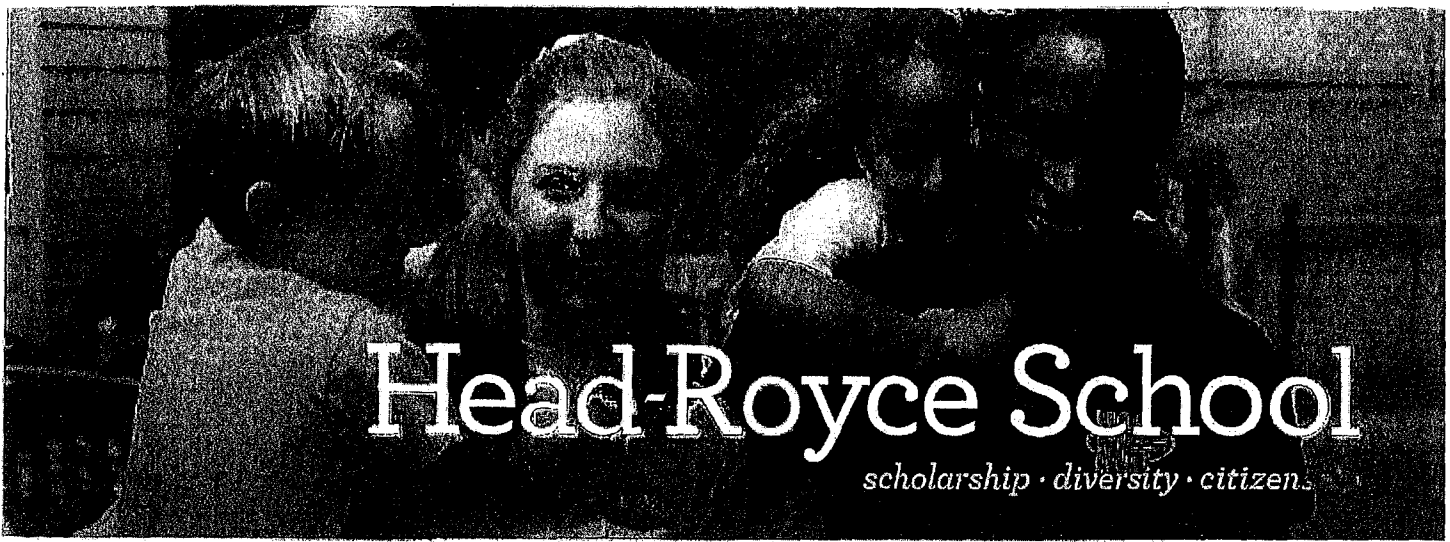


**EXHIBIT A**



# Head-Royce School

*scholarship · diversity · citizens*

## **WHAT IS HEAD-ROYCE REQUESTING FROM THE CITY?**

In 2006, the City of Oakland approved a plan allowing Head-Royce to grow, over time, to an enrollment of 906 students by 2021. The School is asking the City to let it reach this enrollment cap prior to 2021, allowing 31 more students. This represents an increase of approximately 2.9%.

## **IT IS REQUESTING A HIGHER ENROLLMENT CAP?**

No, the City has already approved a cap of 906 students. The School is just asking for permission to reach that cap sooner if it chooses to.

## **IF APPROVED, WOULD ENROLLMENT INCREASE IMMEDIATELY?**

No, Head-Royce would still grow slowly, adding only a few additional students each year.

## **HOW WILL HEAD-ROYCE MINIMIZE ITS IMPACT ON THE NEIGHBORHOOD?**

Head-Royce is committed to being a good neighbor, and has hired a professional transportation firm who created a "Transportation Demand Management plan" (TDM) to better manage traffic.

## **WHAT IS THE TRANSPORTATION DEMAND MANAGEMENT (TDM) PLAN?**

Lincoln Avenue is home to the Greek Orthodox Cathedral, Mormon Temple, Ability Now, Sequoia Elementary School, and at one time, the Lincoln Child Center (LCC). It's a busy corridor shared with other institutions. The TDM plan stipulates when and how families are expected to pick up and drop off their children, where they should park for special events, and other rules. And it provides for the monitoring and enforcement of these requirements. For example, Head-Royce maintains a license plate database, and uses photo/video surveillance. Compliance with driving and traffic rules is an explicit condition of enrollment and employment.

## **HOW ELSE HAS HEAD-ROYCE WORKED TO BE A GOOD NEIGHBOR?**

Head-Royce's three full-time security guards patrol the campus and also look out for the safety of the neighborhood. The School has contributed over \$30,000 to the neighborhood's private security patrols. Head-Royce has also worked closely with neighbors over the years to restrict large trucks on Lincoln Avenue, install stop signs and no u-turn signs – and the School pays for the residential parking permit program. It allows neighbors to use the athletic fields, playgrounds and tennis courts when school is not session.

## **WHAT IS HEAD-ROYCE'S PLAN WITH THE ADDITIONAL LAND IT ACQUIRED?**

The School is exploring uses for the former LCC property. But the School is only in early planning discussions and has not filed any applications. Neighbors will have opportunities to provide feedback once the School has a proposal. Use of this site could alleviate traffic and parking impact in Lincoln Avenue and in the neighborhood.



# 50 YEARS IN OAKLAND

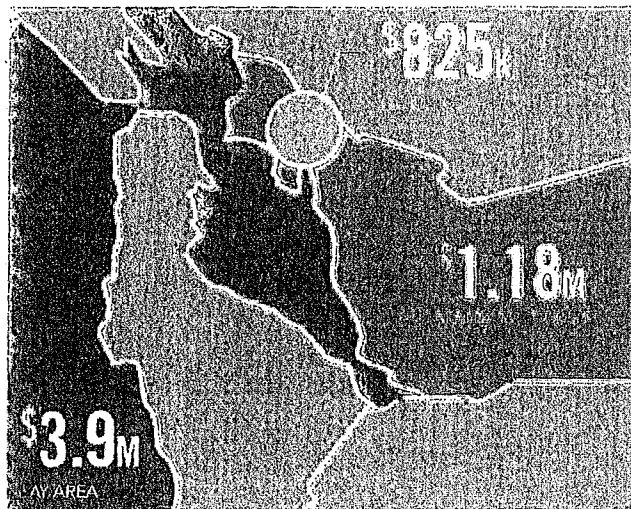
Since 1964, Head-Royce School has made integral contributions to its Oakland neighborhood and to the city at large. Over the course of these 50 years, the school has fostered community during crises such as the 1989 Loma Prieta earthquake and the 1991 firestorm, supported city advancement through service projects, employed hundreds of educators and administrators, and delivered a high-quality education to generations of children. Today, our students, along with our faculty and thousands of alumni, continue to embody our mission of scholarship, diversity, and citizenship in numerous ways.



- 1964:** The Anna Head School for Girls relocates to Lincoln Avenue in Oakland.
- 1971:** The Josiah Royce School for Boys was established on Lincoln Avenue.
- 1974:** The Anna Head School combines with the Josiah Royce School for Boys to create a co-educational K-12 school.
- 1987:** Heads Up, an academic enrichment program for underprivileged OUSD students of color, is created.
- 1989:** The Loma-Prieta earthquake strikes; Head-Royce families rally to assist neighbors and rescue workers.
- 1991:** The Firestorm devastates large swaths of the Oakland and Berkeley hills; school families work to support the 36 Head-Royce families who lost their homes as well as the countless others in need.
- 2008:** The school's first LEED Gold-certified building opens.
- 2012:** Purchased Lincoln Child Center property, former location of the Josiah Royce School for Boys.

## LOCAL IMPACT

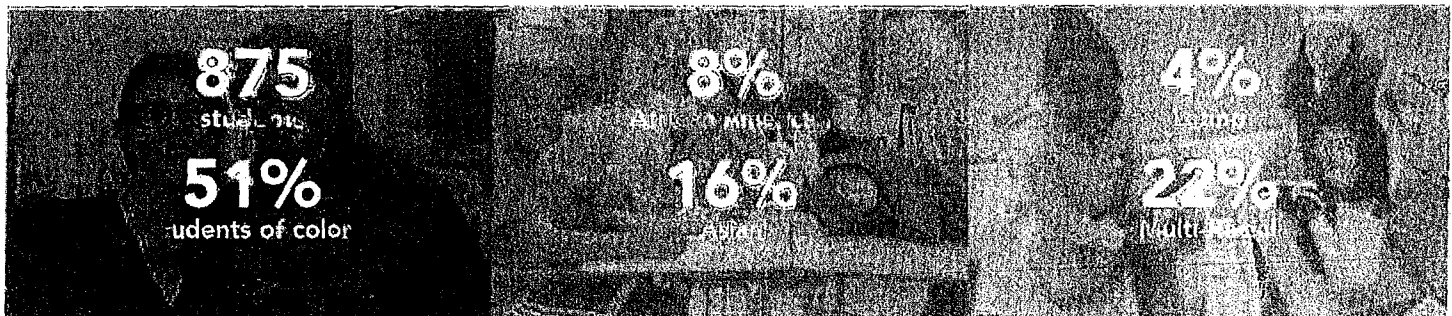
In 2014-2015, Head-Royce spent approximately \$825,000 in Oakland, \$1.18 million across Alameda County, and \$3.9 million in the greater Bay Area. Whenever possible, the school works with small, local businesses — some relationships have been in place for decades.



We're proud to be a vibrant part of the local economy with approximately 160 faculty and staff. The school has a \$27.5 million annual budget, including financial aid and operations as well as \$15.6 million in salaries and benefits. 82% of all employees live in Oakland or Alameda County.

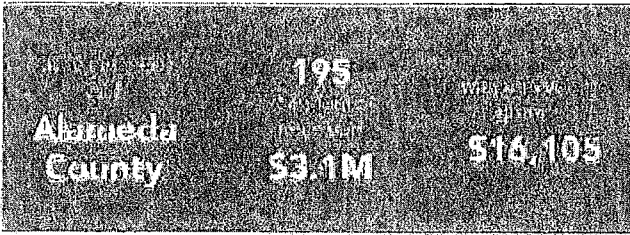
## DIVERSITY

We believe that a school community rich in diversity provides the greatest opportunity for students to learn life's lessons. Our commitment to diversity extends throughout all aspects of the school — academic curriculum, extra-curricular activities and financial aid. We also expanded our staff to include a full-time director of equity and inclusion.



# FINANCIAL AID

This year, Head-Royce awarded more than \$4.2 million in financial aid to 229 students, representing 26% of the student body. We offer more financial aid than 99% of all other Bay Area independent schools.



# heads up

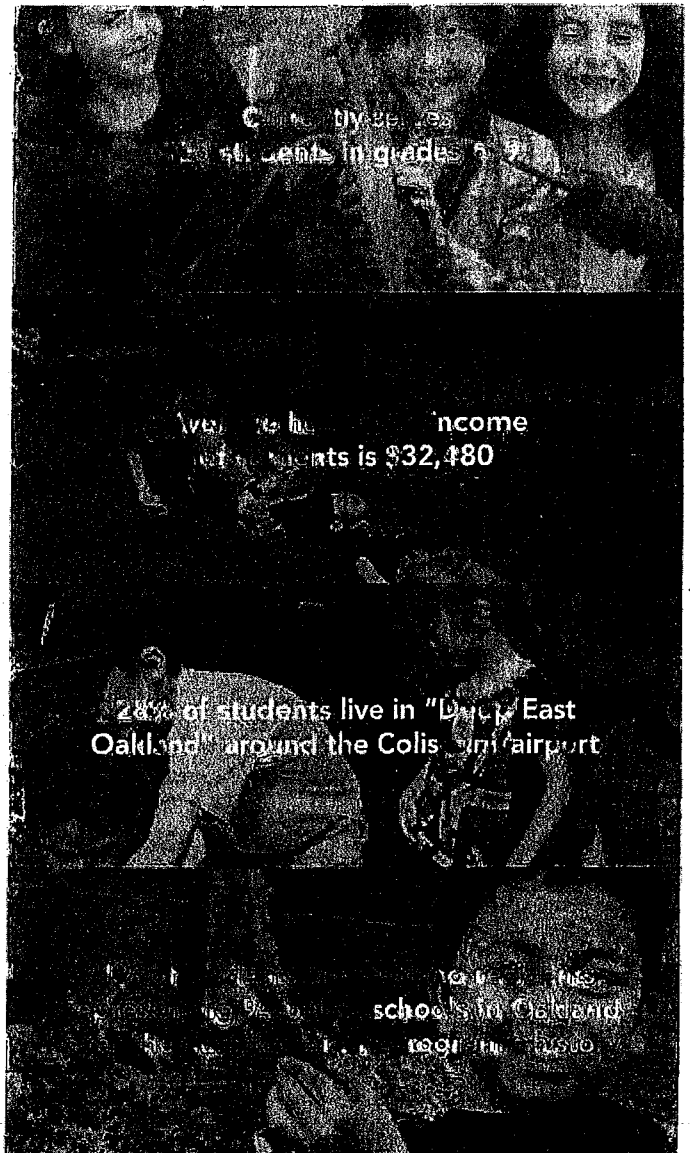
PARTNERING TO EDUCATE OAKLAND'S YOUTH

Founded in 1987 as a partnership between the Oakland Unified School District (OUSD) and Head-Royce School, Heads Up is a year-round academic enrichment program that has served more than 1,000 low-income youth from Oakland. Now entering its 28th year, the mission of the Heads Up program is to provide underserved middle-school students from the OUSD with challenging and enriching educational programs to prepare them for academic success and to help them develop an appreciation for community and civic responsibility. The vast majority of Heads Up students have traditionally been the first in their families to attend college.

Oversight for the program — including teaching, mentoring and fundraising — is provided by Head-Royce. Donations to the program directly fund Heads Up's annual operation. To learn more or donate, visit [headroyce.org/headsup](http://headroyce.org/headsup).

"Head-Royce has been an extraordinary resource for the City of Oakland for many years. During my tenure as Mayor it was an active partner in the Mayor's Educational Cabinet. In particular, for twenty years the Heads Up Program has successfully worked with hundreds of Oakland elementary school students in their transition to middle school and in preparation for college."

—Elihu Harris, former mayor of Oakland



# COMMUNITY SERVICE

We believe that serving one's local community is part of good citizenship and it is an integral part of our mission. Students from kindergarten to 12th grade engage with local and regional agencies as well as international non-governmental organizations.

- Teachers in grades K-8 identify projects linked to the academic curriculum and provide opportunities for students to serve and learn.
- A student-driven Community Service Board leads the program for students in grades 9-12, identifying opportunities and pairing students with organizations.

