Attachment B

CITY OF OAKLAND
APPEAL FORM
FOR DECISION TO PLANNING COMMISSION, CITY COUNCIL OR HEARING OFFICER

RECEIVED
NOV 16 2015
City of Oakland
Planning & Zoning Division

PROJECT INFORMATION

Case No. of Appealed Project: REV13-0003-PUD04-400, PUDOS-339, ER04-0014

Project Address of Appealed Project: 4315 Lincoln Avenue, 4233, 4209 Lincoln & 4274 Wilkie

Assigned Case Planner/City Staff: Heather Klein

APPELLANT INFORMATION:

Printed Name: Welsh Hollywood Steering Committee Phone Number: (510)482-0390

Mailing Address: c/o Veneruso & Monchash 5707 Redwood Rd Alternate Contact Number: _____

City/Zip Code Suite 10, Oakland 94619 Representing: Laila Monchash representing HSC.

Email: 101550@msn.com

An appeal is hereby submitted on:

☐ **AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

- ☐ Approving an application on an Administrative Decision
- ☐ Denying an application for an Administrative Decision
- ☐ Administrative Determination or Interpretation by the Zoning Administrator
- ☐ Other (please specify) _____

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- ☐ Determination of General Plan Conformity (OPC Sec. 17.01.080)
- ☐ Design Review (OPC Sec. 17.136.080)
- ☐ Small Project Design Review (OPC Sec. 17.136.130)
- ☐ Minor Conditional Use Permit (OPC Sec. 17.134.060)
- ☐ Minor Variance (OPC Sec. 17.148.060)
- ☐ Tentative Parcel Map (OMC Section 16.304.100)
- ☐ Certain Environmental Determinations (OPC Sec. 17.158.220)
- ☐ Creek Protection Permit (OMC Sec. 13.16.450)
- ☐ Creek Determination (OMC Sec. 13.16.460)
- ☐ City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- ☐ Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- ☐ Other (please specify) _____

(Continued on reverse)

☒ **A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** ☒ Granting an application to: **OR** ☐ Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☒ Major Conditional Use Permit (OPC Sec. 17.134.070)
- ☐ Major Variance (OPC Sec. 17.148.070)
- ☐ Design Review (OPC Sec. 17.136.090)
- ☐ Tentative Map (OMC Sec. 16.32.090)
- ☒ Planned Unit Development (OPC Sec. 17.140.070)
- ☐ Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- ☐ Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- ☐ Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- ☐ Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- ☒ Other (please specify) Modification of 2006 PUD. Approval of TDM, Adoption of exemptions and reliance on 2006 MND.

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

The Planning Commission abused its discretion and made findings not supported by substantial evidence. The details are in the attached letters of November 3 and 16, 2015. Two CDs attached, as well.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form;* however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

(Continued on reverse)

(Continued)

Lisa N. [illegible] on behalf of NSC — November 16, 2015

Signature of Appellant or Representative of Appealing Organization — *Date*

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: $_____

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

Attachment B-1

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DONNA M. VENERUSO (d.'09)
LEILA H. MONCHARSH

November 16, 2015

Oakland City Council
City Hall
1 Frank Ogawa Plaza
Oakland, CA 94612

RE: Case File No. REV13-0003 – Head-Royce School

Dear City Council:

My law firm represents the Neighborhood Steering Committee (NSC) which files this appeal of the November 4, 2015 decision by the Oakland Planning Commission, granting a modification of the 2006 use permit (CUP) for Head-Royce School (HRS) and adoption of a transportation design management plan (TDM). The decision was not supported by substantial evidence and the Planning Commission erred by allowing the City to adopt an exemption from environmental review under CEQA.

The NSC is an informal group of 20 neighbors who represent approximately 380 households located on the streets surrounding Head-Royce School (HRS) including its current campus, the seven-and-a-half-acres formerly owned by the Lincoln Child Center, and residential properties that HRS has purchased over the years and as recently as June 2015. Each NSC representative has an assigned street or part of a street surrounding HRS's 22 acres, which are located in a dense residential neighborhood. The 22 acres represent far more acreage than would be necessary for any typical K-12 school. HRS is secretive with the City and the neighbors about its plans for use of at least the seven-acre former Lincoln property. However, it has made clear throughout its history that its uses will continue to include non-school related activities and disruption of the surrounding neighborhood.

The neighborhood cannot handle one more car and opposes further expansion of HRS for that reason and because the non-school related activities disrupt the neighbors' quiet enjoyment of their own homes. The noise from the summer program, which includes use of bounce houses with loud generators running all day, organized screaming sessions, and loud speakers or shouting for routine communications have already exceeded the ability of the neighborhood to enjoy a single summer, except for two weeks per year. Moreover, the summer program parents never learn the school's driving rules before the summer session is over and contribute far more traffic problems to the neighborhood than even the regular school year parents. The large events that have no relationship with a typical school overwhelm the neighbors with traffic and noise, often late into the night. The gates and a path next to one gate are open 24/7 with no supervision which allows the public to use the school field and parking lot as a dog park with dogs running onto adjacent properties, go-cart race track, party location for kids who are on the parking lot after school hours, all of which disrupts the neighbors and are inconsistent with typical schools.

At some unknown time, HRS unilaterally instituted a "loop" directing parents and private busses to use narrow residential streets as a way to return to highway 13 after leaving HRS during drop-off and pick-up. As the enrollment of the school has increased, the number of cars and busses streaming through the "loop," some of which is half a mile away from the school's entrance has caused neighbors to lose the quiet enjoyment of their own properties. The vehicles either speed through the loop if they can or they become bottle-necked and then block residents' use of the streets. As a result, these streets have become unsafe due to speeding cars and busses during HRS's drop-off and pick-up times, or the residents are unable to make reasonable use of the streets to get out of their driveways and go to work, run errands, or to drop off or pick up their own children from school. The disruption of these narrow streets occurs for about an hour, twice a day. Typical schools, including other schools in the general area of HRS do not create these unsafe traffic patterns and in fact, are not the subject of neighbor complaints.

On the north side of HRS, residents on narrow streets are confronted with drop-off and pick-up traffic because HRS cannot efficiently handle their traffic on Lincoln Avenue and refuse or fail to use any of their own 22 acres for these purposes. On Whittle Avenue, besides losing their enjoyment of summers, the residents are victims of HRS's constant deliveries by large trucks which rumble through the neighborhood late at night and into early morning hours, despite that the ordinances in Oakland prohibit these practices. The NSC is not aware of any other school in Oakland that handles its deliveries in this manner, which is highly disruptive to the residents.

In response to these problems, the Planning Commission granted a weak, mostly unenforceable use permit and TDM that will guarantee the continuation of the problems about which the neighbors have complained since at least 2008. In 2009 and again in 2012, neighbors filed formal complaints with the City regarding HRS's non-compliance with its 2006 use permit. The last complaint in 2012 was supported by 750 pages of photos, declarations from neighbors, documents from the city files, and other materials. In 2009 and 2012, the City found that there was sufficient evidence to support findings that HRS was indeed non-compliant with its use permit. In 2009, the City threatened to utilize an administrative hearing toward revocation of the use permit. In 2012, the City began revocation proceedings which culminated in the instant application for modification of the 2006 use permit.

In a city with a shortage of good, reasonably priced, market-rate housing, it should not have been necessary for residents to wait for eight years for a use permit modification in light of HRS's noncompliance. And it was an abuse of discretion for the Planning Commission to grant such a weak, unenforceable permit. Furthermore, the Planning Commission abused its discretion by "rewarding" HRS with 280 more participants during the summer program, 180 large events during the year with 55 Saturdays included, and "legalization" of the loop, despite that it is a substantial nuisance for many residents who never chose to move next to a school. Below, are the reasons why the Planning Commission abused its discretion:

I. THE GRANT OF THE MODIFIED USE PERMIT WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

A. The Uses by HRS are inconsistent with the General Plan and Ordinances

The findings state that the project is compliant with the zoning regulations, which is incorrect. The project description includes addressing revocation complaint issues, and clarifying use permit conditions regarding enforcement, which this permit modification does not accomplish. For example, Mr. Ravinder, a neighbor on Whittle stated at the Planning Commission hearing (hearing) that large delivery trucks for HRS rumble through the neighborhood every night and in the early morning hours. The truck loading and unloading before 6:00 a.m. violates Oakland Municipal Code, § 8.18.020 (B). Another example came from numerous neighbors who wrote and spoke at the hearing regarding the noise from the summer program, including Ms. Terry Tobey. She provided photographs of the large bounce houses with generators that ran all day. Another neighbor, Ms. Rezzonico spoke about the noise from unsupervised students partying in the parking lot below her house. She took a photo of a decibel reader when the bounce houses were in use. It registered over 95 decibels and the noise continued for the entire day, not just ten minutes. The excessive noise violates at least Oakland Mun. Code § 8.18.010 (A) (B), subsection (1). However, there is no monitoring or enforcement mechanism other than HRS self-reporting in order to discontinue the code violations.

Therefore, the finding that the project or for that matter, HRS is compliant with zoning regulations is not supported by substantial evidence.

Furthermore, the General Plan Housing Element for the area where the school is located does not include any policies encouraging nuisances. Besides the problems listed above, Ms. Lonergan explained that she finds liquor bottles, pot and cigarette butts, and used condoms on the school hillside below her house. Mr. Thilgen also complained about the same problems, which appear to be due to inadequate supervision during school hours. All of these problems constitute nuisance activities in violation of Civil Code § 3480 et seq. and none of them are consistent with a typical school or with competent management of any school.

