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December 20, 2021

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Attn. Head Royce School Planned Unit Development Project DEIR Comments

Dear Ms. Brown:

I represent the Neighborhood Steering Committee (NSC) and am familiar with the former Lincoln Child Center (LCC – now, South Campus) and with the current Head-Royce campus across the street from it (North Campus). Between 1994 and until LCC put its property up for sale in 2012, I represented neighbors of the former LCC property. Between 2012 and the present I have represented neighbors with homes around the South Campus and the North Campus.

Please find attached as Exhibit A, the expert comment letters from William Weisgerber (evacuation), Colleen Kennedy (entertainment venue), Clearwater Hydrology, Jeffrey Pack (acoustics), and Jennifer Tso (arborist).

The DEIR is deficient in several regards and does not provide adequate information about the project and its impacts. The main issue with determining if an EIR is adequate is whether it complies with its informational duties. “The basic purpose of an EIR is to ‘provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.’ (Public Resources Code (PRC), § 21061.)” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511.) An EIR is a document of accountability because it must be certified or rejected by public officials—in this case, the Oakland City Council. (*Id.* at p. 512.) The public disclosures made by a properly prepared EIR protect both the environment and informed self-government. (*Ibid.*)

Judicial review of a public agency’s compliance with CEQA is governed by the abuse of discretion standard set forth in PRC § 21168.5 and referred to in the policy declaration of Guideline, section 21005, subdivision (a). (*Sierra Club v. County of Fresno, supra*, 6 Cal.5th at p. 512.) Section 21168.5 provides that our “inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (PRC § 21168.5.)

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An abuse of discretion normally can occur in two ways: 1) when a public agency fails to proceed in the manner required by CEQA, thereby committing procedural error; and 2) when a public agency errs by making findings of fact unsupported by substantial evidence. Whether the public agency has employed the correct procedures—that is, followed applicable law—is subject to independent judicial review. (*Sierra Club v. County of Fresno, supra*, at p. 512.) In contrast, when the agency acts in its role as the finder of facts, its findings are subject to deferential review under the substantial evidence standard. (*Ibid.*)

A. The DEIR Project Description Is Incomplete and Inaccurate

The DEIR minimizes and fails to truthfully describe the project as having two main components: 1) increasing the student enrollment to 344 for a total of 1250 with some additional classrooms, and 2) creating an entertainment venue for school events and for renting to the public. The reader is left to search for the rental entertainment venue information, which is buried in two places – the HRS Emergency Plan (Exhibit (Exh) B) and a description of the entertainment component in the biology report about the trees where it does not belong. (Appendix 6A, page 8.) On pages 1-3, the Emergency Plan diagrams show that there is already a performing arts center on the North Campus. There, we see two theaters that also serve as gyms, an amphitheater, classrooms for drama and music, two studios, a media room, and there is a large café for food service. (Em. Plan, Pages 6, 9.) From the community meetings with Mr. Smith, one of two trustees who is in charge of the expansion and head of school Ms. Land, we know the seating capacity for the two theaters on the North Campus, the two theaters on the South Campus, one existing and one proposed:

Building O (South Campus and already existing) - The original auditorium and gym would be repurposed as a theater with seating for between 55 to 125 people. Small “huddle” rooms in the back of the that building would provide space for collaboration, practices and preparations. An office space for administrative use would be provided, and a small kitchen may be included for catering and food service. A new outdoor terrace is proposed to be constructed adjoining the performance center. (DEIR, p. 3-27.)

New Performing Arts Center (South Campus) 15,900 square feet, includes theater with 450 seats.

M.E.W. auditorium/gym (North Campus) seats 800-1000 people

Second all-purpose auditorium (North Campus) that seats 412 people. (source: NSC letter, dated March 7, 2019 repeating information during a community meeting from Head of School and trustee about the two existing multipurpose auditoriums - "HRS has

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two all-purpose gyms on the North Campus. According to Ms. Land and Mr. Smith, one seats 800 to 1000 people and the other seats 412 people." Exh. C)

The South Campus would also have an amphitheater, described variously as "Stairs" or "Commons" with a pavilion and a large grassy area for guests to mingle during breaks in performances. (DEIR, figure 4-5.)

