



CITY OF OAKLAND

AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: William A Gilchrist
Director, Department of
Planning & Building

SUBJECT: Appeal of the Head Royce School
Planned Unit Development Project

DATE: August 28, 2023

City Administrator Approval

Date: Sep 7, 2023

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt A Resolution Denying The Appeal By The Neighborhood Steering Committee (NSC) And Thus Upholding The Oakland Planning Commission's Approval Of (A) The Planned Unit Development Permit (PUD), Final Development Permit Phase I-II, Conditional Use Permit, Design Review, And Amended Conditions For The Expansion Of The Existing Head Royce School Campus To The Former Lincoln Children's Center Site At 4368 Lincoln Avenue To Create A Unified, 22-A K-12 School And To Increase The Enrollment To Twelve Hundred and Fifty (1,250) Students and (B) Certification of The Head Royce School PUD Environmental Impact Report (EIR) Pursuant To the California Environmental Quality Act (CEQA)

EXECUTIVE SUMMARY

On April 29, 2023, the Oakland Planning Commission unanimously approved (by a 4-0 vote) the Head Royce School (School) proposal to revise the existing Planned Unit Development (PUD) and associated Conditional Use Permit and Design Review, to expand the existing K-12 private school located at 4315 Lincoln Avenue (Project). The April 19, 2023 Planning Commission staff report, which includes a link to the California Environmental Quality Act (CEQA) Analysis document for the Project, is included as **Attachment A**.

The School is located approximately 0.4 miles south of Highway 13, and 0.9 miles north of I-580. The existing 14-acre School site, referred to as the "North Campus," is developed with 13 buildings used for school facilities. It includes two properties: one at 4315 Lincoln Avenue that houses classrooms, administrative space, and other school buildings; and an adjacent property at 4465 Lincoln Avenue that is the School outdoor athletic fields and other outdoor activity space.

The Project would allow the school to incrementally increase enrollment from 905 to 1,250 students over an approximately 20-year period, and allow expansion of the school across Lincoln

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Avenue to a new “South Campus” on the adjacent 8-acre site of the former Lincoln Children’s Center at 4368 Lincoln Ave. The proposed South Campus site would be developed with eleven (11) buildings, 129 paved parking spaces, and recreation and outdoor spaces.

On May 1, 2023, two appeals of the Planning Commission’s April 19, 2023 decision were filed by Leila H. Moncharsh of the Law Offices of Veneruso & Moncharsh on behalf of the Neighborhood Steering Committee (NSC), which Ms. Moncharsh claims consists of representatives from each street around the School. The first appeal, PLN18053-A01, is in response to the Planning Commission’s certification of the Environmental Impact Report (EIR) pursuant to the CEQA. The separate second appeal, PLN 18053-A02, is of the Planning Commission’s decision to grant the School numerous permits and approvals for the development of the South Campus and school expansion. (**Attachment B**). The two appeals are collectively referred to herein as the “Appeal.”

Although the Appeal form itself had boxes checked purportedly appealing the granting of the Design Review permit, no arguments and/or supporting evidence was presented to the Planning Commission and/or in the Appeal itself challenging the Design Review action or findings, as required by the Oakland Planning Code. The boxes for “Tree Permit” and “Creek Permit” were also checked on the Appeal form. However, the Tree Permit is still pending and was not part of the Planning Commission action and a Creek permit was not required for the Project. As such, these appeal issues are waived and are not properly before the City Council in the Appeal.

Staff recommends the City Council deny the Appeals and find that: (1) the City’s CEQA analysis and findings and (2) PUD, Conditional Use permit and Design Review Findings are adequate and based on substantial evidence in the record. As such, Staff recommends the City Council uphold the Planning Commission decision to approve the Project.

BACKGROUND / LEGISLATIVE HISTORY

A. Current Application for Proposed Development

The School operates under an existing PUD Permit issued July 7, 2016, subject to site specific conditions of approval relating to enrollment, parking, special events, traffic circulation, pick and drop off, traffic demand management, neighborhood relationships and monitoring. The former Lincoln Children’s Center at 4368 Lincoln Avenue was originally used as an orphanage, and later as a school and treatment facility. The organization relocated to downtown Oakland in 2016. The School purchased the Lincoln Children’s Center site in 2014 but was required to amend the PUD permit or apply for new permitting before expanding their educational activities and prior to increasing enrollment. A Conditional Use Permit for Civic Education Activity and Design Review of modifications to historic structures and new construction is also required.

On December 18, 2018, the School filed an application with the Bureau of Planning of the Planning & Building Department (PBD) to modify their existing PUD Permit to:

- Increase enrollment from 905 to 1,250 students over an approximately 20-year period;
- Amend site specific conditions of approval;
- Expand the school across Lincoln Avenue and develop a new South Campus at 4368 Lincoln Avenue; and
- Obtain the additional required permits and approvals.

The Project would result in a consolidated 22-acre education facility on both sides of Lincoln Avenue to be constructed in three phases.

On January 31, 2022, the School applied for a Final Development Permit (FDP) for the Phases 1 and 2 of the Project, as case file PLN18532-PUDF01, and requested that the PUD and the FDP be processed concurrently. The FDP does not include new building construction, but proposes demolition of 8 buildings, and re-use and re-model of 4 buildings for school facilities. Three of these buildings are historic resources that would be restored. In addition, the FDP proposes construction of a new internal loop road on the South Campus site with signalized entrance and exit on Lincoln Avenue. The Loop Road provides on-site school drop-off and pick-up, replacing the current stacking queue on Lincoln Avenue and turn-around circulation on adjacent neighborhood streets. Parking would be re-configured and increased by 25 spaces. Proposed off-site improvements within the Lincoln Avenue right-of-way include improved pedestrian connections between the North and South Campuses via two at-grade crosswalks, safety improvements including speed control signage, Americans with Disabilities Act access, reduction of street parking at the school entry and improvement to private bus pick-up and drop-off zones.

The PUD also includes Phase 3, which, at a conceptual level, involves construction of a new 9,000-square foot performing arts center, an additional 2,000 square feet of new construction in two smaller buildings, and a pedestrian tunnel under Lincoln Avenue connecting the school's North and South Campuses. Phase 3 requires future submittal of a FDP. As part of Phase 3, the North Campus parcel at 4465 Lincoln Avenue would be permitted to increase parking by up to 36 stacked spaces.

On March 6, 2023, the Project appeared before the Landmarks Preservation Advisory Board (LPAB), during which the LPAB recommended design modifications to the historic structures' remodeling proposals prior to the item moving forward to the Planning Commission for consideration. The design recommendations were incorporated into the Project prior to proceeding to the full Planning Commission. On April 19, 2023, the Planning Commission reviewed and unanimously approved the Project by a (+4, -0) vote.

On May 1, 2023 the law firm, Veneruso & Moncharsh, on behalf of the NSC, filed an appeal (PLN18532-A02) of the Planning Commission approval of the Project.

B. CEQA Analysis for Current Project

In compliance with CEQA, staff determined that project impacts may be significant, and a Draft EIR document, entitled "Head Royce School Planned Unit Development Permit Project," was prepared for the Project.

The Draft EIR did not identify significant and unavoidable impacts that could not be reduced below adopted thresholds of significance by the SCAMMPs. A Final EIR was then prepared that reached the same conclusions and responded to public comments. Further detail is provided later in this report under the "California Environmental Quality Act" and the "Analysis" sections of this report.

On May 1, 2023 the law firm, Veneruso & Moncharsh, on behalf of the appellant, NSC, filed an appeal (PLN18532-A01) of the Planning Commission certification of the Final EIR.

ANALYSIS AND POLICY ALTERNATIVES

Section 1. Appeal Issues Relating to CEQA.

The appellant raises the following five (5) issues relating to CEQA in the Appeal (file PLN18532-A01), as identified and discussed below. These issues primarily relate to the Project's compliance with CEQA and whether the analysis prepared was legally adequate.

- A. Wildfire Hazards
- B. Emergency Evacuation
- C. Noise
- D. Hydrology and Drainage
- E. Loop Road and Parking

The appellant's submitted arguments have been included as **Attachment B** to this report. In addition to the Bureau of Planning staff responses below, a detailed technical response to the issues raised by the appellant is contained in a memorandum prepared by the City's CEQA consultant, Lamphier-Gregory (**Attachment C**).

Section 1.A. Wildfire Hazards

Section 1.A.1 Appellant Claim: That "Regardless of the CEQA Thresholds, The Introduction and Presence of an Increased Vulnerable Population into the Very High Fire Hazard Severity Zone (VHFSHZ), by Definition, Exacerbates the Severity of the Existing Condition of the Life/Safety Situation."

Section 1.A.2 Appellant Argument: The Appeal argues:

1. "In the absence of recognizing this level of life-safety impact – by performing due diligence in advance of a decision - the only logical conclusion that decision-makers can reach is that this Project is not ready for approval."
2. "The CEQA process, in its current form, is unbending at every level in the face of introducing hundreds of additional vulnerable populations into the VHFSHZ, by excusing it away as not meeting CEQA thresholds for exacerbating existing conditions."
3. The appellant "strongly disagrees that the EIR presents sufficient information for City decision-makers to evaluate risk when weighing the relative merits of the proposed Project."
4. The appellant agrees with the requirement "that the School submit a Vegetation Management Plan to the Oakland Fire Department for review and approval prior to issuance of any construction-related permits, but suggests that the Vegetation Management Plan needs to be "Fully Vetted as part of CEQA, the EIR, and prior to granting any building permits."
5. The appellant claims that the School has "a bad history of non-compliance with Vegetation Management" and provides Fire Department photos and inspection citations to demonstrate that failing.
 - a. The Appeal claims that the School "created a firetrap on its Campus in 2018, and that it remained in that condition past 2020 when the EIR consultants toured the site."
 - b. The Appeal also asserts that "despite overwhelming evidence of permit and inspection non-compliance, the EIR treats the School as simply needing some suggestions and guidance."

