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11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

13 TAXPAYERS FOR RESPONSIBLE LAND )  
14 USE, et al., )

15 Plaintiffs and Petitioners, )

16 v. )

17 CITY OF SAN DIEGO, et al., )

18 Defendants and Respondents. )

19 HILLEL OF SAN DIEGO, et al., )

20 Real Parties-in-Interest. )

Case No. GIC867378

OPENING BRIEF: PETITIONERS'

MEMORANDUM OF POINTS AND

AUTHORITIES IN SUPPORT OF WRIT OF

MANDAMUS UNDER CEQA

ASSIGNED FOR ALL PURPOSES TO:

Hon. Linda B. Quinn

Date: March 1, 2006

Time: 1:30 PM

Dept: 74

Action filed: June 12, 2006

21 Petitioners TAXPAYERS FOR RESPONSIBLE LAND USE and LA JOLLA SHORES  
22 ASSOCIATION respectfully submit this Opening Brief: Petitioners' Memorandum of Points and  
23 Authorities in Support of Mandamus Under CEQA.

24 Dated: January 8, 2007

COAST LAW GROUP LLP

25 

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Taxpayers for Responsible Land Use

La Jolla Shores Association

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## I. INTRODUCTION

Petitioners and Plaintiffs TAXPAYERS FOR RESPONSIBLE LAND USE and LA JOLLA SHORES ASSOCIATION (collectively "Petitioners") challenge the CITY OF SAN DIEGO's ("City") approval of HILLEL OF SAN DIEGO's ("Hillel") application to build a 12,100 square foot student center with a 17,000<sup>1</sup> square foot underground parking garage based on a mitigated negative declaration ("MND"). Comments from Petitioners and others establish substantial evidence to support a fair argument the Project may have a number of significant environmental impacts, including, but not limited to: biology, parking, traffic, aesthetics. In addition, the record demonstrates the City requested a biologist report be altered to suppress expert evidence of potential significant impacts to raptors (birds of prey). The responses to comments were so inadequate the City utterly failed "to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action." *No Oil, Inc. v. Los Angeles*, 13 Cal. 3d 68, 86 (1974). Finally, twenty-four new mitigation measures were added after the close of public comment without recirculating the MND.

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## II. STATEMENT OF FACTS

The project at issue, entitled "Hillel of San Diego," has two phases. (1 AR 1.) Phase I is the continued use of a residence as an office for Hillel in violation of zoning. (1 AR 65; 18 AR 7733.) Phase II is the construction of a 12,100 square foot Hillel Student Center with a 17,000 square foot subterranean garage (hereinafter "Project"). (1 AR 65.) The Project is proposed to be located on what is commonly known as Site 653, a triangular lot bounded to north by La Jolla Village Drive, to the east by La Jolla Scenic Way and to the south by La Jolla Scenic Drive North. (1 AR 65, 309, 310.) The lot is directly across La Jolla Village Drive from UCSD. (4 AR 1404, 1432, 1570.) Single family residences are located to the south of the project and town-houses and a single family residence lie directly east of the Project. (17 AR 7369-7375; 18 AR 7759-67.) The area immediately to the east drops off 14 - 16 feet below the grade level of Site 653. (2 AR 673, 6 AR 2161, 10 AR 3960, 12 AR 5176; 18 AR 7760.)

In May of 2003, the City prepared the Initial Study for the Project. (2 AR 625.) The City identified only two potential impacts: parking and paleontological resources. (2 AR 612 and 613.)

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<sup>1</sup>The 17,000 sq. ft. garage was for 40 spaces. The City increased the on-site parking to 68 spaces, requiring a significant increase in the size of the underground garage.