In the biology report, we find the following description of the entertainment's function:

The Performing Arts Center would provide the School's theater, dance, and music groups with practice, performance, and classroom space, and will be a place for the School to hold assemblies, concerts, meetings and host speakers. The building is designed to accommodate up to 450 seats for the audience. . . . ¶ As an optional additional element, the School may seek a Conditional Use Permit to allow community use of the Performing Arts Center for non-school-sponsored events such as graduation ceremonies for small schools or programs, recitals, neighborhood gatherings and functions of non-profits. The Performing Art Center is anticipated to be programmed most of the time for school functions such as class plays, concerts, assemblies and parent meetings, so community use would be limited and may (under this option) occur mostly on weekends. For purposes of this environmental analysis, this option for use of the Performing Arts Center for community use is limited to a maximum of 20 events per year. The size of such events is limited to the seating available (450) seats). Parking would be made available in the School's off-street parking spaces. Events would be required to be over by 10 p.m. on Saturdays and 8 p.m. on Sundays. Community groups would be required to hire the School's security and parking attendants or provide their own. Private parties such as weddings, quinceaneras, bar/bat mitzvahs, etc. would not be allowed.

Even this description is minimized. What about the other three theaters? What would they be used for? If the 1,000-seat auditorium will be limited to gym use, is there a proposed condition of approval limiting it to that use? And the two amphitheaters, one on each campus – what, when, and under what circumstances will they be used? Will the three theaters be used at the same time as the one new 450-seat theater on the South Campus? Will all four theaters be in use at the same time? The total number of theater seats will equal almost 2,000 seats. If the same movie was played in each of these theaters about the same time, or a lecture and music performances were spread over all of the theaters with the guests choosing which to attend at a given time, the number of seats would potentially have a major impact on traffic and noise.

"Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider

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mitigation measures, assess the advantage of terminating the proposal i.e., the “no project” alternative[], and weigh other alternatives in the balance.’ [Citation.]” (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052 [A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.’ ” (*Ibid.*, citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–193.)

The DEIR summary description of an entertainment venue rented to the public and the project’s goal of “flexible spaces” leaves the reader with no understanding how together, the South Campus and North Campus will be used if the City Council grants the school’s application. Just the fact that the project results in four theaters, two amphitheaters, two food service areas, etc. requires the DEIR to fully describe their uses, not just the facilities’ locations. Obviously, no school needs four theaters and a duplication of other entertainment facilities on two campuses across the street from each other. By describing the overall facilities as a school expansion, rather than what it really is – more school enrollment plus an entertainment venue for public rental use, the DEIR skirts its informational duties. Anyone could get around a stable, finite, project description the same way.

For example, another school with 22 acres could say that it is expanding its school with a large grass area, some holes in the grass for students to practice golf, a food service at the end of the grassy area, carts for the students and staff to be able to get around the campus, outdoor classrooms, pavilions for school meetings, and about 20 weekends a year, rental to the public. The EIR could then claim erroneously that the only environmental impact from this school expansion would be the occasional golf ball through a window. As here, it could then mention that later it *might* apply for a permit to rent the facilities for public golf tournaments. In reality, as here, the impacts would be grossly understated. A golf course is a golf course. And, an entertainment venue open to the public is a public entertainment venue.

Further, the concept of repurposing HRS into an entertainment venue for rentals was not a secret. The Planning Commission brought it up during the scoping session and asked the EIR preparer to evaluate it. Mr. Verges, one of the two trustees involved with the project explained the plan during a meeting with neighbors where I was present around 2013, and Mr. Smith claimed in meetings with neighbors recently that “it was the City who demanded” that HRS rent out its properties as an entertainment venue for the public. The DEIR preparer has had ample time to fully disclose specifics about the potential uses of the combined two campuses.

Another problem is that buried in a staff report, there is mention of lifting the roof on the MEW auditorium on the North Campus to return it to its original use as a gym. Wasn’t this building a combination gym/auditorium to begin with? How does lifting the roof five feet make it more of a gym than it is now?

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The DEIR fails as an informational document given the vagueness of its project description and lack of full details about the entire project for which it has applied for a PUD permit. The DEIR needs to be redone with an adequate project description and recirculated for public comment.

B. The DEIR Findings of “Less than Significant” Are Not Supported by Evidence – Even the Expert Reports in Appendices to the DEIR Disagree with those Conclusions

The City as Lead Agency (City) failed to provide *any* evidence supporting some of its less-than-significant findings, especially as to traffic, noise, and evacuation. Opposing its own expert reports in the appendices, the DEIR makes unsupported less-than-significant findings. Where the City made findings that impacts were insignificant, the court will apply the independent standard of review to determine if there was evidence to support those findings. Conclusions without evidence is determined by a court “to be inadequate as an informational document without reference to substantial evidence.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514.) Further:

[A] reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” [] The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions. (*Id.*, at pp. 515-516 – quotation marks and cites omitted.)