- c. The Appeal asserts that the Oakland Planning Commission demonstrated “*abuse of discretion*” by imposing ineffective mitigation measures and permit conditions.”

Section 1.A.3 Staff Response:

1. The analysis of wildfire impacts presented in the Project EIR is based on technical analysis prepared by EIR consulting team member Carol Rice, Principal of Wildland Resource Management, an expert in the field of wildfire hazard analysis and preparation of Vegetation Management Plans.
2. This professional expert analysis and the recommended Vegetation Management Plan for the School were accurately summarized in the EIR, presented in whole as an Appendix to the EIR, and made available to the public for review and comment
 - a. The EIR provides an overview of the regulatory framework pertaining to wildfire protection. This regulatory framework includes:
 - i. The California Fire Code requirements for Wildland-Urban Interface Fire Areas,
 - ii. The identification of Fire Hazard Severity Zones; and
 - iii. Requirements for wildfire protection, including new building construction materials, hazardous vegetation and fuel management, and defensible space requirements.
 - iv. The EIR identifies City of Oakland Fire Code requirements that apply to areas designated as VHFHSZ, including required preparation of Vegetation Management Plans.
 - v. These regulations do not prohibit new construction or prohibit increases in population in areas designated as VHFHSZ but do require measures that serve to reduce fire hazards at individual properties.
 - b. The analysis identifies the Project site as being located in a VHFHSZ as identified by the City of Oakland and CalFire and establishes that the School is located in a Wildland Urban Interface (WUI) zone (see Draft EIR pages 16-1 to 16-4).
 - c. The EIR also presents fire hazard factors that are specific to the Project site, including localized weather conditions that can result in extreme fire danger and high ignition potential, hazardous vegetation and fuel loads, and older buildings constructed well before current Fire Code requirements (Draft EIR pages 16-5 and 16-5).
3. The EIR clearly indicates that the Project site is in “one of the highest risk areas in the country for devastating wildland urban interface fires.”
 - a. The EIR evaluates whether the Project might exacerbate wildland fire-hazard conditions by bringing additional development and people into an area at risk of fire hazards, or by failing to comply with regulatory measures for fire hazard reduction.
 - b. The EIR (Impact Fire-1) identifies that “the Project would exacerbate the current exposure of people and structures to a significant risk of loss, injury or death involving wildland fires by adding buildings and increasing enrollment at a school located within a VHFHSZ” (Draft EIR page 16-17).
 - c. However, this increased exposure can be fully mitigated through the implementation of project upgrades to existing buildings, fire-safe code requirements and several mitigation measures that would reduce the exposure and risk to a less than significant level.
 - d. In fact, the Project will serve to improve existing outdated buildings that currently are considered fire hazards due to the fact they have not been upgraded, are

- vacant and underutilized, and do not meet the latest Building and Fire Code standards for buildings located in the VHFSZ. Also, the Project will improve landscaping and vegetation on the South Campus, while also introducing vegetation management requirements that the applicant will implement as part of the Project. These measures serve to improve the condition on the South Campus, making the area less vulnerable to wildfire.
- e. The Vegetation Management Plan was fully vetted as part of the CEQA process for this EIR. A summary of the Vegetation Management Plan's recommendations is presented in the EIR, and the recommended Vegetation Management Plan is provided in Appendix 16 of the EIR.
 - f. Pursuant to California Fire Code and City of Oakland Fire Code requirements that apply to areas designated as VHFHSZs, the consulting expert in the field of wildfire hazards that helped prepare the EIR developed a draft Vegetation Management Plan for the School, designed to provide an enhanced level of wildfire safety at the School.
 - g. The EIR's recommended Vegetation Management Plan includes the following required components:
 - i. Identifies how to incorporate fire-safe plants and vegetation at the School to reduce fire risk to structures;
 - ii. Specifies vegetation treatments within differing Fuel Management Zones at the School, as required to create sufficient defensible space; and
 - iii. Lists a sequence of scheduled vegetation management practices to be implemented by the School during construction and on-going throughout the life of the Project, to reduce fuel loads and fire hazards
 - iv. The EIR's Vegetation Management Plan satisfies the requirements of the California Fire Code, the City of Oakland Fire Code, and City of Oakland's Standard Conditions of Approval for projects located within the designated VHFHSZ.
 - h. With implementation of the Vegetation Management Plan and other construction-period requirement, the EIR finds that the Project will comply with all defensible Space requirements of the California and Oakland Fire Codes. Compliance with these requirements will reduce the Project's potential to exacerbate the current risk of wildland fires.
 - i. The EIR does not suggest that implementation of the required Vegetation Management Plan would, on its own, reduce or materially lessen existing risk of wildfire in the area.
 - j. The EIR concludes that implementation of the Vegetation Management Plan and compliance with other codes and regulations pertaining to fire-safe development would substantially reduce the potential for the Project to exacerbate these existing hazardous conditions, such that the Project would not increase fire hazards.
4. A Standard Conditions of Approval/Mitigation Monitoring Program (SCAMMP) was prepared for the Project. That SCAMMP includes SCA Fire-1, Designated Very High Fire Severity Zone – Vegetation Management, which requires the Vegetation Management Plan to be submitted for City review and approval, and implemented prior to, during, and after construction of the Project.
 5. Pursuant to CEQA Guidelines Section 15041, the City has authority to require implementation of the Vegetation Management Plan and to require compliance with all other applicable federal, state and local laws and code requirements pertaining to fire protection and life safety systems, fire service features, and materials and construction

methods for fire-safe structures. CEQA Guidelines section 15126 further provides that mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.

- a. If the Project is approved, it is standard City practice to require the School to sign a copy of the approval letter and agree to abide by all conditions and mitigation measures pursuant to that approval (including the Vegetation Management Plan).
 - b. The signed copy is to be submitted with each set of subsequent permit plans for demolition, grading and building permits.
 - c. The School will then be responsible for compliance with all the Conditions of Approval and all adopted mitigation measures at its sole cost and expense, and subject to review and approval of the City of Oakland. Violation of any term, condition or mitigation measure relating to the Project's approvals (including the Vegetation Management Plan) is unlawful, prohibited and a violation of the Oakland Municipal Code.
6. The City reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, to revoke the Project's approvals if the applicant violates of any of the Project's Conditions or mitigation measures, or to take other appropriate enforcement actions.
 7. Regardless of the School's good or bad history with prior fire hazard inspections and compliance, implementation of the Vegetation Management Plan is an absolute requirement of the Project's approval and is enforceable through permit conditions. This condition of approval is neither a suggestion nor a general guidance, but rather a binding obligation of the School in order for the school to be in compliance with the permit.

Section 1.B Emergency Evacuation

Section 1.B.1 Appellant Claim: That the EIR is inadequate because it:

- 1. Does not provide an adequate baseline of existing conditions related to a mass evacuation scenario.**
- 2. Does not adequately analyze the Project's impacts, specifically from adding more students to a panicked and chaotic evacuation condition.**
- 3. Incorrectly concludes that implementation of the recommended mitigation measure (i.e., preparation and implementation of an Emergency Evacuation Plan), will reduce the Project's impacts related to emergency evacuation to less than significant levels; and**
- 4. Inappropriately defers necessary mitigation.**

Section 1. B.2 Appellant Argument: The Appeal argues:

1. The EIR "does not provide baselines showing, under pre-Project conditions, whether it would be possible to evacuate the current population at [the School]." and further states "It should be of paramount importance to update the existing conditions modeling for any proposed expansion, such as the [the School] South Campus, as part and parcel of due diligence." The Appeal argues that "the missing baseline from the EIR violates CEQA because establishing a baseline at the beginning of the CEQA process is a fundamental requirement, so that changes brought about by a project can be seen in context and significant effects can be accurately identified."