In response to the problems, the Planning Commission increased summer program enrollment from 500 participants per session to 780, enacted no enforceable and independently monitored permit conditions, and "rewarded" HRS with an additional 30 students over and above the 30 students it already over-enrolled in violation of its use permit.

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B. The Location and Increased Size of the School Cannot be Well Integrated with Its Surroundings and the Modifications to the 2006 Permit Will Not Reduce the Negative Impacts

The finding states that the modifications to the use permit would not change its location, design, or size. However, the loop that causes a nuisance for neighbors up to half-a-mile from the school main gate has been "legalized" through use permit Condition (hereafter "Condition") 23 which requires a TDM. "Among other things, the TDM implements Conditions 23 a-g as set forth below. The Conditions are the governing and enforceable conditions of approval." While the language is a bit murky, it appears that the TDM is mandatory. The Notice of Exemption so states.

There is a dispute in the record as to when the loop began, but the earlier city file related to the 2006 permit does not show that it was ever included in that permit. However, now it will become part of the legally required TDM. As such, its increased size from the creeping enrollment increases will cause the loop to remain impactful on the neighborhood. Mr. Cowley demonstrated at the hearing with a power point presentation, including photographs, that presently the busses do not fit on the narrow residential streets that constitute the loop, and the amount of traffic from the school running through Potomac and Rampart streets is excessive. His car count was not disputed by HRS's traffic engineer, nor were the safety problems. Ms. Young wrote and spoke about those traffic safety problems including too much traffic at too high a rate of speed rushing through the loop to get back to Lincoln Avenue, despite children walking to their neighborhood school and neighbors trying to access Lincoln Avenue at the same time as the school parents are using the loop.

Accordingly the continuation and "legalization" of the loop will not reduce, but rather perpetuate negative impacts on the greater neighborhood.

C. The Loop, Failure to Restrict Ingress and Egress into the School, Backup onto Highway 13 and Use of Narrow Residential Streets for School Traffic Does Not Meet this Required Finding

The City contends that the loop has always existed and was adequately "vetted" as part of the 2006 permit process. It puts great emphasis on the Mitigated Negative Declaration's (MND) "consideration" of the impacts related to use of the loop, pages 10-11 of the MND. However, these two pages are part of a general description of how traffic moved to and from the school in 2005. Page 10 shows a picture of a loop, but then on page 11, there is a table that shows the MND was simply counting cars that went straight down Lincoln Avenue to Highway 580 or straight up to Highway 13. There is no count of cars that went through the loop, no count of school traffic that impacted any of the intersections involved with it, and no evaluation of the

impacts on the narrow residential streets used for the loop. The obvious reason is that the loop was not part of the project which primarily involved construction activities. The only part of the description that had to do with traffic and listed in the MND project description was:

> Upon completion of the Master Plan improvements, the school would accommodate 880 students, an increase of 180 students, and a staff of 151, an increase of 18 faculty, staff, and administrative employees, for a total school population of 1,031. Table 2 summarizes the proposed project.

The staff report for the 2006 permit indicates that the MND was focused on the intersections around the school, which are the ones identified in the MND. None of those intersections included the loop intersections. Here is the staff report language:

> The MND and the Traffic Study analyzed the surrounding traffic patterns, circulation, and level of service at the intersections. *The proposed project will generate some additional traffic and could result in an extended parking queue along Lincoln that would block traffic at the upper driveway and traffic along Lincoln Avenue.* However, the MND determined that with implementation of the required mitigation measure the traffic impact will be less than significant. (Emphasis added.)

Therefore, the MND was evaluating the increase of the 180 students, and was not considering the impacts of the loop on the greater neighborhood as part of the 2006 permit process because it was not part of the project description. Nor did it consider use of narrow residential streets for the school's traffic purposes, including drop-off and pick-up on Whittle, Tiffin, and other narrow streets.

Furthermore, the finding cannot be made because the TDM, as part of the current conditions, requires use of the loop for cars and busses returning to Highway 13, and therefore the modified permit does not "avoid traversing other local streets."

The City states it has determined the school is in compliance with zoning requirements for adequate off-street parking. Oh? There is no evidence anywhere that the City audited the number of persons currently driving to the school. The 2006 staff report states that 157 parking spaces would be adequate for meeting the Zoning Regulations at full enrollment. It was apparently based on an assumption that at full enrollment, the school would have 151 employees. However, the 2014 public tax return for HRS shows that it has 513 employees and 420 volunteers. (Exhibit A, attached.) There is no discussion of how 157 onsite parking spaces can be sufficient to meet the parking needs for all of these people.

Moreover, the City received emails from neighbors explaining the problems with traffic backing up into the travel lane of Highway 13, and drop-off and pick-up on narrow residential streets. Accordingly, the finding cannot be made that the project will "avoid traversing other local streets," especially during the summer program when the parents are not in the neighborhood long enough to learn the driving rules. As to the summer program the permit allows over a 50% increase in the current enrollment.

D. The TDM Will Not Adequately Serve the Surrounding Neighborhood

The City represents that the TDM "will further alleviate the [traffic] impacts in the neighborhood. As previously stated in NSC's letter to the Planning Commission, the TDM is written in a style that includes nothing but suggestions and "wiggle words" such as that the school shall "encourage," or "use good faith." It is unenforceable and as such, it could not and will not reduce impacts. Furthermore, it includes the loop, which as shown at the hearing and in emails from the neighbors aggravates traffic conditions for neighbors, including those living half-a-mile from the school entrance.

E. There Is No Evidence that There Has Been an Increase in Demand for Private School Education

The City's claim that there has been an increase in demand for private school education is not supported by any evidence.

F. Not applicable.

II. THE CITY'S RECOMMENDATION (PAGE 21) WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The NSC incorporates its discussion in Section I, above in response to this section of the listed findings. The NSC disagrees that that HRS "has achieved compliance with all its Conditions of Approval except the enrollment per the City's May 5, 2015 letter." Attached are CDs of the Complaint in 2012 and a supplement to it in 2013. Many of the same violations that were ongoing in 2012 and 2013 continue today. The evidence submitted by neighbors before and during the hearing demonstrated that the school continues to violate provisions of the use permit including times of deliveries, and proper drop-off and pick-up procedures that should not be occurring on residential streets outside of the school's assigned area on Lincoln Avenue, and inadequate monitoring. The statements of neighbors also demonstrated that HRS continues to engage in nuisance activities, including generators running all day, excessive noise that is inconsistent with a school on the parking lot and field, and inappropriate behavior by students on the school's hillside adjacent to the neighbors' homes during school hours.

The NSC also disagrees that HRS has accepted "significantly more restrictive Conditions than originally required by staff or the Commission." The conditions in the current permit are written in loose, unenforceable language, and contain "wiggle words" designed to prevent the City from ever correcting the problems about which the neighbors have in the past, and continue to complain about.

III. UNDER CEQA, THE CITY MUST REQUIRE AN EIR

The NSC incorporates its letter, dated November 3, 2015 to the Planning Commission and adds these further arguments, responsive to the City's staff report and Notice of Exemption (NOE).

A. The Project Does Not Meet the Criteria for the Guideline 15314 Exemption

The NOE acknowledges that the exemption does not apply if the project increases the "original student capacity by more than 25%." However the guideline actually states: "Class 14 consists 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." (Guideline 15314.) The purpose of the guideline is to address situations where a school closes and the students are transferred to another school. It is designed to make sure that minor transfers of students to "receptor schools" do not trigger CEQA review. Categorical exemptions are strictly construed, "in order to afford the fullest possible environmental protection." (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.)

Here, the City is permitting an addition of over 50% more students to HRS's summer program without any review as to the environmental impacts on the neighborhood. As shown above, the neighbors have already explained that the current enrollment creates excessive noise, inconsistent with typical summer schools or summer programs. The traffic problems are greatly increased when parents, who do not know the school's driving rules, spend only two or three weeks dropping off and picking up their children. The fact that HRS can show that it has the physical capacity to have more children in its summer program does not justify the 50% addition of students. Furthermore, it is unclear from the record how many students participated in the summer program in 2006 when the City determined the need for a MND, let alone how many are in the summer program currently. (*Save Our Schools v. Barstow Unified School District Board of Education* (2015) 240 Cal.App.4th 128.

Furthermore, the cumulative impact exception applies. The former Lincoln property is across the street. The application filed in 2013 by HRS was for changing the property's zoning designation from a residential care facility to the same designation as HRS's current campus. The two properties are located in the same place and the application demonstrated that it

intended to use the property for the same purpose as the current campus. In fact, Mr. Lake, the head of school met with neighbors on the Lincoln property in 2012 and informed them that he intended to seek an additional 300 students for that property. I attended that meeting and he was very specific that the school intended to "grow to about 1200 students." During the hearing, the current head of school stated that there was some confusion over the allowed enrollment because the school personnel thought that when they bought the Lincoln property, it meant they could use the use permit for that property and add students.

HRS's position at the hearing that the use of the Lincoln property is completely unrelated to the current campus and its use permit is nothing more than blatant gamesmanship. Attached as Exhibit B are documents demonstrating that HRS not only intended to seek a permit to begin use of the Lincoln property, but submitted an application to do so. On September 20, 2013, Annie Mudge, representing HRS submitted to the City an application to amend both the HRS and the Lincoln use permits so that it could begin using the Lincoln property. It sought to create internal pick-up and drop-off in the existing upper parking lot at Lincoln, restripe the Lincoln parking lot to create 140 spaces – 87 for HRS and 53 for Lincoln Child Center which was renting office space from HRS, and relaxation of the permit requirements for Lincoln's parking requirements. It also sought to begin use of a building on the property and a change of the use permit designation. The documents also reflect that HRS stated its intention to obtain a master plan permit for the use of both campuses.