The Supreme Court stated that the “ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project. Whether an EIR will be found in compliance with CEQA involves an evaluation of whether the discussion of environmental impacts reasonably sets forth sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.” (*Id.*, at pp. 515-516 – quotation marks and cites omitted; Guidelines, § 15151.)

The City cannot legally make conclusionary statements without any evidentiary bases. Throughout the DEIR, the City ignores this rule. Substantial evidence “shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (Pub. Resources Code, § 21082.2, subd. (c); Guidelines, § 15384; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.)

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Incredibly, the City finds that adding 344 students for a total of 1250 to a school with no evacuation plan to leave the campus, or even a way to evacuate, in the very high wildfire risk zone (VHWRZ) is an insignificant impact. “No mitigation would be required. The Project will not limit emergency access, impede emergency response or create hazardous conditions for the public related to emergency access or evacuation, and the impact would be less than significant.” (DEIR, p. 16-25.) On page 16-23, it refers to Appendix 16 for some suggestions from Professor Wong about how to improve the school’s emergency evacuation plans and its manual.

When we read Professor Wong’s expert report, we learn that “a wildfire that begins in the Oakland Hills could reach Head-Royce within 15-30 minutes.” He states that “it is important for Head-Royce to consider any catastrophic situation that could severely endanger their students.” Then, he goes on to evaluate 9 exit points for students to escape off the campus from an approaching wildfire within that 15-30 minutes. **Not a single escape route is available for use.** Some of the exits prohibit disabled students from leaving, others are blocked in some way by vegetation, others involve unusable small, steep stairways, and locking systems on gates render them unable to be opened from the inside. HRS placed a large set of solar panels on a hillside preventing exit from that route. Shockingly, Professor Wong paints a picture of children running from one unusable exit to another unusable exit, trying to reach Lincoln Avenue, presumably in this 15-30 minute period. (App. 16B.)

With our hair standing on end, Professor Wong next points out that since only 50% of the current students come to school in cars, the only reliable way for them to evacuate is on foot, but then they will run into all of the persons evacuating from neighborhoods all the way from the Joaquin Miller Park area, a substantial distance from the school. This then raises the following scenario by Professor Wong, who apparently assumes that at least some of the children, including those in kindergarten through sixth grade have figured out a way to get up the steep hills and past the barriers he described, with the rest of the 906 children presumably now left to die:

If a wildfire is particularly close, heat and smoke could make an evacuation on foot dangerous. While Lincoln Avenue has dedicated sidewalks, Whittle Avenue does not, making it dangerous for people to walk on the roadway. Fruitvale Avenue has sidewalks but is further away from campus.

After ruling out vehicular and bus escape, Profession Wong begins his recommendations with this nonsensical observation given that he has just explained children will have great difficulty walking out of the campus:

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Head-Royce is recommended to conduct a pedestrian evacuation in the event of a major wildfire, if they have enough time to move people away from campus (e.g., at least 10 minutes). A pedestrian evacuation is likely to be more efficient, safer, and less impactful on the neighborhood than a vehicular evacuation.

To his credit, Professor Wong does list mitigation measures, all of which were ignored by the City in their findings. What he fails to do is explain how or why another 344 students and additional staff, as part of the proposed project, will not exacerbate the already horrendous scenario he just described. (App. 16B.)

The City's text in the DEIR also does not analyze and answer the obvious question whether 344 for a total of 1250 students and additional staff will exacerbate evacuation of the school simultaneously with neighbors and residents above the school also trying to evacuate. In his comment letter, Mr. Weisgerber, a former fire marshal and fire chief answers that question affirmatively and supplies even more shocking information to add to what CalFire and Oakland's own Deputy Fire Chief, Nick Luby, and its Fire Chief Reginald Freeman recently had to say about the dangers of increasing density and blocking evacuation routes in and below the hills. (See section Ea, below.)

Two other examples where the City ignored the only expert evidence it had and came to less than significant findings can be found in the traffic and sound sections. In the NSC's letter, prepared by neighbors who carefully studied the vehicle miles travelled (VMT) calculations, they show how the City's retained expert traffic engineers, Fehrs and Peers specifically found that the proposed project violated the VMT and they documented their work. Instead of accepting that there was a violation of the VMT and mitigating it, the City recalculated the numbers so as to come up with no violation of the VMT. The noise expert also found significant impacts, only to have the City claim there were none.