1 Based on Hillel's traffic study arguing only 38 students would drive to Friday Shabbat Services, the  
2 original initial study discussion stated only 40 on-site parking spaces would be sufficient parking for the  
3 Project, with 75 additional off-site spaces required for occasional special events. (2 AR 572, 594.)  
4 Later, the parking was changed to include 27 off-site spaces for Shabbat based on the Hillel's assertions  
5 that the Project would have only 200 removable seats, (1 AR 77; 2 AR 594), despite the Project being  
6 large enough to hold 600-900 people (2 AR 674; 5 AR 1861; 6 AR 2309; *See also* 16 AR 6638-42  
7 (describing how to determine occupancy loads).) The initial study also noted that the project would  
8 result in the direct loss of 12-15 parking spaces. (2 AR 594.) There is no mitigation for the loss of these  
9 on-street parking spaces.

10 The draft MND was circulated on September 1, 2004. (17 AR 7194.) The comment period for  
11 the draft MND was open until October 1, 2004. (Id.) The City received substantial comments on the  
12 draft MND. (2 AR 669-899.) The City responded to comments and prepared a final MND. (1 AR 334  
13 to 2 AR 567.) The final MND was again revised after the Planning Commission hearings. (1 AR 65.)  
14 However, the MND was never re-circulated and no further responses were prepared in response to the  
15 hundreds of comments received after October 1, 2004. (*In passim.*)

16 Every planning group that reviewed the Project recommended denial. On January 18, 2005 the  
17 La Jolla Planned District Advisory Board recommended denial of the Project. (4 AR 1430.) On  
18 February 3, 2005, the La Jolla Community Planning Group voted 10-2 to deny the Project. (12 AR  
19 5277.) On February 24, 2005, the City of San Diego Planning Commission unanimously recommended  
20 denial of the Project. (4 AR 1430.) Even the University City Planning Group, which the Project was not  
21 before, felt the Project may have significant impacts in its planning area. (8 AR 3122-23, 13 AR 5357.)

22 The primary environmental concerns of the vast majority of the citizens and the planning groups  
23 concerned: 1. The size, bulk and neighborhood compatibility of the Project (aesthetics); 2. Parking, and;  
24 3. Traffic. (2 AR 674, 683, 676, 683-84, 4 AR 1430-1431; 12 AR 5276-77.) In addition, citizens  
25 complained of potential noise impacts, biological impacts, construction impacts and numerous other  
26 potential problems. (2 AR 689, 771, 805, 817, 853, 870, 896; 13 AR 5526.) Cumulative impact were  
27 also brought up by the community. (13 AR 5391-92.) There were also complaints that the City's  
28 responses to comments were inadequate. (6 AR 2190; 13 AR 5512.)

1 On May 9, 2006, the City Council considered the Project. (4 AR 1649.) After the close of public  
2 comment, the City adopted twenty-four conditions proposed by the Mayor. (4 AR 1669-73; 5 AR 1850.)  
3 The MND was not re-circulated to permit public comment on the additional mitigation measures. The  
4 City Council certified the MND and approved the Project. (1 AR 1-2.)

### 5 III. STANDARD OF REVIEW

6 “The legislature intended [CEQA] to be interpreted in such manner as to afford the fullest  
7 possible protection to the environment within the reasonable scope of the statutory language.” *Friends*  
8 *of Mammoth v. Bd. of Supervisors*, 8 Cal. 3d 247, 259 (1972). The Environmental Impact Report (EIR)  
9 is described as the heart of CEQA. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 83 (1974).  
10 Therefore, there is a low threshold for requiring an EIR. *Id.* at 84. CEQA requires an agency to prepare  
11 an EIR whenever the proposed project “may have a significant effect on the environment.” Pub. Res.  
12 Code §§ 21080(d), 21100 & 21151. “[T]he preparation of an EIR [is required] whenever it can be *fairly*  
13 *argued* on the basis of substantial evidence that the project *may have* significant environmental  
14 impacts.” *No Oil*, 13 Cal. 3d at 75 (emphasis added). “‘May’ means a reasonable possibility.” *Pocket*  
15 *Protectors v. Sacramento*, 124 Cal. App. 4th 903, 927 (2004). Doubts as to whether there is a significant  
16 impact should be resolved in favor of preparing an EIR. *League for Protection of Oakland’s*  
17 *Architectural and Historical Resources v. City of Oakland*, 52 Cal. App. 4th 896, 905 (1997).

