Attachment A-12

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111
P: 415.262.5100 F: 415.262.5199

Anne E. Mudge
415.262.5107
amudge@coxcastle.com

File No. 67453

November 4, 2015

VIA E-MAIL

Ms. Heather Klein
Planner III
City of Oakland
250 Frank Ogawa Plaza
Suite 3315
Oakland, CA 94612

Re: Head Royce School Response to the CEQA Arguments in Ms. Moncharsch's November 3, 2015 Letter

Dear Ms. Klein:

Yesterday afternoon the attorney for the Neighborhood Steering Committee ("NSC") submitted a letter raising concerns with the City's decision that Head Royce School's ("HRS's") application to increase enrollment to 906 (the "Project") is exempt from the California Environmental Quality Act ("CEQA"). Attached as **Exhibit A** to this letter is an analysis of why the project is exempt. This letter responds to arguments raised by the NSC.

1. The City is Not "Project Chopping"

The NSC claims that the Project can only be considered together with future plans for the former Lincoln Child Center ("LCC") site. Not so. The only matter before the City is HRS's enrollment request. A future master plan is not a reasonably foreseeable result of increasing enrollment since the existing campus is large enough to accommodate 906 students. In addition, any application for a new master plan is still in the visioning stages.[1] If, in the future, HRS decides to apply for approval of a new master plan that includes the former LCC site, that application would have independent utility from this application. Because these projects have independent utility, there is no "project chopping" and they do not need to be studied together. (See *Del Mar Terrace Conservation v. City Council of the City of San Diego* (1992) 10 Cal.App.4th 712, 720, 730–35 [holding that approval of one road segment did not require study of a potential extension of that road to connect to an interstate highway, even though the agencies had generally indicated that was the ultimate plan].)

[1] HRS had applied to use one of the buildings on the LCC site *temporarily* for administrators in 2013, but that application has been withdrawn.

2. Including the "Loop" in the TDM Has No New Impact

The NSC also claims that if the City approves the Project, it will be approving use of the Loop and the Loop creates a new traffic impact requiring CEQA review. Again, not so. The Loop has been used by AC Transit busses and HRS drivers for at least the past 10 years. The 2005 traffic study prepared for the 2006 Master Plan indicates that "[trip] assignment also accounted for the loop using Alida, Laguna and Potomac to return to SR 13," indicating that the Loop was part of baseline conditions in 2005 (pg. 11, Dowling Associates, Dec. 1 2005). It was agreed to by the neighbors as a means to reduce U-turns on Lincoln Avenue and has been part of the School's Transportation Policy Guide (which it has shared for many years with City and for at least the past five years with the neighbors). Accordingly, the Loop is a baseline condition (like all the other existing conditions at HRS, including its existing enrollment) and not "new." (*Neighbors for Smart Rail v. Expo. Metro. Line Construction Auth.* (2013) 57 Cal.4th 439, 448 ["the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the actually existing physical conditions"].)

Importantly, if the City does not approve the proposed TDM or the Project, HRS will continue to use the Loop as it has done for many years. Many existing traffic control practices are being incorporated into the TDM. Existing practices form the CEQA baseline. Existing practices are not themselves impacts of the Project.

3. The Prior Mitigated Negative Declaration Does Not Preclude Use of An Exemption

The NSC further claims that because the Project is a modification to an earlier project that was reviewed in a mitigated negative declaration ("MND") and not a new project, the City cannot rely on a CEQA exemption. This is untrue for at least three reasons.

First, the Project, which would increase HRS's enrollment by just under 3%, falls squarely within the Class 14 CEQA exemption, which exempts "minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less." The City has relied on the Class 14 categorical exemption in similar situations. For example, in December, 2012, the City allowed a 15% increase in enrollment at the College Preparatory School (CPS) from 340 to 375 students under the Class 14 exemption and required no additional environmental review. (Case File No. REV120004; 6100 Broadway (APN 048A-7200-004-01).) At the time, CPS had an enrollment of 372 students and thus was overenrolled by 32 students.

