Response BB.90: The City’s policy documents (e.g., the NSJADP, North San José Deficiency Plan, and the General Plan) strive to create a balanced transportation network, which includes roadway, transit, bicycling, and pedestrian facilities. The proposed project includes features that implement these policies because all of these modes will benefit from its construction.

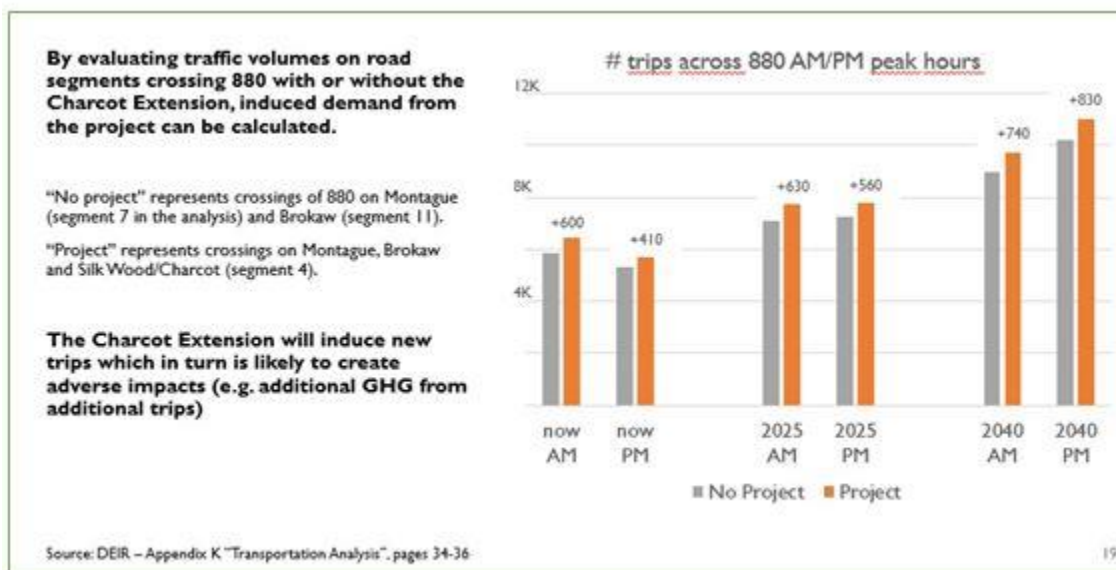
The City’s travel demand forecasting model assigns traffic to roadways based on trip origins and destinations, taking into account factors like capacity, function, delay, and volumes.

Comment BB.91: Induced Demand: “It is important to note that roadway improvement projects, unlike development projects, typically do not generate new vehicle trips that are added to the roadway system. Rather roadway improvement projects, such as the proposed project, provide additional roadway system capacity to accommodate traffic that is currently and projected to be on the roadway system regardless of the contemplated roadway improvement project.” (p. 31)

³⁴ See “Google Apps Are Causing Gridlock” (Mercury News, 2 June 2018) or <https://www.lamag.com/citythink-blog/waze-los-angeles-neighborhoods>



This statement is not supported by the projects own traffic analysis (showing an increase in trips across 880 as well as in VMT), the City’s traffic impact analysis handbook³⁵ nor extensive scientific research³⁶:



San José DOT Transportation Impact Analysis guidelines state:

“Shortly after the project becomes operational, induced VMT may occur where road users respond to an initial appreciable reduction in travel time. With lower travel times, the modified facility becomes more attractive to travelers, resulting in four short-run trip-making changes: (1) longer trips; (2) changes in route choice; (3) changes in mode choice; and (4) newly generated trips.

³⁵ However, most other roadway projects, including building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, may or may not induce additional vehicle travel. For example, adding an extra lane to an especially critical and congested link may leverage VMT growth far beyond that link, increasing VMT to a greater degree.” (Transportation Impact analysis handbook)

³⁶ <https://www.vox.com/2014/10/23/6994159/traffic-roads-induced-demand>

Longer trips may occur because the ability to travel a long distance in a shorter time increases the attractiveness of destinations that are further away, increasing trip length and VMT. Changes in route choice may occur immediately when faster travel times on a path attract more drivers to that path from other paths, which can increase or decrease VMT depending on whether it shortens or lengthens trips. Changes in mode choice may also occur in the near-term when travelers respond to a reduction of personal motorized vehicle travel time by shifting toward personal motorized vehicle use from other modes. Newly generated trips may occur when an individual who previously did not have a travel need might have one because of increased speed and decreased travel time. The short-run effect of a project on induced VMT, measured in percent change in total VMT, is evaluated for a project.” (TIA, p. 49)

As Mayor Liccardo writes:

“Building fewer cars may well reduce traffic but building more roads won’t. Why? What economists call “induced demand” governs behavior of motorists with an iron fist: by providing more of a public good — i.e., a road — without charging for its use, consumers will happily use more of it. The outcome: more traffic. In 2014 for example, Los Angeles spent more than \$1 billion on a five-year project to widen the 405 freeway to add a lane, only to learn that traffic moved one minute slower as a result. Beyond the inefficacy of freeway expansions, the more obvious cost and physical constraints pose sufficiently formidable barriers to road-widening projects — “they’re not making any more land,” according to Mark Twain — to send us looking for alternatives.

Alas, all good intentions of city building and traffic planning bump up against this seeming paradox: we can’t simply build our way out of a traffic congestion problem. That isn’t to say we don’t need to invest in our roads; indeed, we can make our roadways more efficient and effective for all modes of travel, and Measure B will provide some relief in key intersections and freeway interchanges that create choke- points. We can also certainly improve our roads’ maintenance, reliability, and safety. But more freeway lanes and bigger roads consistently fail to deliver much relief to aggrieved commuters, and worst of all, they fail at a high cost.”³⁷

And research agrees:

“Reduced congestion leads to more driving, and that induced and suppressed demand “are critical considerations when assessing the emissions effects of capacity-based congestion mitigation strategies. Capacity expansions that reduce marginal emissions rates by increasing travel speeds are likely to increase total emissions in the long run through induced demand.” (“Congestion and emissions mitigation: A comparison of capacity, demand, and vehicle based strategies”)³⁸

“The fundamental reason is that state and local governments often only view new or wider roads as the right intervention to improve LOS. Major urban road mileage rose by 77 percent from 1980 to 2014 (a total of 169,153 lane miles), compared to 41 percent growth in U.S. population. As the number of lane miles grew, urban residents drove more, and vehicle miles traveled (VMT) on major urban roads grew by 146 percent over the same period. This phenomenon is best explained by the

³⁷ <https://medium.com/@SamLiccardo/one-look-back-four-years-forward-transportation-f0f13f069995>

³⁸ <https://www.sciencedirect.com/science/article/pii/S1361920912000727>

concept of “induced traffic,” which states that more roadways just means more miles traveled via car.” (“Stop trying to solve traffic and start building great places”, Brookings Institute)³⁹

▶ Induced travel does not necessarily result from people making more or more frequent *trips*. Rather, the term refers to the overall amount of travel that is undertaken. Lay-people and transportation professionals often refer inadvertently to changes in “trip-making” when discussing induced demand (e.g. “induced trips”). At best, such references are a kind of shorthand used by professionals who may thoroughly understand the issue, but find such terminology easier to manage in discussions among themselves. More commonly, though, use of such terminology may suggest that the user does not have a good grasp of the subject. For example, one frequently hears the notion expressed “I don’t believe induced travel is real, because it defies logic that people will make more trips simply because travel time is reduced.” Such an expression shows that the speaker confuses induced travel as a phenomenon of discrete trips, rather than aggregate travel.

Source: Gorham, R. *Demystifying Induced Travel Demand*. Sustainable Urban Transport Document #1

Also see:

- “Generated Traffic and Induced Travel Implications for Transport Planning” 18 March 2019 Todd Litman Victoria Transport Policy Institute (<https://www.vtpi.org/gentraf.pdf>)
- Cervero, Robert, and Mark Hansen. 2002. “Induced Travel Demand and Induced Road Investment.” *Journal of Transport Economics and Policy*, 36(3): 469–90
- Research Brief: Effects on VMT of adding roadway capacity (Caltrans/National Center for Sustainable Transportation, 2p): Increasing Highway Capacity Unlikely to Relieve Traffic Congestion http://www.dot.ca.gov/research/researchreports/reports/2015/10-12-2015-NCST_Brief_InducedTravel_CS6_v3.pdf
- Research Brief: Effects on VMT of adding roadway capacity (CA Air Resources Board, 10p): Impact of Highway Capacity and Induced Travel on Passenger Vehicle Use and Greenhouse Gas Emissions Policy Brief https://www.arb.ca.gov/cc/sb375/policies/hwycapacity/highway_capacity_brief.pdf
- Research Brief Technical Background Document: Effects on VMT of adding roadway capacity (CA Air Resources Board, 10p): Impact of Highway Capacity and Induced Travel on Passenger Vehicle Use and Greenhouse Gas Emissions Technical Background Document https://www.arb.ca.gov/cc/sb375/policies/hwycapacity/highway_capacity_bkgd.pdf
- Fulton, L.M., R. B. Noland, D.J. Meszler, J.F. Thomas. 2000. A Statistical Analysis of Induced Travel Effects in the U.S. Mid-Atlantic Region. *Journal of Transportation and Statistics*, 3(1): 1-14
- Cervero, R. 2002. Induced Travel Demand: Research Design, Empirical Evidence, and Normative Policies. *Journal of Planning Literature*, 17: 3-20.
- Cervero, R., J. Kang, and K. Shively. 2009. From Elevated Freeways to Surface Boulevards: Neighborhood and Housing Price Impacts in San Francisco. *Journal of Urbanism*, 2(1): 31-50

³⁹ <https://www.brookings.edu/blog/the-avenue/2019/03/20/stop-trying-to-solve-traffic-and-start-building-great-places/>

- Hunt, J.D., A.T. Brownlee, and K.J. Stefan. 2002. Responses to the Centre Street Bridge Closure: Where the “Disappearing” Travelers Went. *Transportation Research Record*, 1807: 51-58.
- Noland, R.B. and L.L. Lem. 2002. A review of the evidence for induced travel and changes in transportation and environmental policy in the US and the UK. *Transportation Research D*, 7: 1-26.
- Alison Cassady, Tony Dutzik and Emily Figdor (2004), *More Highways, More Pollution: RoadBuilding and Air Pollution in American's Cities*, U.S. PIRG Education Fund
- Phil Goodwin and Robert B. Noland (2003), “Building New Roads Really Does Create Extra Traffic: A Response to Prakash et al.,” *Applied Economics*
- David T. Hartgen and M. Gregory Fields (2006), *Building Roads to Reduce Traffic Congestion in America’s Cities: How Much and at What Cost?* Reason Foundation
- Martin Mogridge (1997), “The Self-Defeating Nature of Urban Road Capacity Policy; A Review of Theories, Disputes and Available Evidence,” *Transport Policy*, Vo. 4, No. 1, pp. 5-23
- Han van der Loop (2014), *The Latent Demand In Road Traffic*, KiM Netherlands Institute for Transport Policy Analysis
- “What's Up With That: Building Bigger Roads Actually Makes Traffic Worse” *Wired*, June 2014⁴⁰

The resulting additional use of energy because of the project should be considered a significant unavoidable impact.

Response BB.91: As explained in Appendix K, the existing demand is based on current traffic volumes and future demand is based on traffic that will be generated by the land uses identified in the City’s approved General Plan. Traffic generation is based on the known travel characteristics of the specific land uses and is not affected by capacity of the roadway network. The planned land uses will occur with or without the proposed Charcot Avenue Extension as no development has been conditioned on the construction of the project. In other words, future demand will not be induced by the project; rather, it will be there with or without the project.

The graph included in this comment regarding volumes across I-880 is misleading as it uses isolated locations in an effort to draw a conclusion regarding the entire roadway network. Specifically, the commenter argues that the graph proves that the project is adding trips (i.e., induced demand), which is not the case. The proposed project will result in the addition of roadway capacity across I-880 in the immediate project area. Thus, it would not be unrealistic to expect that travel across I-880 in the immediate project area may increase. In addition, the increases in traffic volumes shown in the graph indicate minimal change when considering the 10s of thousands of trips on the selected roadways. Furthermore, the comment and provided graph fail to point out that traffic volumes on other roadways would decrease. These changes

⁴⁰ <https://www.wired.com/2014/06/wuwt-traffic-induced-demand>

are indicative of a redistribution of traffic volumes on the entire roadway system and not the introduction of additional traffic on the roadway system

While it is recognized that some in the transportation industry argue that improving roads induces people to drive rather than use alternate modes (e.g., transit), for the reasons stated above, that argument is not germane to the proposed 0.6 mile, 2-lane Charcot Avenue Extension. The minimal change on the traffic analyses metrics (VMT, VHT, speed, travel time) due to the proposed project is an indication that the proposed roadway extension is local-serving and will have minimal effect on travel outside of the immediate project area or to encourage trips that would not otherwise be made.

Comment BB.92: City of San José Travel Demand Forecasting Model (TDF): “The model has the ability to estimate the diversion of traffic and change in traffic patterns due to road- way/transit system changes similar to those proposed by the Charcot Extension.” (Appendix K, p.8) Does the TDF have the ability to simulate and estimate “induced demand” as described in the TIA or does it only account for diverted traffic?⁴¹ City staff at the community meeting indicated it might not account for induced demand. Does the model incorporate higher VMT from increased TNC usage?⁴² Does the model address issues arising from the Braess Paradox?⁴³

According to the CA OPR: “Whenever employing a travel demand model to assess induced vehicle travel, any limitation or known lack of sensitivity in the analysis that might cause substantial errors in the VMT estimate (for example, model insensitivity to one of the components of induced VMT described above) should be disclosed and characterized, and a description should be provided on how it could influence the analysis results. A discussion of the potential error or bias should be carried into analyses that rely on the VMT analysis, such as greenhouse gas emissions, air quality, energy, and noise.”⁴⁴

The DEIR fails to disclose any limitations or sensitivity of the model as described above or for example in:

- Edward Beimborn, Rob Kennedy and William Schaefer (1996), Inside the Blackbox: Making Transportation Models Work for Livable Communities, Center for Urban Transportation Studies University of Wisconsin-Milwaukee⁴⁵
- Petter Næss, Morten Skou Nicolaisen and Arvid Strand (2012), “Traffic Forecasts Ignoring Induced Demand: a Shaky Fundament for Cost-Benefit Analyses,” European Journal of Transport and Infrastructure Research, Vol. 12 (3), pp. 291-301

⁴¹ “Highway expansion advocates generally ignore or severely understate generated traffic and induced travel impacts. For example, Cox and Pisarski (2004) use a model that accounts for diverted traffic (trips shifted in time or route) but ignores shifts in mode, destination and trip frequency.” <https://www.vtpi.org/gentraf.pdf>, p. 24

⁴² <https://www.citylab.com/transportation/2019/08/uber-lyft-traffic-congestion-ride-hailing-cities-drivers-vmt/595393>

⁴³ https://en.wikipedia.org/wiki/Braess%27s_paradox

⁴⁴ See “Technical Advisory - On Evaluating Transportation Impacts In CEQA”, OPR April 2018

⁴⁵ <https://www4.uwm.edu/cuts/blackbox/blackbox.pdf>

Response BB.92: Induced demand is a result of providing a SIGNIFICANT travel time savings for a driver. The proposed extension will provide little to no measurable travel time savings when considering the size of the proposed Charcot extension in relation to the overall roadway system in the project area and the projected development growth. The minimal travel time savings will not sway or induce new trips to be added to the hundreds of thousands of vehicle trips traveling through the area. In addition, the VMT analysis presented in the traffic study indicates that the proposed roadway extension will result in less than a 0.1% increase in VMT on roadways in the project area.

The City of San José Travel Forecasting Model that was used predict traffic volumes for this project does not account for induced traffic demand. The exact same number of vehicles were modeled with and without the project. Therefore, any increases/decreases on traffic volumes on roadways are due to a redistribution of traffic. Furthermore, below is an excerpt from the State’s Office of Planning and Research (OPR) states the following regarding induced travel ... certain transportation projects are not likely to induce significant new travel. Those projects include, among others, installation, removal, or reconfiguration of traffic lanes that are not for through traffic, such as left, right, and U-turn pockets, or emergency breakdown lanes, **new local or collector streets**, conversion of general purpose lanes (including ramps) to managed lanes or transit lanes, etc.

Comment BB.93: Self-driving vehicles: In the context of a potential future of fleets of automated vehicles the impact of providing additional roadway capacity for empty cars has not been evaluated and is likely not yet integrated in the City’s traffic model.

- “New research shows that semi-automated technology like Tesla’s autopilot is already increasing travel. Immediate intervention is necessary to ensure this technology benefits the public. In a worst-case scenario, researchers and transportation experts fear a future where self-driving cars are mostly privately owned, powered by gasoline, and priced for only upper-income populations. Automated vehicle owners might move further out of the urban core, worsening gentrification and urban sprawl. They would likely send empty cars home to park rather than paying to park at their destination, resulting in increased traffic congestion and pollution. Middle and low-income populations might become further disadvantaged in accessibility to transportation if private driverless cars are unaffordable.” (Kelly L. Fleming, policy analyst at UC Davis in the Policy Institute for Energy, Environment, and the Economy, and a 2019 alumni of the Clean Energy Leadership Institute Fellowship Program)⁴⁶

Response BB.93: Self-driving cars are currently in the early development and testing phase and there are numerous technical, legal, and regulatory hurdles to be worked out. It is presently unknown as to how and when such vehicles will become

⁴⁶ <https://earthier.gizmodo.com/uber-and-lyft-induced-congestion-give-a-preview-of-driv-1838489742> also see: <https://theconversation.com/safe-efficient-self-driving-cars-could-block-walkable-livable-communities-103583>

commonplace. Therefore, any analysis of how such vehicles would change driving patterns would be speculation, which is outside of the purview of CEQA.

Comment BB.94: VMT Screening: The DEIR determines: “Per San José Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA transportation analysis.” This determination is omitting key parts of the policy and misreading the parts it applies. The policy exception seemingly applied by the analysis is the following: “Through Lanes: Addition of roadway capacity on local or collector streets provided the project substantially improves conditions for pedestrians, cyclists, and/or transit” (Appendix K, p. 7).

Yet, the policy only speaks of roadway capacity on [meaning existing] streets. As the analysis itself state, the project will provide a new connection, not add on to an existing (also see discussion of Alternative B - widening of Montague or Brokaw). Considering the building of a new connection as adding capacity on a local or collector street is false interpretation of the policy.

Further the City policy itself states: “However, most other roadway projects, including building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, may or may not induce additional vehicle travel. For example, adding an extra lane to an especially critical and congested link may leverage VMT growth far beyond that link, increasing VMT to a greater degree. [...] Therefore, projects that will likely lead to additional vehicle travel should not be presumed to have less-than-significant impacts.” (Transportation Impact Analysis Handbook).

In conclusion, the project needs to include a complete VMT analysis under CEQA based on City guidelines and is not screened for a detailed CEQA transportation analysis.

Response BB.94: The comment infers that the City’s Transportation Project VMT screening criteria is applicable only to existing streets. However, the policy does not explicitly or implicitly state that it is intended to be only applied to specifically identify existing roadways. The screening criteria as identified in the City’s Transportation Analysis Handbook, April 2018 (Table 9 City Transportation Project Types Screened from CEQA Transportation Analysis) states...Addition of roadway capacity on local or collector streets provided the project substantially improves conditions for pedestrians, cyclists, and/or transit.

In addition the Handbook also states...However, most other roadway projects, including building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, may or may not induce additional vehicle travel. The Handbook also states...On the other hand, adding a link that greatly improves connectivity by proving drivers a shorter route in exchange for a longer one may in select cases reduce total VMT.

Comment BB.95: Sphere of Influence: “The sphere of influence of a project is defined as the area in which driving patterns are expected to change due to the project.” (City of San José Transportation Analysis Handbook, p. 53)

There is no explanation why a 1.5 mile radius was chosen as a sphere of influence. It seems to argue that the project will have no impact on travel from Berryessa to North San José or beyond the radius into Santa Clara. There is no evidence to support this assumption. VMT analysis Sphere of Influence analysis seems to include highways 101 and 880. There is no explanation on why traffic on these highways is relevant to the project.

The analysis itself later assumes a 2 mile radius as Sphere of Influence. (p. 44)

It should also be noted that the threshold for general plan amendments is any increase in “VMT per service population over current 2040 General Plan conditions”.

State guidance on VMT analysis seems to indicate that using a “multiplier” would be a more appropriate way of determining additional VMT than the transportation demand model (TDM) used here. “OPR recommends applying elasticities directly from the academic research in order to assess induced VMT. Doing so not only bypasses the model noise and impact area dilemmas described above, it also captures the effects of land use change as required by CEQA and which travel demand models cannot capture.” (California Senate Bill 743 Implementation Assistance Project Using Vehicle Miles Traveled to Evaluate Transportation Impacts in CEQA: Case Study Examples and Insights - Summary of SR 210 Case Study, p5)

Response BB.95: Page 6 of Appendix K states...per San José Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA transportation analysis. However, for informational purposes, a VMT evaluation for the project was completed and included within this study. The VMT evaluation was completed, for informational purposes, using the referenced City methodology. As stated in Table 2 (page 16) of Appendix K, the City methodology requires that a project’s effects be evaluated within its “sphere of influence” which is to be determined on an individual project basis and engineering judgment. The City methodology does not define a specific area, or radius, for the selected sphere of influence. The 1.5-mile radius selected for use in the VMT evaluation includes all major roadways (including Montague Expressway, Brokaw Road, Oakland Road, Ringwood Avenue, and others) within the area of the proposed roadway extension project. The 0.5-mile roadway extension project would have an immeasurable influence on other major roadways.

The 2-mile radius referenced in this comment (from page 44 of Appendix K) pertains to the travel time analysis, which is different from the 1.5-mile radius used for the VMT analysis. The rationale for the selection of these radii for these two different types of analysis is explained in Appendix K.

Comment BB.96: Lane miles added: Please explain how the 1.0 lane miles were calculated. As discussed above, the length of the total project seems to be closer to 0.5 than 0.6 miles. Since roadway already exists between Paragon and O’Toole as well as on Silk Wood Lane. The actual lane miles added seem to be about 0.56 miles.

Response BB.96: As stated in Response BB.42, the total length of the project is approximately 3,000 feet, which equates to 0.5 or 0.6 miles, depending on rounding.

However, lane miles refers to the total length, lanes in both directions of travel. Therefore, for example, a proposed 0.5-mile two-lane roadway extension would equate to 1.0 lane miles.

Comment BB.97: Total lane miles added: Please provide a source for the statement that Santa Clara County will add 170 miles of roads.

Response BB.97: The City cannot find where the referenced 170 miles of roads is stated. It is not in the traffic study or the DEIR.

Comment BB.98: Increase for roadways in Santa Clara County: The analysis fails to analyze the impact on roadways in Santa Clara County as demanded by Transportation Analysis Policy. The VMT analysis should cover both Sphere of influence Total VMT and the Countywide Total VMT.

Response BB.98: An evaluation of VMT for all major roadways in the County was not completed since such an evaluation would be applicable to a major roadway improvement that provided capacity through the City or into adjacent jurisdictions. The proposed approx. 0.5-mile extension is local serving and would not have a measurable effect on the countywide transportation system.

Comment BB.99: Total lane-miles within a 1.5-mile radius: The report needs to specify which lane miles exactly were counted, e.g. was internal circulation in Casa del Lago counted for this purpose and why would that be relevant to the analysis.

Response BB.99: Please see Response BB.95

Comment BB.100: Negligible increase in VMT: “The model results show that the proposed Charcot extension would result in only a negligible increase” (p. 16). Please define negligible as the project will add approximately 16 million VMT to San José’s street between now and 2040.

Response BB.100: The comment’s reference to an increase of 16 million in VMT is incorrect. Per Table 3 of Appendix K, the project will result in an increase of 2,386 VMT when compared to no project conditions in 2040. The referenced increase in VMT in this comment may be referring to a projected increase in VMT that would occur regardless of the proposed project.

Comment BB.101: Significance criteria in City of San José Transportation Analysis Handbook: The VMT significance criteria used for the project are based on the SJ Transportation Analysis Handbook. The criteria in the TA handbook are based on “Plan Bay Area 2040, the long-range Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS) for the San Francisco Bay Area”.⁴⁷

The California Air Resource Board “Staff Report on Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets” illustrates that Regional Transportation Plans and Sustainable

⁴⁷ <http://www.sanjoseca.gov/DocumentCenter/View/76537>, p. 52

Communities Strategies will fall short of achieving the GHG reductions research says are needed to achieve climate stabilization, so OPR recommends not basing transportation project thresholds on those documents.⁴⁸ The significance criteria used in the DEIR therefore might not comply with state goals for GHG reductions.

Response BB.101: The comment makes referenced to OPR recommendations and guidelines. However, these are not requirements. Local agencies have the authority to establish and adopt methodologies, standards, and impact criteria as they please. The City’s Transportation Analysis Handbook and Policy 5.1 were adopted in 2018 to comply with SB 743 and CEQA Guidelines Section 15064.3(b)(2).

The questioning of the adequacy of the City’s transportation policies and criteria in complying with state GHG reduction goals is irrelevant to the evaluation of the proposed project under CEQA. The relevant fact is that, per the analysis contained in Section 3.8 of the DEIR, the project would have the effect of reducing GHG emissions, as compared to the no project alternative.

Comment BB.102: Roadway segments - Roadway segment analysis: The analysis needs to be finer grained so that the impact of the project can be adequately assessed. Traffic volumes for the following roadway segments are missing:

- Montague between Trimble and Seely
- Brokaw east and west of Ridder Park
- Brokaw Montague east west of 880
- Dado street

The HOV lane on Montague should be analyzed independently of the general purpose lanes as speed, vehicle and passenger volumes are likely to be different.

Response BB.102: The commenter is referred to Appendix K which states.... *the determination of project impacts per CEQA requirements are based solely on VMT analysis*. The referenced roadway segment analysis was provided for informational purposes and is not presented for the purpose of determining project impacts. Therefore, the evaluation of additional roadways as the comment suggests is not required.

Comment BB.103: Traffic east of Oakland: The analysis fails to include any evaluation on the impact of the roadway network east of Oakland Road for example Ringwood, Wayne, McKay, Trade Zone. Some of these roads were even included in the traffic counts but excluded from the further analysis without explanation.

Response BB.103: The analysis of the requested roadways is not required since *the determination of project impacts per CEQA requirements are based solely on VMT*

⁴⁸ See “Technical Advisory - On Evaluating Transportation Impacts In CEQA”, OPR April 2018

analysis. However, an evaluation of traffic volumes on selected roadways was completed for the purpose of providing a comparative evaluation of the effects of the project on traffic volumes for informational purposes only. Furthermore, the proposed roadway extension would have minimal effect on traffic volumes on the referenced roadways as they currently provide access to Oakland Road.

Comment BB.104: Roadway connections outside of the immediate area: A comparison of ADT by travel direction on parallel roadways suggests that each day many more people travel westbound than eastbound.

	westbound ADT	eastbound ADT	Diff
Charcot east of junction	5,100	2,500	2,600
Brokaw east of junction	21,700	15,100	6,600
Trimble east of junction	12,700	10,900	1,800
Montague east of Seely	29,600	23,000	6,600
Total	69,100	51,500	17,600 (25%)

Response BB.104: The referenced differences in directions traffic volumes is not uncommon. It is normal for traffic volumes to vary due to commute period congestion and roadway network configuration which may affect travel routes. Several of the referenced segments are along travel routes that do not provide for the same travel route in both directions. As an example, no access to westbound Charcot Avenue from northbound O’Toole Avenue and/or are streets located adjacent to freeway interchanges which may cause variances in traffic volumes due to ramp metering and congestion on the freeways. Furthermore, the traffic volume differences have no effect on the provided roadway segment analysis.

Comment BB.105: Charcot between SR 87 and N 1st: The information about project-related changes in traffic volumes along all segments of Charcot Avenue is contained in Section 3.17, “Transportation” (Appendix B, Response 22.1).

Statement is not true. The segment of Charcot Avenue between SR 87 and N 1st street (as addressed in the comment “Can you comment on additional traffic connecting Charcot using this extension coming from 87 (the other end of Charcot).” is not contained in Section 3.17, Transportation.

Response BB.105: Volumes west of North First Street are not shown because the effect of the project is minor.

Comment BB.106: Freeway on ramps: “The improvement of access to and from I-880 also would provide minimal benefit to operations along Brokaw Road and Montague Expressway due to congestion on the freeway mainline that restricts flow onto the freeway.” (Appendix K - p. 43)

There seems to be no evidence in the project’s traffic study, VTA CMP reports, CalTrans data, Google Map data or personal observation that freeway on-ramps to 880 from Montague or Brokaw are close to being congested to a point where it would restrict traffic on those roads. Please provide data to support this statement.

It should also be noted that congestion on freeway on ramps might be caused by outdated design standards not compatible with current higher speed limits.⁴⁹

Response BB.106: The comment suggests that freeway congestion has no effect on access to I-880 from arterials such as Montague Expressway and Brokaw Road. However, access to I-880 is in fact limited due to congestion in the peak commute directions and associated ramp metering. Caltrans dictates ramp metering which controls the number of vehicles that are permitted to access the freeways. During peak commute periods the flow onto freeway is capped by ramp metering to maintain traffic flow on the freeway mainline. Thus, providing additional capacity on arterials and ramps that feed the freeway mainline will have no effect due to the maximum allowed traffic flow on to the freeway.

Comment BB.107: Impact on 880: Since a main purpose of the project is to improve traffic flow across as well as to and from and 880, segments of 880 including on- and off-ramps need to be included in the roadway segment analysis.

Response BB.107: The comment is incorrect in its statement of objective of the project. The proposed roadway extension is intended to improve east-west circulation across I-880. However, the project will not provide access to and from I-880. The project may result in a reduction in traffic volumes along parallel roadways, such as Montague Expressway and Brokaw Road, which do provide access to I-880 and therefore may result in a slight improvement on access to and from I-880.

Comment BB.108: Segment 11: Segment 11 is described as Montague Expressway between I-880 and Oakland Road. Figure 10 indicates the measurement as taken at the I-880 location – not east of it. This traffic count could be significantly affected by merging and on- and off-ramp movements and measurements need to be re-taken at a more appropriate location in that segment.

Response BB.108: The comment is correct in its reference to the count location. However, the count location is in fact located “west of Oakland Rad.” Furthermore, the count location and associated traffic volume differences have no effect on the project’s impact to the roadway system as the count is used only for a comparative evaluation of the project’s effect on roadway segment volumes.

Comment BB.109: Inconsistency with Traffic Analysis for San José General Plan: The traffic analysis for the Charcot Extension states an ADT of 45,200 for Brokaw Road west of Oakland Road in 2040 (p. 36). In the traffic analysis prepared for the 2016 General Plan update (<http://www.sanjoseca.gov/DocumentCenter/View/62223>) the same segment (there described as Brokaw Road between I-880 and Ridder Park) is estimated to have an ADT of 81,500 (p.16). This is

⁴⁹ “I’ll say that most interchanges in San Jose are horribly designed. they were all designed for a time when we had 80% less people and 40mph speed limits. that means inefficient cloverleaves, short merges, quick exits after interchanges, etc. they’re all bad here”, https://www.reddit.com/r/SanJose/comments/crwtik/worst_free-way_merge_in_bay_area/exab7p9/

inconsistent and requires further explanation. Other roadway segments analyzed in both documents show similar inconsistencies.

Response BB.109: There is no requirement to show consistency with the General Plan in regard to projected traffic volumes. Inputs to the traffic demand forecasting model are frequently updated to reflect changes in future land use designations, roadways, and transit facilities, so modeling undertaken at different times will result in outputs that are not always the same.

In addition, the segments of Brokaw Road referenced in this comment are not the same. The comment references a segment of Brokaw Road between I-880 and Ridder Park Drive. The Brokaw Road segment referred to as “west of Oakland Road” is located between Ridder Park Drive and Oakland Road.

Furthermore, the referenced projected traffic volume differences have no effect on the project’s impact to the roadway system as the volumes are used only for a comparative evaluation of the project’s effect on roadway segment volumes.

Comment BB.110: Inconsistency with other traffic studies: The traffic analysis for the Charcot Extension states an ADT of 23,500 for Oakland Road between Brokaw Road and Silk Wood Lane.

A 2019 traffic study states ADT for Oakland north of Brokaw as 24,500.⁵⁰ This is a difference of almost 5%. If traffic volumes are indeed 5% higher than stated on all road segments this would also influence other parts of the EIR especially noise and air quality. The discrepancy needs to be further examined.

Response BB.110: There is no requirement to show consistency with other traffic studies in regard to projected traffic volumes. The referenced differences in traffic volumes also are insignificant since it is not uncommon for traffic volumes to vary by 10% or more on a daily basis. Furthermore, the referenced projected traffic volume differences have no effect on the project’s impact to the roadway system as the volumes are used only for a comparative evaluation of the project’s effect on roadway segment volumes.

Comment BB.111: Year 2025 Conditions (p. 8): “The Year 2025 traffic volumes were developed via interpolation of existing and forecasted Year 2040 General Plan Buildout traffic volumes.” Please describe the interpolation used in detail. The data in the analysis seems to suggest that a non-linear interpolation was used.

Response BB.111: A linear interpolation was in fact used to develop the Year 2025 projected traffic volumes. The method consisted of applying a portion of the projected traffic growth between 2015 and 2040 (25 years). The Year 2025 traffic volumes

⁵⁰ <https://sanjose.legistar.com/View.ashx?M=F&ID=6991589&GUID=4162B631-2102-40B8-817A-985D33F1002A>, p. 9

consisted of 10 years of the projected 25 year growth on an intersection by intersection basis.

Comment BB.112: Peak hour volumes: The analysis uses arbitrary peak volume numbers for e.g. Montague. The volume chosen is neither during the most congested time nor the highest volume during the day.

Response BB.112: The commenter is considering only the directional peak hour volume. The peak hour volumes used in the DEIR reflect the greatest total volume (both directions) during the standard AM (7:00 -9:00 am) and PM (4:00 – 6:00 pm) commute periods.

Comment BB.113: Focus on peak hours: The focus of the traffic analysis on peak hour traffic is inadequate according to SJ Streets Design Guidelines: “Additionally, designing to accommodate only peak hour delay should be used carefully since it can result in intersections being overdesigned for the other non-peak hours of the day and weekends when there are lower levels of traffic and, often, higher levels of walking and biking activity. For delay analysis, peak period (not peak hour) and off-peak period traffic movements should be analyzed. In addition, multimodal factors of person delay, reliability, safety, and comfort shall be analyzed.”

The Project for Public Spaces writes: “Worse yet, many designers size a road or intersection to be free-flowing for the worst hour of the day. Sized to accommodate cars during the highest peak hour, such streets will be “overdesigned” for the other 23 hours of the day and will always function poorly for the surrounding community.”⁵¹

Response BB.113: The comment does not provide a question and simply makes reference to guidelines. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment BB.114: Direction of travel: The analysis provides data only on roadway volumes but for most parts omits information on the distribution of these volumes per direction. Given that regional traffic pattern through the area are highly imbalanced an analysis per direction is necessary to evaluate if the assumed traffic volumes can be realistically handled by the infrastructure. E.g. a PM peak hour volume of 3,390 vehicles on a two-lane roadway (Charcot East of Junction, 2040) seems improbably high given typical max lane capacities as identified by National Association of City Transportation Officials (NACTO).⁵²

Response BB.114: There is no adopted methodology for the evaluation of roadway segment volumes and capacities that requires the evaluation to consider traffic volume directionality. Furthermore, the referenced projected traffic volume differences have no effect on the project’s impact to the roadway system as the volumes are used only

⁵¹ <https://www.pps.org/article/levels-of-service-and-travel-projections-the-wrong-tools-for-planning-our-streets>

⁵² <https://nacto.org/publication/transit-street-design-guide/introduction/why/designing-move-people>

for a comparative evaluation of the project’s effect on roadway segment volumes. Therefore, no changes to the DEIR are required.

Comment BB.115: The data by direction is also necessary to understand sudden jumps in traffic volumes along corridors as for example:

Intersection	→	First	→	Zanker	+	Junction	+	Paragon	+	Oakland				
Volume between intersections		2,390		(-910)		1,480		(+570)		2,050		(-560)		1,490
		WEST				← CHARCOT		→						EAST

#	Roadway	Location	AM	
			Year 2040	Year 2040+ Project
1	Charcot Avenue	East of 1 st Street	2,150	2,390
2	Charcot Avenue	East of Zanker Road	920	1,480
3	Charcot Avenue	East of Junction Avenue	1,020	2,050
4	Silkwood Lane	West of Oakland Road	120	1,490

This is also required by the SJ TIA “Uneven lane demand and usage”; (Transportation Analysis Handbook, p. 28)

Response BB.115: Please see Response BB.144.

Comment BB.116: Volume to capacity ratio in east-west corridors: The analysis seems to assume wildly varying volume to capacity ratios for the roadway segments especially on Montague, Brokaw and Charcot under 2040 conditions. This is improbable and requires further explanation (Appendix K, p. 36) For example, Charcot East of Junction as a 2-lane road will supposedly handle traffic volumes similar to Trimble or Brokaw which are 6-lane roadways.

Segments west of Oakland	Volume PM Peak 2040	# of lanes	Volume / lane
Charcot	1,720	2	860
Brokaw	3,630	6	605
Montague	5,560*	8	695

Segments east of Junction	Volume PM Peak 2040	# of lanes	Volume / lane
Charcot	3,390	2	1,695
Brokaw	3,940	6	657
Trimble	3,990	6	665

Response BB.116: The comment references volume-to-capacity ratios that were not presented in the traffic study and have no relevancy to the provided roadway segment evaluation. The evaluation of traffic volumes on selected roadways was completed for the purpose of providing a comparative evaluation of the effects of the project on traffic volumes for informational purposes only.

Comment BB.117: Comparison to Montague and Brokaw: “The use of the proposed extension is expected to be minimal outside of a two-mile radius since other roadways, including Montague

Expressway (8-lane roadway) and Brokaw Road (6-lane roadway) will continue to provide greater capacity and speed limits than the proposed two-lane roadway extension.” (p. 44)

This statement confuses theoretical capacity with actual traffic volumes. According to the traffic counts for this project Montague carries less than 700 cars/h on all of its three to four⁵³ eastbound travel lanes combined. The traffic analysis assumes a much higher vehicle volume for Charcot at the same time. Meaning Charcot will supposedly have a greater capacity than Montague Expressway.

Although Montague may theoretically provide a higher speed and speed limit, the traffic count shows that eastbound traffic on Montague is crawling at less than 5.7 miles per hour during the commute time (5-6PM). Since the DEIR assumes an average travel speed of 25 miles per hour for the Charcot Extension (source: Air Quality Analysis), 1-lane Charcot would supposedly provide not only higher eastbound traffic capacity but also higher speeds than 4-lane Montague.

This seems unrealistic and should be re-evaluated. It is also inconsistent with the statement above.

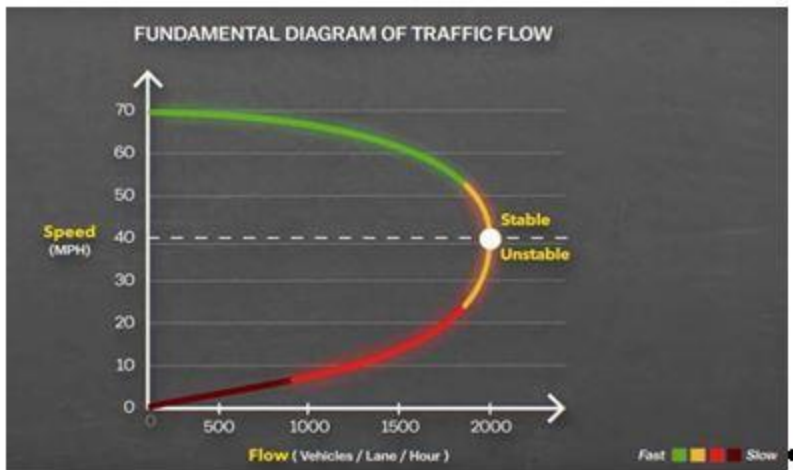
Response BB.117: The comment is making reference to a specific traffic volume on Montague Expressway and inferring that this volume is reflective of the extent of Montague Expressway. The comment also uses the referenced volume to provide a comparison of traffic capacities and speed estimates on the proposed Charcot extension. However, the referenced volume is not reflective of traffic volumes outside of that specific location. Thus, the comments use of the specific volume to form its conclusions is incorrect. The fact is that Montague Expressway provides 6 to 8 travel lanes with a posted speed limit of 45 mph, Brokaw Road generally provides 6 travel lanes with a posted speed limit of 40 mph, whereas the proposed Charcot extension will provide only two travel lanes with a posted speed limit of 30 mph.

Comment BB.118: Traffic data for 2040 for Montague Expressway: Travel speed and roadway capacity/flow are dependent on each other. Traffic moving at roughly 40 mph provides the greatest capacity for a road/highway. In case of slower moving traffic (congestion) roadway capacity shrinks dramatically (see Graph “Fundamental Diagram of Traffic Flow” below).

“the fundamental defining relationship of our field, the speed-flow curve. This shows that the more traffic uses a road, the slower it goes, the effect becoming more and more severe as the traffic flow approaches the maximum capacity of the network, until finally overload is so extreme that all vehicles are unable to move.”⁵⁴

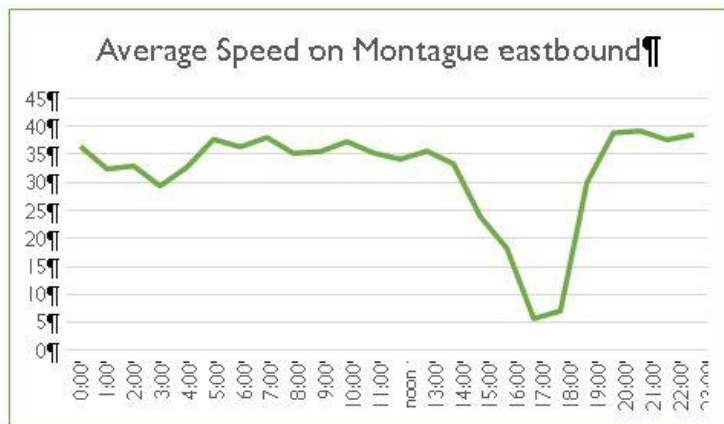
⁵³ Depending on Expressway location

⁵⁴ From: P B Goodwin “Inaugural Lecture For The Professorship Of Transport Policy University College London” https://discovery.ucl.ac.uk/id/eprint/1244/1/2004_22.pdf p. 2



Source: Washington State Department of Transportation

The current traffic counts show average speeds on Montague are dropping dramatically during peak hours (5-6pm): the road becomes congested.



Given the relationship between speed and flow discussed above, flow/capacity on Montague drops dramatically as well.