To the right is a list of organizations that are currently being served, or have been served, by Head-Royce students:

## INTERNATIONAL

- \* Ama Ghar Children's Home (Nepal)
- \* A New Hope for Cambodian Children
- \* Kiva
- \* Nothing But Nets

## LOCAL ORGANIZATIONS

- Alameda County Community Food Bank
- Bay Area Hispano Institute for Advancement
- Berkeley Men's Shelter
- Building Opportunities for Self-Sufficiency (BOSS)
- Centro Vida Children's Program
- Ability Now
- Clausen House
- East Bay Depot for Creative Re-Use

## ENVIRONMENTAL

- \* East Bay Regional Park District
- \* Friends of Sausal Creek
- \* Go Green Foundation
- \* Lake Merritt/Berkeley Marina clean-ups
- \* Sunol Agricultural Park

## SCHOOLS

- Futures Elementary
- New Highland Elementary
- Sequoia Elementary School
- The Paden School
- The Encompass School
- Vincent Academy
  
- First Tee
- Habitat for Humanity
- Lincoln Child Center
- Milo Foundation
- Piedmont Gardens
- Rebuilding Together Oakland
- Salvation Army (Booth Child Development Center)
- SPCA
- Special Olympics

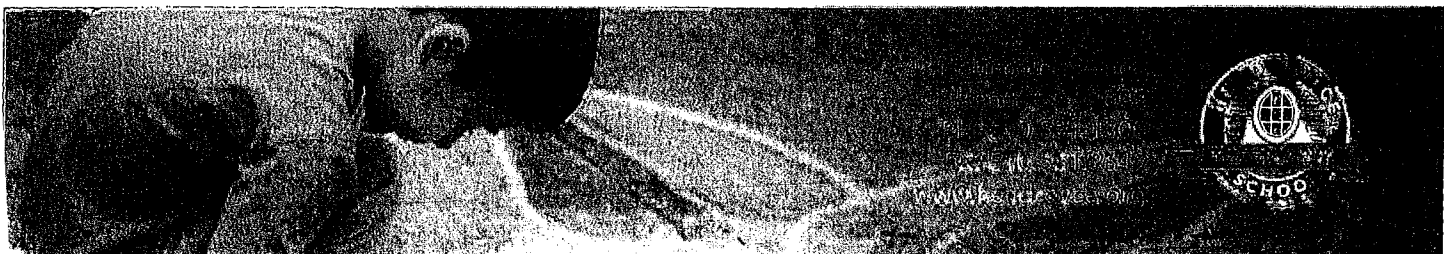
## HEALTH

- \* Children's Hospital Oakland
- \* Relay for Life
- \* UNICEF

# SUMMER ENRICHMENT PROGRAM

For six weeks every summer, Head-Royce opens up its campus to students from 148 schools throughout the East Bay. We believe it is important to offer a meaningful, educational and active experience for young people during the summer months. Research suggests that nearly all students lose skills and knowledge over the summer break. Summer programs like Head-Royce's combat "summer learning loss," which particularly impacts students in the areas of math and reading. Our Summer Enrichment Program keeps students engaged academically, therefore helping them maintain momentum between the end of one school year and the beginning of the next.

Our program provides academic and social enrichment through innovative classes, sports and activities. Many local families with working parents depend on this program because it provides a safe place for kids to continue their education in a fun and nurturing way.



**EXHIBIT B**

# MEMO

**Date:** 2 November 2015  
**To:** Members of the Oakland Planning Commission  
**From:** Head-Royce School  
**Re:** Chronology of Addressing Neighborhood Issues

---

## HISTORY OF SCHOOL

- 1887 Anna Head School for Girls was established in Berkeley.
- 1964 Anna Head School moved to eight acres on Lincoln Avenue in Oakland.
- 1971 Josiah Royce School for Boys was established on Lincoln Avenue in Oakland at the site for the former Lincoln Child Center.
- 1974 Anna Head and Josiah Royce combined, forming coeducational K-12 Head-Royce School (HRS).

## ADDRESSING NEIGHBORHOOD CONCERNS

- 1970s School arranged for AC Transit buses to transport students, reducing SOV traffic.
- 1990s Neighborhood Liaison Committee (NLC) established.
- 1990s Neighbors allowed use of tennis courts and other athletic facilities through purchase of a \$25 key card and signing of use agreement.
- 1990s Traffic assistants and monitors are stationed on Lincoln Avenue, including a crossing guard.
- 1990s Expanded bus service with private provider – Michaels – to reduce impact of cars on drop-off and pick-up.
- 1990s Installed concrete barriers on Lincoln Avenue to protect pedestrians.
- 1990s Instituted before and after-school programs to help reduce peak traffic impacts.
- 1990s Worked with City to install a stop sign at Lincoln Avenue and Tiffin Road.
- 2000s Worked with City and Cerebral Palsy Center to install traffic control measures like an electronic radar sign for speed monitoring.
- 2000s Assisted in process of setting a 4.5-ton limit for trucks traveling on Lincoln Avenue.
- 2004 Opened a hotline for neighborhood concerns and complaints.
- 2004 Adopted "Big 10 Driving Rules" in collaboration with Neighborhood Liaison Council (NLC).
- 2005 Integrated traffic & parking instructions to "Back to School Night" program for parents.
- 2006 Made adherence to traffic rules a condition of enrollment and employment.
- 2007 Purchased digital cameras and started database of license plates at the urging of the NLC, and created a disciplinary process for violations.
- 2007 Eliminated all campus "through traffic" (Lincoln Avenue to Whittle Avenue).

- 2007 Formalized shared parking agreements with institutional neighbors like the Greek Orthodox Church, Mormon Temple, and LCC.
- 2008 Worked with NLC and City to install "NO U-TURN" signs on Alida Avenue.
- 2008 Expanded monitoring pick-up and drop-off operations – including length of queue – and reporting data to the City.
- 2008 Launched portal on CarpoolToSchool.com to encourage families to carpool.
- 2008 Hired first security guard. HRS now has three full-time security guards who have averted robberies and break-ins at neighborhood homes.
- 2008 Adopted new policy, in collaboration with the NLC, creating rules for when and where vendor deliveries could occur.
- 2008 Prohibited parking or drop-off at the back gate on Whittle Avenue & Funston Place.
- 2008 Head of Upper School Carl Thiermann began hosting yearly assemblies to instruct and remind Upper School students about traffic and safety rules.
- 2009 Engaged Dowling Associates (now Kittleson Engineering) to train two traffic monitors.
- 2009 Constructed additional on-site parking spaces.
- 2009 Added 20 additional spaces to upper parking lot, including priority parking for carpools, for a total amount of on-campus parking that exceeds City requirements.
- 2010 Worked with neighbors and the City to implement a two-hour residential parking zone on Alida Avenue, Alida Court, and Linette Court.
- 2010 Added private bus service to Alameda with subsidies to encourage bus usage.
- 2010 Added traffic safety and neighborhood relations to the head of school's performance review.
- 2010 School-requested stop sign on Whittle Avenue was denied by the City due to City-stated lack of need.
- 2011 Installed video cameras to enhance its enforcement of traffic rules after receiving NLC feedback that drivers were gaining access to Whittle Avenue gate.
- 2011 Updated "Big 10 Driving Rules" to address repeat offenders.
- 2011 Head of School Rob Lake expanded outreach to discourage u-turns, as well as intermittent monitoring of at Whittle Avenue and Tiffin Road as well as Laguna Avenue and Alida Avenue.
- 2011 Agreed to NLC requests for a bi-weekly notification of upcoming special events.
- 2012 Increased monitoring during special events after receiving NLC feedback – including collaboration with NLC on new signage discouraging neighborhood parking.
- May 2012 NLC began declining invitations to meet with School representatives.
- 2012 Received vendor commitments on delivery timing.
- 2012 Tripled investment in bus program, providing approximately \$370,000/year in subsidy.
- 2012 Instituted valet parking for major events like graduation.
- 2013 Implemented a "staging area" for drop-off and pick-up vehicles at the Mormon Temple's upper parking lot to reduce congestion and better control the queue on Lincoln Avenue.



- 2013 Monitoring by Kittleson-trained monitors submitted to City showed that the pick-up queue was not extending beyond the upper driveway.
- 2013 Hired Nelson Nygaard to prepare a draft TDM
- 2013 Added buses to the summer program (at no additional cost to participant families).
- 2013 Hosted Summer 2013 Neighborhood Watch meeting.
- 2013 Began providing financial support – at least \$10,000 – for supplemental neighborhood security patrol, in partnership with neighbors, beyond the School’s full-time security guards.
- 2014 Requested point by point audit of compliance matrix
- 2014 Completed all items required by City after point by point audit
- 2015 City staff finds HRS in compliance with all conditions of use permit except enrollment
- Aug. 2015 Hosts neighborhood meeting to discuss proposed conditions of approval
- Aug. 2015 HRS indicates agreement with Staff’s proposed new conditions of approval including:
- Transportation Demand Management (TDM) Plan
    - 27-30% non-SOV ridership
    - Increased number of traffic assistants and monitors
    - Video monitoring of queue
    - Independent monitoring of compliance 4x/year
    - Traffic and parking rules during special events
    - More rigorous enforcement for violators
  - Limits on hours of operation and number of special events
  - Limits on summer program enrollment

**EXHIBIT C**

September 11, 2015

Hon. Elsa Ortiz, Director  
Alameda-Contra Costa Transit District  
1600 Franklin Street, 10th Floor  
Oakland, CA 94612

Dear Director Ortiz:

I understand that certain Oakland residents, represented by Leila Moncharsh, have recently contacted you with a request to modify the routes of the AC Transit 604 and 605 buses. I am writing to request a different resolution to the interference of bus passage at the intersection of Laguna Avenue and Potomac Street.

#### Overview

Head-Royce School (HRS) strongly encourages its students to commute to and from school on buses rather than in private cars to minimize traffic congestion common near schools at drop-off and pick-up times. AC Transit operates three bus routes serving the school's surrounding neighborhood: the 604, 605, and 606. The 604 and 605 routes include Alida Street, Laguna Avenue and Potomac Street, commonly referred to as "The Loop" – which is a prescribed driving route commonly used by both buses and HRS passenger cars headed west on Lincoln Avenue to turn around in order to head east to Highway 13.

In recent weeks, several neighbors have expressed unhappiness with AC Transit buses driving past their homes by deliberately parking their cars on all sides of the Laguna & Potomac intersection in a carefully choreographed attempt to block passage of AC Transit buses. (And, in at least two instances, caused a bus to get stuck – and students stranded.)

Unfortunately, the actions of these neighbors to protest the long-established bus routes run counter to larger community goals of increasing bus ridership to minimize traffic congestion, and the bus blockade seems deliberately timed to coincide with an application before the City of Oakland to modify the school's use permit.

#### Deliberate Acts

The 604 and 605 bus routes have long operated with no reported incidents of interference with parked cars, since at least as far back as 2004 until a recent sudden spike in incidents where parked cars obstructed the bus movements.

On Friday, August 28, a 604 bus became stuck midway through the turn due to the location of a neighbor's parked car. The neighbor was home and outside his house watching as the bus became stuck. The AC Transit driver repeatedly asked the owner of the parked car to please move his car in order to allow the bus to proceed on its way, and the neighbor repeatedly refused to do so. He explained to the driver that he was protesting the passage of buses in front of his house, and due to his refusal to move his car, the bus driver and student passengers were stranded for approximately 30 minutes. Only after the AC Transit driver summoned the Sheriff's Office did the neighbor finally comply with the request.

The next day, the 605 bus got stuck at the same intersection due to cars again being parked strategically to obstruct bus turning. This time, the AC Transit bus actually came into contact with a parked car (fortunately with no damage). Nonetheless, we had to come escort all of the school kids back to campus and call each of their parents to arrange alternative transportation home – a significant inconvenience for many people. The AC Transit drivers documented these incidents with photographs, so you can refer to internal AC Transit incident reports for more detail about these events if that would be helpful.

The buses have driven these precise routes for many years with no problems, but suddenly on two successive school days cars were strategically parked so as to interfere with bus turning – suggesting that the blockade was deliberate. In addition, after a car was ticketed for being parked too close to the corner, the neighbors then spray painted marks on the asphalt to demarcate precisely where to park in order to continue to obstruct the buses without risk of a parking ticket.

#### Neighbors Requested "The Loop"

Ironically, "The Loop" was jointly developed by the School and its neighbors as the preferred driving route for all vehicles back in the 2004-2005 timeframe. At that time, and until approximately 2012, there was a Neighborhood Liaison Committee (NLC) that met on a quarterly basis to communicate neighbor concerns to the school. Neighbors on Alida Street were specifically concerned about cars making U-turns in their driveways – and they requested that the School ask its parents to drive "The Loop" as a means to eliminate these U-turns. It was in accordance with this neighborhood request, around 2004, that HRS started asking parents to use "The Loop."

Neighbors later complained that some school community members were still making illegal U-turns, and requested that the school enact more stringent enforcement of "The Loop." In response, the School continues to employ uniformed traffic monitors along nearby streets to note license plates of any offenders who do not use "The Loop." Ms. Moncharsh's recent request that it be discontinued by both AC Transit buses and passenger cars is a complete reversal from longstanding prior neighborhood requests. If granted, this request would likely generate significant neighborhood opposition from those benefiting from the School's largely successful campaign to prevent U-turns.

More importantly, we believe creating obstacles for AC Transit drivers to perform their jobs endangers larger goals of encouraging bus ridership as a means to reduce school-related traffic at peak times.

The NLC was organized as a forum for neighbors to discuss concerns with the school and was intended to meet quarterly. Starting in 2012, the NLC neighbors stopped attending this forum at the request of Ms. Moncharsh, who had become involved in litigation against Lincoln Child Center (whose property HRS was in contract to buy). Rather than participate in a regularly scheduled and civil forum with the School to express legitimate concerns about "The Loop," this subset of neighbors have instead chosen a path of civil disobedience to deliberately obstruct the bus passage – and with no advance warning.

The photos attached demonstrate that there is ample street parking in the vicinity of Potomac and Laguna intersection.

#### Impacts to HRS and Other Schools

HRS conducts internal surveys regarding bus service. The reason most frequently cited for not riding buses is that they take too long to get students home. As such, we strongly object to Ms. Moncharsh's request to extend the bus routes with an unnecessarily long detour down to MacArthur Boulevard and

back. In addition to potentially reducing bus ridership by HRS students, extending the route as requested would have adverse impacts on bus service to other schools as well. The 604 bus not only serves HRS, but also the Hebrew Day School and Bentley School. Similarly, the 605 bus stops at College Preparatory School in addition to HRS. Perhaps not coincidentally, Ms. Monscharch is on record having vehemently opposed the conditional use permits at several of these other independent schools in the past.

Interestingly, the neighbors do not seem to find the 643 bus as generating the same level of disturbance, noise, and exhaust fumes as they claim are caused by the 604 and 605 buses, even though the 643 travels many of the same streets.

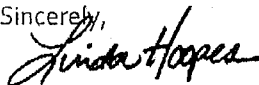
In light of Ms. Moncharsh's longstanding efforts to block the use permits of independent schools served by the 604 and 605, and her apparent willingness to overlook any similar disturbance caused by the 643 bus, the provocative behavior appears to be choreographed rather than coincidental with respect to our amended use permit application. After years of declining to participate in regularly scheduled meetings with the School as organized by the NLC, these incidents appear to be political theater. Nonetheless, if a neighborhood meeting on bus ridership issues would be helpful, HRS would be happy to participate in a session hosted by the Alameda County Sheriff's Office or the Oakland Police Department, both of whom have offered to assist in resolving this matter.