HRS only withdrew its application to begin use of the Lincoln property when it decided that it could "piecemeal" around CEQA by dividing the two applications (the one for use of the Lincoln property and the other for legalization of the over-enrollment on the current campus.) However, the exception in Guideline § 15300.2, subdivision (b) states: "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." As shown above, and in the documents and statements at the hearing by the neighbors, the noise disruptions and traffic problems, including from the loop, already are overwhelming the neighborhood. Any additional noise and traffic from HRS's proposed expansion into the former Lincoln property can only exacerbate those environmental negative impacts. Accordingly, the City is required to forego blindly applying the exemption and study the possible impacts of HRS's clearly intended uses of the former Lincoln property in combination with those from the current campus. (*East Peninsula Education Council, Inc. v. Palos Verdes Peninsula Unified School District* (1989) 210 Cal.App.3d 155.)

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IV. THE PARTIAL EXEMPTION IN GUIDELINE 15182 DOES NOT APPLY

The planning commission abused its discretion by granting the permits without first obtaining an environmental impact report (EIR), in violation of CEQA. (PRC § 21000 et seq.) According to the NOE, the City is attempting to straddle three different approaches to CEQA: a categorical exemption under Guideline § 15314, a partial exemption that recognizes there are negative impacts related to the project under Guideline § 15183; and the 2006 MND. This potpourri of approaches to avoid studying environmental impacts of the project do not work. They seriously contradict one another, and the combining of them signals the court that the City is refusing to give any rational thought to the potential impacts of the project.

The City has failed to correctly interpret PRC § 21083.3 and Guidelines § 15183. The city contends that once it shows by, substantial evidence, that the project is consistent with the 1998 General Plan and Housing Element, it need do no more, including pointing out in findings or elsewhere the zoning code sections that mitigate the project's traffic and noise impacts. By use of this partial exemption, the City seemingly admits that there are environmental impacts peculiar to the project and the parcel it is located on, but that these impacts will be mitigated by unknown sections of the General Plan and Housing Element.

There is no evidence that the Planning Commission made any of the findings listed in the NOE, let alone identified "feasible mitigation measures" in the LUTE EIR that were adopted by the Planning Commission. Nor does the record identify "uniformly adopted development policies and/or standards" that mitigate the project's impacts. In fact, the entire paragraph is nothing more than jibber-jabber with no evidence in the record supporting any of it.

The reference to the MND is that the mitigation measure will "remain in place." However, the City has lightened up the mitigation measure without any environmental study. It claims that the project "is consistent with the MND," despite the fact that the neighbors have made a good faith argument that the project will add negative impacts to the neighborhood, including increased noise from 280 more summer program participants, a loop impacting traffic in the greater neighborhood and up to half a mile from the school entrance, and permitting 180 special events, including events on 55 Saturdays.

The Planning Commission abused its discretion by failing to consider any evidence that the impacts complained of by the neighbors were impacts peculiar to the project. Guideline § 15183, subsection (f) states:

> (f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will

> substantially mitigate that environmental effect when applied to future projects, **unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR.** (Emphasis added.)

Logically, if substantial evidence demonstrated that the proffered policies or standards would not mitigate the environmental effects of the project, an EIR would be required. This section involves evaluating the nature and extent of the potential impacts in the context of whether the proposed mitigations would be sufficient to reduce those impacts to a less than significant level. Here, the Guideline allows a finding based on substantial evidence that the policies and or standards are NOT sufficient to meet that requirement. Any other interpretation would fail to meet CEQA's goal of protecting the environment.

The Fourth District Court of Appeal in *Gentry v. City of Murrieta*1995) 36 Cal.App.4th 1359, 1406-1407, fn. 24 explained that normally, CEQA statutory exemptions do not consider environmental impacts at all and therefore the nature and extent of the impacts are irrelevant. An agency need only demonstrate, by substantial evidence, that the statutory exemption applies. However, with statutory exemptions, such as PRC § 21083.3, the nature and extent of environmental impacts are relevant:

> Therefore, we have at least suggested that where a statutory exemption *does* depend on whether the project will have significant environmental effects (as does section 21083.3), the fair argument standard should govern review of an agency determination that the statutory exemption applies. (*Western Mun. Water Dist. v. Superior Court, supra,* 187 Cal.App.3d at p.1113) . . .

(*Id.*)

The other case that addresses PRC § 21083.3 is *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273 (disapproved on other grounds in *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279). The Fifth District Court of Appeal noted that there was a dispute between the parties as to whether Guidelines § 15183 should be "evaluated under the fair argument standard or the substantial evidence standard." The court cited *Gentry* and assumed "without deciding" to apply the fair argument standard.

Given that the statutory exemption is only a "partial exemption," and that it addresses environmental impacts, the fair argument standard should dictate whether the exemption applies to the project.

Furthermore, staff continues to overlook the significance of PRC § 21083.3 (c). The statute specifically states: "Nothing in this section affects any requirement to analyze potentially significant offsite impacts and cumulative impacts of the project not discussed in the prior environmental impact report with respect to the general plan." Similarly, Guideline § 15183 (j) states "This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR . . ." There is no evidence that the City considered offsite or cumulative impacts. As shown above, the record is replete with examples of offsite impacts from noise and traffic congestion.

The very purpose of the partial exemption is to avoid **duplicating** the same prior EIR analysis of potential impacts. However, the City does not cite and the NSC cannot find any reference to the HRS expansion plans in the 1998 EIR, let alone cumulative impacts from its reasonably foreseeable use of the Lincoln property.

Moreover, admissible evidence by neighbors concerning increased noise and traffic impacts is generally dispositive; and under such circumstances, an EIR must be prepared. The very uncertainty created by conflicting assertions by experts versus the neighbors' observations necessitate an EIR. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 85.) A partial exemption, which specifically includes analyzing the nature and extent of impacts does not get around this general rule.

The City also ignored the requirement that it must identify the mitigations it intends to rely upon for the exemption and include them in a MMRP. Guideline § 15183 (c) directs the City as to what it should do if the evidence shows that a project impact has been addressed already in a prior EIR or can be substantially mitigated with imposition of development policies or standards. The subsection refers the City to subdivision (e) of the same Guideline, which states:

> (e) This section shall limit the analysis of only those significant environmental effects for which:
>
> (1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and
>
> (2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

PRC § 21083.3 (c) is even more direct:

> (c) Nothing in this section affects any requirement to analyze potentially significant offsite impacts and cumulative impacts of the project not discussed in the prior environmental impact report with respect to the general plan. However, **all public agencies with authority to mitigate the significant effects shall undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report relevant to a significant effect which the project will have on the environment or, if not, then the provisions of this section shall have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken.** (Emphasis added.)

The city's refusal to adopt an MMRP is not satisfactorily replaced with a NOE that just assumes all of the requirements of this code section were met by the Planning Commission. The obvious purpose of the public hearing required under subsection (c) of PRC § 21083.3 is so that the decision-makers and the public know exactly what impacts the city believes are due to the project, exactly what mitigations the city is recommending will mitigate those impacts, and which agencies are accepting responsibility for enforcing those mitigations. All of these assurances, required under CEQA, are not supposed to occur behind closed doors, sometime after the public hearings are over and with the only record in a NOE.

Further, neither under the legal rules for "tiering," nor under the partial exemption in PRC § 21083.3 does this project qualify for permitting without a complete environmental impact report (EIR). It is an abuse of discretion under CEQA for a city to grant permits for a project when it presents environmental negative impacts for which no specific and feasible mitigations have been identified. The city should obtain an EIR to **fully** analyze the potential project impacts, consider alternatives, and identify mitigations.

The City must recognize that the NSC has met the "fair argument" standard that requires a full EIR. The NSC and neighbors have met their burden of demonstrating that the partial exemption under PRC § 21083.3 and Guideline § 15183 does not apply to the project. It has also established, by the "fair argument" standard, that the project presents significant impacts to the environment that have not been reduced to a less-than-significant level by any mitigations in the 1998 General Plan EIR, the LUTE EIR, or elsewhere in the city's CEQA documentation. Therefore, the City Council should require that the city obtain an EIR as to at least traffic and noise. It should also include access to emergency vehicles given that the Planning Commission only ordered that the 20 HRS employees currently using Clemens Street for parking should park elsewhere, but did nothing to address the neighbors' statements that the street is too narrow and unable to accommodate both HRS's use of the street for a school parking lot and for emergency vehicles to access the street, or for evacuation purposes.

The "heart" of CEQA is the provision requiring preparation of an environmental impact report (EIR). (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.) The objective of the EIR is to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283.) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.) It is an abuse of discretion for a city to grant a permit for a proposed project when the environmental impacts have not been analyzed in an EIR.

The City must also require a Mitigations Monitoring Reporting Program (MMRP) as part of the EIR process. In addition to identifying environmental impacts and mitigations to such impacts, CEQA requires a plan to monitor the mitigations and transparency in its evaluation of the effect of the mitigations.

V. THE NSC RESERVES THE RIGHT TO SUPPLEMENT THIS LETTER AND DOCUMENTATION

As of this writing, the NSC has not had a chance to review sections of the City's file that are relevant to the issues raised during the Planning Commission hearing. Many documents were filed with the City after the comment period and are not available on the City's website and are not in the possession of the NSC. Other documents, such as historical documents about the "loop" were not available in time to be reviewed and considered in this appeal. Furthermore, the NSC did not receive the expert reports from HRS's experts until very close to the hearing date and reserves the right to submit its own expert reports in response to those supplied to the City by HRS. The NSC also reserves the right to submit any documents or other items that are not available today, but may become available during the time between now and the City Council hearing.