18 “If there was substantial evidence that the proposed project might have a significant  
19 environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with  
20 preparation of an EIR.” *Friends of “B” Street v. City of Hayward*, 106 Cal. App. 3d 988, 1002 (1980).  
21 “‘Substantial evidence’... means enough relevant information and reasonable inferences from this  
22 information that a fair argument can be made to support a conclusion, even though other conclusions  
23 might also be reached.” 14 CCR 15384. “Substantial evidence includes fact, a reasonable assumption  
24 predicated upon fact, or expert opinion supported by fact.” Pub. Res. Code § 21080(e)(1). “Substantial  
25 evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly  
26 inaccurate or erroneous.” Pub. Res. Code § 21080(e)(2).

27 While “substantial evidence” may be tendered by an expert, “[I]nput from non-experts can be  
28 substantial evidence where such input is credible and does not purport to embody analysis that would

1 require special training.” Remy et al., GUIDE TO THE CAL. ENVIRONMENTAL QUALITY  
2 219. For example, adjacent property owners may testify to traffic conditions based up  
3 knowledge. *Citizens Association for Sensible Dev. of Bishop Area v. County of Inyo*, 112 Cal. App. 3d  
4 151, 173 (1985); *Oro Fino Gold Mining Corp. v. County of El Dorado*, 225 Cal. App. 3d 872, 883  
5 (1990). Personal observations of wildlife constitutes substantial evidence. *Mejia v. City of Los Angeles*,  
6 130 Cal. App. 4th 322, 339 (2005). Personal observations about noise from similar projects can  
7 constitute substantial evidence. *Oro Fino Gold Mining Corp.*, at 882. “[A] decision not to require an  
8 EIR can be upheld only when there is no credible evidence to the contrary.” *Quail Botanical Gardens*  
9 *Foundation, Inc. v. City of Encinitas*, 29 Cal. App. 4th 1597, 1602 (1994) (quoting *Sierra Club v.*  
10 *County of Sonoma*, 6 Cal. App. 4th 1307 (1992)).

11 Finally, it is the lead agency’s, not the public’s duty to conduct the proper studies. *Sundstrom v.*  
12 *County of Mendocino*, 202 Cal. App. 3d 296, 311 (1988). As discussed in *Sundstrom*

13 The agency should not be allowed to hide behind its own failure to gather relevant data...If the  
14 local agency has failed to study an area of possible environmental impact, a fair argument may be  
15 based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope  
16 of fair argument by lending a logical plausibility to a wider range of inferences. (Id.) (citations  
omitted).

17 “One major purpose of an EIR is...to demonstrate to an apprehensive citizenry that the agency has in fact  
18 analyzed and considered the ecological implications of its action.” *No Oil*, 13 Cal. 3d at 86. Failing to  
19 study potential impacts identified by the public frustrates the major policy goals of CEQA. 14 CCR 15003

#### 20 IV. ARGUMENT

##### 21 1. BIOLOGICAL RESOURCES

##### 22 A. The Record Demonstrates the City of San Diego Intentionally Suppressed a Biologist’s Report Identifying Evidence the Project May Have a Significant Impact on Raptors.

23 Upon reviewing the application for the Project, the City staff determined Hillel would have to  
24 provide a biological survey of Site 653 because the Project potentially impacted biological resources.  
25 (18 AR 7600.) Hillel submitted a study prepared by its biological consultant, RECON, dated September  
26 25, 2003. (Id.) Although the record does not have a copy of the September 25, 2003 biological survey,  
27 an email from the City’s Development Project Manager, Laura Black, demonstrates the biologist felt that  
28 there were potential raptor (ie. hawks and falcons) nests at the Project site. (16 AR 6702.) The biologist

1 recommended a focused raptor survey be conducted prior to clearing eucalyptus trees, and construction  
2 activities be limited to September 1 through January 31st. (Id.)