This implies that if the Project is able to improve conditions on Montague (i.e. faster flow), traffic volumes would increase, since flow improves. Yet, the traffic analysis postulates the opposite. The traffic analysis says with the Project volumes on Montague during peak hour will fall even below current levels.⁵⁵

Also, the analysis projects a doubling of traffic during peak hours on Montague. It is unclear how the Expressway is able to handle volume in 2040, given that it is not able to handle volume now.⁵⁶ The same is true Brokaw. This questions the validity of the traffic model itself since the model seems to operate with theoretical capacity limits that are significantly above the capacity limits experienced in practice.

“The practical experience with widening I-5 shows that eliminating bottlenecks in one place simply leads to the more rapid congestion of the next downstream bottleneck, and ironically, lower throughput on the freeway system. It might seem paradoxical that highway engineers would allow this to happen, but if you’re more interested in generating excuses to build things, rather than actually managing traffic flows, it makes some sense. As we’ve argued before, it seems as if highway engineers treat the sisyphian aspects of perpetually chasing bottlenecks, not as a bug, but as a feature. To them, the fact that widening one stretch of freeway to eliminate one bottleneck simply creates another one is a guarantee of permanent employment, not a fundamental flaw in engineering practice.”⁵⁷

Response BB.118: The use of the volume data and references to theoretical presumptions have no bearing on the traffic analysis and its conclusions. The projected traffic volumes were developed using the City’s Travel Demand Forecasting (TDF) model. Contrary to the comment’s suggestion that the City’s model does not consider capacity of the roadway system and is therefore flawed. The City’s TDF model projects and assigns traffic based on an extensive process that DOES consider the capacity of the roadway system, travel speeds, congestion, and travel time. Therefore, the City’s TDF model is the tool used for the evaluation of roadway network changes such as the proposed project. In addition, though the projected Year 2040 traffic volumes are near the maximum capacities of many of the roadways studied, the projected volumes are within the capacity of the roadways, including Montague Expressway. Furthermore, the referenced projected Year 2040 traffic volumes have no effect on the project’s impact to the roadway system as the volumes are used only for a comparative evaluation of the project’s effect on roadway segment volumes.

Comment BB.119: Traffic from South Bay Islamic Association (SBIA): Heavy traffic on Friday afternoons coming from presumably the South Bay Islamic Association (SBIA) at 2345 Harris Way, San José, CA 95131 coincidences with school end times. The impact of this potential conflict outside of typical peak hours needs to be assessed.

⁵⁵ This in turn suggests that traffic would be crawling at an even slower speed.

⁵⁶ It seems that the current maximum capacity of Montague Expressway EB seems to be roughly below 2000 cars/hour. Adding vehicle above this numbers lead to breakdown of traffic and a dramatic reduction in speed, flow and capacity.

⁵⁷ http://cityobservatory.org/backfire_wider_worse_traffic

Response BB.119: The proposed project is not required to evaluate and/or mitigate traffic issues that are associated with uses unrelated to the proposed project.

Comment BB.120: Increase in traffic on Paragon Drive south approach: The intersection analysis projects an increase in traffic at the Paragon Drive south approach. This is a driveway. Please specify why the model would assume an increase at this location since there seems to be no connected development or land-use change projected at this location. A possible explanation of the change might be different circulation in the business park due to the projects impact. If that is the case, please provide a more detail local circulation analysis.

Response BB.120: There is a minimal change, 10 trips or less, projected for the referenced south approach. When considering the large scale of the model and its extensive land use and roadway network coding, small variances in volumes are expected and acceptable. The referenced variance in volume have no bearing on the traffic analysis and its conclusion.

Comment BB.121: Projected truck traffic: “Truck traffic on the proposed Charcot extension is anticipated to be limited to only those trucks originating from or bound for destinations along Charcot Avenue between Oakland Road and Zanker Road.” (p. 44). Statement omits trucks originating from or bound for destinations along Oakland Road between Montague and Brokaw. It also requires further explanation why truck drivers would behave differently from other drivers and not try to use the extension if the extension could provide time savings – even if it increases travel distances.

The truck traffic analysis also fails to acknowledge any change in traffic patterns due to the relocation of the Super Micro Loading dock that will be necessary because of the project.

And while the extension might not provide direct access to US 101, I-680 or I-880, it does provide direct access to SR 87.

Instead of using average truck traffic in the area as baseline, it might be more accurate to use the truck traffic percentage of roads connecting to Charcot (such as O’Toole, Paragon) to estimate future truck traffic on the Extension.

Response BB.121: There will be no restrictions for the use of the proposed roadway extension by trucks. The estimates of potential truck traffic on the roadway extension is provided for informational purposes only.

Comment BB.122: Truck traffic volumes: The report should note that roadways adjacent to the project’s western limit (segments 3, 23, 24, 25) have on average a much higher truck traffic volume than other roadways. (p. 142)

Response BB.122: The referenced “higher truck volumes” are related to the roadways and surrounding land uses. The comment suggests that daily truck volumes in the range of 500-800 trucks are on average greater than the 1,000 to 6,500 daily trucks that utilize the major roadways including Montague Expressway, Brokaw Road,

Trimble Road, etc. In fact, the much larger truck volumes on these major roadways are an indication that they currently serve, and will continue to be with the project, as the primary truck routes in the North San José area.

Comment BB.123: Projected speeds: “Therefore, an evaluation of projected ADT and speeds on roadway segments in the project area also was completed using existing and projected traffic volumes without and with the proposed roadway extension.” This evaluation of projected speeds on roadway segments is not included in the analysis and needs to be added.

Response BB.123: Existing travel speed data is provided in Table 7 of Appendix K. An analysis of future travel speeds is not required. Furthermore, the projection of travel speeds 20 years in the future would be speculative.

Comment BB.124: Response 24.1 of DEIR Appendix B – Beneficial LOS impact: “In general, the proposed project would have beneficial impacts on the level of service for existing roadways in the project area”. This is not an environmental impact under CEQA and should not be considered as part of the DEIR.

Response BB.124: This comment is correct in that LOS is no longer the metric used to determine traffic impacts under CEQA. As discussed in Section 3.17, consistent with SB 743, the City’s new metric under Transportation Policy 5-1 is VMT. All of the other metrics discussed in Section 3.17.3 are non-CEQA issues. These include intersection LOS, site access and circulation, pedestrian and bicycle access, travel times, changes in roadway volumes, changes in truck volumes, changes in VHT and average speeds, neighborhood trip diversion, and effects on school drop-off/pick-up activities.

As described on page 153 of the DEIR, although these topics are not “impacts” under CEQA, the information is presented in the EIR “to provide information to the reader, consistent with the primary function of an EIR as an informational document.” Note that the majority of the non-CEQA topics were added to this EIR by the City in response to specific concerns and requests made by the community at the 2018 community meeting and the 2019 scoping meetings.

Comment BB.125: ADT Conclusion: “The evaluation of roadway segment ADTs indicate that the Charcot extension will result in additional roadway system capacity and reduce traffic volumes and congestion on parallel roadways.” (DEIR, p. 154) ADT is neither a measurement of capacity or congestion. Statement is therefore incorrect.

Response BB.125: The referenced statement is supported by tables and figures provided within the traffic study which indicate that ADT on adjacent roadways will, though minimally, decrease with the proposed project. Also, the addition of new travel lanes to the roadway system absolutely equates to additional capacity.

Comment BB.126: Shoulder/bike lanes: The figures on pages 3 and 4 (Appendix K) don’t distinguish between shoulders and bike lanes. Shoulders and in this case protected bike lanes are two

distinctly different roadway features that should not be grouped together. They should be more clearly shown in the overcrossing section of the map in Appendix K and on page 7 of the DEIR.

Response BB.126: The five cross-sections shown on DEIR Figure 2.1-4 clearly differentiate between sidewalks, shoulders, bike lanes, buffers, and traffic lanes. Therefore, no modifications to the DEIR are necessary.

Comment BB.127: Traffic improvements: Please explain why the overpass requires 4 feet shoulders and the remainder of the project doesn't. Since the overpass includes 4ft wide shoulders, this results in visible space of 16' travel lanes, in turn resulting in likely very high speeds. How will this impact travel speed?

Previous research has shown various estimates of relationship between lane width and travel speed. One account estimated that each additional foot of lane width related to a 2.9 mph increase in driver speed.⁵⁸ See also

- Ingrid Potts, Douglas W. Harwood, and Karen R. Richard, "Relationship of Lane Width to Safety on Urban and Suburban Arterials," (paper presented at the TRB 86th Annual Meeting, Washington, D.C., January 21–25, 2007).
- Kay Fitzpatrick, Paul Carlson, Marcus Brewer, and Mark Wooldridge, "Design Factors That Affect Driver Speed on Suburban Arterials": Transportation Research Record 1751 (2000):18–25.
- Macdonald, Elizabeth, Rebecca Sanders and Paul Supawanich. The Effects of Transportation Corridors' Roadside Design Features on User Behavior and Safety, and Their Contributions to Health, Environmental Quality, and Community Economic Vitality: a Literature Review. UCTC Research Paper No. 878. 2008

Is this the reason that City staff believes that "Eastbound traffic on the future four lane arterial will likely be traveling downhill at a high rate of speed approaching the [...] street crossing to the school site." (SJ City Staff memo to Planning Commission, February 19, 2004)?

Response BB.127: Shoulders are typically required for all public roadways and may include width of parking and bike lanes. East and west of the overpass, a contiguous buffered bike lane serves as the roadway shoulder. The overpass is within Caltrans right of way. The roadway design within Caltrans right-of-way is required to comply with Caltrans Highway Design Manual (HDM) requirements. For the overpass and based on Caltrans HDM, the project should provide a 4-foot shoulder in each direction. On the overpass, a concrete barrier separates the bike lane from the vehicle travel lane. The bike lane width thus cannot be considered as part of the shoulder and a separate 4-foot shoulder in compliance with Caltrans requirements is required within Caltrans right-of-way.

⁵⁸ <https://nacto.org/publication/urban-street-design-guide/street-design-elements/lane-width>

Comment BB.128: Impact of shoulders on overpass on safety: This assumption is further supported by the fact that on many roads in the area (e.g. Trimble) the actually measured speed is much higher than the posted speed limit (table p. 33). A more detailed assessment of the road design on likely speeds is necessary.

Response BB.128: The City of San José will enforce the posted speed limit. The proposed roadway has been designed per City and Caltrans standards for the posted speed limit. The Charcot Road overpass is a 2-lane facility unlike Trimble Road which is a multi-lane facility.

Comment BB.129: Impact of noise walls on speed: Since noise walls will make it difficult for drivers to assess if children are present on school grounds, speeds will likely violate stated limits (“25 mph when children are present”).

Response BB.129: This comment is an opinion that is unsupported by any facts or studies. The City is unaware of any information or studies that support this opinion. No changes to the DEIR are required as the comment does not identify any inadequacy in the analyses.

Comment BB.130: Access to the school: “Therefore, it is not anticipated that the proposed Charcot Avenue extension would have an adverse effect on the school’s access.” (p. 44) The analysis assumes a car-centric view of “access”. The SJ General Plan requires special consideration of pedestrian access to schools:

“Coordinate the planning and implementation of citywide bicycle and pedestrian facilities and supporting infrastructure. Give priority to bicycle and pedestrian safety and access improvements at street crossings and near areas with higher pedestrian concentrations (school, transit, shopping, hospital, and mixed-use areas) (TR-2.1)”

Also, “Coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San José (TR-2.10)”.

Not providing safe and attractive pedestrian access to schools, generally leads to increased driving and potentially more congestion.

“The National Household Travel Survey in 1969 revealed that 41 percent of children ages 5-18 walked or bicycled to school, with 48 percent of younger children (ages 5-14) walking or biking. By the 2000s, estimates of younger children walking or bicycling to school was less than 14 percent. In the same time period, the use of passenger vehicles for the trip to and from school has increased from 12 percent in 1969 to 50 percent in the 2000s.”⁵⁹

“According to independent research using the NHTS data series, distance is one of the major factors in the shift in mode to private vehicle by schoolchildren. This research also found that safety and

⁵⁹ <https://lbpost.com/news/education/walking-to-school-why-most-kids-arent-doing-it-these-days>

security concerns are significant factors in parents’ decision to let their children walk to school, especially girls.”⁶⁰

Response BB.130: The City disagrees that the project has a “car-centric view of access” to the school. Consistent with the City’s Complete Streets Policy, the project includes multiple pedestrian and bicycle access improvements, including at Orchard School. These components are described on pages 9 and 10 of the DEIR.

Comment BB.131: Existing use of Silk Wood Lane: The report fails to mention that Silk Wood Lane and the access gate on Silk Wood Lane are also used heavily by students walking to school from the residences along Silk Wood Lane as well as the mobile home park Casa del Lago north of Rock Ave. (see page 147) This omission underlines that pedestrian activity in the area has not yet been properly analyzed.

Response BB.131: Section 3.17 of the DEIR acknowledges that due to the use of Silk Wood Lane as an unofficial drop-off/pick-up area, there are currently many pedestrians along Silk Wood Lane during the Orchard School drop-off/pick-up periods. The use of Silk Wood Lane for school drop-off/pick-up will no longer be allowed with the implementation of the proposed project. It is commonplace to have pedestrians in areas with varying land uses. The proposed traffic signal at the Oakland Road/Charcot Avenue intersection will provide a controlled crossing point for pedestrians in the referenced Silk Wood neighborhood and Casa del Lago mobile home park. In addition, the project proposes a new HAWK signal at the future Silk Wood Lane/Charcot Avenue intersection.

Comment BB.132: Revised drop-off plans: “It is recommended that Orchard School consider a review of the school drop-off/pick-up plan and procedures and implement measures to reduce adverse effects on surrounding businesses and residential areas during the school drop-off/pick-up periods.” (p. 166) A review of drop-off/pick-up plans for the school should focus primarily on the safety of students, not ease of vehicle traffic.

Response BB.132: Staggered hours are implemented at various schools in the City. Consideration of staggered hours is a recommendation of the City to the Orchard School District for the purpose of addressing existing school access issues. It is not a mitigation measure for any impacts of the project. Should the school district decide to undertake a review of existing access issues, the City would provide technical assistance if requested.

Comment BB.133: Staggered dismissal times at the school: The transportation analysis suggests: “Staggered arrival and dismissal schedules should be considered given the physical limitations of the use of public streets and school parking lots to accommodate the current demand of the school.” (p.50). School start times are already staggered. Is the City hereby proposing to cover any costs associated with any further staggering of school operational hours?

⁶⁰ <https://nhts.ornl.gov/briefs/Travel%20To%20School.pdf>

Response BB.133: As stated in the previous response, this is a recommendation of the City to the Orchard School District for the purpose of addressing existing school access issues. It is not a mitigation measure for any impacts of the project.

Comment BB.134: Trip diversion from limiting northbound access to Oakland Road parking lot: The discussion of alternatives in the DEIR (p. 192, DEIR) suggests that some of the proposed alternatives will limit access to the school’s Oakland Road parking lot. This in turn suggests that access to business east of Oakland would be similarly impacted. The traffic analysis needs to include a trip diversion analysis resulting from these potential impacts especially for trucks with wide turn radii.

Response BB.134: The comment is using a specific issue identified in the alternatives analysis to establish a generalized global issue. The referenced “limited access to the Oakland Road” parking lot is in regard to projected vehicular queuing from the left-turn movement at the Oakland Road/Charcot Avenue intersection. The projected queuing analysis indicates that vehicles could extend back and block access to the Orchard School driveway on Oakland Road. Therefore, the project alternative that would create the queuing issue is not recommended. Thus, the comment provides no relevant information in regard to the proposed project impacts.

Comment BB.135: Is the city working with businesses in the area to offer staggered working hours to their employees, metering of Montague expressway or congestion pricing in order to reduce peak hour demand considering the physical limitations of the use of public streets?⁶¹

Response BB.135: This comment is unrelated to the proposed project or any existing issues at Orchard School associated with access.

Comment BB.136: Effect on school drop-off Silk Wood Lane: “With the Charcot Avenue Extension in place, it would no longer be possible for cars to illegally stop/park along the south side of Silk Wood Lane to drop-off, pick-up, or wait for students.” (p. 166) This statement requires further explanation. Why would it “no longer be possible”? It seems that it would continue to be illegal, but that doesn’t make it impossible.

Response BB.136: With the project in place, any driver stopping to discharge a student would be doing so in the middle of an active traffic lane. Although not impossible, such an action would certainly be unsafe and illegal.

Comment BB.137: Silk Wood Lane Traffic Diversion: It is possible that parents will continue to use the residential neighborhood on Silk Wood Lane as drop-off location for students. Since left turns on Charcot are restricted, these parents would make U-turns on Silk Wood Lane to go back to Rock Ave. This impact on the neighborhood needs to be considered. Traffic analysis tables 8/9/10 do not reflect the use of Silk Wood Lane as a new drop off location.

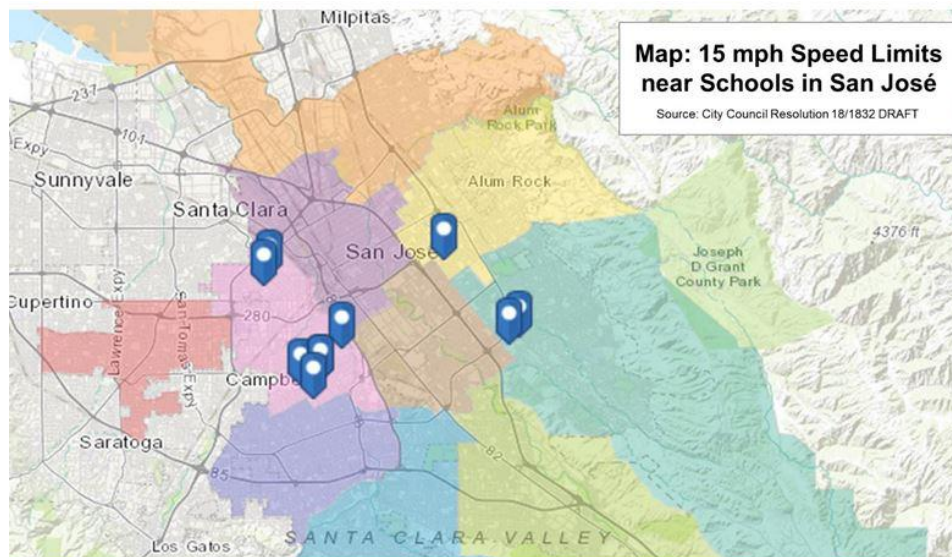
⁶¹ See e.g. <https://www.economist.com/leaders/2018/08/25/the-right-way-to-handle-congestion>

Response BB.137: The comment identifies a potential neighborhood traffic intrusion issue that would be created by inadequate school drop-off/pick-up facilities or procedures for Orchard School. The school should work with the City to identify remedies to minimize the use of the Silkwood neighborhood for school drop-off/pick-up. The project is not responsible for mitigating existing or potential issues created by use of Silk Wood Lane as a non-designated school drop-off/pick-up location.

Comment BB.138: Orchard School parking lots: “Orchard School is currently served by three driveways along Fox Lane that provide access to two onsite parking lots” (p. 146) Only two driveways provide access to parking lots. One driveway is an exit-only driveway.

Response BB.138: Access includes both ingress and egress. Therefore, three is the correct number.

Comment BB.139: 15 mph speed limit near Orchard school: Similar to other schools in San José (see map) or around the state, the City should consider a 15mph speed limit on all roads adjacent to Orchard school.



Response BB.139: In 2011, the City implemented a 15 MPH zones pilot program in several school locations around the City. At these locations traffic data were collected after speed radar signs were activated. The data were collected at each of the participating schools at various times during the 15 MPH pilot. The data collected were during the school drop-off and pick-up periods. The results showed that while the 15 MPH pilot was implemented there was not a significant change in the speed, meaning that vehicles were going at 25 MPH when the pilot 15 MPH was on going. Reducing the speed limit on a residential street from 25 MPH to 15 MPH does not make any significant impact on the speed at the particular segment being evaluated, data shows.

Based on the results from the 15 MPH school zone speed limit pilot program, the City is no longer installing 15 MPH zones in the City of San José. DOT Traffic Safety

recommends installing 25 MPH speed limit and the state mandated signage for school zone for the school in this project.

Comment BB.140: Closing the Charcot Overpass for school drop-off and pick-up times: Similar to approaches piloted in European cities⁶² the city should consider blocking the Charcot Overpass for through traffic during school drop-off and pick-up times.

Response BB.140: The commenter provides no basis to support a conclusion that traffic on Charcot Avenue would create unsafe conditions during school drop-off/pick-up times, such conditions warranting the closure of the roadway. In fact, the project includes features that will promote safe access to/from the school; see DEIR Sections 2.3.2 and 2.3.3 for details.

Comment BB.141: Intersection analysis: According to the SJ TIA (p. 39): “Study Intersections: If a project is expected to add 10 vehicle-trips per hour per lane to a signalized intersection that meets any of the following conditions, the intersection is included in the intersection operations analysis:

- Within a ½-mile buffer from the project’s property line;
- Outside a ½-mile buffer but within a one-mile buffer from the project AND currently operating at D or worse;
- Designated Congestion Management Program (CMP) facility outside of the City’s Infill Opportunity Zones (defined in Section 4.9);”

Based on these criteria the analysis should also include at least the following intersections: 1) Oakland Road and Rock Ave; 2) Oakland Road and Fox Lane; 3) Oakland Road and McKay; 4) Oakland Road and Brokaw; 5) Oakland Road and Montague, 6) McKay and Ringwood; 7) Brokaw and 880; 8) Trimble and Montague; 9) Lundy and Murphy; and 10) Junction and Charcot.

Given the significant increase in traffic volume between 2025 and 2040, a queueing and LOS analysis for 2040 conditions is required in addition to the analysis under 2025 conditions. The analysis already seems to indicate that PM peak queueing from Charcot/Paragon would go back into Charcot/Junction intersection; queueing from Charcot/O’Toole would block access to the overpass; queueing from Charcot/Oakland would reach back through the pedestrian crosswalk.

The 2015 consultant agreement with BKF (right) also includes a number of additional intersections for which data should be provided. This data should be disclosed in the DEIR.

⁶² <https://usa.streetsblog.org/2018/11/27/the-european-answer-to-school-drop-off-chaos/>

1	Zanker Road and Trimble Road
2	Cadence Place and Montague Expressway
3	McCarthy Boulevard and Montague Expressway
4	Oakland Road/Main Street and Montague Expressway
5	Zanker Road and Charcot Avenue
6	Junction Avenue and Charcot Avenue
7	Oakland Road and Silk Wood Lane
8	Zanker Road and Brokaw Road
9	Junction Avenue and Brokaw Road
10	O'Toole Avenue and Brokaw Road
11	I-880 NB Off Ramp and Brokaw Road
12	Oakland Road and Brokaw Road
13	Paragon Drive and Charcot Avenue
14	Junction Avenue and Trimble Road
15	1st Street and Charcot Avenue
16	Oakland Road and Fox Lane
17	O'Toole Avenue and Paragon Drive
18	O'Toole Avenue and Charcot Avenue

Response BB.141: The City of San José *Transportation Handbook* April 2018, provides specific analyses guidelines for the evaluation of “transportation projects.” The referenced guidelines for the selection of study intersections is applicable to only **development** projects and are not applicable to “transportation projects.”

Subsequent to the 2015 agreement, the City adopted their new Transportation Policy (Council Policy 5-1, March 2018) which incorporated the use of VMT metrics for the evaluation of transportation impacts. Therefore, the need for the evaluation of peak hour intersection level of service was deemed unnecessary by City staff and the list of selected intersections was reduced to provide an evaluation of intersection operations for the purpose of aiding in the project design.

Comment BB.142: Intersection Analysis 2025: “An intersection level of service (LOS) analysis was undertaken for the weekday AM and PM peak hours at five study intersections located in the immediate project area. LOS was calculated for both existing and year 2025 conditions with the project in place.” (p. 153). Queueing and LOS analysis for 2040 conditions is required in addition to the analysis under 2025 conditions, given that: a) 2025 is likely to be within one or two years of opening of the extension and therefore not a medium-term analysis; and b) the data for the 2025 is not generated independently but only a extrapolation of the 2040 model data anyway.

Response BB.142: The commenter is referred to page 18 of Appendix K which states.... *the determination of project impacts per CEQA requirements are based solely on VMT analysis.* The referenced operations analysis is provided for informational purposes and is not presented for the purpose of determining project impacts.

The operations analysis provides an evaluation of five-year projection of traffic demand for the purpose of design. The evaluation of 20-year traffic demand projections is speculative and the design of roadway facilities to accommodate such demand may result in over design of roadways. In addition, the evaluation of Year 2040 conditions would be of little value since there is no support to provide additional vehicular capacity as part of the proposed project by the City or other stakeholders. Thus, this comment provides no substantive information in regard to the project’s effect on traffic impacts per CEQA requirements.

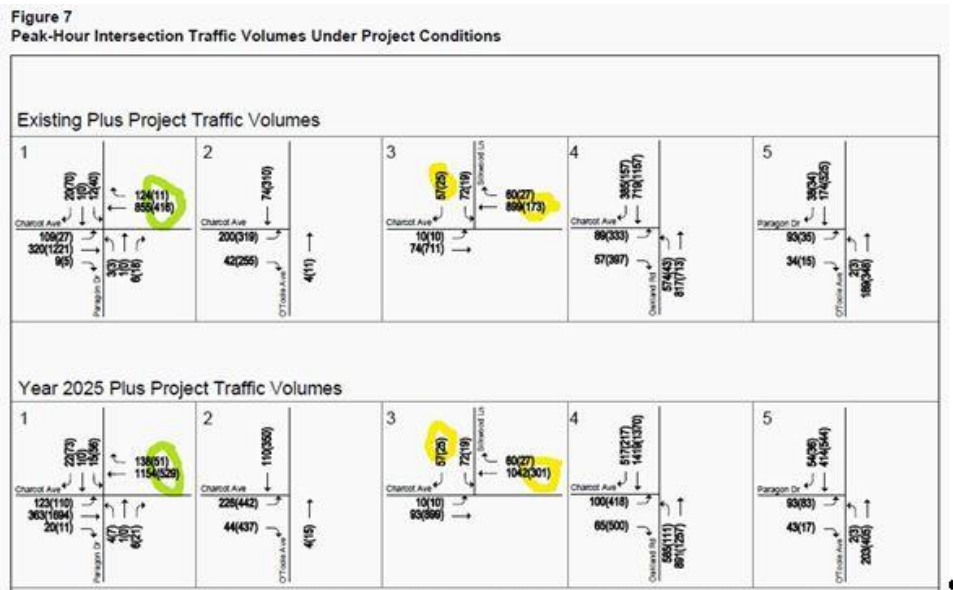
Comment BB.143: Alternative Lane Configurations at Oakland Road: The analysis does not describe Alternative H as a studied alternative lane configuration (p. 29). Alternative H needs to be included. The intersection analysis should also include data for Alternative E.

Response BB.143: Alternative H is the combination of the two lane eliminations listed on page 29 of Appendix K. For traffic lanes, Alternative E is the same as the existing configuration.

Comment BB.144: Description of Oakland/Silk Wood intersection: “The existing unsignalized intersection of Silkwood Lane and Oakland Road will be replaced by a new signalized intersection. The proposed lane configurations at the intersection consist of one left-turn and one shared left-right turn lane on Charcot Avenue and two northbound left-turn lanes and six through lanes on Oakland Road” (p. 5) The description of this intersection omits bike lanes on Charcot and Oakland as well as new crosswalks at the intersection.

Response BB.144: The citation from page 5 of Appendix K is intended to summarize the proposed traffic lanes. The fact that bike lanes and crosswalks are not mentioned in this citation is not a deficiency.

Comment BB.145: Figure 7 of Appendix K – Peak-Hour Intersection Traffic Volumes Under Project Conditions: Since there is no driveway or intersection for vehicle traveling west on Charcot between Silk Wood Lane east of I-880 and Paragon Drive west of I-880, the number of vehicles going up the overpass (Intersection 3, marked in yellow in the graphic below) should be identical to the number of vehicles coming down the overpass (Intersection 1, marked in green). Yet this is not the case. Following the flow of traffic along other intersection also produces inconsistent data.



PM Peak hours existing conditions¶

Cars going on the overpass (Fig. 3)¶		Cars coming down the overpass (Fig. 1)¶	
Going straight on Charcot Ave¶	173¶	Going straight on Charcot Ave¶	416¶
Turn right from Silk Wood Lane¶	25¶	Turn right into Paragon Dr¶	11¶
Total¶	198¶	Total¶	427¶

PM Peak hours 2025 conditions¶

Cars going on the overpass (Fig. 3)¶		Cars coming down the overpass (Fig. 1)¶	
Going straight on Charcot Ave¶	301¶	Going straight on Charcot Ave¶	529¶
Turn right from Silk Wood Lane¶	25¶	Turn right into Paragon Dr¶	51¶
Total¶	326¶	Total¶	580¶

The traffic analysis suggests therefore that the overpass will make cars appear out of nowhere just above 880. Could you please provide more information how this is achieved?

Response BB.145: The comment is correct in regard to the differences in traffic volumes at intersections along the referenced roadway segment. However, the differences in volumes between intersections have no effect on the traffic analysis since the intersection analysis is intended to provide an operational analysis of individual intersections for the purpose of intersection lane configuration and control requirements. Thus, there is no need for the volumes between intersections to exactly match.

Comment BB.146: Response 48.1 of Appendix B – Oakland vs. Paragon: “The Charcot Avenue extension will be a 2-lane facility except at its intersection with Oakland Road. The four lanes on Charcot Avenue at Oakland Road are needed to accommodate the demand associated with turns at this intersection. Oakland Road receives more cars than smaller streets toward the west end of Charcot simply because Oakland Road is a large 6-lane arterial. By definition, larger streets accommodate more traffic and therefore they “attract” more cars, as compared to smaller streets.”

The response seems to argue that the Oakland side of the project will see more traffic than the Paragon side and therefore needs more turn lanes. Generally though, it can be assumed that number of cars on both sides of a bridge is identical at all times. Response seems illogical. Also, response is inconsistent with the traffic analysis which – similarly illogical – actual shows more vehicles going down towards Paragon Drive than enter on the Oakland side (see comment above).

Response BB.146: The comment is incorrect in its insinuation that Oakland Road and Paragon Drive are similar roadways. Oakland Road is generally a six-lane major arterial in the project area and provides for an extension of 13th Street into Downtown San José and Main Street into the City of Milpitas. Paragon Drive is a 0.5-mile local-collector that provides connections to Charcot Avenue and O’Toole Avenue. The comment seems to incorrectly focus only on traffic volumes along Charcot Avenue to conclude that both the Paragon Drive and Oakland Road intersections would serve similar traffic demands and as such should require similar intersection capacity.

Comment BB.147: Response 13.1 of Appendix B – Four lanes on Oakland needed: “The four lanes on Charcot Avenue at Oakland Road are needed to accommodate the demand associated with turns at

this intersection.” Statement inconsistent with the reports traffic analysis that shows that even with two lanes any vehicle delay would be within acceptable limits.

Response BB.147: The comment references “acceptable limits” in apparently referring to intersection LOS. However, the intersection LOS analysis indicates that intersection operations would degrade from LOS C conditions to LOS D conditions with the suggested two lanes on Charcot Avenue. However, the comment makes no mention of the increase in vehicular queuing along eastbound Charcot Avenue with the removal of the referenced lane.

Comment BB.148: Response 33.4 of Appendix B – Fox vs. Silk Wood: “The Charcot Avenue extension will be a 2-lane facility except at its intersection with Oakland Road. The “extra” lanes on Charcot Avenue at Oakland Road are needed to accommodate the demand associated with turns at this intersection. Note that if Fox Lane were the chosen alignment, the lane requirements at the Fox Lane/Oakland Road intersection would be similar because the traffic demand on Fox Lane would be roughly the same as the traffic demand on Charcot Avenue.” This statement requires further explanation as the current traffic volumes on Fox Lane (ADT: 6,100) and Silk Wood Lane (ADT: 700) are not “roughly the same” but vary greatly. Please quantify “roughly the same”.

Response BB.148: An analysis of future traffic volumes for an alternative alignment on Fox Lane was not completed. However, it is logical to assume that given the surrounding land uses and traffic currently served by Fox Lane that additional intersection could be required at an alternative Fox Lane/Oakland Road intersection.

Comment BB.149: Response 34.6 of Appendix B – Changes Oakland intersection 2025 to 2040: “With the extension in place, the projected number of vehicles that will turn left from Oakland Road to Charcot Avenue in year 2025 will be as follows: 567 vehicles during the AM peak-hour and 260 vehicles in the PM peak-hour. In year 2040, these volumes will be 554 and 568 during the AM and PM peak- hours, respectively.” Given that traffic volumes will generally and significantly increase between 2025 and 2040, a reduction in turn movements from 567 to 554 (AM) requires further explanation and seems inconsistent with the data in the traffic analysis.

Response BB.149: The City is not sure where the referenced volume originated. The northbound left-turn volume at Oakland/Charcot under Year 2025 conditions is projected to be 585 vehicles during the AM peak hour and 111 vehicles during the PM peak hour.

Comment BB.150: Response 34.20 of Appendix B – gaps in traffic flow on Silkwood: “Such turns [right turns from Silk Wood Lane to westbound Charcot] will be accommodated during gaps in traffic flow. The upstream traffic signal at Oakland Road will create those gaps as it cycles through various phases.” (p. 24) DEIR does not include any analysis that supports this statement. It is just as likely that alternating left- and right-turns from Oakland into Charcot will be blocking any access from Silk Wood Lane especially considering the additional delay from the HAWK signal. Traffic gaps on Fox Lane which has a similar configuration are very infrequent at times and can lead to substantial backed up traffic (see picture, delay for right turn shown was 90+ seconds)



Queuing on Ridder Park
at T-intersection with Fox Lane

Response BB.150: Delays on minor street approaches to major streets are expected and acceptable in terms of overall intersection operations. Furthermore, other comments from this commenter raise concerns over the use of Silk Wood Lane as a cut-through route. It could then be argued that delays for right-turning from Silk Wood Lane to westbound Charcot Avenue would discourage the use of Silk Wood Lane as a cut-through route.

Comment BB.151: Response 34.11 of Appendix B – access points for industrial businesses on Oakland Road: “The project will not alter or close any access points for industrial businesses on Oakland Road.” Please provide more detailed explanation on how access from southbound Oakland Road to industrial business on the eastern side Oakland will not be altered by the proposed project or any alternatives. This seems inconsistent with the described limited access to the school’s Oakland Road parking lot because of the project and/or its alternatives.

Response BB.151: All properties that have existing access from Oakland Road will continue to do so if the proposed project is constructed. No driveways will be closed.

Comment BB.152: Signal warrant: Similar to approaches in cities like Seattle⁶³ that measure warrants after an improvement has been made the project should consider a traffic signal at Silk Wood Lane and future Charcot Avenue despite seemingly not meeting current warrants.

Response BB.152: A traffic signal at the referenced location would create several operational issues (primarily queuing) along Charcot Avenue due to inadequate spacing between signalized intersections (the adjacent Oakland/Charcot intersection) as well as sight distance issues due to spacing of the Charcot/I-880 overpass. Furthermore, other comments from this commenter raise concerns over the use of Silk Wood Lane as a cut-through route. A signal at the referenced location would provide for controlled access to Charcot Avenue from Silk Wood Lane and thus encourage the use of Silk Wood Lane as a cut-through route.

⁶³ <https://usa.streetsblog.org/2019/02/05/seattle-tosses-out-the-rulebook-to-protect-pedestrians>

Comment BB.153: Roadway improvements under 2040 conditions: The analysis needs to include a detailed list of roadway improvements made by 2040 in order for the public to assess the validity of the analysis. For example, the map on page 39 “Year 2040 Conditions” does not include the planned Zanker/4th street overcrossing over 101.

Response BB.153: The traffic analysis utilizes the City’s General Plan Travel Demand Forecasting (TDF) Model. The TDF model utilizes the adopted *Envision San José 2040 General Plan* (Year 2040) roadway network. For details on the 2040 roadway network, please see the General Plan Transportation Network Diagram, available at: <https://www.sanjoseca.gov/home/showdocument?id=22573>.

Comment BB.154: Year 2025 Conditions (p. 6): Given the rapid planned development in North San José, it is not clear what changes to the existing land use or transportation network have been considered for the 2025. The analysis needs to clearly state any assumptions made for 2025.

Response BB.154: Please see Response BB.111.

Comment BB.155: Inconsistency with Traffic Analysis for NSJ: The traffic data is also inconsistent with traffic data in the NSJ EIR (e.g. volumes at 880 gateways).

Response BB.155: Please see Response BB.110.

Comment BB.156: Response 34.10 of Appendix B – Schedule for other projects: “There is no schedule or construction staging plans for those projects [Montague-Trimble-Flyover, Montague-McCarthy grade separation, Brokaw widening], so it would be speculative to try to estimate how much traffic – if any – would chose to use Charcot during their construction.” Given the collective professional experience at the City’s Department of Transportation and the sophistication of the Traffic Demand Model used for example for this EIR, it is surprising that no professional estimate ranges can be given.

Response BB.156: The timing of transportation improvement projects that are not funded, or where funding sources have not been identified, is highly speculative. Any estimate would be a guess and, for the purposes of timing construction traffic, would not be beneficial. CEQA specifically states that analyses should not be based on speculation.

Comment BB.157: Plan Bay Area 2040, Congestion Management Program Document, Valley Transportation Plan: Inclusion in the Plan Bay Area 2040, Congestion Management Program Document, or Valley Transportation Plan (p. 149) was done without a project-level analysis of project-specific impacts. There is no documentation that any of these plans would be significantly affected should the project be built or not.

Response BB.157: These are program-level planning documents that set forth the “big picture” in terms of the existing and anticipated regional transportation network. Project-level analysis typically follows the program-level analysis. The degree to

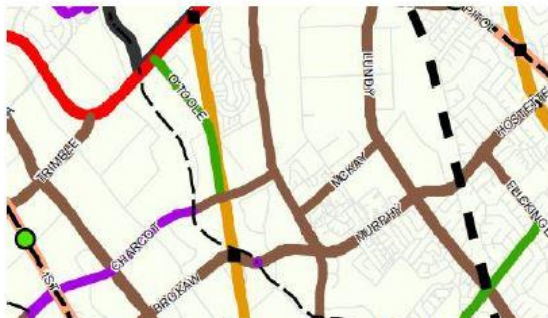
which a regional plan would be affected by deletion of a given project would depend on the size of both the plan and the project.

Comment BB.158: Goal of San José’s transportation system – Bicycle, Transit and Pedestrian Facilities: “San José desires to provide a safe, efficient, fiscally, economically, and environmentally-sensitive transportation system”. (p. 11) The sentence should likely read: “San José desires to provide a safe, efficient, fiscally-, economically-, and environmentally-sensitive transportation system”

Also, this relates to the overall transportation system not only the section about the pedestrian, bicycle and transit facilities that it is placed in. For example, building the Charcot Extension is not fiscally-sensitive.

Response BB.158: The inadvertent omission of a hyphen after the words “fiscally” and “economically” on page 11 of Appendix K is noted. The commenter’s opinion that the proposed project is not fiscally-sensitive is also included in the record.

Comment BB.159: Response 34.2 of Appendix B states “Truck Ban: The City’s ban on select trucks over a certain tonnage is only applicable for residential streets and is not intended for Charcot Avenue.” Statement is inconsistent with San José Municipal Code 11.96.010-10067⁶⁴ which restricts truck traffic on a number of non-residential streets including McKay in close proximity to the project. Also Santa Clara Street next to City Hall seems to be restricted to truck traffic according to the Municipal Code.



General Plan Transportation Diagram



Photo of truck ban sign on McKay Dr

Response BB.159: There is no inconsistency. McKay Street east of Oakland Road is largely bordered by residential uses. There is no truck ban on Santa Clara Street; trucks are restricted only during certain hours.

Comment BB.160: “Charcot will serve as a direct connector to numerous industrial and commercial businesses west of I- 880. As such, a sign prohibiting trucks on this roadway would not be effective, as it would not legally ban local trucks from using it to access area businesses.”

Statement is untrue as only trucks that deliver directly to business on the Charcot Extension would be allowed to use the Extension. As there are no business along the extension, neither between Oakland Road and 880 nor 880 and Paragon Drive (“Between Paragon Drive and O’Toole Avenue, access to

⁶⁴ https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT11VETR_CH11.96LAVERO

adjacent commercial properties from Charcot Avenue would not be provided. Access would be via other existing streets.”), truck traffic could be legally banned next to the school with the few exceptions enumerated in the Municipal Code.

“There are no plans to ban trucks on Charcot Avenue as existing businesses along the Charcot corridor require trucks to support their daily operations.”

Business along Charcot Avenue successfully operate under current condition without the overpass. Banning truck traffic on the overpass would therefore not be an impediment to their operations either. Banning trucks on Charcot Avenue would be important not only from a safety perspective but also from an air pollution perspective:

“Heavy-duty diesels spew out nearly 60 percent of smog-forming oxides of nitrogen (NO_x) emissions and more than 80 percent of fine diesel particulate matter (PM 2.5) emitted in California from all on- road sources. Diesel exhaust contains more than 40 known cancer-causing organic substances and gaseous pollutants, including volatile organic compounds and NO_x, a key ingredient in ground-level ozone, otherwise known as smog.”⁶⁵

Response BB.160: This comment concludes that, since existing businesses along the existing segment of Charcot Avenue successfully receive truck deliveries, there is no need for the project to bring such deliveries. The comment does not acknowledge that existing routes to these businesses may not be as direct as with the Charcot Extension. Also, the statement that banning trucks on Charcot would be important from an air pollution perspective implies that those truck trips would somehow not occur. The opposite is true: the truck trips would still occur, but some trips would inevitably be longer without the connection.

Comment BB.161: Response 34.24 of Appendix B – Construction Plan: “A Construction Management Plan will be developed and implemented to ensure the safety of all persons that will be affected by construction.” Construction activity on Charcot will likely block a major pedestrian access route, yet the impact is not properly assessed.

Response BB.161: Per the City’s standard procedure on the construction of all public works projects, a detailed Construction Management Plan will be prepared that will ensure safe pedestrian access during each phase. Pedestrian access to/from Orchard School will not be blocked.

Comment BB.162: Traffic signals: Figure 14 fails to include the planned traffic light at Paragon Dr/Charcot.

Response BB.162: This omission has been corrected in Section 5, *Draft EIR Text Revisions*.

⁶⁵ <https://www.mercurynews.com/2019/06/25/opinion-california-needs-smog-checks-for-diesel-big-rig-trucks/>

Comment BB.163: Residential cut-through traffic: The DEIR fails to assess if the expected residential cut-through traffic generated by the project should be considered significant under applicable City policies.

- “Neighborhood Streets General Plan policies discourage inter-neighborhood movement of people and goods on neighborhood streets. Streets are to be designed for vehicular, bicycle and pedestrian safety. Neighborhood streets should discourage both through vehicular traffic and unsafe speeds.
- Unacceptable Impacts of Mitigation: For purposes of this Council Policy, an LOS Traffic Improvement has an unacceptable impact if the TIA demonstrates that the improvement would result in a physical reduction in the capacity and/or a substantial deterioration in the quality (aesthetic or otherwise) of any other planned or existing transportation facilities (such as pedestrian, bicycle and transit systems and facilities). The following are examples of the kinds of impacts that would be considered unacceptable: [...] encouraging substantial neighborhood cut-through traffic [...]” (San José Transportation Impact Policy)⁶⁶

Response BB.163: As stated on DEIR page 153, the issue of residential cut-through traffic is part of the non-CEQA LTA. Therefore, no determination of significance is warranted. Nonetheless, the analysis on pages 167-169 provides the reader with information regarding the potential for cut-through traffic to occur, as well as potential traffic calming measures.