Head-Royce would like to focus our efforts with AC Transit and the City of Oakland on preventing future bus blockades by having the appropriate agency either (a) designate new AC Transit bus stops at the intersection of Potomac and Laguna Streets to ensure no cars are legally parked there, or (b) simply restrict parking at this intersection between the hours of 8-9am and 3-4 pm on school days. We are in support of whichever of these solutions can be enacted more quickly.

HRS wants AC Transit buses to freely travel streets in the public right-of-way, as our own success at reducing automobile congestion is tied directly to the ability of AC Transit to operate efficiently, without risk of blockade, delays, or inappropriate route changes.

Thank you for your efforts to stand strong on increasing and encouraging bus ridership, and working with us to develop an appropriate response to these deliberate service disruptions.

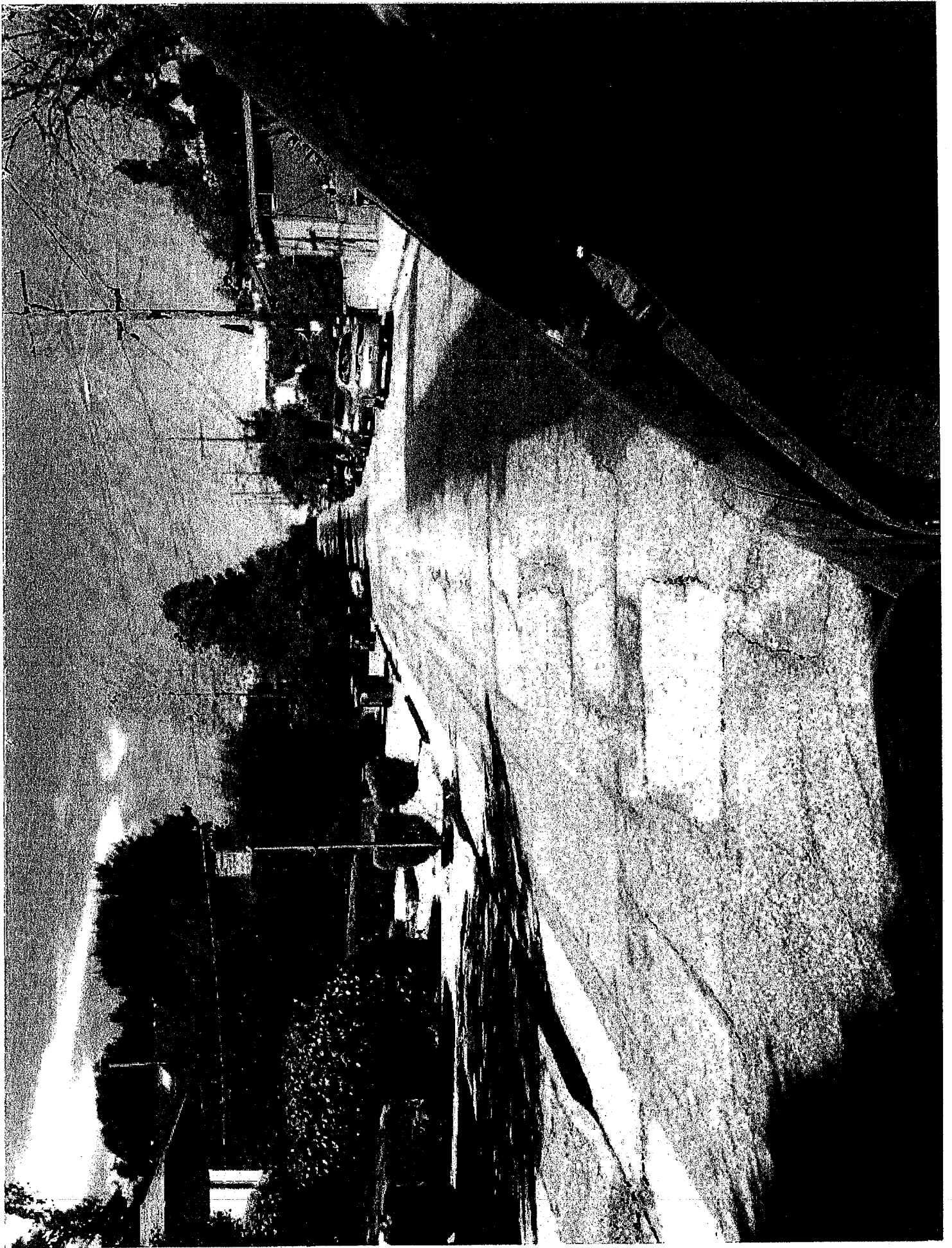
Sincerely,

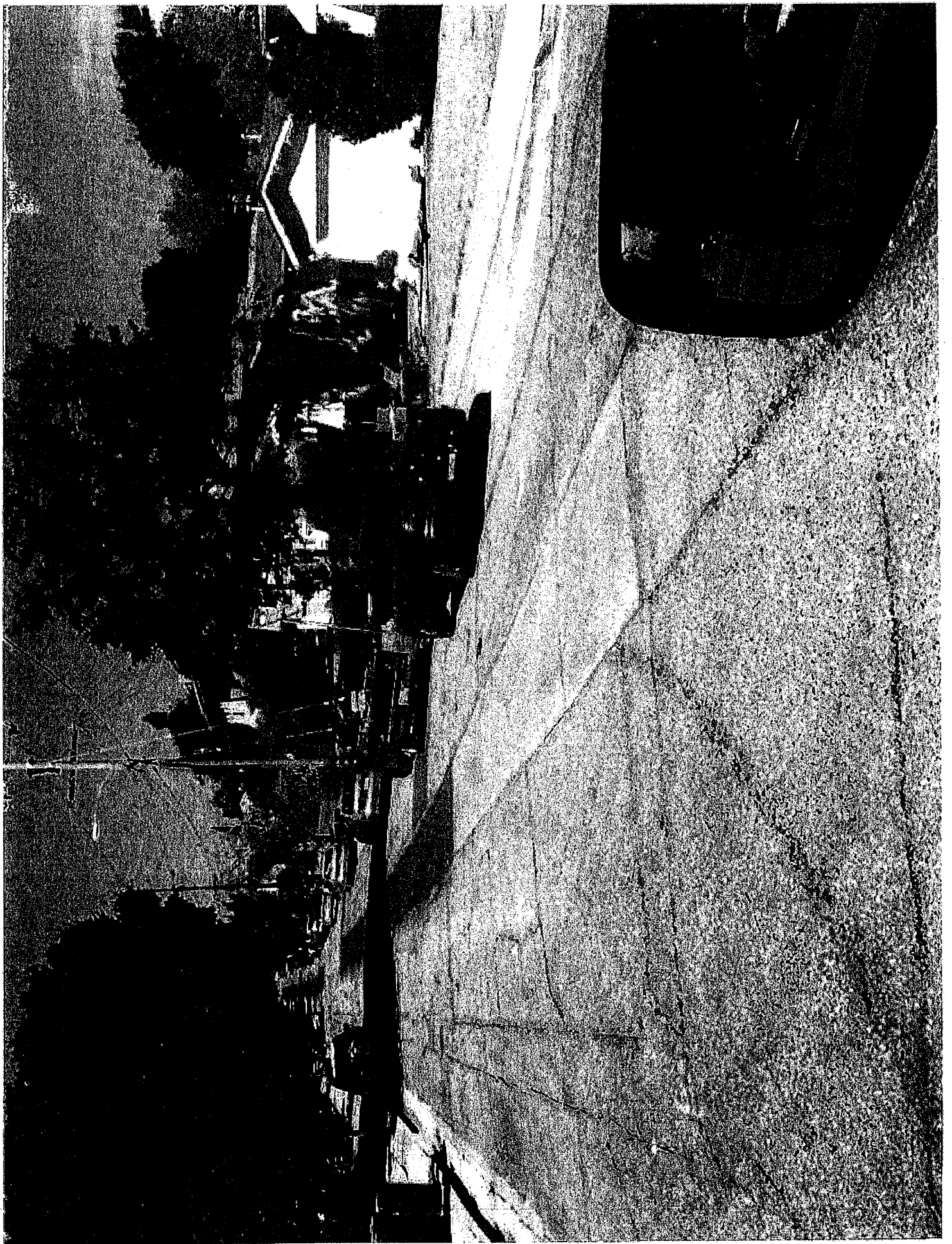


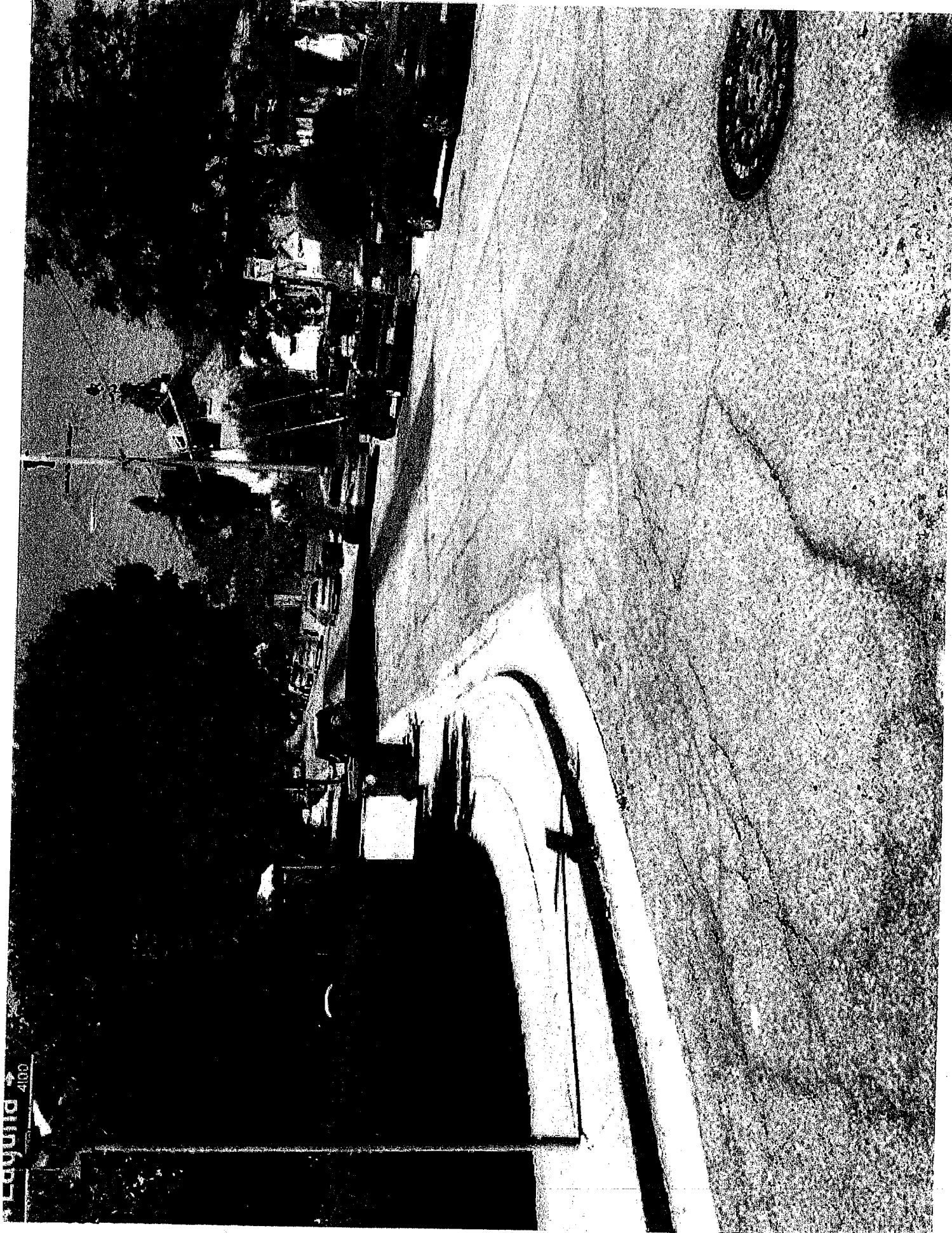
Linda Hoopes  
Acting Head of School

Enclosures (3)

Cc: Heather Klein  
Rachel Flynn  
Hon. Annie Campbell-Washington  
Adam Simons  
Nayeli Maxson  
Capt. Freddie Hamilton







pinpoint 4100



**EXHIBIT D**



WI #13-117

30 October 2015

To: Dennis Malone, COO, Head Royce School

From: Sarah Kaddatz & Deborah Jue, Wilson Ihrig

Subject: Noise Survey Results, All School Fair, October 23, 2015

Following are results from the noise survey recently conducted at Head Royce School (HRS). Noise loggers were placed near the property lines of the school that were most likely to show an impact from the event. Figure 1 below shows the locations of the two noise loggers, Location 1 (by Whittle) and Location 2 (in the eastern parking lot).



*Figure 1 Aerial photo and Noise Measurement Locations*



The noise survey was conducted over 5 days to include the afternoon of Thursday, October 22nd through the mid-morning of Monday, October 26th. The goal of this measurement was to capture the All School Fair event which took place on Friday, October 23rd and also the normal noise levels which occur during a typical school day. The All School Fair is put on by upper school students in the lower school area for the benefit of, and attended by, the majority of lower and middle school students. Many of those students have at least 1 parent in attendance as well chaperoning the kids, so it also serves as a social event for both parents and students. The carnival like atmosphere includes live music performances by some of the school music groups and it is one of the school's largest and noisiest outdoor gatherings all year. Approximately 250 to 300 people were in attendance.

Table 1 summarizes the City of Oakland noise limits for residential receivers (per Planning Code 17.020.050). The City limits the cumulative number of minutes in any hour that a sound can be received at a noise sensitive neighbor, as shown in the left column; the noise limits are shown in the second from left column.

**Table 1 City of Oakland Noise Limits, Daytime hours 7 AM to 10 PM**

Cumulative minutes per Hour	Noise Limit	Comment
20	60	
10	65	
5	70	
1	75	
0	80	Up to 59 seconds per hour

The measured noise levels at Location 1 and Location 2 were in compliance with the Oakland requirements. Figures 2 through 6 illustrate the noise levels measured at Location 1. Following are comments on the results at Location 1:

- Thursday October 22:
  - Noise levels exceeded 80 dBA for <0.4 minutes (<24 seconds) in the 2 PM hour and the 3 PM hour. These are in compliance with the Noise Ordinance.
  - Noise levels exceeded 75 dBA for 0.4 minutes in the 2 PM hour. This is in compliance with the Noise Ordinance.
- Friday October 23
  - Noise levels exceeded 80 dBA for <0.4 minutes (<24 seconds) in the 6 AM hour and the 7 AM hour. These are in compliance with the Noise Ordinance. It is unlikely this noise level was attributable to HRS since the school is not open at 6 AM.
  - Noise levels exceeded 65 dBA for 3.4 minutes in the 2 PM hour. This is in compliance with the Noise Ordinance.
  - Noise levels exceeded 60 dBA for 13.2 minutes in the 2 PM hour and 6.6 minutes in the 5 PM hour. These are in compliance with the Noise Ordinance.
- Saturday October 24: Noise levels in compliance with the Noise Ordinance
- Sunday October 25: Noise levels in compliance with the Noise Ordinance
- Monday October 26: Noise levels exceeded 60 dBA for 6.6 minutes in the 9 AM hour. This is in compliance with the Noise Ordinance.