2. The EIR “does not include a traffic study showing what would happen in the event that there was a typical mix of vehicles and pedestrians of all ages trying to evacuate at the same time.”
3. The EIR “does not discuss the role of panic and chaos in determining whether it is possible to perform a safe evacuate so many people, including an additional 344 school-aged children, during a mass evacuation.”
4. The Appeal cites CEQA case law that “requires agencies to analyze any significant environmental effects a project might cause or risk exacerbating by bringing development and people into the area affected,” and that the EIR “violated this mandate by ignoring the Attorney General’s directive as to what should be analyzed in an EIR.”
5. The EIR “does not contain “sufficient detail to enable those who did not participate in its preparation to understand and consider meaningfully the Project’s impact on the ability of the campus and community to safely evacuate.”
6. “Nearby residents, parents, uphill neighbors and School employees have the right to know the Project’s impact on an evacuation. Without this crucial information, the EIR fails as an informational document.”
 - a. The EIR needed to “either show that an evacuation plan would reduce danger to the neighborhood, the school, and neighbors above Highway 13 to less than significant, or it needed to discuss alternatives to the project’s increase in enrollment.
 - b. The EIR did neither, and thus does not fulfill its obligation to either mitigate the evacuation dangers or pursue another alternative.” The EIR “failed to show how the mitigation of a future evacuation plan would even occur.”
 - c. It appears that the approach was “just trust [the School] because they are a wealthy private school and therefore, can be trusted,” and that “there is no evidence that the EIR has met its legal obligation to show that its proffered mitigation will reduce the vegetation management and evacuation impacts to less-than-significant.”
 - d. The Appeal states that “The EIR concedes that Mr. Weisgerber is a recognized expert on the topic of wildfire prevention and evacuation procedures, but then ignores most of what Mr. Weisgerber said about the emergent need for an evacuation plan.”
7. The Appeal states that requirements related to preparation of an Emergency Evacuation Plan can be put-off until some undetermined time in the future. and “wait for development of questionable mitigation measures to kick-in down the road,” and “put-off analysis or order a report without setting standards” that demonstrate how the Project can avoid exacerbation of an emergency evacuation hazard. The Appeal even suggests that the EIR requirements allow the School to defer providing an Evacuation Plan for at least six years, and that the School can even ask for more time, possibly never preparing an Emergency Evacuation Plan at all.

Section 1.B.3 Staff Response

1. Response to Claim B-1 Baseline Condition:

The EIR provides an adequate baseline from which to measure the Project’s potential impact because:

- a. Baseline information presented in the EIR related to emergency evacuation includes the following:
 - i. The EIR identifies that current research on California wildfires has found that wildfires can spread quickly, may overwhelm officials and communication systems, and can over-stress an evacuation process. With

- a high Diablo wind event and hazardous fire conditions, a wildfire that begins in the Oakland Hills could reach the School within 15 to 30 minutes.
- ii. Under a catastrophic wildfire evacuation scenario, as many as 9,000 people from neighborhoods located above Highway 13 and neighborhoods below Highway 13 but in proximity to the School, plus people from Montclair Village and people from surrounding institutional uses, may seek to use Lincoln Avenue as their primary vehicle evacuation route to safer, downhill locations.
 - iii. Lincoln Avenue is expected to be a main thoroughfare for evacuees going downhill and emergency vehicles going uphill, with traffic congestion being a primary concern.
 - iv. The City's prior 2010 Local Hazard Mitigation Plan (LHMP) encouraged development of plans for evacuation or sheltering-in-place of schoolchildren during periods of high fire danger, specifically recognizing that overloading of streets near schools by parents attempting to pick-up their children during these periods could restrict uphill access by fire personnel and equipment, and the 2016-2021 LHMP identifies the need to improve evacuation procedures, as there is no official evacuation plan for the Oakland Hills.
 - v. The School prepared an Emergency Preparedness Manual (2020), which provided its own procedures and evacuation plans for the School in the event of an emergency. As indicated in that Emergency Preparedness Manual, the School had a shelter-in-place protocol, unless a public agency Incident Command authorized an evacuation procedure. Parents are to be instructed not to attempt to pick up their students during an emergency until receiving instructions about when it is safe for students to be picked-up.
 - vi. As of November 2020, the School's North Campus had numerous pedestrian egress points that were not optimally maintained for an emergency pedestrian evacuation.
- b. The Project would improve egress points and would also improve circulation in the area, which would contribute to enhanced safety in the area in the event of an evacuation.
 - c. This EIR baseline information provides adequate context to assess the potential effects that might result from the Project as related to an emergency evacuation.

2. Response to Claim B.2 Inadequate Analysis of Project Evacuation

Per CEQA Guidelines Appendix G, the CEQA threshold pertaining to emergency evacuation is whether the project would "impair implementation of, or physically interfere with an adopted emergency response plan or emergency evacuation plan." This is the threshold applied in the EIR. The Project is required to prepare an emergency evacuation plan that will assist in ensuring there is safe evacuation of students in the event of an emergency. Given the school enrollment will represent a mere four percent (4%) increase in evacuation load, the emergency evacuation plan will actually improve existing conditions in the area. below are main points discussed in the EIR that support the above conclusion:

- a. As concluded in the EIR, the City of Oakland does not have a publicly facing evacuation plan for the Oakland Hills, and there are no specified public emergency evacuation routes to be followed.

- b. The only emergency evacuation plan strategy that was identified at the time of preparation of the EIR was the City's LHMP, which encourages preparation of plans for evacuation or sheltering in place of schoolchildren during periods of high fire danger, specifically recognizing that overloading of streets near schools by parents attempting to pick-up their children during these periods can restrict access by fire personnel and equipment. As such, the EIR does not find that the Project would conflict with or interfere with any such adopted emergency response plan or emergency evacuation plan.
- c. Irrespective of the presence (or lack thereof) of a publicly facing evacuation plan, the EIR does evaluate whether the Project would exacerbate wildfire hazards by substantially contributing to a condition whereby community residents would be unable to evacuate safely due to increased traffic congestion on potential evacuation routes.
- d. This approach to analysis of emergency evacuation is consistent with recent Court decisions.
- e. By bringing a significant number of people into the area, a project may significantly exacerbate existing environmental hazards, specifically, wildfires and their associated risks." Therefore, this issue was addressed in the EIR.
- f. The EIR clearly identifies that the Project would increase student enrollment by 344 additional students and 17 staff members, representing an increase of 361 new people that would potentially compete for the same limited evacuation routes to escape a wildfire hazard.
- g. Under a catastrophic evacuation scenario, as many as 9,000 people may be seeking to use Lincoln Avenue as an evacuation route to safer downhill locations.
- h. The Project would add 361 more people (or an approximately 4 percent increase in people) potentially attempting to use Lincoln as an evacuation route.
- i. The EIR recognizes that Head-Royce's then-effective Emergency Preparedness Manual emphasized a shelter-in-place protocol. The School's gym is a fire-hardened structure, and the 2020 Emergency Preparedness Manual directed that shelter-in-place action is to occur at that facility.
- j. Both EIR technical consultants (Dr. Wong and Wildland Res. Mgt.) acknowledged this fire-hardened structure, but strongly recommended against shelter-in-place as the primary protocol under a wildfire event. They found that even a strongly fire-hardened structure such as the gym might not provide effective protection against extreme heat and smoke under a wildfire event.
- k. Given this concern, these EIR consultants recommended an evacuation plan be prepared for the School.
- l. The Evacuation Planning Recommendations report for the School (Stephen Wong, November 2, 2020, Appendix 16B of the EIR), evaluated a number of potential evacuation scenarios for the School, including evacuation by vehicles.
- m. That evaluation did not recommend a vehicle evacuation from Campus. It found that a vehicle evacuation would add significant congestion to what can already be expected to be a heavily congested evacuation route.
 - i. Additionally, bus and/or carpool loading would conflict with other evacuating vehicles on the roadway, and not enough vehicles are available to evacuate the School population quickly and efficiently.
 - ii. A vehicle evacuation was only advised if there is substantial forewarning of an imminent evacuation, and if congestion on the surrounding roadways is low.

- n. The Evacuation Planning Recommendations report included in the EIR recommends a pedestrian evacuation for the School.
 - i. Pedestrian evacuation was considered the most likely scenario given that most students do not have access to a vehicle,
 - ii. It is likely to be faster than other types of evacuations in most situations and would minimize the exacerbation of vehicle congestion on Lincoln Avenue from evacuees of the surrounding neighborhoods.

3. Response to Claim B.3 Inadequate Mitigation:

It is not the responsibility of the School, or its project to mitigate potential impacts that exist as a result of existing conditions.

- a. It is not possible to identify a mitigation measure for the School that is capable of reducing the wildfire dangers to the neighborhood, the School, and neighbors above Highway 13 to a less than significant level.
- b. The wildfire danger in the VHFSZ associated with the Oakland Hills is an existing condition that is influenced by local extreme wind and weather conditions, steep and varied terrain and a complex mosaic of different vegetation types with interspersed areas of development.
- c. None of these existing conditions were caused by the School. As such, it is not legally required, nor is it possible, for the School to develop a plan that can successfully mitigate the risks and capacity constraints to people uphill from the School and surrounding neighbors from an evacuation during a wildfire.
- d. The high fire risks, limited evacuation routes, and lack of a comprehensive area-wide evacuation plan are conditions that exist with or without the Project.
- e. The obligation of this EIR is to seek mitigation measures that can reduce or avoid the Project's exacerbation of these existing conditions. The EIR does this by including a mitigation measure to address the Project's potential to exacerbate existing capacity constraints associated with an emergency evacuation of the Oakland Hills (Mitigation Measure Wildfire and Emergency Evacuation-1, Emergency Evacuation Plan).
 - i. This mitigation measure involves a pedestrian-based evacuation plan for the School that does not contribute to anticipated traffic congestion on Lincoln Avenue, and recognizes the School's limited capability to conduct a full vehicle evacuation given the relatively small number of School-related vehicles as compared to the number of School students and faculty.
 - ii. This mitigation measure was developed with input from City departments, the EIR's technical evacuation expert (Dr. Wong) and the detailed comments as provided by Mr. Weisgerber, President of Weisgerber Consulting as included in the NSC's comment letter on the Draft EIR.
 - iii. Mr. Weisgerber's review included suggested improvements to the recommendations of the Draft EIR that helped bolster the effectiveness of the recommended Pedestrian Evacuation Plan. Much of Mr. Weisgerber's recognized expert comments on the topic of evacuation procedures has been included in this mitigation measure, and not ignored.
- f. The EIR's Mitigation Measure Wildfire and Emergency Evacuation-1: Emergency Evacuation Plan includes the following important components:
 - i. The School shall prepare a full, stand-alone Emergency Evacuation Plan.
 - ii. This Emergency Evacuation Plan shall be prepared in consultation with a professional emergency evacuation expert and shall consider those