Comment BB.164: VTA Congestion Management Program Analysis: Does the project warrant a Congestion Management Program Analysis of the VTA since it generates more than 100 net new peak hour trips?

Response BB.164: As discussed in Section 3.17, the project does not generate new vehicle trips. Therefore, a CMP analysis is not required.

Comment BB.165: Cumulative Impact: As the DEIR mentions multiple times, the Extension is one of several roadway improvements in the North San José Area and in the general plan. Since plan level analysis for both the general plan as well as NSJ project a significant increase in VMT, the project’s impact take together with the other developments and roadway project should be considered significant.

Response BB.165: For the reasons described on page 152 of the DEIR, the cumulative transportation impacts of the project would be less than significant. This comment does not provide any facts or analysis that would warrant a different conclusion.

Comment BB.166: Conclusion: Based on comments provided above the conclusion of the traffic analysis needs to be updated to incorporate the necessary changes.

⁶⁶ <http://www.sanjoseca.gov/DocumentCenter/View/3870>

Response BB.166: Responses to each of the preceding comments are provided, above. For the reasons enumerated in the individual responses, none of the comments resulted in any substantive changes to the traffic analysis and all of its conclusions remain as described in the DEIR.

Comment BB.167: Transport of Hazardous Materials: Although all public roadways might be constructed in adherence to design standards and regulation, the City of San José nevertheless reserves the right to restrict commercial traffic which might or might not carry hazardous materials on many of its roadways (Municipal Code 11.96.010-100) for various reasons.

The California Department of Education states that “experience and practice indicate that distances of at least 2,500 feet [to schools] are advisable when explosives are carried and at least 1,500 feet when gasoline, diesel, propane, chlorine, oxygen, pesticides, and other combustible or poisonous gases are transported.”⁶⁷

Given the nature of the businesses west of 880 (e.g. KinderMorgan Oil Terminal, Univar) it is very likely that trucks accessing the area will carry hazardous materials close to classrooms, playgrounds and residential buildings.

The City also needs to adhere to California Public Resources Code 21151.4.



Response BB.167: Please see Response R.51.

Comment BB.168: MM HAZ-2.1: Site Management and Removal Plan: Given the proximity of the site to sensitive receptors at school and residential area, it is unclear if an adequate mitigation such as a Site Management Plan or Removal Action Plan can be developed. It is currently not evaluated if mitigation is possible, this is therefore a significant, unavoidable impact.

⁶⁷ School Site Selection and Approval Guide Prepared by School Facilities Planning Division California Department of Education

Response BB.168: MM HAZ-2.1 prescribes the process to be followed if agricultural pesticides or lead are determined to be present in the soil within the roadway footprint at concentrations above regulatory thresholds. This is a standard mitigation measure for many of the projects located in the Santa Clara Valley because most of the land was historically used for farming. In almost all cases the remediation consists of removing the soil or covering it, whichever is mandated by the SCCDEH or DTSC.

Comment BB.169: Emissions of Hazardous Materials Within One-Quarter Mile of School: As described in chapter 3.9.2.2 of the DEIR, construction work might release hazardous materials other than air pollutant emissions. The impact of this on the school has not been evaluated and poses significant, unavoidable impact.

Response BB.169: The impact being described in DEIR Section 3.9.2.2 pertains to the fact that construction workers or future site users *could* be exposed to harmful chemicals in the soil *if* they are present and *if* they are not remediated prior to the start of construction. However, such exposure will not occur because the project will implement MM HAZ-2.1 *before* any demolition, grading, or excavation for the project begins (emphasis added). As stated in the previous response, MM HAZ-2.1 is standard procedure on numerous projects.

Comment BB.170: Interference with Emergency Plans: The DEIR fails to analyze the impact of the project on emergency plans at the school including for example the capacity of the proposed gate to function as an emergency exit and if there is sufficient assembly room outside of the school.

Response BB.170: The capacity of the gate at the northerly edge of the school property will not be less than the capacity of the existing gate. If the project is approved, more than five acres of open space/recreational facilities would remain at Orchard School. Such acreage could easily accommodate the entire school body and faculty for an outdoor assembly.

Comment BB.171: Increase in hazards due to design features or incompatible uses: “The proposed Charcot Avenue Extension has been designed to comply with current highway design standards” (p. 152) The Project needs to comply with the City’s street design guidelines. Its compliance with these guidelines needs to be analyzed and presented.

Response BB.171: Pursuant to City policy, the project design will comply current design standards, safety criteria, and the Complete Streets Policy.

Comment BB.172: Response 34.2 in Appendix B – Truck ban: “Truck Ban: The City’s ban on select trucks over a certain tonnage is only applicable for residential streets and is not intended for Charcot Avenue.” Statement is inconsistent with San José Municipal Code 11.96.010-100⁶⁸ which restricts truck traffic on a number of non-residential streets including McKay in close proximity to the project. Also Santa Clara Street next to City Hall seems to be restricted to truck traffic according to the Municipal Code.

⁶⁸ https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT11VETR_CH11.96LAVERO



General Plan Transportation Diagram



Photo of truck ban sign on McKay Dr

Response BB.172: There is no inconsistency. McKay Street east of Oakland Road is largely bordered by residential uses. There is no truck ban on Santa Clara Street; trucks are restricted only during certain hours.

Comment BB.173: “Charcot will serve as a direct connector to numerous industrial and commercial businesses west of I- 880. As such, a sign prohibiting trucks on this roadway would not be effective, as it would not legally ban local trucks from using it to access area businesses.”

Statement is untrue as only trucks that deliver directly to business on the Charcot Extension would be allowed to use the Extension. As there are no business along the extension, neither between Oakland Road and 880 nor 880 and Paragon Drive (“Between Paragon Drive and O’Toole Avenue, access to adjacent commercial properties from Charcot Avenue would not be provided. Access would be via other existing streets.”), truck traffic would be legally banned next to the school with the few exceptions enumerated in the Municipal Code.

“There are no plans to ban trucks on Charcot Avenue as existing businesses along the Charcot corridor require trucks to support their daily operations.” Business along Charcot Avenue successfully operate under current condition without the overpass. Banning truck traffic on the overpass would therefore not be an impediment to their operations either. Banning trucks on Charcot Avenue would be important not only from a safety perspective but also from an air pollution perspective:

“Heavy-duty diesels spew out nearly 60 percent of smog-forming oxides of nitrogen (NO_x) emissions and more than 80 percent of fine diesel particulate matter (PM 2.5) emitted in California from all on- road sources. Diesel exhaust contains more than 40 known cancer-causing organic substances and gaseous pollutants, including volatile organic compounds and NO_x, a key ingredient in ground-level ozone, otherwise known as smog.”⁶⁹

Response BB.173: This comment concludes that, since existing businesses along the existing segment of Charcot Avenue successfully receive truck deliveries, there is no need for the project to bring such deliveries. The comment does not acknowledge that existing routes to these businesses may not be as direct as with the Charcot Extension.

⁶⁹ <https://www.mercurynews.com/2019/06/25/opinion-california-needs-smog-checks-for-diesel-big-rig-trucks/>

Also, the statement that banning trucks on Charcot would be important from an air pollution perspective implies that those truck trips would somehow not occur. The opposite is true: the truck trips would still occur, but some trips would inevitably be longer without the connection.

Comment BB.174: Visual Analysis (Appendix D): The analysis is marked “Draft” throughout the document. Visualizations used in the analysis differ significantly from the ones used in the presentation at the community meeting. The report misses key elements in the visualization (e.g. HAWK signal – see below). It seems that similar to the appendices for air quality and noise that the City published an outdated version of the appendix. Therefore, the DEIR needs to be recirculated.



Top: Visualization in the DEIR; Bottom: Visualization used at community meeting



Response BB.174: Although the word “draft” is on each page, the version of the Visual Impact Assessment that is Appendix D of the DEIR is current. The photosimulation shown in the DEIR (Figure 3.1-4) inadvertently omitted the HAWK signal. This has been corrected in Section 5, *Draft EIR Text Revisions*.

Comment BB.175: Methodology used for visual assessment: The “Visual Impact Assessment for Highway Projects published by the Federal Highway Administration (FHWA) in March 1981” method (p. 1) is not an appropriate method to determine visual impacts of a City multi-modal street project or to assess the aesthetics of a school playground or the impact of 6+ feet high sound walls on a first grader. The guidelines are also 38 years old. The use of other guidelines should be considered and explained why the guidelines chosen are the most appropriate.

Response BB.175: The FHWA guidance referenced in this comment is still used for all types of highway projects. Its methodologies focus on “viewer responses” to changes in the visual/aesthetic environment due to a proposed highway improvement project, regardless of its size.

Comment BB.176: Key Viewpoints: The EIR also needs to consider the following Key Viewpoints (in reference to map on p. 6).

- People (drivers, bicyclists, pedestrians) entering the Charcot Extension from Oakland Road

- Students on the school’s playfield (at children’s eyelevel)
- Residents/pedestrians on the remaining part (north-south direction) of Silk Wood Lane

Response BB.176: Photosimulations are tools used in some visual studies to provide “snapshots” of how a project would appear from key viewpoints. The key viewpoints are typically those that would be seen by the greatest number of people but by no means are they intended to represent views from every location where the project would be viewed. The three additional viewpoints requested in this comment would not add any substantive information to the visual assessment. The first viewpoint would be similar to Figure 3.1-4 but from the opposite direction. The other two viewpoints would primarily depict the proposed soundwall. None of these additional viewpoints would change the conclusion stated in the DEIR.

Comment BB.177: Super Micro Segment: “No motorists and few or no sensitive viewer groups are present to be affected” (p. 10) Can you please explain how no motorists can be present in this roadway segment? Are there few or no viewer groups present? Are there no bicyclists or pedestrians that would be considered sensitive viewer groups?

Response BB.177: This sentence is describing the existing condition. The roadway doesn’t exist at this location and therefore there are no motorists.

Comment BB.178: Mitigation Measures: The full analysis recommends a number of mitigation measures in addition to MM AES-3.1 and MM AES 3.2. The report needs to discuss why those have not been incorporated.

Response BB.178: The Standard Conditions listed on page 24 of the DEIR will also be implemented by the project.

Comment BB.179: Sun glare” Will the rising sun impact visibility of the crosswalk for drivers going eastbound in the morning?

Response BB.179: The question of whether the sun will impact the visibility of a given driver in the future cannot be answered.

Comment BB.180: Visual impact of construction: In addition to the impact of the built project, the aesthetic impact of the construction of the project needs to be considered.

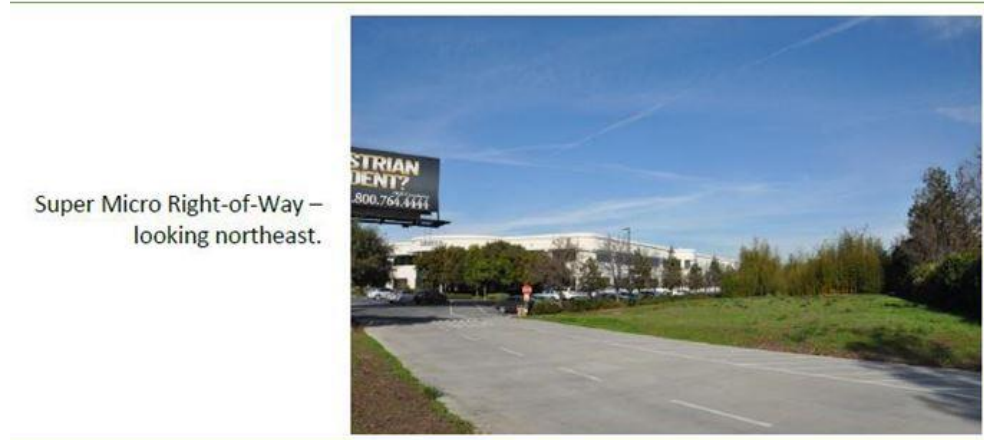
Response BB.180: Aesthetic impacts during construction would be short-term. Viewers would see grading, construction equipment, and phased construction of walls, the roadway, and recreational equipment. As stated previously, construction will be limited to the summer when school is not in session.

Comment BB.181: Impact on Motorists - Charcot Avenue: “In the westernmost Charcot Avenue segment, motorist viewer numbers are low.” (p. 10) Statement seems inconsistent with data from traffic analysis which expects a high number of motorists in this segment. “Exposure to this very short length of the project (less than one block) is brief and fleeting” (p. 10) Statement potentially

incorrect. Given potentially congestion on this roadway exposure might be less than brief and fleeting.

Response BB.181: The text on page 10 of Appendix D is correct because it is referring to existing/baseline conditions where traffic volumes are relatively low.

Comment BB.182: Super Micro:



Appendix D, p. 8

“In the Super Micro segment, there are no current motorists and thus no affected baseline viewers.” (Appendix D, p. 11) As described earlier in the analysis “Super Micro Campus. In the segment immediately east of the freeway, the proposed right-of-way occupies an approximately 100-foot-wide corridor between office park buildings (Super Micro Inc.), including a 360-foot-long paved truck loading area.” (Appendix D, p. 5) Parking and a truck loading dock indicate that motorists are present in this area. Also the pictures on page 8 show a road on the Super Micro Campus with a stop sign. Another indication for the presence of motorists in the area.

Response BB.182: The “road” pictured on page 8 of Appendix D is part of the onsite circulation on the Supermicro campus that crosses the Charcot Avenue alignment perpendicularly. As can be seen on aerial photos, there is presently no public roadway on the Supermicro campus.

Comment BB.183: Visual impact I-880 Segment: “The principal affected viewers of this portion of the project would be freeway motorists on I-880.” (p. 18) It is much more likely that the principal affected viewers of this portion would be people travelling on the Extension (motorist, bicyclists, pedestrian).

Response BB.183: The text on page 18 is referring to the view of the Charcot Avenue bridge over I-880, which will be clearly visible to the thousands of motorists who utilize I-880 each day. See the photosimulation on page 29 of the DEIR.

Comment BB.184: Visual impact O’Toole Avenue: “Effects on motorists on O’Toole Avenue would be essentially similar to those of freeway motorists.” Statement not adequately supported by analysis as motorists on slower moving O’Toole Avenue (85th percentile speed: 24mph for section south of Charcot, Appendix K, p. 33) have not been considered in the prior segments of the analysis.

Response BB.184: Motorists on O’Toole will see the same bridge as those on I-880. The fact that speeds would be different on O’Toole than on I-880 would not affect the view. In both cases, the visual/aesthetic impact would not be significant at this location.

Comment BB.185: Silk Wood Lane Motorist: “In the Silk Wood Lane segment, motorists are currently few, limited mainly to residents on this portion of Silk Wood Lane.” (p.11). Statement is inaccurate. A high portion of motorists on Silk Wood Lane are parents at Orchard School their level of concern with the visual quality of the school is very high. The description also neglects that with the project the number of motorists would be high. “Overall, viewer response of motorists on Silk Wood Lane is thus considered to be moderate.” Based on explanations above, this assessment is not supported by facts.

Response BB.185: Although existing volumes are low, the DEIR does not discount the visual/aesthetic effect of the project along Silk Wood Lane. The DEIR concludes that visual/aesthetic impacts would be significant for the reasons described on page 26.

Comment BB.186: Impact on office workers: “Three adjoining service buildings of Orchard School are completely screened by existing dense tree planting and have no views facing the right-of-way. Overall viewer response in this segment is thus low. (Appendix D, p. 11)



Statement not true. Buildings (shown in the picture above) are not utility buildings but classrooms. Tree planting is not dense. Right of way visible from inside the classroom buildings. Students in these buildings are not office workers as indicated by the heading of this paragraph.

Response BB.186: The tree survey prepared for the project (See Figure 3.1-1 and Appendix G of the DEIR) indicates that there is a row of approximately 15 trees between these buildings and the Charcot Avenue alignment. According to the opinion of the landscape architect who prepared the Visual Impact Assessment (DEIR Appendix D), these trees provide dense screening. The photo provided by the commenter does not show this row of trees from the angle at which it was taken. Further, there are no windows on the side of the building facing the project alignment. Therefore, no change to the text is warranted.

Comment BB.187: Impact on bicyclists and pedestrians: The visual impact of the project on bicyclists or pedestrians on Charcot is not adequately assessed.

Response BB.187: Whether the user of Charcot Avenue is on foot, on a bicycle, or in a vehicle, each would see the same visual changes. The description of those changes in the DEIR would apply to all users.

Comment BB.188: Impact on playground users: The analysis fails to adequately incorporate its own finding of “Young children and accompanying adults using the play structures would thus have high exposure and high overall viewer response to the project” (p. 11-12)

Response BB.188: As stated in Response BB.185, the DEIR concludes that the visual impact of the project along Silk Wood Lane, which includes the school frontage, would be significant.

Comment BB.189: Impact on Silk Wood Lane - Impact of glare and light from new traffic signals: The impact of the HAWK signal shining into a residential bedroom on Silk Wood Lane is not identified or assessed. The impact to residents by the new traffic light on Charcot and Oakland is also not assessed.

Response BB.189: Traffic signals and HAWK signals are designed so that their lights are aimed at approaching vehicles. These devices include shields that prevent spillover to adjacent areas.

Comment BB.190: Vividness of Silk Wood Lane: The analysis describes shields that “the trees provide a vivid element”. The analysis neglects to analyze if the school playground and students or afternoon school activities on the school site that are visible from the road also contribute to the vividness of the road.

Response BB.190: The presence of humans at various land uses along a roadway is not considered a “vivid element” that contributes to the visual setting. A vivid element is a stationary feature such as trees, buildings, vistas, etc.

Comment BB.191: Degradation of Existing Visual Character of Silk Wood Lane: There is no evidence to support the statement that the construction of noise barriers will lead to a Less Than Significant Impact. Quite to the contrary the installation of noise barriers is in itself a significant, unavoidable impact.

- “Because of their size and conspicuousness, noise barriers and noise embankments often set their mark on the environment in which they are placed.”⁷⁰

⁷⁰ UC Davis: “Noise Barrier Design: Danish and Some European Examples”, Hans Bendtsen, 2009. Also see: Knauer, H. S., Pedersen, S., Lee, C. S. Y. and Fleming, G. G., FHWA Highway Noise Barrier Design Handbook (Report No. FHWA-EP-00-005), US Department of Transportation, Federal Highway Administration, Washington, DC, February 2000.

- “If these barriers are not designed for each individual location, they are likely to remain dull, contrived visual elements and diminish landscape character and landscape quality.”⁷¹

The noise barriers will also impact passing motorist on Oakland Rd and especially motorist turning into Charcot Avenue from Oakland. The impact has not been evaluated.

Response BB.191: While some view all walls in a negative fashion, others see them in a positive vein because they can block views of elements that aren’t typically seen as amenities. The construction of a “plain” soundwall by itself would not typically be all that is needed to minimize visual/aesthetic impacts. The DEIR points out that, consistent with City policy, soundwalls will be designed to include aesthetic treatments (color, texture, patterns, etc.).

Comment BB.192: Soundwall: The project plans to introduce 6+-foot-tall soundwalls. Given that the road and the school’s playfield are not at grade, is the height of the soundwalls measured from road level or school level? If from road level, does the additional increase in height alter the visual impact especially on small children?

Response BB.192: Soundwalls are not intended to serve as retaining structures. The grades on the two sides shall be approximately level.

Comment BB.193: What is the basis for the statement “With these proposed walls, the impacts to residents and school viewers would be moderate, and the potentially substantial visual impact to the tot lot would be reduced to a moderate or moderately low-level.” Please provide studies that show that sound walls improve the aesthetics of a residential neighborhood and playground and recreational area.

The San José General Plan seems to disagree with this statement as it prefers setbacks and natural boundaries to sound walls. Also see:

- “A major consideration in the design of a noise barrier is its visual impact on the surrounding area. A tall barrier near a one-story, single family, detached residential area can have a negative visual effect.”⁷²
- “Very few of these walls can be considered a visually successful complement to the community. Most of the noise barriers along highways are an intrusion into the environment, blending neither with the highway nor with the surrounding neighborhood for which they were built. [...] When placed in the landscape and viewed as part of the total environment, a barrier such as this seems out of place, visually oppressive, and overly dominant.”⁷³

⁷¹ Technical Report 2017-02 State of the art in managing road traffic noise: noise barriers”, CERD, 2016

⁷² https://www.fhwa.dot.gov/environment/noise/noise_barriers/design_construction/keepdown.pdf

⁷³ https://www.fhwa.dot.gov/environment/noise/noise_barriers/design_construction/visql/visql02.cfm

Response BB.193: As noted in this comment, setbacks and building design are typically preferable to walls as noise reduction measures. Those options are not always feasible, especially when development is already in place as is the case here. In such cases, the General Plan states that soundwalls should utilize aesthetically pleasing designs. The City intends to work with the District and the community in developing such designs.

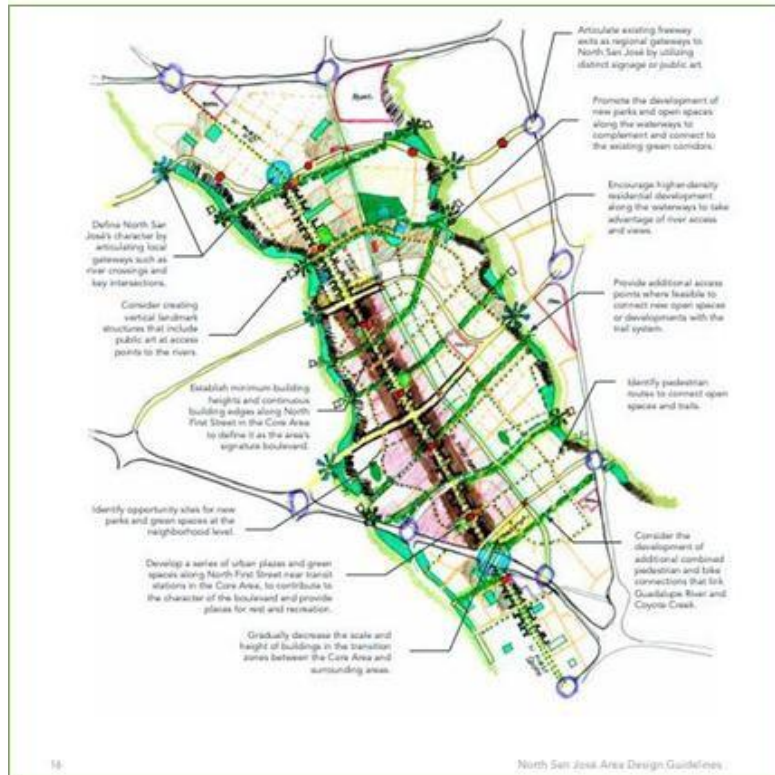
Comment BB.194: Visualizations: The visualizations in the analysis differ from the ones used during the community meeting (see above). Comments below can refer to either of them. The visualization do not accurately depict the visual impact of the project. (see below)

- Missing traffic lights: The visualizations miss pedestrian signals on Silk Wood Lane as well as the full traffic signal on Paragon Drive.
- Trees: The visualizations show trees on the school side of the noise walls. Since the project will require cutting down the existing trees, is this intended to show trees planted as mitigation measures? The visualization from the community meeting also shows trees as part of the sidewalk. How would they impact the usable width of the sidewalk for all users (e.g. in wheelchairs, large strollers)? On the Western side the visualizations shows three large trees in the background (marked with yellow arrows below). Are these existing trees or replacement trees? It seems unlikely that they would be visible from this viewpoint.



Response BB.194: The photosimulations in the DEIR and those used at the community meeting are generally the same except that the latter includes the addition of replacement trees and aesthetic treatment of the soundwall, as well as the HAWK signal. These differences do not impact the conclusion of the DEIR that the visual impacts of the project at this location are significant.

Comment BB.195: Cumulative Impacts: As mentioned in the report “The existing and new bicycle facilities associated with this Project would also provide a connection opportunity to the planned pedestrian/bicycle trail along Coyote Creek, which crosses under Charcot Avenue just west of Paragon Drive.” (p. 10). The cumulative impact of the Charcot Extension Project and the planned trail access to Coyote Creek needs to be considered. The report also mentions “Charcot Avenue is identified as a Parkway between U.S. 101 and Coyote Creek immediately west of the project corridor in the NSJDG.” (Appendix D, p. 13). The implementation of this designation will also lead to aesthetic changes that need to be considered as cumulative impact.



Response BB.195: A trail along Coyote Creek has not been designed so its visual impacts are not known. However, based on trails along other creek corridors, visual impacts would likely be minimal as trails are designed to avoid the removal of riparian vegetation. Further, the trail would likely not be visible to a motorist on Charcot Avenue and a trail user would not see the aesthetic changes along Charcot Avenue.

The “parkway” designation leads to aesthetic enhancements. There are no plans to widen Charcot Avenue west of Coyote Creek and, therefore, future adverse impacts such as tree removal are not anticipated.

Comment BB.196: Air Quality - Existing conditions: All air quality assessments used in the DEIR are based on theoretical models, not actual measurements on site. Sporadic actual measurement on site (see Attachment E – “Air Quality Measurements taken at school site”) have shown higher exposure rates than what the theoretical models seem to show especially for PM2.5. It raises the question, whether cumulative effects of the existing environment and project conditions still meet legal limits.

Similar to the traffic and noise analysis it is necessary to scientifically establish current conditions on site. The DEIR fails to discuss why the methodology used was chosen and its justification. Recent studies have underlined the need for a more granular approach to measuring and evaluating air pollution:

- “EDF’s advanced air-pollution sensors found that NO2 levels within neighborhoods varied by more than 8 times from block to block. Some of the areas with elevated levels were truck routes or abutted businesses that attracted trucks.”⁷⁴

Also see:

- “Indoor and outdoor air quality at Harriet Tubman Middle School and the design of mitigation measures: Phase I report”, Portland State University⁷⁵
- South Coast Air Quality Management District (SCAQMD) “Air Quality Issues in School Site Selection Guidance Document”⁷⁶

Response BB.196: The commenter's Attachment E appears to be air quality measurements taken at the school site. The commenter does not explain the methodology used to take these measurements nor how they were obtained. As stated previously in Response BB.46, the data presented in Attachment E appears to be real-time ambient air quality concentrations. These measurements are not equivalent to the concentrations computed in the DEIR air quality analysis. The air quality analysis follows the methodology recommended in the BAAQMD CEQA Air Quality Guidelines to evaluate the incremental increase in pollutants and health risk caused by the project. The DEIR relies on models for two primary reasons: (1) it is not possible to measure the contribution from the project and (2) the levels that the project could contribute and cause significant impacts are below the accuracy and precision that current measurement methodologies could provide.

Comment BB.197: Sensitive receptors: “Some groups of people are more affected by air pollution than others. The State has identified the following people who are most likely to be affected by air pollution: children under 16, [...] These groups are classified as sensitive receptors. Locations that may contain a high concentration of these sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, and elementary schools.” (DEIR, p. 36)

Air pollution near schools has for example been linked to a significant increase in pediatric asthma as well as psychological issues:

- “For example, the insights EDF gathered from hyperlocal monitoring proved critical to understanding pollution in West Oakland, CA. Sandwiched between two highways and a major container port, this neighborhood’s rate of emergency room visits due to asthma is more than double the state average. Almost 25 percent of the student body in the West Oakland Middle School has asthma or other breathing problems.”⁷⁷

⁷⁴ “Traffic pollution causes 1 in 5 new cases of kids’ asthma in major cities: How data can help”
<http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-new-cases-of-kids-asthma-in-major-cities-how-data-can-help/>

⁷⁵ https://s3.amazonaws.com/arc-wordpress-client-uploads/wweek/wp-content/uploads/2018/07/05143206/Tubman-PSU-HTMSReport_Phase1-Outdoor-Monitoring_Final.pdf

⁷⁶ http://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/school_guidance.pdf

⁷⁷ <http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-new-cases-of-kids-asthma-in-major-cities-how-data-can-help/>

- “A major new study has linked air pollution to increased mental illness in children, even at low levels of pollution. The new research found that relatively small increases in air pollution were associated with a significant increase in treated psychiatric problems. It is the first study to establish the link but is consistent with a growing body of evidence that air pollution can affect mental and cognitive health and that children are particularly vulnerable to poor air quality.”⁷⁸

Also see:

- “Global, national, and urban burdens of pediatric asthma incidence attributable to ambient NO₂ pollution: estimates from global datasets”, Pattanun Achakulwisut, PhD, Prof Michael Brauer, ScD, Perry Hystad, PhD, Susan C Anenberg, PhD, April 2019⁷⁹
- Kim, J. et al. (2004) “Traffic-related air pollution near busy roads: the East Bay Children’s Respiratory Health Study.” American Journal of Respiratory and Critical Care Medicine. 170: 520-526
- Gauderman, J.W., et al (2004) “The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age.” The New England Journal of Medicine. 351, pg. 1057-1067
Wilhelm, Michelle, et al. (2008) “Environmental Public Health Tracking of Childhood Asthma Using California Health Interview Survey, Traffic, and Outdoor Air Pollution Data”. Environmental Health Perspectives. 116. 9. 125-1260
- Heinzerling A et al. (2016) “Respiratory Health Effects of Ultrafine Particles in Children: A Literature Review” Water, Air, and Soil Pollution.

The EIR should discuss whether the studies cited raise the question of impacts from pollution at lower levels than the current regulatory framework.

- “A group of scientist advisers dismissed by the Trump administration has concluded that national limits on fine particles of air pollution aren’t strong enough to protect people. [...]“Based on full consideration of the overall body of scientific evidence, we unequivocally find that the current standards for fine particulate matter do not protect public health and must be revised,” said Chris Frey, a scientist from North Carolina State University who chaired the group. “There is no way for EPA to spin this otherwise.” (“Scientists fired by Trump warn particle pollution standards don’t protect people”, Guardian, October 22, 2019)⁸⁰

Response BB.197: As stated in Response BB.196, the air quality analysis follows the methodology recommended in the BAAQMD CEQA Air Quality Guidelines to evaluate the incremental increase in pollutants and health risk caused by the project. For sensitive receptors, such as school children, the study used community risk thresholds identified in those guidelines that are based on the smallest increase in cancer risk or PM_{2.5} concentrations that BAAQMD would consider significant for

⁷⁸ <http://bmjopen.bmj.com/content/6/6/e010004.full> see also: <https://www.theguardian.com/environment/2016/jun/13/air-pollution-linked-to-increased-mental-illness-in-children>

⁷⁹ [https://www.thelancet.com/journals/lanpla/article/PIIS2542-5196\(19\)30046-4/fulltext](https://www.thelancet.com/journals/lanpla/article/PIIS2542-5196(19)30046-4/fulltext)

⁸⁰ <https://www.theguardian.com/us-news/2019/oct/22/scientists-warn-fine-particle-pollution-standards-don't-protect-people>

sensitive receptors. The evaluation of impacts to sensitive receptors also include cumulative thresholds. Following the BAAQMD CEQA Air Quality Guidelines, the influence of sources within 1,000 feet of the project were included in this analysis and the results were added to the project impacts.

See also Response A.2, which includes a summary of a supplemental air quality analysis undertaken in March 2020 in response to comments received from BAAQMD.

Comment BB.198: Residential receptor at 1942/1954 Oakland Rd: The analysis fails to discuss impact on residential receptors at 1942/1954 Oakland Rd.

Response BB.198: Receptors were placed at both addresses in the supplemental air quality analysis, attached as Appendix A of this First Amendment to the Draft EIR. However, the addition of these residential receptors would not change the location of the residential maximumly exposed individual (or MEI) identified in the DEIR air quality analysis. In other words, those residences would not experience that maximum impacts from the project that were used to judge the significance of the impact.

Comment BB.199: BAAQMD CARE community: The analysis fails to acknowledge that the project area is identified as a CARE community by BAAQMD.

- “In many cases, air quality conditions in impacted communities result in part from land use and transportation decisions made over many years. BAAQMD believes comprehensive, communitywide strategies will achieve the greatest reductions in emissions of and exposure to TAC and PM2.5. BAAQMD strongly recommends that within these impacted areas local jurisdictions develop and adopt Community Risk Reduction Plans, described in Section 5.4. The goal of the Community Risk Reduction Plan is to encourage local jurisdictions to take a proactive approach to reduce the overall exposure to TAC and PM2.5 emissions and concentrations from new and existing sources. Local plans may also be developed in other areas to address air quality impacts related to land use decisions and ensure sufficient health protection in the community.”⁸¹

And that the BAAQMD recommends to:

- “Consider alternatives such as increasing public transit or improving bicycle or pedestrian travel routes before funding transportation improvements that increase VMT.”⁸²

Response BB.199: The project site is within an identified BAAQMD CARE community. However, a Community Risk Reduction Plan has not been developed for San José or the project area. The thresholds recommended in the BAAQMD CEQA Guidelines for air quality risks and hazards from new sources are "Compliance with

⁸¹ http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en

⁸² http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en

Qualified Community Risk Reduction Plan... OR... Increased cancer risk of >10.0 in a million... Increased non-cancer risk of > 1.0 Hazard Index (Chronic or Acute)... Ambient PM2.5 increase: > 0.3 µg/m³ annual average... Zone of Influence: 1,000-foot radius from property line of source or receptor." These were applied to the project. Similar thresholds are recommended as a cumulative threshold, with higher values: "Compliance with Qualified Community Risk Reduction Plan... OR... Increased cancer risk of >100.0 in a million... Increased non-cancer risk of > 10.0 Hazard Index (Chronic or Acute)... Ambient PM2.5 increase: > 0.8 µg/m³ annual average... Zone of Influence: 1,000-foot radius from property line of source or receptor."

Comment BB.200: Bay Area 2005 Ozone Strategy: The report fails to acknowledge that the Bay Area Air Quality Management District (BAAQMD) adopted the Bay Area 2005 Ozone Strategy on January 4, 2006. The Bay Area 2005 Ozone Strategy updates vehicle miles traveled (VMT) and other assumptions in the 2000 Clean Air Plan (CAP) related to the reduction of ozone in the atmosphere and serves as the current CAP for the Bay Area. This is a significant change to the ambient and regulatory requirements regarding air quality that happened since the approval of the 2005 NSJ FPEIR.

Response BB.200: The Revised San Francisco Bay Area Ozone Attainment Plan for the 1-Hour National Ozone Standard is the latest attainment plan approved by the State and CARB to address the National Ambient Air Quality Standards (NAAQS). That control strategy is used to control emissions to meet the newer 8-hour NAAQS. The plan was adopted in 2001. The Bay Area 2005 Ozone Strategy was an update to the 2000 Clean Air Plan. Because the San Francisco Bay Area violates the State one-hour ozone standard, the region is considered a nonattainment area for the State standard. The California Clean Air Act requires regions that do not meet the State ozone standard to prepare plans for attaining the standard and to update these plans every three years. These plans must include estimates of current and future emissions of the pollutants that form ozone and a control strategy that includes "all feasible measures" to reduce these emissions. The plans must also include measures to reduce transport of air pollutants to downwind regions. The first Bay Area plan for the State ozone standard was the 1991 Clean Air Plan. That original plan has been updated regularly since 1994 with the latest update being the 2017 Clean Air Plan. This plan is the basis for demonstrating progress toward attaining the NAAQS for ozone. The plan includes an air basin-wide emissions budget for ozone precursor pollutants that MTC must demonstrate that transportation planning in the Bay Area does not exceed. This plan addresses cumulative emissions, regionwide.

Comment BB.201: General conditions in Bay Area: The EIR fails to acknowledge and include relevant background information for the Bay Area.

- “The San Francisco Bay Area still exceeds federal standards for ozone and fine particulate matter, which are responsible for approximately 2,500 premature deaths each year” (Mayor Sam Liccardo, 29 October 2019)⁸³
- “Santa Clara County experiences many exceedances of the PM2.5 standard each winter. This is due to the high population density, wood smoke, industrial and freeway traffic, and poor wintertime air circulation caused by extensive hills to the east and west that block wind flow into the region.”⁸⁴

San José specifically seems to have made little progress in reducing O3 pollution between 2010 and now.⁸⁵

Response BB.201: Strategies to reduce air pollution levels are complex and rely on reducing emissions while population increases that lead to more pollutant sources and driving. Overall trends in air quality must be evaluated over several years as air pollutant levels are not only dependent on emission levels, but meteorological conditions and severe events such as wildfires. For more discussion on existing air quality and the status of the Bay Area in achieving attainment with applicable standards, please see Section 3.3.1 of the DEIR.

Comment BB.202: California: The EIR fails to acknowledge and include relevant background information for California.⁸⁶

- "California has the worst air quality in the nation. That’s bad news for everyone – but especially bad for hundreds of thousands of Bay Area residents the American Lung Association says are particularly vulnerable to the pollutants we’re spewing into our air. They are our patients, kids and neighbors living with heart or lung disease or asthma. They are those living in impoverished neighborhoods crisscrossed by freeways, or near ports, warehouses and freight hubs where diesel big rigs are commonplace. And when it comes to air pollutants from mobile sources, heavy-duty diesel trucks are a primary culprit."⁸⁷

Increasing frequency and severity of wildfires in California are likely to worsen background conditions further.⁸⁸ Their impact has not been evaluated in the DEIR.⁸⁹

Progress in battling air pollution especially in California has stalled in recent years⁹⁰ and air quality especially fine particle matter is expected to get worse.

⁸³ <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Liccardo%20-%20Testimony.pdf>

⁸⁴ <http://www.baaqmd.gov/in-your-community/santa-clara-county>

⁸⁵ <https://www.thoracic.org/about/newsroom/press-releases/conference/2019/health-of-the-air2.pdf>, p. 76

⁸⁶ For more background on the strategy for achieving California’s 2030 greenhouse gas target see ARB “California’s 2017 Climate Change Scoping Plan”

⁸⁷ <https://www.mercurynews.com/2019/06/25/opinion-california-needs-smog-checks-for-diesel-big-rig-trucks>

⁸⁸ <https://www.sfchronicle.com/bayarea/article/Wildfires-warmer-weather-leave-Bay-Area-air-13790007.php>

⁸⁹ Also see: <https://medicalxpress.com/news/2019-05-reductions-pm-decade-health-ozone.html>

⁹⁰ Trends in Excess Morbidity and Mortality Associated with Air Pollution above American Thoracic Society–Recommended Standards, 2008–2017, <https://healthoftheair.org/uploads/324/27b2db2b11644bfda45fd50f9e7dfc3c.pdf> .

- “More than 90 percent of Californians live in areas impacted by unhealthy air and the transportation sector is by far the leading source. So it should come as no surprise that 32 of California’s 58 counties received an F grade in American Lung Association 2019 State of the Air report for ozone pollution while another 28 counties received an F for particle pollution. Unfortunately, Alameda, Contra Costa and Santa Clara counties earned Fs for both categories of unhealthy air days.”⁹¹
- “Particulate matter concentrations are expected to significantly increase in California due to climate change. According to Cooley et al., vulnerable communities in areas exceeding state standards for PM2.5 levels in 2050 are expected to be concentrated in Southern California (i.e., Los Angeles, Orange, and Imperial counties) and along the San Francisco Bay (i.e., Santa Clara, San Francisco, and Alameda counties).” (Mapping Resilience, p. 30)⁹²

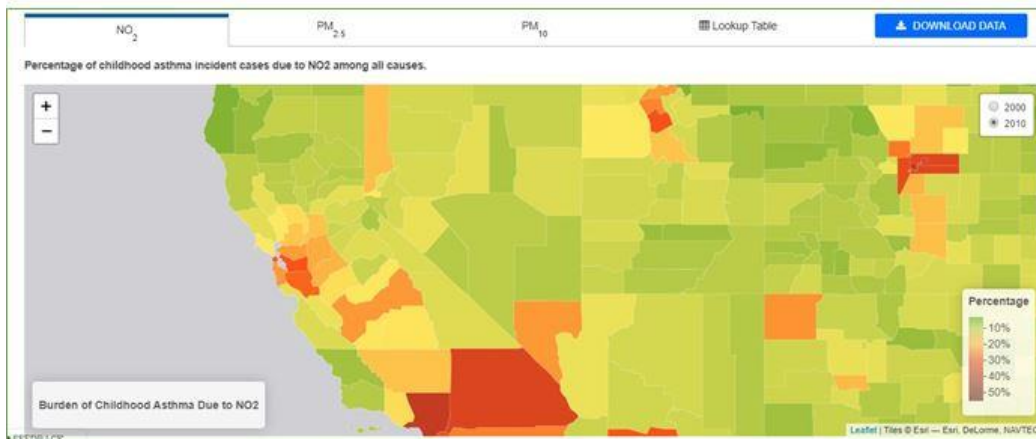


See also: <https://www.latimes.com/local/lanow/la-me-smog-southern-california-20190701-story.html>

⁹¹ <https://www.mercurynews.com/2019/06/25/opinion-california-needs-smog-checks-for-diesel-big-rig-trucks/>

also see: <https://www.lung.org/our-initiatives/healthy-air/sota/>

⁹² https://apen4ej.org/wp-content/uploads/2019/07/APEN-Mapping_Resilience-Report.pdf and Cooley, H., E. Moore, M. Heberger, and L. Allen (Pacific Institute). 2012. Social Vulnerability to Climate Change in California; CEC-500-2012-013. Sacramento, CA: California Energy Commission



Response BB.202: Please see Responses BB.200 and BB.201. For more discussion on existing air quality and the status of the Bay Area in achieving attainment with applicable standards, please see Section 3.3.1 of the DEIR.

Comment BB.203: Air quality has worsened from 2016 to 2018: Study: US air pollution deaths increased by 9,700 a year from 2016 to 2018⁹³

- “New data reveals that damaging air pollution has increased nationally since 2016, reversing a decades-long trend toward cleaner air. An analysis of Environmental Protection Agency data published this week by researchers at Carnegie Mellon University found that fine particulate pollution increased 5.5 percent on average across the country between 2016 and 2018, after decreasing nearly 25 percent over the previous seven years. “After a decade or so of reductions,” said Nick Muller, a professor of economics, engineering and public policy at Carnegie Mellon, and one of the study’s co-authors, “this increase is a real about-face.” The research identified recent increases in driving and the burning of natural gas as likely contributors to the uptick in unhealthy air, even as coal use and related pollution have declined. In the West, wildfires contributed to the rise in particulate matter.”⁹⁴

The reversal in air quality needs to be considered as a cumulative impact.

Additionally, the DEIR fails to discuss the impact of sources outside of California on existing and cumulative impacts.⁹⁵

Response BB.203: The commenter cites articles that describe nationwide trends in air quality levels. Strategies to reduce air pollution levels are complex and rely on reducing emissions while population increases that lead to more pollutant sources and driving. To the extent that sources of pollution from outside of California affect air

⁹³ https://www.vox.com/future-perfect/2019/10/24/20927103/air-pollution-study-deaths-elderly-obama-trump?fbclid=IwAR3_LfD3NITV51IktRJBLg2BXPYiYuUmN3XOfhYGLVTJcodEl0INifVruvk

⁹⁴ <https://www.nytimes.com/interactive/2019/10/24/climate/air-pollution-increase.html>

⁹⁵ <https://www.npr.org/sections/thetwo-way/2017/03/03/518323094/rise-in-smog-in-western-u-s-is-blamed-on-asia's-air-pollution>

quality in California and the Bay Area, those sources are accounted for in the programs, policies, and standards promulgated by the California Air Resources Board and BAAQMD.