The NSC intends to rely for this appeal on the City's files for the HRS property from 2003 to the present, the file for the former Lincoln Child Center property to the extent that it deals with the application by HRS for modification of the permit for that property in 2013, all of the documents that were submitted to the City before and after the Planning Commission hearing and related to the current project application to legalize the over-enrollment, the 1998 General Plan EIR and the LUTE of the General Plan, the CDs submitted with this appeal containing documents submitted with the NSC complaints filed in August 2012 and in February 2013, and any other documents that the NSC finds are relevant to the issues raised here. Other than the attachments to this letter, the NSC will provide a copy of those documents well before the appeal hearing, but cannot provide them any sooner due to the need to review the City's files. The planner assigned

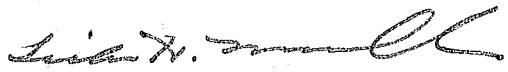
to the project is currently in Japan for a three-week vacation and unavailable to assist with locating various documents necessary for the appeal.

VI. THE NSC OBJECTS TO THE AMOUNT OF THE APPEAL FILING FEE

The master fee schedule was recently revised so that the appeal fee went from $1,600 to $4,088. There is no evidence that the City experienced an unusual need to pay high fees for staff time or any other explanation that I can find in the City's website for the over 300% increase in appeal fees. The current fee stands starkly in contrast with other jurisdictions' filing fees, including Berkeley which charges $500. The purpose of filing fees is to reasonably compensate the City for staff time, not discourage or prevent Oakland's citizens from accessing the City Council. The fees also violate the Equal Protection and due process clauses of the California and federal Constitutions. An economically disadvantaged individual or neighborhood will have far less access to the City Council's appeal process than an individual or neighborhood with more financial means. The fee is outrageous by any standard and sends a clear message to Oakland citizens that they are not welcome to address the City Council unless they are well-to-do developers or other persons of substantial means.

Thank you for considering my comments on behalf of the NSC.

Very truly yours,



Leila H. Moncharsh, J.D., M.U.P.
Veneruso & Moncharsh

LHM:lm

cc: Clients

Attachments

Attachment B-2

From: HKlein@oaklandnet.com
To: 101550@msn.com
CC: RMerkamp@oaklandnet.com
Subject: RE: Head-Royce hearing
Date: Thu, 5 Nov 2015 22:58:34 +0000

Yes, the last day is November 16th at 4:00 pm.

I'm going to be out of town on vacation so you need to submit at the permit counter. You cannot just leave this for me. Robert will be around to help you if need be.

Best,

Heather Klein, Planner III | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-3659 | Fax: (510) 238-6538 | Email: hklein@oaklandnet.com | Website: www.oaklandnet.com/planning

4,088.55

Attachment B-3

LAW OFFICES
VENERUSO & MONCHARSH
5707 REDWOOD RD., STE 10
OAKLAND, CALIFORNIA 94619
TELEPHONE (510) 482-0390
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DONNA M. VENERUSO, P.C. (d.'09)
LEILA H. MONCHARSH, P.C.

November 3, 2015

Oakland Planning Commission
City Hall
Oakland, CA

RE: Head-Royce Application – Agenda Item 3

I am a land use attorney in Oakland and have been requested by the Neighborhood Steering Committee (NSC) to submit this correspondence. This letter is in response to the recommended conditions of approval. (Attachment B to staff report) and recommended TDM. The NSC appreciates the amount of work that planning expended on this technical document and that the NSC's comments were taken seriously. We can see that some of our requests for changes, additions, or deletions were made to the proposed CUP.

Our recommendation to the planning commission remains the same. The application should be denied and Head-Royce ordered to downsize to the phase two level of students that it should have, if it had not violated its use permit. Head-Royce School (HRS) is requesting an approximately 52 student total increase in enrollment that includes the 26 students enrolled in violation of the 2006 use permit plus an additional 26 students over and above that number, all of which is not permitted under the current permit any sooner than 2021.

The history of stubborn and continual noncompliance does not justify "gifting" the school the additional 52 students until 2021. The neighborhood cannot handle even one more car and is already seriously impacted by HRS in ways inconsistent with schools located in residential neighborhoods. The draft CUP before you is complicated and requires a high level of management that HRS has not evidenced.

Just as importantly, HRS will be applying for a master plan permit to use the former Lincoln Child Center property. HRS bought the property in 2012 and in 2014, told the community it would be ready with its master plan by March 2015. It initially applied to the City to begin using this property in 2013, but then withdrew that application to pursue this one. This current application should be consolidated with the master plan application as both properties are in one neighborhood. If planning continues to recommend changing the PUD project to include a loop through a residential

neighborhood located about half a mile from the school and other increases in impacts since the 2006 Mitigated Negative Declaration (MND was adopted, just the CEQA litigation alone will take up the time between now and when a master plan application comes before your commission. (See CEQA discussion, below.) It would be better to rule on the totality of HRS' expected impacts at one time and from a "baseline" of phase two enrollment (844 or 854) students, not 906 students.

If you choose to grant the modification application, your commission should not grant it for the full 52 students and should make further revisions to the draft CUP. Besides the school enrollment, the remaining key issues are the excessive number of events (180), which could occur outdoors, including nights and weekends, and adding 280 participants to the HRS summer camp program which is excessive. Events and the summer program have been two longstanding, vexing issues for the neighborhood due to noise and traffic. Removal of the loop that presents dangerous conditions and a nuisance for neighbors residing on that route is another major issue.

The NSC has done its best to respond to the CUP and TDM recommendations, which were released last Friday. However, the amount of text in both documents deserves further comments than what NSC can accomplish by the hearing date. Below are some of the NSC responses to Attachment B by paragraph.

A. Recommended CUP – by the Paragraph Numbers in CUP

3. We appreciate the better definition of minor and major changes to the use permit. Changes to the TDM should be considered major changes that would allow City Council review.

14. This condition has outdoor athletic practices and games until 7:30 p.m. or until sundown, whichever is earlier. Normally schools have finished these activities no later than 6:30 p.m., assuming school gets out at 3:30. The neighbors would like to have quiet time for their children to do homework and to eat dinner. The activities should be done by 6:30 p.m. and the school closed no later than 7:30 p.m.

15. (c) This condition has the summer program allowed to host special events during evenings and weekends. The neighbor "victims" of the summer camp program ask that this provision be removed and a provision added denying permission to have special events hosted during the summer months. They have written emails about the excessive, unnecessary noise which is inconsistent with a school summer program and that they

have to endure every summer. Neighbors should be able to enjoy at least part of the summer without excessive noise.

15. (d) has 780 children in the summer camp program, which should be reduced to the 500 children that have been in the program and which HRS already cannot handle. The traffic problems by parents, who do not know the driving rules and are only in the neighborhood for two weeks at a time is already disturbing. The noise also is excessive and beyond what other schools create. The bounce houses alone are registering 95 to 100 on the decibel scale and run a generator all day.

16. (a) The summer camp program does not host special events. It puts on entertainment activities every day for the participants. It is a fun camp type of program. Every day is "special event" day, which has become a problem for neighbors due to excessive noise. This provision needs to be changed so that no special events are allowed during the summer.

17, 20. There is no cap on the number of employees. The most recent public tax return tax return for HRS shows that for the 2013 calendar year, it had 513 employees and 420 volunteers. The school only reported 153 employees to the State Department of Education. Even making a large deduction for employees used for the summer program, the parking requirements are insufficient for the number of employees and volunteers who work at the school. There should be a correct statement made as to the number of employees and volunteers and a cap set so that the number of necessary onsite parking spaces can be effectively monitored. The long history of use permit noncompliance combined with the difference in the numbers between the Department of Education and HRS' tax return suggests that without a cap, the City will open the door for continued enrollment and staff "creep." The Planning Commission needs a correct accounting of the persons who drive to the school and surrounding neighborhood.

18. This should be the last time the PUD is amended, given that HRS has acquired more real estate across from and adjacent to its campus in the last several years. A master plan should be required prior to issuance of any permit, not just a modification of this same outdated PUD. This statement, contained in the draft track changes document should be included in the text of the final: "No new construction or enrollment above 906 students is contemplated as part of this approval."

19. The definition of amplified sounds should include generators (which are used all day for large bounce houses).

22. This condition involves the Whittle gate. It allows kids who bike or walk to the school to have access along with "neighbors." These categories may have pedestrian access, only. There should be a definition of "neighbor" given that the campus is open to the public on the driveway side of Lincoln Avenue and HRS has given out key cards to numerous people who are driving and then entering the campus. The condition should add emergency or maintenance as reasons for access through the gate. This condition or an added condition needs to address the open pedestrian walkway next to the Lincoln Avenue driveway. Also, these gates should be locked when the school is not in session to stop the use of the facilities by trespassers or others who are not neighbors and use the facilities for whatever purpose they choose while creating disturbances for neighbors.

23. (a) This includes the loop, which is part of the modified project and requires an EIR. Also it has a goal of "minimizing traffic on neighborhood streets" - that should be "preventing" school traffic from entering neighborhood unless the driver lives in the neighborhood. (c). The words "discourage" and "goal" are too vague. The condition should provide a specific reduction number and a way to monitor it. NSC is asking for a specific bus ridership requirement with periodic counts to make sure that it is complied with.