- recommendations as provided in Appendix 16B of the Draft EIR, as well as those additional recommendations as included in Mr. Weisgerber's peer review/comment letter.
- iii. Selection of the most appropriate and effective details of the Emergency Evacuation Plan are to be conducted by the professional emergency evacuation expert retained by the School and subject to review and approval by the Oakland Fire Department, with input from Emergency Services, Oakland Police Department and the Oakland Department of Transportation.
 - iv. Approval of the Emergency Evacuation Plan by the Oakland Fire Department must be obtained prior to issuance of a certificate of occupancy for the first building permit that would enable an increase of current student enrollment.
 - v. The Emergency Evacuation Plan shall address, at a minimum, the following considerations and performance standards:
 - 1) Establish communication connections with emergency alert systems. This may include developing a liaison relationship with the Fire Marshal and/or safety personnel as designated by the City Administrator, and/or the Oakland Fire Department Operations Center (as do public schools).
 - 2) Establish a power-independent communication connection (such as cell phone, satellite phone, etc.) with the Emergency Management System to maintain emergency response communications in the event of an emergency and for real time updates.
 - 3) Participate in Alameda County's public alert system provided by Everbridge (called AC Alert), which Oakland first responders use to broadcast incident-specific messages for any event.
 - 4) Remove existing physical obstacles throughout the Campus (both North and South) that may hinder a successful pedestrian evacuation, as identified by Dr. Wong in Appendix 16B of the EIR. Appendix 16B of the EIR provides recommendations that Head-Royce School should address to improve egress pathways, gates, stairs, gate openings and ADA compliance, to better prepare for an emergency evacuation.
 - 5) Establish accountability procedures for managing a pedestrian evacuation. These procedures should ensure a methodology for managing and accounting for all primary grade children during an evacuation, with responsibilities assigned to faculty and staff (and potentially older students) to ensure that all students are safely managed under emergency mass evacuation conditions. This may include classroom "all clear" verification, identifying "rally points" along the travel route, and headcount verification that all students have reached the designated evacuation assembly point.
 - 6) Identify evacuation destinations, including primary and secondary, and potentially tertiary evacuation destinations, which should be established in consultation with City reviewers. The pre-designated assembly points should be communicated to all parents and guardians, with methodologies for adequately communicating

- emergency evacuation information and instructions on how reunification with their students is to be achieved.
- 7) Prohibit at-school reunification (i.e., parents and guardians shall not be permitted to pick-up their children by driving to Campus).
 - 8) Publish City-approved Emergency Evacuation Plan on the School website so that neighbors and the public are informed of the School evacuation strategy.
 - 9) Ensure that all faculty, staff, students and parents are fully trained on the evacuation plan, with a minimum of semi-annual exercises observed by the Oakland Fire Department, to ensure that the Campus is well indoctrinated toward an emergency reflex response to a disaster.

4. Response to Claim B-4 Deferred Mitigation:

- a. The EIR's Mitigation Measure Wildfire and Emergency Evacuation-1: Emergency Evacuation Plan does not improperly defer mitigation. Rather, the EIR mitigation measure commits the School to developing a precise pre-evacuation plan and emergency evacuation procedures that satisfy the specific performance criteria as articulated in the mitigation measure. The EIR mitigation measure includes specific pre-evacuation planning and preparation requirements, as well as specific emergency evacuation procedures required during an evacuation. The EIR mitigation measure provides that the selection of the most appropriate and effective details of the School's Emergency Evacuation Plan is to be conducted by a professional emergency evacuation expert retained by the School.
- b. The School's proposed Emergency Evacuation Plan shall then be subject to review and approval by the Oakland Fire Department, with input from Emergency Services, Oakland Police Department and the Oakland Department of Transportation, ensuring all City standards and requirements for the safest and most effective emergency evacuation are incorporated.
- c. The EIR does not suggest that the required pre-evacuation plans and emergency evacuation procedures will eliminate or fully reduce the risk of lost lives and property during a catastrophic wildfire, nor will it eliminate the potential for chaos or panic as people try to escape such a wildfire. Rather, by introducing the pedestrian evacuation strategy for faculty and students from Head-Royce, the School would not compete with residents of the surrounding area for vehicular evacuation on limited roadway evacuation routes and would not add additional vehicle congestion and delay. Residents in the surrounding area may also seek to evacuate on foot because of congested or stopped traffic on Lincoln Avenue.
- d. The School contribution to a potentially crowded pedestrian evacuation will have been practiced pursuant to prior emergency preparedness drills, will be as well-organized and efficient as is practical given the emergency conditions that would necessitate such an evacuation, and will include secondary and potentially tertiary evacuation destinations and routes.
- e. Mitigation Timing Requirements as Presented in the EIR
 - i. The EIR mitigation measure requiring an Emergency Evacuation Plan does not put-off preparation this Plan to some undetermined time in the future, or six years from now, and does not allow for never preparing an Emergency Evacuation Plan. Rather, the EIR mitigation measure requires

- approval of the School's Emergency Evacuation Plan by the Oakland Fire Department prior to issuance of a Certificate Of Occupancy for the first building or construction permit that would enable any increase over currently permitted student enrollment. In other words, before the School can increase its enrollment beyond the limits of the current permitted capacity, or before the potential impact of the Project will be realized.
- ii. Before the Oakland Fire Department can consider such approvals, the School is required to provide the City with a proposed Emergency Evacuation Plan prepared in consultation with a professional emergency evacuation expert. That proposed Emergency Evacuation Plan is then subject to review and input from Emergency Services, the Oakland Police Department and the Oakland Department of Transportation, prior to consideration of approval by the Oakland Fire Department.
- f. The School has Already-Prepared Draft Wildfire Preparedness and Emergency Evacuation Plan. The School has prepared a Draft Wildfire Preparedness and Emergency Evacuation Plan, prepared in consultation with PyroAnalysis (a fire prevention and protection consulting firm) and its Principal Consultant, Shane Lauderdale (an NFPA-Certified Fire Protection Specialist). Below are some details of the draft plan:
- i. It will be subject to detailed review and approval by the Oakland Fire Department prior to any increase in student enrollment.
 - ii. It establishes an Emergency Management Team (EMT) comprised of the Head of School, the Chief Financial and Operating Officer, the Director of Communications and the School's Fire Emergency Consultant
 - iii. It provides that the EMT will be enrolled in multiple services that provide communications and notifications of pending Red Flag Warnings, Air Quality Alerts, PG&E Public Safety Power Shutoffs, and other emergency alert systems including AC Alert/Everbridge, Zonehaven, the Interactive National Weather Service and news media outlets.
 - iv. It identifies evacuation exits from the campus, including the main gates to the North and South Campuses, the middle gate on Lincoln Avenue, the Whittle gate, the driveway to the athletic fields on the North Campus, and the stairs to the tennis court allowing egress to Whittle Avenue. Although School gates are generally locked to limit access from outside, they are now all equipped with panic bars to allow immediate exit in case of emergency. It provides that Lower School personnel will be assigned to assist with students in grades K-5, and that additional staff members will be designated to assist with the evacuation of staff or students with physical disabilities. If individuals with physical disabilities are not capable of a pedestrian evacuation, they will be transported by vehicle to the designated off-campus assembly area.
 - v. It establishes certain accountability procedures for managing a pedestrian evacuation, including adult personnel walking with groups of up to twenty grade 6-12 students, and up to 10 grade K-5 students during an evacuation. Students will be instructed to leave campus in pairs. Upon arrival at the evacuation destination, students and adults are to congregate with one another as closely as possible. If circumstances allow, groups should assemble in a pattern similar to the formation used for all-school fire drills, as this will facilitate the reunification process. Attendance will be

- taken immediately upon arrival so that any missing persons can be identified and accounted for as quickly as possible.
- vi. It identifies the primary default destination for evacuation/reunification as being the Caltrans Park & Ride lot located under the MacArthur Avenue/Interstate 580 overpass, approximately 1.2 miles down Lincoln Avenue from the School. It also identifies a secondary evacuation/reunification area as the Dimond Park Tennis Courts approximately 0.7 miles from the School.
 - vii. It provides that parents and guardians are not to pick-up their child from the campus if an immediate wildfire emergency is declared to ensure that Lincoln Avenue remains as accessible as possible for first responders and vehicular evacuation of the surrounding neighborhood. Instead, they will be provided direction by the Communications Team to either wait for the immediate danger to subside while students shelter in place on campus, or to reunify with their student(s) in one of the two off-site evacuation destination locations.
 - viii. It provides a methodology for communicating emergency evacuation information and instructions on how reunification with students is to be achieved. Periodic electronic updates are to be transmitted to the parent community to reassure them that a reunification process will commence as soon as it is safe to do so. When it is safe to release students, it is expected that the evacuation process will proceed in a sequential manner by grade, for example, with kindergarten students picked up first and 12th grade students last. For families with multiple students, all students in the household may be released with the youngest student. The Communications Team will transmit regular electronic messages to parents throughout the process to ensure that the community is well informed and that there is an orderly process to minimize the amount of vehicle traffic. The IC will coordinate with local authorities to identify the nearest safe location to execute the reunification process.
 - ix. It provides the following additional precautionary measures:
 - a. If a Red Flag Warning or Fire Weather Watch is issued for the School area, the School's EMT will be convened for evaluation of the risk. The Team will communicate to the School community that Red Flag conditions exist for the day, and that further steps, including the potential for a campus closure, may become necessary.
 - b. The School's EMT will ensure that students and faculty will not come to campus if a Wildfire Evacuation Order or Evacuation Warning has been issued by a governmental authority before the start of a school day. If the Evacuation Order is issued after the commencement of the school day, the School's Incident Commander and the EMT will work together to evacuate the campus in accordance with the protocols in the Plan.
 - c. When wildfire risk is particularly high for the area surrounding the School, PG&E may announce a power shutdown (PSPS event) affecting the campus. PG&E provides notice of such projected shutoffs to all PG&E account holders through texts, emails and phone calls. The School is a PG&E customer and will be notified in

advance of all pending PSPS events. If a PSPS event occurs, the campus will be closed for instruction and other school activities during the shutdown period, and no students will be allowed on the campus. If the shutdown occurs while school is in session, the Head of School will determine whether the School will close early depending on the circumstances at the time.