Comment BB.204: Spare the air days: The report needs to note and discuss the increasing number of “Spare the Air” alerts⁹⁶ (e.g. because of increased pollution from wildfires) and how this relates to the cumulative impact.

Response BB.204: Please see Responses BB.200 and BB.201. As stated in those responses, changes in overall air quality must be evaluated over multiple years because short-term meteorological conditions and certain events (e.g., wildfires) can skew or mask long-term trends. For example, as noted in the comment, the region has recently experienced a record number of Spare the Air alerts, primarily due to wildfires. Note that the criteria for declaring Spare the Air alerts has changed and is dependent on meteorological conditions.

Importantly, regardless of short-term fluctuations in air quality, for the purpose of CEQA compliance, the relevant question is whether project-related emissions will exceed the thresholds established by BAAQMD and/or whether project-related emissions will constitute a significant contribution to a cumulative impact. Per the conclusions of the air quality analysis summarized in Section 3.3 of the DEIR, neither of those outcomes will occur if the project is constructed.

Comment BB.205: Input traffic data: Traffic data for the analysis was based on a memorandum provided by Hexagon Transportation Consultants on November 12, 2018. The traffic analysis was not finalized till April 2019 (title page of Appendix K). The analysis should use the finalized traffic data and not preliminary numbers. For example the value of ADT for Oakland Road used in the Air Quality analysis (41,450 ADT, p. 28) does not match the ADT for the road provided in the Traffic Analysis (p. 36) Also the percentage of truck traffic needs to be adjusted to be consistent with the traffic analysis.

Response BB.205: Hexagon Transportation Consultants provided traffic VMT projections for a 2.5 miles radius of the project in 2018 and an analysis of VMT that extends a 1.5-mile radius out from the project in 2019. Both projections were based on the same traffic model.

The ADT for Oakland Road is based on an average ADT for segments just north and just south.

The Ct-EMFAC2014 model used for this analysis used the county default truck percentages that were 5.2 percent in 2020. An updated analysis that used the Ct-EMFAC2017 model used for this analysis used the county default truck percentages that were 6.1 percent in 2020. The truck default percentage is consistent with truck

⁹⁶ <http://www.sparetheair.org> also see <https://www.mercurynews.com/2019/10/30/latest-spare-the-air-ties-the-bay-area-record>

traffic data reported on I-880, which is the only roadway in the area that has truck traffic counts reported. Truck percentage on I-880 in the area ranges from 4.3 to 5.7 percent. The 6.1 percent truck traffic percentage is assumed to be appropriate. Subsequent to the preparation of the DEIR Air Quality Report, the traffic analysis produced estimates for total truck traffic percentages on the roadways. The portion of truck traffic estimated for Charcot Avenue was seven percent. Assuming the seven-percent estimate is accurate, and all cancer risk is from trucks, the contribution of cancer risk from Charcot Avenue traffic to the MEI would increase by up to 1.1 chances per million for the residential receptor to 6.0. At Orchard School, the child cancer risk would increase by about 0.15 chance per million to 1.2 chances per million. These are upper bound estimates since they assume that the contribution from trucks increases without the decrease from non-truck traffic. Even if these upper bound estimates were used, the BAAQMD significance criteria would not be exceeded.

Comment BB.206: Traffic data: The traffic data for the air quality analysis is in many instances inconsistent with the data from the traffic analysis.

Data in air quality analysis inconsistent with data in transportation analysis						
No Project	VMT 2025	VHT 2025	Speed 2025	VMT 2040	VHT 2040	Speed 2040
Transportation Analysis	1,821,479	104,144	25.22	2,659,078	185,249	14.35
Air Quality Analysis	4,789,277	209,093	22.90	6,080,580	340,160	17.88
Project	VMT 2025	VHT 2025	Speed 2025	VMT 2040	VHT 2040	Speed 2040
Transportation Analysis	1,823,272	103,460	25.28	2,661,463	183,620	14.49
Air Quality Analysis	4,787,047	205,279	23.32	6,092,019	336,012	18.13
Cars/h	Peak AM 2025	Peak PM 2025	Peak AM 2040	Peak PM 2040	Average speed	
Transportation Analysis	1240	1250	1490	1720	TBD*	
Air Quality Analysis	776	818	1026	1082	25 mph	

Response BB.206: Please see Response BB.28.

Comment BB.207: Traffic data peak hour traffic: The analysis (e.g. p. 113) assumes not only different peak hour traffic volumes than the traffic analysis, the air quality analysis also assumes traffic volumes are identical in both directions at all times, which is likely to be incorrect given regional travel patterns.

Response BB.207: The commenter is referring to the DEIR air quality analysis Attachment 4. The ADTs used to in the dispersion modeling for Charcot Avenue are consistent with the traffic volumes provided by Hexagon Transportation Consultants in the November 2018 memorandum and those volumes are the same traffic volumes presented in the final traffic analysis form April 2019. The ADTs provided by the traffic consultant are volumes for both directions per the notes of Table 9 and Table 10 in the DEIR traffic analysis. Therefore, assuming the traffic volumes are the same in both directions of the roadway was appropriate.

Comment BB.208: Assumed speed on Charcot: Speed on Charcot is assumed to be 25 mph. Given the volumes expected on the road and average speeds in the area that are much lower than during peak hours, this value is not properly justified and requires further analysis. The impact of a HAWK

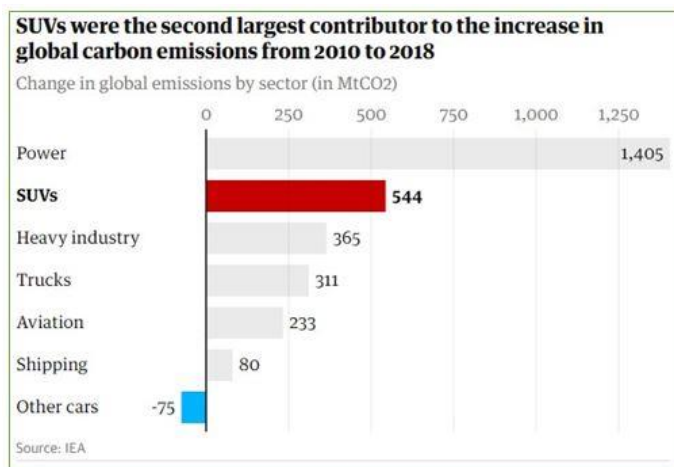
signal at the Silk Wood Lane intersection and the merging necessary in case of the 4-lane alternative are not adequately considered.⁹⁷

The analysis assumes identical speeds for both 2- and 4-lane alternative. It seems improbable that the same traffic volume will travel at the same speed regardless of the number of lanes and this requires further explanation. (p. 134)

Response BB.208: A speed limit around schools and residential areas is 25 mph unless otherwise stated per State law. Since the proposed Charcot Road is adjacent to both a school and residences, an average speed of 25 mph is appropriate. The analysis does not need to account for peak hour speed differences when an average is a better representative of daily vehicle speeds. Also, under the two or four lane alternatives, the average speed would still be 25 mph on Charcot Road due to its proximity to the school and residences. Note that the DEIR air quality analysis is based on traffic conditions for all hours and not just peak hours, when traffic speeds would be higher.

Comment BB.209: SUVs: The air quality fails to incorporate the rising number of SUVs on our streets which have a significantly different air pollution profile than smaller cars.

“Growing demand for SUVs was the second largest contributor to the increase in global CO2 emissions from 2010 to 2018, an analysis has found. In that period, SUVs doubled their global market share from 17% to 39% and their annual emissions rose to more than 700 megatonnes of CO2, more than the yearly total emissions of the UK and the Netherlands combined.”⁹⁸



Response BB.209: he analysis used the fleet mix from the 2014 Caltrans Emissions FACTors (EMFAC) model, which was developed by CARB, and is the appropriate

⁹⁷ “A recent study found that the concentration of airborne nanoparticles at red traffic lights are as much as 29 times higher than concentrations seen while the car is cruising. One study found that pollution levels inside cars due to congested traffic around intersections are up to 40 percent higher than when traffic is moving.”
<https://blog.aclima.io/how-traffic-affects-your-short-term-pollution-exposure-a3b6bae8b71b>

⁹⁸ <https://www.theguardian.com/environment/ng-interactive/2019/oct/25/suvs-second-biggest-cause-of-emissions-rise-figures-reveal>

source to estimate emissions from on-road vehicles. This model uses recent and projected vehicle fleet mixes for each county. SUVs are included in the modeling, as a substantial portion of the fleet mix includes light-duty trucks, which SUV-type vehicles would fall under that category. The EMFAC emission rates for traffic are the best tool available for making reliable predictions of vehicle emissions.

Comment BB.210: Street orientation: The analysis describes traffic being north- or southbound on Charcot (p. 23) and Charcot as having a northwest/southeast orientation (e.g. p. 113). Yet especially near Oakland Rd the orientation of the road is east-west. This could significantly impact exposure levels on and needs to be analyzed more specifically using the correct road orientation or worst-case scenario.⁹⁹ It is also plainly inconsistent to speak of north/southbound traffic on an east/west connection.

Response BB.210: The naming has no bearing on the emission calculations. The descriptors were based on interpretation of the roadway. The street orientation does not change the impacts computed for Charcot Avenue. Also, Charcot Avenue is not clearly an east-west or north-south oriented roadway since it is angled at approximately 45 degrees. Therefore, it is not inconsistent to refer to traffic as northbound or southbound.

Comment BB.211: “Area-Wide Daily Emission”: The report needs to specify what is meant with “area wide” and why that radius was chosen. (Appendix E, p. 18)

Response BB.211: Area-wide daily emission is referring to the study area that was used to predict region-wide emissions affected by the project. This analysis used the traffic from VMT analysis that extends 2.5 miles out.

Comment BB.212: Impact of I-880: The analysis fails to consider increasing traffic volumes that are expected for I-880 by 2040. Especially since Caltrans has indicated that I-880 might be widened (Appendix C, p. 96 and Appendix B p. 4). The analysis needs to take this into account.

Response BB.212: This comment is referring to a comment submitted for the NOP. The comment in its entirety states "Provide information regarding the location of overcrossing structural columns across the I-880 freeway. The placement of overcrossing structural columns, near state facilities such as ramps and freeway segments, should consider (provide enough room for) future widening of said State facilities."

The NOP comment had asked for more information to be provided on the location of overcrossing structural columns across the I-880 freeway, and the comment suggested that the future widening of state facilities should be considered regarding the location of the structural comments. However, the NOP comment does not indicate that

⁹⁹ See for discussion of particle counts in relation to wind direction: Rundell, K. W., Caviston, R., Hollenbach, A. M., & Murphy, K. (2006). Vehicular air pollution, playgrounds, and youth athletic fields. *Inhalation toxicology*, 18(8), 541-547.

Caltrans would be widening the particular section of I-880 near the project site by 2040. This comment is misleading by omitting certain parts of the NOP comment. It is speculative to consider increased traffic volumes for this roadway when currently there are no future plans to widen it.

Comment BB.213: Sources of pollution: The DEIR limits itself to modeling permitted sources in the area. It fails to identify other and/or especially non-permitted sources of pollution in the area (e.g. Union Pacific Railroad, industrial use and truck traffic/idling east of Oakland Rd, loading docks). This needs to be corrected and/or supplemented with air quality measurements of current conditions.

Fox Lane will have an ADT of 7,800 in 2040 and should be included in the analysis as well.

Response BB.213: The cumulative analysis evaluates the TAC sources that are recommended in the BAAQMD CEQA Air Quality Guidelines. These sources include freeways, major roadways, gas stations, stationary sources (e.g. diesel engines). A 1,000-foot influence area was constructed around the project site and any TAC sources within the that influence area were included. The non-project truck traffic/idling that occurs at the nearby industrial uses are not sources of emissions that required further evaluation.

There are Union Pacific owned railroad tracks located 450 feet east of the project. This is an infrequently used rail line that includes a maximum of two switching trains per day. The associated cancer risks, annual PM2.5 concentrations and hazard index are considered negligible at the MEI receptors that are 900 feet away from this source.

Fox Lane was not need included since the ADT is less than 10,000 vehicles per day. Roads with less than 10,000 total vehicles per day are considered to be minor contributors or low impact sources of TACs and can be excluded from the CEQA process per BAAQMD in their Recommended Methods for Screening and Modeling Local Risks and Hazards (version 3.0, May 2012). For screening roadways, the BAAQMD CEQA Air Quality Guidelines recommend including roadways within 1,000 feet “with greater than 10,000 vehicles per day.” In other words, the contribution of roadways with less than 10,000 vehicles per day would have small contributions to the cumulative impact. These low-volume roadways were not included in the cumulative analysis.

Comment BB.214: Cumulative Impact / 10 hours: The analysis assumes that children spend up to 10 hours at the school and are therefore exposed to the air pollution only for this timeframe. The report neglects that the living situation for many of the students at Orchard (the remaining 14 hours a day) also include significant exposure to air pollution (e.g. students living at Casa del Lago next to 880 or mobile home parks on Oakland near 101/880 interchange). The analysis needs to incorporate air pollution exposure for 24 hours not just 10.

Response BB.214: The commenter is referring to the children cancer risk assumptions used to calculate the combined community risk impacts at the school MEI. Those computations are based on recommendations made by BAAQMD for computing health risks at schools. The community risk impacts at the residential MEI are

representative of 24 hours of exposure at the residence for 30 years. Therefore, the school and residential sensitive receptors have been addressed.

Comment BB.215: Impact of construction and operation: The report fails to adequately present the impact of construction and operation on employees working at the offices of Super Micro and the business along Charcot Avenue west of I-880.

Response BB.215: As summarized in Section 3.3 of the DEIR, the Health Risk Analysis addressed the risks from construction and operation of the project upon the most sensitive receptors within the area. These sensitive receptors include infants (assumed at all the residences), children (assumed at all residences and the school) and adults (since the analysis for residences evaluates a 30-year exposure period). These receptors are more sensitive to toxic air contaminants and air pollution due to their greater sensitivity, higher breathing rates and less developed respiratory systems/immune systems. While the health and safety of the workers at the offices/commercial businesses along Charcot Avenue is just as important, it is not necessary to model the project risk impacts because community risks computed for adults will always be less than the community risks calculated for infants and children.

Comment BB.216: CO emissions: “CO impacts, which are expressed in parts-per-million, are described subsequently in this report.” (Table 3.3-4, p. 40) CO impacts are not adequately discussed. As the report states: “Congested intersections with large traffic volumes have the greatest potential to cause high localized concentrations of CO.” (p. 40) As concentrations of CO are highly localized, an area wide assessment as in the DEIR provided is inadequate. Localized analysis similar to e.g. PM2.5 is necessary. The analysis states that the legal threshold for operational CO emissions is 9.00 ppm (8-hour average) or 20.0 ppm (1-hour average).¹⁰⁰ Yet, the analysis does not show if the project will meet these thresholds.

This is also required as part of the Consultant Agreement with BKF:

- CO Hot Spot Analysis. Conduct a qualitative Hot Spot CO analysis based on the screening guidance provided by BAAQMD that is based on traffic volume.

Response BB.216: The project is located in an area designated “Attainment” for CO under both the NAAQS and CAAQS. That means highest levels of CO in the Bay Area are not unhealthy. The U.S. EPA recently informed California that the transportation air quality conformity requirements for CO ceased to apply in June 1, 2018, since the region has attained and demonstrated attainment over the last 20 years. CO, which has been traditionally caused by traffic emissions, is at low ambient levels because of changes in vehicle exhaust systems that were incorporated 30 years ago. The BAAQMD CEQA Air Quality Guidelines recommend an intersection screening criteria of 44,000 vehicles per hour to indicate whether further analysis are necessary. The project would not affect intersections with traffic volumes this high.

¹⁰⁰ Also see BAAQMD “CEQA Air Quality Guidelines”

Comment BB.217: Attachment 2: Operational Emissions Analysis – CT-Emfac2014 (p. 86): Length for “Build 2025 – second row” (21400) described as 0.12, which is inconsistent with the length for the other scenarios (0.18).

Response BB.217: The correct value should have been 0.18 miles and not 0.12 miles. This results in a minor change in emissions for the Build 2025 scenario that does not change the conclusion of the analysis.

Comment BB.218: Project length: Worksheet in Attachment 1 (Road Construction Emissions Model) uses a project length of 0.09 miles. Further explanation needs to be provided.

Response BB.218: The 0.09 miles is representative of the new bridge length. The exact length was unknown at the time of the analysis. Therefore, an approximate length was calculated based on the plan set provided.

Comment BB.219: Release height: The analysis does not seem to factor in that the project starts to be elevated resulting in a higher release heights west of Silk Wood Lane.

Response BB.219: The project's elevation change does not impact the release heights used. The release height used is referenced the level above ground and is not dependent on terrain or elevation.

Comment BB.220: Questions marks in table: The report needs to explain the question marks in the first table of attachment 1 in the row “Concrete Mixer Trucks”.

Response BB.220: The City did not know the exact horsepower or load factor for a diesel truck. The question marks indicated that this specific information was unknown; therefore, the appropriate default assumptions were used in the RCEM model inputs.

Comment BB.221: Roll-back of Federal Air Quality Standards: The DEIR fails to adequately consider the impact of the announced roll-back of federal air quality standards.¹⁰¹

- “The proposed roll back of several Clean Air Act regulations and the proposed roll back of the green- house gas standard for automobiles will make it hard for communities to maintain their air quality, and even harder for cities with poor air quality to clean up”¹⁰²

Response BB.221: The DEIR air quality analysis relied on CARB's emission factor models, Ct-EMFAC2014, which represent the best available information for computing future vehicle emissions.

Comment BB.222: Construction Emissions Calculations:

¹⁰¹ <https://cal.streetsblog.org/2019/06/06/federal-unsafe-rollbacks-would-have-dire-consequences-for-california-air-quality/>

¹⁰² 108 <https://medicalxpress.com/news/2019-05-reductions-pm-decade-health-ozone.html>

Table 3. Construction Period Emissions
PM10: **0.18t**

(Appendix E, p. 16)

*“The Roadway Construction Emissions Model provided total annual PM10 exhaust emissions (assumed to be DPM) from the off-road construction equipment and worker, vendor and hauling trucks used for the proposed road construction (both the bridge and roadwork) of **0.1286 tons** (257 pounds) over the construction period.”*

(Appendix E, p. 19/20)

Table 3. Construction Period Emissions
PM2.5: **0.14t**

(Appendix E, p. 16)

*“Fugitive dust PM2.5 emissions were also computed, and included in this analysis. The model predicts emissions of **0.4464 tons** (893 pounds) of fugitive PM2.5 over the construction period.”*

(Appendix E, p. 20)

Please explain the discrepancies.

Response BB.222: The comment is referring to the difference between the construction period emissions for particulate matter (PM) in Table 3 and the emissions used for the health risk modeling. There is no discrepancy since these are different emissions for different types of processes. The PM₁₀ emissions from Appendix E, page 16, are total exhaust emissions. The emissions used for the construction health risk modeling, page 19/20 are those from the construction site and do not include truck and worker travel that is not on or near the project construction area. Travel lengths for this traffic range from 7.3 to 20 miles. The PM_{2.5} emissions reported in Appendix E, page 16, are exhaust only emission and are different than fugitive PM_{2.5} emissions shown in Appendix E, page 20.

The PM₁₀ exhaust emissions were used to represent DPM emissions in the health risk modeling. Likewise, the sum of the PM₁₀ exhaust and PM_{2.5} fugitive emissions were used to represent total PM_{2.5} construction period emissions in the health risk modeling. in Table 3 are exhaust emissions from construction of the project. These are criteria air pollutant emissions.

The PM₁₀ and PM_{2.5} construction emissions described on pages 19 & 20 in Appendix E are representative of construction-related toxic air containment concentrations. The exhaust PM₁₀ is used to represent diesel particulate matter and fugitive PM_{2.5} emissions are used to predict dust emissions for the health risk dispersion modeling.

Comment BB.223: Air Quality Management District recommends larger buffer (sic) zone:

- “A general buffer zone of no less than 500 feet (150 m), and possibly as much as 1,000 feet (300 m), between major roadways and school sites should be considered to protect the health

of students and school employees and meet state guidelines on location of mobile source emissions.”¹⁰³

The DEIR should include and discuss this recommendation.

Response BB.223: A 2-lane roadway does not meet the definition of a major roadway.

Comment BB.224: Supplemental Analysis: Alternative Designs: Data in Table 10 is partially inconsistent with data in Table 7. This needs to be corrected.

Response BB.224: This comment is correct. The cumulative PM_{2.5} concentrations reported in Table 10 are inconsistent with Table 7. The maximum annual PM_{2.5} concentrations were incorrectly calculated, and the actual results are lower than reported. EIR Table 7.4-3 has been revised to reflect the lower values. See Section 5, *Draft EIR Text Revisions*.

Comment BB.225: Ozone: The analysis should disclose the increase of ozone in the area because of the project and compare it to federal and state standards.

- “Ozone, which is formed when sunlight reacts with chemicals emitted from cars, is getting worse as we drive more and it gets hotter. [...] If you live in a city with high ozone levels for a decade, the results are similar to smoking a pack of cigarettes daily for three decades.”¹⁰⁴

Also see: Association Between Long-term Exposure to Ambient Air Pollution and Change in Quantitatively Assessed Emphysema and Lung Function, Meng Wang, PhD; Carrie Pistenmaa Aaron; Jaime Madrigano, ScD
(<https://jamanetwork.com/journals/jama/fullarticle/2747669?guestAccess-Key=cfba7399-ed6b-4ff3-abcd-260039916cd9>)

Response BB.225: In an environmental analysis, the appropriate method to address impacts to ozone levels, for which the Bay Area is non-attainment, is to compute the emissions of ozone precursor pollutants. The analysis computes the project's change in ozone precursor pollutants, which are ROG and NO_x.

Comment BB.226: Impact to Montague and I-880: In a January 2019 meeting it was indicated that the project would reduce air pollution in the I-880/Montague interchange area (northwest corner of Casa del Lago). Does DEIR support this statement?

Response BB.226: The comment provides no information as to the date or subject of this meeting, nor the source of – or context for - this statement. The City is unaware

¹⁰³ http://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/school_guidance.pdf, p. 8

¹⁰⁴ <https://www.fastcompany.com/90388917/breathing-dirty-city-air-is-as-bad-for-your-lungs-as-smoking>

of a January 2019 public meeting on the subject of the proposed Charcot Avenue Extension. Without such information, it is not possible to provide a detailed response.

Comment BB.227: Cumulative impact: As discussed above because of the inconsistency of the General Plan and the NSJADP with the City’s GHG reduction goals the cumulative impact of the project together with the build out of the General Plan and the NSJADP is therefore significant.

Response BB.227: As shown in Table 3.8-2 of the DEIR, the GHG analysis undertaken for the project shows a reduction in GHG emissions, as compared to No Project. Therefore, by definition, there would be no cumulative impact.

Comment BB.228: Climate Smart San José: Climate Smart San José (p. 77) also includes detailed goals for mode share. The impact of the project on these goals is not discussed and needs to be added.

Response BB.228: The project includes features that will benefit bicyclists, pedestrians, and motorists.

Comment BB.229: Construction GHG emissions: The construction GHG emissions modelled seem to include only direct GHG emissions at the site, but not for example for the production of materials (e.g. concrete) or relative lifecycle emissions from construction equipment. This needs to be added.

Response BB.229: The DEIR air quality analysis followed the procedures for computing construction GHG emissions that are contained in the BAAQMD CEQA Air Quality Guidelines. There is no requirement or guidance for analyzing lifecycle emissions in CEQA documents prepared in the Bay Area.

Comment BB.230: Operational GHG emissions: The data used to calculate operation GHG seems inconsistent with data from traffic analysis. This is not acceptable and needs to be corrected.

Response BB.230: Please see Responses BB.28 and BB.205.

Comment BB.231: Cumulative impact: As discussed above because of the inconsistency of the General Plan and the NSJADP with the City’s GHG reduction goals the cumulative impact of the project together with the build out of the General Plan and the NSJADP is therefore significant and irreparable.

Response BB.231: Please see Response BB.227.

Comment BB.232: Construction GHG emissions - Direct and indirect GHG emissions: The construction GHG emissions modelled seem to include only direct GHG emissions at the site, but not for example for the production of materials (e.g. concrete) or relative lifecycle emissions from construction equipment. This needs to be added.

- “The U.S. added an average of 31,000 highway lane miles per year over the last decade, Shill reports adding about 109 million metric tons of carbon dioxide to the air annually just from

the construction. The social cost of that, using standard formulas, is about \$4 billion, he says.”¹⁰⁵

Response BB.232: Please see Response BB.229.

Comment BB.233: Operational Greenhouse Gas Emissions: Analysis fails to acknowledge the effect of induced demand as described in the San José TIA:

“Shortly after the project becomes operational, induced VMT may occur where road users respond to an initial appreciable reduction in travel time. With lower travel times, the modified facility becomes more attractive to travelers, resulting in four short-run trip-making changes: (1) longer trips; (2) changes in route choice; (3) changes in mode choice; and (4) newly generated trips. Longer trips may occur because the ability to travel a long distance in a shorter time increases the attractiveness of destinations that are further away, increasing trip length and VMT. Changes in route choice may occur immediately when faster travel times on a path attract more drivers to that path from other paths, which can increase or decrease VMT depending on whether it shortens or lengthens trips. Changes in mode choice may also occur in the near-term when travelers respond to a reduction of personal motorized vehicle travel time by shifting toward personal motorized vehicle use from other modes. Newly generated trips may occur when an individual who previously did not have a travel need might have one because of increased speed and decreased travel time. The short-run effect of a project on induced VMT, measured in percent change in total VMT, is evaluated for a project.” (TIA, p. 49)

Response BB.233: The comment incorrectly cites that the referenced language is pulled from a TIA. However, the text is actually pulled verbatim from the City of San José Transportation Analysis Handbook, April 2018. Furthermore, induced demand is a result of providing a significant travel time savings for a driver. The proposed extension will provide little to no measurable travel time savings when considering the size of the proposed Charcot extension in relation to the overall roadway system in the project area and the projected development growth. The minimal travel time savings will not sway or induce new trips to be added to the hundreds of thousands of vehicle trips traveling through the area. In addition, the VMT analysis presented in the traffic study indicates that the proposed roadway extension will result in less than a 0.1% increase in VMT on roadways in the project area.

Also, the City of San José Travel Forecasting Model that was used predict traffic volumes for this project does not account for potentially induced traffic demand. The exact same number of vehicles were modeled with and without the project. Therefore, any increases/decreases on traffic volumes on roadways are due to a redistribution of traffic. Furthermore, below is an excerpt from the State’s Office of Planning and Research (OPR) states the following regarding induced travel ... certain transportation projects are not likely to induce significant new travel. Those projects include, among others, installation, removal, or reconfiguration of traffic lanes that are not for through

¹⁰⁵ <https://usa.streetsblog.org/2019/03/06/heres-how-driving-is-encouraged-and-subsidized-by-law/>

traffic, such as left, right, and U-turn pockets, or emergency breakdown lanes, new local or collector streets, conversion of general purpose lanes (including ramps) to managed lanes or transit lanes, etc.

Comment BB.234: Operational Greenhouse Gas Emissions – increased speeds: The analysis fails to adequately consider that impacts on GHG due to increases in speed vary vastly between for example speed improvements at low speeds and improvements at higher speeds. An analysis based solely on average speeds does not adequately capture these effects, making a more detailed analysis necessary.¹⁰⁶

Response BB.234: The comment states that since GHG emissions vary greatly at different speeds the air quality analysis then needs to compute GHG emissions at various speeds. The analysis used the average travel speeds to reflect the overall changes that might occur. There is no modeling technique available to predict the various changes in speed by roadway and time as well and future traffic conditions.

Comment BB.235: Reduction of congestion: “Decrease [in GHG] is the result of the reductions in congestion” (p. 79) No data in the DEIR allows for the conclusion that the project would lead to a reduction in congestion. Statement needs to be substantiated. It also inconsistent with research.¹⁰⁷

- “Capacity, demand, and vehicle based emissions reduction strategies are compared for several pollutants employing aggregate US congestion and vehicle fleet condition data. We find that congestion mitigation does not inevitably lead to reduced emissions; the net effect of mitigation depends on the balance of induced travel demand and increased vehicle efficiency that in turn depend on the pollutant, congestion level, and fleet composition. In the long run, capacity-based congestion improvements within certain speed intervals can reasonably be expected to increase emissions of CO₂e, CO, and NO_x through increased vehicle travel volume.” (Transportation Research Part D: Transport and Environment, Volume 17, Issue 7, October 2012, Pages 538-547, Transportation Research Part D: Transport and Environment, Congestion and emissions mitigation: A comparison of capacity, demand, and vehicle based strategies, Alexander Y. Bigazzi, Miguel A. Figliozzi)¹⁰⁸
- “[Batterman’s] 2011 study, evaluated how much carbon was released by cars under different conditions: rush hour congestion, work zones, and free flow conditions. The “emissions density” is worse in congested rush hour conditions, because a lot of cars are sitting around idling, which is not surprising. But that finding does not support the popular conclusion that widening highways would reduce emissions, Batterman says in his letter. That’s because highway widening tends to lead to more driving — a phenomenon known as induced demand. He wrote: For example, an expansion adding four lanes to the existing eight lanes that soon reach capacity would represent a 50-percent increase in volume or [vehicle miles traveled], all things being equal. The change in the VMT would likely to be

¹⁰⁶ “Vehicle emissions in congestion: Comparison of work zone, rush hour and free-flow conditions” (<https://sph.uth.edu/kaizhang/files/2014/02/Zhang-2011-AE.pdf>)

¹⁰⁷ http://cityobservatory.org/urban-myth-busting_idling_carbon/

¹⁰⁸ <https://www.sciencedirect.com/science/article/pii/S1361920912000727>

larger than the changes in the emission factors, and thus would offset any benefits of free flow conditions.”¹⁰⁹

Response BB.235: The DEIR does contain data to support a conclusion of reduced congestion. See, for example, Table 3.17-10 that shows the project will decrease VHT and increase average speeds, which are indicators of reduced congestion.

Comment BB.236: Mode share: “The Extension includes bicycle and pedestrian improvements, including a new bike/ped connection over I-880, which will facilitate those modes of travel. Trips made by non-motorized modes instead of by motor vehicle have a direct benefit in terms of fewer GHG emissions.” (p. 79/80) The impact of the project on mode share has not been analyzed. Statement needs to be substantiated.

- “What if we rethought the purpose of our streets. Are they really just meant for cars to get from A to B? Or can we see them as a place to walk and cycle, where children play and neighbours meet? By removing cars from cities, you are not just reducing emissions – there are countless other benefits”¹¹⁰



Response BB.236: The City’s adopted Transportation Policy (Council Policy 5-1) does not require the evaluation of mode-share for the purpose of evaluating a transportation project’s impact. Per Council Policy 5-1, VMT is the only metric by which a project’s impacts must be evaluated. The intent of the use of VMT is to shift the focus of transportation analysis under CEQA from vehicle delay and roadway auto capacity to a reduction in vehicle emissions, and the creation of robust multimodal networks that support integrated land uses.

Comment BB.237: Vibration Source Levels for Construction Equipment: Since construction occurs as close as 30 feet away from sensitive structures, Table 3.13-7 (p. 118) should be updated to portray data at 30 feet instead of 50 feet.

“A review of the anticipated construction equipment and vibration level data provided in Table 3.13-7 by the acoustical engineers who prepared the project’s noise and vibration analysis concluded that

¹⁰⁹ <https://usa.streetsblog.org/2019/06/06/what-happened-when-larry-hogan-tried-to-claim-wider-highways-would-help-the-climate/>

¹¹⁰ <https://europeansting.com/2018/08/11/what-would-happen-if-we-removed-cars-from-cities/>

vibration levels generated by the proposed activities and equipment would be below the 0.2 in/sec PPV criteria when construction occurs at distances of 30 feet or greater from sensitive structures.” (p. 119)

Calculations or supporting evidence for this statement and especially for cumulative impact of simultaneous use of various equipment needs to be provided.

Response BB.237: Table 3.13-7 gives reference levels at a distance of 50 feet based on construction vibration levels stated by the Federal Transit Administration, as referenced in the Draft EIR. Vibration levels at distances less than and greater than 50 feet are calculated based on a standard drop off rate of $\text{Vibration Level} = \text{Reference Vibration Level} * (50/\text{Distance})^{1.5}$, as recommended in the same FTA document.

Comment BB.238: California Department of Transportation threshold: The California Department of Transportation considers sound at 50 decibels in the vicinity of schools to be the point at which it will take corrective action for noise generated by freeways. (See Streets and Highway Code sections 216 and 216.1.) This should be noted in the DEIR.

Response BB.238: The California Department of Transportation (Caltrans) criteria is not relevant to the Draft EIR. For reference, Caltrans defines the Noise Abatement Criteria (NAC) for schools to approach or exceed 67 dBA $L_{eq(hr)}$ (loudest hour) in exterior use areas and 52 dBA $L_{eq(hr)}$ for interior uses. The State and Highway Code also uses a threshold of 52 dBA L_{eq} for interior levels in classrooms, libraries, multipurpose rooms, or spaces used for pupil personnel services to other school-related purposes. The 50 dBA threshold stated in the comment is incorrect. In addition, the Draft EIR uses the City’s interior threshold for the school of 45 dBA DNL and the CHPS Prerequisite Goal of 45 dBA L_{eq} for core learning spaces, which are more conservative than the 52 dBA L_{eq} Caltrans threshold.

Comment BB.239: Vibration during construction: “Construction will occur only during the daytime hours, reducing the potential for annoyance to residences during evening and night hours of rest and sleep.” (p. 119) The report fails to acknowledge that most construction would occur during school operating hours and business hours of nearby offices. The impact of vibration on these receptors will therefore be significant.

Response BB.239: As stated in the Draft EIR, vibration levels will be below 0.2 in/sec at adjacent structures during all periods of construction. At a distance of 30 feet, construction vibration from a vibratory roller is anticipated to be 0.160 in/sec PPV and during use of other heavy equipment would be 0.002 to 0.068 in/sec PPV during periods of heavy construction. A vibration level of 0.04 to 0.2 in/sec would not be anticipated to result in any architectural or structural damage, but could be perceptible to occupants of the nearest structures. This level of vibration is anticipated only during periods when the use of heavy construction equipment is located directly adjacent to a structure, which would occur only for short periods of time at any one location. As construction activities proceed along the project’s alignment, vibration levels would be lower and would generally be below vibration levels generated by existing activities, such as existing traffic, footfalls within the building, etc. Additionally, the City has

committed to construction portions of the project adjacent to the school during summer periods only, which would minimize construction noise and vibration interference with school activities.

Comment BB.240: Vibration during operation: The DEIR fails to discuss the potential impact of vibrations during operation (heavy trucks passing close to classrooms) as discussed for example in “Mitigation of Highway Traffic-Induced Vibration”.¹¹¹

Response BB.240: The vibration generated by heavy trucks during construction was considered in the Draft EIR. As shown in Table 3.13-7, loaded trucks would be anticipated to generate a vibration level of 0.027 in/sec PPV at a distance of 50 feet.

Comment BB.241: Cumulative Increases in Traffic-Related Noise: The table 3.13-8 (p. 121) and subsequently the report fails to acknowledge and further analyzes significant impacts to receivers S2, S3 and S4 as all these receivers will see an increase of 5 dBA DNL or more where the project will contribute 1dBA DNL or more.

Response BB.241: Receivers S2, S3, and S4 are anticipated to experience cumulative noise increases exceeding 5 dBA with a project contribution of 1 dBA or more. As such, exterior noise sensitive use areas would be considered impacted. However, as indicated in the footnote below Table 3.13-8, interior noise levels resulting from exterior noise sources would remain acceptable inside these buildings. Additionally, there are interior noise sources, such as ventilation systems and student activities.

Comment BB.242: Interior noise levels: The City’s standard for interior noise levels should be applied to this project, specifically at the school.

Response BB.242: The City’s standard for interior noise levels (45 dBA DNL) has been used in the Draft EIR as the criteria to identify acceptable noise levels for residential and school receptors in the vicinity of the project. Interior noise levels at the school were found to meet the 45 dBA DNL criteria with construction of the project.

Comment BB.243: Appendix – Calculations: The calculation input documents provided to the public are - according to a phone conversation with John Hesler, Principal Project Manager for David J. Powers & Associates, Inc. -illegible and he was not sure how useful they are. Meaningful, transparent records for all calculations need to be provided, especially given the many typos and inconsistencies in other work sheets.

Response BB.243: This comment misconstrues the referenced phone conversation. The calculation sheets used in the noise analysis, which were specifically requested by the commenter, are legible. Mr. Hesler’s comment regarding “usefulness” pertained to the fact that the calculation sheets are technical inputs to the FHWA Traffic Noise Model (TNM), the usefulness of which to a lay person not trained in the model’s use

¹¹¹ <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.509.3322&rep=rep1&type=pdf>

would likely be limited. Despite being made aware of this limitation, the commenter requested, and the City provided, all of the calculation sheets used in the TNM runs for the project.

Comment BB.244: Traffic data: Based on the information provided, it seems as if the noise study was completed only for existing traffic conditions but not 2040 conditions. An analysis for 2040 conditions needs to be done as well.

Response BB.244: The noise study for the Draft EIR assessed noise levels and noise increases under Existing, Existing plus Project, 2040 No Build, and 2040 Build traffic conditions. The 2040 No Build and Build conditions are discussed in reference to cumulative noise level increases.

Comment BB.245: Accuracy of noise levels: “Close to the noise source, the models are accurate to within about plus or minus 1 to 2 dBA.” (p. 2). The margin of error should be included in the presentation of all results affected, especially since a number of results are close to or at “Normally Acceptable Levels” (see e.g. Table 7, S1, S5, ST-3, R2, R4) or other applicable thresholds. Inaccuracy likely also affects the calculation of existing noise levels. This potential error is not identified in the EIR.

- “it is important to recognize the correlation between the precision of measurements and the confidence in the impact assessment. Especially in a Detailed Noise Analysis, avoid using less precise methods of measuring existing noise just for the sake of convenience or expediency. The use of less precise methods must be clearly justified.”¹¹²

Response BB.245: Noise measurements were made using Type 1 Sound Level Meters, which is the equipment recommended for precision measurements in the field. Type 1 sound level meters have an accuracy of +/- 1 dBA. The noise analysis used the Federal Highway Administration’s (FHWA) Traffic Noise Model (TNM), version 2.5, which is the current model required by FHWA to be use on all Federal-aid projects. Use of these methods is industry standard and certainly not ‘less precise methods of measuring existing noise just for the sake of convenience or expediency’. Considerable time is taken to select measurement locations, set-up equipment and ensure valid data during measurements, develop the noise model, and validate the noise model to real-life conditions. Additionally, the minimum change in noise levels that a ‘typical’ person is able to detect in a non-laboratory setting is considered to be 3 dBA; therefore, these small variations would not typically be detected by the human ear.

¹¹² “Transit Noise and Vibration Impact Assessment Manual”, FTA, https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf, p. 92

Comment BB.246: Regulatory Background - California Collaborative for High Performance School (CHPS): The report should include information on the California Collaborative for High Performance School (CHPS).¹¹³ The Acronym CHPS (p. 22) should be explained at first use.

Response BB.246: The California Collaborative for High Performance School (CHPS) was created to discuss how to improve the energy performance of California's schools. The CHPS program is not relevant to the proposed project as it is not constructing school buildings.

Comment BB.247: Difference in calculated DNL for ST-3 and S2: Table 5 shows a difference of 10 dB under existing conditions between ST-3 and S2 which are in close proximity to each other. This requires further explanation and the calculated value for S1-S5 should be compared to measurements on site.

Response BB.247: Existing noise levels vary between ST-3 and S2 because ST-3 is substantially closer to the existing alignment of Silk Wood Lane. Traffic noise levels would be anticipated to drop off at a rate of about 4.5 dBA per doubling of distance.

Comment BB.248: Difference in calculated DNL for S2 and S5: Table 5 shows a difference of 8dB between S2 and S5 which are in close proximity to each other. This requires further explanation and the calculated value for S1-S5 should be compared to measurements on site.

Response BB.248: Calculated traffic noise levels vary between S2 and S5 because S5 is substantially closer to the existing and proposed alignment of Charcot Avenue. Traffic noise levels would be anticipated to drop off at a rate of about 4.5 dBA per doubling of distance.

Comment BB.249: Super Micro: The report fails to evaluate the noise impact to the employees at Super Micro.

Response BB.249: Super Micro was identified as an industrial use and does not have any noise sensitive outdoor use areas in the vicinity of the project. As stated in General Plan Policy EC-1.2, the City's noise impact thresholds only apply to Land Use Categories 1, 2, 3, and 6 and, therefore, would not apply to industrial uses.

Comment BB.250: Traffic distribution across lanes: "Traffic was evenly distributed across EB/WB and NB/SB lanes on each side of intersections since turning lane volumes at intersections were not available." Given the regional commute patterns, an evenly distribution of traffic seems unrealistic. The report needs to be re-evaluated and its analysis based on updated more detailed traffic data.

Response BB.250: Traffic patterns vary by time of day, typically resulting in one direction having higher traffic volumes during the PM peak hour and the other direction having higher traffic volumes during the AM peak hour. Traffic models were

¹¹³ See e.g. <http://www.sanjoseca.gov/DocumentCenter/View/86115> "Harker School Project Environmental Noise and Vibration Assessment"

developed for AM and PM conditions for each traffic scenario (Existing, Existing + Project, 2040 No Build, 2040 Build, and 2040 Build Alternatives). The higher traffic noise levels for each scenario between AM and PM conditions were used for the analysis.

Comment BB.251: 130 days of construction: A construction period of 130 days (p. 28) seems widely unrealistic given that similar projects that were recently build have either taken much longer than this or are anticipated to take much longer. It is also inconsistent with data provided in other parts of the DEIR.

Response BB.251: Although the total period of construction may exceed 130 days, the period of construction adjacent to noise sensitive uses would not. Additionally, the City has committed to limiting construction adjacent to Orchard School to the summer months, to further minimize interference with school activities.

Comment BB.252: Gap in noise barrier: “To be effective, barriers must be constructed with a solid material and without any gaps in the face of the wall or at its base. Openings or gaps between noise barrier materials or the ground substantially decrease the acoustical effectiveness of the barrier.” The report should evaluate how this statement relates to the gap in the barrier created by the access gate to the school site.

Response BB.252: Access gates that act as noise barriers are available. These gates include acoustical door seals or equivalent to minimize acoustical flanking paths through gaps between barrier elements.

Comment BB.253: Noise barrier west of classrooms: It is not clear how or if noise barriers will continue west of the school buildings. Please provide a correct and more detailed map.



2 LOCATIONS

Response BB.253: The Draft EIR indicated preliminary location of the barrier only. Final design of the noise barrier and the resulting final figures detailing this design will be developed during final design of the project.