23 (c) iii. Again, terms like "shall commit," and "averaging" should be removed. Averaging was a disaster with Bentley School, was rejected by Los Gatos when it considered a trip cap, and is very hard to regulate. There should be a bus ridership requirement that is fixed and does not depend on whether AC Transit runs busses or not. The school is seeking legalization of its over-enrollment in violation of its use permit plus another 26 students. That should more than pay for shuttle and bus service at HRS' expense even if AC Transit falls short of funds to provide busses to HRS.

23. (d) There should be an upper limit on the number of people attending special events to avoid traffic and noise impacts on neighbors. This paragraph goes up to 400, so if that is the upper limit of what it can handle, it should be written as a cap in the condition. The two full paragraphs at the end of this subsection do not make any sense. Why would the school be required to identify violators of the traffic rules when those violators are probably not going to be back in the neighborhood again? The monitors need to stop the violations in the first instance.

23. (g) iii. A semester to cure traffic-related violations of the use permit is excessive. HRS should be able to cure them right away and not need more than 30 days at the extreme. The term "good faith effort" should be removed. The school is either

complying with its use permit or it is violating it. There is no middle ground.

There were several conditions that the neighbors sought and were left out of those recommended by the planning staff. We request their inclusion:

- NSC does not believe 35 monitors are needed, but it does request independent third-party monitors, at HRS' expense. The security guards and teachers have been unable to control traffic. NSC notices that the requirement for cameras is again in the proposed conditions – never has anyone seen a HRS monitor photograph a rule violator.
- The license plate database has been removed from the conditions, leaving it to HRS to monitor the parents. At the same time, the neighbor representatives on Whittle and Lincoln Avenue are supposed to meet with and talk to HRS about problems. They cannot indicate that parents are violating rules if they don't know who is a HRS parent versus somebody else.
- Paragraph 37 of the NSC Responses should be included, subject to the City's paragraph 22 (Whittle gate access). Paragraph 37 prohibits HRS from loaning, partnering, or leasing, any of its facilities. In past years, HRS has used the facilities for fund raising combined with other organizations, rented to a tennis pro, loaned the facilities to other schools for their teams to use the campus, soccer pick-up games, etc. These uses cause two problems: 1. There is no supervision and the people using the facilities create noise and traffic nuisances for neighbors; and 2. HRS promised various neighbors that they could use the facilities during non-school hours, but when they try to do so, they are asked to leave due to the rental and loaning arrangements by HRS.
- Outdoor maintenance with noise generating equipment should only occur on school or summer program days between 8:00 a.m. and 6:00 p.m. Currently, the leaf blowers and other equipment begin running at 7:00 a.m. before school, and then on weekends and holidays when the neighbors have to listen to it. When students are inside classrooms, it is not noise that would interrupt them, but it is unnecessary noise for neighbors to hear when school is out.
- Cones and mobile signs should be removed daily when their use is finished instead of spread around on the street and neighborhood sidewalks.
- The mailbox and the handicap parking space on Lincoln Avenue are next to one another. They need to be free of cones and accessible when the school is not conducting drop-off and pick-up.

- The twice yearly community meetings by HRS should be open to the greater neighborhood given the amount of impact covering numerous streets and not limited to a few representatives on Whittle and Lincoln Avenue.
- The NSC submitted a landscaping condition that should be included. It requires HRS to maintain the landscaping, remove ivy from trees and keep it from going into the streets. The eucalyptus trees produce a great deal of debris which should be removed once a year for fire safety of the houses above the hillside.
- The condition requiring payment for the two-hour parking permits should include any increases in the cost.
- One of NSC's goals is getting HRS' operations out of the narrow residential streets. We have had complaints by neighbors on Clemens that they do not want HRS continuing to use their street as an HRS parking lot. The CUP should direct HRS to stop allowing its employees to park on the streets behind the school, including Whittle, Funston, Fruitvale and Clemens.
- There needs to be a condition setting out egress and ingress for the school. Otherwise, it will continue letting its students and employees enter from any place they feel like.
- NSC language prohibiting egress and ingress to the school campus through its residential properties was omitted from the recommended conditions of approval and needs to be included. Head-Royce teachers, staff and students enter and exit the campus through the properties at 4200 and 4220 Whittle Ave. This happens numerous times a week. Even entire classes have been seen doing so. Neighbors have sent written complaints to the school for years to no avail. One neighbor has asked the school to place a sign at the top and bottom of the driveway of these properties that notifies all that this is not an authorized shortcut in and out of the campus. Head-Royce has not only not done so after repeated requests, they refuse to say why they will not place these signs. The recommended conditions of approval should contain a specific prohibition against using the Head-Royce residential properties for ingress and egress to the campus. It should also include a provision that Head-Royce place a substantial, weatherproof sign at the top and bottom of the driveway of 4200/4220 Whittle Ave notifying their teachers, staff and students not to use the 4200/4220 Whittle Ave driveway as a shortcut to enter or leave the school.

B. Proposed TDM & CEQA

CEQA requires the City to recirculate the Mitigated Negative Declaration (MND) that was adopted as part of the 2006 PUD approval. Because this is not a new project, but a modification of the PUD which already depended on an MND, an exemption is not available. The planning department is viewing the modification as having no environmental impact because it only moves up a date for when HRS would reach 906 students, for which it has a vested right as of 2021. However, the "project" modification also includes a TDM and new conditions of approval that increase environmental impacts that were not discussed in the original MND:

1. The loop was mentioned in the MND, but was not studied. Unlike other intersections, there was no study of the loss of service (LOS) for Potomac and Lincoln, Laguna and Potomac, Alida and Laguna, Laguna and Rampart, and Rampart and Lincoln, all of which are involved in the loop. (MND, p. 4.)
2. The proposed conditions of approval contemplate an addition of 280 more participants in the summer program, which was not discussed in the MND. It is silent on the traffic issues and noise impacts related to the summer program, although it mentions its existence.
3. The MND made assumptions that are no longer true given changes in circumstances. For example, on page 9 the MND assumed that almost all of the students were coming from the Oakland Hills and Berkeley, which of course could be served by busses. However, the chart prepared from the 2012-2013 school directory shows that only 53% of the students come from Oakland, with the majority of the remainder coming from Piedmont, Berkeley, Alameda, Orinda, etc. where public bus service is now less available or not available at all.
4. The proposed CUP contemplates 180 special events per year, none of which was addressed by the MND's traffic analysis. Nor were the noise problems during non-school hours analyzed.
5. The MND admitted that in 2005, the LOS was F and E at Monterey and Lincoln Avenue due to traffic coming off of Highway 13. Neighbors have been complaining about the current backup in trying to get from 13 to Lincoln Avenue. The school's use of a "staging area" was not considered in the MND and it is unclear whether it helps or hinders the LOS coming off of Highway 13.
6. None of the bus routes in 2005, set out in the MND included the loop. (MND, pp.5-6.) The current TDM, which would be required under the modified PUD requires that the busses run through the loop. Further, the MND assumed only

two private busses would be used – one serving Danville, Walnut Creek, Lafayette, and Orinda and a second serving North Berkeley, Berkeley, and North Oakland. The TDM includes far more busses now – all using the loop if they come from Highway 13 downhill to the HRS main gate.

There is a legal difference between a school choosing on its own to tell parents that they can use the "loop" and the City issuing a permit requiring compliance with a TDM that has drivers wishing to return to Highway 13 using the loop. It is the City requirement that the loop be used as part of a permit process that creates an impact falling within CEQA. Similarly, a permit process that adds more summer participants also requires CEQA review. There are sufficient changes to the "project" and triggering of environmental impacts that the City is required to conduct CEQA review. (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 527.

The MND does not discuss any of the impacts listed above and raised by the current changes to the project. The City is not contemplating any environmental review, instead relying on an exemption. However, that is not legally permissible because if it were allowable, the project could be chopped up into little pieces with one MND followed by many exemptions, thus avoiding review of the whole project. The term "'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." (Guidelines, § 15378, subd. (c).) CEQA mandates that environmental considerations not be glossed over by piecemeal handling of the project such that, with each little piece of it or discretionary approval, the cumulative impacts can become disastrous. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452.) Therefore, the City should conduct environmental review and if it determines that it can rely on the MND, it should recirculate the MND for public comment.

Even if the City were entitled to rely on an exemption, it does not qualify here due to the cumulative impact exception. (Guideline § 15300.2 (b)). HRS applied in 2013 for a change in the use permit for the former Lincoln property so it could begin using that property. It has informed the public, the city, and the court during litigation with neighbors over a land use contract, that it intends to use the Lincoln property in the near future for K-12 purposes. The City has made it clear that HRS will need to apply for a master plan that encompasses both of its institutional properties. Again, the staff report focuses on the granting of the 2006 PUD permit without considering the environmental impacts from the traffic in the same neighborhood due to HRS' statements that it intends to expand into the Lincoln property. It also is not considering the incremental impact of

"building" on the 2006 PUD permit by adding more traffic impacts (loop) and noise (180 events, 280 more summer participants) in the modification of that permit.

Moreover, given the state of the record, the City will need to require at least a focused environmental impact report as to noise and traffic. The two reports, one about noise during school hours by Wilson/Ihrig and the recent TDM report are insufficient to overcome the evidence submitted by the neighbors. An EIR is required whenever "substantial evidence in the record supports a 'fair argument' significant impacts or effects may occur." (*City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1421.)

The neighbors have submitted documents, visuals, and emails regarding the traffic conditions on the loop, and the continuing problems on Lincoln Avenue. As laypersons and residents, their evidence qualifies as substantial evidence. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928. "An adjacent property owner may testify to traffic conditions based upon personal knowledge." (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173.) Because substantial evidence includes "reasonable assumptions predicated upon facts" (Guidelines, § 15384, subd. (b)) and "reasonable inferences" (*id.*, subd. (a)) from the facts, factual testimony about existing environmental conditions can form the basis for substantial evidence.(*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4 714, 730; *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1054 [existing traffic problems were substantial evidence that increase in traffic would only make the traffic impacts worse.)