- x. It will reduce the need for a potential emergency evacuation by preemptively closing school on those days when fire risks are high.

See also **Appendix C**. City of Oakland's 2023 Wildfire Annex in response to Letter 4 (Weisgerber Consulting), Response to Comment 4-3. Master Response to the Appeal - Noise

Section 1.C Noise

Section 1.C.1 Appellant Claims:

1. **The Noise Portion of the EIR Is Inadequate Because it Relies on Conclusory Statements Without Factual or Expert Support.**
2. **The EIR Does Not Present an Adequate Baseline of Noise Information, Which Is Needed to Understand the Difference Between Pre And Post Project Noise Conditions.**

Section 1.C.2 Appellant Argument: The Appeal argues that the EIR preparer "did not have the expertise to opine about the interpretation of acoustics data or realize that data was missing, and that there is no evidence that the EIR preparer had any expertise in acoustics."

1. The Appeal asserts that work on the EIR "fell way below what one would expect of a competent acoustics expert."
2. The City Council should require that the noise section be redone in a recirculated EIR prepared by "a reputable acoustics company that is provided with sufficient funding to complete the task."
3. The EIR "does not present an adequate baseline of noise information, which is needed to understand the difference between pre- and post-Project noise conditions." and that the the EIR preparer "waited until after the comment period on the Draft EIR had closed, and then obtained some noise measurements . . . a month before the Planning Commission hearing." It failed to report the baseline noise measurements along Lincoln Avenue "making it impossible to know the pre- and post- project sound conditions."

Section 1.C.3 Staff Response: Noise

1. Staff Response Regarding Technical Noise Analysis in the EIR

It is not clear from the Appeal whether the appellant is asserting that the technical noise analysis prepared by Illingworth & Rodkin and presented in Appendix 16 to the EIR falls below what they expect of a competent and reputable acoustics expert, or whether the appellant is asserting that Lamphier-Gregory (the City's EIR consultant) has made incorrect conclusory statements in the EIR, without factual or expert support from Illingworth & Rodkin.

- a) Illingworth & Rodkin is one of the Bay Area's preeminent acoustics and air quality technical consulting firms. They have vast expertise and experience in preparing technical acoustic

studies, including technical report for City of Oakland CEQA documents, spanning over decades.

- b) For some of the more complex analysis of noise impacts related to outdoor graduation ceremonies, Illingworth & Rodkin's work was also subject to peer review by RGD Acoustics, another preeminent Bay Area acoustic technical consulting firm.
- c) The Appeal relies on assertions made by Mr. Pack of Pack Associates, claiming that the EIR contains numerous technical mistakes. However, the EIR's Response to Comments document and this Response to the Appeal refute these claims of technical mistakes and provide substantial evidence that the technical acoustic work contained in the EIR has been prepared correctly, meeting the standards and thresholds set by the City of Oakland.
- d) Lamphier-Gregory has been preparing CEQA documents on behalf of the City of Oakland for over twenty-five (25) years and has proven its expertise and capability of incorporating complex information prepared by technical subconsultants into CEQA documents in an accurate manner. Mr. Pack's assertion that Lamphier-Gregory has made incorrect conclusory statements in the EIR without factual or expert support is not itself supported by any examples of where the EIR text deviates from or is not supported by the work.
- e) Adequate Noise Baseline Information Presented in the EIR. As fully addressed in the EIR's Response to Comments document, much of the original technical noise analysis work for the Draft EIR was conducted during the summer of 2020, when the Covid-19 pandemic resulted in shelter-in-place regulations and prohibitions on fieldwork. Even after the shelter-in-place restrictions were lifted, the closures of offices and businesses throughout the Bay Area (including closure of Head-Royce School) resulted in substantially reduced outdoor activity and resulting low traffic levels. Noise measurements that might have been taken at that time would have shown an abnormally low level of surrounding ambient noise levels due to the reduced level of outdoor activity. Therefore, baseline noise data presented in the Draft EIR was derived from several different sources:
 - f) Noise measurements had previously been conducted at the School in June of 2019 (i.e., pre Covid-19 pandemic). These noise measurements were taken at the School by Salter Associates (a professional acoustics firm). Daytime periodic noise levels along Lincoln Avenue were found to range from 48 to 60 dBA Leq on weekdays. Weekday average day-night noise levels were calculated to be 53 dBA Ldn. Daytime background noise levels representative of background noise levels in the surrounding residential areas ranged from 40 to 45 dBA L90 (or 90% of the measured hour) on weekdays.
 - g) The results of the June 2019 noise monitoring were compared to traffic noise modeling using the Federal Highway Administration's Traffic Noise Model. Based on noise modeling and using pre-existing traffic volume inputs, average day/night traffic noise levels at 50 feet from the center of Lincoln Avenue were calculated to be approximately 61 dBA Ldn under existing conditions. Average day/night noise levels at a distance of 180 feet from the centerline of Lincoln Avenue (representative of background noise levels in the surrounding residential areas) were calculated to be 53 dBA Ldn.
 - h) In March of 2022, Illingworth & Rodkin conducted additional noise monitoring and measurements during a period when school was in session. The March 2022 noise measurement data generally confirmed the Draft EIR's assumptions for ambient noise conditions. This showed an hourly average traffic noise on Lincoln was found to be 61 to 65 dB Leq during the daytime and 52 to 62 dB Leq during the nighttime, for an average day/night traffic-generated noise level within 50 feet of the center of Lincoln Avenue of 65 dBA Ldn. It also showed an hourly average ambient noise in the surrounding residential neighborhood was found to be 41 to 49 dB Leq during the daytime - and 35 to 49 dB Leq

during the nighttime, for an average day/night noise level of 49 dBA Ldn in the surrounding neighborhood.

- i) The most current (March 2022) noise measurement data generally confirms the assumptions for ambient noise conditions as presented in the Draft EIR. Average day/night traffic-generated noise levels within 50 feet of the center of Lincoln Avenue are as high as 65 dBA Ldn, and average day/night ambient noise conditions in the surrounding residential neighborhood are at 49 to 50 dBA Ldn.

2. City's Response to Appellant's Claims Regarding Appropriate Use of Noise Thresholds to Assess Project Impacts.

The assertions of the Appeal that pertaining to the noise thresholds remain similar to those comments presented by Pack Associates, Inc. in their comments on the Draft EIR. The general theme of these comments is that that each potential noise source attributed to the Project needs to be evaluated as both an operational noise source and as a permanent noise increase.

- a) As identified in the Draft EIR (at page 13-18): Operational noise in excess of City of Oakland CEQA thresholds would occur if the Project's operations were to exceed the noise level standards specified in the Oakland Municipal Code (OMC Section 17.120.050), and as conservatively adjusted down by 5 dBA to account for noise sources consisting primarily of speech or music (see Table 13-5 in the Draft EIR). These noise standards are expressed as L_x, representing the noise level that is exceeded X percent of a given period (e.g., L₃₃, L₁₇, with L_{max} representing the maximum instantaneous noise level).
- b) Permanent noise in excess of City of Oakland thresholds would occur if the Project were to permanently increase the existing ambient (average day/night) noise level by 5 dBA Ldn or more where resulting noise level would be less than 60 dBA Ldn. Alternatively, permanent noise in excess of City of Oakland thresholds would occur if the Project were to permanently increase the existing ambient noise level by 3 dBA Ldn or greater where resulting noise level would be 60 dBA Ldn greater (where dBA Ldn is expressed as an average day/night noise level).

