

**Attachment A-10**

## **CITY STAFF'S RESPONSE TO THE NSC'S PROPOSED REVISED CONDITIONS OF APPROVAL**

**Outlined below is a summary of the NSC's proposed revisions to City staff's proposed conditions of approval (following each bolded heading) and staff's responses to NSC's proposal (in italics)**

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**NSC Proposal: Scope of This Approval; Major and Minor Changes:** The Planning Director should not have the discretion to determine what is a Major or Minor Change. The NSC proposal is to make any changes to the TDM, traffic conditions of approval, enrollment number, or summer program a "Major Change" that must come before the Planning Commission for initial approval rather than a staff decision that is appealable to the Commission

*Planning Code Section 17.140.110 (Adherence to approved plan, and modification thereof) and the City's Standard Condition of Approval both indicate how major and minor changes should be processed. Specifically, Section 17.140.110 states that minor changes may be approved by the Director of City Planning if such changes are consistent with the development plan while all other modifications shall be processed in the same manner as the original application and shall be subject to the same procedural requirements. While City staff believes that changes to enrollment or summer school program enrollment are already to be considered Major Changes, we have added specific language in our revised Condition #3 to reflect this change. In addition, City staff included a lot merger of the residential parcels as a Major Change.*

*However, staff disagrees that any changes to the TDM or the traffic Conditions of Approval should be considered Major Changes. Traffic conditions are ephemeral, changing from day to day and even moment to moment such as when an accident or other situation arises. The Planning Director, as well as the Transportation Services Division, should have the discretion afforded to them under the Planning Code and other applicable regulations to evaluate traffic conditions and make minor changes as necessary to the traffic Conditions of Approval to ensure beneficial traffic conditions on City streets.*

*The TDM implements the traffic Conditions of Approval, but changes to the TDM would not necessarily require changes to the Conditions of Approval themselves. As a result, staff did not include this language in the revised set of Conditions of Approval.*

**NSC Proposal: Conformance to Approved Plans; Modification of Conditions or Revocation.** Nuisance or Blight conditions should be corrected within 30-60 days as 90 days is too long.

*Staff's Response: Staff agrees that 90 days may be too long to address blight or nuisance conditions and has revised the proposed Condition of Approval #4 to 60 days which is the adopted standard in the City's Standard Conditions of Approval that apply to all projects on a Citywide basis.*

*Both the Oakland Municipal Code and the City's annual adopted Master Fee Schedule outline what the City may charge applicants for City services, including penalties for non-compliance. Neither the Planning Department nor the NCS may apply a charge that has not been adopted by the City Council by Ordinance or as part of the Master Fee Schedule.*

*The City has existing specific processes to address compliance with code violations (which includes enforcement of Conditions of Approval) and determine what constitutes a nuisance. City staff has included additional language regarding the ability to impose fines or penalties in the revised Condition of Approval # 4.*

**NSC Proposal: Compliance Matrix:** NSC is requesting that the matrix be submitted at the beginning of each semester and the summer program with a copy to the NSC. The document should be signed under penalty of perjury.

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*Staff's Response: Staff has corrected the Compliance Matrix to address the fact that all construction has been completed. The Compliance Matrix is a document intended as a tool for the applicant so that they will continue to ensure compliance with the Conditions of Approval. It is also used as a "spot check" of annual compliance for City staff. Unless otherwise indicated (i.e. monitoring timeframes), compliance is required at all times and neighbors can submit code compliance complaints if they believe that the applicant is not in compliance. Staff will investigate and validate each complaint in accordance with established City code requirements and procedures. Due to the existence of such requirements, the number of proposed revised conditions and the burden on City staff to review the compliance matrix document, we believe that annual review is acceptable and reasonable. Regarding the suggestion that the matrix be submitted "under penalty of perjury," the City is not a court and does not have the authority to impose or enforce such a requirement. Therefore, staff does not recommend this NSC proposal.*

**NSC Proposal: Mitigation Monitoring and Reporting Program:** Require that the School hire a third-party to daily monitor the queue. Deletion of the City's proposed solutions to mitigate the queue length and require only an extensive increase in bus ridership.

*Staff's Response: The City's proposal provides for the School to either to hire a third-party to monitor the queue or allow a third-party to train School staff to perform the monitoring. The School has already retained a qualified traffic consultant to train several monitors in the appropriate procedures. Staff has received monitoring reports for several years, as well as several videos, that show that the queue has not been exceeded. Based on a review of submitted information as well as site visits to observe the queue, staff does not believe that a third-party monitor is necessary on-site continuously during pick-up and drop-off. In addition, City staff determined that the queue is in compliance with the existing Mitigation Measure from the 2006 action per the letter dated May 5, 2015. This determination was not appealed. Finally, a third-party monitoring twice every day for four weeks would be cost prohibitive, especially since the queue is not and has not been violated for years.*