The reliability of evidence relied upon solely by the City in contravention with its own experts must be rejected because its reasons for changing data and contradicting its own experts' findings are clearly inadequate and unsupported. (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 426.) There is nothing in the record that demonstrates the City had expertise to render new and different opinions than the ones in their own expert reports. The sections of the DEIR with the less than significant findings are not even signed. The public has no way of knowing who wrote the opinions that the traffic, sound, and evacuation impacts were less than significant, the expert basis for those findings, or whether the person(s) who wrote them even had any expertise. Who wrote those three sections of the DEIR (traffic, evacuation, and traffic)? What was their expertise to render the opinions they wrote? Why did they reject the findings of their own retained experts' in the appendices?

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Moreover, the City was not free to just throw its own conclusions into the EIR in an attempt to downplay the seriousness of the evacuation problems and support the school's application for an expansion of enrollment and facilities. "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376,405, citing *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.)

Because the DEIR findings of less than significant impacts for evacuation, sound, and traffic were not based on anything more than the City's bare conclusions and opinions which were completely unsupported by any expert evidence, it must be done over and recirculated to the public. This time, the new DEIR must also discuss the evacuation hazard as to the South Campus. Where are the escape routes? If there was a fire near or in the new 450-seat theater, where and how would the guests escape off the campus? What is the plan for simultaneous evacuation of the South and North Campuses simultaneously with the neighbors and persons escaping from the hills?

C. The DEIR Ignored Changing Baseline Conditions Due to the Pandemic

In using a baseline based on pre-pandemic conditions, the DEIR fails to take into account the Covid pandemic that will eventually morph into an endemic. Under CEQA, an EIR "must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. . . . The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts." (CEQA Guidelines § 15125(a).)

In describing the environmental setting, lead agencies should generally describe conditions on the ground at the time the notice of preparation (NOP) is published. (CEQA Guidelines § 15125(a)(1).) Where conditions fluctuate over time, "and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record." *Id.*

Many of the environmental impacts in the DEIR have changed due to the pandemic. For example, the traffic situation during drop-off and pick-up has changed drastically since the NOP was issued. As reported by neighbors in their comment letters, the parents are driving their

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children to the school instead of putting them on busses, there is now almost no bus ridership, the school stopped complying with its current use permit by refusing to have the right number of traffic monitors required under its use permit long ago, and the drop-off and pick-up times have elongated to hours in the morning and in the afternoon. There was no substantial evidence to support using just the baseline conditions as of the 2019 NOP.

“[T]he date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods.’ [Citation.]” (*Communities, supra*, 48 Cal.4th at pp. 327-328; see also *San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 218-219 [five-year average of mining volumes was appropriate baseline].) Thus, “despite the CEQA Guidelines’ reference to … the time environmental analysis is commenced’ [citation], ‘[n]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence.’ [Citation.]” (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 449.)

Therefore, since the pandemic is not going away and at best will turn into an endemic and there is no reason to believe that the parents are going to stop engaging in what the school calls “bus resistance,” the right approach would have been to analyze potential impacts against both the 2019 conditions (i.e., conditions as they existed pre-pandemic in 2019, when the NOP was issued), and the 2021 conditions. This is especially true because the amount of traffic has increased exponentially. No doubt the VMT has also increased. Certainly, the conditions for evacuation are exacerbated further by the increased traffic congestion morning and afternoon. At the very least the DEIR should have disclosed the current conditions so that the public and decision-makers could compare those conditions to what existed in 2019. Instead, the DEIR pretends that the pandemic never happened.

D. Failure to Identify Project Impacts and Mitigate Them

The DEIR periodically attempts to reduce negative environmental impacts of the project into nothingness by indicating that a few suggestions to the school will suffice. The tone and reality of the DEIR is that as a special school for the elite, a “kid gloves” approach is all that is appropriate to require of HRS, not binding mitigations that the City will be required to enforce. The law does not countenance treating different uses as “special” such that they are above the requirements of CEQA. Under CEQA, the DEIR findings are inadequate to support project approval unless they discuss the impacts, “enforceable measures to mitigate those impacts, or the remaining unmitigated impacts.” (PRC §21081; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412.)

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E. Comments Regarding Individual Topics

a. Fire Evacuation and Vegetation Management

The *only* substantial evidence in the record shows that in the event of a wildfire emergency requiring evacuation off the school properties, the project will exacerbate the inability to safely evacuate HRS on each campus simultaneously with the neighbors and persons above the school site on Lincoln Avenue. Under CEQA, the “substantial evidence” definition (see section B, above), requires an expert with experience in designing evacuation plans. (*Newton Preservation Society v. County of El Dorado (Newton)* (2021) 65 Cal.App.5th 771, 789-791.) “It is not enough to have even a firefighter opining about evacuation if they do not have the necessary expertise: “While petitioners note that Barnes is a retired aerial firefighter, they identify no evidence in the record establishing he has experience in determining, directing, or effecting evacuation routes.” (*Id.*, at pp. 789-790.) Here, there is no evidence in the DEIR that Professor Wong, a research professor in Canada, has such expertise. However, NSC expert Mr. Weisgerber does have the expertise demonstrated in his report and his resume. He has experience in planning evacuations and is certified in California for Emergency Management Planning.