Comment BB.254: Impact of construction noise and vibration: The report fails to adequately present the impact of construction noise and vibration on the offices of Supermicro and the business along Charcot Avenue west of I-880.

Response BB.254: Super Micro is an industrial land use and is, therefore, not considered to be a noise sensitive land use. Construction-related noise impacts only applies to sensitive land uses.

Comment BB.255: Union Pacific Railroad: The analysis fails to identify the UPRR as a significant source of noise.

Response BB.255: The Union Pacific Railroad is not a significant source of noise in the vicinity of the project and, therefore, was not identified as such in the Draft EIR. The closest UPRR line is a freight rail spur located about 1,000 feet south of Charcot Avenue.

Comment BB.256: Residential receptor at 1942/1954 Oakland Rd: The analysis fails to include a residential receptor at 1942/1954 Oakland Rd.

Response BB.256: 1942 and 1954 Oakland Road are not located on the project alignment. The primary noise source at these locations is traffic noise from Oakland Road, which has considerably more traffic than Charcot Avenue under all scenarios. Traffic noise increase would be similar to those given for R4 (0 dBA increase contribution from project), which is also located along Oakland Road.

Comment BB.257: Increase in public services: The DEIR states that the project will have no impact on public services. It fails to consider that any increase in VMT is correlated with an increase in crashes which will require public services (police, fire, health). The project will also require general funding for maintenance, potentially impacting other public services by reducing the funding available for them.

Response BB.257: The project would construct a 2-lane roadway with a length of 0.6 miles. In the context of the existing 2,400-mile roadway network maintained by the City of San José, the resources needed to maintain an additional roadway of less than a mile in length would be miniscule. There is no methodology to predict the number of crashes that might occur on the Charcot Avenue Extension but that number would be very small when considering San José's total street network.

Comment BB.258: Crime Near Noise Barriers:

“The City is not aware of any study that establishes a correlation between roadway construction and crime rates. In any event, this is a social impact that is not covered under CEQA.”

(Appendix B, Response 3.2)

- *“Another consideration related to the design of barrier overlap sections [similar to the gate to the school site] is the potential for increased crime in the immediate areas surrounding the overlapping sections, particularly where a pedestrian overpass is also located nearby. To address this concern, safety measures, including additional lighting or a modified overlap design to provide more open visibility, may need to be implemented.”*

(FHWA Highway Noise Barrier Design Handbook)¹²⁰

The increased need for public services (i.e. police) is an impact that needs to be evaluated under CEQA.

- “Collective Point 6 is a cooperative of feminist architects, sociologists and urban planners who have been trying to build equality into Barcelona’s streets for a decade. Visibility is key, says member Sara Ortiz, but there’s more to it than lighting. “In well-lit places where there is no activity, no eyes on the street, people are not going to feel safe anyway,” she says. “Eyes on the street” means both activity on the streets in terms of footfall and what’s going on in the buildings that line them. “Whether it’s commercial [properties] or not,” Ortiz says, “there should be transparency.” From inside you can see outside, and vice versa. After all, violence against women often happens behind closed doors. Affluent neighbourhoods can be the worst offenders in this respect, with high walls shielding homes so that the streets feel like a tunnel.” (“What would a city that is safe for women look like?” The Guardian, 13 December 2018)¹¹⁴

The impact of noise walls on safety and walkability in the area needs to be discussed in the DEIR.

Response BB.258: The proposed soundwalls would be erected where there are existing walls or fences and, therefore, no routes used for walking would be severed.

Crime is a social issue not covered under CEQA. This statement notwithstanding, it is recognized that isolated locations that are hidden from public view by buildings, landscaping, walls, etc. provide greater opportunities for crime than open areas. However, the proposed soundwall along the northerly edge of the recreational area at the school would not block the views of those facilities from Oakland Road. Use of the facilities typically involves the presence of multiple persons, including supervising adults, which would also be a deterrent to crime.

Comment BB.259: No road closures: “During the construction phase of the project, no full roadway closures/detours would be needed.” (p.128) Can you please expand how the Charcot Extension will be built without a roadway closure of Silk Wood Lane between Oakland Road and the future

¹¹⁴ <https://www.theguardian.com/cities/2018/dec/13/what-would-a-city-that-is-safe-for-women-look-like>

intersection at Charcot and Silk Wood Lane on the eastern end or of the existing Charcot Ave at the western end?

The statement is also inconsistent with response 20.6 which states that detours might be needed. Consultant Agreement with BKF also states that consultants are required to:

- “Lane Closure Report: Consultant will obtain 7 day 24 hour traffic counts from Caltrans. If the counts are not available, perform 7 day 24 hour traffic counts at mainline and for all ramps where closures are required, including local streets.”

This has not been discussed.

Response BB.259: A lane closure provides for a closure of one or more lanes on a roadway but does not close the full roadway width. Lane closures will be required for the construction of the project.

The roadway construction on existing Charcot Avenue and Silk Wood Lane will be performed in a manner such that full closure of the roadway will not be required. Partial roadway closures will require traffic to be diverted to one side with reduced lane widths. This is typical for roadway construction.

Comment BB.260: Impact of noise walls on emergency access: The report needs to evaluate how the noise walls will impact emergency access to both the school and residences on Silk Wood Lane.

Response BB.260: Existing barriers consist of the wooden fences along the north side of Silk Wood Lane and the chain-link fence along the south side of Silk Wood Avenue. The proposed soundwalls would replace these barriers. The soundwalls would not constitute a new barrier to access.

Comment BB.261: Cumulative impact: The EIR argues that the Extension is an important part of development in North San José which will “provide for the development of 26,700,000 square feet of industrial uses, 300,000 square feet of commercial uses, and 32,000 residential dwelling units in North San José. [...] the Charcot Avenue Extension is identified as one of the infrastructure projects in the NSJADP, its construction will facilitate the planned growth in North San José that is identified above.” (p. 179). If this development will only happen with the Extension project, then this cumulative impact would mean a significant increase in the need of all public services. This is a significant, unavoidable impact.

Response BB.261: The Charcot Avenue Extension project is one of many infrastructure improvements that the City is counting on being in place to serve development in North San José, as embodied in the General Plan, NSJADP, and the North San José Deficiency Plan. Deleting a planned infrastructure improvement would create a deficiency that would need to be addressed with either a replacement project or by a change in policy that acknowledges the need will go unmet. Both of these options would require additional review under CEQA due to changed circumstances under which the growth in North San José would be occurring.

The Charcot Avenue Extension does not contribute to cumulative impacts of North San José development. Instead, it serves the transportation needs of that development. The Charcot project does not increase the need for public services caused by North San José population and employment growth.

With regard to the last sentence in this comment, it is unclear what significant unavoidable impact is being assigned to the Charcot Avenue Extension.

Comment BB.262: Impact on school scores: “Based on the analyses contained in this EIR, there is no reason to conclude that the construction of the project would result in a demonstrable degradation of the school’s programs and their competitiveness.” (Response 20.7) It needs to be specified which part of the analyses contained in the EIR the statement is based on. Research has shown that increased air pollution can significantly impact student learning:

- Victor Lacy, Avraham Ebenstein, and Sefi Roth study the impact of short-term ambient air pollution on Israeli students’ test scores and find “a robust negative relationship with test scores” which “suggest[s] that the gain from improving air quality may be underestimated by a narrow focus on health impacts.”¹¹⁵
- Wes Austin, Garth Heutel, and Daniel Kreisman look at the rollout of school buses in Georgia that have had their engines retrofitted to be cleaner and “find that retrofitting districts see significant test score gains in English and smaller gains in math.”¹¹⁶

Also see

- “Something in the air? Air quality and children's educational outcomes”, Economics of Education Review, Volume 56, February 2017, Pages 141-151
<https://www.sciencedirect.com/science/article/abs/pii/S0272775716303>
- “Air pollution: A systematic review of its psychological, economic, and social effects”, Current Opinion in Psychology, Volume 32, April 2020, Pages 52-65,
<https://www.sciencedirect.com/science/article/pii/S2352250X19300673>
- “Indoor air quality and academic performance”, Journal of Environmental Economics and Management, Volume 70, March 2015, Pages 34-50,
<https://www.sciencedirect.com/science/article/abs/pii/S0095069614001016>
- Brockmeyer, S., & D’Angiulli, A. (2016). How air pollution alters brain development: the role of neuroinflammation. Translational neuroscience, 7(1), 24-30.
- “Does Pollution Drive Achievement? The Effect of Traffic Pollution on Academic Performance”, Jennifer Heissel, Claudia Persico, David Simon, NBER Working Paper No. 25489, Issued in January 2019, <https://www.nber.org/papers/w25489>
- Air Pollution Exposure Harms Cognitive Performance, Study Finds,

¹¹⁵ <https://www.nber.org/papers/w20648>

¹¹⁶ <https://www.nber.org/papers/w25641>

- <https://www.npr.org/2018/08/27/642321572/scientists-link-air-pollution-exposure-to-cognitive-decline>
- Air pollution and detrimental effects on children’s brain. The need for a multidisciplinary approach to the issue complexity and challenges; Lilian Calderón-Garcidueñas, Ricardo Torres- Jardón, Randy J. Kulesza, Su-Bin Park and Amedeo D’Angiulli, <https://www.frontiersin.org/articles/10.3389/fnhum.2014.00613/full>
- The role of neuroinflammation in developmental neurotoxicity, tackling complexity in children's exposures and outcomes, Advances in Neurotoxicology, Volume 3, 2019, Pages 223-257, <https://www.sciencedirect.com/science/article/pii/S2468748018300274?via%3Dihub>
- Prenatal and Childhood Traffic-Related Pollution Exposure and Childhood Cognition in the Project Viva Cohort (Massachusetts, USA), Environ Health Perspect. 2015 Oct; 123(10): 1072– 1078, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4590752/>
- The impact of exposure to air pollution on cognitive performance, Xin Zhang, Xi Chen, and Xiaobo Zhang, <https://www.pnas.org/content/115/37/9193>
- Sunyer, J. et al. (2015) “Association between Traffic-Related Air Pollution in Schools and Cognitive Development in Primary School Children: A Prospective Cohort Study.”
- Pastor et al. (2004) Reading, writing and toxics: children’s health, academic performance, and environmental justice in Los Angeles
- Byoung-Suk Kweon, Paul Mohai, Sangyun Lee, and Amy M Sametshaw. 2016. “Proximity of public schools to major highways and industrial facilities, and students’ school performance and health hazards. ”Environment and Planning B: Urban Analytics and City Science Vol 45, Issue 2, pp. 312 – 329
- “Air Pollution Around Schools Is Linked To Poorer Student Health And Academic Performance”, Paul Mohai, Byoung-Suk Kweon, Sangyun Lee, and Kerry Ard <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2011.0077>
- Air pollution rots our brains. Is that why we don’t do anything about it?, James Bridle, <https://www.theguardian.com/commentisfree/2018/sep/24/air-pollution-cognitive-improvement-environment>

Response BB.262: Based on the following data and information contained in the DEIR, there is no evidence that the construction of the project would lead to a degradation of the school’s programs or competitiveness: 1) construction adjacent to the school would occur during the summer when school is not in session, 2) both indoor and outdoor long-term noise levels would comply with applicable standards, 3) emissions of air pollutants would not exceed the thresholds established by BAAQMD, and 4) the school’s recreational facilities will be reconfigured.

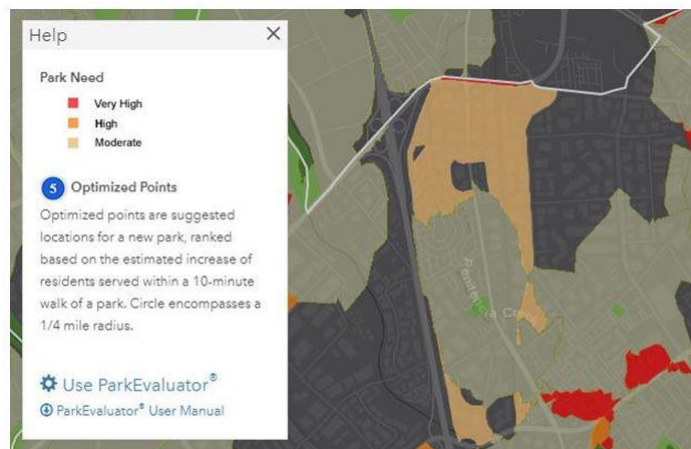
Comment BB.263: Recreation: Regulatory framework: Staff has indicated that the project will apply for federal funding. (VTA Board of Directors Meeting April 4th, 2019). If so compliance with NEPA and especially section 4(f) will be necessary. This needs to be considered and acknowledged in the EIR.

Response BB.263: The City is not proposing to utilize federal monies for the project. Therefore, compliance with NEPA and Section 4(f) of the federal Department of Transportation Act will not be required.

Comment BB.264: Impact of Construction: The DEIR fails to describe the impact on the recreational areas at Orchard School during construction both because of easements needed for construction as well as limitations in use due to construction activities.

Response BB.264: Construction adjacent to the school will be limited to the summer when school is not in session.

Comment BB.265: Existing condition: The DEIR should discuss existing conditions in neighborhood in terms of access to parks relative to needs.



Source: [ParkServe ParkEvaluator](#)¹²⁴

Response BB.265: Unlike a residential project that generates the need for park facilities, a roadway project does not increase the demand for parks. Therefore, the DEIR does not need to discuss this issue other than to describe the project's impact on the recreational facilities at Orchard School (see Section 3.16).

Comment BB.266: Cumulative Impact: Cut-through traffic from and to the Extension along McKay might lead to increased traffic volumes next Gran Paradiso Park which in turn could limit activities at this park. This impact needs to be analyzed.

Response BB.266: Gran Paradiso Park is located on the corner of two residential streets, McCay Drive and Avenida Elisa. The use of these streets for cut-through traffic would not change because of the project. The use of McCay Drive as a cut-through route provides no benefit in terms of shorter route distance from the surrounding streets of Brokaw Road, Murphy Avenue, Hostetter Road, and Lundy Avenue. The referenced park is located directly across the street from an industrial park and west of a large amount of industrial uses along Lundy Avenue. Therefore, any minimal increase in use of McCay Drive would be negligible when considering existing volumes. Furthermore, McCay Drive is a designated "City Connector Street" per the City's General Plan. City connector streets are intended to provide access to adjacent uses as well as provide connections to primary roadways.

Comment BB.267: Cultural Resources - Sensitivity of the location: “The entire project alignment has a high to highest potential for buried prehistoric archaeological deposits, with the highest being at the eastern and western ends of the project alignment.” (p. 58)

“An Extended Phase 1 included excavation of eight exploratory trenches and six exploratory cores at 14 different locations within the project alignment. The subsurface investigation identified a cultural feature at a depth of approximately 10-12 feet below ground surface in one of the trenches. The age, nature, and depth of materials found in this feature suggests that a potentially important prehistoric archaeological site is buried in the general vicinity of the trenching location where this feature was identified.”(DEIR, p. 58) Given the stated highest potential for an important prehistoric site, further studies should be undertaken to fully assess the potential impact. Further discussion is needed to evaluate the impact of construction on the important prehistoric site, the value of further examining the site before construction, the impact of vibrations from construction and operation of the roadway.

Response BB.267: The purpose of the subsurface investigation by a qualified archaeologist was to obtain additional data and information with regard to the potential for buried archaeological resources to be present. Based on the results of the subsurface work, it is the judgment of the archaeologist that further investigation is not warranted. MM-CUL-2.1 through MM-CUL-2.7 are adequate to avoid adverse impacts to archaeological resources.

Comment BB.268: Hydrology and Water Quality - Bioretention area: “These bioretention areas would be located throughout the project as landscape strips along the back of curb, which collect surface runoff directly from sidewalk and roadway” (DEIR, p. 94) Please explain how bioretention area located next to the sidewalk along the back of the curb can collect surface runoff from the roadway. Given the raised profile of these areas, it requires further explanation how water can flow up the curb to the bioretention area.

Response BB.268: Surface runoff will be collected by inlets placed along the curb and gutter. These inlets will be connected to the bioretention area via subsurface storm drain pipes.

Comment BB.269: Groundwater: There is insufficient discussion of how the groundwater level at 5 feet impacts the project.

Response BB.269: Groundwater levels at 5 feet below ground will require dewatering for the construction of the column foundations, and other excavation exceeding a 5-foot depth.

Comment BB.270: Utilities and Service Systems - Construction impact/Solid waste: The report fails to adequately describe the expected amount of waste resulting from construction activities.

Response BB.270: Until final design is completed, the volume of construction waste cannot be calculated with accuracy. In any event, as stated on page 175 of the DEIR, City policy requires that 75% of all construction waste generated by the project shall be recycled or reused.

Comment BB.271: The project is inconsistent with a number of General Plan policies and other City policies.

Fiscally strong City

- “MAJOR STRATEGY #8: FISCALLY STRONG CITY: The General Plan establishes a land use planning framework that promotes fiscal balance of revenue and costs to allow the City to deliver high-quality municipal services. The Fiscally Strong City Major Strategy was created in part to counteract the negative fiscal consequences of past land use patterns.
- Land Use and Fiscal Health
- Past land use patterns have resulted in a predominance of low-density, single-family residential uses (43 percent of the City’s land area) compared to only approximately 15 percent of job-generating employment land. The remaining land is higher density residential, public, or other uses. Low-density sprawl results in a disproportionate cost to the City due to high capital investments and ongoing operations and maintenance for infrastructure, serving less people and businesses than the City otherwise could in a higher-density built environment.”
- “The Circulation Element of the Envision San José 2040 General Plan includes a set of balanced, long- range, multi-modal transportation goals and policies that provide for a transportation network that is safe, efficient and sustainable (minimizes environmental, financial, and neighborhood impacts).”

The EIR does not assess the financial impact of the project or its alternatives. This omission needs to be corrected.

- “New roads encourage environmentally destructive transportation and land use; they’re also a bad deal that has led the country into a road maintenance crisis. Existing road miles outnumber new ones 99 to 1, but states spend more money making those incremental additions than taking care of the rest.”¹¹⁷

Response BB.271: Fiscal issues associated with constructing, operating, and maintaining the project are not physical impacts to the environment under CEQA. The analysis of the project under CEQA is focused on the 20+ subject areas contained in Chapter 3 of the DEIR.

Comment BB.272: Maintenance Costs: According to the most recently adopted City budget San José does not have sufficient funds to bring its street pavement into overall “Good” condition (PCI 70).¹¹⁸ Adding an additional road and bridge structure to the system will only increase maintenance

¹¹⁷ <https://slate.com/business/2019/02/portland-oregon-is-expanding-a-highway-says-it-will-be-good-for-the-environ-ment.html>

¹¹⁸ “San José’s street system consists of 2,434 miles of pavement and is rated overall in “Fair” condition with a Pavement Condition Index (PCI) rating of 66 on a scale of 0-100, with 100 being a new street. The City would need to invest \$102 million annually for 10 years to improve the City’s streets into overall “Good” condition (PCI 70) and

costs, potentially impact the General Fund and make delivery of other public services more difficult.¹¹⁹ This impact needs to be discussed and disclosed.

Consistency of General Plan and NSJADP with San José Climate Smart: “Further, the proposed roadway extension is included in the adopted Envision San José 2040 General Plan roadway network and the planned roadway network for the North San José Area Development Policy, both of which are consistent with the City’s GHG Reduction Strategy.” (p. 80) Statement is inconsistent with staff memo for City of San José Transportation and Environment Committee October 7, 2019:

- “the climate implications of building out the General Plan and finds that the General Plan alone is not enough to meet the [City’s or] State’s carbon commitments, let alone align with the decarbonization rates implied by the Paris Agreement”¹²⁰

And with staff memo:

- “Mobility accounts for 54% of GHG emissions in San José today. The City supports the Paris Agreement and is developing an Environmental Sustainability Plan that establishes a technically robust “pathway to Paris” that aligns with the Agreement’s 2 degrees Celsius goal. Implementing the General Plan is a necessary but insufficient part of that pathway. To realize our GHG-reduction goals, the City must use a metric like VMT that supports smart land use and transportation choices and reduce the need to travel by car.”¹²¹

California in general is not on track to meet its climate goals:

- “While positive gains have been made to improve the alignment of transportation, land use, and housing policies with state goals, the data suggest that more and accelerated action is critical for public health, equity, economic, and climate success. [...] California will not achieve the necessary greenhouse gas emissions reductions to meet mandates for 2030 and beyond without significant changes to how communities and transportation systems are planned, funded, and built.” (California Air Resources Board, California’s Sustainable Communities and Climate Protection Act, Progress Report November 2018)¹²²

Response BB.272: The first portion of this comment pertains to maintenance costs which are not environmental impacts under CEQA.

significantly reduce the \$539.1 million backlog of deferred pavement maintenance. With average ten-year funding levels estimated at approximately \$87.2 million per year, the City falls short of the total amount of needed funding by \$14.8 million annually.” <http://www.sanjoseca.gov/DocumentCenter/View/86326, V-776>

¹¹⁹ http://lgc.org/wordpress/docs/events/first_thursday_dinners/ftd_2013_Protecting_Transportation-june.pdf

¹²⁰ <https://sanjose.legistar.com/View.ashx?M=F&ID=7740265&GUID=BDA753CC-B484-4112-BA30-0F346E4D1F96>

¹²¹ ¹²⁹ http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2795&meta_id=667835

¹²² ¹³⁰ <https://ww2.arb.ca.gov/resources/documents/tracking-progress> also see

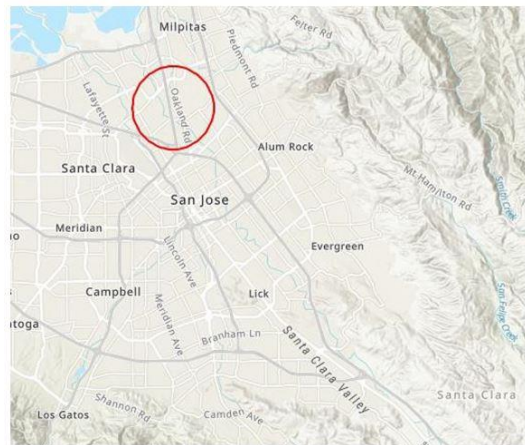
<https://cal.streetsblog.org/2018/11/26/report-california-efforts-to-reduce-transportation-emissions-are-not-working/>

Regarding GHG emissions, it is not the purview of this EIR to evaluate the City’s progress toward meeting San José Climate Smart and/or the GHG Reduction Strategy. The EIR is tasked with calculating the GHG emissions of the project, comparing those emissions to baseline conditions, and determining whether the project is inconsistent with applicable policies. Table 3.8-2 of the DEIR shows that GHG emissions will be slightly lower with the project than under No Project conditions, which is consistent with GHG policies.

Comment BB.273: Traffic analysis data suggests significant increase in VMT: DEIR seems to indicate that VMT in San José will actually increase significantly by 2040 as the project area alone will see an increase of 1.4 million VMT per day.

	2015	2025	2040
Daily VMT in study area ¹³¹	1,263,080	1,821,479	2,659,078
Increase vs. 2015		+44%	+111%

Given an increase of this magnitude – roughly 11% of total City VMT¹²³ – in this relatively small area of San José (see map) raises questions how a reduction of 43% by 2040 for the City as whole can be achieved.



Response BB.273: The increases in VMT referenced in this comment pertain to the planned growth of the entire City, as described in the *Envision San José 2040 General Plan* and its accompanying EIR. The fact that Citywide VMT may be increasing notwithstanding, each individual project is required to be evaluated per Transportation Policy 5-1 to determine if its VMT-related impacts are significant. In accordance with the criteria described in the City’s Transportation Analysis Handbook, a project’s VMT impacts are dependent on numerous factors.

¹²³ City wide VMT is estimated to be 12.5 million per day (Source: SJ DOT, October 2019)

The proposed Charcot Avenue Extension was evaluated per the City’s criteria listed in the Transportation Analysis Handbook. As described in Section 3.17.2.2 of the DEIR, the project’s VMT impact will not be significant.

See also Response BB.271.

Comment BB.274: San José Bike Plan 2020:

The DEIR should note that the Bike Plan 2020 designates the Charcot/880 overcrossing as a Bike-/Pedestrian Only-Overcrossing and that the proposed project is therefore inconsistent with the Bike Plan 2020, and a significant impact.

- Bike Lanes (On-Street: Class II Bikeway)
 - Existing (Basic)
 - Planned
- Bike Routes (On-Street: Class III Bikeway)
 - Existing (Basic)
 - Planned
- Bike Bridges (Pedestrian Over Crossing)
 - Existing
 - Planned



Response BB.274: This statement is incorrect. The Bike Plan addresses bicycle and pedestrian facilities, not facilities for motor vehicles. Thus, the fact that the Bike Plan doesn’t mention the roadway extension does not equate to an inconsistency, especially when the General Plan and other planning documents clearly show the roadway connection over I-880.

Comment BB.275: Complete Streets Design Guidelines: The DEIR fails to acknowledge the City’s Complete Streets Design Guidelines and the compliance or non-compliance of the project with this plan.

Vision Zero: The DEIR fails to acknowledge the City’s Vision Zero plan and the compliance or non-compliance of the project and alternatives with this plan.

- “Vision Zero Principle 2: Human life and safety takes priority over mobility”¹²⁴

Response BB.275: Pages 97-98 of the DEIR discusses the project’s consistency with the City’s Complete Streets Policy.

Comment BB.276: San José Transportation Analysis Policy 5-1: The DEIR (p. 149) does not accurately interpret San José Transportation Analysis policy 5-1, the transportation analysis does not meet the standards of policy 5-1 and the construction of the project is therefore not consistent with this policy. The analysis determines:

¹²⁴ Vision Zero San Jose <http://www.sanjoseca.gov/DocumentCenter/View/74828>

“Per San José Transportation Analysis Policy 5-1, the project is presumed to have less-than-significant transportation impact and is screened from a detailed CEQA transportation analysis.” This determination is omitting key parts of the policy and misreading the parts it applies. The policy exception seemingly applied by the analysis is the following:

- “Through Lanes: Addition of roadway capacity on local or collector streets provided the project substantially improves conditions for pedestrians, cyclists, and/or transit” (p. 7).

Yet, the policy speaks of roadway capacity ON [meaning existing] streets. As the analysis itself state, the project will provide a new connection, not add on to an existing (also see discussion of Alternative B – widening of Montague or Brokaw). Considering the building of a new connection as adding capacity on a local or collector street is false interpretation of the policy.

Further the City policy itself states:

- “However, most other roadway projects, including building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, may or may not induce additional vehicle travel. For example, adding an extra lane to an especially critical and congested link may leverage VMT growth far beyond that link, increasing VMT to a greater degree. [...] Therefore, projects that will likely lead to additional vehicle travel should not be presumed to have less-than-significant impacts.” (Transportation Impact Analysis Handbook).

In conclusion, the project needs to include a complete VMT analysis under CEQA based on City guidelines and should not be screened from a detailed CEQA transportation analysis.

Response BB.276: Please see Response BB.94.

Comment BB.277: Public Outreach Policy for Pending Land Use and Development Proposal - Notice of Preparation and Scoping: The Project seems to be in violation of the City’s “Public Outreach Policy For Pending Land Use And Development Proposals”¹²⁵

This is a project of significant community interest and yet
Notification radius inadequate
No on-site notice

The notification radius for example was smaller than the notification radius for when the adjacent residential development was approved (Permit GP03-04-01) providing further evidence that the notification radius was too limited. Please provide a list of owners notified to verify.

Response BB.277: Notifications were sent to properties within 1,000 feet of the proposed alignment of the Charcot Extension. Entire neighborhoods that were only

¹²⁵ <https://www.sanjoseca.gov/DocumentCenter/View/3892>

partially within the 1,000 feet radius were also included. The City's "Public Outreach Policy for Pending Land Use and Development Proposals" requires a 1,000 feet notification radius for a "Significant Community Interest". On-site notice displays are not used for capital improvement projects. Due to the resident's privacy, the list of owners and their personal information is not provided.

Comment BB.278: Community meeting: "An important aspect of staff's role at community meetings is to understand and record public comment so that staff can transmit community input to the decision-makers" (p. 3). Staff did not record public comment at the community meetings in 2018 and indicated that they won't record verbal public comments at the September 2019 meeting either.

In contrast, comments at the community meeting organized by Orchard PTA on September 26, 2019 were summarized live by Orchard PTA and a full record of comments is available as the community meeting was recorded on tape. Record of the meeting has been submitted to the City as part of the commenting process to the DEIR. A summary of comments made can be found in Attachment D – "Notes from September 26, 2019 community meeting at Orchard School".

Response BB.278: Please see Response H.1 for a summary of the community outreach undertaken by the City.

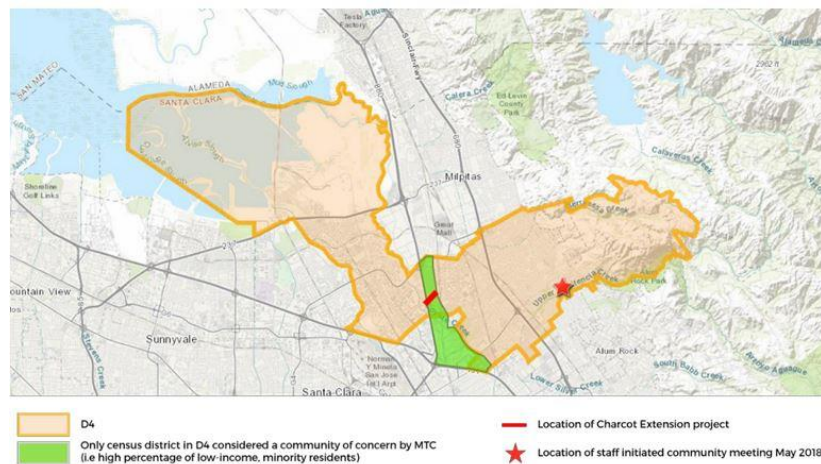
The September 26th meeting organized by the Orchard PTA was independent of the community meetings organized by the City. The project team was unavailable to make a presentation of the DEIR findings at the September 26th meeting. Such presentation was made at the September 24th community meeting held by the City at the Berryessa Library.

Comment BB.279: Location of the Community meeting: The EIR should also note that the City held a community meeting on the project in May 2017. While Orchard school was deemed an appropriate meeting place for the May 2017 meeting, staff initiated public meetings in 2018 and 2019 were at the Berryessa Library Branch – 25 minute away.

According to the EIR, "The nearest branch library is the Joyce Ellington Library at 491 East Empire Street, which is located approximately one mile south of the project alignment."

The EIR has been made available at the Educational Park Branch Library location which is also closer to the project site than the Noble Branch library where the community was held. This indicates that the location chosen for the community meeting was inadequate.

The location of the community meeting at the Noble Branch library is not a location that allowed the majority of the directly impacted community to adequately be informed about the project.



Response BB.279: Please see Response S.1 regarding the locations of the community meetings. The City does not agree that the Berryessa Library is an inappropriate location for a community meeting as it is only 5 miles and a 10-minute drive from the Charcot Extension.

Comment BB.280: Inadequate responses to community concerns in Appendix B: Many community members expressed concerns about the project in written comments. The responses to these comments are often inadequate (see Attachment C – “Inadequate responses to NOP/scoping comments”). Responses often stated that comments are just included in the record since they don’t raise any environmental issues. Closer evaluation of the original comments shows that the comments did raise environmental issues, although not in “official EIR/planning” terminology. The City should respond to all comments equally, regardless of vocabulary used.

Response BB.280: Under CEQA, “scoping” is intended to focus on the potential environmental impacts of a project. Nonetheless, many of the scoping comments did not raise environmental concerns but simply expressed an opinion on the project itself. In such cases, the responses acknowledged the comment. This comment does not provide any examples of where an environmental question or request was ignored.

Comment BB.281: Sensitivity of reports: Why is the information contained in the following reports considered sensitive and what qualifications are necessary to view the report?

- Cultural Resources Report
- Tribal Cultural Resource Report
- Paleontological Report

Response BB.281: Under state law, these reports are confidential because they contain the locations of cultural and archaeological resources. Disclosure of the locations in the past has resulted in looting and desecration of these resources.

Comment BB.282: Decision for EIR: Please describe when and by whom the determination to work on an EIR was made. Numerous statements indicate that substantial efforts for the EIR seem to have been made before a Notice of Preparation was issued. For example, a number of sources were last

accessed before the NOP notice was circulated. One source was last accessed in July 2016. Two years before the NOP for the EIR was published.

Response BB.282: Some of the background research and groundwork for the environmental studies commenced prior to the circulation of the NOP. This is a common practice that does not violate CEQA so long as the information gathered is representative of conditions at the time the NOP is circulated.

Comment BB.283: The noise analysis was prepared by Illingworth & Rodkin, Inc. The subcontractor is not identified in the BKF consultant agreement (see below). Please provide documentation including the written approval by the Director on when the subcontractor was added to the agreement.

SECTION 7. USE OF SUBCONSULTANTS

7.1 **Authority to Use:** Whichever of the following is marked applies to this Agreement:

The Consultant can *not* use any subconsultants without the Director's prior written approval.

The Consultant will use the following subconsultants for the specified areas of work. The Consultant can not remove, replace or add to any of the subconsultants identified in this provision without the Director's prior written approval.

	Subconsultant's Name	Area of Work
1.	David J. Powers & Associates, Inc.	Environmental Engineering
2.	Hexagon Transportation Consultants	Traffic Engineering
3.	Apex Strategies	Community Outreach
4.	Biggs Cardosa Associates, Inc.	Structural Engineering
5.	Parikh Consultants, Inc.	Geotechnical Engineering
6.	Alliance Engineering Consultants, Inc.	Electrical Engineering
7.	Gates + Associates	Landscape Architecture

Response BB.283: Illingworth & Rodkin, Far Western Anthropological Research Group, Cogstone Resource Management, William Kanemoto & Associates, and HT Harvey & Associates are all subconsultants to David J. Powers & Associates. Director approval of these subconsultants was not required.

Comment BB.284: Other approved EIRs: “Since being added to the General Plan in 1994, all traffic analyses for projects in the greater North San José area and environs have included the Charcot Avenue Extension as part of the planned roadway network. Examples include the 2004 EIR for the condos located on the northside of Silk Wood Lane, the 2015 EIR for the Super Micro Project, the 2007 EIR for the San José Flea Market Project, the 2018 EIR for the BART Project, and various revisions to the North San José Development Area.” (Appendix B, Response 34.55)

Some of the EIRs mentioned do not identify Charcot as a transportation improvement included in their EIR. The statement therefore seems untrue. Furthermore, data from the EIRs where Charcot was included is inconsistent with data in this DEIR especially in regards to traffic data and projections.

The City has failed to adequately incorporate the Charcot Extension in its long-term traffic planning.

Response BB.284: Whether or not the Charcot Avenue Extension was specifically called-out in every environmental document prepared in the area in recent years does not mean it was not included in the assumed roadway network and does not invalidate its importance as an infrastructure improvement project that will serve development in the North San José area. The modeling undertaken for all long-term planning horizons

has included the Charcot Avenue Extension since it was added to the *San José Focus on the Future 2020 General Plan* in 1994.

Further, the fact remains that the project is identified in the City's key planning documents and corresponding CEQA documents, namely the *San José Focus on the Future 2020 General Plan*, the *Envision San José 2040 General Plan*, the *North San José Area Development Policy*, and the *North San José Deficiency Plan*. It is also identified as Project R19 in VTA's *VTP 2040: The Long Range Transportation Plan for Santa Clara County*.

Comment BB.285: Milpitas Transit Area Specific Plan: The 2007 DEIR for the Milpitas Transit Area Specific Plan¹²⁶ had to undertake a detailed traffic study of the area between 237 and Brokaw Road. The DEIR failed to include the Charcot Extension as a future roadway in the analysis.

Since the Charcot Avenue Extension is an "important and established part" of the NSJADP, the San José General Plan, the NSJ Deficiency Plan, it is surprising that the City of San José in its comment to the DEIR¹²⁷ did not mention this oversight. Could you please elaborate, why the City of San José did not feel it to be necessary for the Project to be included in the Milpitas Transit Area Specific Plan EIR and why the City did not mention it in the official comment to Milpitas? Are there other EIRs where the City failed to adequately notify applicants of this future roadway?

Response BB.285: According to Figure 2.1-2 of the EIR referenced in this comment, the study area for the Milpitas Transit Area Specific Plan did not extend south of Trade Zone Boulevard in Milpitas. Presumably, this is why Charcot Avenue wasn't called-out in the EIR as it is outside the study area. In any case, the failure to mention the Charcot Extension in a City of Milpitas document does not imply it is not an important infrastructure project for San José.

Comment BB.286: Orchard School EIR: "Prior to that decision, the City advised the Board against building the school at this location due to its proximity to existing and planned roadways (Oakland Road and Charcot Avenue) and industrial businesses."

Email Meenaxi Ravel: "The statement in Appendix B of the EIR is based on conversations with former staff members of the City's Planning Department and City Attorney's Office. The staff expressed to the District staff in phone calls concern with constructing an elementary school in an industrial area and adjacent to major planned roadways (Oakland Road and Charcot Avenue), and that the District was subject to the City's General Plan land use designation and zoning designation, pursuant to state law, and the District Board needed to go through an override process to locate the school, despite the City's land use controls applicable to the site. [...]"

Regardless of staff expressing certain opinions to unidentified school staff, there is no indication that the SJ Planning Commission - who under Public Resource Code Section 21151.2 seems to be the

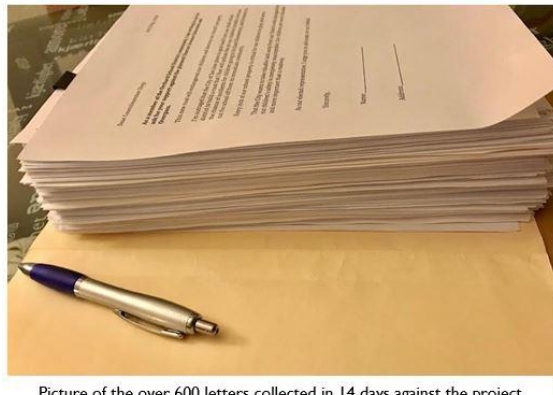
¹²⁶ http://www.ci.milpitas.ca.gov/_pdfs/plan_eir_tasp_draft.pdf

¹²⁷ http://www.ci.milpitas.ca.gov/_pdfs/plan_eir_tasp_final.pdf

appropriate decision making body for such concerns - indicated those concerns to the school district or disapproved of the school site selection during the environmental review for the school site.

Response BB.286: The City’s written records of Planning Commission actions date back to 1997, which is subsequent to the 1994 referral from the Orchard School District. Therefore, although former staff recall expressing concerns verbally regarding the proposed school site, it is unknown whether a written response was prepared.

Comment BB.287: General Planning Process: The City of San José updates its general plan on a regular basis, including comprehensive updates as needed to ensure that the plan reflects the latest vision of the community as well as economic and demographic trends.” (DEIR, p. 3)



Picture of the over 600 letters collected in 14 days against the project
(first page blank to protect privacy)

Given that the City is currently in the process of its regular general plan update, given the overwhelming opposition in the community that shows that this project does not reflect the latest vision of the community, and the general generational change under way,¹²⁸ the project should not move forward till at least after the general plan update.¹²⁹ It should also be noted that there is now a statewide majority to update outdated plans:

- “A strong majority of Californians (74%, 68% likely voters) also express support for encouraging local governments to change land use and transportation planning so that people can drive less.”¹³⁰

Response BB.287: The statements in this comment are the opinions of its author. Any decision to reevaluate the Charcot Avenue Extension would need to be made by the City Council.

¹²⁸ <https://usa.streetsblog.org/2018/11/13/millennials-unhappily-stuck-in-their-parents-transportation-system>

¹²⁹ For a discussion of a similar problematic also see: “The Inertia of Lines on Paper” <https://www.strong-towns.org/journal/2018/10/8/the-inertia-of-lines-on-paper>

¹³⁰ <https://www.ppic.org/blog/californians-favor-stronger-efforts-to-reduce-greenhouse-gas-emissions/>

Comment BB.288: Original planning for the Charcot Avenue Extension: “The City has planned the Charcot Avenue Extension for over 25 years.”(p. vi)

“The Extension was first identified as an infrastructure improvement project needed to serve the planned growth in the North San José area in the San José Focus on the Future 2020 General Plan, which was approved in 1994.” (p.3)¹³¹ Other infrastructure improvements identified at that time¹³² have either never been finished (expanding Tasman Drive to 6 lanes across Coyote Creek) or are currently re-evaluated (Tasman Complete Corridor Study).

Additionally, other infrastructure improvements planned to accommodate growth and planned even before 1994 have since been deemed not feasible anymore.

- “These included pre-1975 General Plan facilities such as State Route 87 extended north to State Route 237, the Commercial Street/Sierra Road Connection over Coyote Creek, etc. These improvements are no longer feasible due to developed land uses along the routes and will cause significant environmental impact. Based on this review, City staff concluded that no other viable, alternatives are available without significantly impacting land-use in the current General Plan designation.” (1994 NSJ deficiency plan)

It should also be noted that between 1994 and today, plans for Charcot itself have changed (e.g. reduction from four lanes to two lanes, Complete Streets Design).¹³³

Response BB.288: As stated in the previous response, any decision to reevaluate the Charcot Avenue Extension would need to be made by the City Council.

Comment BB.289: Orchard School opposition to General Plan 2020: The Charcot Avenue Extension was first identified as an infrastructure improvement project needed to serve the planned growth in the North San José area in the San José “Focus on the Future” 2020 General Plan, which was approved in 1994.

Further it should be noted that Orchard School District in a consortium with other schools urged and appealed to the City to not approve the General Plan 2020 and the EIR for it without further analysis of its impact schools such as Orchard (see Attachment I – “School opposition San José General Plan 2020”). The City declined the appeal and moved forward with the General Plan against the recommendation from the schools.

Response BB.289: The 1994 opposition referenced in this comment was unrelated to the proposed project or other transportation improvements.

¹³¹ As a point of reference: The median price for a single family home in Santa Clara County was \$257,520 at that time (September 1994).

¹³² See https://gallery.mailchimp.com/3c2e887be4432eb0e94db571d/files/0136cf2d-6e3e-43d3-8e2a-b2b00635b9d4/20170322_PublicMeetingPresentation.pdf, p. 3)

¹³³ See for example Response 34.56, Appendix B

Comment BB.290: General Plan Policy CD-1.24: “Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible, include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.”

The compliance of the project with this policy needs to be discussed in more detail.

Response BB.290: The project is only removing trees where avoidance is not feasible. Trees removed will be replaced at the ratios listed in Table 3.4-2 of the DEIR, which complies with the referenced policy.

Comment BB.291: General Plan Policy CD-2.1: “Create a comfortable and safe pedestrian environment by implementing wider sidewalks, shade structures, attractive street furniture, street trees, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, and on-street parking that buffers pedestrians from vehicles.”

The project does not implement wider sidewalks (10 feet is minimum according to SJ Complete Street Design Guidelines), shade structures, attractive street furniture, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, bulb-outs and curb extensions at intersections, and on-street parking that buffers pedestrians from vehicles.

Response BB.291: The referenced policy contains a list of potential pedestrian improvements, not all of which are applicable to every location. The improvements that are applicable to the project are listed on page 10 of the DEIR and include 11-foot sidewalks, a 9-foot pedestrian path, and an enhanced crosswalk with a HAWK signal.