*The NSC's proposal questions whether the amendments addressing the maintenance of the queue condition are more stringent and whether the City can change the mitigation measure at this juncture. The amendments to the conditions are not a change to the mitigation measure which remains the same—no queuing above the upper driveway. In addition, the project has no impact on the queue and there is therefore nothing to mitigate. In all events, the proposed conditions introduce monitoring during the morning and summer program which would increase the number of days and times monitored making the changes more stringent than just monitoring the afternoon pick-up.*

*The NSC's proposal would eliminate all potential measures, essentially relying on one measure - bus ridership. City staff's proposal recognizes that there are a variety of measures to maintain adherence with the queue mitigation measure from the 2006 MND (the queuing measure as imposed in 2006 also recognized there are a variety of ways to achieve compliance), and further recognizes that since 2006, the school has introduced new ways that effectively manage the queue. For example, the Mormon Temple upper parking lot is currently used and has effectively controlled the queue by holding cars there until there is available space in the queue area. Continued use of this area is appropriate as 1) it is available, and not necessary for Temple operations during the week, and 2) cars are already heading in this direction to the School. If the Temple lot becomes unavailable, the School shall, with direction from the City, institute another method of controlling the queue as permitted by the mitigation measure. Finally, staff's proposed language does not rule out another "kiss and ride" area as proposed by the NSC. However, there are potential implications for directing traffic to another location. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

*The City's proposal includes:*

- *A reduction in the number of monitoring timeframes from six weeks to four weeks*
- *A reduction in the timeframe per year that monitoring must occur from two years after the enrollment increase to one year with additional timeframe determined by the Planning Director.*
- *A reduction in the timeframe for additional monitoring if a queue is exceeded from six weeks to three weeks.*

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*These timeframes are adequate to analyze compliance. Furthermore, a reduction in the timeframe reduces the compliance time period significantly.*

*The City's proposal also clarifies the timeframe for monitoring and how the monitoring should be recorded for compliance which was a previous issue between the City and the School. It should be noted that the School is located along a busy arterial and many of the vehicles on Lincoln Avenue are not accessing the Head Royce but are heading toward I-580 or other destinations. Congestion on Lincoln is not evidence of violation of the queue condition. Whether the queue is violated or not is based on the number of cars exceeding the on-street queuing area not whether the street is congested. Traffic was already analyzed in the MND showing no significant impacts based on the City's Thresholds of Significance. The updated traffic analysis, which looks at an increase in enrollment to 906 from both a "permitted baseline" of 844 students and an actual baseline of 880 students, shows that this conclusion has not changed.*

**NSC Proposal: School Grades/Enrollment / Verification:** Cap the student enrollment at 875 students as the maximum fluctuation rate was not intended to be met consistently.

*Staff's response: As part of its 15-year master plan and PUD permit, the School requested an enrollment increase of up to 880 students plus or minus 3% to account for enrollment fluctuations. The School's Agreements with the surrounding neighborhoods required certain measures be completed before the enrollment increases could occur and prohibited the final enrollment increase before January 4, 2021, 15 years after approval of the master plan. These Agreements became a Condition of Approval to the PUD permit.*

*The inclusion of a fluctuation rate was not originally intended to be the maximum enrollment. However, nothing in the Conditions of Approval prohibit the fluctuation maximum from being achieved every year. By the approving such a fluctuation rate along with the maximum enrollment, the Planning Commission did effectively grant the higher enrollment up to 906 students. The issue is whether the enrollment should be granted earlier than 2021.*

*The School decided to eliminate the later construction phases of the master plan in 2008 as part of the phase 2 FDP permit. Therefore, the master plan effectively was complete in 2008, well before 2021. In addition, the School completed all the items per the Agreements, including eliminating the cross-campus driveway, a parking agreement with Lincoln Childcare Center, installing landscaping, and adding additional parking spaces on the campus, to meet both the phase 2 and phase 3 enrollment increases. Therefore, staff believes that there is no reason that the 3rd enrollment increase shouldn't occur earlier.*

*Finally, City staff is asking that the School accept revised Conditions of Approval as part of the Planning Commissions' consideration of the enrollment increase. The School could wait until 2021 to achieve the last enrollment increase and choose not to accept the revised Conditions. This would mean that the new proposed conditions of approval, which cap the number of special events, cap enrollment in the summer program, require implementation of a TDM and create new monitoring requirements would not go into effect. In addition, the existing use permit creates confusion for the City, School and neighborhood regarding compliance with the existing Conditions of Approval. The School has agreed to the Conditions staff has proposed, including the implementation of a TDM program.*

**NSC Proposal: Hours of Operations (Academic, Childcare and After School Program)** Limit athletic practices and games to daylight hours only. No field lighting shall be installed unless close to the ground and needed for safety. Supervision of children should continue until students leave. All vehicles shall be off the campus with the gate locked by certain hours