The courts have also upheld use of this exemption in similar circumstances, *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006)139 Cal.App.4th 1356, the Class 14 exemption was held to be properly applied to a 2.4% increase in the original capacity of the school (from 675 to 691), "well below the 25 % maximum set forth in the guideline." (See also *City of South Gate v. Los Angeles Unified School Dist.* (1986) 184 Cal.App.3d 1416, 1425 [transfer of 600 students to a school with an original

capacity of 1,935 is exempt from under Class 14 exemption because it does not exceed the capacity by more than 25%].)

Second, contrary to the NSC's claim, examining this Project alone is not "project chopping" because the aspects of the 2006 Master Plan that required an MND (and which have been implemented) where examined in one. No activities that are not expressly exempt will "fall through the cracks." Moreover, even if the proposal included multiple activities that are independently exempt, the City would be entitled to "stack" exemptions. (See *Surfrider Found. v. Cal. Coastal Comm'n* (1994) 26 Cal.App.4th 151 [upholding an agency's use of two exemptions that each covered different aspects of the project].) Also, separate approvals for the same overall activity may be found to be exempt under different exemptions. (See *Madrigal v. City of Huntington Beach* (2007) 147 Cal.App.4th 1375 [upholding use of a ministerial exemption for a grading permit following prior use of a different exemption for a use permit for the same overall project].)

Third and most importantly, there is no bar to relying on an exemption for a project that was part of larger project that required CEQA review in an MND or EIR. (See, e.g., *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1310–11, 1320 [upholding city's use of an exemption for a project that was part of a larger project that the city had reviewed in a programmatic EIR].)

4. The Cumulative Impact Exception Does Not Apply Here

The NSC next argues that use of the Class 14 exemption is defeated by the "cumulative impact" exception because the City must consider a not yet filed master plan in its impact analysis. The NSC is incorrect. As discussed above, the master plan is a separate potential project that is a long ways off and unrelated to this Project. The NSC also argues that there are cumulative traffic impacts from the incremental contribution of the Loop and allowing 780 summer students. As discussed above, the Loop is a baseline condition. The 780 summer students also is a baseline condition. Accordingly, they are not impacts from the Project but instead form the existing physical conditions from which the significance of the Project's impacts should be measured.

Further, the cumulative impact exception considers only "successive projects of the same type in the same place." Courts examining this text have interpreted it strictly, refusing to expand it beyond its plain meaning. (See, e.g., *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012). In addition, whether there are cumulative impacts sufficient to defeat the exemption is determined under the substantial evidence test. (See, e.g., *Berkeley Hillside Preservation v. City of Berkeley* (2015) ___ Cal.App.4th ___ ["Accordingly, as to this question [whether an exception defeats an exemption], the agency serves as 'the finder of fact', and a reviewing court should apply the traditional substantial evidence standard that section 21168.5 incorporates." [Citations omitted.]) Under the substantial evidence standard, courts will uphold an agencies decision as long as it is supported by substantial evidence, even if others

have submitted contradictory evidence. There are no other school expansions *of the same type in the same place* with impacts that would combine with the impacts of the Project to create a significant cumulative impact. Accordingly, the cumulative impacts exception does not defeat the exemption.

5. The Caps Proposed in the Use Permit Reflect Existing Conditions

The NSC also argues that the new conditions of approval such as capping special events and capping participation in the summer program will allow new uses that are either not currently allowed or not already occurring and this requires additional CEQA review. The NSC knows this is incorrect. The proposed caps will prevent expansion of uses beyond those already in existence. The caps were designed to allow the school to continue to carry out its existing activities but not expand them with the increased enrollment. As discussed above, existing conditions form the baseline and are not considered Project impacts.

6. The Class 14 CEQA Exemption Does Not Require Proof Of No Significant Traffic or Noise Impacts

The NSC claims they have submitted evidence showing a "fair argument" that noise and traffic impacts will be significant and that this evidence overcomes the expert reports by Nelson Nygaard and Wilson Irhig that show no significant impacts. The NSC misunderstands the law. The lead agency's determination of whether an exemption will apply in the first instance is reviewed under the "substantial evidence" rather than "fair argument" test. The NSC misunderstands the law. The lead agency's determination of whether an exemption will apply in the first instance is reviewed under the "substantial evidence" rather than "fair argument" test. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109; see *Berkeley Hillside Preservation v. City of Berkeley* (2015) ___ Cal.App.4th ___, 2015 WL 6470455, at *7–*8 [finding that the "substantial evidence" test applies to whether an exemption applies in the first instances and petitioners failure to challenge the application of a categorical exemption was fatal].)