In his comment letter, Mr. Weisgerber explains the conditions that caused CalFire to place HRS on both sides of Lincoln Avenue in the VHWFRZ. He comments on the school’s failure to have open and usable escape routes from the current campus, and the absence of any emergency evacuation plan. Adding more students and employees to the school will exacerbate the dangers already present and cost lives. He also shows how likely a wildfire would be in the area of the school, based on facts, including the increasing rate of fire spread during recent years.

The DEIR does not analyze the potential for lost lives due to the lack of emergency exits or even require an evacuation plan for removing students and employees off campus. “The test is [] whether the record contains substantial evidence that the project may have a significant effect on the environment or may exacerbate existing environmental hazards.” (*Newton, supra*, at p. 775.) As to the likelihood of a wildfire, the Oakland Fire Department already answered that there is a high likelihood and the mechanism of death during an evacuation. Deputy Nick Luby spoke at a Planning Commission hearing on June 2, 2021. At that time, he demonstrated through maps of the Oakland Hills and a video of a real evacuation what is likely to happen in Oakland in the area in the hills above the school and then travelling down the hillside to major streets. (<https://www.oaklandca.gov/meetings/june-2-2021-planning-commission-meeting> - minutes 1:39:35 to 1:57.) He noted that in a major fire shown in his video, most of the people who lost their lives were in cars trying to evacuate. Fire Chief Freeman also weighed in on the dangers of increased density in the HWFRZ, not even getting to the very high category of fire danger. (Exh. E, attached.)

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Both App. 16A (vegetation management) and 16B (evacuation from the building) in the DEIR recommend just making some “suggestions” and educating HRS about fire prevention. There is nothing in CEQA that allows a city to substitute mitigating life threatening conditions with “suggestions.” (See section D, above.) The problem is not that HRS does not know *how* to do vegetation management or that it is supposed to have a plan for evacuating students and staff from the school property – it is that the school refuses to comply with either of these requirements.

In 2016, the City issued an amended use permit with changed conditions of approval. These changed conditions resulted from a complaint about HRS’s noncompliance with its prior use permit that neighbors filed with the City Planning Department and that the City for the most part determined were true. Condition 21 in the 2016 amended use permit required HRS to keep a push gate in a specific fence for evacuation purposes. It appears from Professor Wong’s report that this was not done. More glaringly, HRS also was noncompliant with Condition 26:

26. Management Plan.

Prior to the start of the next semester after Planning Approvals and Ongoing

The project applicant shall develop an Emergency Management Plan (“EMP”), and submit to Planning and Zoning Division, Transportation Services Division, OPD-Traffic Safety, and the Fire Marshall, for review and consultation. The Applicant shall implement the final EMP. The EMP shall include at least the following components:

a) Fire Protection Bureau Occupancy Review Ongoing

The School shall cooperate and coordinate with the Fire Services Department to conduct yearly occupancy and fire safety inspections of the school, fire drills and unannounced future site visits. The resulting Fire Department report(s), and any follow-ups, shall be sent to the Planning and Zoning Division for review.

b) Emergency Preparedness Plan

With 6 months and Ongoing

The School shall submit an Emergency Preparedness Plan, within 6 months after this approval. The completed plan shall be submitted to the Planning and Zoning Division and the Fire Protection Bureau for review and consultation. The plan shall discuss emergency evacuation procedures that will facilitate emergency vehicle access to the neighborhood during School pick-up and drop-off operations. The plan shall be implemented.

c) Fire Department Site Visits

The project applicant shall coordinate with the Oakland Fire Marshal’s Office to make periodic unannounced visits to the school (the frequency, timing, and types of visits should be at the Fire Marshal’s discretion based on need for visits and compliance by the school) to verify that adequate emergency vehicle access is being maintained during peak pick-up and

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drop-off periods. The Fire Marshal should consult with the School to identify modifications to the circulation rules, if emergency access problems are identified. (Exh. F.)