*Staff response: City staff agrees that there is no documented reason why students should be playing on the athletic fields after dark. Field lighting was not proposed as part of the original PUD or this amendment. City staff has added language in the revised Conditions of Approval to address this issue and prohibit field lighting.*

*Supervision of children, staff, or others on the School's property is the responsibility of the School and is not generally within the authority or resources of the Planning Department to regulate. Event hours have been restricted in Condition #16. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

**NSC Proposal: Summer Program Enrollment / Operations.** The summer program attendees do not know or follow the driving rules. Compliance with the rules is handled by children with little to no enforcement. The summer program creates excessive noise. The summer school enrollment is also excessive. The NSC proposal would cap the summer program at 500 children per session, limit noise after 2:00 pm, and prohibit loaning or renting out the summer school program.

*Staff response: City staff agrees that the summer program can create traffic and noise concerns. City staff has required that, unless otherwise indicated, all the revised Conditions of Approval including Condition #19 (Operational Noise) and #23 (TDM) (except for the 30% non-SOV ridership requirement) apply to the summer program. City Staff has determined that it would be impracticable to require an alternative transportation requirement on the summer program because students are only at the school for a few weeks and may only attend the summer program once and thus have fewer opportunities to make carpool connections. Traffic assistant and monitors are required for the Summer Program and these must be adults. In addition, City staff has prohibited the School from renting or loaning the School to another summer school program organization or provider. Finally, City staff has placed hours of operation on the summer program which are the same as the School's hours of operation and has limited the summer use of the playing fields or the pool to after 9:00 am.*

*City staff's proposal is to limit the number of summer school participants to 780 students per session. In arriving at this number staff recognized that the School has been built to accommodate 906 students on a daily basis, summer and day care programs are important resources for families, and the General Plan encourages these programs in schools. City staff also recognized that operation of a summer program does not provide the neighborhood a respite from continuous school activities. In discussing the acceptance of revised Conditions of Approval, the School indicated that the operation of a summer program was important to their overall mission and service to the neighborhood and community. The 780 enrollment number has been recommended by staff to balance these concerns. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

**NSC Proposal: Number of Special Events / Days and Hours of Operation.** Redefine special events to be those involving more than 50 but less than 200 vehicle trips. Limit events to reduce traffic congestion, parking, and noise. Reduce the number of events the School may hold to:

- 42 events total per year
- 30 between 7:00 am and 9:00 pm on weekdays (not summer) that do not exceed 100 visitors.
- 10 between 6:30 pm and 10:00 pm on weekdays (not summer) that not to exceed 150 visitors
- 2 between 7:00 am and 10:30 pm on Saturdays (not summer) that do not exceed 150 visitors
- Prohibit special events, except Graduation, that exceed 200 visitor vehicles.
- No Summer Program, Sunday events or other use of the facility on weekends.

*Staff's response: The School's original PUD approval did not limit the number of events, attendees or timeframes even though the master plan was proposing to construct facilities such as new auditorium that would hold events. In addition, it was clear that the pool and athletic fields would continue to be used for sporting events.*

*City staff agrees that special events can create traffic congestion, parking, and increased noise within the neighborhood. Therefore, staff's proposal is to limit the number of events that School may hold by defining an event, limiting the number and timeframe, ensuring the neighborhood is aware of the event, and requiring that events with a certain number of vehicles have corresponding traffic controls.*

*In developing the limits on the number of events, staff analyzed the 2012-2013 School's athletic game and school calendar as representative of a typical year's events. That year:*

- 62 days had more than one event (for example, both an athletic game and play occurred the same day)

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- 62 events occurred on weekends
- 84 events finished after 6:00 pm with events typically ended by 9:30 pm except on rare occasions such as school dances.

Based on this analysis, the City's proposal limits the School to:

- 85 evening events ending by 9:30 pm per year
- 55 Saturday daytime events between 9:00 am and 6:00 pm per year
- 10 Saturday evening events between 6:00 pm and 9:30 pm per year
- 10 Sunday daytime events between 9:00 am and 6:00 pm per year
- 10 single-day weekday summer events between 9:00 and 6:00 pm per year
- 10 weekday evening events not on the calendar per year

The City's proposal counts an event in terms of vehicles not visitors as it would be too difficult to enforce or count visitors. The City does not limit the number of events that occur during academic hours, such as parent tours, as these are typical of a School use. However, the School shall comply with the event traffic procedures if these events generate over 50 cars. The School shall count each game, play, musical, etc. separately. For example, if the School hosts a swim meet, basketball game, school play, and music recital on the same day, the School would hold four (4) events and need to anticipate the number of vehicles for each event and provide the corresponding traffic measures for the total number of cars. As shown above, the 2012-2013 calendar had 62 days where more than one event occurred and it is expected that this will continue. Therefore, the School's events will most likely result not events every Saturday of the year or an event every evening. The City's proposal eliminates the ability for the School to loan out the facility for an event to another institution or group. Furthermore, even though the City allows for Summer Program events, any summer program event would reduce the number of school related events.