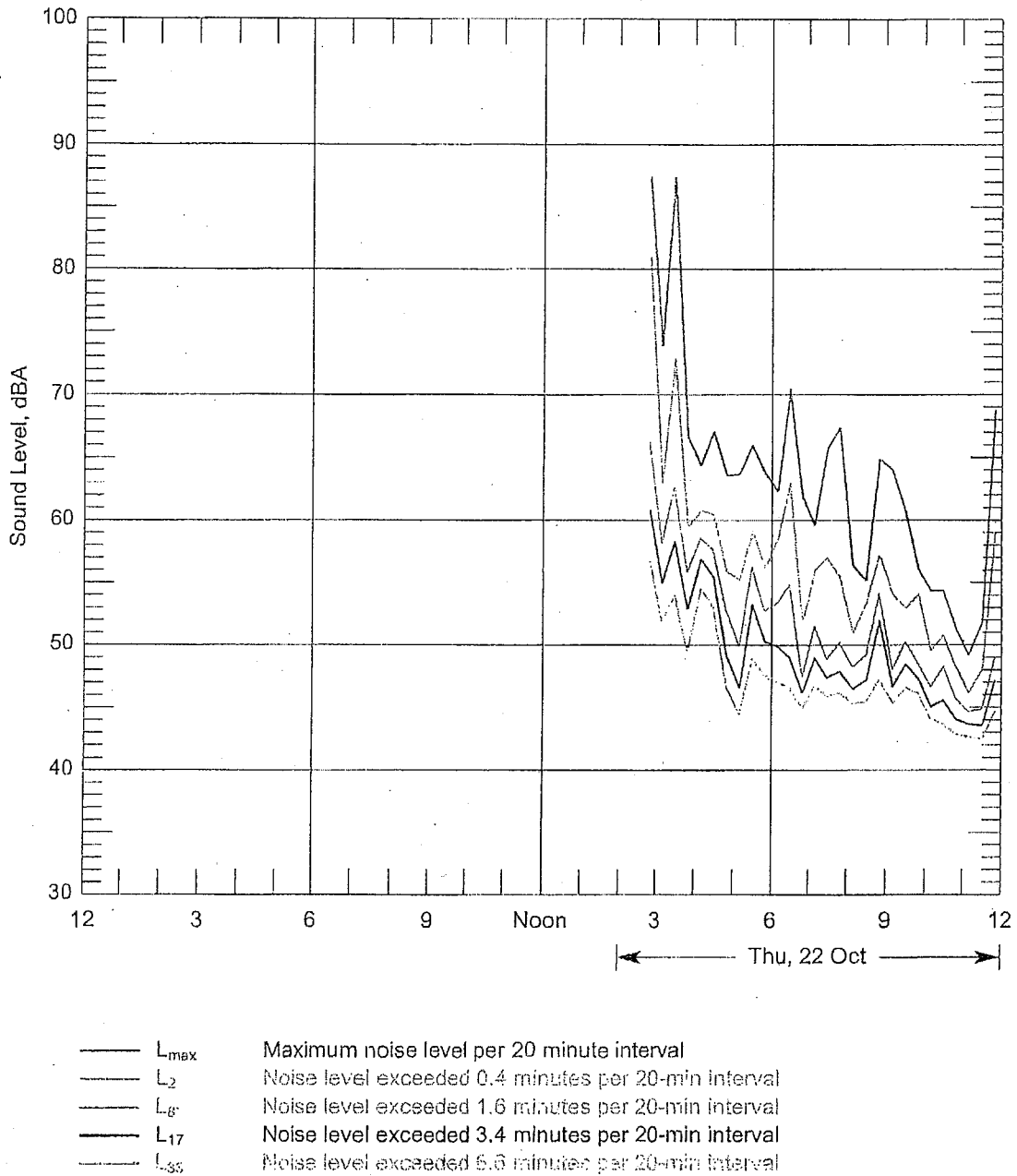
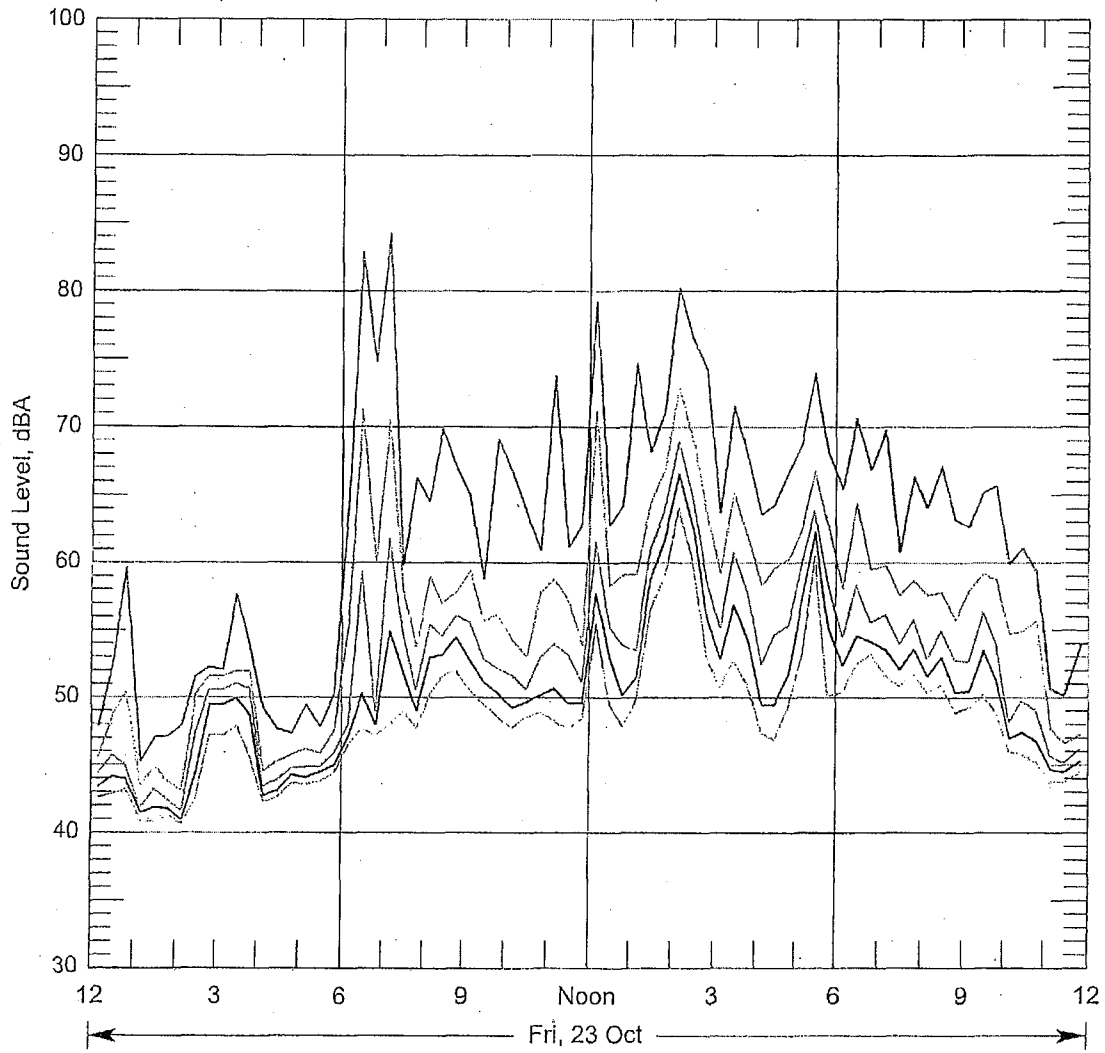
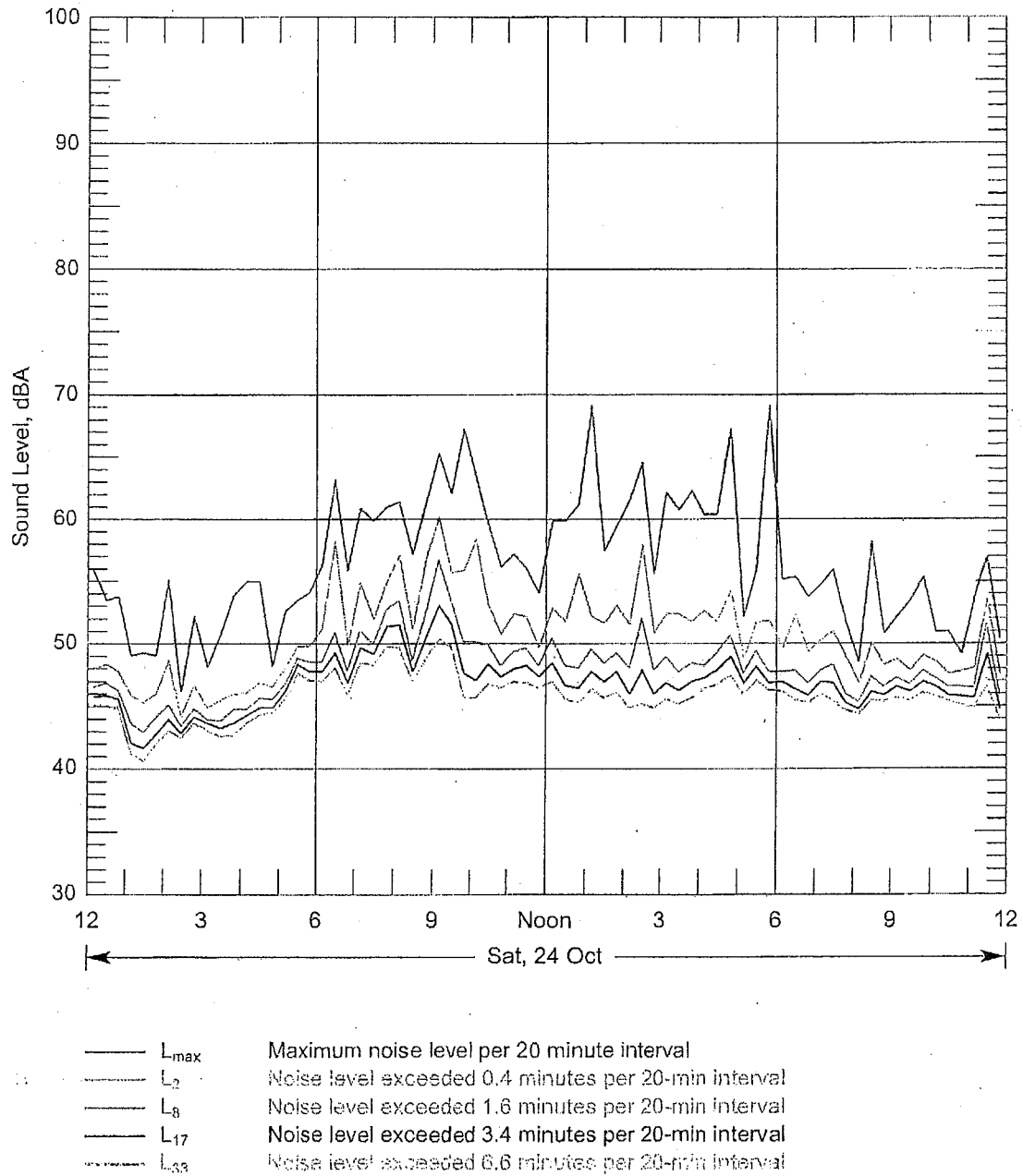


Figure 2: 20-minute statistical summary of noise levels measured at Location 1: Whittle Gate on Thursday, 22 Oct, 2015



- $L_{max}$  Maximum noise level per 20 minute interval
- $L_2$  Noise level exceeded 0.4 minutes per 20-min interval
- $L_0$  Noise level exceeded 1.6 minutes per 20-min interval
- $L_{17}$  Noise level exceeded 3.4 minutes per 20-min interval
- $L_{2.5}$  Noise level exceeded 6.6 minutes per 20-min interval

**Figure 3: 20-minute statistical summary of noise levels measured at Location 1: Whittle Gate on Friday, 23 Oct, 2015**



**Figure 4: 20-minute statistical summary of noise levels measured at Location 1: Whittle Gate on Saturday, 24 Oct, 2015**

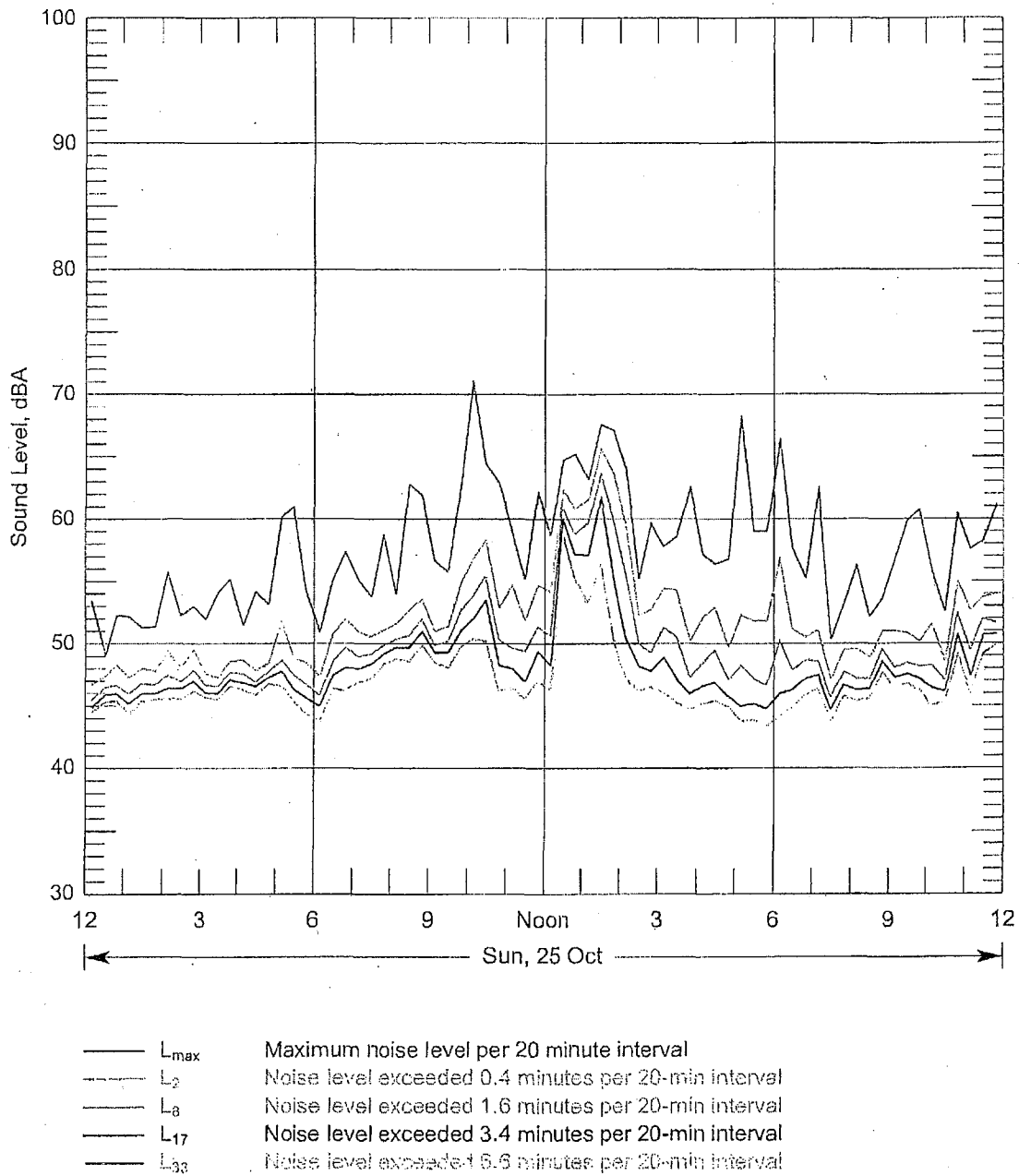


Figure 5: 20-minute statistical summary of noise levels measured at Location 1: Whittle Gate on Sunday, 25 Oct, 2015