3. City's Response to Appellant's Claims Regarding Operational Noise:

- a) As clearly described in the EIR, the Project's proposed new operational noise sources include proposed outdoor classrooms, daily use of the central commons outdoor space, school recess held at the existing recreation field, a dust collection system on the interior of the Building 2, proposed parking lots, two proposed audible crosswalk signals for pedestrian crossings of Lincoln Avenue, and a loading area at the Performing Arts Center building. Operational noise sources also include each of the Project's expected "special events" (including graduation ceremonies to be held in the outdoor Commons, and Special School Events held at the Performing Arts Center), and traffic noise along the Loop Road. These operational activities of the Project would not occur every day, would not occur during the nighttime when school is not in session, and would not occur continuously throughout the day. Therefore, the City of Oakland's operational thresholds were appropriately used for analysis of these new noise sources.
- b) Analysis of operational noise impacts as presented in the EIR relied on the use of computerized modeling of the noise sources using SoundPLAN Version V8.2. SoundPLAN is a sophisticated three-dimensional noise mapping software that takes the characteristics of the noise source, and the geometry of the receivers, surrounding terrain and any intervening structures into account. SoundPLAN was used to calculate noise contours for each operational noise source, and the results of the model are presented in the EIR as noise contours emanating from each noise source (Figures 13-5 through 13-

7), and as individual sound levels at identified sensitive receptors (Tables 13-9 through 13-14). These results are technically accurate, based on reliable modeling techniques, and accurate source data for sound levels.

- c) As shown on these EIR figures and tables, all but one of the Project's operational noise sources would not generate noise levels that would exceed the operation noise thresholds, either individually or under simultaneous cumulative conditions.
- d) The exception is noise attributed to annual outdoor graduation ceremonies, which would include crowd noise and amplified sound that would exceed operational noise thresholds. Mitigation measures are identified in the EIR to reduce this operational noise source to levels that would not exceed the thresholds (i.e., to levels of less than significant).

4. City's Response to Appellant's Claims as to Permanent Noise

- a) As also clearly described in the EIR, the City of Oakland thresholds for a permanent noise increase were used to measure the significance of increased traffic noise on Lincoln Avenue, where traffic occurs throughout all hours of every day. Based on the Project's increase in traffic as projected in the Project's Transportation Impact Assessment, traffic noise levels along Lincoln Avenue are calculated to increase by 1 dBA Ldn over existing conditions with the addition of Project-generated traffic.
- b) This dBA increase in traffic noise along Lincoln Avenue is less than the City's 3 dBA or 5 dBA Ldn increase over ambient levels, and this impact was correctly identified as being less than significant.

5. City's Response Regarding Comparison of Operational versus Permanent Thresholds for assessing Noise Impacts

The Appeal (supported by the letter from Edward L. Pack Associates, Inc. – see Letter 5) asserts that the EIR should have used both operational and permanent thresholds to assess the impacts of each of the Project's noise sources.

- a) The Appeal does not provide any evidence supporting its assertion that an analysis of the Project's operational noise sources against the permanent noise threshold would indicate a new or more significant noise impact. The Appeal only provides theoretical calculations of how this analysis could be conducted.
- b) This same assertion was included in public comments on the Draft EIR. As part of the Response to Comments included in the Final EIR, two examples were provided of an analysis of operational noise impacts as compared to the permanent noise threshold, as suggested by Pack.
- c) These two examples (performed for two nearby residential receptor locations) demonstrate that using permanent noise threshold for operational noise sources would not result in a new or more significant noise impact. Rather, the Municipal Code's operational noise source thresholds appear to be more restrictive of operational noise than are the permanent noise threshold. This is primarily because the permanent noise threshold relies on a day/night average calculation of noise that occurs over a full 24-hour day, which includes more than 12 hours of each day when the School would not be making any perceivable operational noise. The City of Oakland Noise Ordinance's operational limits appear to be more restrictive of the Project's operational noise impacts as compared to the City's permanent noise thresholds, and the operational noise thresholds were appropriately used in the EIR.

6. City's Response to Appellant's Claim That Neighbors near the Project will be able to hear new noise sources attributable to the Project and may find this new noise to be irritating or annoying.

Based on the City's correctly applied operational noise thresholds, the Project's new noise sources (other than graduation ceremonies) would not exceed the Noise Ordinance limits and the Project's operational noise would not be significant according to the City's CEQA thresholds.

Section 1.D. Drainage

Section 1.D.1 Appellant Claims: The Appellant Has Been Unable To Find A Final Drainage Plan Showing The Changes Referenced In The Final EIR, Demonstrating How Drainage Near Two Off-site Properties Will Be Handled. The Appeal Requests An Answer To This Question.

Section 1.D. 2 No further arguments were submitted about drainage issues.

Section 1.D.3 Staff Response: Drainage

Pursuant to the recommendations of the Project's geotechnical engineering consultant (Rockridge Geotechnical), the Project does propose to line the retention basins that are to be located south of the Loop Road and to connect these retention basins with underground pipe, rather than earthen bottom basins and an open swale. See the detail drawing from Sheet C7.04 of the FDP Engineering Plan Set, which does call for geotextile lining and piping.

Section 1.E Loop Road

Section 1.E.1. Appellant Claims: The New Loop Road Will Change the Way the School will Manage Drop Off and Pick Up, and Is Not A Benefit to the Neighborhood.

Section 1.E.2 Appellant Argument: Lincoln Avenue is congested every school day and often because of the School's evening and weekend special events, and that the Loop Road will not correct the drop off and pick up traffic congestion. The Appeal also suggests that the School is severely under-parked now and will continue to be under-parked in the future.

Section 1.E.3 Staff Response: The Project's Design for the Loop Road

1. Although traffic issues related to level of service standards are no longer a component of CEQA, the EIR Project Description does describe how vehicular access to the proposed South Campus will be from Lincoln Avenue, via a new internal, one-way Loop Road that would ring the internal perimeter of the proposed South Campus.
 - a. The entrance to this Loop Road would be at or near the existing curb cut and driveway off Lincoln Avenue at the easterly (upper) end of the proposed South Campus, and the exit would be at a similar existing curb cut and driveway off Lincoln at the westerly (lower) end of the proposed South Campus.
 - b. The new Loop Road would provide on-Campus, off-street queuing space for vehicles.
 - c. Two distinct drop-off and pick-up points (one for the Upper School, and one for the Lower and Middle Schools) would provide an alternative to the current drop-off and pick-up location along Lincoln Avenue.

- d. Other than public and private bus loading and unloading (which would continue at Lincoln Avenue), all vehicle pick-up and drop-off activity at the School would occur along this Loop Road, rather than as currently occurs along Lincoln Avenue.
- e. The existing loading zones for AC Transit and private buses would be maintained on Lincoln Avenue as the width of the Loop Road is too narrow to accommodate these larger vehicles, but the Loop Road is sized to accommodate emergency vehicles.
2. The new internal Loop Road would replace the circuitous turn-around routes called “the Alida Loop,” which relies on public streets in the adjacent, downhill neighborhood to change direction on Lincoln Avenue, and to use the Mormon Temple parking lot near Highway 13 as a staging area for afternoon pick-up.
3. Separate and apart from the CEQA document, the City has prepared a Transportation Impact Report (TIR) for the Project. This TIR is not a CEQA document or part of the CEQA review of the Project, but is a separate analysis required by the City to ensure consistency with the General Plan and other adopted plans and policies. Thus, it is not included in the EIR, nor is it part of the CEQA-mandated EIR public review process.
 - a. The TIR is part of the public record of the City’s decision-making process. It was made available for public review, along with other information relevant to considerations on the Project’s merit.
 - b. That TIR also included a traffic simulation model that visually demonstrated traffic flow along Lincoln Avenue under existing conditions (where all drop-off and pick-up activity occurs along Lincoln Avenue) and a separate simulation that visually demonstrated traffic flow along Lincoln Avenue under existing conditions with all drop-off and pick-up activity occurring along the Loop Road.
 - c. The simulation provides a clear demonstration of the relative merits of the Loop Road as alleviating traffic congestion during the drop-off and pick-up periods. It can be viewed at the following link: <https://www.oaklandca.gov/projects/head-royceParking> The Project proposes to add 25 new on-site parking spaces, and to retain and redesign the 129 paved parking spaces that currently exist, for a net of 154 total parking spaces on the proposed South Campus. In addition, the existing Campus also has 154 parking spaces that are not proposed to change pursuant to the Project. School-wide, with the Project, there would be 308 total off-street parking spaces on the overall Campus.
 - d. Based on the School’s own parking demand study in support of the Project, the School expects that 344 off-street parking spaces would be required to meet the anticipated demand. To accommodate the anticipated demand for 344 total off-street parking spaces at full enrollment, the School proposes to either add 36 stacked parking spaces at the existing Campus or to reduce parking demand by prohibiting some or all students from driving to school (currently, approximately 90 students [juniors and seniors] have permits to drive to and park at the Campus).

Section 2: Appeal of Planning Entitlements

The appellant raises issues relating to planning entitlements in appeal case file PLN18532-A0 2 as identified and discussed below. These issues primarily relate to the Project’s compliance with required policy, regulatory requirements and conditions of approval for the required findings and land use entitlements including the PUD, the FDP and Conditional Use Permit approvals. The complete appeal document is provided in **Attachment B** and a summary of requested amendments to Conditions of Approval is provided in **Attachment D**.

The Appeal claims that “The Planning Commission Abused its Discretion in Approving the Project in Violation Of Three Overriding City Council Priority Policies: A. Wildfire Evacuation, B. Diversity, Equity and Inclusion, and C. Affordable Housing” The Appeal states that for “all of the reasons cited with respect to these Priority Policies, the Planning Commission abused its discretion by putting a wealthy private school’s needs ahead of residents in an Oakland neighborhood.”

Section 2.A. Wildfire Evacuation

Section 2.A.1 Appellant Claim

The Appeal argues that the Planning Commission decision demonstrates abuse of discretion by imposing new ineffective mitigation measures and permit conditions.