It is unreasonable to assume that a K-12 School which has playing fields, academic, art, music, and dance programs should be limited to 42 events per year or approximately 4 events per grade per year. The City has required special event parking requirements to reduce congestion and parking. Noise associated with people leaving events is addressed per the noise ordinance but staff has also noted event end times. Therefore, staff did not include this language in the revised set of Conditions of Approval.

**NSC Proposal: Total Number of Employees:** Limit the number of employees to 157 employees to reduce parking in the neighborhood.

*Staff's response:* The NSC is correct in that the number of parking spaces required is related to the number of employees. However, the ratio required in the Oakland Planning Code for a high-school is one (1) space for each three employees plus one space for each 10 students of planned capacity. The original PUD required 137 spaces and the Agreements required that another 20 spaces be installed for a total of 157 spaces. The School has 157 spaces on campus.

Head Royce has met its parking requirements as part of the master plan. The City has addressed the parking/employee relationship by requiring that the School maintain sufficient parking per the Oakland Planning Code if additional employees are retained and requiring that the School submit its employee numbers to the City. Placing a cap on employees is unnecessary and burdensome for the School; therefore, staff did not include this language in the revised set of Conditions of Approval.

**NSC Proposal: Parking Requirement and Shared Parking**

The paragraph does not define what is meant by "surplus parking."

*Staff response:* Shared parking is a goal of the General Plan and was approved as part of the School's master plan. Surplus parking means parking that is not necessary for a land use per the Planning Code or necessary at

*the time of operation of that land use. The City proposal clarifies the intent and parameters of shared parking between the School and the other neighboring institutions.*

**NSC Proposal: Whittle and Lincoln Avenue Properties:** The School has purchased residential properties adjacent to the School and the neighborhood is concerned with land banking and the City should require that the School sell these properties.

*Staff response: City staff agrees that the property at 4180 Whittle should be included in the Condition that requires these homes be retained for residential uses unless an amendment has been made to change their uses. Staff has also consolidated requirements regarding the Lincoln and Whittle Avenue properties into one clear Condition. In addition, City staff has placed restrictions on the type of activities that can occur on these lots, including storage, as examples. Finally, any merger of these lots with the overall campus would be a Major Change.*

*City staff understands the concern regarding homes being bought by the School. However, City staff cannot prevent a homeowner from selling to the School or the School from buying property in the area. The City cannot require that the School sell these properties. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

**NSC Proposal: Whittle Gate Access:** Close Whittle gate to all but deliveries and vehicles accessing parking spaces in this area of the campus and reduce pick-up and drop-off traffic to the gate by prohibiting the use of the Whittle Gate as access points. Change the Whittle gate from metal to a solid wooden crash gate. Permit vehicle access via the Whittle gate only to drivers assigned to the parking spaces, deliveries, and emergency and maintenance personnel. Change the pedestrian gate to allow for key card access only. Permit access only to students and employees that live on certain streets generally west of the campus. Require a contract from each student/employee that they will not loan out their key card to anyone else and penalties for violations. Change access codes every six months.

*Staff response: The 2006 master plan eliminated the vehicle driveway through the campus from Lincoln Avenue to Whittle. This physical change resulted in a significant reduction in the amount of vehicle traffic through the western neighborhoods. However, the master plan retained the Whittle gate entrance for "back of house" needs like deliveries, a few parking spaces, and for students/employees that live on the west side of the campus.*

*Staff understands that Whittle neighbors would like to further reduce traffic to this area. City staff's proposal would limit access to the following:*

- *Pedestrian card access to students/employees who walk/bicycle to the School.*
- *Vehicle access to those assigned to the parking spaces accessed off of the Whittle Gate.*
- *Deliveries*
- *Disabled student access.*

*The Whittle gate already requires key card access. Approximately 40 students/teachers use the gate for pedestrian access via key codes which is miniscule when compared to the overall School population, including other teachers parking on Clemons. (The conditions prohibit drop off and pick up of students at Whittle gate.) In addition, approximately 30 neighbors have pedestrian access to campus through Whittle gate to use the field, playground and tennis courts. If additional students/employees move to the area west of the campus, they should be encouraged to walk or bike to the School in keeping with the City's Complete Streets and Transit First Policies. The incentive of closer campus access would encourage travel via these modes. Therefore, staff has not specified or limited the number of pedestrian key card access codes/passes that can be handed out. (As noted below, there is a limit on the number of vehicular passes given to Whittle gate.) Staff's proposal does require the School to submit the number of key card access passes so that this can be monitored by staff for anomalies in the number of accesses passes provided and eliminate this access for teachers parking on Clemons.*