The school was supposed to provide the emergency plan to Ms. Klein within six months of the 2016 use permit, which meant no later than the beginning of 2017. Ms. Carona describes her attempts to obtain a copy of it only to discover that HRS never complied with the requirement and provided nothing to the planner because it did not bother to prepare one. Even when it did eventually prepare something, it did not address evacuation off of the property. And it still has not prepared a plan for offsite evacuation.

The same problem exists with vegetation management. The NSC has been after the school about noncompliance with vegetation management for years. It also requested that the school take down all of the eucalyptus trees on the North and South Campuses. It took down five or six on the South campus and apparently did not remove any on the North Campus, citing a kerfuffle with a neighbor over cost sharing for removal of a few of the trees and that it did not have enough money to remove other eucalyptus trees. Since then, it has invested in a large bank of new solar panels and a new field with artificial turf. Fire safety is not a priority with HRS.

To get around noncompliance with the annual vegetation inspection, HRS fails the first inspection in May or June, does not pass any subsequent inspection, waits until August before students come back, then does what is necessary to pass. It then posts on its website compliance notices from August to lure parents into thinking that all is safe because they have a compliance notice. Nothing could be further from the truth. From August, when HRS finally gets a compliance notice after failing the spring inspection by the vegetation fire inspectors, the first rain starts in November. The inspection program is set up so that in the spring, the inspectors require compliance and afterwards, the property owner is supposed to continue managing the vegetation fuel loads.

We know that HRS, after August, does nothing to maintain them because they repeatedly violate the spring inspection. That means that after the rains, HRS is out of compliance from the end of the rains in November until August of the following year – from about December to August – at least eight months out of every year, when the fire hazard is now a year-round threat! The NSC has repeatedly gotten after HRS about leaving the vegetation fuel loads to build until August with the only response that they have compliance certificates from August. (See Exhs. C and G – June 5, 2019 letter and memo to HRS Trustees from NSC, sample non-compliance findings including for 2021.) Fire safety is not a low priority for HRS – it is a no-priority and so far down the list of expenditures as to be non-existent.

Therefore, “suggestions” are not going to solve the fire dangers presented by HRS. The only solutions we have seen thus far are the ones presented by Mr. Weisgerber. Those solutions

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need to go into an enforceable mitigation measure. The vegetation management requirements also must go into enforceable mitigation measures, given the long history of non-compliance.

b. Traffic

A group of neighbors have worked together to gather data and respond to the traffic section of the DEIR in their letter. From the date on the traffic report (and the dates of pretty much all of the City's other expert reports), it appears that the plan was done first "back-of-a-napkin" style and then experts were called in after the project was already designed. Instead, the traffic engineer firm should have been doing the designing of the traffic management plan, not two trustees from the school with no expertise. As a result, the DEIR does not meet its informational requirements because it basically is trying to hide the lack of work done on the design of the project. As such, the project has multiple changes in its descriptions within the text.

The napkin was devoid of details and nobody has filled them in during the CEQA process (See section A, above.) For example, we are told that an internal loop on the South Campus will take care of drop-off and pick-up traffic for 1,250 students, but we are never told specifics about how that will occur even in broad strokes. Nor are we told what will happen to the current loop now in existence. In some places the DEIR refers to removing all school traffic off of Lincoln Avenue, except buses and at other times, we are told that it will only reduce traffic in the neighborhood. What exactly happens to the Lincoln-Alida-Laguna-Potomac-back to Lincoln loop in the project?

Another failure to provide sufficient information involves a reference to putting barriers around Lincoln Avenue so that parents cannot drop their children there and at the same time the DEIR is silent about use of the main driveway on the North Campus for drop-off and pick-up purposes as that originally was the purpose and use for that driveway. HRS later changed that purpose to address its violation of its use permit by not supplying sufficient parking spaces. What was designed to be the main driveway for the school ended up with one lane of parked cars and one lane for traffic.

The internal loop road is another example of the DEIR failing to include sufficient information for the public and decision-makers to know the impacts of the project. There are three different descriptions of the Loop Road. On page 13-40 of the DEIR, it states that the Loop Road will be about 1,000 linear feet and says a total of 385 student drop-offs and 385 pick-ups are anticipated each day. However, at 3-31 it says approx. 1,450 lineal feet, and at 5-22, the DEIR estimates 1,184 at the upper drop off and 1066 at the lower end per day, about 3 times as many feet as at 13-40. The relevance of this information is that it, in part, dictates how long it will take a parent from the time they enter the loop to the time they exit the loop to unload or pick up their child. The longer the "discharge rate" from entry to exit, the longer the queue in the middle of Lincoln Avenue trying to turn left into the loop. The length of the loop also dictates