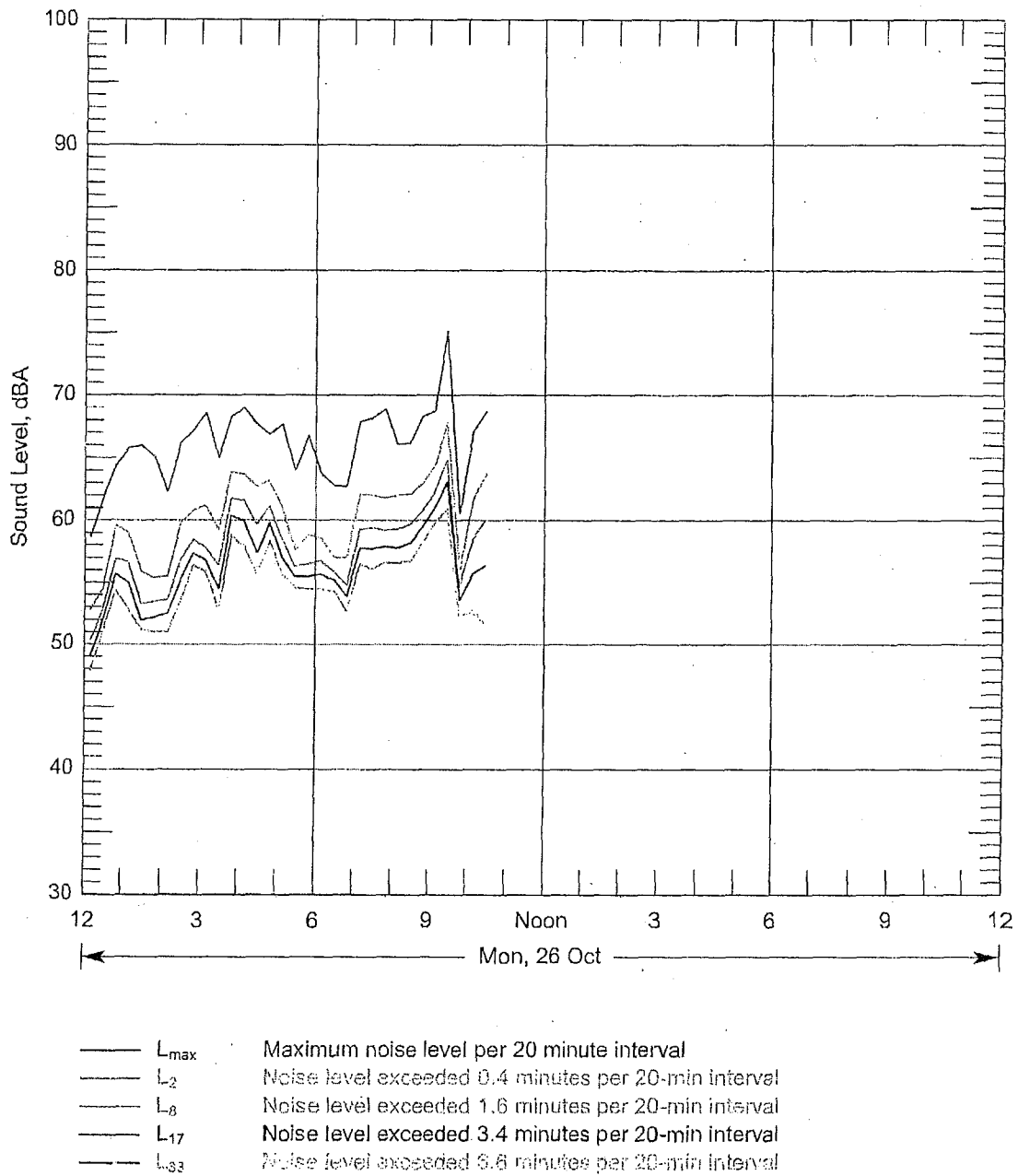
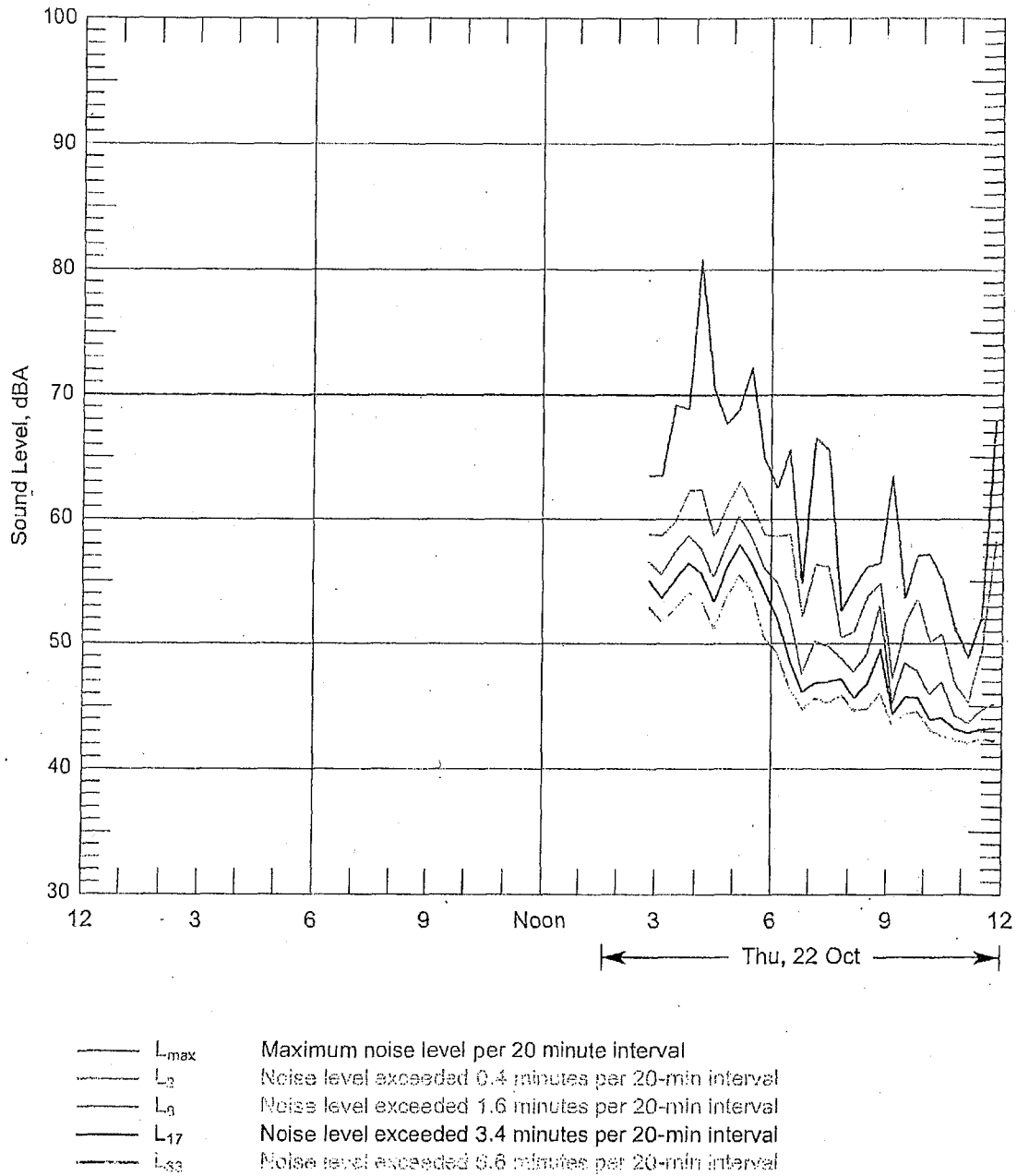


Figure 6: 20-minute statistical summary of noise levels measured at Location 1: Whittle Gate on Monday, 26 Oct, 2015

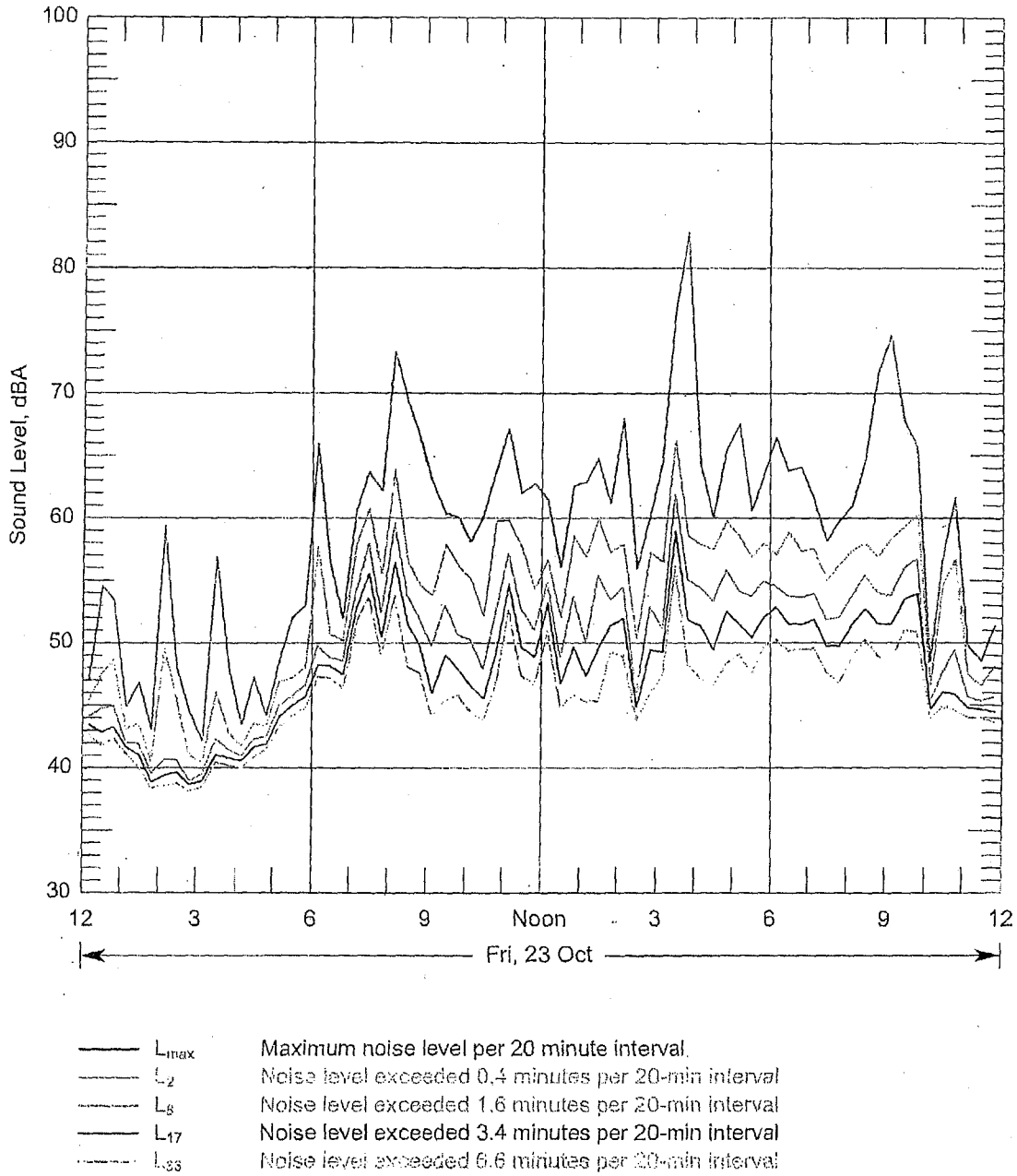


Figures 7 through 11 illustrate the noise levels measured at Location 2. Following are comments on the results at Location 2:

- Thursday October 22: Noise levels exceeded 80 dBA for <0.4 minutes (<24 seconds) in the 4 PM hour. This is in compliance with the Noise Ordinance.
- Friday October 23: Noise levels exceeded 80 dBA for <0.4 minutes (<24 seconds) in the 3 PM hour. This is in compliance with the Noise Ordinance.
- Saturday October 24: Noise levels in compliance with the Noise Ordinance
- Sunday October 25: Noise levels in compliance with the Noise Ordinance
- Monday October 26: Noise levels in compliance with the Noise Ordinance