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*Staff does not understand why the gate should be changed from metal to a crash gate. The gate has been approved as part of the overall master plan and has key card/code access and is acceptable to address emergencies.*

*Staff has limited vehicle access to persons assigned to the School's on-site parking spaces off of Whittle Avenue. Staff has eliminated Whittle Gate access for teachers parking on Clemens as the School has not submitted any documentation of assigned spaces. The employees may continue to park on the public street, unless a residential parking permit has been established; however, these employees may not be given pedestrian or vehicle access to the Whittle gate and should be parking in other designated areas or taking alternative modes of transportation. Deliveries should continue to be directed to the back gate.*

*Staff has permitted disabled students to use Whittle Gate to access the School. Requiring these students to be dropped off on Lincoln Avenue as part of the queue or at the School's driveway would require the students to travel longer distances to access the campus which is inconsistent with the purpose of ADA accessibility. Furthermore, the handicap spaces accessed off the upper driveway are for employees not for student drop-off/pick-up. Therefore, staff did not include this language in the revised Conditions of Approval.*

*In sum, City staff believes that the proposal would eliminate most of vehicle and pedestrian traffic through the Whittle gate. However, the already limited vehicle and pedestrian access through Whittle gate does not appear to create a significant impact on the neighborhood. Contracts with students/employees that use the Whittle gate and penalties if a student provides key card access codes to another person are unnecessary and enforceable for City staff, the School, or a third-party.*

**NSC Proposal: Whittle Gate Monitoring:** Require a third-party to monitor access to the Whittle Gate.

*Staff response: See monitoring and enforcement sections below.*

**NSC Proposal: Fence along Whittle Avenue Residential Properties:** Install a six foot fence along the property lines at the Whittle Avenue properties to prevent unauthorized access to the property.

*Staff response: There is already a chain link fence and gate that prevents access to the property. This area is also signed as No Trespassing. Eliminating trespassing onto the School property is the responsibility of the School and the Oakland Police Department not the Planning Department to address. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

**NSC Proposal: Transportation Demand Management - Drop-off:** Load buses only on one side of Lincoln Avenue to address visibility and safety issues. Require a 20% bus ridership. If the Planning Commission approves an increase to 906 students require that the School increase bus ridership to 30% by 2016; a 40% bus ridership and limit enrollment to 885 students by 2017, and a 50% bus ridership and limit enrollment to 906 students by 2018. Require that 10% of students walk or bike. Require a 10% student carpool requirement. Define a carpool as one parent and four children for a regular car and one parent and three children for a compact car and one student driver with three additional students. Require a 30% shuttle or bus ridership, and a 20% carpool requirement for employees. Require that all vehicles proceed in the same direction. Require an on-site drop-off at the bottom of the school's driveway and upper parking lot for small children that cannot take the bus. Eliminate all School parking and traffic from residential streets including the "loop" and busing. Require penalties.

**NSC Proposal: Transportation Demand Management- Pick-Up:** Load only buses only on one side of Lincoln Avenue to address visibility and safety issues. Require a 20% bus ridership. If the Planning Commission approves an increase to 906 students require a 30% bus ridership and limit enrollment to 885 students by 2016, and a 40% bus ridership and limit enrollment to 906 students by 2018. Prohibit student pick-ups in other locations. Eliminate the staging area at the Mormon Temple parking lot but allow a shuttle.



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*Staff responses: The City has revised the Conditions of Approval to require a 30% alternative transportation usage requirement. The City believes that this is feasible for the School to achieve. The NSC's proposal is unclear as written how and when the percentages and maximum students are arrived at.*

*For example, does the NSC's proposal require a 70% alternative transportation usage or are the reductions applied consecutively? If the intent is the later, during drop-off the NSC's proposal requires that 50% of the 906 students or 453 students arrive by bus. In addition, 10% of the remaining students (45 students) need to walk or bike. Furthermore, 10% of the remaining students (407) need to carpool and a carpool is defined. Assuming that all of the remaining students are student drivers, which need to be four to a car, then there would be only 10 carpools. This would result in a 366 single occupancy vehicles arriving at the school. This same number would be required if the remaining students ride with parents driving a regular car and carpooling. However, if the remaining students ride with a parent in a compact car than 10% would be 40 students divided by 3 for would be 394 students. However, if the carpool percentage was required to be calculated before the walk/bike requirement, than the numbers would be different. For example, student driving and carpooling parents in regular cars would result in  $(453 * 10\% = 45)$   $45/4 = 11$   $(453 - 11 = 442)$  442 students not 407. Then the walk/bike percentage would be 10% of 442 for a maximum of 400 students arriving by single occupancy vehicles.*

*As shown above, the NSC proposal is unclear, cumbersome to calculate and impossible to enforce based on type of car being driven at any time. It is possible that a household might have two different vehicles and the carpool percentage not be met. It is also possible that students/parents may change their preference of arriving or leaving the School based on the weather, the time of year, a practice or events or other circumstance.*