3 Laura Black directed Hillel to request RECON to revise the report before public review. (Id.)

4 Mrs. Black warned:

5 As you are aware, the public is very interested in this project and all technical reports can be  
6 reviewed/copied by the public. That being said, a revised biology report is necessary for  
7 consistency with the City's determination that no mitigation is required for biological resources  
(raptors). (16 AR 6702.)

8 Laura Black's email is direct evidence the City's process was focused on a predetermined finding  
9 of no significant impact, instead of a neutral process to determine whether an EIR should be prepared.  
10 As discussed in the RECON report that was released, "The loss of an active raptor nest by removal of a  
11 tree or the abandonment of an active nest due to construction activity would be considered a significant  
12 impact." (3 AR 1110.) Requesting the biologist to alter his report to remove evidence of a potentially  
13 significant impact is fraud on the public. Based on this evidence alone, the MND should be rescinded.

14 Furthermore, the City ignored substantial evidence presented by a neighbor whose kitchen  
15 window overlooks Site 653. (2 AR 817.) The neighbor states, "I frequently see hawks and peregrine  
16 falcons on the four eucalyptus trees where Ms. Black denies their presence." (2 AR 817.) She notes  
17 that Site 653 is "gopher heaven...no wonder raptors perch on the tree in that area." (Id.) Clearly,  
18 observations from her kitchen window on a daily basis are more accurate than a biologist who surveyed  
19 Site 653 one afternoon on July 25, 2003. (2 AR 820; 3 AR 1108.) Such personal observations of  
20 wildlife constitute substantial evidence there may be a significant impact on biological resources.

21 *Mejia*, 130 Cal. App. 4th at 339.

## 22 2. PARKING

### 23 A. The Project is Severely Deficient of Parking, because it Requires, at Least, 135 Parking 24 Spaces Under the Municipal Code but can only Accommodate 68 Parking Spaces On-Site.

25 The City initially determined the Project only needed 40 on-site parking spaces for Friday Night  
26 Shabbat, and 115 (40 on-site and 75 off-site) spaces for special events. (2 AR 571.) The Projects'  
27 parking was based on Hillel's parking study which asserted a majority of student visitors would park in  
28 lot P-102 at UCSD and walk to the Hillel Center. (3 AR 1133, 1137.) The initial study recognized, but

1 downplayed, the increased competition for parking in the neighborhood, stating, "It is reasonable to  
2 assume that a relatively small number of vehicles will park on nearby streets even if there are spaces on  
3 the site. This spillover could be accommodated along the roadways adjacent to the site." (2 AR 571.)

4 Hillel's traffic and parking study was roundly criticized by UCSD's Community Planner, who  
5 found the survey failed to provide an accurate portrayal of parking availability at Lot P-102. UCSD's  
6 planner noted "[T]he three dates when [parking] surveys were performed that the La Jolla Playhouse was  
7 not in performance." (2 AR 886.) Based on the planner's expert knowledge, "A survey on a La Jolla  
8 Playhouse or Theatre Department performance evening would reveal very few, if any available spaces."  
9 (2 AR 887.) UCSD's planner also noted the Theatre Department and La Jolla Playhouse held  
10 performances on Friday and Saturday night 34 weeks of the year, including on major Jewish holy days.