Neighbors can also provide substantial evidence regarding noise impacts, as has occurred here with photos of bounce houses, emails regarding barking dogs and go-carts during non-school hours, and excessive summer program noise as examples. Readings by a sound expert will not diffuse those neighborhood observations. The observations still constitute substantial evidence of a significant noise impact. (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4 714, 731.) Conformity with a general plan or ordinance standard does not insulate a project from EIR review where there is substantial evidence that it can be fairly argued that the project will generate significant environmental effects.' " (*Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338 [general plan noise standard], quoting *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882.)

See also, *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1381.["the fact that residential uses are considered compatible with a noise level of 65 decibels for purposes of land use planning is not determinative in setting

a threshold of significance under CEQA".) Noises from loud music, bounce houses, and other causes that disturb the neighbors has been adequately demonstrated and is sufficient to require an EIR:

> We begin by considering the impact of event-related noise on neighboring residents. There is substantial evidence in the record supporting a fair argument that music played by a DJ during events on the Property may have significant noise impacts on surrounding residents. One neighboring couple, the Matlocks, stated that they could hear "pounding music" from a wedding held on August 7, 2010, despite a video showing the speakers were oriented away from their home, as called for by the MND and use permit.

(*Id.* at p. 733 – Court held the evidence sufficient to meet the "fair argument"standard and required an EIR.)

The proposed permit modification proposes to continue and exacerbate HRS' use of the current campus as an entertainment venue, convention center with 180 events over and above what normally occurs in a typical school, a dog park early in the morning and late in the afternoon, open campus to the public (including go-carts), bus and car route through narrow residential streets located at one point half a mile away from the school and which blocks egress and ingress for the neighbors, and incidentally a school that services only about 450 Oakland children.

For all of the foregoing reasons, the City must require preparation of an EIR before granting the permit modifications.

Thank you for considering our comments.

Very truly yours,

Leila H. Moncharsh

Leila H. Moncharsh, J.D., M.U.P.
Veneruso & Moncharsh

cc: NSC

Attachment B-4

efile GRAPHIC print - DO NOT PROCESS | As Filed Data - | DLN: 93493079009585

Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter Social Security numbers on this form as it may be made public By law, the IRS generally cannot redact the information on the form

▶ Information about Form 990 and its instructions is at www.IRS.gov/form990

OMB No 1545-0047

2013

Open to Public Inspection

A For the 2013 calendar year, or tax year beginning 07-01-2013 , 2013, and ending 06-30-2014

B Check if applicable
- ☐ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Terminated
- ☐ Amended return
- ☐ Application pending

C Name of organization
THE HEAD ROYCE SCHOOL

Doing Business As

Number and street (or P O box if mail is not delivered to street address) | Room/suite
4315 LINCOLN AVENUE

City or town, state or province, country, and ZIP or foreign postal code
OAKLAND, CA 94602

D Employer identification number
94-1518656

E Telephone number
(510) 531-1300

G Gross receipts $ 33,492,920

F Name and address of principal officer
ROBERT LAKE
4315 LINCOLN AVENUE
OAKLAND, CA 94602

H(a) Is this a group return for subordinates? ☐ Yes ☑ No

H(b) Are all subordinates included? ☐ Yes ☐ No
If "No," attach a list (see instructions)

H(c) Group exemption number ▶

I Tax-exempt status ☑ 501(c)(3) ☐ 501(c) ( ) ◀ (insert no) ☐ 4947(a)(1) or ☐ 527

J Website: ▶ WWW HEADROYCE ORG

K Form of organization ☑ Corporation ☐ Trust ☐ Association ☐ Other ▶ | **L** Year of formation 1887 | **M** State of legal domicile CA

Part I Summary

Activities & Governance

1 Briefly describe the organization's mission or most significant activities
OPERATION OF A SCHOOL FROM GRADES KINDERGARTEN THROUGH 12TH GRADE

2 Check this box ▶☐ if the organization discontinued its operations or disposed of more than 25% of its net assets

3	Number of voting members of the governing body (Part VI, line 1a)	3	23
4	Number of independent voting members of the governing body (Part VI, line 1b)	4	22
5	Total number of individuals employed in calendar year 2013 (Part V, line 2a)	5	513
6	Total number of volunteers (estimate if necessary)	6	420
7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	0
b	Net unrelated business taxable income from Form 990-T, line 34	7b	0

Revenue

		Prior Year	Current Year
8	Contributions and grants (Part VIII, line 1h)	1,552,479	1,549,671
9	Program service revenue (Part VIII, line 2g)	26,613,923	28,117,395
10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	1,537,959	614,841
11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	329,137	429,793
12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	30,033,498	30,711,700

Expenses

13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)	3,854,590	4,196,778
14	Benefits paid to or for members (Part IX, column (A), line 4)	0	0
15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	16,052,177	16,834,555
16a	Professional fundraising fees (Part IX, column (A), line 11e)	0	0
b	Total fundraising expenses (Part IX, column (D), line 25) ▶755,211		
17	Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	9,095,811	9,722,962
18	Total expenses Add lines 13–17 (must equal Part IX, column (A), line 25)	29,002,578	30,754,295
19	Revenue less expenses Subtract line 18 from line 12	1,030,920	-42,595

Net Assets or Fund Balances

		Beginning of Current Year	End of Year
20	Total assets (Part X, line 16)	98,555,211	101,190,383
21	Total liabilities (Part X, line 26)	43,243,005	43,934,903
22	Net assets or fund balances Subtract line 21 from line 20	55,312,206	57,255,480

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including my knowledge and belief, it is true, correct, and complete Declaration of prepar preparer has any knowledge

Sign Here

****** Signature of officer

DENNIS MALONE CHIEF FINANCIAL OFFICER Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name MATTHEW J NOONAN | Preparer's signature

Firm's name ▶ LAUTZE & LAUTZE

Firm's address ▶ 303 SECOND STREET SUITE 950N
SAN FRANCISCO, CA 94107

May the IRS discuss this return with the preparer shown above? (see instructio

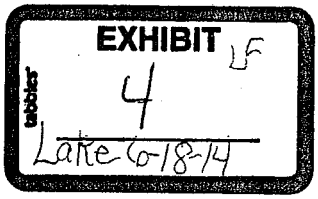
[redacted]

For Paperwork Reduction Act Notice, see the separate instructions.

Attachment B-5

Head-Royce School

scholarship, diversity, citizenship



since 1887

March 19, 2012

Dear Head-Royce Community,

As Head-Royce prepares to celebrate our 125th Anniversary next year, we are excited to share with you an extraordinary opportunity to strengthen our mission and better serve our students now and in the future.

The Board of Trustees is pleased to announce that Head-Royce has entered into a contract to purchase the 7.8 acres of property directly across the street from our campus, currently the site of the Lincoln Child Center, which will increase our campus by more than 50 percent.

This acquisition will enable Head-Royce to implement our strategic goals in ways that we could not achieve otherwise. Expanding our campus will allow us to increase student safety by providing a safer system for drop-off and pick-up and concurrently ease our traffic and parking challenges. The expansion will enable us to improve our classrooms, labs, performance spaces, and athletic fields.

Additionally, the space will allow us to expand and improve our current campus master plan to support new initiatives and strategic programs. As we begin to embark on a master planning process, some of these exciting new potential initiatives include:

- Developing innovative research institutes, including global studies and STEM (science, technology, engineering, mathematics), which would allow us to deepen our partnerships with Bay Area institutes and universities and provide groundbreaking opportunities for our students to learn in a center of innovation.
- Creating a performance and exhibition center, in which our students could develop their confidence and love for the arts in state-of-the-art facilities.
- Expanding recreation space for lower and middle school students, providing a more inspiring and expansive setting for play, which is critical for child development and learning.
- Building a second athletic field and a competition-size swimming pool to expand our sports offerings and provide more opportunities for students to develop teamwork and leadership.
- Housing some classes on this new location.
- Utilizing additional facilities to expand our summer enrichment programs.

The Board of Trustees and school administrators carefully considered this opportunity with the financial well-being and long-term stability of Head-Royce among its top priorities. We conducted a number of economic stress tests and can report with confidence that the strength of our reserves, robust enrollment, and the continuing, large unmet demand for a Head-Royce education position us strongly to move forward with this opportunity.

In the coming months we will provide updates and information from the trustees and administration on the process, plans, and momentum behind this opportunity. We will seek input from all of you as we engage in master planning discussions, which will take place over the next 12 months or longer.

Great schools do not stand still. To thrive, they continually grow and evolve. As Head-Royce looks forward to our 125th Anniversary next year, we know that the Head-Royce community – our students, parents, faculty, staff, alumni and friends – always have been our greatest asset. We extend tremendous appreciation to all of you, as we work together to prepare Head-Royce for the decades ahead.

Sincerely,

Charles Freiberg
Board Chair

Robert A. Lake
Head of School

LCC0023652

4315 Lincoln Avenue Oakland, CA 94602 510.531.1300 T 510.531.2649 F www.headroyce.org

Attachment B-6

In The Matter Of:

Lincoln Child Center vs.

Drew T. Lau Regent, et al.