*Staff's proposal of a 30% SOV reduction is reasonable given that the School is already meeting 27-28% non-SOV ridership based on traffic studies. In addition, and there is no clear nexus to require such a drastic bus ridership percentage given that the traffic reports indicate an acceptable Level of Service. Furthermore, the NCS's proposal requiring such a certain percentage for each travel mode is inconsistent with City practice and the approved Standard Condition of Approval. Specifically, the City's Standard Condition of Approval requires, for projects generating 100 or more net new a.m. or p.m. peak hour vehicle trips, a 20% vehicle trip reduction. The intent behind the Condition is to reduce vehicle traffic and parking demand generated by the project to the maximum extent practicable, consistent with the potential traffic and parking impacts of the project. As shown in the traffic analysis, the School will add a miniscule amount to the already congested area but not to the extent that a traffic impact occurs per the City's Thresholds of Significance.*

*The rest of the proposed measures such as eliminating buses from both sides of the street, and requiring that younger students use the School's driveway, thereby eliminating off-street parking, further penalize the School and make it impossible to comply. Furthermore, only way to limit drop-off from one direction is to designate Lincoln Avenue one-way. As discussed, the City cannot prevent or enforce pick-ups or drop-offs in the neighborhood or the use of residential street for the public. Neither the School nor a third-party can monitor this with any accuracy to result in a financial penalty. City staff comments regarding penalties are discussed in a later this document.*

**NSC Proposal: Transportation Demand Management – Monitoring:** The School should hire a third-party to twice daily monitor the School's pick-up and drop-off period. There shall be a total of 17 monitors which will be tasked with preventing certain behaviors and reporting violations which include prohibiting parking or loading on the east side of Lincoln Avenue, U-turns, use of the Mormon Temple, double parking, or pulling in front of car or bus, unauthorized locations for pick-up and drop-off, unsafe driving or pedestrian behavior, jaywalking, supervising students and preventing noise, and any School activity in the surrounding residential neighborhoods. Report violations to the rule enforcers.

*Staff's response: Staff's proposal requires that the School maintain five assistants in the morning and eight in the afternoon to facilitate children arriving and leaving the School efficiently during peak pick-up and drop-off periods. In addition, staff's proposal also includes four monitors to ensure that the School community addresses safety issues such as jaywalking and U-turns on Lincoln Avenue which are dangerous to children given the congestion. The goal of staff's proposal is to separate assistants from monitors to ensure that 1) traffic is*

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*managed effectively and 2) the most dangerous safety violations are recorded and enforced, by reducing the number of violations the monitors need to be looking for. Monitors shall provide violations to the School for action per their policies.*

*It should be noted that the goal of requiring the School to develop a set of traffic rules was to efficiently move traffic while being sensitive of the School community's driving behavior in residential areas. If the City wanted u-turns, blocking of driveways, or pick-up/drop-offs to be prohibited, the City would have specified this within the Condition. Instead, the City allowed the School to develop the rules. It was never the City's intent to be required to enforce these rules ourselves as a Condition of Approval. However, this is what is being proposed by the NSC.*

*The NSC's proposal is to have 17 third-party persons monitor twice every day for the following violations:*

- *Parking uphill of the School's driveway*
- *U-turns*
- *Double parking or pulling out in front of a vehicle*
- *Parking and pick-up and drop-off outside the queue area*
- *Jaywalking*
- *Direct traffic away from neighborhood streets*
- *Speeding, excessive noise in parking areas*
- *Safe and polite behavior*

*This is cost prohibitive and unnecessarily burdensome. Staff specifically eliminated good neighbor rules and driving behavior from the Conditions of Approval as this is unenforceable. The Oakland Police Department is responsible for issuing tickets for illegal or unsafe driving.*

**NSC Proposal: Rule Enforcer/Violations:** Planning Director should appoint one Rule Enforcer, who will collect the monitoring violation reports and submit monthly reports to the Planning Director and the School once a month for first 3 years and thereafter once every three months. The Enforcer shall also count students arriving by bus or shuttle. The School will provide notice to the driver if there is a violation. If the driver violates again, penalties will be imposed by the School payable to the City of Oakland. If the driver is a student, they are required to take a bus or shuttle or incur penalties.

*Staff response: The City has an existing, detailed, legal compliance/enforcement process, as described in the City's Municipal and Planning Code. The City's adopted requirements include procedures for complaints, investigations, full and fair hearing and appeal processes, and, as applicable, standards for imposition of appropriate penalties or other remedies. Any purported alternative method could unduly complicate enforcement and prolong or undermine the attainment of a mutually acceptable solution. As a result, staff has not included this proposal in the draft Conditions of Approval.*

**NSC Proposal: Parking:** The NSC has a goal of removing the School's operations from residential streets and is requiring a Condition of Approval that no parking is permitted on any residential street. Having a bus ridership requirement will reduce the need to park on the City's streets. School employee car and license plates are required to be submitted the City. The NCs is also concerned with emergency evacuation. Finally, the NSC proposal prohibits radios, honking of horns or any other excessive noise on School parking lots.