Comment BB.292: General Plan Policy CD-4.11: “Accomplish sound attenuation for development along City streets through the use of setbacks and building design rather than sound attenuation walls. When sound attenuation walls are located adjacent to expressways or freeways, or railroad lines, landscaping, public art, and/or an aesthetically pleasing and visually interesting design should be used to minimize visual impacts.”

Noise walls along City streets are to be avoided according to General Plan policy. They should therefore be considered a significant impact.

Response BB.292: Please see Response BB.193.

Comment BB.293: General Plan policy CD-5.1: “Design areas to promote pedestrian and bicycle movements, to facilitate interaction between community members, and to strengthen the sense of community.”

The impact of the project on this policy and especially of the noise walls is not adequately discussed.

Response BB.293: As listed on pages 9-10 of the DEIR, the project includes many components to enhance bicycle and pedestrian modes of travel. Soundwalls will not reduce the benefits of these improvements to bicyclists or pedestrians.

Comment BB.294: General Plan Policy CD-5.3: “Promote crime prevention through site and building designs that facilitate surveillance of communities by putting “eyes on the street.” Design sites and buildings to promote visual and physical access to parks and open space areas.”

The impact of the proposed sound walls has not been evaluated under this General Plan Policy. They represent a significant, unavoidable impact.

Response BB.294: Please see Response BB.257.

Comment BB.295: General Plan Policy CD-10.2: “Require that new public and private development adjacent to Gateways, freeways [...] and Grand Boulevards consists of high-quality architecture, use high-quality materials, and contribute to a positive image of San José.”

Impact of noise walls needs to be considered under this policy. Given that sound walls have not been designed, impact cannot be accurately assessed. Also the architectural quality of the overpass in general should be evaluated as well.

Response BB.295: As stated in previous response, during the final design of the overcrossing, retaining walls, and soundwalls, the City will work with the community to incorporate aesthetic treatments (e.g., patterns, colors, textures, etc.) into these features. There are numerous examples of where such treatments are in place throughout the region.

Comment BB.296: General Plan Policy EC-1.1: “Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review”

In accordance to San José General Plan policy EC-1.1, The report needs to acknowledge and incorporate California Streets and Highway Code sections 216 and 216.1. as relevant regulatory background. California Streets and Highway Code sections 216 and 216.1. states that sound at 50 decibels in the vicinity of schools to be the point at which corrective action needs to be taken.

Response BB.296: The Charcot Avenue Extension is not “new development” as used in this policy. The policy is referring to proposed land uses such as the siting of residences and schools. In any event, the noise levels that will be produced by traffic on the Charcot Avenue Extension will comply with both the indoor and outdoor noise/land use compatibility standards of the City. See Section 3.13 of the DEIR for details.

Comment BB.297: General Plan Policy EC-1.2: “The City considers significant noise impacts to occur if a project would: Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain “Normally Acceptable.”

Table 3.13-6 shows increases of 11 and 6 dBA for receivers S2 and S3. The report subsequently fails to identify and discuss these significant impacts.

“While noise levels outside the Orchard School primary classrooms (S2 and S3) would be exposed to increases in traffic noise levels that are greater than five dBA DNL, the classrooms have been constructed with double-paned windows, insulation, and forced-air mechanical ventilation, therefore interior noise levels would still be maintained at 45 dBA DNL and the impact at this location would be less than significant. (Less Than Significant Impact)” (p. 116)

As stated in General Plan policy EC-1.2, an increase by five dBA DNL needs to be considered significant even when noise levels remain “Normally Acceptable”.

The report further fails to analyze of mitigation measures for these noise receptors.

Response BB.297: The statement quoted above “While noise levels outside the Orchard School primary classrooms (S2 and S3)” explains why the impact to these land uses was found to be less-than-significant. Therefore, mitigation was not recommended.

Comment BB.298: General Plan Policy EC-6.5: “The City shall designate transportation routes to and from hazardous waste facilities as part of the permitting process in order to minimize adverse impacts on surrounding land uses and to minimize travel distances along residential and other non-industrial frontages.”

The transportation of hazardous materials next to Orchard school and the residential area along Silk Wood Lane also conflicts with the City’s General Plan:

Response BB.298: Please see Response R.51.

Comment BB.299: General Plan Policy EC-6.7: “Do not approve land uses and development that use hazardous materials that could impact existing residences, schools, day care facilities, community or recreation centers, senior residences, or other sensitive receptors if accidentally released without the incorporation of adequate mitigation or separation buffers between uses.”

Since the project is likely to increase the number of trucks passing the school while also bringing them into closer proximity to the school, the impact should be considered significant.

Response BB.299: Please see Response R.51.

Comment BB.300: General Plan Policy ES-3.9: “Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly visible and accessible spaces.”

The impact of the proposed soundwalls has not been evaluated under this General Plan Policy. They represent a Significant, Unavoidable Impact.

Response BB.300: The proposed 6-foot soundwall along the northerly boundary of the Orchard School property will be durable and meet current design standards. The soundwall will replace an existing fence and therefore would not serve as a new barrier to access. By reducing noise, the soundwall would enhance the experience of persons utilizing the recreational facilities at the school.

Comment BB.301: General Plan Policy MS-21.4: “Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.”

The reports need to disclose how all feasible alternatives would conform to this policy and what reasonable measures haven been evaluated to preserve mature trees.

Response BB.301: The City seeks to minimize tree loss by designing projects that have the smallest footprint, while at the same time not compromising design and safety standards or sacrificing important features (e.g., bike lanes and sidewalks). In this case, it is not feasible to construct the project without requiring the removal of approximately 85 trees. As described on pages 53-54 of the DEIR, as standard conditions in compliance with General Plan Policies MS-21.4, MS-21.5, MS-21.6, and CD-1.24, the project includes the installation of replacement trees as mitigation for impacts to the trees.

Comment BB.302: General Plan Policy MS-21.5: “As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.”

The reports need to disclose how all feasible alternatives would conform to this policy.

Response BB.302: Please see Response BB.299.

Comment BB.303: General Plan Policy MS-21.5: “As a condition of new development, require the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.”

The reports need to disclose how all feasible alternatives would conform to this policy and where the replacement trees are likely to be planted.

Response BB.303: Please see Response BB.299.

Comment BB.304: General Plan Policy TR-1.1: “Accommodate and encourage use of non-automobile transportation modes to achieve San José’s mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).”

The report should note that the project is in violation of this goals as it increases VMT (Appendix K, p. 16).

Response BB.304: In compliance with Policy TR-1.1, the project accommodates bicycle and pedestrian modes, as described in Sections 2.3.2 and 2.3.3 of the DEIR.

Comment BB.305: General Plan Policy TR-1.2: “Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects”

Or, as stated in the DEIR:

- “Policy 1.2 of The Envision San José 2040 General Plan states that impacts on overall mobility and all travel modes should be considered when evaluating transportation impacts of new developments or infrastructure projects to encourage the use of non-automobile transportation modes to minimize vehicle trip generation and reduce VMT.” (p. 5)

The DEIR fails to analyze overall mobility and mode share use. This omission needs to be corrected.

Response BB.305: As stated in the previous response, the project includes both bicycle and pedestrian improvements in compliance with Policy TR-1.2. These features will facilitate travel along the Charcot Avenue Corridor and in the project area by pedestrians and bicyclists, providing buffered bike lanes and sidewalks and a new connection across I-880.

Comment BB.306: General Plan Policy TR-1.3: “Increase substantially the proportion of commute travel using modes other than the single-occupant vehicle.”

The EIR fails to disclose the impact of the project or its alternatives on mode share.

Response BB.306: Please see Responses BB.302 and BB.303.

Comment BB.307: General Plan Policy TR-1.5: “Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences”

The EIR fails to disclose the impact of the project and especially the proposed sound walls on attractive access and travel for pedestrians and bicyclists.

Response BB.307: Please see Responses BB.302 and BB.303.

The soundwall along the north side of Silk Wood Lane would replace the existing soundwall. The soundwall along the south side of Silk Wood Lane would replace the existing chain-linked fence. As such, the soundwalls would not create any new blockages or impediments to bicycle or pedestrian travel.

Comment BB.308: General Plan Policy TR-1.9: “Give priority to the funding of multimodal projects that provide the most benefit to all users. Evaluate new transportation projects to make the most efficient use of transportation resources and capacity.”

The DEIR fails to provide a cost-benefit analysis for the alternatives.

Response BB.308: A cost-benefit analysis is a financial issue that is not an environmental impact under CEQA.

Comment BB.309: General Plan Policy TR-2.1: “Coordinate the planning and implementation of citywide bicycle and pedestrian facilities and supporting infrastructure. Give priority to bicycle and pedestrian safety and access improvements at street crossings and near areas with higher pedestrian concentrations (school, transit, shopping, hospital, and mixed-use areas)”

The DEIR fails to address how different project alternatives would comply or not comply with this policy.

In violation of this policy the transportation analysis even suggests: “Therefore, it is recommended that access to the school site be located near Oakland Road to discourage crossing of Charcot Avenue at points other than the Oakland Road intersection.” (p. 30).

Response BB.309: The comment suggests that the traffic study recommends a change to the transportation system that is in “violation” of a General Plan policy. However, the traffic study states that maintenance of an uncontrolled crossing of Charcot Avenue is not recommended and references the controlled crossing point that would be provided by the new signalized Oakland Road intersection. The comment also references a statement on P. 30 of the traffic study. However, the comment omits the entire discussion and therefore does not present the true context of the statement. The entire discussion is as follow:

“Due to the large projected traffic volumes and limited sight distance along Charcot Avenue, an uncontrolled crosswalk on Charcot Avenue is not recommended. A controlled crossing point of Charcot Avenue is provided at the Oakland Road intersection. Access to the school site along Charcot Avenue is being considered. It is likely that students will cross Charcot Avenue at uncontrolled points, such as the Silkwood Lane intersection, should the school access point be located near Silkwood Lane. ***Therefore, it is recommended that access to the school site be located near Oakland Road to discourage crossing of Charcot Avenue at points other than the Oakland Road intersection.*** A new pedestrian only signal or High-Intensity Activated Crosswalk (HAWK) beacon at the Silkwood Lane intersection should be considered should a new access to the school be provided along Charcot Avenue. However, to minimize queues along Charcot Avenue, no left turn-movements to and from Silkwood Lane should be allowed at the crossing point.”

Thus, the proposed project would include measures to improve pedestrian travel within the project area.

Comment BB.310: General Plan Policy TR-2.3: “Construct crosswalks and sidewalks that are universally accessible and designed for use by people of all abilities.”

The report should note that the project is in violation of this goal as the planned sidewalks do not meet minimum standards of the City’s Street Design guidelines. The visualizations provided show trees planted on the sidewalk next to Orchard School. While useful as shade structures, this would limit the sidewalk width to an inadequate narrow path.

Response BB.310: Trees along the planned sidewalk next to Orchard School were not included in the visualizations in the Visual Impact Assessment of the Draft EIR. Trees may be provided during detailed design at the request of the stakeholders and City. Adding trees would not reduce the sidewalk to an inadequate narrow path, as ADA tree grates can be installed and a minimum 36" ADA clearance will be provided around all points of obstructions, which may include trees, fire hydrants and light poles etc.

Comment BB.311: General Plan Policy TR-2.6: “Require that all new traffic signal installations, existing traffic signal modifications, and projects included in San José’s Capital Improvement Plan include installation of bicycle detection devices where appropriate and feasible.”

The report should note that the project is in violation of this goal as the installation of bicycle detection devices is not planned.

Response BB.311: Bike detectors are included in the project. For clarification, the detectors have been added to the project description. See Section 5, *Draft EIR Text Revisions*.

Comment BB.312: General Plan Policy TR-2.10: “Coordinate and collaborate with local School Districts to provide enhanced, safer bicycle and pedestrian connections to school facilities throughout San José.”

While the City’s Department of Transportation has collaborated with the Orchard School District to enhance safety for access to the school on Fox Lane, the project team has not collaborated with the Orchard School District to create a safer bicycle and pedestrian connection from Silk Wood Lane to the school.

Response BB.312: As detailed in Response H.1, the City has met with school district staff on multiple occasions to discuss the project.

Comment BB.313: General Plan Policy TR-2.22: “Collect and report pedestrian and bicycle counts, as part of routine manual traffic counts, along road- ways and at intersections where bicycles or pedestrians are permitted. Quantifying pedestrian and bicycle activities will measure the amount of pedestrian and bicycle activities throughout the City and assist in determining and prioritizing infrastructure improvement projects.”

The location for the pedestrian counts (Oakland Road/Silk Wood Lane) does not match the main areas of pedestrian crossings and activity identified in the traffic study. (p. 49) The pedestrian and bicyclist count is inadequate.

Response BB.313: Pedestrian and Bicyclists counts were collected at each of the studied intersections. However, the comment seemingly suggests that pedestrian counts should be located at additional points, specifically along Silk Wood Lane where student drop-off/pick-up occur in a non-designated area. Regardless, Section 3.17.1 of the DEIR acknowledges the pedestrian activity along Silk Wood Lane. The collection of pedestrian counts as suggested by the comment would have no effect on the recommended pedestrian improvements measures.

Comment BB.314: General Plan Policy TR-5.7: “Development projects’ effects on the transportation network will be evaluated during the entitlement process and will be required to fund or construct improvements in proportion to their impacts on the transportation system. Improvements will prioritize multimodal improvements that reduce VMT over automobile network improvements.”

Similar to private developers the City of San José should prioritize multimodal improvements that reduce VMT over automobile network improvements to mitigate development in North San José.

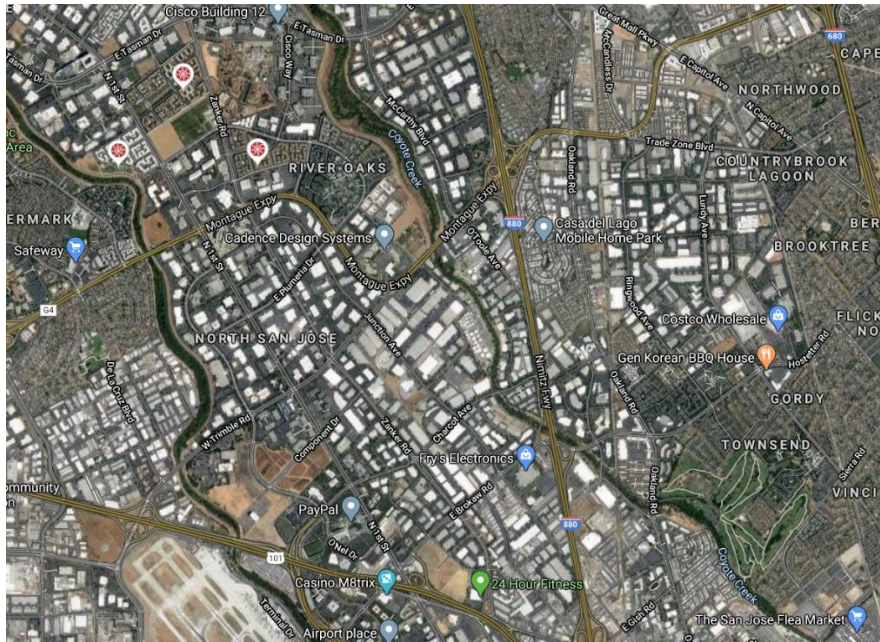
Response BB.314: The Charcot Avenue Extension is not a “development project” seeking entitlement and therefore Policy TR-5.7 is not applicable. Nonetheless, consistent with Policy TR-5.7 and the City’s Complete Streets Policy, the project consists of multimodal improvements that will benefit vehicles, pedestrians, and bicyclists. These improvements are listed on pages 8-10 of the DEIR.

Comment BB.315: Project objectives: For a more detailed discussion of transportation system deficiencies and potential alternatives to the project please see Attachment F – “Discussion of Context and Alternatives to Charcot Extension”.

Response BB.315: As stated in Section 7.1 of the DEIR, CEQA Guidelines Section 15126.6 requires an EIR to evaluate a “reasonable range of alternatives” to the project. The Guidelines state that the discussion of alternatives is limited to those that would feasibly attain most of the project objectives and, further, that an EIR need not consider every conceivable alternative to a project.

Pursuant to CEQA Guidelines Section 15126.6, Section 7 of the DEIR evaluates the environmental impacts of a reasonable range of eight alternatives and analyzes the ability of each alternative to meet some or all of the five project objectives list on page 184 of the DEIR.

It is important to note that the Charcot Extension has been planned since 1994 and that significant development has occurred in the area since that time, all of which has anticipated the construction of the Charcot Extension. The reality of this development is that there now very limited corridors that would feasibly serve to meet the project objectives without major property acquisitions, business relocations, and residential relocations. This can be seen on the following Google Maps excerpt:



Given the existing development, the obvious alternatives to the Charcot Avenue corridor to improve east-west travel would be Fox Lane, Brokaw Road, Montague Expressway, and a new I-880 overcrossing utilizing Ridder Park Drive, each of which was evaluated in Section 7.3 of the DEIR and determined to be infeasible. These options are encompassed on page 26 of Appendix F of the comment as Alternatives 2, 3, and 4.

In addition to Alternatives 2, 3, and 4, page 26 of Appendix F summarizes five other suggested alternatives. Alternative 1, Bike/Ped Bridge Only, is evaluated as Alternative E in Section 7.4.2 of the DEIR. Alternatives 5-8 would make various improvements to the I-880/Montague Expressway interchange or at the Montague/McCarthy/O’Toole intersection. None of these alternatives would provide a new east-west crossing of I-880, would provide a new bike/ped crossing of I-880, or would implement a programmed project identified in the *Envision San José 2040 General Plan*, *North San José Area Development Plan*, or *North San José Deficiency Plan*.

Comment BB.316: Purpose vs. objectives: The DEIR should make a clear distinction between the projects purpose and its objectives. The current descriptions are at least partly redundant.

*“The **purpose** of extending Charcot Avenue across I-880 is to **provide a safe multi-modal facility, improve connectivity** for vehicular, bicycle, and pedestrian travel routes, provide the **opportunity** to utilize alternative travel modes, and **reduce travel time** for the east-west travelers in the North San José Area.”*

(DEIR, p. 13)

*“The **objectives** for the proposed project are as follows:*

- ▶ **Improve connectivity** between the east side of I-880 and the west side of I-880; [...]*
- ▶ **Provide a safe bicycle/pedestrian facility** over I-880, in compliance with San José’s Complete Streets Policy; [...]*”

(DEIR, p. 13)

Response BB.316: A project’s purpose and objectives are, by definition, interrelated. The “purpose” answers the question of “why” and the “objectives” set forth the desired result(s).

Comment BB.317: Change in project objectives since scoping

The objectives for the proposed project are as follows:

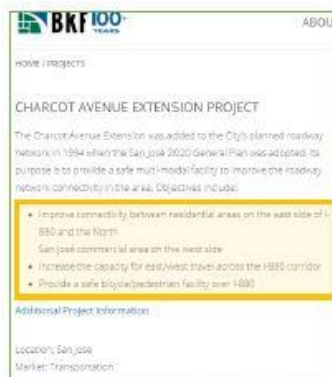
- ▶ Improve connectivity between the east side of I-880 and the west side of I-880;
- ▶ Increase the capacity for east/west travel across the I-880 corridor;
- ▶ Provide a safe bicycle/pedestrian facility over I-880, in compliance with San José’s Complete Streets Policy;
- ▶ Implement a programmed roadway network improvement project identified in the *Envision San José 2040 General Plan*; and
- ▶ Implement a planned major roadway improvement project, as set forth in the *North San José Area Development Policy* and the *North San José Deficiency Plan*.

(DEIR, p. 13)

The project objectives presented in the DEIR are inconsistent with the project objectives presented during the scoping process, the City’s project website and the information in the initial site assessment. Please explain why additional objectives (i.e. compliance with City plans) were added, when and by whom.



Project website October 2019



Contractor BKF website, October 2019



Slide from Community Scoping Meeting, May 2018

The EIR also needs to identify the initial transportation deficiency, the system strategies as defined in State, regional, and local plans, goals, and objectives, and the community values the project reflects as described in the 2015 Consultant Agreement with BKF:

The primary purpose and need of the Project needs to be defined in order to initiate the geometric alternative analysis and establish if the traffic operations support the Project goals. The purpose and need will be collaboratively developed by the Consultant, the City, VTA and Caltrans to ensure concurrence. Considerations in establishing the purpose and need include:

Identify the Initial Transportation Deficiency; • Meet system strategies as defined in State, regional, and local plans, goals, and; objectives; • Reflect Community Values

Once the initial purpose and need is established, Consultant shall evaluate alternatives to; avoid or reduce environmental impacts and to select the alternative that causes the least; overall environmental damage and that satisfies the transportation purpose and need.; The purpose and need may be modified by Consultant (with the approval of City) during the; course of the PSR/PDS development as other requirements and benefits arise.“

Response BB.317: As envisioned by the statements in this comment, part of the project development process involves the development and refinement of its purpose and need, also known as its objectives. A project’s objectives are determined by the project applicant, which in this case is the City’s Department of Transportation. Implementing its General Plan and other adopted planning documents is an objective of the City.

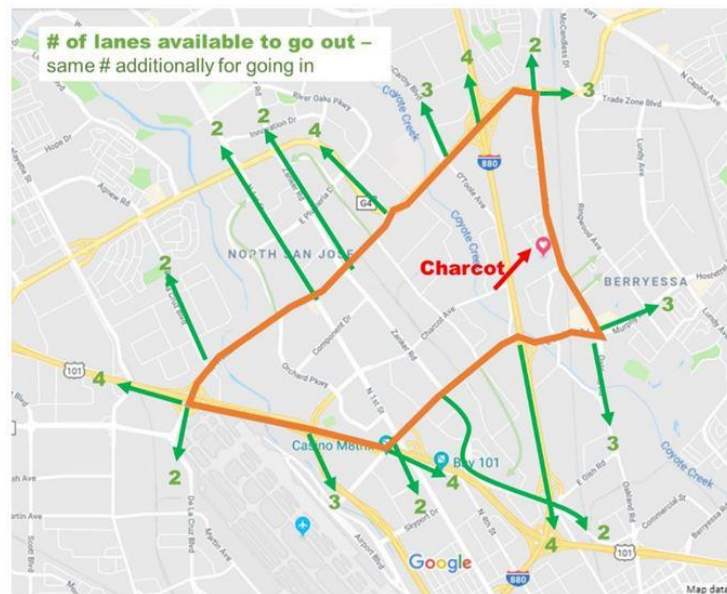
Comment BB.318: Connectivity: The original justification for including the project in the general plan has been capacity increase: “The additional capacity at the eastbound approaches to I-880 [...] is expected to attract slightly heavier traffic volumes and improve the screenline level of service from LOS E to LOS D” (GP 2020 EIR Traffic Analysis, p. 219).

Improved connectivity might be a benefit of the project but was not identified as an objective. Please provide any supporting material that shows that connectivity is an intended objective of the project. Also, connectivity in this context should be assumed as connectivity for people. Generally, staff has argued that NSJ has a high degree of accessibility and connectivity.

“North San José provides a strategic location for job growth because of its proximity to the San José Norman Y. Mineta International Airport and the Downtown, along with a high degree of accessibility from several major freeways including Highway 101, Interstate 880, State Route 237 and State Route 87. The area is also well served by other transportation facilities including an existing light rail line and the Guadalupe River and Coyote Creek trail systems.”¹³⁴

And although staff has compared the south end of NSJ to a “bathtub”¹³⁵, a detailed analysis of this¹³⁶ shows NSJ is connected to its surroundings by 49 vehicle lanes per travel direction or 98 lanes for both travel directions). Based on NACTO information¹³⁷ this provides access for over 940,000 vehicles per day - one-way.

As shown on the map, it is also unclear how Charcot would actually increase connectivity. It should further be noted that many of the existing barriers blocking vehicle traffic are freeways built to increase car mobility.



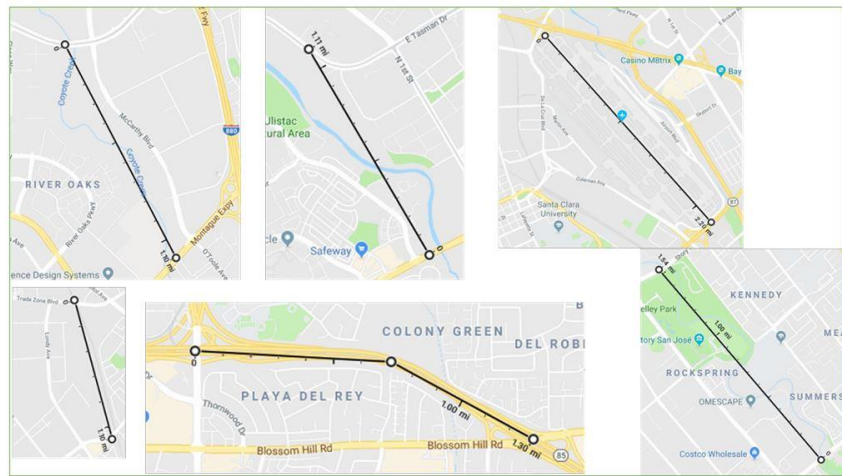
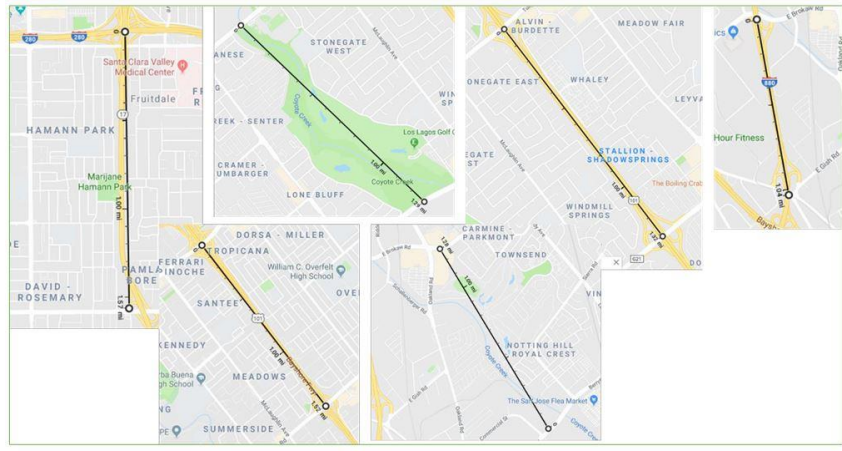
It should further be noted that there are a number of similar barriers (longer than 1 mile) throughout San José including some very close to the project area that limited connectivity, yet there seem to be no plans to build any roadways across these barriers

¹³⁴ North San José Area Development Policy, p. 7, <http://www.sanjoseca.gov/DocumentCenter/View/43619> also: “One of North San Jose’s greatest strengths is its connection to the regional transportation infrastructure. The area is located adjacent to the Norman Y. Mineta San Jose International Airport and is bounded by multiple major highways that provide direct access to the rest of Silicon Valley, San Francisco, and East Bay communities. Multiple VTA light-rail stations also connect area residents and workers directly to Downtown San Jose. Furthermore, the area has relatively easy access to two existing Caltrain stations and two future BART stations (Berryessa and Alum Rock), all of which provide even greater regional connectivity.” “NSJ Retail Strategy”, http://sanjose.granicus.com/MetaViewer.php?meta_id=624592”

¹³⁵ Jim Ortbal, Director of Transportation at San José City Council, Jun 19, 2018, “6.5 18-837 Amendment to the Agreement with BKF Engineers for I-880/Charcot Avenue Extension Project.”

¹³⁶ Comparable to a screenline analysis

¹³⁷ <https://nacto.org/publication/transit-street-design-guide/introduction/why/designing-move-people/>

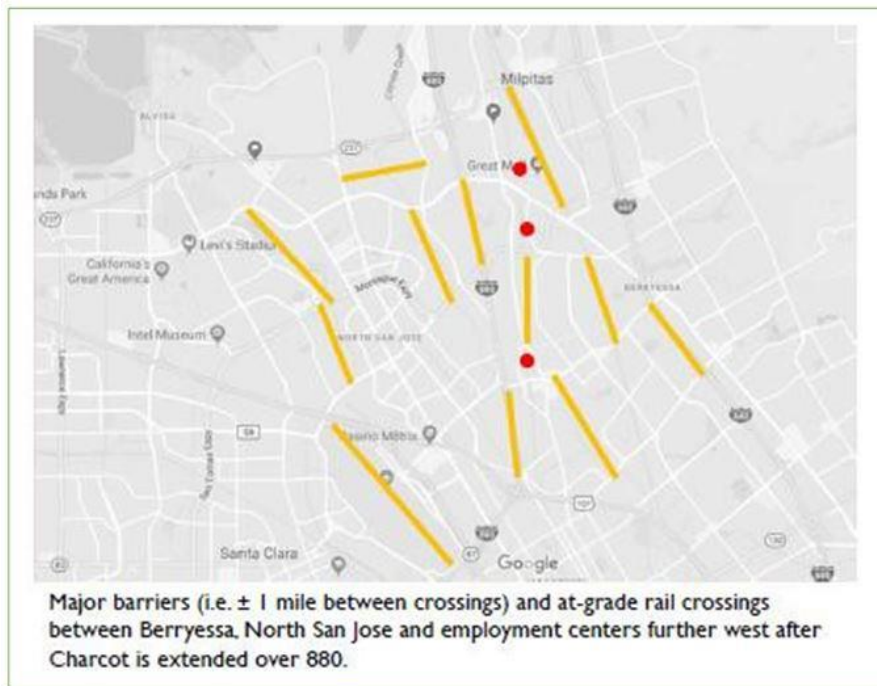


Response BB.318: As noted in previous responses, a project’s “benefit” and “objective” are interrelated. A project’s objective is, by definition, aimed at achieving certain benefits.

With regard to the question as to how the project would improve connectivity, the answer is that it would bridge the north-south barrier posed by I-880. The new overcrossing would provide a connection between the land uses on the east and west sides of the freeway in the vicinity of the Charcot Avenue alignment.

The statements that there are other existing barriers in San José and that there seems to be no plans to build roadways across those barriers is irrelevant to the proposed project.

Comment BB.319: Existing east/west connections: There are also a number of other north-south barriers in the vicinity of the project that are maybe the underlying cause of congestion in the area and that are not addressed by the project (e.g. Coyote Creek, UPPR, Bart tracks). The focus on the I-880 crossing as a potential reason for congestion is arbitrary. The project also does nothing to address remaining barriers.



Response BB.319: The Charcot Avenue Extension does not purport to solve all of the transportation deficiencies in the area. The City has the responsibility and the right to prioritize infrastructure improvement projects and the process to set priorities is not arbitrary. One of the goals of the *North San José Area Development Plan* is to establish priorities and phasing commensurate with planned land use development in the area.

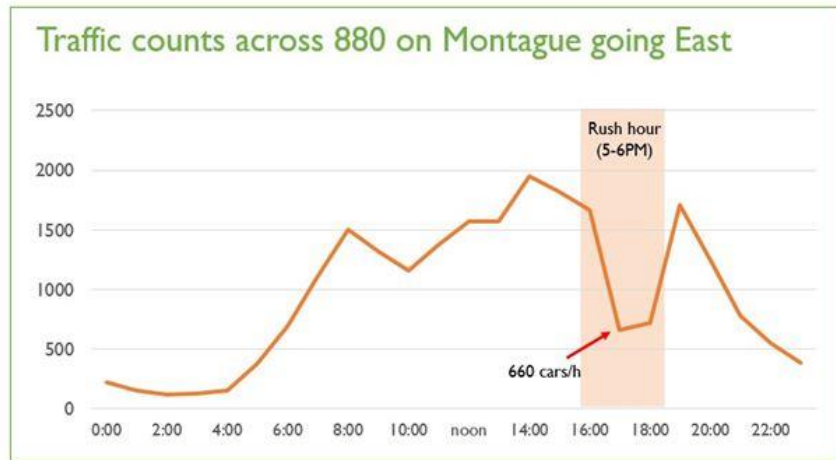
Comment BB.320: Time savings: The purpose of the project is to “reduce travel time for the east-west travelers in the North San José area” (p. 13).

Does the project fulfill this purpose? Please provide data to support the assessment. According to the data included in the DEIR any time savings seem to be minimal at best and might not even occur during peak travel hours. An appropriate focus of such an analysis would be a corridor analysis for Montague, Charcot and Brokaw for people travelling between 1st and the BART tracks between the Milpitas and Berryessa stations.

Response BB.320: The traffic study states the following (page 5): ...Therefore, it is expected that the Charcot extension would reduce travel time and improve travel speed for vehicles traveling east-west *within the study area bounded by Trimble Road and Montague Expressway to the north, First Street to the west, Brokaw Road to the south, and Oakland road to the east.* The minimal change on the traffic analyses metrics (VMT, VHT, speed, travel time) due to the proposed project is an indication that the proposed roadway extension is local-serving and will have minimal effect on travel outside of the immediate project area.

Comment BB.321: Capacity: The purpose of increasing capacity for east/west travel across the I-880 corridor is questionable given that traffic volumes on for example Montague eastbound (peak hour direction) sink dramatically (below 700 cars/hour on 4 lanes) and below levels seen during off-

peak hours. This seems to indicate that this is not an issue of roadway capacity, but rather more complex.



Response BB.321: Please see Response BB.117. The minimal change on the traffic analyses metrics (VMT, VHT, speed, travel time) due to the proposed project is an indication that the proposed roadway extension is local-serving and will have minimal effect on travel outside of the immediate project area.

Comment BB.322: State strategy: “Reducing congestion through strategies designed to encourage people to shift from cars to other modes of transportation. Funding active transportation options that contribute to the overall health of Californians and reduce greenhouse gas emissions, such as walking, transit, biking, and other active modes.” (Executive Order Governor Newsom, September 2019)¹³⁸ The EIR should address how the project and the alternatives meet the cited state strategy.

Response BB.322: Consistent with this strategy, the project includes multimodal improvements that will benefit pedestrians and bicyclists. These improvements are listed on pages 9-10 of the DEIR.

Comment BB.323: Impact EN-1: “The project would not result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy, or wasteful use of energy resources, during project construction or operation. (Less than Significant Impact)”. Since the City has not established that the project would provide a significant benefit especially compared to the alternative of the overpass for pedestrians and bicyclists only, the consumption of energy necessary for the project construction and operation is wasteful, inefficient and unnecessary and a significant impact.

Response BB.323: Section 3.8 of the DEIR concludes that the project would reduce GHG emissions, while Section 3.17 of the DEIR concludes that the project would reduce VHT, increase average speeds, and reduce travel times. These conclusions, coupled with the features of the project that will facilitate bicycle and pedestrian

¹³⁸ <https://cal.streetsblog.org/wp-content/uploads/sites/13/2019/10/9.20.19-Climate-EO-N-19-19.pdf>

modes, demonstrate the benefits of the project. For these reasons, there is no basis to conclude that the project would result in a significant energy impact.

Comment BB.324: North San José Planning: For a more detailed discussion of how Charcot relates to the development of North San José, please see Attachment A – “Background memo Charcot and Development in North San José”.

Response BB.324: Appendix A was prepared in January 2018 by this commenter as a background memo. The thrust of this memo is to question the need for the project and other planned roadway improvements in the North San José area. The memo cites potential drawbacks associated with the projects’ costs/benefits, environmental impacts, and conflicts with various policies.

Appendix A is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

Comment BB.325: Direct and Indirect Growth:

“Further, there are no pending or recently-approved projects whose construction is conditioned upon the implementation of the project.”

(DEIR, p. 179)

“Chapter 5 of the NSJADP identifies the infrastructure improvements needed to serve the planned development. The Charcot Avenue Extension is listed as one of nine Major Roadway Projects”

(DEIR, p. 179)

Given the above cited inconsistency, the EIR needs to explain in more detail if development of North San José is conditioned upon the implementation of the project (statement right) or not (statement left). Depending on the conclusion the DEIR will need to further address if the project will induce growth or not.

Response BB.325: Please see response BB.260.

Comment BB.326: NSJ Evaluation at program level: “The environmental impacts of the Extension and other planned transportation improvements were evaluated at a program level in the San José Focus on the Future 2020 General Plan EIR (1994).” (p. 3)

“The environmental impacts of the nine Major Roadway Projects were evaluated at a program level in the North San José Development Policies Update EIR (2005).”(p. 8) Given that evaluation criteria for transportation improvements have significantly shifted (LOS to VMT, SB 743)148, any previous evaluation of the project is irrelevant or contradictory to today’s standards. The evaluation of the Charcot project on a program level for the North San José Development Policies Update EIR (2005) does not show any benefit of the project.

The NSJ deficiency plan itself states: “the degree that individual projects identified in the North San José Deficiency Plan have the potential for creating ancillary (i.e. localized) impacts to the environment, such impacts will be evaluated as individual projects come forward for design and construction.”

The criteria used to suggest and develop transportation improvements changed between the 1994 approval of the “General Plan 2020” (criteria: screenline analysis) and the 2005 NSJ Development Policy (LOS intersection analysis). Given this shift in methodology between 1994 and 2005, it has not been evaluated if the 1994 transportation improvements are actually necessary under the 2005 methodology.

As so much has changed since 2005. For example these companies or products didn’t even exist in 2005: Uber, Instagram, Bitcoin, iPad, Snapchat, Apple Maps, Angry Birds, Kickstarter, GoFundMe, WhatsApp, Apple Watch, FB Messenger, Candy Crush, Pinterest, Alexa, Venmo, WeWork, WeChat, Tinder, Twitch, Siri, Square, Stripe, Slack

NSJADP: “The Charcot Avenue Extension has been included in each version of the NSPADP in 2005.”(DEIR, p. 8) It needs to be noted the inclusion in each version of the NSJADP happened without any evaluation of impact or benefits of the Charcot Extension.

North San José Deficiency Plan: “The City adopted the North San José Deficiency Plan in July 2005 to identify and implement a set of measures that will improve transportation conditions and air quality in North San José. Charcot Avenue Extension was identified as one of the projects on the Action List in the North San José Deficiency Plan.”(DEIR, p. 8)

The North San José Deficiency Plan is based on LOS. In May 2019, City Council directed staff to: “return to Council in early August with a workload and feasibility assessment of various options that forward the goal of advancing housing with an enhanced amount and incentives for affordable housing, including but not limited to the following options:[...] Commencing a new programmatic environmental impact study on North San José, utilizing statewide adoption of VMT to guide creation of a new development policy.”

This indicates that City Council is realizing the flaws of the current North San José Deficiency Plan and would like staff to re-evaluate the improvements in the plan. Staff has so far failed to follow through on council direction. And although the plan intends to improve air quality there is no proof that infrastructure projects such as the Charcot Extension identified in the plan will improve air quality. Statement is also inconsistent with NSJ EIR that states: “The proposed project will implement mitigation measures identified above to reduce impacts to regional air quality. The project as proposed will, however, result in near-term and long-term impacts to regional air quality. (Significant Unavoidable Impact)”

North San José Deficiency Plan: “Implement a planned major roadway improvement project, as set forth in the North San José Area Development Policy and the North San José Deficiency Plan.” (p. 13) The NSJ Deficiency Plan writes about the purpose of Charcot:

“The City of San José has identified several physical improvements to non-CMP intersections that will further offset CMP [i.e. LOS] deficiencies. [...]: Charcot Avenue Extension“ (p. 13-15 NSJ Deficiency Plan)

“It is the objective of the NSJDP to set forth a comprehensive solution to LOS deficiencies at CMP inter- sections in North San José to avoid the need for strict adherence to LOS standards at CMP intersections for which no localized mitigation is feasible.”(Hexagon Transportation Consultants)¹³⁹

It should be noted that the DEIR doesn't show any LOS intersection improvements at CMP intersections or otherwise because of Charcot.

“For decades, most local, regional, and state governments have had a myopic approach to handling the transportation needs related to infill development: they require developers to add more street/road capacity. And this single-minded approach has produced exactly what one might expect: Lots of new, expensive roads that actually increase driving, and with it pollution, emissions, roadway deaths, and impediments for people trying to get around without cars.” (“Modernizing Mitigation: A Demand-Centered Approach”, State Smart Transportation Initiative (SSTI) and the Mayors Innovation Project (MIP)¹⁴⁰)

Timing in NSJADP: “The Area Development Policy establishes a specific procedure for the allocation and timing of development capacity within the policy area.” (DEIR, p. 98) The report fails to acknowledge that the Charcot Extension is a Phase 2 project under the policy. Phase 1 projects have not been completed or in some cases even started.

Statement needs to be amended to incorporate the fact that Charcot is not part of the current Policy phase. Moving it to the current phase is a significant impact demonstrated by the fact of City staff having numerous discussions with a large number of stakeholders including several reports to City Council about this potential change. Arguing that the order can or should be changed admits that the specific procedure and timing of the policy has shown to be flawed and raises the question of additional flaws in the policy especially given new understanding of transportation impacts and the move from LOS to VMT.

In-fill and compact development: “However, to the extent that the Extension supports in-fill and compact development within the TPA and PDA, it is consistent with the Plan.” (p. 97). There is no evidence that the Extension supports in-fill and compact development. Quite contrary road expansion

¹³⁹ <http://www.hextrans.com/featured-work>

¹⁴⁰ <https://smartgrowthamerica.org/app/uploads/2018/10/Modern-Mitigation-A-demand-centered-approach-compressed.pdf>

projects have generally lead to more suburban development and sprawl.^{141 142 143 144 145} For a detailed discussion also see: “Driving and the Built Environment The Effects of Compact Development on Motorized Travel, Energy Use, and CO2 Emissions” (Transportation Research Board)¹⁴⁶

“We should not expect that adding capacity to the road network will provide more than short-run relief from traffic congestion. [...] we should expect that transportation infrastructure leads to cities that are less dense, even if metropolitan area population increases” (Local Transportation Policy and Economic Opportunity Matthew A. Turner Brown University, January 2019)¹⁴⁷

The stated purpose of the project according to the 2020 general plan is to allow more access to North San José from suburban areas outside the area.