11 The calculations for traffic and parking were also criticized by the Petitioners who pointed out  
12 the calculation did not comply with the Municipal Code requirement of three parking spaces for each  
13 fixed seat or thirty parking spaces per 1,000 square feet of assembly area. (SDMC table 142-05F, 6 AR  
14 2410.) Thus, depending how one calculates the "assembly area" the Project requires anywhere from  
15 135 to 187 to 272 spaces. (1 AR 20; 2 AR 674.) The City at the final hearing determined the proper  
16 amount of parking under the Municipal Code was 135 parking spaces for Shabbat and 143 parking  
17 spaces for special events. (1 AR 20.) However, the architect stated the Project cannot provide more than  
18 68 on-site parking spots. (Id.) Thus, the Project is severely deficient in available parking.

19 The City attempts to mitigate the deficient parking by requiring Hillel obtain the remaining  
20 parking spaces, off-site, through "shared parking agreements," despite the fact the Municipal Code  
21 specifically prohibits shared parking agreements in single unit residential zones. (SDMC § 142.0545(a);  
22 7 AR 2505.) The Planned Development Permit ("PDP") requires Hillel provide sixty seven (67) off-site  
23 parking spaces through shared parking agreements for weekly Shabbat services, and seventy five (75)  
24 off-site parking spaces for occasional special events. (1 AR 29-30.) The PDP also require a shuttle  
25 between the off-site parking location(s) and the Hillel Center. (1 AR 30.) One of the conditions of the  
26 PDP is to "advise visitors to the Center on Friday night Shabbat and during occasional Special Events  
27 not to park in the neighborhood." (1 AR 35.)

28 Regardless of these mitigation measures, there is a fair argument based upon personal

1 observations and independent newspaper reports concerning similar shared parking agreements that the  
2 Project may still cause a significant impact on parking in the neighborhood. Further, because neither the  
3 MND, PDP or Mitigation Monitoring Report Plan (“MMRP”) indicates the location of the off-site  
4 parking, the City lacks substantial evidence the off-site parking will “mitigate the effects on the  
5 environment to a point where clearly no significant effect on the environment would occur.” 14 CCR  
6 15064(f)(2). Finally, the City improperly defers future mitigation of parking based on future studies.

7  
8 **B. The Community Provided Substantial Evidence the Hillel Student Center would  
Adversely Impact Parking Regardless of the Mitigation Measures.**

9 The community is justifiably skeptical about willingness of Hillel students to bypass parking  
10 places in the neighborhood and take a shuttle from “far-flung” parking lots. (2 AR 686.) The lack of  
11 effectiveness of other shared parking arrangements has been personally witnessed within the  
12 neighborhood. Temple Adat Yeshurun, one of the local Orthodox Jewish temples, is supposed to have a  
13 shared parking agreement with Torrey Pines Christian Church. (2 AR 868.) Despite such shared parking  
14 agreement, and the fact that Orthodox Jews are not supposed to drive on Sabbath or high holy days, the  
15 congregation regularly parks in the neighborhood. (2 AR 866.) Attempts to prevent congregants from  
16 parking in the neighborhood have proven ineffective. During a September event at the Temple Adat  
17 Yeshurun, the temple hired six people to monitor parking and direct people to the off-site parking. (2 AR  
18 736.) Much of the congregation simply parked in the neighborhood anyway.

19 Criticism of the off-site parking plan is further supported by an article in the Union Tribune  
20 which reports that a shared parking agreement for Thomas Jefferson School of Law is completely  
21 ineffective at mitigating parking impacts on the local neighborhood. (13 AR 5560; *See also*, 13 AR  
22 5297 (referring to the article) .) The Union Tribune article describes how on-street parking is completely  
23 occupied by law students despite Thomas Jefferson’s leasing of 60 parking spaces at a parking lot 1/4  
24 mile away, and paying students \$5 per day to park there for free. (13 AR 5561.)

25 Personal observations by neighbors of a similarly ineffective off-site parking arrangement and the  
26 Union Tribune article regarding Thomas Jefferson’s parking problems, constitutes substantial evidence  
27 to support a fair argument the Project may have a significant impact on parking regardless of a shared  
28 parking agreement. *See, Oro Fino Gold Mining Corp.*, 225 Cal. App. 3d at 883 (“substantial evidence

1 based on personal observations.) The City must prepare an EIR.