*Staff response: Staff agrees that increasing alternative transportation methods, including busing, will reduce parking on residential streets and the City has increased the bus ridership requirement to a level that is both feasible and stringent as described above.*

*Parking along public streets may be used by the public, including the Head Royce School community. The Planning Department and Code Compliance Divisions cannot enforce and would oppose any Condition of Approval that requires the School to prohibit its members from parking along a public street as it would be impossible for the School to comply 100% with this requirement setting the School up for continued non-compliance.*

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*However, if parking in the neighborhood is a concern, the appropriate process to address such an issue is to have the City establish a residential parking program in the neighborhood. This program has already been established along Alida due to Head Royce parking. In addition, this program has been established at several other major institutions such as Children's Hospital, Alta Bates, and more recently at the Safeway in Rockridge. If a residential parking permit program was established, parking would be enforced by the Parking Enforcement Department which is the proper Department to enforce parking. Planning and Code Compliance staff should not be placed in the position to monitor parking on a public street as substitute for Parking Enforcement. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

*Finally, noise is already addressed in Condition of Approval #19.*

### **NSC Proposal: Neighborhood Liaison Committee /Point of Contact/Complaints:**

Neighbors should be allowed to participate once per year in the NLC at an agreed upon date/time and with a clear agenda including a review of complaints/concerns.

*Staff's response: The City's proposal is to have the Committee meet at least two times a year. Staff has added proposed language regarding who sets the date/time/location, the timeframe for invitations, and who is sent an invitation. Staff has not accepted the NSC's changes regarding the agenda topics. This can and should be resolved between the School and the neighborhood representatives and staff should not dictate in a Condition of Approval what should be discussed at the meeting.*

### **Additional requested conditions:**

**NSC Proposal: Hillside Path and Fence:** Eliminate a concrete path on the hillside below upper Whittle Avenue and monitoring of the hillside to ensure that students are not engaging in drinking, smoking, or playing music. In addition, the NCS proposal includes construction of a fence on top of the wall along the running path to prevent access to the campus during school and non-school hours.

*Staff's response: The path on the hillside would be outright permitted per the Oakland Planning Code as it is at-grade. City staff does not see a clear reason to eliminate the path as students and staff could still access the hillside if they wanted. Supervision of children, staff, or others on the School's property is the responsibility of the School and is not the responsibility of the Planning Department to regulate. Eliminating illegal activities such as underage drinking or trespassing is the responsibility of the School and the Oakland Police Department not the Planning Department to address. Therefore, staff did not include this language in the draft revised set of Conditions of Approval.*

**NSC Proposal: Trash:** Trash to be contained in an enclosed area away from property lines and not in view of residents. Restrict trash pick-up.

*Staff's response: Screening of trash containers is already provided for in Section 17.124.045 of the Oakland Planning Code. If the trash containers are not appropriately screened, the neighbors should call the City's Code Compliance Department. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

*In a review of the complaints submitted by neighbors over the years, trash pick-up has not been an issue nor has staff seen a conflict with trash pick-up during student drop-off or pick-up. Staff would support a request that trash pick-ups be conducted outside the peak School traffic periods. However, neither the School nor the Planning Department can regulate the days or times of trash pick-up and this should not be included as a Condition of Approval for an entitlement. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

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**NSC Proposal: Maintenance Worker and Equipment Noise:** Neighbors have complained to the NSC about maintenance workers beginning with leaf blowers and other equipment at 7:00 a.m. Major maintenance occurs when the School is not in session, during the Summer Program or on a holiday.

*Staff's response: The City's noise ordinance addresses consistent, excessive and annoying noise and sets acceptable noise levels and timeframes. Specifically, Oakland Municipal Code Section 8.18.10 states that while leaf blowers are an annoying noise, the use of this and other maintenance and gardening equipment may not be used between nine p.m. and six a.m. so as to create a noise disturbance across a real property line or at any time to violate the applicable noise provisions of the Oakland Planning Code. This Oakland Municipal Code Section is already referenced as Condition of Approval #19. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

**NSC Proposal: Landscaping:** Keep the campus irrigated and pruned. Remove dead material. Trim eucalyptus, mow lawns, and remove weeds.

*Staff did not include this language in the revised set of Conditions of Approval as this is already required per the Condition #4 addressing blight.*

**NSC Proposal: Noise Mitigation:** Prohibit use of bells, loudspeakers, blow horns or other noise makers that can be heard by neighbors.