Here, the NSC has submitted no evidence disputing that the Class 14 exemption allows increases in enrollment if less than 25% of original capacity. Nor has the NSC disputed that the increase in enrollment under the Project is less than 25 % of original capacity. If those points have been established, the Class 14 exemption applies, even if there are traffic and noise impacts.

The only way to defeat the exemption is by showing that one of the exceptions to the exemption applies. As discussed above, the only exception mentioned by the NSC, cumulative impacts, does not apply. The expert reports show that existing conditions do not cause significant traffic impacts or violate the City's noise ordinance, and the cumulative contribution of adding 31 students would not be cumulatively considerable, particularly when considering only projects in the same place and of the same type. (See 14 Cal. Code Regs. § 15300.2(b).)

* * *

In sum, the City's decision that the Project is exempt from CEQA is well supported by substantial evidence. No reason exists to require CEQA review for this Project, which is the increase of enrollment by up to 31 students over the next two years.

Please let me know if you would like further clarification of any of the above issues.

Sincerely,

Anne E. Mudge

Anne E. Mudge

AEM/mp

067453\7257701v1

EXHIBIT A

Memorandum

Date: November 4, 2015

Re: CEQA Review for Increasing Head Royce School's Enrollment to 906

I. INTRODUCTION

Head Royce School ("HRS") has requested amendment of its PUD permit to allow an increase in enrollment to 906 students, an increase of 31 students over existing enrollment of 875 students. It has applied for this amendment under a categorical exemption from CEQA per Guidelines section 15314 (Class 14: Minor Additions to Schools). The Class 14 exemption consist "of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less". This memorandum explains why the Class 14 exemption applies and why the 2006 Mitigated Negative Declaration prepared in support of the prior Master Plan is not relevant to the analysis.

II. THE PROJECT FITS WITHIN A CATEGORICAL EXEMPTION AND NO EXCEPTION DEFEATS THE USE OF THE EXEMPTION

A. The Class 14 Exemption Applies Here

In deciding the appropriate CEQA path, a lead agency must first determine if the project is exempt. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1372 [internal quotation marks omitted]). "If the agency finds the project is exempt from CEQA under any of the stated exemptions, no further environmental review is necessary." (*Id.* at p. 1373). Courts review "an agency's factual determination that a project comes within the scope of a categorical exemption" under the deferential substantial evidence standard. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105, 1114). Courts also apply the substantial evidence test to questions of fact relating to exceptions to categorical exemptions, deferring to the express or implied findings of the local agency that found a categorical exemption applicable.

The Class 14 categorical exemption has been applied in similar situations. In December, 2012, the City allowed a 15% increase in enrollment at the College Preparatory School (CPS) from 340 to 375 students under the Class 14 exemption and required no additional environmental review. (Case File No. REV120004; 6100 Broadway (APN 048A-7200-004-01). (A 2009

approval had allowed an increase from 325 students to 340 students.). At the time, CPS had an enrollment of 372 students and thus was overenrolled by 32 students.[1]

Similarly, in *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006)139 Cal.App.4th 1356, the Class 14 exemption was held to be properly applied to a 2.4% increase in the original capacity of the school (from 675 to 691), "well below the 25 % maximum set forth in the guideline." See also *City of South Gate v. Los Angeles Unified School Dist.* (1986) 184 Cal.App.3d 1416, 1425 (transfer of 600 students to a school with an original capacity of 1,935 is exempt from under Class 14 exemption because it does not exceed the capacity by more than 25%).[2]

Here, HRS proposes just under a 3% increase in existing enrollment and no physical expansion to the existing facilities, and thus is well within the 25% increase in original capacity allowed under the exemption.[3] Accordingly, the project is exempt from CEQA under CEQA Guideline section 15314, which exempts projects consisting of "minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less."