Section 2.A. 2 Appellant Argument: The Appeal argues that the approved mitigation and conditions of approval fail to address adequate wildfire evacuation. The Appeal cites the Wong and Weiberger reports, the School’s history of non-compliance with vegetation management requirements and late reporting of corrections. The Appeal further claims that the SCAMMP presented in the staff report “all treat [the School] as simply needing some suggestions and guidance” and allow the School to defer the evacuation plan for 6 years.”

Section 2.A.3 Staff Response: For a complete discussion of the Mitigation Measures and requirements for an Emergency Management Plan see Section 1 Subsections A and B. The allegation of deferral of the evacuation plan is incorrect and is specifically responded to in **Section 1.B.3.4** of this report.

Section 2.B Diversity, Equity and Inclusion

Section 2.B.1 Appellant Claim: The Appellant claims that despite testimony that the student body is 69% minority, the School is a typical private school catering to parents with discretionary income over \$50,000.

Section 2.B.2 Appellant Argument. The Appeal argues that: “families are not representative of Oakland and that “parents and supporters of the project are not representative of Oakland.”

1. The appellant claims that the map in Exhibit D of the Appeal submittal demonstrates that the School: “avoided accepting students from census tracts where there was a predominance of black residents, and the data more strongly indicates that [the School] may be avoiding census tracts where there was a high percentage of Hispanic residents.”
2. The appellant further claims that this pattern of enrollment is consistent with “redlining by avoiding accepting students living below Highway 580 or 880.”
3. The appellant claims that less than half the student body lived in Oakland in 2015-2016 (the last date that public data was available), as shown in Exhibit E of the Appeal submittal.
4. The appellant further contends that the School has ongoing internal issues around racism documented by students who detailed evidence of racism and bias by the School administration and board in an Instagram post “Black at [Head Royce School].” See **Attachment B** for the complete appeal submittal.

Section 2.B.3 Staff Response: This information presented by the appellant as part of the Appeal was not presented to the Planning Commission at a public hearing nor discussed during the

Commission's deliberation and decision making. It was delivered electronically within the comment period but after the close of business the day prior to the hearing. The information presented by the Project applicant at the meeting included a statement that the student body is diverse, that 26 percent of the student body receives tuition assistance with an average award of \$25,000, and that 69 percent of the student body identifies as minority. The Project applicant and members of the public also testified about the opportunities to Oakland residents in both the full-time program and in the summer program "Heads Up," which offers educational opportunities to Oakland School District attendees. At the Commission hearing, the School presented a diverse number of students who spoke to the Commission about how the School has benefited them and their families.

Section 2.C. Housing

Section 2.C.1 Appellant Claim: The appellant claims that the highest best and ethically proper use of the South Campus is affordable housing.

Section 2.C.2 Appellant Argument: The Appeal argues that the South Campus 8 acres includes 1 existing house and 2 "joined houses" houses or buildings that could be used for affordable housing.

Section 2.C.3 Staff Response: The first plan submittal for this Project included 3-5 units of temporary housing in Building 9 for new teaching staff. This housing proposal was studied in the Draft EIR. In addition, a housing development of up to 35-43 single family units was studied in the "No Action Alternative" under the heading "Other Predictable Potential Actions" in the Draft EIR. Both of these housing scenarios were included in the document at the time of publication and circulation. Although the existing zoning (RD-1) would allow housing, the site was not studied for housing during the recent Housing Element Update, and it is not designated as a Housing Opportunity Site or considered for up zoning to encourage additional missing middle housing. The early use of the site by the Lincoln Children's Center included 39 dormitory units but the units were gone for sufficient time to determine that the site is now exempt from the requirement to retain existing housing units. Housing could be allowed on the site, but it is not required. Development of the property without housing is not considered a "housing loss" since the site is not currently designated for housing under the Housing Element. After review of the issue, the School removed residential uses from the proposal and this minor modification was included in the Final EIR. The Planning Commission was advised of this change during their deliberations.

Section 2.D PUD

Section 2.D.1 Appellant Claim: The Planning Commission abused its discretion by approving the PUD Allowing Further Student Enrollment Growth

Section 2.D.2 Appellant Argument: The Appeal argues that Planning Commission decision is an abuse of discretion because the record is "replete" with evidence and expert opinions that demonstrate that the School cannot safely handle increasing enrollment, and that 344 more students violates Oakland's Fire safety policy. Appellant claims that the School historically and erroneously claimed to increase enrollment very gradually. In 2016 the School was over enrolled by 30 students but amendments to the PUD approved in 2016 allowed that enrollment "after the fact" but five years earlier than scheduled.

Section 2.D.3 Staff Response: It is not clear from the Appeal submittal materials which aspect of Fire Safety Policy is referenced by the appellant. California Fire Code and City of Oakland Fire Code include requirements that apply to areas designated as VHFHSZs. These codes require preparation of a Vegetation Management Plan to reduce the potential for a project to exacerbate the risks of wildland fires. Pursuant to these code requirements, the consulting expert in the field of wildfire hazards that helped prepare the EIR developed a Vegetation Management Plan for the School, designed to provide an enhanced level of wildfire safety at the School. The Vegetation Management Plan addresses both management of wildlands and on-site landscaping. **Section 1.A.3 Vegetation Management Plan** analyzes these requirements in greater detail. **Section 1.B.3. Emergency Evacuation addresses increased enrollment and evacuation.**

Section 1.B.3 of this report analyzes the increased enrollment as it relates to evacuation. The EIR identifies that the Project would increase student enrollment by 344 additional students and 17 staff members, representing an increase of 361 new people that would potentially compete for the same limited evacuation routes to escape a wildfire hazard. Under a catastrophic evacuation scenario, as many as 9,000 people may be seeking to use Lincoln Avenue as an evacuation route to safer downhill locations, and the Project would add 361 more people (or an approximately 4 percent increase in people) potentially attempting to use Lincoln as an evacuation route. **Section 1. B.3** of this report also addresses requirements for the Fire Safety Management Plan for the project. Subsequent to the 2016 violation of the enrollment cap for the school referenced in the Appeal, the City reviewed and approved a revised set of conditions of approval for the 2016 PUD which include requirements for annual monitoring and reporting of school year and summer school enrollment. That reporting has occurred continuously since then. The Project approved in the current application, PLN18053, modifies and continues the monitoring requirements. The current condition reads as follows.

#19. Enrollment Monitoring

Requirement: The school shall submit annual enrollment numbers to the California Department of Education in accordance with state law, with a copy to the Planning Bureau.

When Required: October 15th of each year, unless a different compliance deadline is required.

Monitoring/Inspection: Planning Bureau

This information was part of the public record and available to the Planning Commission as part of their deliberation on the project's merits.

Section 2. E. Loop Road

Section 2.E.1 Applicant Claim: The Planning Commission abused its discretion in its decision approving the Loop Road and the left turn pockets into the loop road from Lincoln Avenue with installation of new additional traffic lights.

Section 2.E.2 Appellant Argument: The Appeal argues that the Loop Road is not a benefit to the neighborhood approved without consideration of whether the Loop Road will improve access along Lincoln Avenue for area residents. The Planning Commission's decision is an abuse of

discretion because none the following issues have been resolved in a way to allow neighbors and businesses to have access along Lincoln Avenue. The new loop is road not a benefit to the neighborhood because:

1. The School has pushed all its impacts out into the neighborhood and off its own properties by pretending that it has no access driveways and parking lots.
2. Instead of pushing the drop off and pick up next to houses, The School should have been required to use its own driveways, which are not next to houses, and should be required to substantially reduce the number of cars coming to the campus.
3. The Loop Road will not correct the drop off and pick-up traffic congestion.

Section 2.E.3 Staff Response: The proposed Loop Road is located on private property (the South Campus) and will create capacity for loading and unloading students and include a stacking lane for vehicles waiting to drop off or pick up students. It will be accessed from a turn lane on Lincoln Road which will allow separation of through traffic and facilitate traffic flow.

A further analysis of the Loop Road and how it reduces traffic congestion resulting from school drop off and pick up is provided in **Section 1.E.3** of this report. As discussed above, the City prepared a TIR for the Project. This TIR is a separate analysis required by the City to ensure consistency with the General Plan and other adopted plans and policies. The TIR is part of the public record of the City's decision-making process. It was made available for public review, and to the Planning Commission along with other information relevant to considerations on the Project's merit.

The TIR also included a traffic simulation model that visually demonstrated traffic flow along Lincoln Avenue that visually demonstrated traffic flow along Lincoln Avenue under existing conditions with all drop-off and pick-up activity occurring along the Loop Road. The simulation provides a clear demonstration of the relative merits of the Loop Road as alleviating traffic congestion during the drop-off and pick-up periods. It can be viewed at the following link: <https://www.oaklandca.gov/projects/head-royce>.

Section 2.F Entertainment Venue

Section 2.F.1 .Appellant Claim: An Entertainment Venue is still included in the Project Site Plan

Section 2.F.2 Appellant Argument: The Planning Commission abused its discretion by approving the project with all of the entertainment facilities still in the plans because:

1. The School is not applying for entertainment or public activity permit but features of the plan are consistent with the original entertainment center concept and not consistent with a school
2. Across the total 22 acres there are four theaters/auditoriums, two pavilions for guests, two outdoor event areas including an amphitheater on the South Campus, loud-speaker capacity on each campus, and food dispensary services on both campuses”
3. The NSC submitted an expert letter during the EIR comment period from an entertainment expert (Colleen Kennedy) page B4 of EIR who stated that
 - a. Entertainment is economically infeasible
 - b. Amphitheater next to housing impacts neighbors

- c. Noise will result from daily classes, special events and ceremonies
4. The School would still be able to apply for an entertainment permit but before it constructed the facilities for it.
5. The commission violated CEQA's prohibition against piece-mealing the EIR by not analyzing the impacts from an entertainment venue until after the facilities were already constructed.