**Figure 7: 20-minute statistical summary of noise levels measured at Location 2: Upper Gate on Thursday, 22 Oct, 2015**



**Figure 8: 20-minute statistical summary of noise levels measured at Location 2: Upper Gate on Friday, 23 Oct, 2015**

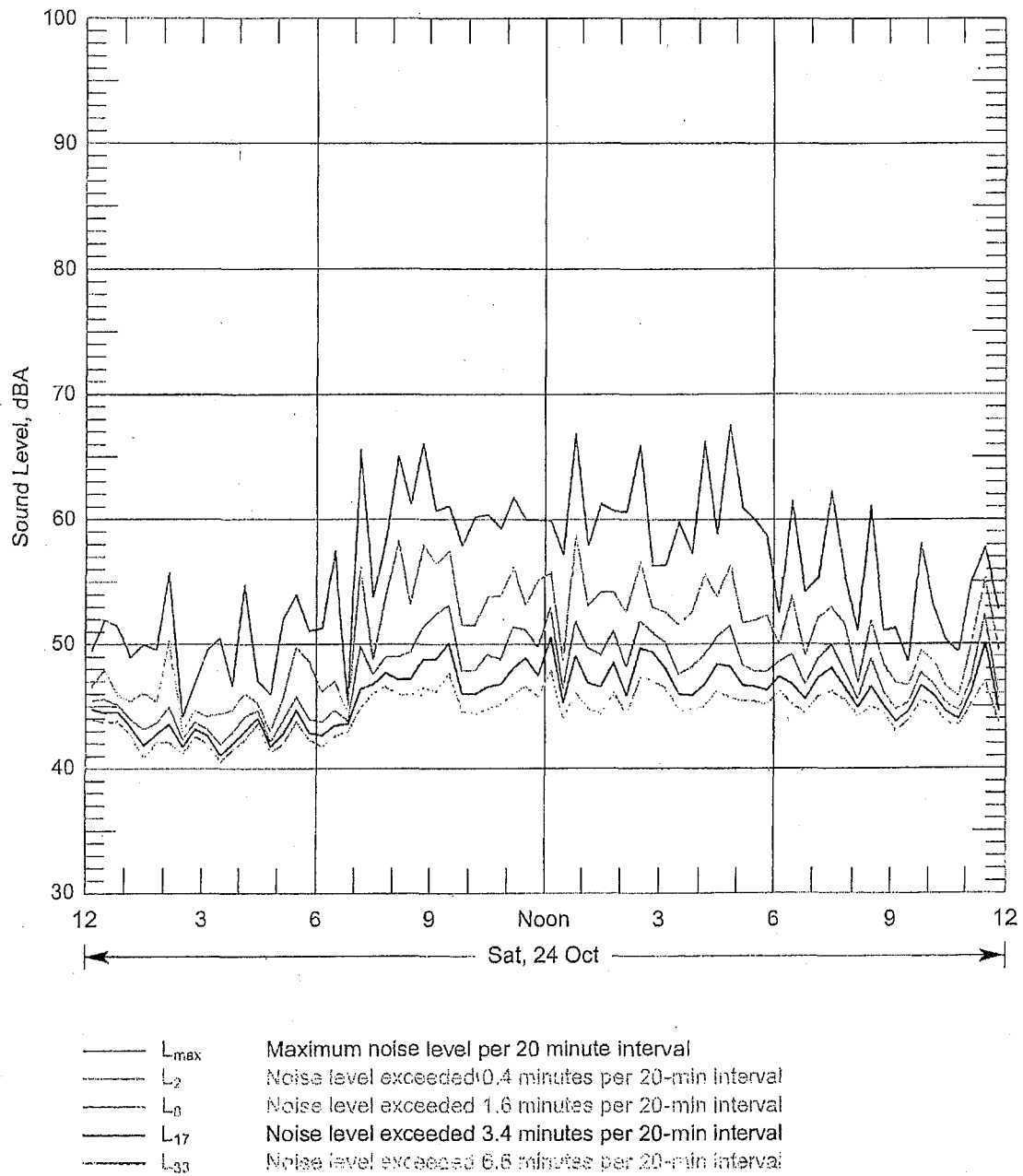
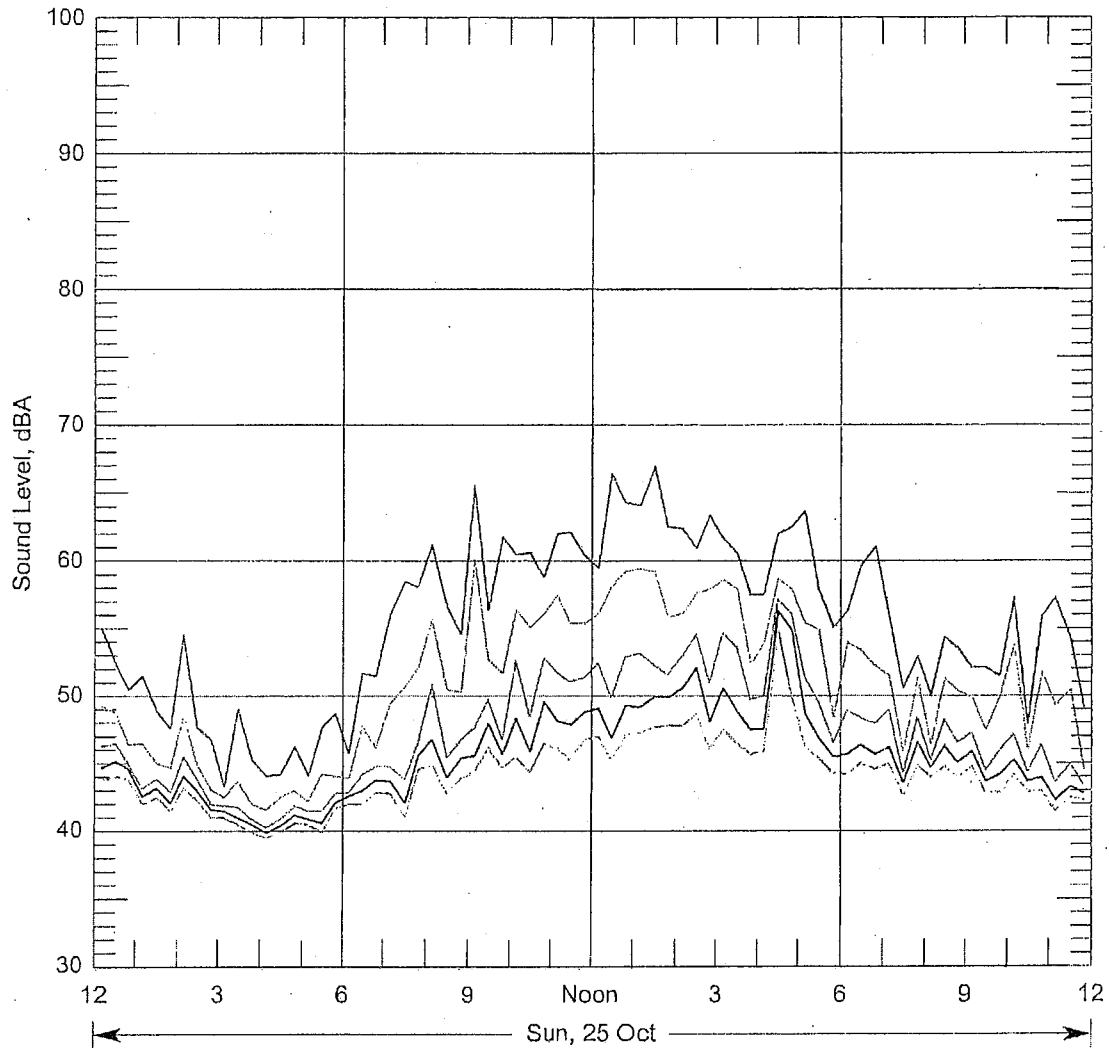


Figure 9: 20-minute statistical summary of noise levels measured at Location 2: Upper Gate on Saturday, 24 Oct, 2015



- $L_{max}$  Maximum noise level per 20 minute interval
- $L_2$  Noise level exceeded 0.4 minutes per 20-min interval
- $L_8$  Noise level exceeded 1.6 minutes per 20-min interval
- $L_{17}$  Noise level exceeded 3.4 minutes per 20-min interval
- $L_{33}$  Noise level exceeded 6.6 minutes per 20-min interval

Figure 10: 20-minute statistical summary of noise levels measured at Location 2: Upper Gate on Sunday, 25 Oct, 2015

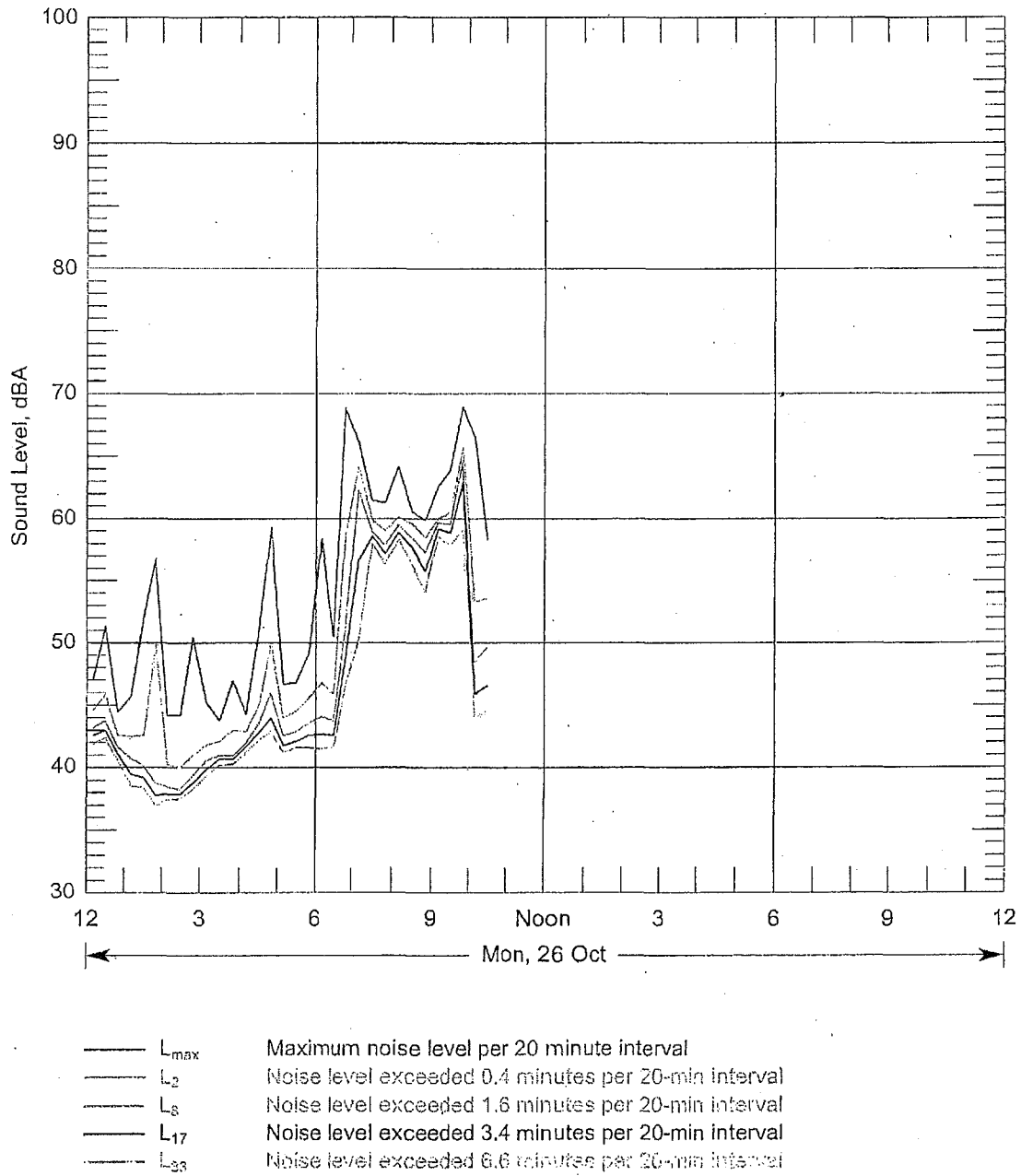


Figure 11: 20-minute statistical summary of noise levels measured at Location 2: Upper Gate on Monday, 26 Oct, 2015

**Klein, Heather**

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**From:** Kate Nicol <knicol@vincentacademy.org>  
**Sent:** Monday, November 02, 2015 11:35 AM  
**To:** Kate Nicol  
**Subject:** Vincent Academy Support for Head Royce Permit Application  
**Attachments:** Letter\_VA\_Support\_Head\_Royce\_Planning\_Commission.pdf

Dear Commissioners:

Vincent Academy writes to support Head-Royce School – please see the attached letter of support. We urge the Planning Commission to approve the School’s application to amend its use permit. Head-Royce has a strong track record of service to the Oakland community, and we’re proud to partner with them.

Thank you,

Kate Nicol

Kate Nicol  
Executive Director  
Vincent Academy  
c: 510.772.9601



October 30, 2015

Members of the Planning Commission  
City of Oakland  
250 Frank Ogawa Plaza, Suite 3315  
Oakland, CA 94612

Dear Members of the Planning Commission:

On behalf of Vincent Academy, which is located at 2501 Chestnut Street in Oakland, I am writing to support Head-Royce School's request to amend its existing use permit. For years, we've been glad to partner with Head-Royce in our shared mission of giving back to the community.

The Head-Royce community has consistently supported the development of a quality educational program for the students and families of West Oakland. Each year, the 8<sup>th</sup> grade class has enthusiastically participated in a "Big Buddies" program with our youngest students in Transitional Kindergarten through First Grade. The older Head Royce students "buddy up" with the younger students from Vincent Academy and share powerful literacy experiences together such as partner reading and literacy games on four special days spaced throughout the year. The Vincent Academy students love meeting their new buddy for the first time and then develop a strong bond over the course of the year. As a culminating event, Vincent Academy students go on a special field trip at the conclusion of the school year to picnic and play with their big buddies.

All in all, the Buddy Program continues to be a wonderful success that enriches the learning and lives of both Vincent Academy and Head-Royce students. The leadership at Head-Royce has prioritized the buddy program and promoted positive connections between our two school communities.

We respectfully urge you to approve Head-Royce's requested amendments to its use permit.