*Staff's response: It is infeasible for the City or the applicant to prohibit any noise on the School that could be heard by neighbors. As stated below, noise levels and timeframes are governed by the Oakland Municipal Code.*

**NSC Proposal: Lighting Mitigation:** Prohibit outdoor field lighting.

*Staff response: Staff has revised Condition of Approval #14 to prohibit outdoor field lighting and reduce practice timeframes to daylight hours.*

**NSC Proposal: Residential Properties:** Require that the residential properties be used solely for residential purposes and not for deliveries, ingress/egress, or other School related activities.

*Staff response: City staff has revised Condition of Approval#21, placing restrictions on the type of activities that can occur on these lots including storage.*

**NSC Proposal: Leasing other Institutions Facilities:** HRS leased a field from Cerebral Palsy Center above housing and began having school practices from 4:00 p.m. to 6:00 p.m. resulting in increased noise. The School should not be allowed to lease or rent out other facilities.

*Staff's response: The School may at times need to rent out other facilities such as playing fields for games, tournaments, and parking. Noise is regulated by Oakland's Noise Ordinance which sets allowable noise for residential areas. Therefore, the City has not included language restricting the School's rental of other facilities as a revision to the Conditions of Approval. As stated above, the shared use of parking is encouraged by the General Plan and should be encouraged to reduce parking in the neighborhood. Therefore, the City has not added this language as a revision to the Conditions of Approval.*

**NSC Proposal: Bounce Houses:** These temporary structures (and any others that make excessive noise) should not be placed on the field or outdoors.

*Staff's response: Oakland Municipal Code Section 8.10.020 states that air compressors, such as those that power bounce houses, should be located as far from residential uses as possible. According to the school, the bounce houses are only used a few times each year for special events and are located on the playing fields which are away from residences. Furthermore, as shown in the noise analysis, monitoring was conducted during a walkathon in*

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*the vicinity of the athletic fields in October of 2013. This event was attended by about 200 people and represents a typical event. The noise levels did not exceed the City's noise ordinance. Finally, allowable noise levels and timeframes at residential property lines are already included in the City's adopted noise ordinance and are referenced as Condition of Approval #19. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

**NSC Proposal: Cones and Parking Signs:** The cones and parking signs are routinely left in the street, blocking a mailbox and handicapped parking.

*Staff's response: Cones and parking signs should not be routinely left out after they are not necessary to address traffic and parking in the neighborhood. However, the School and the traffic assistants should have the discretion to determine how long these elements are necessary. Finally, obstructions in the public street and inaccessibility of handicap spaces are not within the purview of the Planning Department. This is the responsibility of either Parking Enforcement or the Oakland Police Department. Therefore, staff did not include this language in the revised Conditions of Approval.*

**NSC Proposal: Deliveries:** Relocate mulch deliveries to another location off of Lincoln Avenue and limit delivery times.

*Staff's response: Given the location of the playground, Lincoln Avenue is the only location for the mulch delivery. If the delivery were to occur from the Whittle gate, the equipment would need to snake through classrooms to reach the playground which is impractical. Furthermore, staff does not believe that a once a year delivery is impactful enough to necessitate relocation of the delivery to another location. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

*Staff's proposed Condition #25 already limits deliveries to school academic operation hours only and no overnight parking or idling is permitted. Therefore, staff did not include this language in the revised set of Conditions of Approval.*

**NSC Proposal: Penalty Provisions:** Require a specific dollar penalty per day for each student enrolled over the maximum permitted. Additional subsequent violations, after correction, to incur increasing financial penalties. Allow compliance to be verified by specifically defined means including photographs, videos or declarations. Fines will be deposited into a penalty fund for the purpose of administering this permit and verifying compliance as well as neighborhood improvements.

*Staff response: City staff does not recommend the NCS' proposal. The NSC's proposal would create a new enforcement process applicable only to this project and inconsistent with the City's adopted policies and procedures. The NSC proposes an alternative, conflicting enforcement concept which relies on unofficial means (i.e. declarations instead of observations) of determining compliance and eliminates the City's adopted requirements include procedures for complaints, investigations, full and fair hearing and appeal processes, and, as applicable, standards for imposition of appropriate penalties or other remedies.*

*As discussed above, although financial penalties are permitted by the Oakland Municipal Code to address compliance, City staff has revised Condition of Approval #4 to specify that these financial penalties can be used. Both the Oakland Municipal Code and the City's annual adopted Master Fee Schedule outline what the City may charge applicants for City services, including penalties for non-compliance. The Planning Department cannot apply a base or continued non-compliance fine that has not been adopted by the City Council as part of the Master Fee Schedule. Furthermore, Condition of Approval #4 already allows the City to collect funds to address compliance with Conditions of Approval and mitigation measures and pay for staff. A separate penalty fund is not necessary to accomplish this goal. Finally, the City cannot legally direct Code Compliance funds to neighborhood improvements such as pothole repair or repaving.*