B. The Exemption Is Independent of the 2006 Mitigated Negative Declaration

The proposed increase in enrollment is within the maximum enrollment allowed in 2021 under the school's existing PUD permit, which the City approved under a Mitigated Negative Declaration ("MND") in 2006. However, the Class 14 exemption stands on its own and does not rely on the 2006 MND. While the requested increase happens to be within the scope of what was already approved for enrollment in 2021 under the MND, the existence of the 2006 MND does not mean the City cannot use an otherwise applicable exemption.[4] For example, under the minor additions to schools exemption, HRS could ask for an increase of up to 226 students, assuming the additional students could be accommodated on existing school grounds. (226

---

[1] In conjunction with its request for increased enrollment, CPS voluntarily submitted a traffic study showing no new impacts to traffic from the increased enrollment. Unlike some of the other categorical exemptions, such as the infill development exemption under Guidelines section 15132 (Class 32) which requires a demonstration of "no significant effects relating to traffic," or the Leasing New Facilities under Guidelines section 15327 (Class 27), which applies only if the project does not "result in a traffic increase of greater than 10% of front access road capacity," application of the Minor Addition to Schools exemption does not require any showing regarding traffic.

[2] "Original student capacity" is understood by several reported cases to mean the student capacity that can be accommodated by the existing physical facilities of the school. See *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356. "As to the modifier ("original"), we take that to mean the receptor school's preexisting physical ability to house students." *Id.*

[3] Maximum enrollment appears to be the same as "original student capacity" for purposes of the Class 14 exemption However, even if "original student capacity" means a school's existing enrollment as opposed to physical capacity, 25% of 875 (existing enrollment) would be 218 students.

[4] See, e.g., *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1310–11, 1320 (upholding city's use of an exemption for a project that was part of a larger project that the city had reviewed in a programmatic EIR).

students is 25% of 906, which is the school's projected capacity under the 2006 PUD).[5] However, the school is requesting just over a 3% increase in *existing enrollment* (which is less than "original school capacity" of 906) and no physical expansion to the existing facilities, and thus is well within the 25% increase in "original school capacity" allowed under the Class 14 exemption.

Given that, the City is not tied to the analysis in the 2006 MND for CEQA purposes even though that MND assumed an increase of enrollment up to 906. The question is not whether the conditions under which the project will be undertaken or the project itself have changed since the MND was approved. Instead, the question is whether HRS's proposal for an increase of 31 (906-875 = 31) students falls with the scope of the exemption as set forth in the Guidelines and whether any of the exceptions to the exemption under Guidelines section 15300.2 apply. However, to the extent existing conditions (such as traffic conditions) are relevant to the appropriateness of the Class 14 exemption, the proper baseline for the CEQA analysis should be existing conditions at today's enrollment.[6]

C. No Exception Defeats The Exemption

The CEQA Guidelines contain five exceptions that could defeat the use of the Class 14 exemption. Once "an agency has established that a project comes within a categorical exemption, the burden shifts to the party challenging the exemption to show that it falls into one of the exceptions". (*North Coast Rivers Alliance v. Wetlands Water Dist.* (2014) 227 Cal.App.4th 832, 868).

- **Cumulative Impact**. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

---

[5]. "Original student capacity" is understood by several reported cases to mean the student capacity that can be accommodated by the existing physical facilities of the school. See *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356. "As to the modifier ("original"), we take that to mean the receptor school's preexisting physical ability to house students." *Id.* Maximum enrollment appears to be the same as "original student capacity" for purposes of the Class 14 exemption However, even if "original student capacity" means a school's existing enrollment as opposed to physical capacity, 25% of 875 would be 218 students.

[6] For CEQA purposes, existing conditions, not permitted conditions, form the proper environmental baseline, *even if existing conditions result from unauthorized activity.* See *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357 (existing setting for CEQA purposes includes existing playground built in violation of code); *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 (current airport operations are proper baseline for CEQA purposes even if airport had expanded without County authorization); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 (baseline properly included unauthorized development at a mining operation).