“The flight to the suburbs and the decentralization of American cities, the report says, was fueled not only by the commuting benefits that highways provided but by the desire of more affluent urbanites to escape the negative effects of increased noise and air pollution that these roads inflicted.”¹⁴⁸

“Our congested commutes are the result of decisions that stretch back decades, to when Americans began to build their communities around cars. Today, the ways in which we plan and invest in transportation continue to contribute to problems like congestion, lack of accessible and affordable transportation options, and a sprawling, unsafe, and ecologically destructive built environment.” (“Stop trying to solve traffic and start building great places”)¹⁴⁹

In contrast, limiting car access to an area is much more likely to densify an area and result in compact, high-density, mixed-use neighborhoods.¹⁵⁰

¹⁴¹ “Maybe you are saying, “But at least in this way you can escape the hell of the city once the workday is over.” There we are, now we know: “the city,” the great city which for generations was considered a marvel, the only place worth living, is now considered to be a “hell.” Everyone wants to escape from it, to live in the country. Why this reversal? For only one reason. The car has made the big city uninhabitable. It has made it stinking, noisy, suffocating, dusty, so congested that nobody wants to go out in the evening anymore. Thus, since cars have killed the city, we need faster cars to escape on superhighways to suburbs that are even farther away. What an impeccable circular argument: give us more cars so that we can escape the destruction caused by cars.” <http://un-evenearth.org/2018/08/the-social-ideology-of-the-motorcar>

¹⁴² <https://sanjosespotlight.com/fearer-the-elephant-in-the-room-is-san-joses-sprawl/>

¹⁴³ “Equating mobility with building more roads nurtured a tendency towards increased motorisation, reinforcing an ever-increasing inclination to expand the road network. The result was a range of unintended adverse environmental, social and economic consequences. Most of these are rooted in the high priority given to private vehicles.” <https://theconversation.com/four-ways-our-cities-can-cut-transport-emissions-in-a-hurry-avoid-shift-share-and-improve-106076>

¹⁴⁴ “The Commuting Principle That Shaped Urban History”, <https://www.citylab.com/transportation/2019/08/commute-time-city-size-transportation-urban-planning-history/597055/>

¹⁴⁵ <https://www.theatlantic.com/ideas/archive/2019/07/car-crashes-arent-always-unavoidable/592447/> also see: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3345366

¹⁴⁶ <http://onlinepubs.trb.org/onlinepubs/sr/sr298.pdf>

¹⁴⁷ https://www.brookings.edu/wp-content/uploads/2019/01/Turner_PP_web_20190128.pdf

¹⁴⁸ <https://www.citylab.com/transportation/2019/07/freeway-revolts-interstate-highway-system-data-urban-history/594082/>

¹⁴⁹ <https://www.brookings.edu/blog/the-avenue/2019/03/20/stop-trying-to-solve-traffic-and-start-building-great-places/>

¹⁵⁰ <https://www.strongtowns.org/journal/2018/10/30/a-literal-bridge-from-the-past-to-the-future>

“People who live in more compact and mixed used developments in cities tend to own fewer cars and take fewer trips compared to their suburban counterparts. These results show that traditional transport planning models are overestimating the traffic impacts and parking needs of new ‘smart growth’ schemes which may in turn be discouraging the spread of such developments. [...] Guidelines for trip and parking generation in the United States come mainly from the Institute of Transportation Engineers (ITE). The ITE Trip Generation Manual and Parking Generation manuals are considered “bibles” in transportation planning. However, these manuals focus on suburban locations with limited transit and pedestrian access. As a result, they overestimate vehicle trips and parking demands generated at urban sites” [such as future NSJ].¹⁵¹

“more cars make the city a less congenial place for strollers, bicyclists and people who take public transit to their destinations. The cars push out frolicking kids, quiet afternoons reading on a bench and sidewalk cafes. So we give up our public space, our neighbor-to-neighbor conversations and ultimately our personal mobility for the next car, and the next one.”¹⁵²

Even adding thousands of residents to an area does not necessarily lead to an increase vehicle traffic:

“Seattle, almost alone among American cities, has managed to grow without putting more cars on its roadways. Average daily traffic has stayed flat, and even declined a little, as its hot economy added 116,000 new residents.”^{153 154}

Response BB.326: Please see Response O.4.

Comment BB.327: Financial impact of the project on development in NSJ: There is no evidence that the Extension supports any development of any kind. The EIR itself states: “the proposed roadway extension would not result in a population and housing impact.” (p.125)

To the contrary, the high and significant Traffic Impact Fees collected for this and other major transportation projects are a major obstacle to development in North San José. Reducing the costs of this and other projects might allow the City to reduce Traffic Impact Fees and with that spur development in San José.

Statement is therefore not supported by evidence and should be removed.

Response BB.327: This comment misinterprets the statement on page 125 of the DEIR. The statement on page 129 means that, unlike a residential development, the roadway extension will not construct housing or increase population. This does not mean that the project, like all infrastructure projects, would not support the planned growth of North San José.

¹⁵¹ <https://blogs.lse.ac.uk/usappblog/2018/12/14/transport-planning-bibles-overestimate-car-and-parking-needs-and-this-may-be-hurting-smart-growth-development/>

¹⁵² <https://www.nytimes.com/2018/04/25/opinion/cars-ruining-cities.html>

¹⁵³ <https://sf.curbed.com/2019/10/15/20916092/market-street-sf-ban-cars-vehicles-san-francisco-vote>

¹⁵⁴ <https://www.politico.com/interactives/2019/what-works-next-2019-seattle-carless-city/>

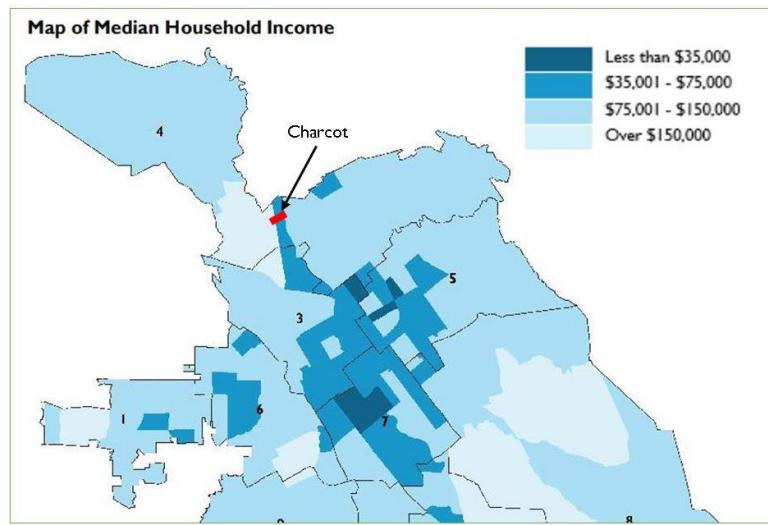
Comment BB.328: Equity: “We know it’s a problem when we see much higher rates of asthma in low-income communities in the eastern part of my city where we know there are neighborhoods built closer to freeways. We know it’s directly resulting from transportation, particularly automobiles. We know we have much farther to go. [...]”As I experience children who simply cannot engage in daily activities because of asthma, as I see premature deaths, particularly in low income communities, caused by this kind of air, it makes me furious.” (Mayor Sam Liccardo, 29 October 2019)¹⁵⁵

The EIR fails to consider equity as a City goal in its discussion of the project and the alternatives. Of particular concern are disparities in income and on different gender.

- “If we truly want to tackle the issue of equity in our City, then everything we do should be done through an equity lens. We will not achieve systemic change without first truly understanding how inequity inherently makes its way into the systems, processes, and mechanisms that govern San José.” (Memorandum from Peralez, Jimenez, Carrasco, Esparza, Arenas, June 7, 2019)¹⁵⁶

Response BB.328: Equity is a social issue that is not an environmental impact under CEQA.

Comment BB.329: Low income neighborhood: The project will cut through a low-income neighborhood in order to connect richer suburbs with job rich areas west of it.



- “Finally, children living in census block groups with a lower median household income had slightly higher percentage of attributable incident cases [of asthma] than children living in areas with a higher median income. Our results are in line with previously published data

¹⁵⁵ <https://sanjosespotlight.com/on-capitol-hill-san-jose-mayor-sam-liccardo-talks-pge-outages-clean-air/#.Xbi23xJ3hXw.twitter>

¹⁵⁶ <https://sanjose.legistar.com/View.ashx?M=F&ID=7297950&GUID=619210E1-FF17-41BC-A317-088B2BE38566>

showing that, on average, households with lower income were more likely to live near high density traffic”¹⁵⁷

- “There are powerful equity reasons to invest in walkability.” That’s because car-centered cities only cater to the two-thirds of Americans who can drive—excluding the elderly, the vision-impaired, and people who can’t afford to have a vehicle in the first place. Cities with more transit choices demonstrate less income inequality and less overspending on rent, he writes, while better sidewalks make life easier for wheelchair users and seniors alike” (Jeff Speck¹⁵⁸)
- “Researchers also have honed in on the pollution dangers children - particularly lower-income children - face when at school. A study assessing inner-city schoolchildren via personal exposure monitoring of schoolchildren with asthma showed that exposures to fine particulate matter increased same-day wheezing, shortness of breath and total symptoms. A national study found that approximately one in three U.S. public schools are located in “air pollution danger zones” within a quarter-mile or less of high-ways. A similar study of California schools found that 9.5 percent of schools were located within 450 feet of roads carrying at least 25,000 vehicles per day. The same California study also found that schools with higher levels of exposure to traffic were schools that disproportionately served economically disadvantaged and non-white students. Similar findings were reported in a study of Wayne County, Detroit, Michigan. The results showed 7.2 percent of schools were located in high-traffic areas and that more traffic exposure correlated with lower-income and minority populations. Looking abroad, studies in Canada and in Europe have also found that lower-income individuals live in and attend schools in neighborhoods that are located closer to busy roadways. (Safe Routes to School and Traffic Pollution)¹⁵⁹
- “Study Finds Racial Gap Between Who Causes Air Pollution And Who Breathes It”¹⁶⁰

Also see:

- Spira-Cohen, A, LC Chen, M Kendall, R Lall and GD Thurston. “Personal Exposures to Traffic-Related Air Pollution and Acute Respiratory Health among Bronx Schoolchildren with Asthma.” *Environmental Health Perspectives* 119,4 (2011): 559–565
- Appatova, A S, P Ryan, G LeMasters and S Grinshpun. “Proximal exposure of public schools and students to major roadways: a nationwide US survey,” *Journal of Environmental Planning and Management* 51,5 (2008)
- Green, Rochelle S, Svetlana Smorodinsky, Janice J Kim, Robert McLaughlin and Bart Ostro. “Proximity of California Public Schools to Busy Roads.” *Environmental Health Perspectives* 112,1 (2004): 61–66

¹⁵⁷ <https://www.sciencedirect.com/science/article/pii/S0160412018325388?via%3Dihub>

¹⁵⁸ <https://qz.com/1421323/for-the-good-of-all-humankind-make-your-city-more-walkable/>

¹⁵⁹ http://saferoutespartnership.org/sites/default/files/pdf/Air_Source_Guide_web.pdf

¹⁶⁰ <https://www.npr.org/sections/health-shots/2019/03/11/702348935/study-finds-racial-gap-between-who-causes-air-pollution-and-who-breathes-it>

- Wu Y-C and SA Batterman. “Proximity of schools in Detroit, Michigan to automobile and truck traffic.” *Journal of Exposure Science and Environmental Epidemiology* 16 (2006): 457-470
- Amram, Ofer, Rebecca Abernethy, Michael Brauer, Hugh Davies and Ryan W Allen. “Proximity of public elementary schools to major roads in Canadian urban areas.” *International Journal of Health Geographics* 10,68 (2011): 1–11
- Deguen, Séverine and Denis Zmirou-Navier. “Social inequalities resulting from health risks related to ambient air quality – A European review.” *European Journal of Public Health* 20,1 (2010): 27–35.
- <https://mass.streetsblog.org/2019/06/28/study-minorities-suffer-higher-health-risks-from-highway-pollution/>
- <http://cityobservatory.org/why-do-poor-school-kids-have-to-clean-up-rich-commuters-pollution/>

Response BB.329: Economic and social issues are not environmental impacts under CEQA.

Comment BB.330: Gender equity:

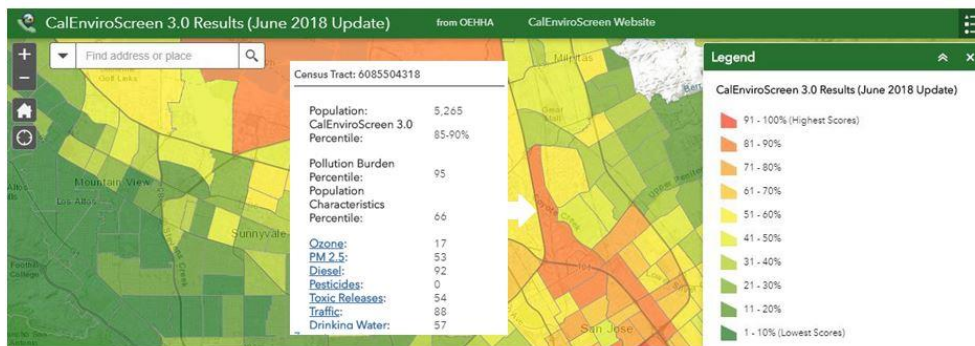
- “Car-dominated environments particularly dissuade women from cycling, as well as other under-represented groups and people travelling with children.”¹⁶¹
- “Transportation engineers — who by the way are overwhelmingly men — have long held up work commuting as the standard by which to base planning decisions. But women make many more trips than men daily, and they commute shorter distances on average. According to the American Enterprise Institute, they spend 31 percent less time commuting in the U.S. than men. In addition, they are often responsible for more caregiving and retail trips. U.S. transport planning has for ages privileged long trips over short. Big highway expansion projects that serve suburban commuters over more small scale projects that facilitate safer, faster short-distance travel.”¹⁶²

Response BB.330: Gender equity is a social issue that is not an environmental impact under CEQA.

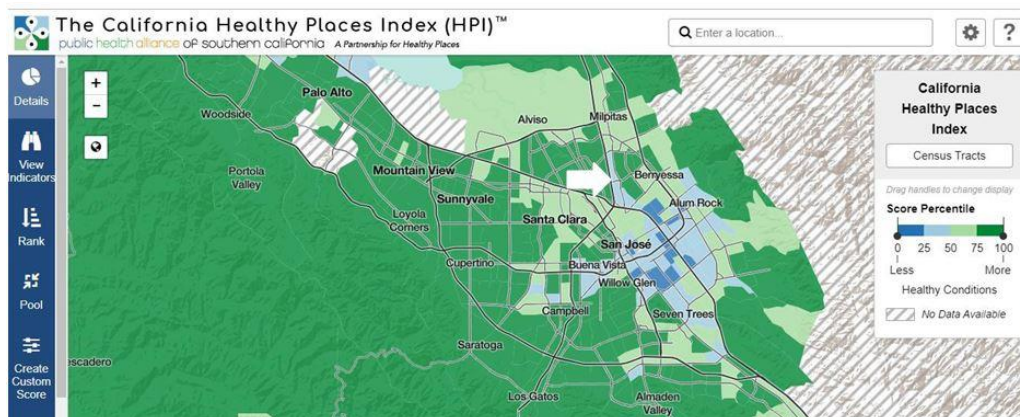
Comment BB.331: Cumulative impacts with overall existing conditions: The DEIR fails to adequately address and consider overall existing environmental conditions as documented by CalEnviroScreen 3.0

¹⁶¹ <https://irishcycle.com/2019/07/04/reducing-cars-is-like-smoking-ban-people-wont-want-the-traffic-back-cycling-expert-tells-irish-politicians>

¹⁶² <https://usa.streetsblog.org/2019/08/29/all-the-ways-u-s-transport-system-is-biased-against-women/>



Or the California Healthy Places Index¹⁶³



Response BB.331: There are a variety of issues rated by the California Healthy Places Index and CalEnviroScreen. Environmental factors include those addressed and analyzed in the DEIR, including air quality, water quality, noise, hazardous materials, etc. As an example, the air quality analysis summarized in Section 3.3 of the DEIR accounts for emissions from multiple sources and includes a Health Risk Assessment.

Comment BB.332: Impact on Charcot between Junction and Paragon Drive: The section of Charcot between Junction and Paragon Drive – which crosses Coyote Creek – will see the most increase in traffic of all roadway segments studied under existing and 2025 conditions. Impacts resulting from this increase have not been evaluated and but need to be assessed especially but not limited to air quality, noise, biological resources and impacts to Coyote Creek.

Response BB.332: The project will not construct any physical improvements along the segment of Charcot Avenue between Junction Avenue and Paragon Drive. This includes no work within 330 feet of Coyote Creek and no widening of the bridge over Coyote Creek. The fact that traffic volumes will increase on the existing bridge over the creek does not equate to increased impacts because the bridge was constructed and evaluated under the assumption that Charcot Avenue would be extended to Oakland Road. There are no noise-sensitive land uses (e.g., schools or residences) located

¹⁶³ <https://map.healthyplacesindex.org/>

along this segment of Charcot Avenue; adjacent uses are industrial and commercial. Populations sensitive to air pollutants (e.g., infants, children, elderly) are not present in this area.

Comment BB.333: Cumulative Impacts: “Cumulative air quality, energy, greenhouse gas, and noise and vibration analysis were evaluated in relation to pending and approved projects in the larger project area. These cumulative projects were accounted in the traffic modeling used for this project, which was used to derive traffic volumes in the larger project area.” Please provide a detailed breakdown which pending and approved projects were accounted for.

Response BB.333: As described in Section 3.17 of the DEIR, cumulative traffic, noise, and air quality impacts utilize data from the City’s traffic demand model, which accounts for all planned development in the City’s General Plan through the year 2040. As described on page 15 of the DEIR, this methodology for addressing cumulative impacts is consistent with CEQA Guidelines Section 15130(b)(1).

Comment BB.334: NSJADP to be considered as cumulative impact: Given that the DEIR sees the Extension project as an essential part of the NSJADP and the deficiency plan, any discussion of cumulative impacts in DEIR should consider the cumulative impact of Charcot and the NSJADP and the deficiency plan throughout the report.¹⁶⁴

Response BB.334: Where North San José development affects a cumulative discussion in the DEIR, it is accounted for. Examples include traffic and air quality. For other subject areas (e.g., visual, cultural, geology), only projects close enough to affect the cumulative analysis are included. Please see the cumulative impact section of each subject area in the DEIR for details.

Comment BB.335: Discussion of alternatives: For a more detailed discussion of transportation system deficiencies and potential alternatives to the project please see Attachment F – “Discussion of Context and Alternatives to Charcot Extension”. The discussion in this chapter needs to be revised based on errors and inconsistencies discovered.

Response BB.335: Responses to the material contained in Attachment F were previously provided in Response BB.313.

Comment BB.336: Criteria used to evaluate alternatives - Alternatives are not infeasible: “The ultimate determination as to whether an alternative is feasible or infeasible is made by the lead agency’s decision-making body, City of San José City Council. (See PRC Section 21081[a] [3].)” (p. 183) All alternatives discussed should therefore be considered potentially feasible till a decision by the decision-making body.

Response BB.336: The ultimate determination of feasibility is made by the City Council when they decide whether or not to approve the project or an alternative. Nonetheless, the DEIR needs to describe whether a potential alternative could feasibly

¹⁶⁴ Also see: <https://records.sanjoseca.gov/Resolutions/RES72768.PDF>

accomplish most of the basic objectives. If there are clearly factors that affect an alternative's feasibility, those should be disclosed.

Comment BB.337: Costs: Considering alternatives infeasible because of costs as for example for Alternatives A, B and C does not comply to CEQA as stated in the EIR itself:

“The discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (p. 183).

The EIR should provide a clearer cost-benefit analysis so that the decision-making body has the necessary information to evaluate alternatives. How does the DEIR define “significant” costs? Please provide cost estimates for all alternatives and the project.

Response BB.337: There are no conceptual plans for Alternatives B and C so right-of-way costs are not available. However, the Fox Lane alignment (Alternative A) would directly impact one or two of the SuperMicro buildings. Similarly, a review of aerials along Montague Expressway and Brokaw Road shows that those roadways have been widened to the maximum within the existing right-of-way. The alternative alignments (Alternative B) are lined with numerous commercial, industrial, and/or residential developments. The effects of right-of-way takes would vary by parcel but would include impacts to sidewalks, landscaping, parking, access roads, and buildings. The new overcrossing south of Brokaw Road (Alternative C) would require the acquisition of multiple businesses and sever access to Lowe's and a building that contains multiple businesses.

When compared to the estimated right-of-way costs for the proposed project of approximately \$7.7 million, the right-of-way costs for Alternatives A, B, and C would be orders of magnitude higher.

Comment BB.338: The DEIR should discuss how efficient the feasible and infeasible alternatives would be in terms of reducing congestion and travel times.

Response BB.338: The discussion in Section 7 of the DEIR describes the transportation effects of each alternative in comparison to the proposed project.

Comment BB.339: Additional alternatives to be considered - Evaluate the following additional alternatives:

- Road diet on Brokaw
- Bus express lanes on Brokaw and Montague
- McCarthy grade separation
- Trimble flyover

- Roundabouts on Montague and Brokaw, which could increase capacity on these roadways¹⁶⁵

It should be noted that studies have shown that smaller, slower street might be better equipped to handle larger traffic volumes.¹⁶⁶ And that “two U.S. cities, Salt Lake City and Portland, Oregon, showed measurable progress in making traffic less frustrating. Both attacked the problem with a similar strategy, investing in sophisticated traffic light optimization, bike infrastructure, light rail, and reducing parking availability. It’s a lesson all cities should take to heart. Make life easier for pedestrians, bikers, and mass transit users and encourage more commuters to shift modes and abandon their cars, and roads start to become unclogged.”¹⁶⁷

Response BB.339: CEQA Guidelines Section 15126.6 requires an EIR to evaluate a “reasonable range” of alternatives, focusing on those that would attain most of the project objectives. Chapter 7 of the DEIR evaluates eight alternatives to the project, including three that were suggested by the public during the EIR scoping phase. This fulfills the requirements of Section 15126.6.

None of the alternatives suggested in this comment would meet *any* of the project objectives (see list of objectives on page 184 of the DEIR). Specifically, none would provide a new connection or additional capacity across the I-880 corridor and none would provide additional bicycle/pedestrian facilities. Further, none of the suggested alternatives would implement improvements identified in the *Envision San José 2040 General Plan*, the *North San José Area Development Policy*, or the *North San José Deficiency Plan*. Therefore, their evaluation in the EIR is not warranted.

Comment BB.340: Response 14.1 in DEIR Appendix B: “This comment recommends an alternative roadway improvement to alleviate congestion along Brokaw Road. The suggested alternative serves to improve access to I-880 via a new ramp and improvements at Gish Road. However, improved access to I-880 is not the intent of the proposed Charcot Avenue extension. Rather, the extension aims to improve local access, generally the area surrounded by Montague Expressway, Oakland Road, and Brokaw Road, from the east and west sides of I-880. The extension will not provide access to I-880 and will have minimal effect on travel routes to and from I-880 in the area.”

The alternatives suggested by the comment are similar in nature to the alternatives of widening Brokaw Road or the alternative of an overpass south of Brokaw. Both these alternatives are

¹⁶⁵ <https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/camutcd2014-part4-rev3-a11y.pdf> p 827

¹⁶⁶ Billy Riggs, an assistant professor at the University of San Francisco School of Management and a planner who consults on the future of transportation, says autonomous vehicles, and lower speeds, could allow cities to devote less room to cars by redesigning street infrastructure. “It’s speed and uncertainty that requires such wide roads for human-operated cars,” says Riggs. [...] In other words, it’s like that old Navy Seal adage: Slow is smooth, smooth is fast. That’s also the idea behind “green wave” signal timing, which is now getting a pilot in New York City. Traffic flowing at 15 mph allows for fewer red lights. (<https://www.citylab.com/transportation/2019/08/low-speed-limit-vehicle-safety-crash-data-traffic-congestion/588412/>)

¹⁶⁷ <https://www.curbed.com/2019/6/11/18661586/bike-train-traffic-transportation-congestion>

considered in the DEIR, therefore the alternatives suggested by the comment should be considered as well.

Response BB.340: This comment was addressed by the response provided in Appendix B. The alternatives were not evaluated since they would not meet any of the project objectives.

Comment BB.341: Alternative locations north of Montague or south of Brokaw: “The alternative of locating the crossing north of Montague Expressway or south of Brokaw Road would not meet goals listed in the first and third bullet [reduce traffic volumes along Montague Expressway and Brokaw Road] points listed above, as it would not be effective in alleviating existing and projected road- way congestion, since these two major arterials would continue to provide more direct access with wider lanes and greater speed limits across I-880.”

Please provide the TDF data associated with this statement.

Response BB.341: This comment was addressed by the response provided in Appendix B. The alternatives were not evaluated since they would not meet any of the project objectives.

Comment BB.342: Fox Lane Alignment - Alternative A: “From an environmental perspective, there would be substantial impacts to Orchard School’s designated student drop-off/pick-up area on Fox Lane.” (DEIR, p. 185)

As the EIR considers the impact of this alternative to the student drop-off/pick-up area on Fox Lane significant, a similar impact by the proposed project to the drop-off/pick-up area on Silk Wood Lane should also be considered substantial and significant.

Response BB.342: For the reasons cited in Section 3.17 of the DEIR and previous responses, the loss of illegal stopping on Silk Wood Lane to drop-off and pick-up students is not an environmental impact of the project.

Comment BB.343: Alternative B – “Widening of Brokaw/Montague” - Capacity constraints (ramp meters) at freeway ramps: “Widening of Montague Expressway and Brokaw Road also may not improve the east-west travel due to capacity constraints at their connections to major regional freeways including their interchanges with I- 880. It is likely that the capacity constraints (ramp meters) at freeway ramps and congestion on the freeway mainline could result in blockage of travel lanes on both roadways even with widening. The improvement of access to and from I-880 also would provide minimal benefit to operations along Brokaw Road and Montague Expressway due to congestion on the freeway mainline that restricts flow onto the freeway.” (DEIR, p. 187)

There is no evidence provided that free ramp meters are restraining capacity on Brokaw or Montague or are expected to be. Statement therefore not substantiated.

Response BB.343: The purpose of ramp meters is to “meter” or regulate traffic flow onto the freeway mainline so as to maintain mainline flow. Caltrans dictates the operation of ramp meters and sets the maximum number of vehicles that will be

permitted to access the freeway system during periods when ramp meters are active. Queuing onto local arterials that provide access to freeway ramps will occur when demand to access freeways exceeds the set flow rate through the meter. This subsequently may result in a reduction in capacity of the local arterials since travel lanes are occupied by queued vehicles. There is no need to provide further evidence that freeway ramp metering can result in reduced capacity on the referenced roadways.

Comment BB.344: Alternative C – “Overpass south of Brokaw” - Access to Lowe’s: “It would also sever access to Lowe’s” At least two access points to Lowe’s are more 500 feet distance from 880. It is unclear how those would be affected given that the planned overpass has a footprint of less than 500 ft on the western side of Charcot and continues to provide access and through-fare on O’Toole Ave.

Alternatively, as the proposed project severs access to several existing businesses on Charcot, this should then similarly be considered a significant impact.

Response BB.344: Excluding the driveway for loading/unloading at the back of Lowe's, there are two driveways available for public use on Ridder Park Drive. These driveways would be made inaccessible by the retaining structure approaching the bridge over I-880. If the bridge over I-880 is extended to span the driveways, the bridge would also have to be extended over the loading dock entrance and Schallenberger intersection before descending to conform to existing grade. This would limit the connections to and from Ridder Park Drive and Schallenberger Road and create an excessively long bridge structure.

The bridge structure on the western side of Charcot Road was extended to provide limited north-south connectivity along O’Toole Avenue, which serves as a connector to several streets and businesses. O’Toole Avenue is adjacent to the bridge that spans I-880 so the length of bridge extension required to provide connectivity along O’Toole Avenue and serve several businesses was feasible and not excessive.

While the project would remove driveways along Charcot Avenue on the west side of I-880, all of the affected businesses/parking areas will have multiple driveway access points. The affected business park just north of Charcot Avenue will have five (5) driveways and the affected business park just south of Charcot Avenue will have four (4) driveways.

Comment BB.345: Connection to Zanker: As argument against Alternative C it is mentioned that “unlike the Charcot Avenue alignment, there would be no direct connection to major North San José roadways such as Zanker Road, North First Street, and SR 87.” (p. 187) Alternative C could provide a convenient access to the new Zanker Road/4th street overcrossing if Junction Ave were to be extended towards that new 101-overcrossing.

Response BB.345: Extending Junction Avenue to Zanker Road would require the acquisition of relocation of multiple businesses that are located west of Rogers Avenue.

Comment BB.346: Connection to SR 87: As mentioned in the previous comment “unlike the Charcot Avenue alignment, there would be no direct connection to major North San José roadways such as Zanker Road, North First Street, and SR 87.” Can you please expand why a connection to SR 87 is relevant in the context of the Charcot Avenue alignment since “The use of the proposed extension is expected to be minimal outside of a two-mile radius.” (p. 161) and the Sphere of Influence for the project is defined as 1.5 miles which excludes any part of SR 87?

Response BB.346: The point of the reference to “a connection to SR 87” is that a roadway’s utility is enhanced if it provides convenient (as opposed to circuitous) connections to other roadways. One of the benefits of Charcot Avenue is that it provides direct connections to key facilities including North First Street, Zanker Road, SR 87, and Oakland Road (proposed).

Comment BB.347: Alternative D – “No Project”: “The No Project Alternative would not, however, meet any of the project objectives. It would also be inconsistent with:

- Policy TR-5.6 of the Envision San José 2040 General Plan, which states that the City should complete the buildout of the City’s street system per its Land Use / Transportation Diagram, on which the Charcot Avenue Extension has been listed since 1994. [...]
- The North San José Area Development Policy, which identifies the Charcot Avenue Extension as a key roadway improvement project needed to serve the planned development of North San José.” (DEIR, p. 188)

The report states that the no-project alternative would not meet any of the project objectives. And “also be inconsistent with [...] Envision San José 2040 General Plan [...] North San José Area Development Policy”. (p. 188). These statements seem to be left over from before consistency to the General Plan and NSADP were added to the overall project objectives. The statements are repetitive to “would not meet any of the project objectives” [as stated now] and superfluous. This also impacts discussions on other alternatives.

Response BB.347: The text on page 188 of the DEIR is correct. The No Project Alternative would not meet any of the project objectives and would be inconsistent with General Plan Policy TR-5.6 and the *North San José Area Development Policy*.

Comment BB.348: Alternative E – “New Overcrossing for Bicycles and Pedestrians Only”: Impact of improved bike and pedestrian facilities: “Traffic circulation for the Bicycle/Pedestrian Overcrossing Only would be the same as for the No Project Alternative under existing, year 2025, and year 2040 conditions, as described in Section 3.17.” (p. 189)

This statement is inconsistent with statements in the DEIR and City plans that bicycle/pedestrians improvement will reduce traffic.

“Walkable and bikeable streets reduce the need for passenger car journeys and encourages active forms of transport, public transport infrastructure, and personalized mobility solutions. This reduces vehicle miles traveled (VMT), a metric of vehicular use which can be a proxy for traffic collisions, and the emissions associated with car journeys.” (Climate Smart San José, p. 89)

“The project would provide a new bicycle and pedestrian crossing of I-880, which would facilitate those forms of non-motorized travel. The proposed project would also shorten pedestrian and bicycle travel routes and provide the opportunity to utilize walking and bicycling as an alternative travel mode, which would lead to a reduction in the number of vehicle trips.” (DEIR, p. 66)

“By providing improvements that will facilitate bicycle and pedestrian use, the operational phase would reduce vehicle trips and thereby reduce energy consumption” (DEIR, p. 67)

Response BB.348: The quoted statement on page 189 of the DEIR is correct because it is referring to motor vehicles. The traffic circulation pattern for motor vehicles will be the same under Alternative E as under the No Project Alternative because no new vehicular connection over I-880 would be constructed under either scenario.

Comment BB.349: Alternative E – consistency with objectives: The EIR does not state that the project objectives of capacity or connectivity must include capacity and connectivity for SUVs, trucks and other vehicles. As the Bike-/pedestrian overpass would improve connectivity and increase capacity for people to cross 880, it would meet those project objectives. As stated above consistency General Plan and NSJADP has been added after the NOP, are based on outdated LOS methodology¹⁶⁸ and therefore irrelevant. As staff writes:

- "VMT is a significant shift in the way the City thinks about transportation. Instead of continuing to plan for more and more auto traffic, using streets and freeways that are already at or nearing capacity, the City is instead focused on developing safe and inviting pedestrian, bicycle, and transit networks to meet new travel demand."¹⁶⁹

Response BB.349: As used in the *North San José Area Development Plan* and the *North San José Deficiency Plan*, capacity and connectivity refer to motor vehicles. As stated in Section 7.4.2 of the DEIR, Alternative E would not achieve that objective. The statement in this comment that this objective is based on outdated LOS methodology and is irrelevant is included in the record and will be considered by the City Council.

Comment BB.350: Alternative F & H – access to Orchard School Event Center Driveway: The EIR fails to assess the impact of northbound and southbound access to the driveways east of Oakland Road.

Response BB.350: The projected queuing analysis included in Appendix K of the DEIR indicates that vehicles could extend back and block access to the Orchard School driveway on Oakland Road. Therefore, the alternative that would create the queuing issue and potentially have an effect on the Orchard School driveway and driveways east of Oakland Road is not recommended.

¹⁶⁸ <https://www.strongtowns.org/journal/2018/8/13/a-losing-proposition>

¹⁶⁹ <http://sjeconomy.com/new-traffic-measuring-method-could-benefit-infill-development-in-san-jose/>

Comment BB.351: Alternatives F, G & H – consistency with San José Bike Plan 2020: The DEIR omits that the project in its current form as well as alternatives F, G and H are inconsistent with the San José Bike Plan 2020 that designates the crossing of Charcot and 880 as a “Pedestrian Over Crossing”.

Response BB.351: This statement is incorrect. The Bike Plan addresses bicycle and pedestrian facilities, not facilities for motor vehicles. Thus, the fact that the Bike Plan doesn’t mention the roadway extension does not equate to an inconsistency, especially when the General Plan and other planning documents clearly show the roadway connection over I-880.

Comment BB.352: Missing references: The following documents are missing in the list of references

- Visual Impact Assessment for Highway Projects published by the Federal Highway Administration (FHWA) in March 1981. Plan Bay Area 2040
- VTA Congestion Management Program Document
- Valley Transportation Plan 2040
- Thorburn Associates, 1996

Response BB.352: References added. See Section 5, *Draft EIR Text Revisions*.

Comment BB.353: Scenic Highways: The link provided in the EIR in footnote 4 is not accessible anymore.

Response BB.353: New link added. See Section 5, *Draft EIR Text Revisions*.

Comment BB.354: Location of trees: “For more detail regarding the size, location, and species of the trees located within the project alignment, refer to Appendix G of this EIR.” (p. 50) Appendix G does not include locations of the trees within the project alignment.

Response BB.354: Clarification added to state that tree locations are shown on DEIR Figure 3.1-1. See Section 5, *Draft EIR Text Revisions*.

Comment BB.355: Source 52 / References that don’t exist: The source “Orchard School District. Indirect Transfers.” cannot be found and doesn’t seem to exist. The link provided leads to a different document. The title of that document is “Interdistrict Transfers”

Response BB.355: This source for this information for the Orchard School District has been deleted as it is not needed. See Section 5, *Draft EIR Text Revisions*.

Comment BB.356: Access dates: A number of sources were last accessed before the Notice of Preparation (NOP) for the EIR was even circulated. One source was last accessed in July 2016. Please explain how they can be references for the EIR, if they weren’t looked at in the preparation of the EIR (i.e. after the NOP was published).

Response BB.356: Background and contextual information are frequently gathered during the preparation of an EIR before a NOP is published. There is no provision under CEQA that prohibits this practice. In fact, early information often informs the content of the part of a NOP that identifies likely environmental issues to be addressed in an EIR.

Comment BB.357: Alternative B - east-east capacity: Increasing “east-east” capacity (p. 187, second paragraph) seems indeed difficult. This should be corrected to state “east-west” capacity.

Response BB.357: Correction made. See Section 5, *Draft EIR Text Revisions*.

Comment BB.358: “Silk Wood” or “Silkwood”: The transportation analysis refers nine times to a road called “Silk Wood Lane” and 127 times to “Silk- wood Lane”. Are these different roads?

The DEIR main document with one exception speaks of “Silk Wood Lane”. Other appendixes are also inconsistent in the usage. Please correct all instances to the correct street name(s).

In other documents staff has also referred to a street named “Silkwood Drive” that would be affected by the project.¹⁷⁰

Response BB.358: Various documents refer to this roadway as “lane” and “drive,” as well as the name being one word, hyphenated, or two words. The main text of the DEIR uses “Silk Wood Lane” as that is what is shown on the actual street signs and on the official tract map for the existing residences.

Comment BB.359: “Old Oakland Road” or “Oakland Road”: “East of I-880, the proposed extension would [...] connect with a widened Silk Wood Lane, to the intersection with Old Oakland Road to the east.” Use of “Old Oakland Road” inconsistent with DEIR which generally speaks of “Oakland Road”, further down in the same paragraph. “The extension would also construct bicycle/pedestrian facilities on Charcot Avenue, including sidewalks and Class IV bikeways, between Paragon Drive and Oakland Road.”

Response BB.359: Historically, the referenced highway was known as “Old Oakland Road,” but the name was shortened to “Oakland Road” a number of years ago.

Comment BB.360: Appendix J: Footnote 1 should read “short-term locations” not “shot-term” locations.

Response BB.360: Correction made. See Section 5, *Draft EIR Text Revisions*.

Comment BB.361: Transit Facilities Appendix K: The headline of this section should be corrected to “facilities”

Response BB.361: Correction made. See Section 5, *Draft EIR Text Revisions*.

¹⁷⁰ http://sanjose.granicus.com/MetaViewer.php?meta_id=693644 p. 3

Comment BB.362: NSPADP: “The Charcot Avenue Extension has been included in each version of the NSPADP in 2005.” (DEIR, p. 8) The correct the acronym is NSJADP.

Response BB.362: Correction made. See Section 5, *Draft EIR Text Revisions*.

Comment BB.363: Typo: Third paragraph, first sentence: “CEQA Guideline Section 15065(a)(3). The cumulative impacts discussion for each environmental issue” (p. 15)

Response BB.363: Correction made. See Section 5, *Draft EIR Text Revisions*.

Comment BB.364: Section 7.1 Introduction: Second paragraph on page 183 ends in quotation marks. It is not clear where the quote begins.

Response BB.364: Correction made. See Section 5, *Draft EIR Text Revisions*.

Comment BB.365: Word seems to be missing: “GEO-3: Although the project would be located on soil that could become unstable during an earthquake, the implementation of standard conditions and compliance with current seismic safety codes will any significant effects due to this condition.” The sentence seems to be missing a word.

Response BB.365: Correction made. See Section 5, *Draft EIR Text Revisions*.

CC. Ronja Romer (dated November 4, 2019)

Comment CC.1: My name is Ronja and I am writing you today from Germany’s capital Berlin. I have followed the events, decisions and news regarding the Charcot Avenue Extension project for a year and a half. I am impressed by the community’s sense of community, safety and justice and even more impressed that they unite themselves to do their very best to ensure the safety of all children living in San José.

Being part of a generation that has realized too late the consequences of how we are living today, I kindly would like to ask you to reconsider all environmental and safety issues linking to the Charcot Avenue Extension project. Believing in the suggested alternatives and fair, safe and sustainable options the community has worked on together, I kindly ask you to reconsider your choices.

If there is something left to do for the generations still able to make a change, it is making the right choices for the environment and our children. German politicians are starting to realize this, too. Thank you very much in advance for taking the time to read through this.

Response CC.1: This comment expresses the opinion that the City should reconsider the project in view of its environmental and safety impacts. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

DD. Deena Said (October 31, 2019)

Comment DD.1: My name is Deena Said and I own and reside in a home that backs up to Silkwood Lane, and more importantly I'm the mother of a son that will be attending Orchard School in the 2021-2022 school year. I commute to Sunnyvale everyday and sit in traffic from 1-2 hours. I understand that traffic congestion is an issue. However this extension project is not the solution. I am vehemently against this extension project. A plan introduced in 1994, nearly 25 years ago, well before the school and homes were built, has no place in 2019.

The potential harm of this extension project has been completely glossed over in the materials provided at the last meeting. It's been reported that commuters will save 17 seconds. 17 seconds is laughable in light of the harm that this project will cause through construction to completion.

Air pollution is already a major concern considering the amount of cars on the roads and freeways across the south bay. In the last couple of months a study was published in the Environmental Health Perspectives Journal that found that short-term exposure to high ambient air pollution corresponded with a rise in visits to the children's psychiatric emergency department.

Researchers at the University of Cincinnati and the Cincinnati Children's Hospital Medical Center examined psychiatrist patient visits, and then traced the concentration of PM 2.5 in their residential areas. Researchers found that whenever there were increases in PM 2.5, there would be MORE psychiatric visits within the following few days.

Collectively, these studies contribute to the growing body of evidence that exposure to air pollution during early life and childhood may contribute to depression, anxiety, and other mental health problems in adolescence. Our children now live in the age of anxiety, the last thing we need is to actively contribute to their potential anxiety by allowing this project to continue. Furthermore, on an even more personal note, my children will be limited as they play in our backyard, due to the pollution and particulate matter.

San José calls itself the capital of Silicon Valley, the home of innovation. This plan is the opposite of innovation as it doesn't solve for the problem of traffic congestion, instead it puts our children in harms way. The focus should be on improving public transportation options, planting additional vegetation to combat current pollution, and looking for solutions that do not impact our most vulnerable population.

Response DD.1: This comment expresses the opinion that the project should not be constructed because of its air pollution impacts. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

EE. Zaqloub Said (November 3, 2019)

Comment EE.1: My name is Zaqloub Said and I own and reside in a home that backs up to Silkwood Lane, and more importantly I'm the mother of a son that will be attending Orchard School in the 2021-2022 school year. I commute to Sunnyvale everyday and sit in traffic from 1-2 hours. I understand that traffic congestion is an issue. However this extension project is not the solution. I am vehemently against this extension project. A plan introduced in 1994, nearly 25 years ago, well before the school and homes were built, has no place in 2019.

The potential harm of this extension project has been completely glossed over in the materials provided at the last meeting. It's been reported that commuters will save 17 seconds. 17 seconds is laughable in light of the harm that this project will cause through construction to completion.

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Collectively, these studies contribute to the growing body of evidence that exposure to air pollution during early life and childhood may contribute to depression, anxiety, and other mental health problems in adolescence. Our children now live in the age of anxiety, the last thing we need is to actively contribute to their potential anxiety by allowing this project to continue. Furthermore, on an even more personal note, my children will be limited as they play in our backyard, due to the pollution and particulate matter.

San José calls itself the capital of Silicon Valley, the home of innovation. This plan is the opposite of innovation as it doesn't solve for the problem of traffic congestion, instead it puts our children in harms way. The focus should be on improving public transportation options, planting additional vegetation to combat current pollution, and looking for solutions that do not impact our most vulnerable population.

Response EE.1: This comment expresses the opinion that the project should not be constructed because of its air pollution impacts. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

FF. Sharmila Shirali (dated November 5, 2019)

Comment FF.1: I am the resident of San José and one of the parent of the Orchard Elementary School. The Charcot Avenue Extension Project is not going to help in solving the traffic. It in fact

will affect the children studying in Orchard School. Pollution, speed of the car, flyover close to the classroom, and cutting off the school playground. We talk about safety and future of our children then why it's been neglected through this project. We request to rethink over this project. We love our school and we love our children.

Response FF.1: This comment expresses the opinion that the project should not be constructed because of its impacts to the school community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

GG. Cecile Wei-Yu-Neng (dated November 4, 2019)

Comment GG.1: This project is based on outdated plans and assumptions. It doesn't fit into the City's new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk.

The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood, already so close to a major highway and other major roads. How is it acceptable in 2019 to ignore the scientific data available linking air pollution to negative impact on children and their development? The scientific research is very clear. See the report from the World Health Organization or from the American Lung association to cite only 2.