Robert Lake

June 18, 2014

PATRICIA CALLAHAN REPORTING

Certified Shorthand Reporters

(510)885-2371 • (415)788-3993

Page 21

Two years ago, did you have the view that Head-Royce needed to be run somewhat like a public corporation?
A. No.
Q. As you sit here today, do you have any understanding of the potential uses of the Lincoln Property that Head-Royce may make of it?
A. Help me understand your question a little bit more. I'm not sure what you're asking.
Q. Let me rephrase it.
What I'm trying to figure out is, you know -- let me go back a minute.
I understand that there is a process going on, because I've taken other depositions, including Mr. Smith's.
A. Yes.
Q. So I understand that there's a thought process and planning process going on.
A. Yes.
Q. Okay. What I'm trying to figure out is whether you, as the head of school, have any uses in mind for the Lincoln school, that, while it's not in cement, you would like to see the property used for those purposes. Does that make sense?
A. Yes. It's a very good question.

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I have very intentionally kept a very open mind about potential future uses for the Lincoln Child Center. The reason for that is I think the best ideas come when you have a collaborative process and we engage with a wide range of different constituents about what we might put across the way. So there have been a lot of ideas thrown around. And there have been ideas that actually have a lot of good rational behind them. What I can tell you is we have a good sense right now of what some of our needs are, current facilities that aren't really serving the school well. But that doesn't mean that's what we're going to put across the street or we're going put into any type of final plans.
Q. What are those needs?
A. So as an ongoing concern, for every school, we want to make sure that the classroom spaces that we have for our kids are the best spaces for teaching and learning. We have buildings that were built in the '60s that, you know, we're always examining and renovating and repairing, and we've got to make sure that those are up to par. We have some new buildings that are -- or relatively new buildings from that last campaign that are fabulous. So whatever we build, we want to be sort of in keeping with those buildings. But, broadly, a school like ours, K through 12, could always use more

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open spaces for gathering or for sports or for quiet study or group study or eating. So open spaces are always very important. We have some patio spaces that need to be renovated.
We have a small -- a pool that is old and nonregulations, so we may prioritize that. I know that was -- that's something that is very much on the minds of neighbors. You know, people have asked are we going to build an Olympic-size swimming pool. We don't have a plan to build an Olympic-size swimming pool. We may build a pool that would -- that's regulation size that would allow our swim team to hold matches, but we don't know if we're going to do that. And if we did build the pool, it might be on our current campus or it might be on the new campus. We would have to engage in a planning process around that.
Another question that has been raised and something that we are thinking about is a new performing arts center. Our current auditorium is old and doesn't really serve the needs of the school well. So we might renovate the space that we have on our current footprint, or there might be, as part of new plans, a performing art center that we put across the street. It's still very, very, very early stages in our planning process.

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Q. Two years ago, did you ever make a statement along the lines that you wanted to see people come from all over and have a community center at Head-Royce?
A. Really good question.
So one of my hopes is that Head-Royce continues to be a place where we're seen as a positive presence in the community, in our neighborhood and the City of Oakland, certainly, and California.
So two years ago and even before that when I have spoken with neighbors, the NLC, Randy and others, I've said I hope that Head-Royce is seen as a place where the community feels comfortable gathering. I'll give you a good example. We've held a number of -- or we've allowed neighbors to have a number of meetings around safety and security. They have asked if they can use our community room, and we've said of course. And they very much appreciated that. So I hope that that type of relationship continues.
I think when I spoke about it like that, in the context of the Lincoln Child Center property, some people misinterpreted that as, hey, we're going to build these big centers, and all of a sudden we're going to have hundreds of events with thousands of cars coming and being disruptive. And that's not what our intentions are at all. And when I may have mentioned

Page 17

There are days when I'm writing blog posts about different educational trends. There are days when I'm -- I have an opportunity to watch students in various performances or games. So it's sort of a wide range of responsibilities.
Q. You didn't mention soccer.
A. All right. Well, that's my love. That's my love. Are you a soccer player?
Q. Did you know that Randy Morris is also an All American soccer player?
A. I did not know that.
Q. Yeah, you two have that in common.
A. I'm surprised we didn't talk about it. Very cool. Where did he play?
Q. I want to say he played for Notre Dam, but don't hold me to that.
A. Awesome.
Q. Yeah.
A. Bet he's probably glued to the TV right now watching the World Cup as well.
Q. Or on his way to Israel. He's going to go for a long vacation.
A. Cool.
Q. Okay. Do you have any intentions to leave Head-Royce between now and the end of September?

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A. No.
Q. Okay. So you're available for trial?
A. I am, sure, absolutely.
MR. SMITH: Leave Head-Royce or leave for vacation?
MS. MONCHARSH: Leave Head-Royce.
Q. You're going to stay employed -- you intend to stay employed at Head-Royce through -- into the fall of this year?
A. I do, yes. And, then, I thought, like Peter said, you were talking about vacation. I have some vacation planned, but I'm not leaving the country, and I'll be available.
Q. Okay. So when you say you'll be available, so even if you went out of the state for something and you were needed to testify, you'd be able to?
A. Yes.
Q. Okay. Fair enough.
So going back to paragraph five, I want to ask you some questions about what Head-Royce does intend as opposed to what it does not intend.
Couple of years ago, do you recall telling a group of neighbors at a meeting that your vision was to have 300 more students at Head-Royce?
A. I don't. I have never given a definitive this

Page 19

is exactly the number of kids that we're going to increase our enrollment by. A lot of people have asked how big is the school going to get. And we're going to engage in a really thoughtful examination and thoughtful research project into just what the appropriate school size is.
So I have said publicly and to the board, I imagine that our enrollment will grow, but I don't know the number that it will grow to, and I want to really sort of take our time and do it well.
Q. Okay. My question is a little bit different.
My question is just what you said back two years ago. I mean, it may be different now. So I just want to clarify with you.
A. Sure.
Q. Is it your testimony that you never said to a group of neighbors at a meeting that you wanted to add 300 students to Head-Royce?
A. Definitively that that's what the plan was and I thought that we were going to increase specifically to 300 kids exactly? I did not say that.
Q. Okay. All right. Let's do it this way: Did you ever use the number 300 in a --
A. I -- okay.
Q. Let me finish. Okay? I'm not attacking you. I

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want to make sure we're both on the same page here.
A. Yeah.
Q. Did you ever, a couple of years ago -- well, strike it.
Have you ever, at any time, made statements to anybody in which the number 300 students was used?
A. I can't remember.
Q. You can't remember one way or the other?
A. Yes, I can't remember one way or the other.
Q. All right. Did you ever, at any time, make a statement to anyone that in order for Head-Royce to survive it needed to grow?
A. I don't believe that I have said that.
Q. Did you, at any time, make a statement to anybody that compared Head-Royce with corporations, generally?
MR. SMITH: Objection. Vague as to what you mean by "compared to corporations."
MS. MONCHARSH: It is vague. Let me rephrase it.
Q. Have you ever stated to anybody, in the last four years, that -- even that is vague. Let me ask it this way.
A. Okay.
Q. Four years ago, was -- well, strike even that.

Attachment B-7

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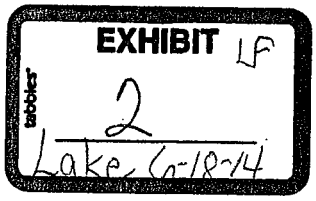
Attorneys for The Head-Royce School



9SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA – UNLIMITED JURISDICTION

LINCOLN CHILD CENTER, INC. et al.,

Plaintiffs,

v.

DREW T. LAU REGENT, et al.,

Defendants,

AND RELATED CROSS-ACTION.

Case Number: RG 12 658771

DECLARATION OF ROBERT A. LAKE IN SUPPORT OF HEAD-ROYCE'S POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

ASSIGNED FOR ALL PURPOSES TO JUDGE RONNI MacLAREN

DEPARTMENT 25

Hearing Date: July 24, 2014
Hearing Time: 9:00 am
Department: 25
Reservation No.: 1502128

I, Robert A. Lake, declare:

1. I am the Head of School for The Head-Royce School ("Head-Royce") and have been for the past four years. Except as to those matters stated on information and belief, I have personal knowledge of the matters set forth herein and if called as a witness could and would competently testify thereto. As to those matters stated on information and belief, I believe them to be true.

2. Head-Royce, formerly the Anna Head School, has operated for 125 years as a K-12 private school. It operates as a coeducational independent K-12 day school at its current location

Property, because they dictate terms that are appropriate only to a residential care treatment facility, but not to a K-12 day school. Head-Royce does not intend to operate "24 hours per day, seven days per week" as the CUP obtained by Lincoln allowed and the 1998 DA envisioned. Head-Royce will not have "visitation for clients and their families" and will not be having visits by "therapists providing counseling services to residents," as contemplated in the 1998 DA. Head-Royce's use of the Property is not required to be licensed by the State Department of Social Service "to operate programs 24 hours per day" and will not require children to be enrolled at the school who require supervision of adult staff or guardians in the way that the 1998 DA provides. Head-Royce students will not require attended supervision or staffing for on or off campus activities. Head-Royce will not have a residential program for mentally ill, emotionally disturbed and abused children, such that any regulation of "boom boxes or outdoor music after 7:00 P.M." or "Children . . . remain[ing] indoors until 7:00 A.M." would be relevant. Head-Royce will not have the activities that Lincoln had for "mentally ill, emotionally disturbed and abused children." Head-Royce will not use the Property in such a way to require a 4 to 1 adult to student ratio. Head-Royce will not operate the Holmgren or Linnet Houses as residential group homes.