- **Significant Effect due to Unusual Circumstances**. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

- **Scenic Highways**. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

- **Hazardous Waste Sites**. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

- **Historical Resources**. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

(CEQA Guidelines § 15300.2).

Here, HRS:

- Is not located along an officially designated state scenic highway

- Is not on a site included on a list compiled pursuant to Government Code section 65962.5 (often called the Cortese List)

- Will not cause a substantial adverse change in the significance of a historic resource.

Accordingly, the discussion below focuses on whether the **cumulative impact** of successive projects of the same type in the same place over time would be significant and whether the Project would have a **significant effect on the environment due to unusual circumstances**.

1. Cumulative Impacts

The cumulative impacts exception to exemptions is limited to cumulative impacts from "successive projects **of the same type in the same place**." (Emphasis added). Courts examining this text have interpreted it strictly, refusing to expand it beyond its plain meaning. (See, e.g., *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012).

a. Projects of the Same Type. To count, cumulative project must be the very same type as the proposed project and courts have strictly construed this requirement. *North Coast Rivers Alliance, supra,* concerned the renewal of certain water contracts. (227 Cal.App.4th at p. 838). "The purpose of the interim renewal contracts was to continue the existing terms for water delivery in advance of the parties' anticipated execution of new, long-term (25-year) renewal contracts." (*Id.)* Petitioners argued that a categorical exemption could not be used because the cumulative impact exception applied due to successive contract renewals. (*Id.* at p. 875). The court disagreed, distinguishing between the short-term and long-term nature of the contracts, noting "the short-term interim renewal contracts did not constitute 'successive projects of the same type'" as the long-term projects, and the cumulative impact exception was concerned only with impacts caused by projects "of the same type." (*Id.* at p. 876).

b. Projects in the Same Location. Courts have also strictly construed this requirement. *San Francisco Beautiful, supra,* concerned the installation of 726 telecommunication equipment boxes on San Francisco sidewalks. (226 Cal.App.4th at pp. 1017–18). San Francisco determined the project was categorically exempt from CEQA. (*Id.* at pp. 1019, 1021). Plaintiffs challenged the use of the exemption on the ground that the utility boxes, when considered with "all similar equipment that had been or would be installed throughout the City" would cause significant cumulative impacts. (*Id.* at p. 1030). The court found that the plaintiffs misinterpreted the exception, ignoring the phrase "in the same place." (*Id.*) As the court noted, "'[t]his limitation makes sense, because without a limitation as to the location of the projects whose cumulative impact must be considered, agencies deciding whether the exception applies to a project would be required, in every instance, to consider the cumulative environmental impact of all successive similar projects in their jurisdictions, at least, and perhaps regionally or even statewide. If this were the case, the exception would swallow the rule.'" (*Id.*, quoting *Robinson v. City and County of San Francisco* (2012) 208 Cal.App.4th 950, 958). Since plaintiffs failed to present "any evidence showing that the utility boxes will create significant cumulative impacts in the individual locations in which they are placed," the court concluded the cumulative impact exception did not defeat the exemption. (*Id.* at p. 1031).

Here, there are no other school expansions *of the same type in the same place* with impacts that would combine with the impacts of the Project to create a significant cumulative impact. Accordingly, the cumulative impacts exception would not defeat the exemption.

2. Significant Effect On The Environment Due To Unusual Circumstances

For the "unusual circumstances" exception to apply, "it is not alone enough that there is a reasonable possibility the project will have a significant environmental effect; instead, in the words of the Guidelines, there must be 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.'" (*Berkeley Hillside Preservation, supra,* 60 Cal.4th at p. 1098). To make this determination, a lead agency asks two

questions: (1) are there unusual circumstances, and (2) if so, do those unusual circumstances cause the project to have a significant effect on the environment. (See *id.* at pp. 1114–15 [explaining the "bifurcated approach to the questions of unusual circumstances"]).