Sincerely,

Kate Nicol  
Executive Director



**Klein, Heather**

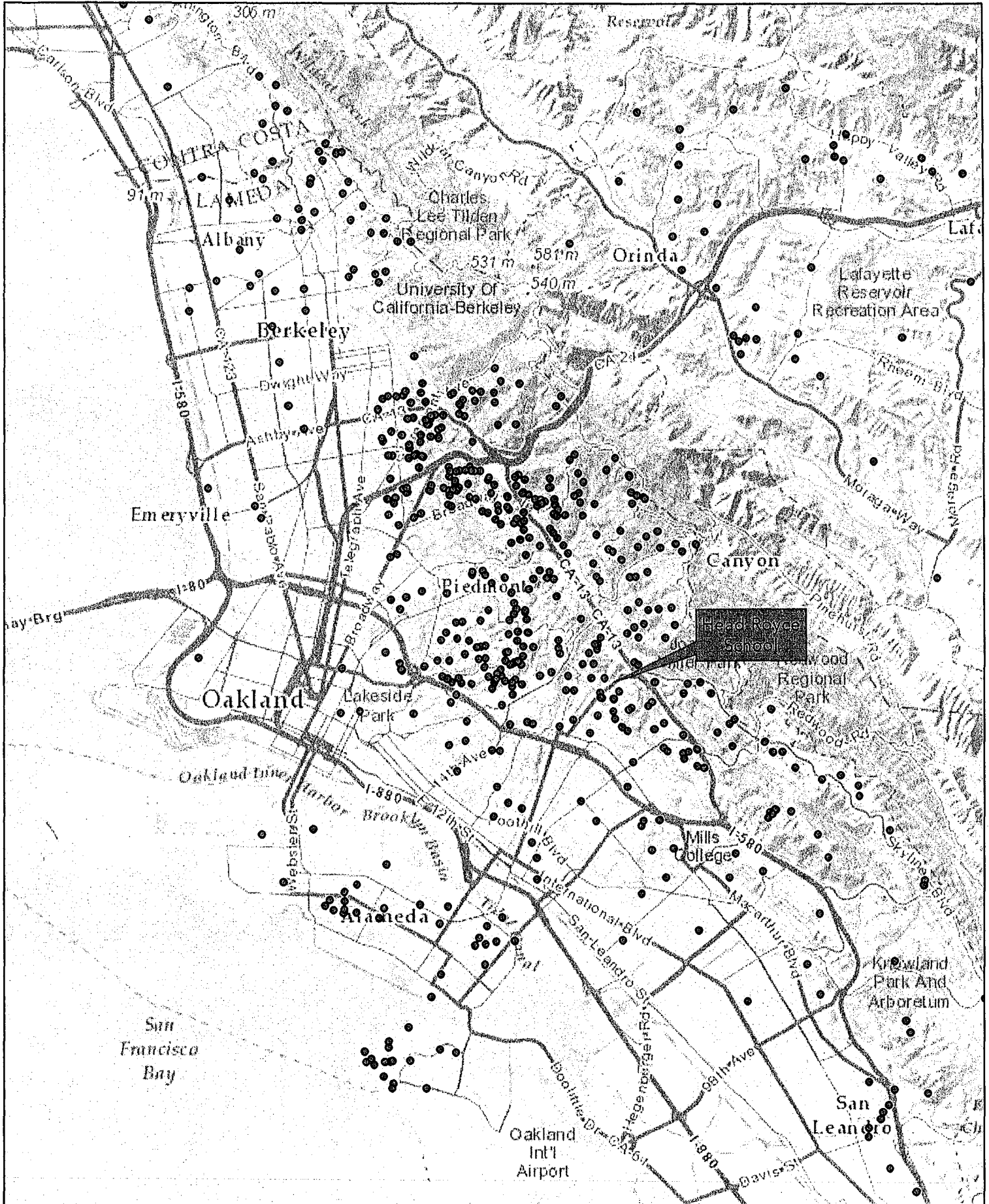
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**From:** Leila H. Moncharsh <101550@msn.com>  
**Sent:** Friday, October 30, 2015 11:00 AM  
**To:** Office of the Mayor; City Administrator's Office; Cappio, Claudia; Kalb, Dan; Bolotina, Olga; arguillen; McElhaney, Lynette; Gallo, Noel; Campbell Washington, Annie; Brooks, Desley; Kaplan, Rebecca; Reid, Larry; Moore, Jim; magraplanning; nags98; jahazielbonillaoaklandpc; amandamonchamp; jmyres.oakplanningcommission; Pattillo, Chris; ew.oakland; Klein, Heather; Ranelletti, Darin; Flynn, Rachel; asimmons; Merkamp, Robert; Miller, Scott; nagrajplanning@gmail.com  
**Subject:** RE: Head-Royce claim - "Community Asset"  
**Attachments:** HRS\_05-14-13\_BerkeleyOakland\_zoom.pdf; HRS\_MedianIncome\_05-14-13.pdf; HRS\_PopAfrAm\_05-14-13.pdf; HRS\_PopAsian\_05-14-13.pdf; HRS\_PopHispanic\_05-14-13.pdf; HRS\_PopWhite\_05-14-13.pdf; HRS\_StudentAddresses\_05-06-13 (1).pdf

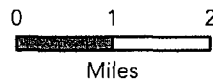
Here are the maps referenced in the summary sheet just emailed to you from the NSC.

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# Albany to San Leandro

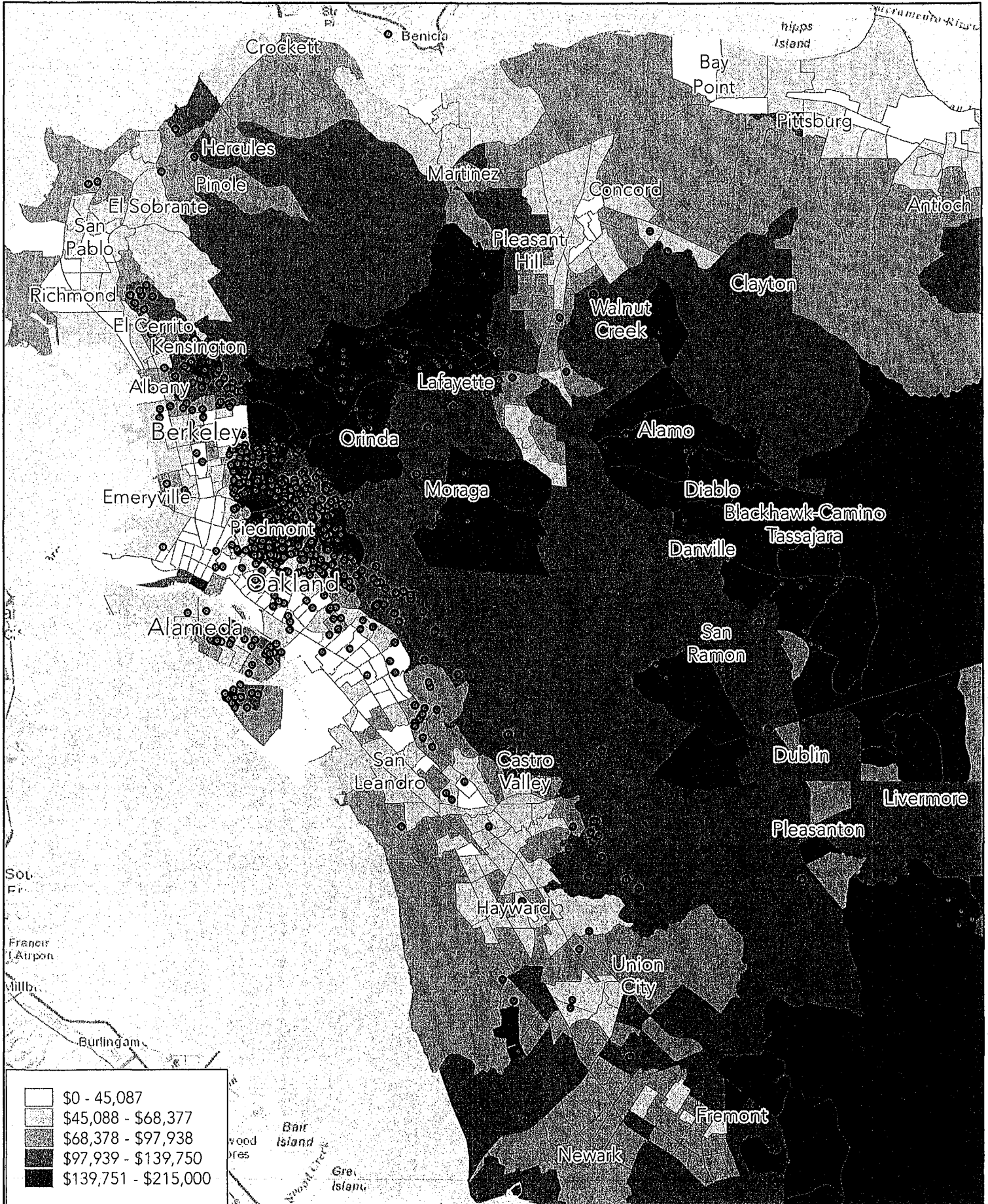


● Student Home Locations  
 \*\* 879 total student home locations;  
 this map shows only locations in select cities.

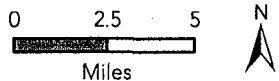


Source: ESRI ArcGIS Online map service;  
 Veneruso & Moncharsh  
 May 2013

# Alameda and Contra Costa Counties

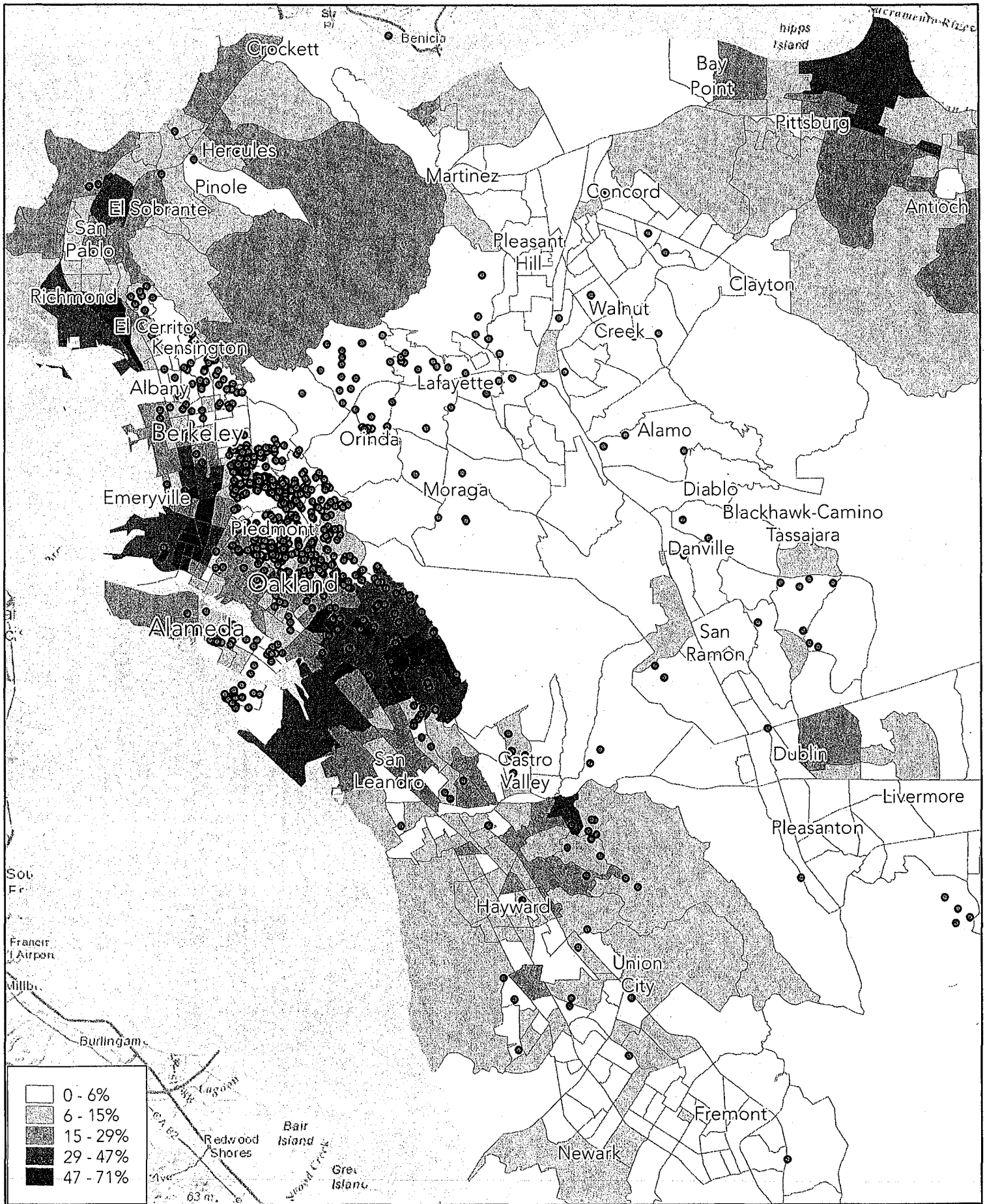


● Student Home Locations  
 \*\* 879 total student home locations  
 Not included: 3 locations in other counties  
 Median income classified by Jenks Natural Breaks

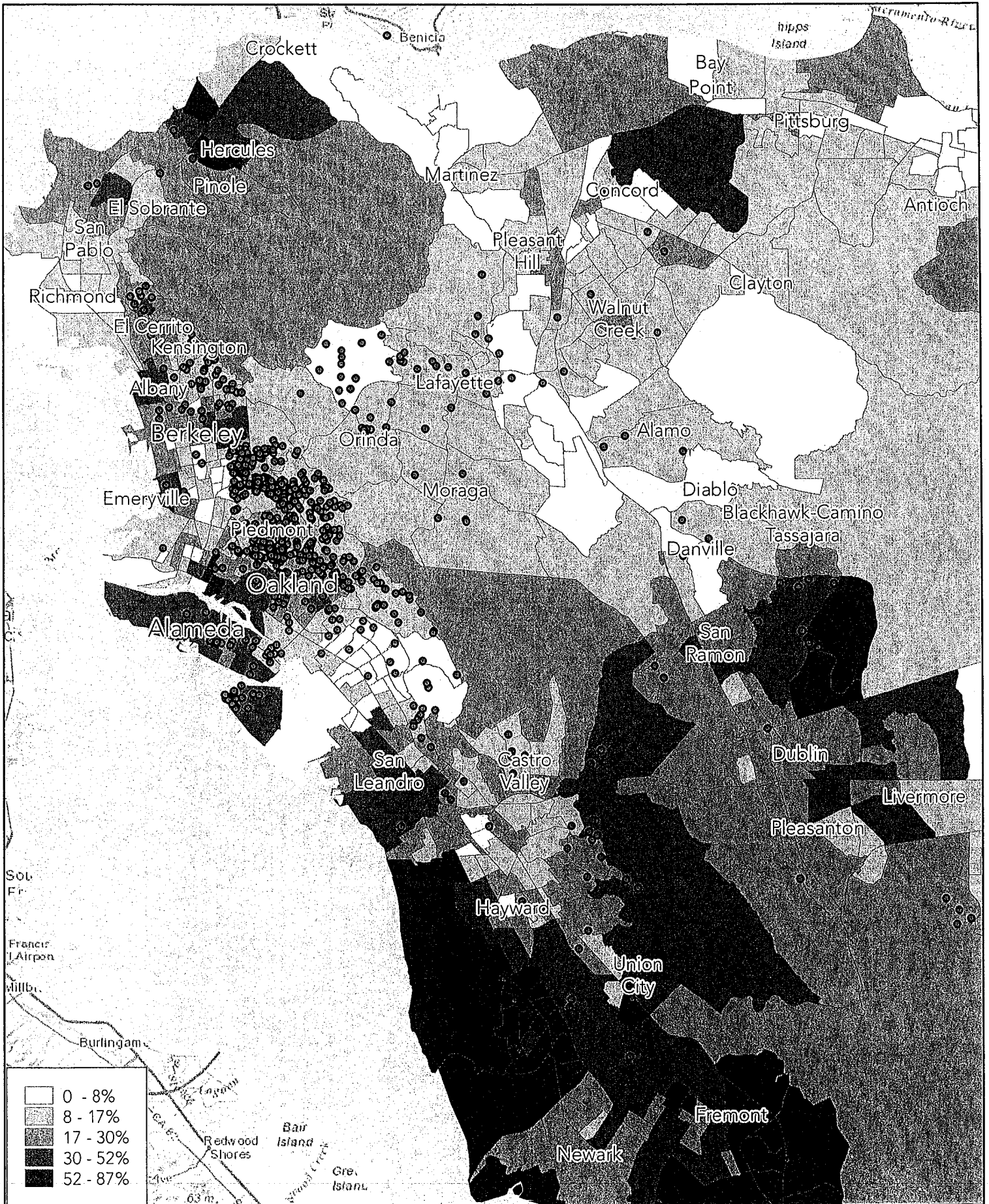


Source: U.S. Census Bureau, American Community Survey 2007-2011 5-Year Estimates; ESRI ArcGIS Online map service; Veneruso & Moncharsh; Color Brewer. May 2013