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how many trees will need to be removed. The DEIR fails to fulfill its informational duties by excluding this key discharge rate information. It also does not give the public or the decision-makers sufficient information to consider traffic management alternatives.

c. Greenhouse Gas Emissions

In the Greenhouse Gas section 9, the DEIR gives us a very complete list of all the ways that greenhouse gases are contributing to global climate change. (Pages 9-1 to 9-2.) Not surprisingly, cars contribute fossil fuel combustion to the toxic mix of greenhouse gases. From the following pages, we learn about all of the ways that the state and even the City of Oakland have worked tirelessly to come up with Legislative bills and policies to reduce greenhouse gases. On pages 9-5 to 9-7, the DEIR lists the City's resolutions to reduce greenhouse gasses, including 87397, declaring a climate emergency. As to new development, it is required to complete an ECAP Checklist and "qualitatively demonstrate[] compliance with the Checklist items" as part of the project's design.

We do not see where in the analysis of greenhouse gases, the DEIR addresses the violation of the VMT that was demonstrated in the Fehr & Peers traffic engineer's report. As we explained in section D, above, the DEIR must identify negative impacts, provide an analysis of them and then mitigate those impacts. That has not been done here.

The other problem is that the DEIR seems to be making a less than significant finding but it is not clear where it actually makes that finding as to more than one aspect of the project (see p. 9-12 – stationary sources of GHG). It actually appears impossible to make it, especially in light of the fact that the project would have to meet the state and local policies, which it does not, based on the Fehr & Peers report.

Instead of measuring or analyzing whether the project significantly increases GHGs, the DEIR relies on a threshold of significance, which in turn is based on self-reporting by HRS. Thresholds of significance are not a substitute for substantial evidence that the project will have a less than significant impact on GHGs:

CEQA Guidelines Update: Proposed Thresholds of Significance (May 3, 2010), pp. 8–21 [regional air quality district for the San Francisco Bay Area proposes a threshold of 1100 MTCO₂E in annual emissions as one alternative agencies may use in determining CEQA significance for new land use projects].⁷ Thresholds, it should be noted, only define the level at which an environmental effect "normally" is considered significant; they do not relieve the lead agency of its duty to determine the significance of an impact independently. (Guidelines, § 15064.7, subd. (a); *Center for Biological Diversity v. Department of Fish &*

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Wildlife (2015) 62 Cal.4th 204, 228-229; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342, 29 Cal.Rptr.3d 788.

The problem with relying on HRS for answers to questions about contributing to GHG is that it is the “poster child” for creating vehicle exhaust. For example, it prides itself in its website and elsewhere on being the only K-12 school in Oakland and that it has students coming from 33 different cities around the greater Bay Area. Currently, according to neighbor observations, it is allowing all of the “bus-resistant” parents to drive to the school twice a day for pick-up and drop-off, which includes for most of them, using a loop around the neighborhood to go back to highway 13. The neighbors’ data and the memo with statistics from Fehr & Peers show that daily, school traffic backs up all the way down highway 13 while parents wait to get into a queue, and then wait to get into another queue.

In the self-reported ECAP, we see that HRS is fudging quite a bit, which the City should have caught, corrected, and required more evaluation for the GHG section of the DEIR. For example, the second and third questions are about whether the project’s use of buses and reducing parking will be part of it. The answer goes off into fairy-land with excuses why the public buses are not available and comes up with totally speculative information about some sort of parking lift on the North Campus that is not even in the DEIR project description or the application for the project. The truth is that HRS hires buses from AC Transit and private busses, but it does not hire enough of them to handle its 906 students, its staff, or the proposed 344 additional students. The answers should have truthfully been “no.”

Question 4 is asking whether the current TDM provides transit passes to employees and/or residents. Instead of answering that question, HRS untruthfully implies that it is reducing SOV use by 30%, despite the pandemic. It evades the question by saying it provides a “subsidy” for students and faculty “for transit passes.” The truth is that it charges for students to use its buses and does not pay AC Transit sufficiently to take care of the current enrollment transit needs, let alone with another 344 students. Question 7 is asking if the project would reduce displacement of residents. It is not answered and instead HRS talks about when it took occupancy of the Lincoln property and only used it for parking. The truth is that the project contemplates demolition of three houses, and at least one other building that could be renovated into housing. The same problem occurs with HRS’s answer to question 12 – it definitely intends to create demolition waste on the property. And, the answer to question 14 is patently false – HRS has not been complying with vegetation management and has rebuffed all efforts from the Fire Department and the neighbors to do so.