"Whether a particular project presents circumstances that are unusual for projects in an exempt class is an essentially factual inquiry, founded on the application of the fact-finding tribunal's experience with the mainsprings of human conduct." (*Id.* at p. 1114 [internal quotation marks omitted]). The lead agency serves as "the finder of fact" on the question whether unusual circumstances exist (*id.*) and "ha[s] discretion to consider conditions in the vicinity of the proposed project" (*id.* at p. 1119). Accordingly, a reviewing court applies the traditional substantial evidence standard if the lead agency's decision is challenged. (*Id.* at p. 1114). "Under that relatively deferential standard of review, the reviewing court's role in considering the evidence differs from the agency's." (*Id.*) "Agencies must weigh the evidence and determine 'which way the scales tip,' while courts conducting traditional substantial evidence review generally do not." Reviewing courts, "after resolving all evidentiary conflicts in the agency's favor and indulging in all legitimate and reasonable inferences to uphold the agency's finding, must affirm that finding if there is any substantial evidence, contradicted or uncontradicted, to support it." (*Id.*)

When the lead agency finds unusual circumstances exist, it is only then "appropriate for agencies to apply the fair argument standard in determining whether 'there is a reasonable possibility [of] a significant effect on the environment due to unusual circumstances.'" (*Id.* at p. 1115). "As to this question, the reviewing court's function is to determine whether substantial evidence supports the agency's conclusion as to whether the prescribed 'fair argument' could be made." (*Id.* [alteration and internal quotation marks omitted]).

The unusual circumstances exception applies when the circumstances of a project differ from the circumstances of projects covered by a particular categorical exemption, and those circumstances create an environmental risk that is inconsistent with the exemption. Practice under CEQA, section 5.55 (CEB 2013) at p. 249. A use that is consistent with existing uses in the area does not constitute an unusual circumstance. *City of Pasadena v. State* (1993) 14 Cal. App. 4th 810 (decision by State to lease space in existing building in civic center area for use as a parole office is not an unusual circumstance given the presence of other of other custodial and criminal justice facilities in the immediate area); *Fairbank v. City of Mill Valley* (1999) 75 Cal.App. 1243 (proposed approval of 5,866 sq. ft. retail/office building in an urbanized area did not give rise to "unusual circumstances" because the building could give rise to minor adverse changes in the amount and flow of traffic and in parking patterns in the area); *Association for Protection of Values v. City of Ukiah* (1991) 2 Cal. App.4th 720, 734 (construction of single family house on non-conforming lot requiring a site development permit did not present an "unusual circumstance" because the size of the lot raised only "normal and common considerations in the construction of a single family house").

There is nothing "unusual" about HRS as a school or about the environmental setting in an urbanized residential setting that makes this enrollment increase different or unusual from other school enrollment increases. HRS is located, as most schools are, in a residential neighborhood; it is located, as many schools are, on a busy arterial that experiences traffic congestion during peak hours. The school is a typical school located in a typical urban residential neighborhood experiencing typical urban traffic congestion during certain times of day.

Further, even if some unusual circumstance exists, there must be a reasonable possibility that the unusual circumstance will result in a significant environmental impact. For example, petitioners in *North Coast Rivers Alliance* claimed that because "the large scale of the water diversion at issue (combined with the fragile fish ecosystem in the Delta and the salt/selenium issues on the west side) constituted 'unusual' circumstances," the agency could not rely on a categorical exemption. (*North Coast Rivers Alliance, supra*, 227 Cal.App.4th at p. 838). The court found that even assuming petitioners were correct that unusual circumstances existed, their claim failed because they did not establish a reasonable possibility that the activity will have a significant effect on the environment due to such circumstances. (*Id.* at p. 873).

Here, as in *North Coast Rivers Alliance*, even if the increase in enrollment were considered "unusual" in some respect, there are no significant environmental impacts from that increase, which is a mere 31 students over existing conditions.

Summary of Conclusions

1. HRS's proposed approximately 3% increase in existing enrollment falls within the Class 14 exemption for minor additions to schools.

2. The Class 14 exemption is self-standing and does not rely on any prior CEQA review.

3. No exceptions to the exemption apply under Guidelines section 15300.2.

AEM/lck