"Children are society's future. But they are also its most vulnerable members. The immense threat posed to their health by air pollution demands that health professionals respond with focused, urgent action. Although more rigorous research into how air pollution affects children's health will continue to be valuable, there is already ample evidence to justify strong, swift action to prevent the damage it clearly produces. Health professionals must come together to address this threat as a priority, through collective, coordinated efforts. For the millions of children exposed to polluted air every day, there is little time to waste and so much to be gained." (WHO)

And if science is not enough, then please listen to our elected representatives themselves: San José Mayor Liccardo said when he was in Washington some days ago: "As I experience children who simply cannot engage in daily activities because of asthma, as I see premature deaths, particularly in low income communities, caused by this kind of air, it makes me furious."

"We know it's a problem when we see much higher rates of asthma in low-income communities in the eastern part of my city where we know there are neighborhoods built closer to freeways. We know it's directly resulting from transportation, particularly automobiles. We know we have much farther to go" My son who never had an asthma issues before started to get some symptoms some months ago already. He is playing every day soccer at recess, and this what recess is for, Kids need to play, run, be happy...

Councilmember Lan Diep said: “We can’t stay being a car-oriented community any longer, especially as the North San José representative [...]”

I agree with this but it seems that this is not in line with this project! Do you realize that this road will bring more trucks closeby our kids class windows? Do you realize that an accident, one truck going out of the road could be dramatic? Do you realize that these trucks just want to save time as your project expects, but to do so, do you think they will go slower where our kids cross the street? And you don't even think of putting a speed bump near the school... this is truly unacceptable.

Our community is primarily low-income, our school is a Title I school. We cannot continue with a project negatively impacting people who need the City's support the most. The harm done to the students at Orchard will be irreparable. The health of the students at Orchard School needs to be more important than increasing the speed of cars or allowing commuters to save a ridiculous 30 seconds (per DEIR) per trip.

Additionally, cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss for the environment. How are we going to achieve the greenhouse gas emission reduction targets of the international Paris Agreement by cutting trees, allowing more cars and trucks on the road and polluting the air during construction? As stated by Climate Smart San José, "Together, we can make San José a better place for our families, children and future generations. Every action, big or small, makes a difference!" Well I believe that you, Meenaxi and team, have a chance to make a big difference by recommending the right thing to do: cancelling the project.

The City needs to take concerns of the community under serious consideration. Spending more than 50 million dollars of taxpayer money to increase congestion is fiscally irresponsible. There are much better ways to spend the allocated budget to help the city of San José and its constituents.

Response GG.1: To clarify the process of project approval or denial, the role of the City’s Department of Transportation is to develop a design that implements the project described in the General Plan and NSADP, as well as to make recommendations to the City Council. The role of the City’s Planning Department and EIR consultant team is to evaluate the project under CEQA. The decision to approve or deny the project rests with the City Council.

This comment expresses the opinion that the project should not be constructed because of its impacts to the school community. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

HH. Steve Zhou (dated November 3, 2019)

Comment HH.1: This project is based on outdated plans and assumptions. It doesn’t fit into the City’s new vision of itself as a vibrant, active place. It will increase traffic and pollution to unacceptable levels and will make it less pleasant and safe to walk. It will divide the neighborhood

and the noise will disturb residents and students. The City needs to consider how polluted the air in the area already is and how the school and the recreational space are a refuge for the community. The environmental study done for the City does not adequately consider the current situation in the neighborhood.

Cutting down over 35 mature trees – some of them redwoods 30 inches in diameter and more – near the Coyote Creek side of the project is an irreplaceable loss. Spending more than 50 million dollars of taxpayer money to increase congestion is fiscally irresponsible. Most importantly, the harm done to the students at Orchard will be irreparable.

The health of the students at Orchard School needs to be more important than increasing the speed of cars. The City needs to take concerns of the community under serious consideration and needs to reevaluate the project.

Response HH.1: This comment expresses the opinion that the project should not be constructed because of its environmental impacts. The comment is included in the record and will be considered by the City Council. The comment does not raise any issues or concerns with the adequacy of the analyses in the DEIR and, therefore, no further response is required.

LATE COMMENTS

November 4, 2019 was the formal deadline for submittal of official comments or questions regarding the DEIR. However, in order to best respond to, and make record of, public concerns, any additional comments received after the deadline are included below.

II. Lozano Smith – Attorneys at Law (December 3, 2019)

Comment II.1: The Draft EIR fails as an informational document as it does not address safety issues that will affect the Orchard School. As referenced in the District Comments, safety of the children who attend Orchard School (“School”) is of the utmost concern to the District. The City was made aware of concerns about safety issues on Fox Lane in “City of San José Budget Document 68.” (See Appendix A, Comment JJ.) In a request for crosswalk improvements on Fox Lane, it was noted that “delivery trucks and automobiles speed down Fox Lane daily including during hours that children are being dropped off and picked up from school.. .not too long ago, a child was hit by a car here.” Based on this information, the School requested an updated, improved crosswalk with more visibility.

As previously stated in the District Comments, the School has dealt with multiple automobile accidents on School grounds, including numerous instances of cars crashing through the School fence. The Draft EIR’s Transportation Analysis acknowledged a greater use of the Fox Lane drop-off/pick-up areas under Project conditions. (Draft EIR, Appendix K, p. 50.) The City seeks to introduce this Project into an area that already experiences speeding trucks and automobile accidents. Through this document, the City was made aware of the dangerous nature of Fox Lane and a catastrophic event in which a child was hit by a car, yet the Draft EIR does not address School safety issues. The Draft EIR does not take this information into account as the Project will work to increase traffic onto an already crowded and dangerous Fox Lane. As such, the District reiterates that the Draft EIR is in violation of CEQA Guidelines in that it fails to inform public agency decision makers of the significant environmental effects of the Project.

Response II.1: Please see Response R.8 from this same commenter. As stated in that response, any existing safety or access issues on Fox Lane near Orchard School is not an environmental impact of the project. Further, as stated in Section 2 of the DEIR, the project will not be implementing any improvements at that location. The fact that the project would eliminate the existing illegal dropping-off and picking-up of students on Silk Wood Lane, which would likely increase the use of the school’s official drop-off and pick-up areas on Fox Lane, is not a traffic impact of the project under CEQA as none of the thresholds of significance listed on page 147 of the DEIR would be exceeded.

Comment II.2: The Draft EIR errs in finding the transportation impact to be of a less than significant impact.

The District Comments concluded that the Draft EIR’s discussion of transportation effects on the Project were unsupported, inadequate, and in violation of CEQA. Specifically, the Draft EIR boasts of efficiencies in travel that would result from the Charcot Extension. (Draft EIR, p. 39- 40.) These

efficiencies are generally unsupported, as evidenced by an e-mail composed by Zahir Gulzadah, the City's Division Manager for the Department of Transportation, which points to a lack of efficiency with respect to driver travel times. Mr. Gulzadah provided the following analysis: "the proposed extension will provide little to no measurable travel time savings when considering the size of the proposed Charcot extension in relation to the overall roadway system in the Project area and the projected development growth. The minimal time savings, will not sway or induce new trips to be added to the hundreds of thousands of vehicle trips traveling through the area." (See Appendix A, Comment JJ.)

The Draft EIR pointed out negligible increases in speed and an increase in Vehicle Miles Traveled under Project conditions. The lack of time saved referenced above only confirms the inefficiencies that would result from the implementation of this Project. On balance, this lack of efficiency coupled with the potential impacts on student safety outweigh the purported benefits of the Project.

Response II.2: This comment begins with a statement that the DEIR errs in finding the transportation impact of the project to be less-than-significant. However, the balance of the comment contains no data or information to support that conclusion. Instead, the comment argues that the benefits of the project would be minimal. While one might have an opinion that the benefits of the project, as described in Section 3.17 of the DEIR, would not outweigh its adverse impacts, that opinion would not change the conclusion of the DEIR analysis that transportation impacts are not significant.

Comment II.3: The City errs in finding the noise and vibration impact to be of a less than significant impact with mitigation.

The District Comments noted that the Draft EIR applied the wrong noise level standards for the outside School areas. The Draft EIR applied Land Use Category 2, described as "*Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds*" to the exterior areas of the School campus. This is in opposition to the finding of Liza Gonzalez, an Associate Engineer for the City of San José, in a discussion about the Project. Ms. Gonzalez stated that "in the event the comment relates to the school (Orchard), it is not a 'park.'" (See Appendix A, Comment JJ.) It does not make sense for the Draft EIR to apply a noise level standard for parks and playgrounds when a City employee with knowledge of the Project appropriately found that the School is not a park. As the Draft EIR applied the incorrect noise standards to the Project for the outside School areas, a recirculated Draft EIR must apply the proper standards.

Response II.3: The e-mail from Liza Gonzalez to Caltrans referenced in this comment is dated 9/16/2016, which substantially pre-dates the preparation of the DEIR and the noise impact assessment. Ms. Gonzalez was responding to a question from Caltrans regarding potential wetlands, cultural resources, and parks. Ms. Gonzalez's response that Orchard School is not a city park is correct. However, for applying the correct noise/land use compatibility standards in the noise analysis, the use of Land Use Category 2 is correct. For an explanation, please see Response R.30.

Comment II.4: The City has limited public participation in the Project approval process. The District Comments previously stated that the City violated the spirit of CEQA by limiting public participation in the Project approval process. The District and its parents are frustrated with both the

timing and location of meetings regarding this Project. City staff members have been made aware of these concerns but have done little to allay those concerns. E-mails sent by City staff on May 7, 2019, show that “the reason that we had the 2nd scoping meeting for the school [sic] because the date we (both departments) picked was conflicting with the school’s year-end activities which, according to the Superintendent, prevented most parents from going to the project scoping meeting. Hindsight, we should have coordinated the meeting date with the school.” (See Appendix A, Comment JJ.) Councilmember Lan Diep’s staff was made aware by the Orchard PTA of concerns with the timing of community meetings (conflict with the last week of school) as well as concerns about the radius of information mailed by the City. (See Appendix A, Comment JJ.) A concerned parent advised City staff on September 5, 2019, that “the community meeting set up by the City will make it very difficult for many community members to attend (Berryessa Library on Noble).” (See Appendix A, Comment JJ.) Numerous members of City staff were aware of community concerns about meetings.

In spite of the City’s admitted lack of coordination with the School, and with concerns relayed by both Councilmember Diep’s office and a concerned parent, the City scheduled its September 24, 2019, community meeting to conflict with the Orchard School Board Meeting on the same day. As stated in the District Comments, the District wishes to work with the City to make all future meetings accessible to all interested parties and to ensure that public comments are recorded. It is disheartening to the District that the City ignored community concerns and its own internal discussions and scheduled its September 2019 meeting in conflict with School business. This is not the transparency that CEQA envisioned, and it certainly doesn’t model cooperation among public agencies who serve the same populations.

Response II.4: As described in Section 8 of the DEIR, as well as in Response H.1, the City has undertaken extensive coordination and outreach with the community regarding the Charcot Avenue Extension project. This includes a 2017 community meeting, two scoping meetings in 2018, and a meeting on the DEIR in 2019, as well as three meetings with Orchard School staff. To facilitate attendance, all meetings were held in the community, either at Orchard School or the Berryessa Library.

Comment II.5: In light of the above supplemental information, the District renews its request for recirculation of the Draft EIR to more adequately assess the substantial environmental impacts of the Project.

Response II.5: Based on the above responses to this commenter, none of the thresholds listed in CEQA Guidelines Section 15088.5(a) regarding recirculation of a DEIR have been met.

JJ. Lozano Smith – Attorneys at Law (January 8, 2020)

Comment JJ.1: The Draft EIR fails as an informational document as it does not address safety issues that will affect the School. In the District Comments, the District has expressed its concerns with respect to the Project’s effects on the safety of the Orchard School (“School.”) The District discovered additional documentation that demonstrates the City’s awareness of traffic safety issues that plagued the School prior to the circulation of the Draft EIR.

As far back as 2016, the City was aware of the heavy traffic usage in the area surrounding the School, particularly Fox Lane. Fox Lane's usage was discussed in an e-mail from Gordon Sweet of BKF Engineers to Liza Gonzales of the City San José. The e-mail, dated May 19, 2016, stated: "as Nat and I were driving back to the office yesterday - we chatted about some of the 'unknowns' moving forward, and specifically the SuperMicro vehicle distribution, and how this may be the elephant in the room. This relates to the rather large numbers currently accessing Fox, and the anticipated large numbers that would access a Fox/Charcot extension." (See Appendix A, Comment KK.) This shows that the City and its consultants had concerns about the heavy traffic on Fox Lane, even at the outset of the planning process for the Project and decided to move forward with a Project that would only increase in the traffic on Fox Lane while failing to acknowledge the impact in the Draft EIR.

San José City Councilmember Lan Diep met with District Superintendent Dr. Wendy Gudalewicz in early 2018 and discussed safety concerns about Fox Lane. Councilmember Diep relayed these concerns via e-mail to City employee Zahir Gulzadah on February 1, 2018. Councilmember Diep stated: "I wanted to reach out to you because I met with the new superintendent of Orchard School and she pressed me on two DOT-related items...there is a crosswalk on Fox Ln, but cars, and especially tankers carrying diesel gasoline do not respect it, creating a dangerous condition in the morning and afternoons when kids come to and from school (about 90 minutes a day). She (Dr. Gudalewicz) is asking for:

- a. A crossing guard;
- b. A flashing crosswalk; or
- c. Signage that slows down oncoming traffic"

(See Appendix A, Comment KK)

As stated in the District's previous Comments, the Draft EIR's Transportation Analysis acknowledged a greater use of the Fox Lane drop-off/pick-up areas under Project conditions. (Draft EIR, Appendix K, p. 50.) What the Project intends to do is direct greater usage to Fox Lane, an area that is heavily used and already experiences speeding cars and tanker trucks carrying diesel, as discussed in the attached e-mails. Additionally, in his e-mail, the Councilmember singled out that Fox Lane is a dangerous area for children in the pick-up and drop-off time periods.

The Draft EIR again departs from common sense and continues to ignore the safety concerns of the Orchard community with its introduction of this Project into the neighborhood. This Project will introduce new traffic into an area that has already been reported to be heavily used and dangerous. The potential exists for an already dangerous area to become even more dangerous due to the introduction of more traffic. This dangerous area will see additional vehicle trips without the implementation of additional safety measures. The District reiterates that the Draft EIR is in violation of CEQA in that it fails to inform public agency decision makers of the significant environmental effects of the Project, namely its effects on traffic conditions near the School.

Response JJ.1: This comment raises the same issues as those in Comment II.1. Please see Response II.1.

Comment JJ.2: The Draft EIR slates that “developments along the alignment have been planned and approved in anticipation of the proposed Charcot Avenue Extension, which was added to the City’s General Plan in August 1994.” (Draft EIR, 3.11.2.1.) The developments included both the construction of the Orchard School and the Supermicro Campus. The City contends that the District knew all along that the Project would eventually move forward. However, the City offered no input or analysis of the Orchard School construction’s compatibility with the conceptual Project. Further, the District dedicated an easement to the City in 2004 as a result of Summerhill Homes’ development of the adjacent residential area, yet the City made no inquiry as to the 0.44 acres currently required for this Project. Conversely, the City was more considerate of the Project and its land needs during its discussions with Supermicro.

In reviewing additional documents, it appears that the City took a more proactive approach with the Supermicro Campus, specifically by earmarking land needed for the Project. An e-mail from Gordon Sweet to Liza Gonzalez of the City of San José and Natalina Bernardi of BKF Engineers dated January 11, 2017 stated: “the irrevocable offer of dedication on the Supermicro parcel (before it was owned by supermicro)[sic] was signed in June 1998; the mapping shows “Future Charcot Avenue.” Ms. Gonzalez replied on January 13, 2017: “The SJ 2020 General Plan process was initiated in 1992 and concluded in 1993 per history on the City website. Therefore, it was around the mid 1990s that the Charcot Ave extension was first identified in the GP. This GP justified the requirement for the 1998 irrevocable offer of dedication on the Supermicro site that you pointed out.” (See Appendix A, Comment KK.)

Further, Ned Thomas of the City of San José referenced additional documents that purport to set aside land for the Project in an e-mail to Natalina Bernardi and Amy Wang of BKF Engineers, stating: “Following up on the discussion from our meeting yesterday, please see the attached Site Development Permit HA89-039-01 for the SuperMicro property located at 871 Fox Lane. This permit was approved on April 27, 2011, and includes a condition of approval pertaining to the temporary use of the Charcot Ave. right-of-way along the northern boundary of the property. Specifically, Condition 7.g (Maintenance and Removal Agreement) references the an [sic] existing Irrevocable Offer of Dedication (for street purposes) for the future extension of Charcot Avenue. This Condition notes that this Offer was made as a requirement of development for neighboring property (APN237-15-197) and provides other stipulations related to the Offer.” (See Appendix A, Comment KK.)

The District is currently not in possession of any documents that purport to reserve or dedicate land for a “Future Charcot Avenue.” As stated above, the City has had multiple opportunities to bring the Project to the attention of the District. Yet the City has remained silent towards the District, even though it contemplated a “Future Charcot Avenue” during the dedication of the Supermicro parcel and approved a permit that discussed an Irrevocable Offer of Dedication for the future extension of Charcot Avenue. This exemplifies the City’s poor planning with respect to the Project and highlights the inconsistent approach it has taken in communicating with landowners regarding its needs for the Project. There was no reasonable basis for the District to expect the Project was ever likely to come to fruition and judging by the City’s inconsistent planning, it has never had a consistent and focused approach towards the completion of the Project. This is exemplified in the discrepancy in the City’s approach to the Supermicro parcel as opposed to the District’s parcel.

Response JJ.2: This comment contends that the Orchard School District and Super Micro were treated differently by the City with regard to the planning of the Charcot Avenue Extension. The comment states that “there was no reasonable basis for the District to expect the Project was ever likely to come to fruition,” yet acknowledges that the District dedicated land for the Project in 2004. A review of Orchard School District board of Trustees Resolution #062204-01 dated 6/22/2004 shows the Trustees dedicated 12,000 ft² of school land to the City for “road purposes.”

The above paragraph notwithstanding, the circumstances regarding the history of the project are not relevant to the adequacy of the environmental analyses in the DEIR. The DEIR complies with CEQA by quantifying and describing the impacts of the project on existing/baseline conditions. Section 2 of the DEIR discloses the fact that the project will require the acquisition of 0.44 acre of land from the school district and Section 3.16 describes the effect of that acquisition on the school’s existing recreational facilities. Further, other sections of the DEIR describe the aesthetic, air quality, noise, transportation, and GHG impacts of the project at the school.

Comment JJ.3: The City has limited public participation in the Project approval process. In the District’s previous Comments, it has pointed to numerous instances in which the City has violated the spirit of CEQA by limiting public participation in the Project approval process. A specific point of conflict was the planning of a community meeting on May 21, 2018, that took place at Orchard School. Initially, a community meeting on the Project was scheduled on May 7, 2018, at the Berryessa Noble Library. This led to backlash from the District and concerned parents, who noted the meeting’s conflict with the School’s Open House activities and the distance of the Library from the School. The community meeting that took place on May 21, 2018, was not originally planned by the City, but came about through the insistence of the district. The District reviewed the following e-mails that document the District’s frustration about public participation and how this new meeting came about.

On April 26, 2018, District Superintendent Dr. Wendy Gudalewicz sent the following e-mail to City employee Thuy Nguyen: “Earlier today a parent let me know there was going to be a meeting held to share information about the Charcot Project with the community. Given the greatest impact the project will have is on our school campus, it does not make sense to me that we were not notified directly about the possibility of such a meeting. You chose May 17 for the meeting. May 17 is our school’s Open House night. My entire staff and the majority of our community will be at this event. In addition, the meeting is going to be held in the Berryessa community. This also does not make sense. We would have been more than happy to host such an event if asked. We are requesting that the meeting be rescheduled to include our community.” (See Appendix A, Comment KK.)

Thuy Nguyen, senior engineer for the City of San José responded on the same day, stating: “sorry for the conflict but the notices for the May 17 meeting have been mailed out along with the Notice of Preparation of an EIR for the project. The project team held one community meeting at the school site on March 22, 2017. We can have another community meeting at the school site in addition to the May 17 meeting.” Per the e-mail exchange, the parties agreed to a May 21, 2018, meeting date at the Orchard multi-purpose room. Thuy Nguyen sent a message to Dr. Gudalewicz on May 4, 2018, stating, “I assume you will notify the parents, staff, and school board members.” (See Appendix A, Comment KK.) On May 17, 2018, John Hesler of consultant David J. Powers & Associates, Inc. e-

mailed numerous City of San José employees slating, “as background, when the team met a week ago Friday, it was decided that any outreach for the Monday meeting (May 21, 2018) would be done by the Orchard School folks since they were the ones who asked for an additional meeting.” (See Appendix A, Comment KK.)

An e-mail sent on May 3, 2018 from concerned School parent Robin Roemer to San José’s District 4 further informed City staff about the community’s frustration with the scheduling and location of community meetings about the Project. Mr. Roemer stated, “As I think your office is aware neither location nor date/time of DOT meeting are very convenient to us parents at Orchard due to the school’s long planned open house on the same night. I had complained to the DOT about this event even before the flyers were sent out. I wish Councilmember Diep would address with the city how they can be more inclusive and accommodating to the community. Given that I’m at the moment not likely to attend the May 17 meeting, it would be great to find another time to meet with Councilmember Diep.” (See Appendix A, Comment KK.)

It is very disappointing that the City did not coordinate with the School regarding the scheduling of the Project community meeting in May 2018. As stated by Dr. Gudalewicz, the School has a lot to lose as a result of the Project, and the City should have included the District in its planning process for community meetings. Also disappointing is the fact that the District Superintendent, the District’s highest level manager, was not aware of the meeting on May 17, 2018, and had to learn about it from a School parent. It would be expected that the City would contact the highest ranking authority of a stakeholder, like the District’s Superintendent, directly about such a meeting.

The eventual meeting that took place on May 21, 2018 at the Orchard School’s multi-purpose room only came about through the persistence of the School’s Superintendent and would likely have not been scheduled without the Superintendent pushing for the meeting. A burden was then placed on the School both to host the community meeting and notify the parents, staff, and school board members, all on short notice. This confusion and last minute planning could have been avoided had the City involved the District in the planning of community meetings. The District has always been and will continue to be a willing host for community meetings pertaining to the Project as the outcome of the Project could potentially have a great impact on the School. Through this process, the City has demonstrated inaction and indifference with regard to involving the District in community meetings. As was the case in the May 2018 meetings, the District had to insert itself into the process. This is not cooperation amongst public agencies.

Additionally, the City’s request for the District to give notice to its parents, staff, and school board members certainly tests the boundaries of the CEQA Guidelines. CEQA Guidelines 15202(e) states: “notice of public hearings shall be given in a timely manner. The notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.” The Guidelines do not contemplate that a public agency other than the responsible agency will have a duty to provide notice of a public hearing. Further, the City and District agreed to the May 21 date on May 3, 2018, giving eighteen days for notice to be given to the public. The City only produced a flyer for the May 21 meeting, as opposed to the official notices and flyer produced for the past meetings.¹ Thus it is likely that notice for the May 21 meeting was not given in the same form and time as notice for other regularly conducted public hearings of the public agency. This would not be surprising as this meeting was not considered by the City until Dr. Gudalewicz expressed the District’s concerns about the time and location of the meeting. Due to the City’s poor planning,

additional resources of both the City and the District were expended to accommodate a meeting on May 21, 2018. Had the City involved the District from the start, the parties could have worked together to prevent a duplication of efforts.

Further, an e-mail from Josephine Kimura to Meenaxi Raval dated May 8, 2019 shed some light on the City's thought process for the location of community meetings. The e-mail stated: "we will manage the community meeting along with the associated outreach.. our plan is to not have the meeting at the school, but rather a neutral location." (See Appendix A, Comment KK.) As stated above, the Berryessa Library, the City's preferred neutral location is difficult for School staff and parents to access. Thus, the location is not truly neutral if it is a hardship for a certain segment of interested community to attend. That hardship only increases when community meetings are held in conflict with important School business.

Though the District and its parents have made their concerns about the scheduling of Project community meetings abundantly clear and the City itself has had internal discussions suggesting better coordination of community meetings with the District, it appears that the City has taken nothing from these experiences. The more recent September 24, 2019, Project community meeting was held at the Berryessa Noble Library, which as stated in previous Comments, is at best a twenty minute drive from the School. This meeting also took place at the same time as an Orchard School Board meeting, which led to the planning of another District-initiated community meeting. Mr. Roemer informed Meenaxi Raval of the City of San José of this meeting in a September 8, 2019, e-mail, stating: "given the circumstances, we as school community have decided to organize our own meeting to give people in the community as well as interested stakeholders a chance to learn about the project and voice their concerns (Thursday 9/26 @6pm @ Orchard school). City staff is obviously very welcome to attend. We will provide you with a report on what was said in any ease." (See Appendix A, Comment KK.) Thus, the District has twice had to initiate their own community meetings due to the City's indifference towards working with the District and keeping the community served by the District informed and involved, it does not make sense for the District (a key stakeholder that stands to lose 0.44 critical acres if this Project is approved) to encounter such obstacles in being a part of the discussion surrounding this Project.

This is not the wide public involvement envisioned by CEQA. Nevertheless, the District remains willing to coordinate any future Project community meetings with the City to address the serious concerns of the District and its parents.

Response JJ.3: This comment raises the same issues as those in Comment II.4. Please see Response II.4.

SECTION 5.0 DRAFT EIR TEXT REVISIONS

This section contains revisions to the text of the Charcot Avenue Extension Draft EIR dated August 2019. Revised or new language is underlined. All deletions are shown with a ~~line through the text~~.

Page 8, **REVISE** last sentence of 3rd paragraph: The Charcot Avenue Extension has been included in each version of the ~~NSPADP~~ NSJADP in 2005.

Page 10, **ADD** fourth bullet at the top of the page:

- Bicycle detectors would be installed in the pavement at signalized intersections along the Charcot Avenue Extension.

Page 11, **REVISE** 2nd bullet at top of page: The retaining wall on the south side of the extension would extend to Oakland Road around the northeast corner of the Orchard School Ball Field along the proposed sidewalk and would have a height of approximately four feet.

Page 11, **ADD** new **Section 2.3.7: Construction Phase Limitations.** Construction of the portion of the project that is adjacent to the Orchard School property will be limited to the period of time during the summer when school is not in session.

Page 13: **REVISE** Uses of the EIR: This EIR will provide decision makers in the City of San José and general public with relevant environmental information to use in considering the proposed project. The City will also utilize information in this EIR for various administrative processes (e.g., tree removal permits and actions related to the Municipal Regional Stormwater NPDES Permit).

Page 15, 3rd paragraph, **REVISE** 2nd sentence: The cumulative impacts discussion...

Page 17, **REVISE** Footnote 34: California Department of Transportation. “Scenic Highways.” Accessed: December 19, 2018. Available at: <http://www.dot.ca.gov/design/lap/livability/scenic-highways/index.html>.
http://www.dot.ca.gov/hq/LandArch/16_livability/scenic_highways/scenic_hwy.htm.

Page 30: **REPLACE** the photosimulation in Figure 3.1-4 with the following:



Page 50, **REVISE** 2nd Paragraph: For more detail regarding the size, location, and species of the trees located within the project alignment, refer to Figure 3.1-1 and Appendix G of this EIR.”

Page 72: **REVISE** Impact GEO-3: Although the project would be located on soil that could become unstable during an earthquake, the implementation of standard conditions and compliance with current seismic safety codes will avoid any significant effects due to this condition.

Page 100, **ADD** Section 3.11.3 – Effects on Off-Street Parking:

Parking stalls are not environmental resources, they are physical features to accommodate vehicle trips to/from a site or that exist in the public right-of-way to support adjacent land uses. Parking supply was removed from the CEQA Appendix G Checklist as an impact topic for analysis earlier this decade. This statement notwithstanding, since an EIR is a disclosure document, the following is presented for informational purposes:

- The right-of-way required for the project from APN 237-02-084, a business park located on the north side of Charcot Avenue, west of O’Toole Avenue, would affect a number of existing parking spaces. The affected spaces are located between the front of the buildings and Charcot Avenue. The wider footprint needed for the project would require a reconfiguration of parking area. Based on a preliminary conceptual design, the City anticipates in no net loss of parking spaces with the reconfiguration. Should there be any net loss, that fact would be accounted for during the negotiation over the right-of-way costs between the City and the property owner.
- The right-of-way required for the project from APN 237-02-064, a business park located on the south side of Charcot Avenue, west of O’Toole Avenue, would affect a number of existing parking spaces. Current parking supply at this business park is 330 spaces. The affected spaces are located between the front of the buildings and Charcot Avenue. The wider footprint needed for the project would require a reconfiguration of parking area. Based on a preliminary conceptual design, the City anticipates a net loss of approximately eight parking spaces with the reconfiguration. That fact would be accounted for during the negotiation over the right-of-way costs between the City and the property owner.

Page 126, **REVISE** Footnote #52: Sources: ~~1) Orchard School District. “Indirect Transfers.” Accessed: May 14, 2018. Available at: <http://www.orchardsd.org/Parents/Interdistrict-Transfers/index.html>. 2) East Side Union High School District. “School Boundaries.” Accessed: May 14, 2018. Available at: <http://www.esuhd.org/Community/School-Boundaries/>.~~

Page 129: **REVISE:** The City is currently in the process of another revision to the plan known as Greenprint Update Activate SJ 2018.

Page 133, **REVISE** MM REC-2.1, as follows:

MM REC-2.1: ~~The City will work with Orchard School District to determine the appropriate amount of compensation for the approximate 0.44 acre required for the project. If an amount is not agreed upon, the City will follow local, state and~~

~~federal laws to determine the appropriate compensation amount to the Orchard School District.~~

~~The amount of compensation may include reimbursement to the Orchard School District the cost to reconfigure/reconstruct the existing recreational facilities affected by the project. This could involve shifting and reconstructing the affected facilities to the south of their current locations. The intent of this measure is that the replacement facilities would be comparable to the existing facilities in size, function, and quality.~~

The City will reconfigure the existing recreational facilities at Orchard School that would be impacted by the project. The reconfiguration will meet the following performance standards:

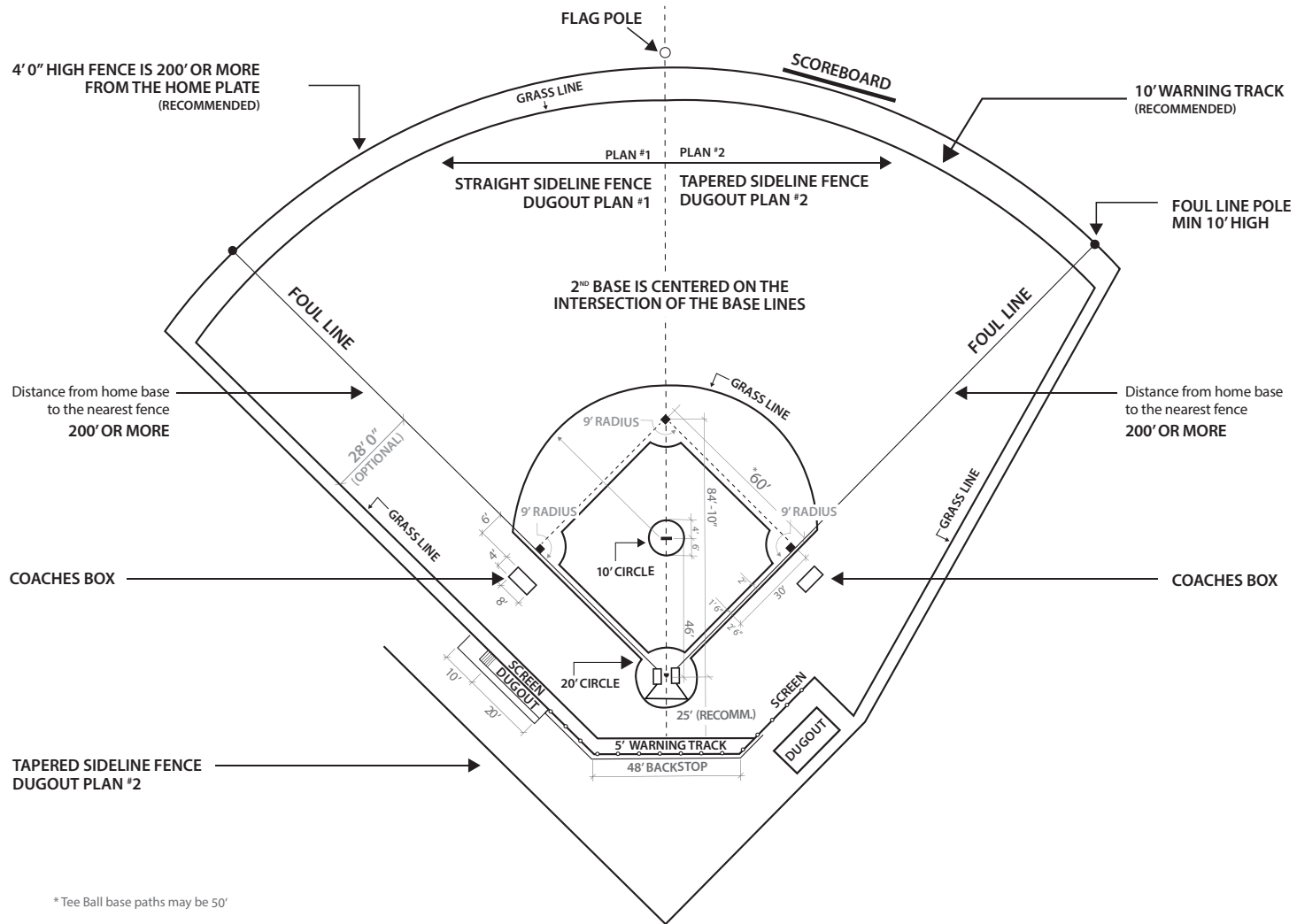
- A standard Little League baseball field with backstop to complement existing conditions. Figure 3.16-2 provides the dimensions for a standard Little League baseball field.
- A 6-foot wide perimeter running path around sports field
- An approximately 5,000 ft² playground structure appropriate for children ages 5 to 12 years old
- Two 315 ft² tetherball games
- Two 640 ft² ball walls
- Four 6-foot benches adjacent to the play area
- New irrigation system, sod lawn, perimeter tree planting and ornamental shrub planting around the school perimeter adjacent to the field fence and play yard.

To illustrate how the above-described reconfiguration would fit within the available acreage at the school assuming the Charcot Avenue Extension is constructed, Figure 3.16-3 has been prepared. Please note that Figure 3.16-3 is one potential conceptual design and is not intended to depict a selected configuration. The City will work with the Orchard School District to develop a final configuration that meets the above-listed criteria.

MM REC-2.1 would not result in any new permanent impacts since it would be limited to the replacement of existing facilities at the same location. It would result in temporary noise and air quality impacts during the construction phase for the reconfigured/reconstructed facilities, but such impacts would be mitigated with implementation of standard construction measures for noise, water quality, and dust (refer to Sections 3.3, *Air Quality*, 3.10, *Hydrology and Water Quality*, and 3.13, *Noise and Vibration*). Further, the reconfiguration would occur during the summer when school is not in session. Upon completion of the reconfigured/reconstructed facilities, users would not be significantly impacted by the Charcot Avenue Extension because a proposed new noise wall would mitigate for any increases in noise and air quality impacts would not be significant; see Sections 3.3, *Air Quality*, and 3.13, *Noise and Vibration*, for details.

LITTLE LEAGUE BASEBALL® (MAJOR/MINOR) DIVISIONS FIELD LAYOUT

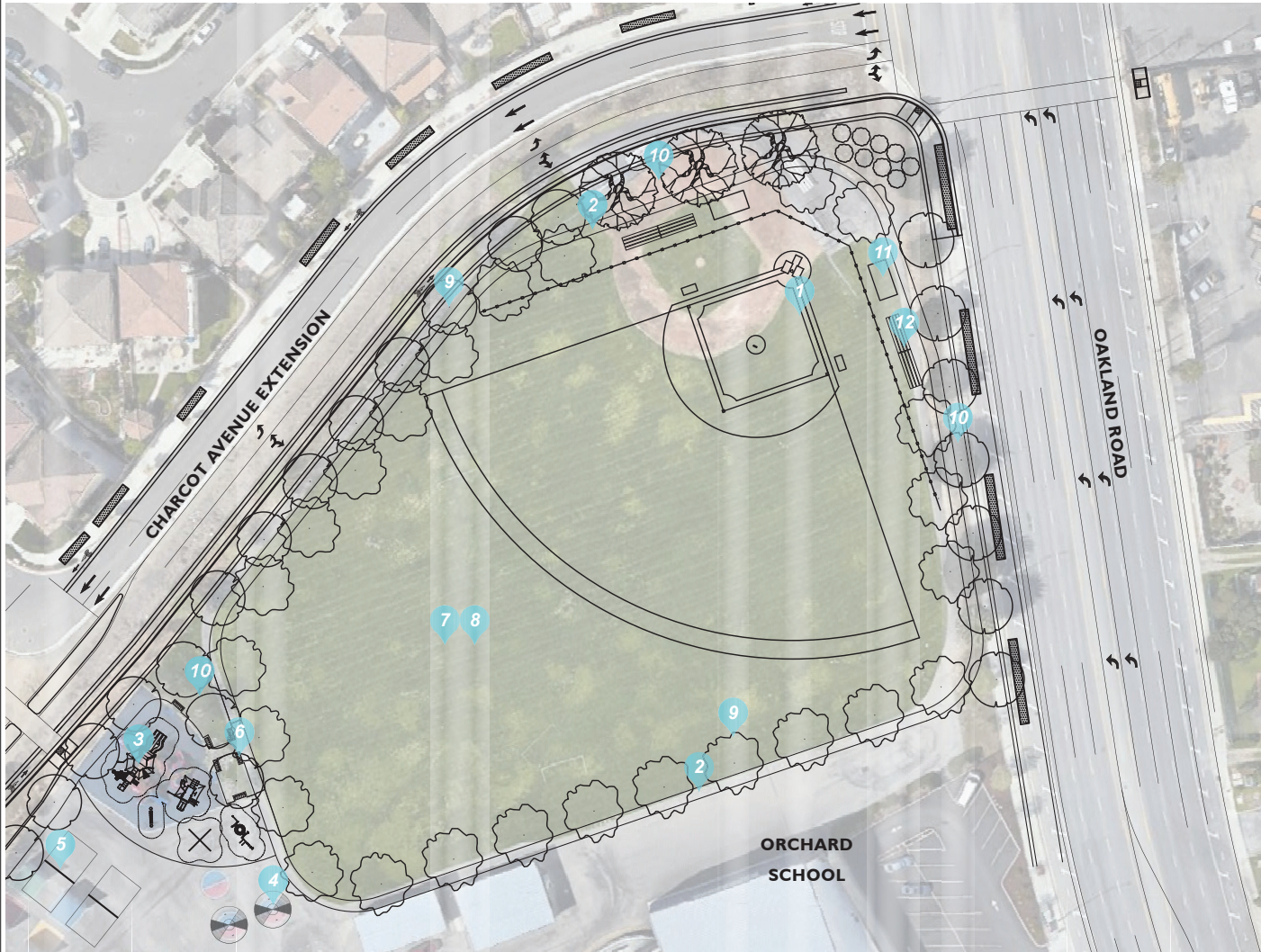
TEE BALL, COACH AND MACHINE PITCH



* Tee Ball base paths may be 50'

STANDARD LITTLE LEAGUE FIELD DIMENSIONS

FIGURE 3.16-2



- 1 Little League baseball field with Backstop
- 2 6FT perimeter running path around sports field
- 3 5-12 playground structure (5000 SQ FT)
- 4 Tether Ball, 315 SF (Typical of 2)
- 5 Ball Wall, 640 SF (Typical of 2)
- 6 6' Wide Bench @ Play Yard
- 7 New Automatic Irrigation System for Landscape
- 8 Sod Lawn
- 9 Evergreen Perimeter Tree Planting
- 10 Drought Tolerant Ornamental Shrub Planting
- 11 Dugouts, Typical
- 12 Bleachers, Typical

This figure represents one potential conceptual layout for the reconfiguration of the recreational facilities with the Charcot Avenue Extension in place. The intent is to demonstrate that the reconfiguration can occur within the available space.



POTENTIAL CONCEPTUAL RECONFIGURATION OF RECREATIONAL FACILITIES

FIGURE 3.16-3

Page 143, **REVISE** Table 3.17-1: Ridder Park Drive – North of ~~Oakland~~ Brokaw Road.

Page 143, **REVISE** Table 3.17-1: Speed limit on Oakland Road (north & south of Silk Wood Lane) is ~~45~~ 40 mph.

Page 146, **REVISE** Table 3.17-2: Ridder Park Drive – North of ~~Oakland~~ Brokaw Road.

Page 155, **REVISE** Table 3.17-7: Ridder Park Drive – North of ~~Oakland~~ Brokaw Road.

Page 156, **REVISE** Table 3.17-8: Ridder Park Drive – North of ~~Oakland~~ Brokaw Road.

Page 157, **REVISE** Table 3.17-9: Ridder Park Drive – North of ~~Oakland~~ Brokaw Road.

Page 162: **REVISE** Travel times between the selected origins and destinations were projected assuming that it would take approximately 30 seconds to travel between ~~Oakland Road~~ Silk Wood Lane and O’Toole Avenue via the proposed extension

Page 179: **REVISE** first sentence in first paragraph under Section 4.2.2: The *Envision San José 2040 General Plan* provides for the development of 26,700,000 square feet of industrial uses, ~~300,000~~ 1,700,000 square feet of commercial uses, and 32,000 residential dwelling units in North San José

Page 183: **DELETE** the quotation mark at the end of first paragraph.

Page 187, **REVISE** 2nd paragraph: Additional widening to increase east-~~east~~ west capacity...

Page 194, **REVISE** Table 7.4-3: The Maximum Annual PM10 Concentration values for the row labeled “Total for Project + Cumulative Sources” are revised as follows:

- Proposed Project Residential MEI: ~~0.55~~ 0.39
- Proposed Project School MEI: ~~0.56~~ 0.47
- Alternative F Residential MEI: ~~0.55~~ 0.40
- Alternative F School MEI: ~~0.56~~ 0.44
- Alternative G Residential MEI: ~~0.55~~ 0.39
- Alternative G School MEI: ~~0.56~~ 0.46
- Alternative H Residential MEI: ~~0.55~~ 0.40
- Alternative H School MEI: ~~0.56~~ 0.44

Pages 202-204, References: **ADD** the following:

- Thorburn Associates, Letter to Steinburg Group regarding Orchard School, Sept. 19, 1996.
- VTA, Valley Transportation Plan 2040, 2014.
- VTA, Congestion Management Program, December 2017.
- MTC, Plan Bay Area 2040, July 2017.

Page 205, **REVISE** Department of Transportation, John Ristow, ~~Acting~~ Director

Appendix J, **REVISE** Footnote #1: The DNL values at ~~short~~ short-term locations were calculated...

Appendix K, Page 11, **REVISE** Heading near Bottom of the Page: Existing Transit ~~Facilities~~
Facilities

Appendix K, Page 41: **INCLUDE** a future traffic signal on Figure 14 at the Paragon/Charcot intersection.