Section 2.F.3 Staff Response: The facilities approved as part of the of the Project are for activities and special events that are part of the range of uses typically associated with a K-12 school and must be related to school activities. The site plan does include outdoor classrooms and a "commons" area designed as an amphitheater. In a future Phase 3, a 9,000 sq ft performing arts center is proposed and will also be limited to school activities. There are no facilities in the approved site plan that can be rented or used as an entertainment venue by outside parties.

Section 2 G Conditions of Approval

Section 2.G.1 Appellant Claim: The Proposed Project Is Incompatible With the Neighborhood and Creates Negative Impacts That the EIR and the Staff's Proposed Use Permit Conditions Do Not Adequately Address.

Section 2.G.2 Appellant Argument: The Appeal argues that the Planning Commission decision to treat the two campuses the same and not limit uses on the South Campus is an abuse of discretion. The Appeal claims that the approved conditions of approval need modification and that additional conditions of approval are required. The appellant suggests that some activities should be restricted to the North Campus because the topography at the North Campus forms a geographic area that contains sound better than the relatively flat South Campus. The Appeal seeks to further restrict the use of the South Campus for the summer program, restrict outdoor special events during the school year, including graduation, and prohibit amplified sound. Other identified issues address phasing, air quality during construction, vegetation management, tree removal, noise sources, monitoring and enforcement, traffic generation and parking, re-location of the Loop Road to the North Campus maintenance and deliveries.

Section 2.G.3 Staff Response: The Planning Commission's made its decision based on public testimony and the best professional practices, standards and regulatory requirements embodied in the City's adopted Standard Conditions of Approval for development projects. The Commission also adopted site-specific requirements that respond to particular aspects of the site and proposed land use activity. Based on this body of information, the Planning Commission considered the mandatory findings for approval for each permit type under review and affirmatively made the required findings.

The Appeal filed by the NSC seeks an order setting aside all permit approvals including approval of the EIR and denying the School's application pending further review and consideration under CEQA. If the Appeal is granted or partially granted, the numerous changes to conditions of approval anticipated by the NSC could then be on the table for consideration. A more detailed summary of proposed changes to the adopted conditions is provided in **Attachment D**. for review and consideration. Many of the proposed changes such as the change in the location of the Loop Road to the North Campus, further restrictions on enrollment, additional restrictions on outdoor activities and amplified sound on the South Campus are inconsistent with the current project

description and would require further analysis. Letters from individual members of the NSC submitted as part of the Appeal identify changes to adopted conditions and propose new topics for conditions, and are included in **Attachment B**. A summary of the issues raised is included in **Attachment D**.

Section 3 Appeal of the Appeal Fee

Section 3.A.1 Appellant Claim: The fee for the Appeal filing was erroneous.

Section 3.A.2 Appellant Argument: The Appeal argues that the fee charged for two appeal filings is not in the published schedule.

Section 3.A.3 Staff Response: The appellant filed appeals of two different Planning Commission decisions.

1. The fee for an appeal of an Environmental Review decision is shown on the fee schedule as Appeal of ER, \$2,476.31.
2. The fee for an appeal of a planning entitlement decision, which includes all of the planning permit decisions, is shown on the fee schedule as Appeal of the Planning Commission decision to the City Council. \$2,765.48.

FISCAL IMPACT

The Project involves a private development and does not request or require public funds and has no direct fiscal impact on the City of Oakland. If constructed, the Project would provide a positive fiscal impact through increased property taxes, sales taxes, utility user taxes, and business license taxes, while at the same time increasing the level of municipal services that must be provided.

PUBLIC OUTREACH / INTEREST

This item has appeared before community meetings and public hearings on six prior occasions. The Project appeared before the City LPAB on March 11, 2019 for scoping of the EIR, on December 13, 2021 for a Hearing on the Draft EIR, and on March 6, 2023 for a hearing on proposed modification to the three historic resource buildings on the site.

The item appeared before the Planning Commission on February 20, 2019 for scoping of the EIR, on December 15, 2021 for a Hearing on the Draft EIR, and on April 19, 2023 for certification of the EIR and a decision on the Project, including the PUD revisions, FDP Phases 1 and 2, Conditional Use Permit, Design Review and amended conditions of approval for the existing school.

COORDINATION

This report and legislation were prepared in coordination with the City Attorney's Office and the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Allowing the Project to proceed would establish a new development on an existing underutilized property, and restoration of historic resource structures would increase property taxes to the City and allow for the enjoyment of previously unused and neglected historic buildings. The development of an internal loop road on the Project site will also help to alleviate traffic congestion on Lincoln Avenue.

Environmental: Developing in already urbanized environments reduces pressure to build on agricultural and other undeveloped land. Sites near transit enable residents to reduce dependency on automobiles and further reduce adverse environmental impacts. The restoration of neglected buildings with historic value, the creation of an internal loop road, and the establishment of fire-resistant landscaping and structures will help improve the environment in and around the Project site.

Race & Equity: The Project benefits the community by adding educational opportunities to Oakland residents in both the full-time program and in the summer program. The student body is diverse with 69 percent of the student body identifying as minority. Twenty-six percent of the student body receives tuition assistance with an average award of \$25,000. The summer program "Heads Up" offers educational opportunities to Oakland School District attendees.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Draft EIR analyzed potentially significant environmental impacts in the following categories: Aesthetics, Air Quality, Biological Resources, Cultural Resources including Historic Resources and Tribal Cultural Resources, Greenhouse Gas Emissions and Global Climate Change, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use Planning, Noise, Transportation, Utilities, Wildfire and Emergency Evacuation. The Draft EIR did not identify significant and unavoidable impacts that could not be reduced below adopted thresholds of significance by the SCAMMPs.

The Draft EIR included analysis of three alternatives to the Project that meet the requirements of CEQA to include a reasonable range of alternatives to that would feasibly attain most of the Project's basic objectives and avoid or substantially lessen many of the Project's significant environmental effects. The CEQA alternatives analyzed include:

Alternative 1, No Project: Some other institutional use of the site, or the development of detached single unit residences with the potential for a limited range of commercial uses is anticipated.

Alternative 2: Minor Development Alternative would include a cap on enrollment and some modification and reuse of existing buildings.

Alternative 3: Reduced Alternative would provide for a reduced incremental increase in student enrollment, a new Loop Road for off street drop off and pick up and an at grade crossing at Lincoln venue linking the campuses.

None of the alternative met the Project Objectives as well as the Project. In addition, the Project's potential significant impacts could all be mitigated to a level of less than significant. As a result, the EIR deemed the Project to be more suitable than the alternatives.

PUBLICATION AND DISTRIBUTION OF THE DRAFT EIR

- A Notice of Preparation (NOP) was published on February 1, 2019
- Public Scoping Hearings occurred before the Planning Commission on February 20, 2019 and before the LPAB on March 11, 2019.
- A Notice of Availability for the Draft EIR was published on November 5, 2021.
- Public hearings on the Draft EIR were held before the Landmarks Preservation Advisory Board on December 13, 2021 and before the Planning Commission on December 15, 2021.

By the end of the comment period, the City received written comments from 287 commenters. Of those 287 comment letters, 57 letters included comments on the adequacy and/or accuracy of the Draft EIR, and 230 letters expressed support for the Project and the EIR conclusions

In addition to providing the comments and responses to comments on the Draft EIR, the Final EIR includes two other substantive chapters. Head-Royce School proposed several modifications to its original PUD permit application, and the environmental effects of those changes are addressed in Chapter 2, Analysis of Project Changes. Other necessary updates, modifications and clarifications to the text and exhibits in the Draft EIR are found in Chapter 5, City-Initiated Updates and Errata to the Draft EIR. The Draft EIR, together with the comments, responses to comments, and other information included in this Response to Comments document constitutes the Final EIR, consistent with State CEQA Guidelines Section 15132, Contents of Final EIR.

The April 19, 2023 Planning Commission staff report, which includes a link to the CEQA Analysis document for the Project is included as **Attachment A**.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council conduct a public hearing and upon conclusion adopt a resolution denying the Appeal by the Neighborhood Steering Committee (NSC) and thus upholding the Oakland Planning Commission's approval of (a) the Planned Unit Development Permit (PUD), Final Development Permit Phase I-II, Conditional Use Permit, and amended Conditions for the expansion of the existing Head Royce School campus to the former Lincoln Children's Center site at 4368 Lincoln Avenue to create a unified, 22-acre K-12 school and to increase the enrollment to twelve hundred and fifty (1,250) students and (b) Certification of The Head Royce School PUD Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA).

For questions regarding this report, please contact Rebecca Lind, Planner IV, at (510) 238-3472.

Respectfully submitted,



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Attachments:

Attachment A. April 19, 2023 Planning Commission staff report, which includes a link to the EIR

Attachment B Appeal Submittal Case File PLN18053A-01 and PLN18053A-02

Attachment C Memorandum prepared by the City's CEQA consultant, Lamphier-Gregory

Attachment D Summary of Appellant's Proposed Changes to Conditions of Approval