2 **C. The City lacks substantial evidence off-site parking will clearly mitigate parking**  
3 **impacts because it does not know where the off-site parking will be located.**

4 There is nothing in the Initial Study, PDP, MND, MMRP, Resolutions or Findings indicating the  
5 location of the off-site parking. Even the draft Transportation Demand Management Plan (TDMP) fails  
6 to identify the location of the off-site parking. (11 AR 4388; 13 AR 5300.) Without identifying the  
7 permanent location for off-site parking, the City lacks substantial evidence that the offsite parking  
8 mitigation measures will “mitigate the effects on the environment to a point where clearly no significant  
9 effect on the environment would occur.” 14 CCR 15064(f)(2).

10 The importance of the location for the off-site parking was pointed out in numerous comments.  
11 (2 AR 683, 687, 698, 730, 734; 6 AR 2266, 2395; 13 AR 5300, 5302, 5358.) However, there is no  
12 requirement in the PDP for the off-site parking to be convenient, close-by, safe, lighted, or even paved.  
13 Obviously, the more remote and inconvenient the location, the less likely visitors to Hillel will use the  
14 off-site parking. As currently conditioned, the off-site parking could be located 1/4 mile, 1 mile, or 5  
15 miles or more away. The off-site parking could even, theoretically, be located in Pacific Beach,  
16 Qualcomm Stadium or even El Cajon. Furthermore, the impact of 75 additional cars seeking parking at  
17 certain locations may have significant impacts on its own. (See 13 AR 5300, 5302, 5358 (objecting to  
18 potential off-site parking at the La Jolla Corporate Center).)

19 Requiring off-site parking to be to the satisfaction of the City engineer is not sufficient under  
20 CEQA. (1 AR 18.) “[T]he CEQA process demands that mitigation measures timely be set forth, that  
21 environmental information be complete and relevant, and that environmental decisions be made in an  
22 accountable arena.” *Oro Fino Gold Mining Corp.*, 225 Cal. App. 3d at 885. The City engineer cannot  
23 make such a crucial decision. A permanent location for the off-site parking is a necessary pre-condition  
24 before the City can even make a colorable argument the off-site parking plan is effective mitigation.

25 The failure of the MND, PDP or MMRP to identify a permanent location for off-site parking is  
26 fatal to the City’s claim it mitigated the Project’s impacts to parking. *Topanga Asso. for Scenic Cmty. v.*  
27 *County of L.A.*, 11 Cal. 3d 506, 515 (1974)(“Findings [must] bridge the analytical gap between the raw  
28 evidence and ultimate decision”). Without a location for the off-site parking, the City lack substantial.

1 evidence the shared parking agreement(s) “mitigate the effects to a point where clearly no significant  
2 effect on the environment would occur.” Pub. Res. Code § 21080(c)(2); 14 CCR 15064(d)(2).

3 **D. The City Improperly Deferred Proper Study and the Imposition of Mitigation of**  
4 **Parking Impacts into the Future.**

5 Part of the mitigation required by the permit is to prepare a Transportation Demand Management  
6 Plan (TDMP). As noted in the Planned Development Permit:

7 The TDM Plan shall include the following:

8 c. Annual post-occupancy parking demand study shall be conducted by Hillel for  
9 Shabbat services and occasional special services for three years after the facility becomes  
10 operational, satisfactory to the City Engineer. If post occupancy study indicates a need  
11 for additional off-site parking, then Hillel shall secure the additional parking spaces,  
12 satisfactory to the City of San Diego. If post occupancy study indicates that Hillel has no  
13 need for the required off-site parking spaces, then those spaces do not need to be  
14 provided. The parking demand study should also include an annual summary of the type  
15 and frequency of the events that take place at Hillel’s facility. **The parking demand  
16 study should also monitor the use of the on-street parking in the vicinity of the  
17 project and eliminate any adverse impact of the project on the on-street parking.**

18 (1 AR 133 (Condition 57))(emphasis added.)