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The DEIR must quantify and analyze the GHGs from 1,250 students arriving in SOVs along with all of the HRS employees. It also needs to include in its assessment all of the SOVs that are anticipated to arrive and leave the school for events for the school and non-school use. A new DEIR should be republished and provide the required comment period.

d. The Project is Inconsistent with the General Plan, Zoning, the Vegetation Management Ordinance, the Noise Ordinance, and the Permit Criteria for an Entertainment Venue

In the fire evacuation section, the DEIR seems to be suggesting that if the project complies with some of the fire code, it is then legal to expose students and the community to wildfire risks. Mr. Weisgerber's report disabuses the public of that notion. Not only is it a violation of the Fire Code to create a fire trap with NONE of the exits from the North Campus available for realistic evacuation, especially for the vulnerable population of elementary school children, but it is also illegal and implicates the City for another reason. A known fire evacuation trap where students, employees, neighbors, and event attendees cannot quickly leave a property constitutes gross negligence on the part of the property owner and the City.

The General Plan and Zoning for the project site do not support a public entertainment venue. It does not meet the requirement that it would benefit all of Oakland for the reasons stated by entertainment promoter Colleen Kennedy. The project, once in operation, will violate the noise ordinance according to acoustics expert Jeff Pack. The project does not qualify for meeting the City's policies on wildfire prevention, reducing greenhouse gases, or its policies on equity and inclusion.

e. NSC Requests that the EIR Analyze a Modified Alternative 2

On page 18-5, the DEIR shows a table 18-1 with four alternatives. The Alternative 2 presents the best environmental alternative. It is the only one that even has a chance of saving lives although that result is highly questionable given that HRS has no evacuation plan for offsite escape from a wildfire. To increase the student enrollment and staffing by even one person is irresponsible.

It is difficult with so little information in the DEIR to figure out what modifications to Alternative 2 could be made so that it is more environmentally protective in keeping with CEQA. Tentatively, the following modifications should be made: Keep buildings 4 and 8. 4 is a house and 8 is new construction from the 1990s that could be made into housing, which is a high priority in Oakland. Remove the amphitheater ("Commons") as it presents sound impacts and arrange outdoor classrooms so that they do not interfere with neighbors' peace and quiet.

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Remove “option” of at-grade school crossing and replace with tunnel which reduces a traffic safety issue for children crossing the street. It also provides a way for deliveries received on the North Campus to be moved from that campus to the South Campus without disturbing neighbors with early morning noise from deliveries on the North side deliveries. Instead of just removing a new PAC, add classrooms. The modified Alternative 2 would require opening the North Campus main driveway for drop-off and pick-up as originally designed and a traffic management design plan that included shuttle services from offsite locations. It would include greatly cutting back on SOV usage, which would improve the environment in multiple ways.

On page 18-29, there is a list of ways that Alternative 2 as now drafted would not meet HRS’ goals. There are four goals – 1) HRS would not have a new PAC for the students; 2) Enrollment would not be increased; 3) remove the Alida loop or remove traffic from Lincoln Avenue; and 4) it would not join together the two campuses with an underground tunnel.

1. The new PAC is not for the students and is clearly part of the public entertainment venue as the students already have at least two theaters on the North Campus with all of the same classrooms, etc. that makes up the proposed PAC. There already is also a theater on the South Campus.

2. The enrollment should never be increased at the location given all of the fire risks listed by Mr. Weisgerber in his report. If anything, it should be decreased to prevent a major tragedy for the school community, the neighbors, and the escaping persons coming down from above the school on Lincoln Avenue.

3. The school has vehemently fought any attempts by the neighbors to get rid of the Alida loop and they will continue that fight no matter what. In some places in the DEIR, they already indicate an intention to keep the Alida loop.

4. A modified Alternative 2 would provide the tunnel, which should be added.

CEQA does not require meeting all of a project’s goals. However, a modified Alternative 2 would meet goals 3 and 4 above. Goal 1 and 2 are not viable in any event due to fire risks and the fact that the neighborhood is not zoned or appropriate for a public entertainment venue. Moreover, under CEQA, the City Council does not have to approve a project just so that it can have all of its goals met:

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every

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conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. ([Citizens of Goleta Valley v. Board of Supervisors\(1990\) 52 Cal.3d 553](#) and [Laurel Heights Improvement Association v. Regents of the University of California\(1988\) 47 Cal.3d 376](#)).

Accordingly, a modified Alternative 2 should be considered in the EIR.

Thank you for considering our comments.

Very truly yours,

Leila H. Moncharsh
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Veneruso & Moncharsh

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cc: Clients