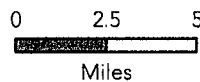
# Alameda and Contra Costa Counties



# Alameda and Contra Costa Counties

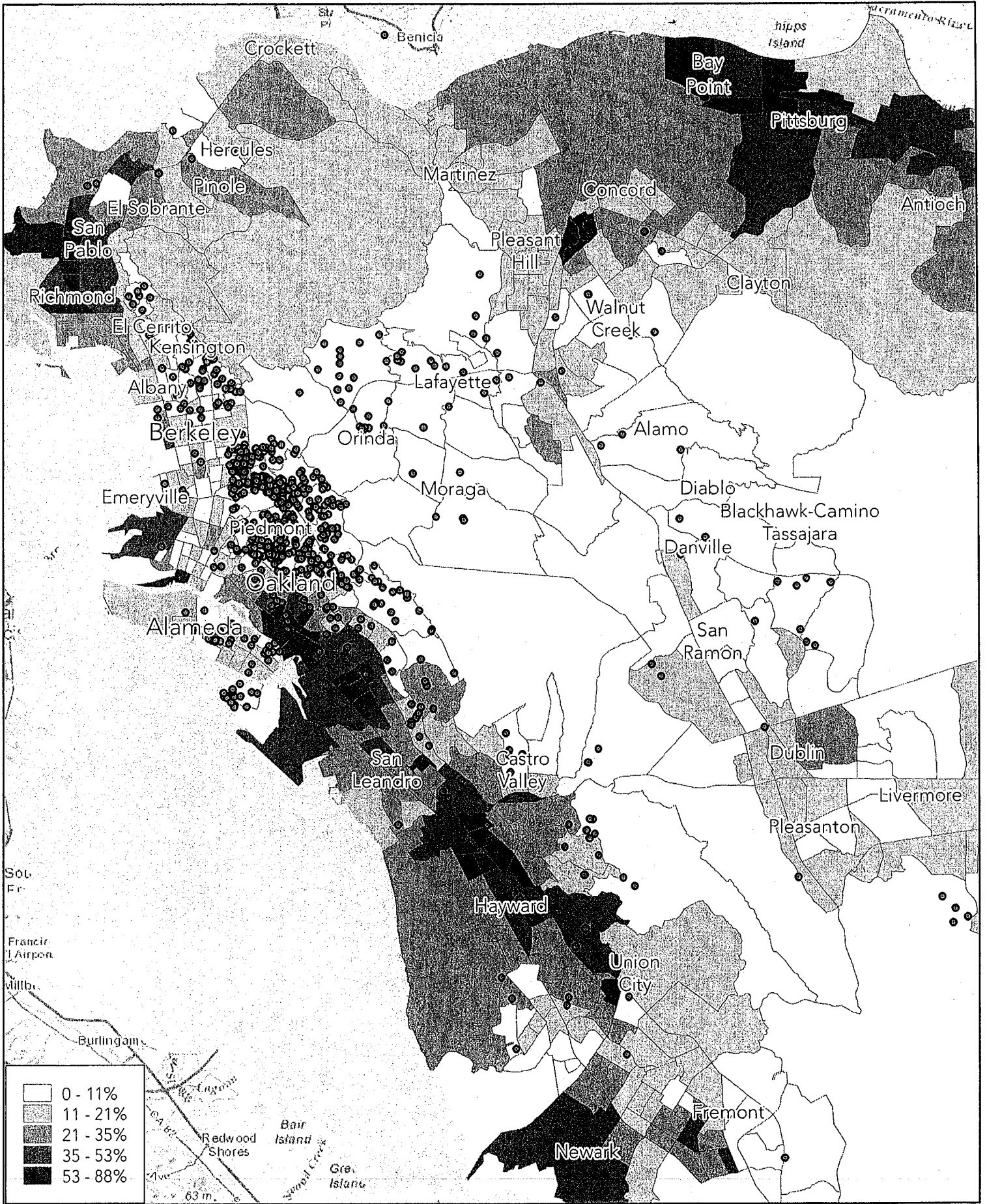


● Student Home Locations  
 \*\* 879 total student home locations  
 Not included: 3 locations in other counties  
 Classified by Jenks Natural Breaks

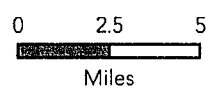


Source: U.S. Census Bureau, American Community Survey 2007-2011 5-Year Estimates; ESRI ArcGIS Online map service; Veneruso & Moncharsh; Color Brewer. May 2013

# Alameda and Contra Costa Counties

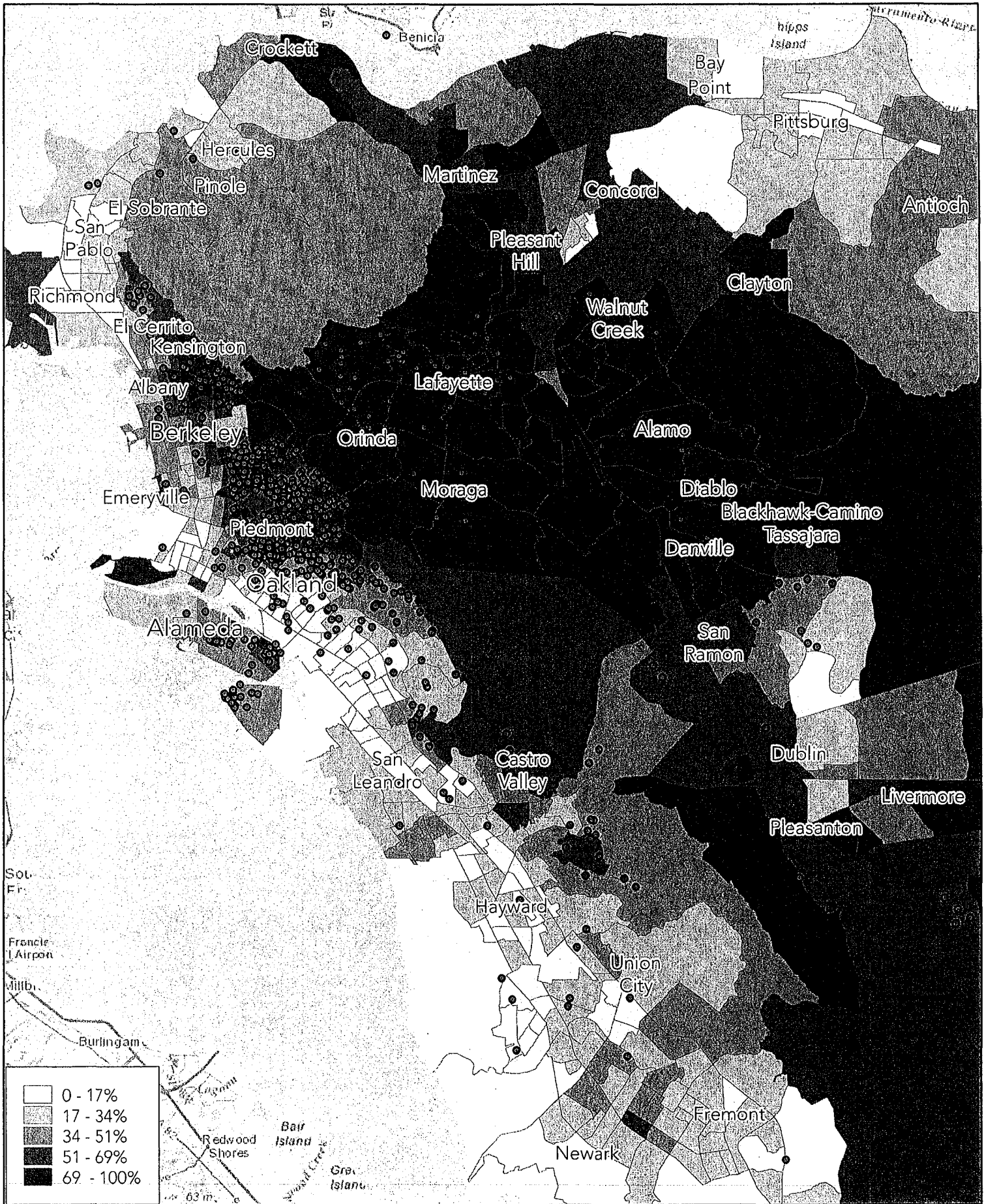


● Student Home Locations  
 \*\* 879 total student home locations  
 Not included: 3 locations in other counties  
 Classified by Jenks Natural Breaks

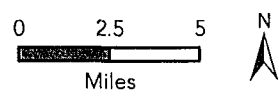


Source: U.S. Census Bureau, American Community Survey 2007-2011 5-Year Estimates; ESRI ArcGIS Online map service; Veneruso & Moncharsh; Color Brewer. May 2013

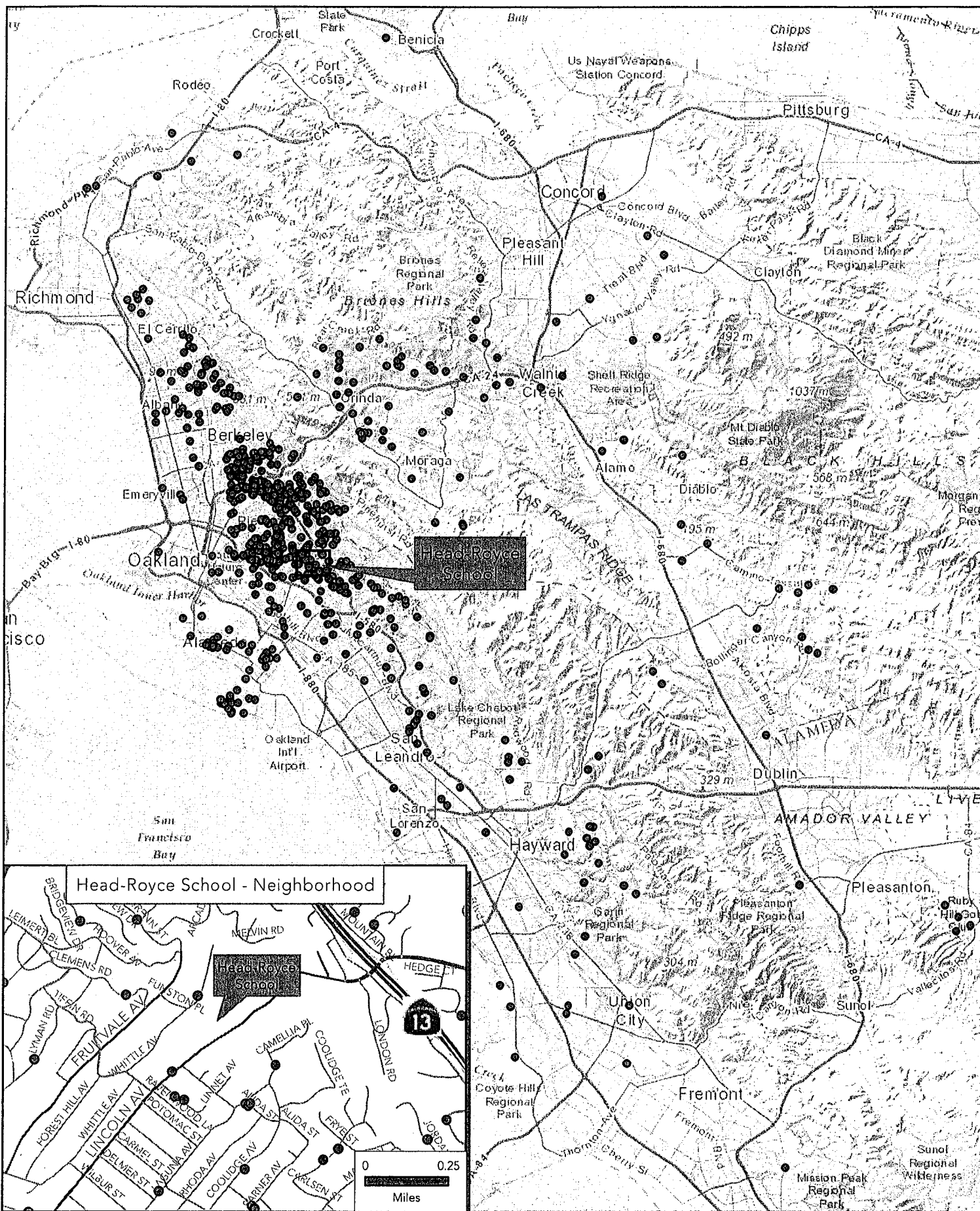
# Alameda and Contra Costa Counties



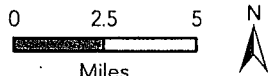
● Student Home Locations  
 \*\* 879 total student home locations  
 Not included: 3 locations in other counties  
 Classified by Jenks Natural Breaks



Source: U.S. Census Bureau, American Community Survey 2007-2011 5-Year Estimates; ESRI ArcGIS Online map service; Veneruso & Moncharsh; Color Brewer. May 2013



● Student Home Locations (879 Total)  
 \*\* Not shown on map: 1 location in San Francisco; 1 in Palo Alto



Source: ESRI ArcGIS Online map service;  
 Veneruso & Moncharsh  
 May 2013



**Klein, Heather**

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**From:** Leslie Werosh <lwerosh@cpcoak.org>  
**Sent:** Tuesday, October 27, 2015 2:23 PM  
**Subject:** Letter of Support for Head Royce School  
**Attachments:** HRS Support Letter 10.15.pdf

Dear Commissioners:

In advance of your November 4<sup>th</sup> Planning Commission meeting, Ability Now Bay Area – formerly the Cerebral Palsy Center for the Bay Area – wishes to express its support for Head-Royce School’s application for an amendment to its existing use permit. Please note the attached letter of support.

Head-Royce works extremely hard to be a good neighbor to those of us who share the surrounding community and we are pleased to have them in our neighborhood.

Thank you,

**Leslie C. Werosh, MPA**  
**Executive Director**  
**Ability Now Bay Area**  
4500 Lincoln Avenue  
Oakland, CA 94602  
510.531.3323 ext 36  
510.531.2990 fax  
[www.abilitynowbayarea.org](http://www.abilitynowbayarea.org)

*Founded in 1939 as the Cerebral Palsy Center for the Bay Area*

**Attachment A-12**

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.<sup>1</sup> 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].)

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<sup>1</sup>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) were 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).)

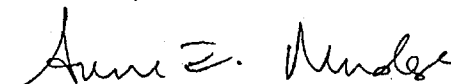
November 4, 2015

Page 5

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,

A handwritten signature in cursive script that reads "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

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#### 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.<sup>1</sup>

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%).<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> “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.*

<sup>3</sup> 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.

<sup>4</sup> 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).<sup>5</sup> 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.<sup>6</sup>

### 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.

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<sup>5</sup> "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.

<sup>6</sup> 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