19 There are two basic problems with this mitigation measure. First, it demonstrates the City  
20 believed that there may be a significant adverse impact to on-street parking, and secondly, such  
21 mitigation measure improperly defers mitigation based on future studies. “The requirement that the  
22 applicant adopt mitigation measures recommended in a future study is in direct conflict with the  
23 guidelines implementing CEQA.” *Sundstrom*, 202 Cal. App. 3d at 306 (citing 14 CCR 15070).

24 A mitigated negative declaration is only appropriate when there is no substantial evidence in light  
25 of the whole record, that the project may have a significant effect on the environment. Pub. Res. Code §  
26 21080(c)(1). If there may be an impact, revisions or mitigation measures may be adopted by the lead  
27 agency or the applicant to mitigate the impacts to a point where clearly no significant effect on the  
28 environment would occur. Pub. Res. Code § 21080(c)(2) (emphasis added).

In this case, it is impossible to reconcile a requirement for future study and mitigation of such  
potential impact with CEQA’s requirement to prepare an EIR whenever there may be a significant  
impact on the environment. Clearly, a fair argument was made if the City is requiring a post occupancy

1 study and “eliminate any adverse impact of the project on the on-street parking,” discovered by the  
2 study. Requiring future mitigation based on future study is an admission by the City that there may be a  
3 significant unmitigated impact to parking in the neighborhood.

4 There is one case that upheld future mitigation based on future studies of parking plans.  
5 *Sacramento Old City Assn. v. City Council*, 229 Cal. App. 3d 1011, 1026 (1991). In *Sacramento Old*  
6 *City Assn*, the court upheld an environmental impact report which mitigated parking based on a  
7 transportation management plan. The court found that the list of alternatives, and a commitment to  
8 mitigate the parking using one of the alternatives, complied with CEQA. *Id.* at 1028. However, the  
9 Court was very careful to distinguish the *Sundstrom* case, noting that unlike *Sundstrom*, where an MND  
10 was used, “the City in the present case acknowledged traffic and parking have the potential, particularly  
11 under the worst case scenario, of causing serious environmental problems. The City did not minimize or  
12 ignore the impacts in reliance on some future parking study.” *Sacramento Old City Assn.*, 229 Cal. App.  
13 3d at 1028; *See also* the City Attorneys’ Analysis (12 AR 5020.)

14 Unlike *Sacramento Old City Assn.* case, the City is ignoring the possibility that the “shuttle plan”  
15 may not effectively mitigate impacts on parking. Considering the City does not even know where the  
16 off-site parking will be located on a permanent bases, whether the off-site parking location may have its  
17 own significant impacts, and whether enforcement will be successful, there is a fair argument there may  
18 be a significant impact to on-street parking. The City must prepare an EIR.

### 19 3. TRAFFIC

#### 20 A. The Traffic Study Failed to Evaluate the Impacts Caused by Pedestrians Crossing La 21 Jolla Village Drive.

22 According to Hillel’s traffic and parking study, “The project is designed to encourage pedestrian  
23 access.” (3 AR 1138.) The study estimates that only 38 students will drive to the site for Shabbat  
24 services. (3 AR 1136.) In addition, the study estimates 2 students for each vehicle. (3 AR 1134.) Thus,  
25 assuming full occupancy for Shabbat services of 200 students, 40 of which drive with one other student  
26 (80 total), 120 students will be walking to or from the Hillel Center on Friday night between 5:30 and  
27 7:30 p.m.. According to the traffic study, these students will be coming from UCSD. (3 AR 1136-37.)  
28 Thus, potentially 120 students will push the walk signal to cross La Jolla Village Drive.