6. Head-Royce is engaged in the early stages of a master plan process for the Property and anticipates extensive review by the City and its consultants over several years. Head-Royce has been preparing a Master Plan that will plan for the use the Property, Area "A", and Head Royce's existing adjacent 14 acre campus to continue its current school-related functions that are typical for community education purposes for a K-12 private school. Head-Royce will continue to operate as a Community Education Civic Activity in pursuing any master plan for the Property. Since February 7, 2013, a steering committee has met on a weekly basis to guide the school's efforts in the master plan. Teams of administrators are tasked with reaching out to constituent groups, including Defendants and other surrounding neighbors, to determine the goals, concerns, and aspirations of each constituency. Head-Royce retained the internationally renowned firm of Skidmore, Owens and Merrill ("SOM") to serve as its planners and architects during the master plan process.

7. On repeated occasions, as part of the master plan process, Head-Royce invited Defendants and others to participate in meetings concerning the master plan process for the Property. An initial meeting with Defendants, following Head-Royce's purchase of the Property was set for July 16, 2013 ("July 16 Meeting"). On July 2, 2013 ("July 2 Letter"), my assistant Samantha Baheti sent Defendants Carl Boe, Scott Carnes, Irving Carnes, Roberta Dempster, Delia Garcia, Jodi Lerner, Allen Leung, Maria Leung, Eleni Miller, Leila Moncharsh, Evelyn Pong, John Prestianni, Robert Regent, Drew Lau Regent, Hiroshi Uchida, Sumiko Uchida, Hickman Wong, May Wong, Stephen Wong, and Karen Wong a notice about the July 16 Meeting. Attached hereto as Exhibit A is a true and correct copy of the July 2 Letter.

8. On July 16, 2013 ("July 16 Letter"), in correspondence to Harold P. Smith, the school's counsel, Moncharsh stated that she and her clients "are not in need of information from Head-Royce about its master plan concepts" and, on that basis, refused to attend the meeting that was scheduled for that night. Attached hereto as Exhibit B is a true and correct copy of the July 16 Letter. Defendants have failed to provide any reason why they refuse to meet.

9. On January 27, 2014, I sent each Defendant a letter inviting Defendants to meet with our architects and to participate in a meeting regarding the master plan process on February 4, 2014. Attached hereto as Exhibit "C" is a true and correct copy of that letter. Head-Royce has been genuine in its desire to include all constituent groups potentially affected by the operation of a school in any discussions about its plans. Many neighbors are active participants the process and respond with helpful input. Defendants, through counsel, again stated that they would not meet with the school at the February meeting. Additional meetings are planned.

10. I and others have attempted to resolve informally the dispute with Defendants regarding the inapplicability of the 1998 DA to Head-Royce's use of the subject property. Defendants have refused to meet with Head-Royce or any of its representatives. Defendants have been non-responsive to all inquires and have not provided any reason why they have not yet agreed that use restrictions in the 1998 DA are inapplicable to Head-Royce. If the Defendants choose to participate in the master planning efforts, their concerns will be considered.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed by me at Oakland, California on May 9, 2014.

ROBERT A. LAKE

Attachment B-8

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Attorneys for The Head-Royce School

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA – UNLIMITED JURISDICTION

LINCOLN CHILD CENTER, INC., et al.,

Plaintiffs,

v.

DREW T. LAU REGENT, et al.,

Defendants,

AND RELATED CROSS-ACTION.

Case Number: RG 12 658771

DECLARATION OF ANNE E. MUDGE IN SUPPORT OF PLAINTIFF HEAD-ROYCE'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

ASSIGNED FOR ALL PURPOSES TO JUDGE RONNI MacLAREN

DEPARTMENT 25

Hearing Date: July 24, 2014
Hearing Time: 9:00 am
Department: 25
Reservation No.: 1502128

I, Anne E. Mudge, declare:

1. I am an attorney at law duly admitted to practice in the State of California. I am a partner in the firm of Cox Castle Nicholson, counsel for the Head-Royce School ("Head-Royce"). I have represented Head-Royce in their master planning process and related land use matters. Except as to those matters stated on information and belief, I have personal knowledge of the matter set forth herein and if called as a witness could and would competently testify thereto. As to those matter stated on information and belief, I believe them to be true.

2. I have reviewed the land use approvals obtained by Plaintiff Lincoln Child Center ("Lincoln") relating to the use of the property commonly known as 4368 Lincoln Avenue, Oakland, California ("Property"). Lincoln's use of the Property has been under the City of Oakland's zoning code designation of "Residential Care Civic Activity."

3. I am informed that on February 7, 2013 Head-Royce purchased the Property and as of that time, Head-Royce owned the Property in fee simple. Shortly thereafter, Head-Royce began the process of intiating a master plan to use the land to continue and expand on its mission of providing high quality education to children in grades K through 12. Lincoln has operated a "residential, education and treatment program for mentally ill, emotionally disturbed, and abused children" and is operating a state-licensed Community Care facility. Lincoln Child Center is currently leasing the property from Head-Royce, but is expected to move out on or before October 31, 2014.

4. Head-Royce does not intend to operate a residential, education and treatement program for mentally ill, emotionally disturbed, and abused children at the property. Under its zoning code, the City of Oakland considers Head Royce's use to be a "Community Education Civic Activity." Head Royce will continue to operate as a Community Education Civic Activity in pursuing any master plan for the Property. The current use will end entirely when Lincoln moves off the Property. Both types of uses are conditionally permitted in a residential zone but are considered distinct and separate categories of use.

5. On August 8, 2012, Defendant and Counsel for Defendants, Leila Moncharsh, filed a formal complaint with the City of Oakland that claims that Head Royce's operation of a school at 4315 Lincoln Avenue is a "public nuisance." The complaint seeks to revoke the school's use permit and shut down the school. The process invoked by Ms. Moncharsh has rarely been invoked but had previously had been employed in Oakland to attempt to shut down problem liquor stores. Ms. Moncharsh's attempt to apply a nuisance abatement process to a school is unprecedented.

6. Heather Klein, a Planner with the City of Oakland forwarded a number of emails to me that she had received from Ms. Moncharsh. On June 24, 2013, in a letter to Ms. Klein, Ms. Moncharsh stated, among other things: "As to the 'legalization' of 890 students, the NSC already has stated that the community wants the current enrollment reduced to 700 students because even at that level, HRS has been unable to handle the traffic problems on Lincoln Ave. and on the feeder residential streets." Head-Royce currently has approximately 870 students. Attached hereto as Exhibit A is a true and correct copy of the June 24 Letter. On October 8, 2013, in a letter to Heather Klein, a Planner with the City of Oakland, Ms. Moncharsh stated: "80% of the problem [with Head-Royce] is the traffic." Attached hereto as Exhibit B is a true and correct copy of the October 8 Letter.

7. Head-Royce took additional steps to plan for the use of the Property when it completed the purchase of the Property in February 2013. Specifically, Head-Royce submitted plans to the City for the reuse of Building 9. Defendants learned of the plans and actively submitted comments to the City planners while simultaneously refusing to meet with Head-Royce. Attached hereto as Exhibit C is a true and correct correspondence from Moncharsh to the city planner dated July 31, 2014 wherein Ms. Moncharsh suggested that the City impose a series of onerous conditions on the City's approval of Head-Royce's use of Building 9 but failed to make any concerns with Head-Royce's proposed reuse of Building 9 known to anyone at the school. . Such subterfuge is clearly not the good faith discussions required by paragraph 2.o. of the 1998 Development Agreement.

8. Head-Royce continues to be engaged in the preliminary stages of the master plan process for the Property and anticipates extensive review by the City and its consultants over several years. At the end of the lengthy master planning process, the City will decide whether to issue land use approvals. It is certain that any land use approvals granted will have extensive conditions that are tailored to the uses that Head-Royce seeks to establish on the Property. Those conditions will rely on the City's studies of the uses proposed by Head-Royce, as well as neighbor concerns. Among other things, the conditions will be carefully crafted to address traffic and

parking impacts generated by employees and students at a K-12 school with its typical student-faculty ratios. The current use restrictions in the 1998 Development Agreement between Lincoln and Defendants address impacts generated by a residential care facility for mentally ill, emotionally disturbed, and abused children with its typical counselor to client rations. It makes no sense to apply Use Restrictions developed for a residential care facility for mentally ill and abused children to a day school that does not serve a special needs population.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed by me at San Francisco, California on May 9, 2014.

Anne E. Mudge (/CK)
ANNE MUDGE

Attachment B-9

250 Frank H Ogawa Plaza, Suite 3315
Oakland, CA 94612
ph: (510)238-3659
fax: (510)238-6538
email: hklein@oaklandnet.com

Please consider the environment before printing this email

From: Mudge, Annie [mailto:amudge@coxcastle.com]
Sent: Friday, September 20, 2013 3:13 PM
To: Klein, Heather; Miller, Scott; Lee, Heather
Cc: (pvanness@signaturedevelopment.com); rlake@headroyce.org; Ken Defiebre; sverges@tmgpartners.com; Harold P. (Peter) Smith (Dhillon & Smith); Elizabeth Crabtree; Chris Stoner (chrisstoner@lincolnchildcenter.org)
Subject: Second Revision to HRS Amendment to Use Permit

Heather, et al.:

Attached please find:

(1) Letter requesting revision to pending HRS application to amend use permit and to amend LCC use permit (plus exhibits)

(a) Create internal pick up and drop off loop in existing upper parking lot (eliminates 70 parking spaces)
(b) Restriping of LCC parking to create 140 spaces – 87 for HRS/53 for LCC
(c) relaxation of LCC parking requirements under its use permit in recognition of LCC's reduced operations

(2) Basic Application materials

(3) LCC authorization for HRS to seek amendment

I think it makes sense to set up a conference call next week to discuss next steps. Could you provide some available dates and times?

Thanks and have a great weekend.

Regards,

Annie